

Agenda – Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Lleoliad: I gael rhagor o wybodaeth cysylltwch a:
Ystafell Bwyllgora 4 – Tŷ Hywel **Gareth Williams**
Dyddiad: Dydd Llun, 16 Ebrill 2018 Clerc y Pwyllgor
Amser: 08.00 0300 200 6362
SeneddMCD@cynulliad.cymru

1 Cyflwyniad, ymddiheuriadau a dirprwyon

2 Bil yr UE (Ymadael): sesiwn dystiolaeth

(Tudalennau 1 – 14)

Y Gwir Anrhydeddus Alun Cairns AS, Ysgrifennydd Gwladol Cymru

CLA(5)–11–18 – Papur briffio

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

(Tudalen 15)

CLA(5)–11–18 – Papur 1 – Offerynnau statudol sydd ag adroddiadau clir
Offerynnau'r Weithdrefn Penderfyniad Negyddol

3.1 SL(5)200 – Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Deintyddol) (Cymru) (Diwygio) 2018

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

Offerynnau'r Weithdrefn Penderfyniad Negyddol

4.1 SL(5)205 – Rheoliadau Treth Trafodiadau Tir (Darpariaethau Trosiannol) (Cymru) (Diwygio) 2018

(Tudalennau 16 – 26)



CLA(5)-11-18 – Papur 2 – Rheoliadau

CLA(5)-11-18 – Papur 3 – Memorandwm Esboniadol

CLA(5)-11-18 – Papur 4 – Llythyr gan Arweinydd y Tŷ a'r Prif Chwip, Torri'r rheol 21 diwrnod

CLA(5)-11-18 – Papur 5 – Adroddiad

Offerynnau'r Weithdrefn Penderfyniad Cadarnhaol

4.2 SL(5)204 – Rheoliadau Llywodraethu Digidol (Cyrff Cymreig) (Cymru) 2018

(Tudalennau 27 – 50)

CLA(5)-11-18 – Papur 6 – Rheoliadau

CLA(5)-11-18 – Papur 7 – Memorandwm Esboniadol

CLA(5)-11-18 – Papur 8 – Adroddiad

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

5.1 SL(5)203 – Rheoliadau Awdurdodau Lleol (Cyllid Cyfalaf a Chyfrifyddu) (Cymru) (Diwygio) 2018

(Tudalennau 51 – 52)

CLA(5)-11-18 – Papur 9 – Adroddiad

6 Adroddiad Atodol: SL(5)190 – Rheoliadau Awdurdod Cyllid Cymru (Pwerau i Ymchwilio i Droseddau) 2018

(Tudalennau 53 – 64)

CLA(5)-11-18 – Papur 10 – Adroddiad Atodol

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

**7 Adroddiad Atodol: SL(5)191 – Gorchymyn Deddf Enillion
Troseddau 2002 (Cyfeiriadau at Ymchwilwyr Ariannol Awdurdod
Cyllid Cymru) 2018**

(Tudalennau 65 – 66)

CLA(5)–11–18 – Papur 12 – Adroddiad atodol

8 Papurau i'w nodi

8.1 Bil yr Undeb Ewropeaidd (Ymadael)

(Tudalennau 67 – 83)

**CLA(5)–11–18 – Papur 13 – Llythyr gan Ysgrifennydd Gwladol Cymru at y
Llywydd, 16 Mawrth 2018**

**CLA(5)–11–18 – Papur 14 – Llythyr gan y Llywydd at Ysgrifennydd Gwladol
Cymru, 22 Mawrth 2018**

**CLA(5)–11–18 – Papur 15 – Llythyr gan Gadeirydd y Pwyllgor Materion
Allanol a Deddfwriaeth Ychwanegol at y Prif Weinidog, 23 Mawrth 2018**

**CLA(5)–11–18 – Papur 16 – Llythyr Arweinydd y Tŷ a'r Prif Chwip, 27 Mawrth
2018**

**CLA(5)–11–18 – Papur 17 – Llythyr gan y Prif Weinidog at Ysgrifennydd
Gwladol Cymru, 29 Mawrth 2018**

**8.2 Llythyr gan y Llywydd: Adroddiad Llywodraethiant yn y DU ar ôl Gadael yr
Undeb Ewropeaidd**

(Tudalen 84)

**CLA(5)–11–18 – Papur 18 – Llythyr gan y Llywydd: Adroddiad Llywodraethiant
yn y DU ar ôl Gadael yr Undeb Ewropeaidd**

**8.3 Llythyr oddi wrth Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau
Cymdeithasol: Bil Iechyd y Cyhoedd (Isafbris am Alcohol) (Cymru)**

(Tudalennau 85 – 90)

**CLA(5)–11–18 – Papur 19 – Llythyr gan Ysgrifennydd y Cabinet dros Iechyd a
Gwasanaethau Cymdeithasol: Bil Iechyd y Cyhoedd (Isafbris am Alcohol)
(Cymru)**

8.4 Llythyr gan Simon Thomas AC, Aelod sy'n Gyfrifol am Fil Ombwdsmon Gwasanaethau Cyhoeddus (Cymru)

(Tudalennau 91 – 93)

CLA(5)–11–18 – Papur 20 – Llythyr gan Simon Thomas AC, Aelod sy'n Gyfrifol am Fil Ombwdsmon Gwasanaethau Cyhoeddus (Cymru)

8.5 Datganiad Llywodraeth Cymru: Bil Deddfwriaeth Drafft (Cymru)

(Tudalennau 94 – 96)

CLA(5)–11–18 – Papur 21 – Datganiad Llywodraeth Cymru: Bil Deddfwriaeth Drafft (Cymru)

8.6 Llythyr gan Ysgrifennydd y Cabinet dros Gyllid: Bil Cyfraith sy'n Deillio o'r Undeb Ewropeaidd (Cymru)

(Tudalennau 97 – 101)

CLA(5)–11–18 – Papur 22 – Llythyr gan Ysgrifennydd y Cabinet dros Gyllid: Bil Cyfraith sy'n Deillio o'r Undeb Ewropeaidd (Cymru)

8.7 Nodyn ar Ddigwyddiad IWA ar Effaith Bil Ymadael â'r UE ar ddeddfwrfeydd datganoledig

(Tudalennau 102 – 116)

CLA(5)–11–18 – Papur 23 – Nodyn Digwyddiad IWA ar Effaith Bil Ymadael â'r UE ar ddeddfwrfeydd datganoledig a'u pwerau priodol

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

10 Trafod tystiolaeth gan Ysgrifennydd Gwladol Cymru

11 Bil yr Undeb Ewropeaidd (Ymadael): Y datblygiadau diweddaraf

(Tudalennau 117 – 123)

CLA(5)–11–18 – Papur 24 – Y Gwasanaeth Ymchwil: Bil yr Undeb Ewropeaidd (Ymadael): Y datblygiadau diweddaraf

**12 Llywodraethiant yn y DU ar ôl gadael yr Undeb Ewropeaidd:
Crynodeb o'r adroddiad drafft o'r dystiolaeth**

(Tudalennau 124 – 201)

CLA(5)-11-18 – Papur 25 – adroddiad drafft

Dyddiad y cyfarfod nesaf

23 Ebrill 2018

Mae cyfyngiadau ar y ddogfen hon

Offerynnau Statudol sydd ag Adroddiadau Clir 16 Ebrill 2018

SL(5)200 – Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Deintyddol) (Cymru) (Diwygio) 2018

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn diwygio Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Deintyddol) (Cymru) 2006 ("Rheoliadau 2006").

Mae rheoliad 2 yn diwygio rheoliad 4 o Rheoliadau 2006 (cyfrifo ffioedd) drwy gynyddu'r ffi gymwysadwy sydd i'w thalu am gwrs o driniaeth Band 2 a Band 3.

Rhiant–Ddeddf: Deddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006

Fe'u gwnaed ar: 01 Mawrth 2018

Fe'u gosodwyd ar: 07 Mawrth 2018

Yn dod i rym ar: 01 Ebrill 2018



Eitem 4.1

OFFERYNNAU STATUDOL
CYMRU

2018 Rhif 401 (Cy. 71)

TRETH TRAFODIADAU TIR, CYMRU

**Rheoliadau Treth Trafodiadau Tir
(Darpariaethau Trosiannol)
(Cymru) (Diwygio) 2018**

NODYN ESBONIADOL

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

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Treth Trafodiadau Tir (Darpariaethau Trosiannol) (Cymru) 2018 er mwyn gwneud darpariaeth drosiannol bellach mewn cysylltiad ag achos penodol pan fo les cyfnod penodol yn parhau am gyfnod o fwy na blwyddyn ar ôl ei dyddiad terfynu contractiol (cyfnod a elwir yn gyfnod "dal drosodd"), ac yn cael ei hadnewyddu a'i hôl-ddyddio wedi hynny i ddiwrnod yn ystod y cyfnod dal drosodd.

Pan fo'r amodau ym mharagraff 8(1) o Atodlen 6 i Ddeddf Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig (Cymru) 2017 wedi eu bodloni, caiff y rhent sy'n daladwy o dan y les newydd ei ostwng at ddibenion y dreth trafodiadau tir gan swm y rhent trethadwy sy'n daladwy mewn cysylltiad â'r denantiaeth dal drosodd.

Mae'r diwygiad a wneir gan reoliad 2 yn sicrhau bod y gostyngiad sydd ar gael o dan baragraff 8(3) o'r Atodlen honno yn gymwys mewn cysylltiad â lesedd a roddir cyn 1 Ebrill 2018 ond a adnewyddir ar y dyddiad hwnnw neu wedi hynny, er gwaethaf y ffaith bod treth dir y dreth stamp i'w chodi ar y rhent a oedd yn daladwy yn ystod y cyfnod dal drosodd.

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

OFFERYNNAU STATUDOL
CYMRU

2018 Rhif 401 (Cy. 71)

**TRETH TRAFODIADAU TIR,
CYMRU**

Rheoliadau Treth Trafodiadau Tir
(Darpariaethau Trosiannol)
(Cymru) (Diwygio) 2018

Gwnaed 22 Mawrth 2018

*Gosodwyd gerbron Cynulliad Cenedlaethol
Cymru* 23 Mawrth 2018

Yn dod i rym 1 Ebrill 2018

Mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pŵer a roddir iddynt gan adran 78(1) o Ddeddf Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig (Cymru) 2017(1).

Enwi a chychwyn

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Treth Trafodiadau Tir (Darpariaethau Trosiannol) (Cymru) (Diwygio) 2018.

(2) Daw'r Rheoliadau hyn i rym ar 1 Ebrill 2018.

**Diwygio Rheoliadau Treth Trafodiadau Tir
(Darpariaethau Trosiannol) (Cymru) 2018**

2. Ar ôl rheoliad 9 o Reoliadau Treth Trafodiadau Tir (Darpariaethau Trosiannol) (Cymru) 2018(2), mewnosoder—

“Tenantiaethau dal drosodd

9A.—(1) Mae'r rheoliad hwn yn gymwys pan fo'r hen les y cyfeirir ati ym mharagraff 8(1) o'r Atodlen wedi ei rhoi cyn y dyddiad cychwyn.

(2) Pan fo'r rheoliad hwn yn gymwys—

(1) 2017 decc 1.
(2) O.S. 2018/126 (Cy. 31).

- (a) mae paragraff 8(1) o'r Atodlen yn gymwys i'r hen les;
 - (b) mae paragraff 8(3)(b) a (4) o'r Atodlen yn cael effaith fel pe bai "sy'n dod i ben ar y dyddiad cyn y dyddiad y rhoddir y les newydd" yn cael ei roi yn lle "sy'n dod i ben ar ddiwedd y blynyddoedd dal drosodd cyfan"; ac
 - (c) mae'r "rhent trethadwy" sy'n daladwy mewn cysylltiad â'r denantiaeth dal drosodd at ddibenion paragraff 8(3) a (5)(b) o'r Atodlen i gynnwys y swm a ystyriwyd wrth bennu'r dreth a oedd i'w chodi o dan ddarpariaethau Atodlen 5 i DC 2003 am y cyfnod hwnnw.
- (3) Yn y rheoliad hwn, ystyr "yr Atodlen" yw Atodlen 6 i'r Ddeddf TTT."

Mark Drakeford
Ysgrifennydd y Cabinet dros Gyllid, un o Weinidogion
Cymru
22 Mawrth 2018

Explanatory Memorandum to

The Land Transaction Tax (Transitional Provisions) (Wales) (Amendment) Regulations 2018

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

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Land Transaction Tax (Transitional Provisions) (Wales) (Amendment) Regulations 2018. I am satisfied that the benefits justify the likely costs.

Mark Drakeford AM
Cabinet Secretary for Finance
23 March 2018

1. Description

1.1 These Regulations make an amendment to the Land Transaction Tax (Transitional Provisions) (Wales) Regulations 2018 so as to provide an additional transitional provision in respect of the introduction of land transaction tax (“LTT”) in Wales by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“the LTTA Act”). The amendment ensures that transactions which take place on or after 1 April 2018 receive treatment which is consistent, meaning that transactions are not taxed twice under LTT and Stamp Duty Land Tax (“SDLT”).

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

2.1 Section 79(3) of the LTTA Act provides that Regulations made under section 78(1) of the LTTA Act are subject to the negative procedure, unless they have the effect of imposing or increasing liability to tax. The effect of the regulation contained in this instrument does not impose tax liabilities, in fact it provides for a reduction in the amount of LTT chargeable to ensure that a double charge to tax does not arise, therefore the Regulations are subject to the negative procedure.

2.2 In order to provide certainty to Welsh taxpayers and avoid any risk that a taxpayer may be affected by any double taxation arising as a result of the transition from SDLT to LTT, it is necessary to breach the 21 day rule to ensure that the Regulations come into force on 1 April 2018.

3. Legislative background

3.1 Section 78(1) of the LTTA Act provides for the Welsh Ministers to make such transitional provision as they think appropriate for the purposes of, or in connection with, or giving full effect to any provision under the Act.

3.2 Commencement of LTT will take place after SDLT has been dis-applied in Wales, which will be on 1 April 2018, in accordance with the Wales Act 2014, Sections 16 and 19 (Disapplication of UK Stamp Duty Land Tax and UK Landfill Tax) (Appointed Date) Order 2018 (S.I. 2018/214).

4. Purpose & intended effect of the legislation

4.1 The **purpose** of these Regulations is to set out the treatment of certain leases granted on or after 1 April 2018 which follow a period where the tenant continued in occupation after the contractual termination date of the old lease.

4.2 When a lease reaches its contractual termination date, a number of events may occur:

- i. A new lease may have been negotiated prior to the termination date which is granted to start on the day after that termination date;
- ii. The tenant may vacate the property; or
- iii. When permitted by law or agreed between the parties to the lease, the tenant may continue in occupation until both parties agree the terms of a new lease (a situation known as ‘holding over’). The effect of holding over the lease is that the terms of the lease continue (including paying rent as agreed under the lease) for the duration of the holdover.

4.3 Various tax consequences arise as a result of a tenant holding over. The immediate consequence is that liability to additional tax might arise as a result of the rent paid during the holdover period. For leases that cross the LTT 'go live' date (that is they were granted under the SDLT regime, but a hold-over period arises, or continues, on or after 1 April 2018), the additional tax payable is assessed to SDLT. Once a new lease is granted a LTT liability will arise.

4.4 There is a risk of a double-taxation situation arising where a new lease is granted, but the landlord and tenant decide to backdate the term of that lease so that it commences on a date falling within the hold-over period. In these circumstances, paragraph 8 of Schedule 6 to the LTTA Act is made available to ensure that the amount of rents chargeable during the hold-over period may be taken into account when calculating the LTT liability.

4.5 The **intention** is to ensure that paragraph 8 of Schedule 6 to the LTTA Act is also made available where rent is paid during a holdover period and assessed to SDLT and a subsequent lease (that will be liable to LTT) is granted with a backdated commencement date. The regulation ensures that the rents on that holdover period are not taxed twice (by both SDLT and LTT) as a result of the transition from SDLT to LTT, and despite the fact that the old ('SDLT') lease was granted prior to the commencement date

4.6 Guidance on the effect of this transitional rule will be published by WRA.

5. Consultation

5.1 The risk of taxpayers incurring a double charge to tax under both SDLT and LTT was brought to the Welsh Government's attention by external advisers.

6. Regulatory Impact Assessment

6.1 A primary aim of the Regulations is to ensure the correct liabilities to tax arise to the correct tax authority and that no taxpayer is unfairly disadvantaged by the switch from SDLT to LTT for Welsh land transactions. The key benefit of these Regulations is therefore that they provide taxpayers with certainty, clarity and fairness in the tax liability results arising from their land transactions.

Option 1: Do Nothing

6.2 The key potential impact of not making this instrument as part of the legislative framework for LTT would be that some transactions with relevant events falling either side of the commencement date will be taxed, on the same consideration given, to both SDLT and LTT. The instrument ensures the proper and fair collection of LTT and SDLT for leases affected by the transition from one tax to the other.

Option 2: Provide for the Welsh Ministers to make transitional provision for the purposes of LTT

- 6.3 Description: the regulation applies to leases that were granted before 1 April 2018 and were, on grant, subject to SDLT. If the lease terminates and is heldover following that termination date an SDLT liability will arise on for each year following the termination date until the tenant (the taxpayer) leaves the premises or a new lease is granted. In some cases that lease may be backdated so that the lease is expressed to begin in a holdover period for which the taxpayer will have paid SDLT. In these cases the regulation ensures that the amount of taxable rent payable under the holdover tenancy for the old lease is, for the purposes of LTT on the newly granted (but backdated lease), taken into account when determining the LTT chargeable.
- 6.4 Impact: These regulations are expected to reduce tax; removing double taxation, for a few non-residential leasehold transactions over the next few years as the conditions to which it applies are considered to be relatively exceptional. Given the number of taxable transactions to which these regulations may apply, it is therefore estimated to reduce revenues by less than £0.2m per year, with a declining profile over future years as fewer transactions are affected.
- 6.5 Benefit: These regulations ensure where rents are paid under a holdover tenancy which was assessed under SDLT, the rents assessed under SDLT will be taken into account when calculating the tax liability under LTT on the grant of the new lease. This enables these types of leasehold situations to not be double taxed.

7. Post Implementation review

- 7.1 Section 77 of the LTTA Act provides that the Welsh Ministers must make arrangements for an independent review of land transaction tax to be completed within 6 years of the day after the day of the LTTA Act receiving Royal Assent. A review of LTT will encompass all of the subordinate legislation made under the LTTA Act.



Ein cyf/Our ref MA-L/MD/0181/18

Elin Jones AC
Llywydd
Cynulliad Cenedlaethol Cymru

23 Mawrth 2018

Annwyl Elin,

Rheoliadau Treth Trafodiadau Tir (Darpariaethau Trosiannol) (Cymru) (Diwygio) 2018

Yn unol â chanllawiau rwy'n ysgrifennu atoch i'ch hysbysu bod adran 11A(4) o Ddeddf Offerynnau Statudol 1946, fel y'i mewnosodwyd gan Atod.10 para 3 o Ddeddf Llywodraeth Cymru 2006, sy'n mynnu'r rheol bod offerynnau statudol yn dod i rym o leiaf 21 diwrnod ar ôl y dyddiad gosod, yn mynd i gael ei thorri er mwyn cyflwyno'r rheoliad diwygio uchod. Mae'n anffodus bod rhaid torri'r adran hon, ond nid oes modd osgoi gwneud hynny.

Mae Ysgrifennydd y Cabinet dros Gyllid wedi bod yn glir nad yw'n fwriad ganddo i'r pontio o dreth dir y dreth stamp i'r dreth trafodiadau tir roi trethdalwr o dan anfantais annheg. Mae set o reoliadau trosiannol wedi cael eu gwneud eisoes sy'n mynd i'r afael â nifer o faterion o'r fath. Mae wedi dod i'w sylw, fodd bynnag, ar adeg hwyr yn y broses fod yna sefyllfa arall lle gallai'r pontio i'r dreth trafodiadau tir arwain at drethiant dwbl. O ddyddiad cychwyn y dreth trafodiadau tir, bydd y rheoliadau newydd hyn yn cael gwared ar yr annhegwch hwnnw.

Mae Rheoliadau Treth Trafodiadau Tir (Darpariaethau Trosiannol) (Cymru) (Diwygio) yn darparu ar gyfer rheol drosiannol bellach mewn perthynas â thrafodiadau les penodol lle y mae dechrau'r les yn cael ei ôl-ddyddio i ddyddiad pan oedd y trethdalwr yn 'dal drosodd' les flaenorol yr oedd treth dir y dreth stamp yn cael ei chodi arni.

Mae'r rheoliadau yn diwygio Rheoliadau Treth Trafodiadau Tir (Darpariaethau Trosiannol) (Cymru) 2018 i gynnwys rheol debyg i'r rheol drosiannol a ddarparwyd eisoes sy'n ymdrin â sefyllfa debyg lle yr oedd treth dir y dreth stamp yn cael ei chodi ar y les gyntaf a'r dreth trafodiadau tir yn cael ei chodi ar yr ail mewn perthynas â lesuedd yn gorgyffwrdd.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Mae'r rheoliad newydd yn mynd i'r afael â'r posibilrwydd y codir treth dir y dreth stamp ynghyd â'r dreth trafodiadau tir ar y trethdalwr am yr un swm o rhent sy'n daladwy i'r landlord gan y tenant (y trethdalwr). Mae'r sefyllfa hon yn codi os yw les wedi cyrraedd ei dyddiad terfynu contractiol ond wedyn yn cael ei dal drosodd (oherwydd bod y tenant yn parhau i feddiannu) ar yr un telerau ag a nodwyd yn yr 'hen' les hyd nes i les newydd gael ei rhoi. Mewn achosion lle cafodd yr 'hen' les ei rhoi o dan dreth dir y dreth stamp, bydd yn ofynnol i'r trethdalwr dalu treth dir y dreth stamp ar rent a dalwyd yn ystod y cyfnod dal drosodd hwnnw (os codir y dreth ar y rhenti).

Pan fydd les newydd yn cael ei rhoi, bydd y les honno yn agored i'r dreth trafodiadau tir. Mewn llawer o achosion, bydd y les newydd yn cael ei rhoi ac yn dechrau ar ddyddiad yn dilyn terfyn y cyfnod dal drosodd. Mewn achosion o'r fath ni fydd trethiant dwbl yn codi yn sgil pontio o dreth dir y dreth stamp i'r dreth trafodiadau tir. Fodd bynnag, mewn rhai achosion, bydd y les newydd yn cael ei hôl-ddyddio i ddyddiad rhwng dyddiad terfyn yr hen les a'r dyddiad pan roddir y les newydd. Yn yr achosion hyn, heb y rheol drosiannol sydd wedi'i chynnwys yn y rheoliadau hyn, byddai'r dreth trafodiadau tir yn cael ei chodi ar drethdalwr ar renti y codwyd treth dir y dreth stamp arnynt eisoes.

Dim ond yn ddiweddar y daeth y mater hwn i sylw fy swyddogion ac maent wedi ceisio cymryd camau i fynd i'r afael â'r mater mor gyflym â phosibl ac osgoi'r perygl y gallai trethdalwyr fod yn destun trethiant dwbl yn yr amgylchiadau hyn. Mae Ysgrifennydd y Cabinet dros Gyllid wedi penderfynu gosod yr offeryn statudol fel ei fod yn dod i rym ar 1 Ebrill 2018 – y dyddiad cychwyn ar gyfer y dreth trafodiadau tir. Yr angen i ddiogelu trethdalwyr rhag trethiant dwbl a chynnal y polisi y dylai'r dreth trafodiadau tir weithredu mewn ffordd deg a chyson i drethdalwyr sy'n sail i'r penderfyniad hwn.

Rwy'n cydnabod nad yw'n ddelfrydol o gwbl fod y rheol 21 diwrnod yn cael ei thorri, ac mae'n ddrwg gennyf eich hysbysu er mwyn dod â'r rheoliadau hyn i rym mewn da bryd i sicrhau bod y rheol drosiannol mewn effaith o ddyddiad cychwyn y dreth trafodiadau tir, ni allwn ganiatáu 21 diwrnod cyn i'r offeryn hwn ddod i rym.

Mae'r Memorandwm Esboniadol ynghlwm er gwybodaeth ichi ac mae Asesiad Effaith Rheoleiddiol wedi cael ei baratoi ar gyfer y rheoliadau, sydd hefyd yn cael ei gynnwys fel rhan o'r Memorandwm. Maent yn cael eu gosod ill dau, ynghyd â'r rheoliadau, yn y Swyddfa Gyflwyno.

Anfonir copi o'r llythyr hwn i Mick Antoniw AC, cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol, Simon Thomas AC, cadeirydd y Pwyllgor Cyllid a Chris Warner, pennaeth Gwasanaeth y Pwyllgorau Polisi a Deddfwriaeth Comisiwn y Cynulliad.

Yr eiddoch yn gywir,



Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

SL(5)205 - Rheoliadau Treth Trafodiadau Tir (Darpariaethau Trosiannol) (Cymru) (Diwygiad) 2018

Cefndir a Phwrpas

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Treth Trafodiadau Tir (Darpariaethau Trosiannol) (Cymru) 2018 i wneud darpariaeth drosiannol bellach mewn perthynas ag achos penodol lle mae prydles tymor sefydlog yn parhau am gyfnod o fwy na blwyddyn ar ôl ei dyddiad terfynu cytundebol (a elwir yn gyfnod "**dal drosodd**"), ac fe'i hadnewyddir a'i hôl-ddyddio wedyn i ddiwrnod yn ystod y cyfnod dal drosodd.

Pan fo'r amodau ym mharagraff 8(1) o Atodlen 6 i Dreth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig (Cymru) 2017 wedi'u bodloni, yna yn unol ag 8(3) o'r Atodlen honno, mae'r rhent sy'n daladwy o dan y brydles newydd yn cael ei leihau at ddibenion treth trafodiadau tir gan swm y rhent trethadwy sy'n daladwy mewn perthynas â'r denantiaeth dal drosodd.

Mae'r diwygiadau a wneir gan y Rheoliadau hyn yn sicrhau bod y gostyngiad y cyfeirir ato uchod yn gymwys o ran prydlesi a roddwyd cyn 1 Ebrill 2018 ond a adnewyddwyd ar neu ar ôl y dyddiad hwnnw, er bod y rhent oedd yn daladwy yn ystod y daliad yn gymwys ar gyfer treth dir y dreth stamp.

Y weithdrefn

Negyddol.

Craffu Technegol

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

Craffu ar rinweddau

Nodwyd y pwynt a ganlyn i gyflwyno adroddiad arno o dan Reol Sefydlog 21.3(ii) mewn perthynas â'r offeryn hwn **[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 Rheoliadau hyn ar 22 Mawrth 2018, eu gosod ar 23 Mawrth 2018 a deuant i rym ar 1 Ebrill 2018.

Yn unol ag adran 11A(4) o Ddeddf Offerynnau Statudol 1946, lle na chaiff copi o unrhyw offeryn statudol sy'n ddarostyngedig i gael ei ddirymu yn unol â phenderfyniad gan Gynulliad Cenedlaethol Cymru ei osod gerbron y Cynulliad o leiaf 21 diwrnod cyn i'r offeryn ddod ar waith, rhaid anfon hysbysiad i'r Llywydd gan dynnu sylw at y ffaith honno ac esbonio pam.

Trwy **lythyr** dyddiedig 23 Mawrth 2018, hysbysodd Llywodraeth Cymru y Llywydd fod y "rheol 21 diwrnod" uchod wedi'i thorri o ran y Rheoliadau hyn. Mae'r llythyr yn cadarnhau mai dim ond yn ddiweddar y daeth swyddogion y Llywodraeth yn ymwybodol o'r amgylchiadau penodol a fyddai'n arwain at sefyllfa lle gallai trethiant dwbl ddigwydd (hynny yw, Treth Dir y Dreth Stamp a Threth Trafodiadau Tir mewn perthynas â'r un trafodyn) a bod y Rheoliadau hyn wedi'u gwneud felly i amddiffyn trethdalwyr rhag y perygl o dalu trethiant dwbl. Mae'r dyddiad dod i rym yn cyd-daro â chychwyn y drefn Treth Trafodiadau Tir. Nid yw'r esboniad felly'n ymddangos yn afresymol.



Goblygiadau sy'n deillio o adael yr Undeb Ewropeaidd

Dim.

Ymateb y Llywodraeth

Nid oes angen ymateb gan y llywodraeth.

Cynghorwyr Cyfreithiol

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

27 Mawrth 2018



Rheoliadau drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adrannau 44(9), 54(6) a 62(6) o Ddeddf yr Economi Ddigidol 2017, i'w cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

OFFERYNNAU STATUDOL
CYMRU DRAFFT

2018 Rhif (Cy.)

**DATGELU GWYBODAETH,
CYMRU**

**Rheoliadau Llywodraethu Digidol
(Cyrrff Cymreig) (Cymru) 2018**

NODYN ESBONIADOL

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

Mae Rhan 5 o Ddeddf yr Economi Ddigidol 2017 (“y Ddeddf”) yn caniatáu i bersonau penodedig, a restrir yn yr Atodlenni i'r Ddeddf, rannu gwybodaeth at ddibenion penodol.

Mae'r Rheoliadau hyn yn diwygio Atodlenni 4, 5 a 6 (personau penodedig at ddibenion cyflenwi gwasanaethau cyhoeddus), Atodlen 7 (personau penodedig at ddibenion y darpariaethau dyledion) ac Atodlen 8 (personau penodedig at ddibenion y darpariaethau twyll) i'r Ddeddf. Mae'r Rheoliadau hyn yn ychwanegu personau sy'n gyrff Cymreig (fel y'u diffinnir yn y Ddeddf) at yr Atodlenni hynny er mwyn eu galluogi i ddefnyddio'r pwerau ym Mhennod 1 (cyflenwi gwasanaethau cyhoeddus), Pennod 3 (dyledion sy'n ddyledus i'r sector cyhoeddus) a Phennod 4 (twyll yn erbyn y sector cyhoeddus) o Ran 5 (Llywodraethu Digidol) o'r Ddeddf.

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

Rheoliadau drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adrannau 44(9), 54(6) a 62(6) o Ddeddf yr Economi Ddigidol 2017, i'w cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

OFFERYNNAU STATUDOL
CYMRU DRAFFT

2018 Rhif (Cy.)

**DATGELU GWYBODAETH,
CYMRU**

**Rheoliadau Llywodraethu Digidol
(Cyrrff Cymreig) (Cymru) 2018**

Gwnaed

Yn dod i rym

26 Ebrill 2018

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir gan adrannau 35(3), 36(5)(a), 38(5)(a), 44(2)(b), 48(5), 54(2)(b), 56(6) a 62(2)(b) o Ddeddf yr Economi Ddigidol 2017(1) (“y Ddeddf”), yn gwneud y Rheoliadau a ganlyn.

Mae Gweinidogion Cymru wedi ymgynghori â'r Comisiynydd Gwybodaeth, Comisiynwyr Cyllid a Thollau Ei Mawrhydi, Gweinidogion yr Alban, Adran Gyllid Gogledd Iwerddon, y Gweinidog dros Swyddfa'r Cabinet, ac unrhyw bersonau eraill y mae Gweinidogion Cymru yn ystyried eu bod yn briodol, fel sy'n ofynnol gan adrannau 44(4), 48(11) a 56(12) o'r Ddeddf.

Yn unol ag adrannau 35(6), 36(8), 38(8), 48(10) a 56(11) o'r Ddeddf, mae Gweinidogion Cymru wedi rhoi sylw i'r systemau a'r gweithdrefnau ar gyfer trin gwybodaeth yn ddiogel gan y personau y cyfeirir atynt yn yr Atodlen i'r Rheoliadau hyn.

Gosodwyd drafft o'r Rheoliadau hyn gerbron Cynulliad Cenedlaethol Cymru o dan adrannau 44(9),

(1) 2017, p. 30. *Gweler* adrannau 45(1), 55(1) a 63(1) i gael y diffiniadau o “appropriate national authority”.

54(6) a 62(6) o'r Ddeddf, ac fe'i cymeradwywyd drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

Enwi, cychwyn a dehongli

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Llywodraethu Digidol (Cyrff Cymreig) (Cymru) 2018.

(2) Daw'r Rheoliadau hyn i rym ar **XX**.

(3) Yn y Rheoliadau hyn ystyr "y Ddeddf" yw Deddf yr Economi Ddigidol 2017.

Diwygio Atodlenni 4, 5, 6, 7 ac 8

2. Mae Atodlen 4 (cyflenwi gwasanaethau cyhoeddus: personau penodedig at ddibenion adran 35) i'r Ddeddf wedi ei diwygio yn unol â pharagraff 1 o'r Atodlen.

3. Mae Atodlen 5 (cyflenwi gwasanaethau cyhoeddus: personau penodedig at ddibenion adrannau 36 a 37) i'r Ddeddf wedi ei diwygio yn unol â pharagraff 2 o'r Atodlen.

4. Mae Atodlen 6 (cyflenwi gwasanaethau cyhoeddus: personau penodedig at ddibenion adrannau 38 a 39) i'r Ddeddf wedi ei diwygio yn unol â pharagraff 3 o'r Atodlen.

5. Mae Atodlen 7 (personau penodedig at ddibenion y darpariaethau dyledion) i'r Ddeddf wedi ei diwygio yn unol â pharagraff 4 o'r Atodlen.

6. Mae Atodlen 8 (personau penodedig at ddibenion y darpariaethau twyll) i'r Ddeddf wedi ei diwygio yn unol â pharagraff 5 o'r Atodlen.

Enw

Arweinydd y Tŷ a'r Prif Chwip, un o Weinidogion

Cymru

Dyddiad

YR ATODLEN Rheoliadau 2,
3, 4, 5 a 6

Diwygiadau i Atodlenni 4, 5, 6, 7 ac 8

1.—(1) Mae Atodlen 4 i'r Ddeddf wedi ei diwygio yn unol ag is-baragraffau (2) i (4).

(2) Ar ôl pennawd yr Atodlen mewnosoder—

“PART 1

UK AND ENGLISH BODIES”.

(3) Ym mharagraff 28, ar ôl y gair “who” mewnosoder—

“—

(a) falls within this Part of this Schedule;
and

(b)”.

(4) Ar ôl paragraff 28 mewnosoder—

“PART 2

WELSH BODIES

29. The Welsh Ministers.

30. The Counsel General to the Welsh Government.

31. The Welsh Revenue Authority.

32. A county council in Wales.

33. A county borough council in Wales.

34. A community council in Wales.

35. A Community Health Council in Wales.

36. A Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.

37. An NHS Trust established under section 18 of the National Health Service (Wales) Act 2006.

38. The Board of Community Health Councils in Wales.

39. A Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006.

40. A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue

Services Act 2004, or a scheme to which section 4 of that Act applies, for an area in Wales.

41. Career Choices Dewis Gyrfa Ltd (company number 07442837, operating as Careers Wales).

42. The governing body of an educational establishment maintained by a Welsh local authority (within the meaning of section 162 of the Education and Inspections Act 2006).

43. The governing body of an institution in Wales within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992) whose activities are carried on, or principally carried on, in Wales.

44. The governing body of an institution in Wales within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992) whose activities are carried on, or principally carried on, in Wales.

45. A regulated institution within the meaning of the Higher Education (Wales) Act 2015 (ignoring section 26 of that Act) other than an institution within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992).

46. The Natural Resources Body for Wales.

47. A registered social landlord being a body registered in the register maintained under section 1 of the Housing Act 1996.

48. A person providing services in connection with a specified objective (within the meaning of section 35) to a specified person who—

- (a) falls within this Part of this Schedule; and
- (b) is a public authority.”

2.—(1) Mae Atodlen 5 i'r Ddeddf wedi ei diwygio yn unol ag is-baragraffau (2) i (4).

(2) Ar ôl pennawd yr Atodlen mewnosoder—

“PART 1

UK AND ENGLISH BODIES”.

(3) Ym mharagraff 18, ar ôl y gair “who” mewnosoder—

“—

- (a) falls within this Part of this Schedule;
and
- (b)".

(4) Ar ôl paragraff 18 mewnosoder—

“PART 2 WELSH BODIES

19. The Welsh Ministers.

20. The Counsel General to the Welsh Government.

21. The Welsh Revenue Authority.

22. A county council in Wales.

23. A county borough council in Wales.

24. A community council in Wales.

25. A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004, or a scheme to which section 4 of that Act applies, for an area in Wales.

26. The Natural Resources Body for Wales.

27. A registered social landlord being a body registered in the register maintained under section 1 of the Housing Act 1996.

28. The governing body of an educational establishment maintained by a Welsh local authority (within the meaning of section 162 of the Education and Inspections Act 2006).

29. The governing body of an institution in Wales within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992) whose activities are carried on, or principally carried on, in Wales.

30. The governing body of an institution in Wales within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992) whose activities are carried on, or principally carried on, in Wales.

31. A regulated institution within the meaning of the Higher Education (Wales) Act 2015 (ignoring section 26 of that Act) other than an institution within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992).

32. A person providing services in connection with a fuel poverty measure (within the meaning of section 36) to a specified person who—

- (a) falls within this Part of this Schedule; and
- (b) is a public authority.”

3.—(1) Mae Atodlen 6 i'r Ddeddf wedi ei diwygio yn unol ag is-baragraffau (2) i (4).

(2) Ar ôl pennawd yr Atodlen mewnosoder—

“PART 1

UK AND ENGLISH BODIES”.

(3) Ym mharagraff 12, ar ôl y gair “who” mewnosoder—

“—

- (a) falls within this Part of this Schedule; and
- (b)”.

(4) Ar ôl paragraff 12 mewnosoder—

“PART 2

WELSH BODIES

13. The Welsh Ministers.

14. The Counsel General to the Welsh Government.

15. The Welsh Revenue Authority.

16. A county council in Wales.

17. A county borough council in Wales.

18. A community council in Wales.

19. A registered social landlord being a body registered in the register maintained under section 1 of the Housing Act 1996.

20. The Natural Resources Body for Wales.

21. The governing body of an educational establishment maintained by a Welsh local authority (within the meaning of section 162 of the Education and Inspections Act 2006).

22. The governing body of an institution in Wales within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992) whose

activities are carried on, or principally carried on, in Wales.

23. The governing body of an institution in Wales within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992) whose activities are carried on, or principally carried on, in Wales.

24. A regulated institution within the meaning of the Higher Education (Wales) Act 2015 (ignoring section 26 of that Act) other than an institution within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992).

25. A person providing services in connection with a water poverty measure (within the meaning of section 38) to a specified person who—

- (a) falls within this Part of this Schedule; and
- (b) is a public authority.”

4.—(1) Mae Atodlen 7 i'r Ddeddf wedi ei diwygio yn unol ag is-baragraffau (2) i (4).

(2) Ar ôl pennawd yr Atodlen mewnosoder—

“PART 1

UK AND ENGLISH BODIES”.

(3) Yn lle paragraff 17 rhodder—

“**17.** A person providing services to a specified person who —

- (a) falls within this Part of this Schedule; and
- (b) is a public authority,

in respect of the taking of action in connection with debt owed to a public authority or to the Crown.”

(4) Ar ôl paragraff 17 mewnosoder—

“PART 2

WELSH BODIES

18. The Welsh Ministers.

19. The Counsel General to the Welsh Government.

20. The Welsh Revenue Authority.

21. A county council in Wales.

22. A county borough council in Wales.

23. A community council in Wales.

24. A person providing services to a specified person who—

- (a) falls within this Part of this Schedule;
and
- (b) is a public authority,

in respect of the taking of action in connection with debt owed to a public authority or to the Crown.”

5.—(1) Mae Atodlen 8 i'r Ddeddf wedi ei diwygio yn unol ag is-baragraffau (2) i (4).

(2) Ar ôl pennawd yr Atodlen mewnosoder—

“PART 1

UK AND ENGLISH BODIES”.

(3) Yn lle paragraff 41 rhodder—

“**41.** A person providing services to a specified person who—

- (a) falls within this Part of this Schedule;
and
- (b) is a public authority,

in respect of the taking of action in connection with fraud against a public authority.”

(4) Ar ôl paragraff 41 mewnosoder—

“PART 2

WELSH BODIES

42. The Welsh Ministers.

43. The Counsel General to the Welsh Government.

44. The Welsh Revenue Authority.

45. A county council in Wales.

46. A county borough council in Wales.

47. A community council in Wales.

48. A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004, or a scheme to which section 4 of that Act applies, for an area in Wales.

49. The Higher Education Funding Council for Wales.

50. The Natural Resources Body for Wales.

51. Arts Council of Wales.

52. The Sports Council for Wales.

53. The Royal Commission on Ancient and Historical Monuments in Wales.

54. The National Library of Wales.

55. A registered social landlord being a body registered in the register maintained under section 1 of the Housing Act 1996.

56. A person providing services to a specified person who—

- (a) falls within this Part of this Schedule;
and
- (b) is a public authority,

in respect of the taking of action in connection with fraud against a public authority.”

Explanatory Memorandum to The Digital Government (Welsh Bodies) (Wales) Regulations 2018

This Explanatory Memorandum has been prepared by the Office of the Chief Digital Officer and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with

Standing Order 27.1

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Digital Government (Welsh Bodies) (Wales) Regulations 2018. I am satisfied that the benefits justify the likely costs.

Julie James
Leader of the House and Chief Whip
13 March 2018

1. Description

- 1.1. The Digital Economy Act 2017 (“The Act”) provides new powers for public bodies to share data to help improve the delivery of public services, and to identify and deal with debts owed to, and fraud against, the public sector. To be able to access these new powers, public bodies need to be named in the appropriate Schedules to the Act and, in the case of the public service delivery powers, also named against a specific objective.
- 1.2. These regulations set out the devolved Welsh public bodies that will be able to access the new powers alongside the English and non-devolved bodies that are already named in the Schedules to the Act.

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

None.

3. Legislative background

- 3.1. The Act introduced a suite of measures designed to support the digital transformation of government and enabling the delivery of better public services. The digital government elements of the Act provide new powers for public authorities to share personal information to combat fraud against the public sector and empowers the public sector to reduce the debts owed to government by allowing early identification of and help for people who owe debts to multiple public agencies. The Act also introduces new offences and penalties for unlawful disclosure.
- 3.2. In March, the UK Government will also set out new regulations which include four specific objectives for the use of the new powers in relation to sharing data for public service delivery – objectives designed to help identify and support individuals and households affected by multiple disadvantages, eligible for support under a television retuning scheme, or living in fuel or water poverty.
- 3.3. To be able to access these new powers, public bodies need to be named in the relevant Schedule to the Act. At present, only English and non-devolved public authorities are named in those Schedules.
- 3.4. These new regulations are made under the following sections of the Act :
 - Section 35(3) enables the Welsh Ministers to add, remove or modify any entry relating to a person or description of a person listed in Schedule 4: Public Service Delivery: specified persons for the purposes of section 35 (Disclosure of information to improve public service delivery).
 - Section 36(5)(a) enables the Welsh Ministers to add, remove or modify an entry relating to a person or description of a person listed in Schedule 5: Public Service Delivery: specified persons for the purposes of sections 36 and 37 (Disclosure of Information to/by gas

and electricity suppliers).

- Section 38(5)(a) enables the Welsh Ministers to add, remove or modify an entry relating to a person or description of a person listed in Schedule 6: Public Service Delivery: specified persons for the purposes of sections 38 and 39 (Disclosure of information to/by water and sewerage undertakers).
- Section 44(2)(b) enables the Welsh Ministers to make consequential, supplementary, transitional or savings provisions in consequence of the provisions listed above.
- Section 48(5) enables the Welsh Ministers to add, remove or modify any entry relating to a person or a description of a person listed in Schedule 7: specified persons for the purposes of the debt provisions.
- Section 54(2)(b) enables the Welsh Ministers to make consequential, supplementary, transitional or savings provisions in consequence of section 48(5).
- Section 56(6) enables the Welsh Ministers to add, remove or modify any person listed in Schedule 8: specified persons for the purposes of the fraud provisions.
- Section 62(2)(b) enables the Welsh Ministers to make consequential, supplementary, transitional or savings provisions in consequence of section 56(6).

3.5. This instrument is subject to the approval of the Assembly.

4. Purpose & intended effect of the legislation

4.1. The effect of these new regulations is to extend the new powers to share data in the Act to devolved Welsh public authorities. This will mean they can share data for the purposes of improving public service delivery, dealing with debt and tackling fraud with other public bodies in Wales and bodies across the UK that are also specified in the Act.

4.2. Specifying these bodies at this time also means that the appropriate Welsh bodies can be referred to in the Digital Government (Disclosure of Information) Regulations 2018 that UK Government intends to lay in March. This will enable those bodies to share data to support the objectives listed in para 3.2.

4.3. These new powers are permissive. Where a public body in Wales is named, it is under no obligation to share data for any purpose, if it chooses not to. If data-sharing is desired, new codes of practice are being introduced by UK Government which will set out how that data should be shared and the procedures to follow. These will be available in Welsh once they have been finalised. These new powers provide a statutory basis for data to be shared – organisations involved in sharing

data will still need to meet the requirements of current and future data-protection regulations.

- 4.4. If these Regulations are not made, Welsh public bodies will not be able to access the new powers and will continue to have to create new statutory gateways using existing processes, where these are needed.

5. Consultation

- 5.1. Details of the consultation are included in the Regulatory Impact Assessment in Part 2 below.

PART 2 – REGULATORY IMPACT ASSESSMENT

1. Options

1.1. Option 1 – Do nothing

Maintain the status quo. Public authorities in Wales will be able to share data under any existing legal gateways but if they do not exist they will need to establish new legal gateways for specific purposes when a need for them arises, as they will not have access to the new data sharing powers granted to specified public bodies under Part 5 of the Digital Economy Act 2017.

1.2. Option 2 – Introduce new Regulations

Introduce new legislation which will insert relevant Welsh public authorities into schedules 5 to 8 to the Digital Economy Act 2017. This will enable Welsh public authorities to share data with other public bodies (specified in the same schedules) across the UK for the purposes of improving public service delivery, identifying and collecting debts, and identifying and taking action against fraud.

2. Costs & benefits

Option 1 - Costs

- 2.1. Establishing new statutory gateways for data-sharing can meet an identifiable need, but it is a time consuming and resource intensive process. It does not provide public authorities with a clear and established solution which enables them to respond quickly to changing needs. The resources required to establish specific gateways to share data will continue to be used inefficiently under this option.
- 2.2. The anticipated costs of this option are assessed as minimal as there will be no change from existing processes. The current main costs are discussed below.
- 2.3. Establishing a new legal gateway involves public sector officials' time in researching the legal framework and negotiating the terms of the data sharing with the authorities involved. New gateways will also require new legislation. The process required for each new gateway will depend on the specific requirements in each case and the administrative requirements will therefore also vary. Anecdotal evidence from civil servants across the UK suggests establishing a new data sharing gateway can take several years to negotiate and establish. This is an ongoing cost and the total value will depend on the number and type of gateways required.
- 2.4. A further cost is associated with the time delay in negotiating a data sharing gateway. This can cause delays in improved processes or launching policy interventions, and delay the benefits of those interventions. This may directly impact on the well-being of the individuals for whom data sharing was intended to benefit, and lead to a wide range of unquantifiable societal and economical costs. Delaying the provision of a legal gateway for data sharing for these purposes will also lead to, again

unquantifiable, costs in terms of duplication of administrative processes across public authorities.

Option 1 - Benefits

- 2.5. The main benefit in maintaining the status quo is that it is a known process, with well understood benefits and risks. The scrutiny around the current process already prevents data-sharing where this would be outside of the limits set by the Human Rights Act as well as current and future data protection requirements, preventing possible data loss. These safeguards would be maintained and strengthened under option 2 through scrutiny of public service delivery regulations and new safeguards around data sharing agreements. Policy benefits can still be delivered under this option but may be delayed, reduced or prevented entirely where a data sharing gateway cannot be established in good time, or at all.

Option 2 - Costs

- 2.6. Public authorities will incur no additional cost as a direct result of this change. The powers are permissive and therefore impose no statutory requirement on the authorities. Those that do decide to participate in data-sharing exercises under the new powers will incur one-off costs to familiarise their staff with the new legislation. Familiarisation may take a number of forms but could include reading and understanding the new legislation, disseminating the new information and training staff to understand the new rules.
- 2.7. If they do decide to use the powers, as is the case for data sharing under a do nothing option public authorities will also incur costs to establish a new data sharing agreement under the new regulations. Each new agreement must be established as a pilot and the potential impact, risks, ethical issues, monitoring, evaluation requirements and other factors considered in line with the new codes of conduct before any data is shared. Again, the cost of this process is difficult to estimate but is also expected to be minimal, and significantly less than the resource required to establish a new gateway under the existing regime.
- 2.8. There may also be costs for private bodies working on behalf of a public authority. These costs will be reimbursed by the public sector as part of commercial arrangements.
- 2.9. Data sharing is expected to increase as a result of these new powers, which will increase administrative costs involved in the data sharing itself as well as the additional costs incurred in recovering increased amounts of debt. These costs cannot be readily estimated, as they will depend on the data sharing arrangements that are established under this power. However, time will need to be spent on preparing the new arrangement (including the production and publication of privacy and other impact statements), auditing by the ICO, and operating the new arrangement in line with DPA, GDPR and Human Rights Act principles. This change may result in more data sharing requests. However, this will be limited to

requests from the specified bodies, and only where the objective is to improve the delivery of public services, to identify and deal with debts owed to the public sector, and to identify and tackle fraud. These costs would exist for any data sharing undertaken through any other new or existing legal gateway and are expected to be outweighed by the benefits achieved.

Option 2 - Benefits

2.10. The administrative burden on the public sector bodies will be reduced.

The costs associated with existing process of establishing specific legal gateways will be eliminated and significant time savings will be achieved. These are ongoing benefits and the total value will depend on the number and type of future data sharing requests.

2.11. *Simplifying the legislative framework*

The law surrounding data-sharing between public bodies at present is complex, with powers scattered across a large number of statutes, which may be expressly set out, or implied. Establishing a new data sharing gateway for each specific requirement only adds to this complexity. The current system lacks flexibility and cannot respond to rapidly changing requirements due to the length of time the legislative process takes.

2.12. This option will simplify the legislative landscape for Welsh public bodies and will reduce the time it takes to create new data sharing relationships. Although legislation will be required to set out the list of Welsh public bodies and to define any new data-sharing objectives for the public service delivery powers, these will not need to set out fully all of the categories of data being shared. This will allow more flexibility for public authorities seeking to share data which may change over time.

2.13. *Policy delivery benefits*

The new process to establish a data sharing exercise under the new powers will be simpler and quicker to complete than establishing a new legal gateway. This will eliminate any delays in policy delivery, and ensure policy is always developed on the latest data available. Policy benefits will be delivered more rapidly and will be increased by better availability of data which will also allow more robust measurement of the impact.

2.14. Although the number of data sharing requests may rise, further benefits may be realised through more policies making better use of available data due to the increased ease of data sharing.

2.15. *Targeting of public services*

This change will ensure that public services have access to the data they need to deliver public services that are accurately targeted and delivered to those that need them most. Changing the way data is shared, and reducing the bureaucracy around establishing a data sharing agreement, will ensure that data can move between appropriate public authorities in a way which supports improved outcomes for citizens, makes the best use of public resources, and protects personal privacy. The overall societal

and economic benefits of this are difficult to quantify and will be dependent on the intended outcomes of data sharing.

2.16. This change will mean that public resources and funds that are currently used to establish appropriate gateways for sharing information can be redirected to other priorities.

2.17. **Recovery of debt**

This option aids in the recovery of debt through a number of means:

- (i) Reducing the cost and time required to set up a data sharing agreement, and reducing the complexity of the agreement, will increase the amount of data shared overall;
- (ii) Helping to develop a single customer view which will aid a coordinated response to recovering debt owed to Government.

2.18. 90% of the debt owed to the public sector is owed to either DWP or HMRC, which already have sufficient powers to share data. The remaining debt is owed to other government departments and Local Authorities, which do not have sufficient powers to share information easily. Improved data sharing around debt could aid in earlier identification of debt, increase recoveries, and reduce the amount of debt written off by public bodies.

2.19. UK Government estimates that £2.4 billion is owed by debtors who owe money to multiple government departments, and that approximately 10% of this is not covered by existing data sharing agreements. This option will help identify people who have multiple debts to government, and enable a coordinated approach to recoveries that would reduce costs and minimise the impact on potentially vulnerable citizens who may be struggling to deal with multiple demands for repayment.

2.20. **Tackling Fraud**

The Annual Fraud Indicator estimated that the total loss to the UK economy due to fraud as £190 billion, and the total amount attributable to the public sector as £40.4 billion.¹ This estimate does not include losses as a result of 'errors' or other factors such as negligence or failure to take due care. The actual level of losses, both overall and to the public sector, is likely to be much higher.

2.21. Data matching is a proven way to identify fraud. The National Fraud Initiative is a national data-matching exercise designed to identify and prevent fraud and overpayments. Between 1996 and 2015, the NFI has identified over £30 million fraud losses in Wales and over £1.3 billion in the UK, across a variety of areas including council tax, immigration, welfare benefits and blue badge use amongst others.²

¹<https://www.croweclarkwhitehill.co.uk/wp-content/uploads/sites/2/2017/11/Annual-fraud-indicator-2017.pdf>

² https://www.wao.gov.uk/sites/default/files/download_documents/417A2016-NFI-eng.pdf

- 2.22. Wider use of data sharing could improve the prevention, detection and investigation of fraud through a number of means, including:
- Improved targeting and risk-profiling of potentially fraudulent individuals;
 - Streamlining processes, enabling the Government to act more quickly; and
 - Simplifying the legislative landscape.
- 2.23. Increased data sharing will contribute to an improved evidence base, helping to inform decision making, supporting the use of tailored approaches such as behavioural insights, and making interventions more effective overall.

Summary

- 2.24. When comparing the relative costs and benefits of the two options, there is a strong argument that simplifying the data sharing legislative landscape will lead to minimal increase in relative costs but provide far wider potential for benefits. Without the new powers it is likely that data sharing would continue to be desired but this would either be hampered or delayed by the lack of a flexible legal gateway, leading to poor outcomes for citizens and increased relative costs for public authorities.
- 2.25. The powers will also give Welsh public bodies the same powers as English and non-devolved bodies. The costs associated with the new processes are significantly less than those associated with the current process of establishing new data-sharing gateways (with legislation) and offer more flexibility and ability to respond to emerging requirements.

3. Sectors

3.1. Local Government

There is no direct regulatory impact being imposed on local government as a result of this change. The powers are permissive and as such, local authorities are free to use them or not. One off familiarisation costs, costs to assess in line with code of conduct, more data requests (but from a restricted group of other authorities) may emerge.

3.2. Business

There will be no direct impact being imposed on business as a result of this change. These new powers will not introduce any new statutory obligations or requirements or increase the amount of debt a business may owe the Government.

- 3.3 As an indirect impact on businesses, data sharing may identify a higher level of debt or increase levels of fraud than the current system, which may result in increased debt recovery from businesses.

3.4 Voluntary Sector

There will be no direct impact on any voluntary sector organisation as a result of this change. Where voluntary sector organisations provide services on behalf of government bodies, they may incur familiarisation costs for their staff if they are to participate in a future data sharing agreement, but these are not likely to be intensive or time-consuming and will not require more resource than current processes.

4. Duties

4.1. Equality of Opportunity

An equality impact assessment has been completed and will be published on the Welsh Government website. No significant impact has been identified as a result of these Regulations.

4.2. Welsh Language

A Welsh Language impact assessment has been completed and will be published on the Welsh Government website. No significant impact has been identified as a result of these Regulations.

4.3. Sustainable Development

Environmental impact screening has been conducted and no environmental impact has been identified.

The Well-being of Future Generations (Wales) Act 2015 requires the Welsh Ministers to take action, taking account of the five ways of working set out in section 5 of the Act ('the sustainable development principle'), aimed at achieving the 7 well-being goals set out in section 4 of the Act, and the objectives published by the Welsh Ministers in November 2016.

- 4.4. Providing public bodies in Wales with the ability to share information and data will improve the delivery of public services to all. At this stage the Welsh Government are simply implementing the Digital Economy Act 2017 against the UK Government objectives and other data sharing provisions within the Act. Consideration of the sustainable development principle will continue as the Act is further implemented in devolved areas.

4.5. Welsh Consolidated Fund

There is no expenditure from the Welsh Consolidated Fund anticipated as a result of this change.

5. Consultation

- 5.1. A public consultation was held from 8th December 2017 – 5th February 2018. Stakeholders were asked to consider whether the public bodies that were being considered for each power were the right ones. The consultation also asked for specific feedback on the inclusion of health bodies, what public service objectives could be considered for Wales in the future, and how the new powers could be used to support the Welsh

Language. Full lists of the proposed bodies intended to be named in the regulations were included in the consultation.³

5.2. This consultation was open to all, but responses were specifically encouraged from:

- Local government;
- Arms length bodies;
- NHS organisations;
- Third sector organisations;
- Fire and rescue authorities; and
- Schools, colleges and universities

5.3. A small number of statutory consultees (Scottish and Northern Irish Governments, the Information Commissioner and Ministers for the Cabinet Office) were also contacted separately and encouraged to respond.

5.4. A total of 26 responses, including one statutory consultee, were received as follows:

| Category | Responses received |
|-------------------------------|--------------------|
| Public body in Wales | 11 |
| Local authority | 6 |
| Voluntary sector organisation | 2 |
| Registered Social Landlord | 2 |
| Individual | 2 |
| Private organisation | 1 |
| UK Government department | 1 |
| Other | 1 |

5.5. Following the consultation, the responses were assessed with a particular focus on any suggestions for changes to the list of Welsh public authorities to be included for each list, and the questions around the inclusion of health bodies in the Public Service Delivery powers. The responses to the questions about the Welsh language were also assessed.

5.6. The responses to the consultation were broadly positive, with a number of suggestions to include additional bodies. A small number of these suggestions were to include non-devolved bodies (such as the Department for Work and Pensions), or other bodies which have already been specified in the UK schedules and do not need to replicated.

³ <https://beta.gov.wales/digital-economy-act-proposed-list-data-sharing-public-bodies-wales>

- 5.7. As a result of the consultation, and to ensure the list of bodies were proportionate in terms of their requirement to share personal data, the following changes were made to the lists of bodies:

Public Service Delivery Powers

- State schools, further education colleges and higher education institutions were added to the list of bodies able to share data with/from energy and water suppliers
- The Board of Community Health Councils and Special Health Authorities were added to the list of bodies able to share data, for the purposes of future objectives (health bodies are excluded from using the forthcoming UK Government objectives)
- Registered Social Landlords were added to the list of bodies able to share data
- The Higher Education Funding Council for Wales was removed from the list of bodies able to share data
- The National Parks Authority was removed from the list of bodies able to share data

Fraud Powers

- Natural Resources Wales was added to the list of bodies able to share data
- Registered Social Landlord were added to the list of bodies able to share data
- The following bodies were removed from the list of bodies able to share data:
 - The Local Democracy and Boundary Commission for Wales
 - Qualifications Wales
 - National Park Authorities in Wales
 - The National Museum of Wales

- 5.8. No changes were made to the list of bodies able to share data under the new debt powers.

- 5.9. A full government response to the consultation is being prepared and will be published in due course.

6. Competition Assessment

A competition filter test was applied to the changes and no significant impact was identified to businesses, charities or the voluntary sector. The main impact and costs will fall to the public sector.

7. Post implementation review

- 7.1. No formal review is planned. However, Welsh Government will take an interest in any future use of the new powers and how effective any data sharing arrangement are.
- 7.2. Each new data sharing arrangement will need to include monitoring and evaluation requirements and these will be used to inform future data sharing exercises using the new powers.

SL(5)204 - Rheoliadau Llywodraethu Digidol (Cyrff Cymreig) (Cymru) 2018

Cefndir a Phwrpas

Mae Rhan 5 o'r Ddeddf Economi Ddigidol 2017 ("y Ddeddf") yn caniatáu i bersonau penodol, a restrir yn yr Atodlenni i'r Ddeddf, rannu gwybodaeth at ddibenion penodol.

Mae'r Rheoliadau hyn yn diwygio Atodlenni 4, 5 a 6 (personau penodedig at ddibenion darparu gwasanaethau cyhoeddus), Atodlen 7 (personau penodedig at ddibenion y darpariaethau dyled) ac Atodlen 8 (personau penodedig at ddibenion y darpariaethau twyll) i'r Ddeddf. Mae'r Rheoliadau hyn yn ychwanegu personau sy'n gyrrff Cymreig (fel y'u diffinnir yn y Ddeddf) i'r Atodlenni hynny i'w galluogi i ddefnyddio'r pwerau ym Mhennod 1 (darparu gwasanaethau cyhoeddus), Pennod 3 (dyled sy'n ddyledus i'r sector cyhoeddus) a Phennod 4 (twyll yn erbyn y sector cyhoeddus) o Ran 5 (Llywodraeth Ddigidol) y Ddeddf. Mae yna eisoes nifer o gyrrff Seisnig a rhai nad ydynt wedi'u datganoli wedi'u rhestru yn yr Atodlenni i'r Ddeddf.

Y weithdrefn

Cadarnhaol.

Craffu Technegol

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

Craffu ar rinweddau

Nodir un pwynt i gyflwyno adroddiad arno o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

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

Yn y dyfodol, bydd y Rheoliadau hyn yn galluogi cyrrff cyhoeddus Cymru a restrir yn yr Atodlenni i'r Ddeddf i rannu gwybodaeth bersonol mewn rhai amgylchiadau (ee atal twyll a nodi a helpu pobl sydd mewn dyled i sawl asiantaeth gyhoeddus). Mae'r pwerau i rannu data yn yr amgylchiadau hyn yn ganiataol (nid yw'r cyrrff a enwir yn yr Atodlenni i'r Ddeddf o dan rwymedigaeth i rannu data at unrhyw ddiben). Mae codau ymarfer yn cael eu cyflwyno gan Lywodraeth y DU a fydd yn nodi sut mae unrhyw ddata i'w rannu a'r gweithdrefnau y bydd angen eu dilyn. Fodd bynnag, bydd yn rhaid i sefydliadau sy'n ymwneud â rhannu data barhau i fodloni gofynion deddfwriaeth diogelu data cyfredol ac yn y dyfodol.

Goblygiadau sy'n deillio o adael yr Undeb Ewropeaidd

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

Ymateb y Llywodraeth

Nid oes angen ymateb gan y Llywodraeth.

Cynghorwyr Cyfreithiol

**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Ebrill 2018**



SL(5)203 - Rheoliadau Awdurdodau Lleol (Cyllid Cyfalaf a Chyfrifyddu) (Cymru) (Diwygio) 2018 Item 5.1

Cefndir a Phwrpas

Cyflwynodd Rhan 1 o Ddeddf Llywodraeth Leol 2003 ("Deddf 2003") fframwaith cyfreithiol y caiff llywodraeth leol ymgymryd â gwariant cyfalaf oddi mewn iddo. Caiff Gweinidogion Cymru reoleiddio'r gweithgarwch hwnnw drwy reoliadau. Gwnaed darpariaeth o'r fath gan Reoliadau Awdurdodau Lleol (Cyllid Cyfalaf a Chyfrifyddu) (Cymru) 2003 (OS 2003/3239) ("**Rheoliadau 2003**") sy'n darparu'r gyfundrefn reoleiddiol ar gyfer cyllid cyfalaf llywodraeth leol ac arferion cyfrifyddu sydd i'w dilyn gan awdurdodau lleol yng Nghymru. Mae Rheoliadau 2003 wedi'u diwygio sawl gwaith ers dod i rym.

Mae'r Rheoliadau hyn yn gwneud cyfres o ddiwygiadau pellach i Reoliadau 2003, y bydd nodiadau'r Memorandwm Esboniadol yn "llacio'r cyfyngiadau presennol o ran trafodion cyfalaf benthyciad, trafodion cyfalaf cyfranddaliadau a bondiau penodol sy'n gosod awdurdodau lleol yng Nghymru ar sail gyfatebol i gymheiriaid yn Lloegr."

Mae'r diwygiadau penodol yn cynnwys y canlynol:

- Gofyniad i drafodion gwarantoli gael eu trin fel trefniadau credyd at ddibenion adran 7 o Ddeddf 2003 a gwerth unrhyw ystyriaeth a gafwyd o ganlyniad i drafodyn gwarantoli gan awdurdod lleol i gael ei drin fel derbyniad cyfalaf;
- Tynnu'r gofyniad am wariant gan awdurdodau lleol ar gaffael cyfalaf benthyciad i gael ei drin fel gwariant cyfalaf; ac
- eithrio gwariant ar gaffael mathau penodol o gyfalaf cyfranddaliadau (mewn cynlluniau buddsoddi ar y cyd) rhag cael ei drin fel gwariant cyfalaf.

Y weithdrefn

Negyddol.

Craffu Technegol

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

Craffu ar rinweddau

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

Goblygiadau sy'n deillio o adael yr Undeb Ewropeaidd

Mae'r Rheoliadau hyn yn diffinio "cronfa'r farchnad arian" drwy gyfeirio at ddeddfwriaeth yr UE, hy Cyfarwyddeb 2009/65/EC Senedd Ewrop a'r Cyngor ar 13 Gorffennaf 2009 ar gydlynu cyfreithiau, rheoliadau a darpariaethau gweinyddol sy'n ymwneud ag ymrwymadau ar gyfer buddsoddiad ar y cyd mewn gwarantau trosglwyddadwy.



Felly, bydd angen i Lywodraeth Cymru ystyried priodoldeb parhaus y diffiniad hwn yn dilyn ymadawiad y DU â'r UE.

Ymateb y Llywodraeth

Nid oes angen ymateb gan y llywodraeth.

Cynghorwyr Cyfreithiol

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

3 Ebrill 2018



Adroddiad atodol: SL(5)190 - Rheoliadau Awdurdod Cymru (Pwerau i Ymchwilio i Droseddau) 2018 Eitem 6

Cefndir a Diben

Mae'r Rheoliadau hyn yn darparu ar gyfer darpariaethau amrywiol Deddf yr Heddlu a Thystiolaeth Droseddol 1984 a Deddf Cyfiawnder Troseddol a'r Heddlu 2001 i gael eu cymhwyso i waith ymchwilio i droseddau a gaiff ei wneud gan Awdurdod Cyllid Cymru ("yr Awdurdod"). Maent yn cynnwys cael mynediad i adeiladau o dan amgylchiadau penodedig ac ymafael mewn eitemau perthnasol.

Ceir esboniadau o'r pwerau unigol yn y Nodyn Esboniadol a'r Memorandwm Esboniadol. Gwnaeth Ysgrifennydd y Cabinet ddatganiad ysgrifenedig ar 21 Chwefror 2018 a gyfeiriodd at yr ymgynghoriad ar y pwerau a'r penderfyniadau a wnaethpwyd.

Trafododd y Pwyllgor yr offeryn yn ei gyfarfod ar 5 Mawrth [\[link\]](#) a chyflwynodd adroddiad i'r Cynulliad yn unol â'r pwynt rhinweddau a nodwyd.

Fodd bynnag, yn ystod ei ystyriaeth, cytunodd y Pwyllgor i gynnwys pwynt arall ar gyfer adrodd yn ymwneud ag anghysondeb rhwng y rheoliadau a'r Memorandwm Esboniadol.

Mae'r Memorandwm Esboniadol yn nodi bod yn rhaid i'r Awdurdod gydymffurfio â chodau ymarfer statudol, ond ein dealltwriaeth ni yw mai dim ond rhoi sylw i'r cod sydd ei angen, a dim ond dyletswydd i roi sylw i ddarnau perthnasol o'r cod hwnnw (gweler adran 67(9) o Ddeddf yr Heddlu a Thystiolaeth Droseddol 1984). Mae gwahaniaeth pwysig rhwng gorfod cydymffurfio â rhywbeth a rhoi sylw iddo. Dylai Llywodraeth Cymru egluro'r sefyllfa ac, os oes angen, sicrhau bod yr holl ddogfennau perthnasol sy'n gysylltiedig â'r rheoliadau yn cael eu cywiro.

Y weithdrefn

Cadarnhaol

Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

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

Ymateb Atodol y Pwyllgor

Bydd y Pwyllgor am fod yn ymwybodol bod y Memorandwm Esboniadol wedi'i ddiwygio i adlewyrchu sylwadau yn adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol.

Mae'r Pwyllgor yn diolch i Lywodraeth Cymru am ei hymateb ac yn croesawu'r newidiadau a wnaed i'r Memorandwm Esboniadol.



Explanatory Memorandum to:

- 1. The Welsh Revenue Authority (Powers to Investigate Criminal Offences) Regulations 2018**
- 2. The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018**

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

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

1. The Welsh Revenue Authority (Powers to Investigate Criminal Offences) Regulations 2018; and
2. The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018

I am satisfied that the benefits justify the likely costs.

Mark Drakeford AM
Cabinet Secretary for Finance

21 February 2018

1. Description

- 1.1 Part 9 of the Tax Collection and Management (Wales) Act 2016 (“TCMA”) amended the Police and Criminal Evidence Act 1984 (“the 1984 Act”), the Criminal Justice and Police Act 2001 (“the 2001 Act”) and the Proceeds of Crime Act 2002 (“the 2002 Act”) to allow the Welsh Ministers, by regulation and order, to confer powers on the Welsh Revenue Authority (“WRA”) to investigate devolved tax crime.

The Welsh Revenue Authority (Powers to Investigate Criminal Offences) Regulations 2018.

- 1.2 These Regulations provide that the following provisions contained in the 1984 Act apply to WRA when it investigates devolved tax crime:
- a power to apply for and obtain a warrant from a justice of the peace to authorise entry and search of premises (section 8 of the 1984 Act);
 - a power to obtain access to “excluded material” or “special procedure material” (defined Part 2 of the 1984 Act), subject to obtaining a warrant from a judge in accordance with the procedure in Schedule 1 to the 1984 Act (section 9 of the 1984 Act);
 - a power to seize relevant items found during the course of a search (section 19);
 - the extension of seizure powers to require information contained in an electronic format to be produced during the course of a search (section 20);
 - a power which enables WRA to copy information which has been seized during the course of a search (section 21);
 - a power to retain anything seized during the course of a search (section 22).
- 1.3 In addition to these powers, the Regulations apply appropriate safeguards and governance on their potential use. These include safeguards in relation to execution of searches and the seizure of items found during the course of a search (sections 15 and 16), and accompanying rights for the owners of property seized during the course of a search (section 21). WRA will also be under a duty to notify in writing a person interviewed in relation to an offence when a decision is taken not to proceed (section 60B). More generally, WRA must have regard to the relevant statutory codes of practice issued under sections 66 and 67 of the 1984 Act when investigating criminal offences.
- 1.4 These Regulations will also apply provisions in Part 2 of the 2001 Act to investigations conducted by WRA, which, among other things, provide for additional powers of seizure during the course of a search. As with the 1984 Act, various safeguards are also applied to the use of those powers. For example, section 52 of the 2001 Act imposes a requirement on WRA when relying on the powers of seizure provided by sections 50 or 51 to provide the owner of the property with a written notice setting down various details, including what has been seized, the grounds of seizure and the scope to apply to a judge for the return of the seized

items. Section 59 of the 2001 Act gives any person with an interest in property seized using these powers the right to apply to the court for it to be returned, subject to certain conditions being met.

- 1.5 Regulation 3 provides that further to the provisions listed in the Schedule to the Regulations, any applicable safeguards, and procedural elements in the 1984 Act will also apply. Consequently, any terms defined by other provisions in the 1984 Act will also apply to WRA when the provisions listed in the Schedule are applied to WRA investigations.
- 1.6 Regulation 3(3) substitutes references to police officers, constables and the police with references to WRA.
- 1.7 Regulation 4 allows a person exercising a function conferred on WRA by the Regulations to use reasonable force if that person considers it necessary in the exercise of that function. This could range from guiding a person to stand aside by placing a hand on their arm through to stopping a person by restraining them to prevent violence or injury against another person or officer, for example.
- 1.8 Regulation 5 makes provision for WRA to search any person found on the premises which is the subject of a search in reliance of a warrant issued under the 1984 Act. However, WRA may only search a person where there is reasonable cause to believe the person is in possession of something which is likely to be of “substantial value” to the investigation. This may be concealing/hiding something which may be relevant to the investigation, whether by itself, such as a relevant document in a briefcase, or something which when considered alongside other material could be of value, such as a mobile phone with passwords for electronic files or a key in a persons pocket which would open a filing cabinet on the premises.
- 1.9 Regulation 6 modifies section 16 of the 1984 Act, which makes provision in relation to the authorisation required before multiple premises warrants can be executed on a second or subsequent occasion, and where an all premises warrant can be executed in respect of property not specified in the warrant. The modification made by regulation 6 has the effect of substituting the requirement of obtaining a police inspector’s approval with a requirement that approval may only be provided by a person exercising WRA functions of at least civil service Grade 7 (or equivalent).
- 1.10 Regulation 7 modifies section 77 of the 1984 Act, which makes provision in relation to the treatment of confessions made by a person with a learning disability. Where such a confession is received as evidence in criminal proceedings, section 77 of the 1984 Act requires the court to exercise caution before relying on that evidence where (among other things) it has not been made in the presence of an “independent person”. The modification made by regulation 7 ensures that a person

exercising a function conferred on WRA by these Regulations is not regarded as an “independent person”.

1.11 Regulation 8 specifies that the functions conferred by these Regulations may only be exercised by a person with written authorisation from WRA to conduct relevant investigations.

1.12 These Regulations will come into force on 1 April 2018.

The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018

1.13 The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (“the Order”) enables accredited financial investigators who are members of staff of the WRA to exercise the following powers under the 2002 Act:

- apply for a restraint order under Part 2;
- seize property to which a restraint order applies;
- search for, seize, detain and apply for the forfeiture of cash under Chapter 3, Part 5 (recovery of cash in summary proceedings); and
- apply for orders and warrants in relation to confiscation, money laundering and detained cash investigations under Part 8, including an application to the courts for an order requiring a financial institution to provide customer information in relation to a specified person.

1.14 The types of investigations referred to in relation to Part 8 can be described as follows:

- **Confiscation** – A confiscation investigation is an investigation into whether a person has benefited from his criminal conduct or to the extent or whereabouts of his benefit from his criminal conduct, following criminal prosecution.
- **Detained Cash** – A detained cash investigation is an investigation for the purposes of Chapter 3 of Part 5 of the 2002 Act into the derivation of cash detained under that chapter or a part of such cash, or whether cash detained under that chapter is intended by any person to be used in unlawful conduct.
- **Money laundering** – A Money laundering investigation is an investigation into whether a person has committed a money laundering offence. This could occur where for example, there is a reasonable suspicion that a person has converted criminal property.

1.15 In addition, the Order applies appropriate safeguards and governance on the potential use of these powers, including the requirement that certain powers can only be exercised after obtaining senior officer approval.

1.16 Article 3 of the Order provides that a reference to an accredited financial investigator in a provision of the 2002 Act specified in Part 1 of the Schedule to the Order, is a reference to an accredited financial investigator who is a member of staff of WRA.

1.17 Article 4 of the Order provides that a reference to an accredited financial investigator in a provision of the 2002 Act specified in Part 2 of the Schedule, is a reference to an accredited financial investigator who is a member of staff of WRA and is at or above grade 7 or equivalent.

1.18 This Order comes into force on 1 April 2018.

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

2.1 This Explanatory Memorandum covers two Statutory Instruments; The Welsh Revenue Authority (Powers to Investigate Criminal Offences) Regulations 2018, which is subject to the affirmative procedure and the Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018, which is subject to the negative procedure.

2.2 These Statutory Instruments are interlinked and it is beneficial to interpret the impacts of each Statutory Instrument jointly to explain the wider legislative context. Thus, an Explanatory Memorandum incorporating a Regulatory Impact Assessment has been prepared to describe both Statutory Instruments.

3. Legislative background

3.1 The Welsh Revenue Authority (Powers to Investigate Criminal Offences) Regulations 2018 are made under section 114ZA of the Police and Criminal Evidence Act 1984 and section 67A into the Criminal Justice and Police Act 2001.

3.2 Section 114ZA of the Police and Criminal Evidence Act 1984 was inserted by section 185(1) TCMA and section 67A of the Criminal Justice and Police Act 2001 was inserted by section 185(2) TCMA.

3.3 In accordance with section 114ZA(4) of the 1984 Act and section 67A(4) of the 2001 Act, the regulations must be laid before and approved by the National Assembly for Wales (the affirmative procedure).

3.4 The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial investigators) Order 2018 is made pursuant to section 453(1A) and (2) of the Proceeds of Crime Act 2002. This Order is subject to the negative resolution procedure.

3.5 Section 453(1A) of the Proceeds of Crime Act 2002 was inserted by section 186 TCMA.

4. Purpose & intended effect of the legislation

- 4.1 The Tax Collection and Management (Wales) Act 2016 creates three criminal offences: wrongful disclosure of protected taxpayer information under section 20; concealing or destroying documents following an information notice under section 114 and concealing or destroying documents following notification under section 115. In addition to these offences there are a number of other criminal offences relevant to devolved taxes, including fraud (under the Fraud Act 2006); the common law offence of cheating the public revenue; and facilitating tax evasion (under the Criminal Finances Act 2017).
- 4.2 WRA's functions include promoting compliance with the law relating to devolved taxes (section 12 TCMA). This means that WRA has a role to play in tackling criminal behaviour that impacts on the devolved taxes. The purpose of the Regulations and the Order are to confer relevant investigatory powers on WRA so that it can lawfully and effectively tackle criminal behaviour, exercising powers as a law enforcement agency, by acquiring evidence to enable the prosecution of criminal offences.
- 4.3 Criminal behaviour in this context can be wide ranging, covering both devolved taxes, and could include deliberately providing false information to WRA (e.g. lying in a tax return); deliberately failing to comply with the requirements of the law (e.g. not weighing waste before it is sent to landfill or misstating the value of a land transaction); or deliberately destroying documents or other information that may be needed to establish a person's true tax position. The criminal intent in each of these circumstances is to make a financial gain or to seek to reduce the amount of money that should be paid to the public revenue.
- 4.4 These criminal investigation powers are additional to the civil investigatory powers conferred on WRA under the devolved tax legislation (Tax Collection and Management (Wales) Act 2016, Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 and Land Disposals Tax (Wales) Act 2017), which are primarily intended to allow WRA to identify and collect the correct amount of tax due (by obtaining information and inspecting premises, and where appropriate, imposing financial penalties). In some cases, it may be appropriate for individuals to face criminal sanctions for their behaviour, including fines and custodial sentences and these powers facilitate that.
- 4.5 It may also be considered appropriate to recover the money and assets a person acquires as a result of that criminal behaviour. The 2002 Act enables an accredited financial investigator to look into the financial position of individuals under investigation to identify, trace and freeze the proceeds of crime with a view to asking the courts to make a confiscation order following prosecution.

- 4.6 The Regulations and Order seek to put WRA in a similar position to HMRC in terms of criminal investigation powers, although the powers conferred on WRA by these statutory instruments are narrower than those conferred on HMRC. This reflects the narrower scope of the functions which WRA is able to exercise, for example WRA has no customs functions. WRA will not, for example, have the power to arrest or detain a person, or the powers to stop and search a person or vehicles without a warrant from a justice of the peace.
- 4.7 There is a real possibility of criminal offences in relation to Welsh devolved taxes in the future. The OECD report on Fighting Tax Crime recognises that “criminal law plays an important role... it enhances the general preventive effect that criminal law enforcement can have and reduces non compliance.”¹ Enabling the WRA to investigate devolved tax offences, as HMRC does for LfT and SDLT, with a consistent set of criminal investigation powers will help to ensure Wales is not seen as a soft target for those who may be seeking to evade taxes. Public knowledge that there are the appropriate criminal powers in place will allow WRA to prioritise criminal enforcement in appropriate cases and, therefore, act as a deterrent for those contemplating breaking the law. However, as previously noted, the civil powers conferred on WRA will be used in the majority of compliance cases.
- 4.8 The Regulations and Order are intended to provide WRA with proportionate criminal investigation powers to tackle and deter devolved tax crime. In exercising the powers conferred by these statutory instruments, WRA will be subject to the supervision of the courts and will be required to comply with or have regard to all relevant safeguards in the same way as the exercise of these powers by other law enforcement agencies such as the police and HMRC. In particular, a person will only be authorised by WRA to exercise these powers where that person has the requisite experience, training and understanding of the relevant legal framework and it is anticipated that these staff will carry specific identification similar to a warrant card. In addition, use of the powers will need to have regard to the relevant PACE codes of practice and, where specified, be approved at an appropriate level within WRA by a senior, authorised officer with the requisite experience, training, accreditation and understanding of the relevant legal framework.
- 4.9 In relation to the POCA order, accredited financial investigators must be trained, accredited and monitored by the National Crime Agency and the use of these investigatory powers must be by order or warrant from the court. Evidence and information obtained through the use of these powers must be retained and stored in a safe and secure way and used only for the purpose for which it was obtained, as is the case for all protected taxpayer information.

¹ Fighting Tax Crime: The Ten Global Principles OECD 2017, p.14 - <http://www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles.pdf>

PART 2 – REGULATORY IMPACT ASSESSMENT

1. Options

Option 1: Do Nothing

1.1 Under this option, the Regulations and Order would not be introduced.

Option 2: Introduce the regulations

1.2 Under this option, the Regulations and Order as described in Part 1 of this Explanatory Memorandum would be introduced. This is the preferred option.

2. Costs & benefits

Option 1: Do Nothing

2.1 If these Regulations and Order were not introduced, the WRA would be unable to use the investigative powers in the 1984 Act, the 2001 Act and the 2002 Act to investigate criminality and reclaim the proceeds of that crime for the public purse in relation to the devolved Welsh taxes. In this option, powers to investigate criminality in the devolved Welsh taxes would fall to the police forces in Wales.

2.2 It would be possible for the police in Wales to lead on all elements of investigation of devolved tax offences. However, this would be an additional responsibility for police in Wales and any police action would be dependent on their consideration of a range of other priorities. The Home Office are responsible for policing across England and Wales, (though the Welsh Government partially funds the police and, along with Welsh local authorities, have a strong and close relationship with the Welsh police).

Option 2: Introduce the Regulations and Order

2.3 The Welsh Government's preferred option is that the WRA investigate tax crime themselves. Financial profit is the driver for almost all serious and organised crime, and other lower-level acquisitive crime. It is difficult to estimate the cost of tax crime in relation to the two devolved taxes, however, HMRC estimate that there is a 10% tax gap for landfill tax and a 1% tax gap for stamp duty land tax². This suggests that the potential lost revenue to the WRA for LDT could be in the region of £2.6 million and for LTT in the region of £2.5 million – although only part of this

² Measuring the Tax Gap 2017, HMRC The tax gap is the difference between the amount of tax that should, in theory, be collected by HMRC, and what is actually collected.

would be due to tax crime.³As tax rules diverge across the UK following the devolution of tax powers to Wales and Scotland, it is imperative that tax crime is tackled consistently and in the best interests of compliant taxpayers and businesses, so no part of the UK is a safe haven for those who evade tax. It will be important that any organisation responsible for investigating devolved tax offences works closely with HMRC and Revenue Scotland to share information and ensure effective enforcement.

- 2.4 It is clear that the application of the 1984 Act, the 2001 Act and the 2002 Act will have resource implications for WRA and the Welsh Government and there is a shared commitment to ensuring that appropriate resources are made available.
- 2.5 Much of the governance and compliance work required to enable the lawful exercise of these powers will be case-specific – the powers under consideration are permissive: WRA would not be required to use them, but would have the option to do so in appropriate circumstances.
- 2.6 This means that the immediate impact of the Regulations and the Order could be relatively limited, for example, to allow staff to receive appropriate training and accreditation. It is anticipated that the initial resource requirements stemming from WRA access to criminal powers can be accommodated within the existing WRA budget allocation of £6m for 2018/19 and 2019/20.
- 2.7 The exercise of the powers in particular cases could imply further cost, for example, relating to the storage of evidence and the appropriate equipment for staff. The ongoing resource will depend on the extent and nature of the case-work that WRA may wish to take forward and the priority attached to it. The costs associated will be dependant upon the nature, volume and extent of criminality uncovered once WRA becomes operational and has access to protected taxpayer information.
- 2.8 However, it may be anticipated that some of those costs may overlap with WRA's civil enforcement powers under TCMA, to inspect premises and to take samples and remove documents during an inspection.
- 2.9 The Office of Budget Responsibility considers the cost and benefits associated with compliance work subject to “high levels of uncertainty since they target specific subsets of taxpayers who are already actively changing their behaviour to lower their tax liabilities. As a result, there is usually relatively high behavioural uncertainty. Similarly, since the measures are directed at uncollected tax, there is usually less reliable data available to inform the costing.”⁴

³ Based on information from HMRC Measuring the Tax Gap 2017 and Welsh Government tax forecasts

⁴ Office of Budget Responsibility – “Working Paper No.11: Evaluation of HMRC anti-avoidance and operational measures, September 2017” http://budgetresponsibility.org.uk/docs/dlm_uploads/WP-No.11-Evaluation-of-HMRC-anti-avoidance-and-operational-measures.pdf

- 2.10 However, the benefit of investment in tackling tax crime are seen as not only recovering lost tax, but also in encouraging wider compliance as the risk of being caught outweighs the potential benefit. In addition, OECD states that “the investment is worthwhile, with some jurisdictions being able to calculate the return on investment from the criminal tax investigation teams and reporting recovery of funds well in excess of the expenditure, ranging from 150% to 1500% return on investment.”⁵
- 2.11 The Regulations and Order are not expected to impose costs on business, other than those that may become subject to an investigation from potential criminal activity.
- 2.12 The Regulations and Order are considered as a way of levelling the playing field for legitimate businesses in Wales. The Regulations and Order are designed to tackle tax crime and we anticipate this to be most prevalent in landfill disposals tax, which will have the potential to impact on wider waste crime which can have serious environmental impacts. However, the motive for tax crime is economic and is aimed at the acquisition of financial benefit. As with any crime, waste crime has a cost to the wider economy, taking business away from legitimate, permitted waste operators, who therefore lose income and the ability to invest in their businesses and the wider local economy. However, the profits come largely at the expense of the taxpayer. The Environmental Services Association estimates “each pound spent on enforcement is likely to yield a return of as much as £5.60. Of this £3.20 would be received directly by government in taxes, with the rest benefitting legitimate waste sector businesses and wider society.”⁶
- 2.13 Overall, the benefits of this option are:
- By creating an effective deterrent to criminal behaviour, it has the potential to reduce tax lost as a result of criminal activity;
 - There is the potential to reclaim revenue lost to the public purses as a result of criminal behaviour;
 - It has the potential to create a fairer environment for waste businesses and other tax payers in Wales; and
 - Consultation responses from other law enforcement agencies, including the police, National Crime Agency and NRW were supportive of the proposals.

3. Consultation

- 3.1 On 10 July, the Welsh Government published a consultation on WRA access to criminal powers to tackle tax crime, which closed on 2 October. In total, the Welsh Government received 17 responses from a

⁵ Fighting Tax Crime – The Ten Global Principles: OECD 2017-
<http://www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles.pdf>

⁶ Environmental Services Association Education Trust- Waste Crime: Tackling Britain’s Dirty Secret:
http://www.esauk.org/esa_reports/ESAET_Waste_Crime_Tackling_Britains_Dirty_Secret_LIVE.pdf

range of stakeholders from various sectors, all from within Wales.

3.2 A full Welsh Government response to the consultation can be viewed here: <https://consultations.gov.wales/consultations/welsh-revenue-authority-powers-tackle-tax-crime>

3.3 Following the consultation, engagement has taken place with the Home Office, HMRC, CPS, NRW, National Crime Agency and the Police as well as other WRA stakeholders. Their views have been taken into account when developing these Regulations and Order.

4. Post implementation review

4.1 The Finance Committee in its Stage 1 Report on the TCMA stated: “the Minister should consider reviewing these powers once the taxes have been established and in operation for a number of years.”⁷

4.2 It is anticipated that TCMA will be reviewed within three to five years. The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 will be reviewed by May 2023 and the Landfill Disposals Tax (Wales) Act 2017 will follow the same timeline. The impact of the powers conferred by the Regulations and Order will be considered as part of the wider review programme.

⁷National Assembly for Wales, Finance Committee, Tax Collection and Management (Wales) Bill Stage 1 Committee Report, November 2015. Paragraph 241.
<http://www.assembly.wales/laid%20documents/cr-ld10451/cr-ld10451-e.pdf>

Adroddiad atodol: SL(5)191 – Gorchymyn Deddf ~~Enitem~~ 7 Troseddau 2002 (Cyfeiriadau at Ymchwilyr Ariannol Awdurdod Cyllid Cymru) 2018

Cefndir a Diben

Mae'r Gorchymyn hwn yn darparu bod cyfeiriadau at ymchwilyr ariannol achrededig yn Neddf Enillion Troseddau 2002 ("y Ddeddf") i'w darllen fel cyfeiriadau at ymchwilyr ariannol achrededig sy'n aelodau o staff Awdurdod Cyllid Cymru.

Caiff ymchwilyr ariannol achrededig wneud cais am orchmynion atal o dan Ran 2 o'r Ddeddf a chânt ymafael mewn eiddo y mae unrhyw orchymyn o'r fath yn gymwys iddo. Caiff ymchwilyr ariannol achrededig hefyd chwilio am arian parod, ymafael ynddo, ei gadw a gwneud cais i'w fforffedu. Cyn arfer pwerau chwilio, rhaid iddynt gael cymeradwyaeth ymlaen llaw oddi wrth naill ai ynad heddwch neu uwch-swyddog (oni bai ei bod yn anymarferol gwneud hynny o dan yr amgylchiadau).

Caiff ymchwilyr ariannol achrededig hefyd wneud cais am orchmynion a gwarantau mewn perthynas ag ymchwiliadau atafaelu, gwyngalchu arian ac arian parod. Gall dibenion gorchmynion o'r fath gynnwys, e.e. ei gwneud yn ofynnol i berson gyflwyno deunyddiau penodol, i ganiatáu chwiliad o fangre benodedig ac ymafael mewn deunyddiau ynddi a'i gwneud yn ofynnol i sefydliad ariannol ddarparu gwybodaeth cwsmeriaid. Ymchwilydd ariannol achrededig yn unig, sydd (gan ddibynnu ar natur y gorchymyn neu'r warant) naill ai'n berson priodol, yn swyddog priodol neu'n uwch-swyddog priodol, gaiff wneud cais am y pwerau o dan orchmynion neu warantau o'r fath a/neu eu harfer.

Trafododd y Pwyllgor yr offeryn yn ei gyfarfod ar 12 Mawrth 2018, ynghyd ag ymateb y Llywodraeth, ac mae'n cyflwyno adroddiad i'r Cynulliad yn unol â'r pwynt rhinweddau uchod.

Fodd bynnag, yn ystod ei ystyriaeth, cytunodd y Pwyllgor i gynnwys pwynt arall ar gyfer adrodd yn ymwneud ag anghysondeb rhwng y rheoliadau a'r Memorandwm Esboniadol.

Mae'r Memorandwm Esboniadol yn nodi bod yn rhaid i Awdurdod Cyllid Cymru gydymffurfio â chodau ymarfer statudol, ond ein dealltwriaeth ni yw mai dim ond rhoi sylw i'r cod sydd ei angen, a dim ond dyletswydd i roi sylw i ddarnau perthnasol o'r cod hwnnw (gweler adran 67(9) o *Ddeddf yr Heddlu a Thystiolaeth Droseddol 1984*). Mae gwahaniaeth pwysig rhwng gorfod cydymffurfio â rhywbeth a rhoi sylw iddo. Dylai Llywodraeth Cymru egluro'r sefyllfa ac, os oes angen, sicrhau bod yr holl ddogfennau perthnasol sy'n gysylltiedig â'r rheoliadau yn cael eu cywiro.



Y weithdrefn

Negyddol

Ymateb Atodol y Pwyllgor

Bydd y Pwyllgor am fod yn ymwybodol bod y Memorandwm Esboniadol wedi'i ddiwygio i adlewyrchu sylwadau yn adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol.

Mae'r Pwyllgor yn diolch i Lywodraeth Cymru am ei hymateb ac yn croesawu'r newidiadau a wnaed i'r Memorandwm Esboniadol.





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

T: 020 7270 0575
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Elin Jones AM
Presiding Officer
National Assembly for Wales
Cardiff Bay
CF99 1NA

16 March 2018

Dear Elin,

CHANGES TO THE EUROPEAN UNION (WITHDRAWAL) BILL

Further to my letter of 16 January, UK Government officials have been working closely with their counterparts in the Welsh Government, Scottish Government and Northern Ireland Civil Service on a number of detailed issues relating to the devolution provisions in the EU (Withdrawal) Bill.

I am writing to set out where we have got to in our work on these issues. I am pleased that this work has delivered agreement in many areas. Notwithstanding ongoing discussions between the UK government and the Welsh Government to secure the Welsh Government's support for the Bill, we now need to finalise detailed provision in order to prepare for the Bill's Lords Report stage.

I enclose an annex setting out the changes we intend to make to the Bill. In summary, we will:

- Amend the Bill so that the Clause 7 power to correct deficiencies cannot be used to amend the Government of Wales Act 2006 (or the Scotland Act 1998);
- Correct the deficiency in the reservation for technical standards on the face of the Bill as it is common to all three devolution settlements;
- Make corrections to the Government of Wales Act 2006 on the face of the Bill where they are within devolved competence, as requested in the First Minister's letter of 5 February; and
- Amend the Bill to ensure that the 'made affirmative' procedure is available to scrutinise the Welsh Ministers' use of the powers in the Bill, as recommended by the Assembly's Constitutional and Legislative Affairs Committee.

There remain further corrections that will need to be made to the Government of Wales Act which my officials have discussed with yours. The remaining deficiencies that have been identified are in reservations in Schedule 7A to the Act and I can confirm that, as our officials have discussed, my intention is to use the Order in Council power in section 109 of the Act so that the Assembly is able to approve the changes that are made. My officials will continue to work closely with yours and

counterparts in the Welsh Government over the coming weeks to ensure that you are sighted on the changes that will be made in this order.

There remain some outstanding issues relating to scrutiny arrangements by the Assembly where the First Minister's view, as set out in his 5 February letter, differs from the recommendations made by the Assembly's Constitutional and Legislative Affairs Committee following its scrutiny of the Bill. I have asked the First Minister to confirm whether his consideration of the Committee's recommendations have resulted in any change in what he is seeking.

I am copying this letter to the First Minister and to the Chairs of the Assembly's Constitutional and Legislative Affairs Committee and External Affairs and Additional Legislation Committee. I am also writing in similar terms to the First Minister.

Yours,



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

ANNEX A - CHANGES TO THE EU (WITHDRAWAL) BILL

1. Protection for the Devolution Statutes under the Correcting Power

- 1.1 Working with Welsh Government officials, we have been able to confirm that we will not need to use the clause 7 power to correct the remaining deficiencies in the Government of Wales 2006 (GoWA) and can instead use the Bill itself or orders made under section 109 of GoWA. We will therefore table amendments to clause 7 to apply the same protection from modification to GoWA (and the Scotland Act) that currently applies to the Northern Ireland Act.
- 1.2 Subject to agreement of the drafting we will also correct the ‘technical standards’ reservation for all three Acts in the Bill. The change will read across to the correcting power conferred on devolved ministers in Schedule 2 Part 1. That power too will not generally be capable of modifying the Devolution Acts.
- 1.3 We announced the amendments to clause 7 at Committee Stage, to be tabled at Report Stage. We now need to draft and agree the amendments for those deficiencies that will be corrected on the face of the Bill in time for Report Stage.

2. Outstanding Corrections to the Government of Wales Act 2006

The technical standards reservation:

- 2.1 UK Government and Welsh Government officials have been considering how best to remedy the deficiency in the reservation covering technical standards and requirements for products in pursuance of an EU obligation for each of the three devolution statutes. For this, and every deficiency in a reservation, we intend that the corrections should be devolution neutral, i.e. that they should not change the scope of the reservation.
- 2.2 The proposed correction to the technical standards reservation would reserve existing technical standards in relation to products as they apply immediately before exit day, including any subsequent changes that are made to those standards (as it currently works whilst we are in the EU). Technical standards for new products arising post-exit, and therefore outside of an EU obligation would not fall within the scope of the existing reservation and would not be covered by the amended reservation.
- 2.3 We will need to work with the Welsh Government and the other devolved administrations to consider any technical standards arising in future outside of the reservation, just as we would now for those that are outside of our EU obligations and are not covered by the existing reservation. This will be a matter for relevant departments to consider.
- 2.4 We have now shared the drafting of the amendment with the Welsh Government and my officials will continue to work with their counterparts in the devolved administrations to agree drafting.

Deficiencies within devolved competence:

- 2.5 In his letter of 5 February the First Minister confirmed that he wants the deficiencies within GoWA that fall within devolved competence to be corrected in the Bill.
- 2.6 In order to instruct Parliamentary Counsel in sufficient time for these to be drafted, for the drafting to be agreed and the amendments tabled for Report Stage, we will need to make progress quickly and to have instructed Counsel no later than 23 March. My officials are working with Welsh Government officials on how these deficiencies will be corrected.

3. Restrictions on Delegated Powers

Restricting the definition of deficiency:

- 3.1 The Commons accepted the amendment to limit the scope of the clause 7 power to amend only those deficiencies that are listed in subsection (2) of clause 7, while providing a 'sweeper' provision to ensure deficiencies not on the list but of a 'similar kind' to those on the list are recognised as also being deficiencies.
- 3.2 The new power to add to this list of definitions is available to UK ministers. In line with our commitment at the despatch box, we will consider closely any suggestions put forward for additional definitions of deficiencies that you identify in your own laws. We would expect any definitions added to the list to apply to the power for ministers in both the UK Government and devolved administrations. This is important to ensure that there is consistency across the jurisdiction of the UK so that we can all deal with any deficiencies that arise.

Enhanced explanatory material:

- 3.3 The First Minister has confirmed that the requirements for enhanced explanatory material relating to the effect of SIs and equalities statements should not be applied to Welsh Ministers' powers. I will keep you informed if there are any further changes to the provisions on explanatory material.
- 3.4 We have been considering further the question of how this duty should apply in relation to the joint procedure. The joint procedure is a means to ensure scrutiny by Parliament and the relevant devolved legislature where it is appropriate that both consider the legislation, for example where correcting a deficiency in an existing joint instrument. We would not want it to be viewed as a means to avoid scrutiny by not having to provide the same level of explanatory material. We therefore think that it is correct for the duty to continue to apply to a UK minister when legislating jointly with a devolved minister.
- 3.5 This would mean that the material that is required to be produced by the UK minister would be available to the relevant devolved legislature to consider. But the duty would apply to the UK minister only, not to the devolved minister.

4. Scrutiny Arrangements

The 'made affirmative' procedure:

- 4.1 In its report on the EU (Withdrawal) Bill the Assembly's Constitutional and Legislative Affairs Committee ("the Committee") recommended that the 'made affirmative' procedure is available for the exercise of the Bill powers by the Welsh Ministers. The First Minister also asked for this in his 5 February letter. The Scottish Government have confirmed that this should be available to the Scottish Ministers. We have also confirmed with the Northern Ireland Civil Service that we will make the procedure available to Northern Ireland departments.
- 4.2 My officials will work with yours, and those in the Devolved Administrations to ensure that the amendments deliver the intended effect and work properly in the context of each legislature's procedures.

The 'sifting committee' procedure:

- 4.3 The Committee recommended that the provisions relating to a sifting committee in the Bill should be extended to scrutiny of instruments laid before the Assembly and that it should be binding, going further than the procedure that has been applied in the Bill in relation to UK Ministers. However, the First Minister has stated that such a procedure should not apply to the Welsh Ministers' powers.
- 4.4 I recognise that this is a question for the Assembly and Welsh Government to consider and I would be grateful for your thoughts on how you would like us to proceed. It is worth noting that amending the scrutiny arrangements in the Bill will be within the legislative competence of the Assembly and so this does not necessarily need to be addressed in the Bill, but could be dealt with in new Assembly legislation if that were more appropriate.

Further changes to scrutiny:

- 4.5 I have previously invited you to comment on any other changes that you would wish to be made to the scrutiny arrangements for the Welsh Ministers' powers. If there are any such changes I would be grateful for confirmation of what they would be at the earliest opportunity.

5. Technical and Consequential Changes

Severance of ultra vires provision in Schedule 2 regulations:

- 5.1 A question has been raised by Welsh Government legal advisers and Scottish Parliament legal advisers as to the effect of the provision requiring that Schedule 2 regulations can only be made where they are within competence.
- 5.2 The current drafting stipulates that no regulations can be made unless every provision is within competence. The point has been made that this could prevent the courts from applying the usual principle of severance, by which they could

sever a provision that is outside of competence rather than striking down the whole instrument.

- 5.3 Having tested this with Parliamentary Counsel, we do not think that this would be the case and severance would apply as normal. However, we believe that it would provide helpful reassurance if we amend the drafting to make this clearer. Counsel has drafted amendments that will achieve this and we will share these with you. We intend for these to be tabled at Report Stage.

Allowing for composite instruments under the joint procedure:

- 5.4 The joint procedure included for the Schedule 2 powers currently permits a UK minister and a devolved minister to make 'joint instruments', which will be laid before and scrutinised by Parliament and the relevant devolved legislature. These would be where the UK minister and devolved minister are exercising the same power and each has the competence to make every provision within the instrument.
- 5.5 The intention is that this should also permit the making of a 'composite instrument', where provisions made under different powers by a UK minister and a devolved minister are combined in a single instrument. We expect this to be the more common manner in which the procedure would be used, for instance where a Welsh Minister is making provision for Wales and a UK minister is making the same or equivalent provision for England.
- 5.6 Some doubt has been expressed as to whether the current drafting does allow for composite instruments to be made using this procedure. Counsel has drafted technical amendments to address this, which we will share with you. We plan to table these at Report Stage as well.



Rt Hon Alun Cairns MP
Secretary of State for Wales
1 Caspian Point
Cardiff Bay
CF104DQ

22 March 2018

Dear Alun

Changes to the European Union (Withdrawal) Bill

You wrote to me on 16 January 2018 (and again on 16 March 2018) regarding the European Union (Withdrawal) Bill (the Bill). In particular, you provided an update on amendments made to the Bill at Committee stage in the House of Commons and included a list of questions relating to scrutiny procedures that should apply to regulations in devolved areas.

At the time of your letter, the National Assembly's Constitutional and Legislative Affairs Committee (CLA Committee) had already initiated its inquiry into the powers in the Bill to make subordinate legislation. Its report, *The Scrutiny of regulations made under the European Union (Withdrawal) Bill*, was laid and published on 16 February and covers the questions you raised in your 16 January letter.

The Chair of CLA Committee wrote to you on 16 February enclosing its report and setting out its views on all the issues raised in your 16 January letter.

On 7 March, Assembly Members debated the report of the CLA Committee and unanimously endorsed recommendations 1, 2, 4 and 7. For ease of reference, those recommendations are set out in an annexe to this letter.



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

Therefore, I draw your attention to those recommendations and ask that you receive this letter as formal notification of the National Assembly for Wales's position on what amendments should be made to the Bill in respect of procedures for the scrutiny of subordinate legislation.

I agree that it is important that your officials work closely with Assembly officials in the drafting of these amendments before they are tabled to ensure that the recommendations of the CLA Committee are effectively translated to amendments to the Bill.

I am copying this letter to Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee, David Rees AM, Chair of the External Affairs and Additional Legislation Committee and the First Minister.

Yours sincerely,

Elin Jones AM

Llywydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in
Welsh or English

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National Assembly for Wales

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Tudalen y pecyn 74

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Annexe – Constitutional and Legislative Affairs Committee report ‘*Scrutiny of regulations made under the European Union (Withdrawal) Bill*’ - recommendations 1, 2, 4 and 7

Recommendation 1. We recommend that the sifting mechanism currently included in the Bill should be extended to cover all regulations that are made under the Bill and are laid before the National Assembly, and that a committee of the National Assembly is responsible for making a recommendation as to the appropriate procedure for the regulations.

Recommendation 2. The recommendation made by the sifting committee under recommendation 1 should be binding, save where the National Assembly resolves otherwise. This requirement should be reflected on the face of the Bill.

Recommendation 4. We recommend that the Bill is amended in line with paragraphs 44 to 46 of this report, which include endorsements of recommendations made by the House of Lords Constitution Committee and the House of Lords Delegated Powers and Regulatory Reform Committee.

Recommendation 7. We recommend that the made affirmative procedure for urgent cases should also apply to regulations made by the Welsh Ministers (whether acting alone or acting with UK Ministers in composite regulations or acting with UK Ministers in joint regulations) in order for there to be consistent treatment of ministers of all governments.

Y Gwir Anrhydeddus Carwyn Jones AC
Prif Weinidog Cymru

23 Mawrth 2018

Annwyl Brif Weinidog,

Bil yr Undeb Ewropeaidd (Ymadael): Trefniadau craffu

Ysgrifennodd Ysgrifennydd Gwladol Cymru at y Llywydd ar 16 Mawrth 2018 mewn cysylltiad â newidiadau i Fil yr Undeb Ewropeaidd (Ymadael) ('y Bil Ymadael') a gopiwyd atoch chi a'r Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol.

Yn y llythyr hwnnw, mae'r Ysgrifennydd Gwladol yn ysgrifennu:

“There remain some outstanding issues relating to scrutiny arrangements by the Assembly where the First Minister’s view, as set out in his 5 February letter, differs from the recommendations made by the Assembly’s Constitutional and Legislative Affairs Committee following its scrutiny of the Bill. I have asked the First Minister to confirm whether his consideration of the Committee’s recommendations have resulted in any change in what he is seeking.”

Tra bod y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol (y 'Pwyllgor CLA') wedi cynnig trefniadau craffu manwl ar gyfer yr is-ddeddfwriaeth a fydd yn llifo yn sgîl y Bil Ymadael, mae hwn yn parhau i fod yn faes sydd o ddiddordeb mawr i ni fel Pwyllgor y Cynulliad sy'n gyfrifol am graffu ar y broses ymadael â'r Undeb Ewropeaidd.



Heb roi sylwadau ar fanylion cynigion y Pwyllgor CLA, credwn eu bod, yn fras, yn unol â'n safbwynt ni ar drefniadau craffu, fel y mynegwyd yn y chweched amcan a osodwyd gennym ar gyfer gwella'r Bil Ymadael.

Wrth drafod ein safbwynt ni ar drefniadau craffu, mae Ysgrifennydd y Cabinet dros Gyllid wedi dweud yn glir o'r blaen y dylai hwn fod yn fater i'r Cynulliad benderfynu arno.

Byddwn yn ddiolchgar os gallech ddarparu manylion inni ynghylch sut mae eich safbwynt yn wahanol i safbwynt argymhellion y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol, ac a yw'n wahanol i'n safbwynt ni, fel y mynegwyd yn ein chweched amcan ar gyfer y Bil Ymadael.

Amgaeir copi o'n hamcanion ar gyfer y Bil Ymadael er hwylustod.

Mae hefyd ail bwynt yr hoffem ei godi, sef, mewn perthynas â deunydd esboniadol gwell.

Mae'r Ysgrifennydd Gwladol, ym mharagraff 3.3 o'r atodiad i'w llythyr at y Llywydd, dyddiedig 16 Mawrth, yn datgan:

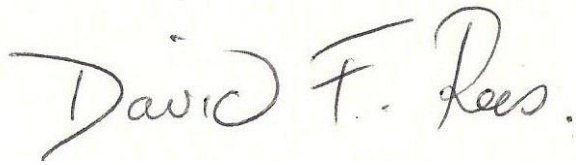
"The First Minister has confirmed that the requirements for enhanced explanatory material relating to the effect of SIs and equalities statements should not be applied to Welsh Ministers' powers."

Byddwn yn ddiolchgar pe gallech gadarnhau eich rhesymau dros y penderfyniad hwn.

Rwy'n anfon copi o'r llythyr hwn at Gadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ac at y Llywydd.



Yn gywir,

A handwritten signature in black ink that reads "David F. Rees." The signature is written in a cursive style and is set against a light yellow rectangular background.

David Rees AM, Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/L/JJ/ 0198/18

Mick Antoniwn AC
Cadeirydd, y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Cynulliad Cenedlaethol Cymru
CF99 1NA

27 Mawrth 2018

Annwyl Mick,

Rwy'n ysgrifennu i roi gwybod i chi am ymateb ffurfiol Llywodraeth Cymru i adroddiad diweddaraf y Pwyllgor ar yr archwiliad o'r rheolau a wneir o dan Bil yr Undeb Ewropeaidd (Hysbysu am Ymadael). Rwy'n amgáu tabl sy'n gosod allan ein hymateb i bob argymhelliad.

Yr wyf yn ddiolchgar i'r Pwyllgor am eu gwaith ar y mater hwn.

Yn gywir,

Julie James AC / AM
Arweinydd y Tŷ a'r Prif Chwip

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Tudalen y pecyn 79

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol - Craffu ar reoliadau a wneir o dan Fil ymadael â'r Undeb Ewropeaidd

Nodyn cefndir - argymhellion ac ymateb drafft CLAC

| Argymhelliad | Ymateb Drafft |
|--|--|
| <p>Argymhelliad 1. Rydym yn argymhell y dylid ymestyn y dull sifftio sydd wedi'i gynnwys yn y Bil ar hyn o bryd i bob rheoliad a wneir o dan y Bil ac a osodir gerbron y Cynulliad. Rydym hefyd yn argymhell bod un o bwyllgorau'r Cynulliad Cenedlaethol yn gyfrifol am wneud argymhelliad ynghylch y weithdrefn briodol ar gyfer y rheoliadau dan sylw.</p> | <p>CYTUNO: Mater i'r Cynulliad ei ystyried a chytuno arno â Llywodraeth y DU a Senedd y DU yw hwn. Mae Llywodraeth Cymru'n cytuno y dylai arfer pwerau dirprwyedig fod yn destun craffu priodol a chymesur. O ran y darpariaethau sy'n ymwneud ag arfer a chraffu ar bwerau dirprwyedig, rydym hefyd yn credu y dylai'r pwerau a'r dyletswyddau ar Weinidogion Cymru gydymffurfio â'r rhai sy'n gymwys i Weinidogion y DU. Felly, byddai Llywodraeth Cymru'n fodlon i ofynion sifftio cyfatebol fod yn gymwys i offerynnau a osodir gerbron y Cynulliad ag i offerynnau a osodir gerbron Senedd y DU.</p> |
| <p>Argymhelliad 2. Dylai'r argymhelliad a wneir gan y pwyllgor sifftio o dan argymhelliad 1 fod yn orfodol, oni bai fod y Cynulliad Cenedlaethol yn penderfynu fel arall. Dylid adlewyrchu'r gofyniad hwn ar wyneb y Bil.</p> | <p>GWRTHOD: Mae Llywodraeth Cymru'n cydnabod mai mater i'r Cynulliad Cenedlaethol ei ystyried a chytuno ag ef â Llywodraeth y DU a Senedd y DU yn bennaf yw hwn. Er hynny, nid ydym yn argyhoeddedig y dylai'r argymhelliad a wneir gan y pwyllgor sifftio fod yn derfynol. Rydym yn cytuno y dylai arfer pwerau dirprwyedig fod yn destun craffu priodol a chymesur ac rydym wedi dangos ein hymrwymiad i graffu cadarn trwy'r dull gweithredu yr ydym wedi'i ddefnyddio yn y Bil LDEU. Rydym yn credu hefyd y bydd Gweinidogion Cymru yn y mwyafrif o achosion yn derbyn argymhelliad y pwyllgor sifftio y dylai set o reoliadau fod yn destun y weithdrefn gadarnhaol yn hytrach na'r weithdrefn negyddol. Er hynny, gallai fod sefyllfaoedd lle y gallai fod angen i Weinidogion Cymru weithredu'n gyflymach nag y mae'r weithdrefn gadarnhaol yn darparu ar ei gyfer - a hynny oherwydd rhesymau brys - ac mae'n hanfodol bod y Llywodraeth yn cadw'r hyblygrwydd i wneud hynny, er gwaethaf argymhellion y pwyllgor sifftio. Mae Llywodraeth Cymru'n credu hefyd fod achos o blaid cadw trefniadau cyson rhwng y Cynulliad Cenedlaethol a Senedd y DU, yn enwedig ar gyfer cyd-offerynnau ac offerynnau cyfansawdd lle y byddai</p> |

| Argymhelliad | Ymateb Drafft |
|--|--|
| | pwyllgorau sifftio'r Cynulliad a Senedd y DU yn gwneud argymhellion ar y weithdrefn briodol. |
| <p>Argymhelliad 3. Rydym yn argymhell bod y meini prawf sifftio sydd wedi'u nodi ym mharagraff 35(b) o'r adroddiad hwn yn cael eu cymhwyso i'r holl reoliadau sy'n cael eu gwneud o dan y Bil ac a osodir gerbron y Cynulliad Cenedlaethol, ac y dylid nodi'r meini prawf yn Rheolau Sefydlog y Cynulliad Cenedlaethol.</p> | <p>GWRTHOD: Mae Llywodraeth Cymru'n cydnabod y bydd angen i'r pwyllgor sifftio gytuno ar y meini prawf i'w defnyddio ar gyfer cyflawni'r broses sifftio. Er hynny, bydd angen i'r meini prawf hyn fod yn gyson â'r fframwaith terfynol ar gyfer y mecanwaith sifftio, a bod angen i'r Cynulliad gadw rhywfaint o hyblygrwydd yn hyn o beth. Nid yw Llywodraeth Cymru wedi'i darbwylo felly y dylai'r meini prawf gael eu cynnwys yn y Rheolau Sefydlog.</p> |
| <p>Argymhelliad 4. Rydym yn argymhell bod y Bil yn cael ei ddiwygio yn unol â pharagraffau 44 i 46 o'r adroddiad hwn, sy'n cynnwys datganiadau yn cymeradwyo'r argymhellion a wnaed gan Bwyllgor Cyfansoddiad Tŷ'r Arglwyddi a Phwyllgor Pwerau Dirprwyedig a Diwygio Rheoleiddio Tŷ'r Arglwyddi.</p> <p>Y gwelliannau a gynigir ym mharagraffau 44-46 yw:</p> <ul style="list-style-type: none"> • Y dylai'r weithdrefn gadarnhaol fod yn gymwys i unrhyw fesur sy'n cynnwys gwneud polisi • Y dylai'r weithdrefn gadarnhaol fod yn gymwys i reoliadau a wneir o dan gymalau 7, 8, 9 a 17 sy'n diwygio neu'n diddymu deddfwriaeth sylfaenol 46 • Y dylai Deddf Llywodraeth Cymru 2006 gael ei chynnwys yn y rhestr o ddeddfiadau yng nghymal 7(7) na ellir eu diwygio trwy gyfrwng rheoliadau | <p>CYTUNO: Mae Llywodraeth Cymru'n credu, mewn perthynas â'r darpariaethau sy'n ymwneud ag arfer a chraffu ar bwerau dirprwyedig, y dylai'r pwerau a'r dyletswyddau ar Weinidogion Cymru gydymffurfio â'r rhai sy'n gymwys i Weinidogion y DU. Rydym yn cefnogi diwygio Bil Ymadael â'r Undeb Ewropeaidd yn y ffordd a gynigiwyd gan CLAC (paragraffau 44-46).</p> |
| <p>Argymhelliad 5. Rydym yn argymhell mai'r Pwyllgor hwn – y Pwyllgor Cyfansoddiadol a Materion Deddfwriaethol - ddylai fod y pwyllgor sifftio ar gyfer y Cynulliad Cenedlaethol ac y dylid diwygio Rheolau Sefydlog y Cynulliad Cenedlaethol yn unol â hynny.</p> | <p>CYTUNO O RAN EGWYDDOR: mater i'r Cynulliad yw hwn. Mae Llywodraeth Cymru'n cytuno y byddai'n briodol i CLAC ysgwyddo'r swyddogaeth hon. Er hynny, nid ydym yn credu bod angen diwygio Rheolau Sefydlog i adlewyrchu hyn.</p> |
| <p>Argymhelliad 6. Rydym yn argymhell y dylai'r dull sifftio fod yn gymwys i reoliadau o dan Gategorïau 1, 2 a 3, sydd wedi'u nodi yn yr adroddiad hwn, sef yr holl reoliadau a wneir o dan y Bil sy'n cynnwys darpariaethau datganoledig a osodir gerbron y Cynulliad Cenedlaethol.</p> | <p>CYTUNO: Mae Llywodraeth Cymru'n cytuno y dylai'r mecanwaith sifftio fod yn gymwys i'r categorïau o reoliadau a nodir gan CLAC, er ei bod yn nodi'r heriau posibl mewn perthynas â chyd-reoliadau a rheoliadau cydamserol, lle y bydd pwyllgorau sifftio'r Cynulliad Cenedlaethol a</p> |

| Argymhelliad | Ymateb Drafft |
|---|--|
| <ul style="list-style-type: none"> • Categori 1: rheoliadau a wneir gan Weinidogion Cymru yn gweithredu'n annibynnol gan ddefnyddio eu pwerau o ran Atodlen 2, a osodir gerbron Cynulliad Cenedlaethol Cymru yn unig; • Categori 2: rheoliadau a wneir gan Weinidogion Cymru a Gweinidogion y DU yn gweithredu ar y cyd o dan Atodlen 2, a osodir gerbron Cynulliad Cenedlaethol Cymru a Senedd y DU; • Categori 3: rheoliadau a wneir gan Weinidogion Cymru a Gweinidogion y DU gan ddefnyddio eu pwerau cydamserol o dan Atodlen 2 a chymalau 7, 8 a 9 yn eu trefn) mewn rheoliadau cyfansawdd, a osodir gerbron Cynulliad Cenedlaethol Cymru a Senedd y DU; • Categori 4: rheoliadau a wneir gan wneir gan Weinidogion y DU yn defnyddio eu pwerau o dan gymalau 7, 8, 9 a 17, a osodir gerbron Senedd y DU yn unig. | <p>phwyllgorau sifftio Senedd y DU'n ystyried yr un set o reoliadau.</p> |
| <p>Argymhelliad 7. Rydym yn argymhell y dylai'r weithdrefn gwneud cadarnhaol ar gyfer achosion brys hefyd gael ei chymhwyso mewn perthynas â rheoliadau a wneir gan Weinidogion Cymru (boed a ydynt yn gweithredu ar eu pen eu hunain neu'n gweithredu gyda Gweinidogion y DU mewn perthynas â rheoliadau cyfansawdd, neu'n gweithredu gyda Gweinidogion y DU mewn perthynas â rheoliadau ar y cyd), a hynny er mwyn sicrhau bod gweinidogion o bob llywodraeth yn cael eu trin yn gyson.</p> | <p>CYTUNO : Mae Llywodraeth Cymru o'r farn bod y gweithdrefnau cadarnhaol ar gyfer achosion brys fod ar gael mewn perthynas â rheoliadau a wneir gan Weinidogion Cymru, i gyd-fynd â'r hyblygrwydd sydd ar gael i Weinidogion y DU ac yn gyson ag egwyddorion cysondeb o ran y ffordd y caiff Gweinidogion pob Llywodraeth eu trin.</p> |



Rt Hon Alun Cairns MP
Secretary of State for Wales
Gwydyr House
London
SW1A 2NP

29th March 2018

Dear Alun

I am writing in response to your letter of 16 March 2018 about changes to the European Union (Withdrawal) Bill. I note the summary of the changes you intend to make to the Bill at Lords Report, and the progress in respect of other matters, including the correction of within competence deficiencies in the Government of Wales Act 2006, the correction to the technical standards reservation, and your proposal in respect of enhanced explanatory material.

You raise a specific question in respect of the 'sifting committee' provisions, with reference to the recommendation of the Constitutional and Legislative Affairs Committee that the provisions should apply to instruments laid before the Assembly, and that the sifting committee's recommendation on the appropriate procedure should be binding. The Welsh Government's view is that it would be appropriate for the sifting committee provisions as set out in the Bill to apply to instruments laid before the Assembly.

However, we are not persuaded that the recommendation made by the sifting committee should be binding. It is right that the exercise of delegated powers should be subject to appropriate and proportionate scrutiny and I expect that in the vast majority of cases Welsh Ministers will accept the recommendation of the sifting committee. However, there may be situations where – for reasons of urgency – Welsh Ministers will need to act more quickly than the affirmative procedure provides for, and it is essential the government retains the flexibility to do so, notwithstanding the recommendations of the sifting committee. We also believe there is a strong case for maintaining consistent arrangements between the National Assembly and the UK Parliament.

I can also confirm that we have no other proposed changes to the scrutiny arrangements for the Welsh Ministers' powers.

I am copying this letter to the Presiding Officer and to the Chair of the Assembly's Constitutional and Legislative Affairs Committee.

Yours sincerely

CARWYN JONES

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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

Annwyl Mick

Rwy'n ddiolchgar i'ch Pwyllgor am y gwaith y mae wedi'i wneud ar eich ymchwiliad i *'Lywodraethiant yn y DU ar ôl gadael yr Undeb Ewropeaidd'*. Mae'r adroddiad yn gwneud cyfraniad gwerthfawr i'r trafodaethau pwysig sydd eu hangen ar oblygiadau Brexit ar gyfer Cynulliad Cenedlaethol Cymru ac i'r trefniadau rhyng-sefydliadol sy'n ofynnol o ran y strwythurau gwleidyddol ar draws y DU.

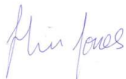
Mae Argymhelliad 5, Argymhelliad 6 ac Argymhelliad 8 eich adroddiad yn ymwneud yn uniongyrchol â rôl y Llywydd wrth sefydlu Cynhadledd y Llefaryddion, a'r nod o benderfynu ar y ffordd orau o ddatblygu gwaith rhyng-seneddol ar ôl Brexit. Rwyf fi'n sicr o'r farn ei bod o werth archwilio'r cynigion hyn ac edrych yn fanwl sut y byddent yn gweithio'n ymarferol.

Fel y gwyddoch, cyflwynais i, ochr yn ochr â chi, dystiolaeth i Bwyllgor Gweinyddiaeth Cyhoeddus a Materion Cyfansoddiadol San Steffan (PACAC) ar 5 Chwefror, fel rhan o'u hymchwiliad ar *'Ddatganoli ac Ymadael â'r UE'*, pan edrychwyd hefyd ar y posibilïadau o ran cynnal Cynhadledd y Llefaryddion. Mewn ymateb, fe wnes i ymrwymo i godi'r materion hyn fel eitem drafod bosibl yng nghyfarfodydd pedair ochrog y Llefaryddion.

Drwy gyfrwng diweddariad i'ch pwyllgor ac mewn ymateb i'r argymhellion a wnaed gennych, gallaf gadarnhau fy mod wedi cyflwyno'r argymhellion fel eitem ar yr agenda, i'w trafod yng nghyfarfod pedair ochrog nesaf y Llefaryddion ym mis Mai.

Byddaf yn diweddarau eich pwyllgor maes o law.

Yn gywir,



Elin Jones AC
Llywydd

Vaughan Gething AC/AM
Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau
Cymdeithasol
Cabinet Secretary for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf / Our ref: VG/0157/18

Mick Antoniw AC
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

28 Mawrth 2018

Annwyl Mick,

Hoffwn ddiolch i'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol am ei waith yn craffu ar Fil Iechyd y Cyhoedd (Isafbris am Alcohol) (Cymru) yn ystod Cyfnod 1 o'r broses ddeddfwriaethol. Yn Atodiad A i'r llythyr hwn, rwyf wedi nodi fy ymatebion i'r chwe argymhelliad a wnaethpwyd yn adroddiad craffu Cyfnod 1 y Pwyllgor ar y Bil. Mae hwn yn adlewyrchu fy marn ar hyn o bryd.

Byddaf yn ysgrifennu hefyd at Gadeiryddion y Pwyllgor Iechyd, Gofal Cymdeithasol a Chwaraeon a'r Pwyllgor Cyllid ynglŷn â'u hadroddiadau Cyfnod 1 hwythau a byddaf yn anfon copïau o'r llythyrau at Gadeiryddion y Tri Phwyllgor.

Rwy'n edrych ymlaen at barhau i gydweithio â'r Aelodau wrth i'r Bil fynd rhagddo drwy broses y Cynulliad.

Yn gywir,

Vaughan Gething AC/AM

Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau Cymdeithasol
Cabinet Secretary for Health and Social Services

Bae Caerdydd • Cardiff Bay
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Tudalen y pecyn 85

Atodiad A: Argymhellion y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Ar 5 Mawrth, cyhoeddodd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ei adroddiad ar Egwyddorion Cyffredinol Bil Iechyd y Cyhoedd (Isafbris am Alcohol) (Cymru). Mae Llywodraeth Cymru yn ymateb yma i bob un o'r argymhellion a gynhwysir yn ei adroddiad.

Cytunodd y Cynulliad Cenedlaethol ar Egwyddorion Cyffredinol y Bil ar 13 Mawrth.

Argymhelliad 1: Rydym yn argymhell y dylai Ysgrifennydd y Cabinet gyflwyno gwelliant i adran 16 o'r Bil i'w gwneud yn ofynnol i'r meddiannydd gael gwybod enwau'r personau sy'n dod gyda swyddog wrth fynd i fangre.

Ymateb Llywodraeth Cymru:

Rwyf wedi ystyried y mater hwn a phryderon y pwyllgor yn ofalus ond rwy'n parhau i gredu nad yw'n angenrheidiol diwygio adran 16 o'r Bil. Rydym yn fodlon bod adran 16 yn briodol. Mae'r adran hon yn gyson â darpariaethau deddfwriaethol eraill megis y darpariaethau gorfodi cyfatebol yn Neddf Iechyd y Cyhoedd (Cymru) 2017. Mae rhanddeiliaid o lywodraeth leol wedi croesawu'r cysondeb â'u pwerau gorfodi presennol.

Yn ystod y ddadl ar egwyddorion cyffredinol y Bil, codwyd mater pwysigrwydd ystyriaethau hawliau dynol, yng nghyd-destun y pwerau a roddir gan adran 16. Mae Llywodraeth Cymru yn ystyried bod y drefn orfodi a gynigir gan y Bil naill ai'n cydweddu â'r Confensiwn Ewropeaidd ar Hawliau Dynol neu'n gallu cael ei harfer mewn modd sy'n cydweddu ag ef. Rydym yn ystyried y byddai'n sicrhau cydbwysedd teg a chymesur rhwng gwarchod hawliau'r rheini y mae'r pwerau mynediad hyn yn effeithio arnynt, ac effeithiolrwydd y dull o orfodi'r drefn arfaethedig.

Byddai'n rhaid gwneud unrhyw benderfyniad ynghylch pa gyfarpar neu bersonau, os o gwbl, i ddod â hwy o dan adran 16, mewn modd sy'n gyson ag amcanion adrannau 13 i 17; mae adran 16(1) yn gyfyngedig i'r graddau mai'r bwriad yw nad yw ond yn caniatáu i swyddogion wneud pethau sy'n hwyluso arfer y prif bwerau mynediad.

Yn ychwanegol at y mesurau diogelwch amrywiol sydd o fewn y Bil ei hun, bydd y pwerau gorfodi a roddir i swyddogion awdurdodedig o awdurdodau lleol yn gweithredu o fewn cyd-destun mesurau diogelwch eraill amrywiol, sy'n bodoli eisoes, megis Deddf Hawliau Dynol 1998.

Yn yr un modd, fel a grybwyllwyd hefyd yn y ddadl ar egwyddorion cyffredinol y Bil, bydd yn ofynnol i'r rheini y rhoddir dyletswydd arnynt i ymchwilio i droseddau roi sylw

i God B o Ddeddf yr Heddlu a Thystiolaeth Droseddol 1984. Mae'r cod hwn hefyd yn cynnig canllawiau cyffredinol sefydledig sydd, ymhellach, yn rhoi pwyslais clir ar weithredu yn unol â hawliau'r Confensiwn. Mewn perthynas ag argymhelliad y Pwyllgor yn benodol, mae'r Cod hwn eisoes yn cynnwys darpariaeth sy'n ymdrin â rhoi enwau'r rheini sy'n dod gyda swyddogion i chwilio mangre. Yn ein barn ni, mae'r eithriadau sy'n bodoli i'r ddarpariaeth hon yn adlewyrchu cymhlethdod y sefyllfaeod a allai wynebu'r rheini sy'n gyfrifol am chwilio mangre ac rydym ystyried eu bod wedi eu profi'n drylwyr ac yn briodol.

Am yr holl resymau hyn, nid wyf o blaid cyflwyno gwelliant i adran 16.

Argymhelliad 2: Rydym yn argymhell y dylai Ysgrifennydd y Cabinet gyflwyno gwelliannau i'r Bil, gan roi dyletswydd ar Weinidogion Cymru i gyhoeddi canllawiau ynghylch arfer yr holl bwerau a dyletswyddau o dan y Bil, ac i sicrhau bod y Bil yn cynnwys dyletswyddau priodol i ystyried y canllawiau hynny.

Ymateb Llywodraeth Cymru:

Bydd Llywodraeth Cymru yn cyhoeddi canllawiau ynghylch y Bil er mwyn hwyluso a hyrwyddo dealltwriaeth o'r drefn newydd arfaethedig, ond ni cheir pŵer ar wyneb y Bil mewn perthynas â hyn am fod gan Lywodraeth Cymru bwerau i'w cyhoeddi eisoes.

Bydd datblygu'r canllawiau yn rhan o'r gwaith a wneir yn y cyfnod a fydd yn arwain at weithredu'r Bil, a bydd Llywodraeth Cymru yn cydweithio'n agos â rhanddeiliaid er mwyn sicrhau bod y canllawiau'n offeryn ymarferol a defnyddiol a fydd yn helpu manwerthwyr a'r rheini a fydd yn gorfodi'r ddeddfwriaeth. Bydd hyn yn cynnwys cydweithio â Chonsortium Manwerthu Cymru, Rhwydwaith Diwydiant Alcohol Llywodraeth Cymru, awdurdodau lleol a Phenaethiaid Safonau Masnach Cymru.

Rydym hefyd yn bwriadu ymgysylltu â'r Trydydd Sector ynghylch datblygu canllawiau a dulliau cyfathrebu cysylltiedig. Byddwn yn gwneud hyn drwy gydweithio â'r Rhwydwaith Camddefnyddio Sylweddau, sy'n cynnwys aelodau o amrywiaeth o randdeiliaid a darparwyr gwasanaethau gwahanol.

Argymhelliad 3: Rydym yn argymhell y dylid cyflwyno gwelliant i osod isafbris uned ar gyfer alcohol ar wyneb y Bil.

Ymateb Llywodraeth Cymru:

Mae Llywodraeth Cymru yn parhau i ystyried ei bod yn briodol dirprwyo'r pŵer i bennu'r isafbris uned at ddibenion y Bil i is-ddeddfwriaeth am resymau sy'n ymwneud â hyblygrwydd, bod yn amserol, a chywirdeb. Bydd gwneud hynny yn sicrhau bod Gweinidogion Cymru yn gallu adolygu a phennu'r pris a ystyrir fwyaf priodol ar yr adeg berthnasol - gan ystyried y data mwyaf perthnasol a chyfredol, yn ddarostyngedig i gymeradwyaeth y Cynulliad Cenedlaethol. Ar ôl ystyried y ffactorau hyn, nid wyf yn meddwl ei bod yn briodol pennu'r isafbris uned ar wyneb y Bil.

Rydym yn credu bod hyn yn taro cydbwysedd cywir a chymesur rhwng pwysigrwydd y mater hwn, sy'n cael ei gydnabod, a'r gallu i ymateb yn y ffordd fwyaf effeithiol i unrhyw newid perthnasol mewn amgylchiadau economaidd a chymdeithasol.

Ffactor arall a ystyriwyd yw'r dyddiad cynharaf y mae'r polisi'n debygol o gael ei weithredu. Cynigir y bydd cyfnod o amser cyn y daw'r drefn isafbris am alcohol i rym, a fydd yn galluogi'r rheini y bydd y drefn yn effeithio arnynt i baratoi. Nid ydym eisiau pennu lefel isafbris uned ar wyneb y Bil a allai beidio â bod yn gyfredol pan fydd y polisi'n cael ei weithredu. Bydd hyn hefyd yn caniatáu i ni gynnal ymgynghoriad ar yr isafbris uned arfaethedig er mwyn gwahodd sylwadau ar y lefel arfaethedig hon, gan adlewyrchu'r dull a ddefnyddiwyd yn yr Alban.

Argymhelliad 4: Ar y cyd ag argymhelliad 3, rydym yn argymhell y dylai unrhyw newid yn y dyfodol i isafbris uned am alcohol yn adran 1 y Bil gael ei gyflawni drwy ddefnyddio gweithdrefn uwchgadarnhaol.

Ymateb Llywodraeth Cymru:

O ystyried ei effaith ar randdeiliaid a'r cyhoedd yn ehangach, rydym yn ystyried ei bod yn briodol na fydd yr isafbris uned yn cael ei bennu neu ei ddiwygio heb ystyriaeth lawn a'r cyfle i gynnal dadl yn y Cynulliad Cenedlaethol. Mae Llywodraeth Cymru yn fodlon bod y weithdrefn gadarnhaol yn cynnig y cyfle hwnnw a'i bod yn briodol.

Byddwn yn ymgynghori ar lefel gychwynol yr isafbris uned y mae Gweinidogion Cymru o blaid ei bennu. Bydd hyn yn rhoi'r cyfle i Aelodau'r Cynulliad a rhanddeiliaid allanol ystyried lefel arfaethedig yr isafbris uned.

Hefyd, nid y weithdrefn gadarnhaol yw'r unig fesur diogelwch i'w gynnwys yn y dull arfaethedig o bennu'r isafbris uned at ddibenion y Bil. Mae'r Bil yn ymrwymo Gweinidogion Cymru i gyhoeddi adroddiad ar weithrediad ac effaith y drefn isafbris am alcohol ar ôl pum mlynedd. Mae hefyd yn darparu ar gyfer diddymu'r ddeddfwriaeth ar ôl cyfnod o chwe mlynedd oni bai bod Gweinidogion Cymru, gyda chymeradwyaeth y Cynulliad, yn penderfynu parhau â hi.

Argymhelliad 5: Yn ystod dadl Cyfnod 1, rydym yn argymhell bod Ysgrifennydd y Cabinet yn cyfiawnhau ... cynnwys enghreifftiau penodol o gyfrifiadau o'r isafbris cymwys am alcohol ar wyneb y Bil, ac [yn] egluro sut y bydd yn osgoi'r posibilrwydd o achosi dryswch lle mae'r ffigur a ddefnyddir yn yr enghraifft benodol yn wahanol i'r hyn a geir naill ai ar wyneb y Bil (ein dewis ni) neu mewn rheoliadau

Ymateb Llywodraeth Cymru:

Rwyf yn derbyn yr argymhelliad hwn ac rwy'n hapus i ailadrodd ac ychwanegu at y pwyntiau a wneuthum yn ystod y ddadl ar yr Egwyddorion Cyffredinol ar 13 Mawrth.

Mae Llywodraeth Cymru wedi ymrwymo i sicrhau bod deddfwriaeth yn hwylus ac yn hygyrch i'r defnyddiwr. Bydd y camau y bydd angen eu cymryd i hybu hygyrchedd yn amrywio o'r naill Fil i'r llall gan ddibynnu ar y maes pwnc a'r gynulleidfa darged. Yn yr achos hwn, mae darpariaethau'r isafbris yn cynnwys cyfrifiadau mathemategol. Mae hwn yn fater ymarferol sy'n effeithio ar fywydau pob dydd pobl, a bydd gan lawer o bobl ddiddordeb ynddo.

Cynhwyswyd enghreifftiau yn nhestun y Bil er mwyn ymhelaethu ar yr hyn a fyddai, fel arall, yn gamau hollol dechnegol neu fathemategol, ac er mwyn eu mynegi mewn ffyrdd ymarferol y byddai pobl wedi arfer eu gweld ac a fyddai felly o gymorth iddynt eu deall. Mae trafodiadau amleitem, yn enwedig, yn faes cymhleth, a'r teimlad oedd y byddai cynnwys enghreifftiau yn y Bil ei hun o gymorth o ran hygyrchedd. Cafodd y ffigurau a nodir yn yr enghreifftiau eu dewis i'w gwneud yn bosibl gweithio drwy'r enghreifftiau yn rhwydd.

Mae Adroddiad y Pwyllgor yn nodi y byddai modd diwygio'r ffigurau sydd yn yr enghreifftiau, ond nid yr isafbris ei hun, wrth i'r Bil fynd drwy'r Cynulliad. Nid yw Llywodraeth Cymru o'r farn bod hwn yn anghysondeb. Wrth benderfynu pa ffigurau y mae'n briodol eu defnyddio yn yr enghreifftiau, rydym yn teimlo mai'r ystyriaeth bennaf yw pa mor hygyrch yw'r enghreifftiau a pha mor hawdd y bydd hi i aelodau'r cyhoedd eu dilyn. Nid oes angen iddynt adlewyrchu'r isafbris gwirioneddol.

Mae'r Bil, yn ogystal â'r dogfennau ategol, yn ei gwneud yn glir mai'r isafbris uned at ddibenion y Bil fydd pa bris bynnag a gaiff ei nodi mewn rheoliadau a wneir gan Weinidogion Cymru (gyda chymeradwyaeth y Cynulliad).

Goblygiadau ariannol

Nid oes goblygiadau ariannol i dderbyn yr argymhelliad hwn.

Argymhelliad 6: Rydym yn argymhell y dylai Ysgrifennydd y Cabinet gyflwyno gwelliant i'r Bil i ddileu'r geiriau "neu'n hwylus" yn adran 22(3).

Ymateb Llywodraeth Cymru:

Mae Llywodraeth Cymru yn ystyried ei bod yn bwysig cadw'r geiriau "neu'n hwylus".

Mae adran 22 o'r Bil yn darparu ar gyfer diddymu darpariaethau'r isafbris ar ôl i'r cyfnod 6 mlynedd ddod i ben, oni bai y gwneir rheoliadau sy'n darparu fel arall. Os bydd y diddymu'n digwydd ar ddiwedd y cyfnod hwn, mae'n bosibl y bydd angen gwneud newidiadau canlyniadol i ddeddfwriaeth arall er mwyn i'r diddymu hwnnw weithio, neu er mwyn sicrhau bod y ddeddfwriaeth yn gweithio'n effeithiol yn unol â'r bwriad gwreiddiol. Yn yr un modd, mae'n bosibl y bydd angen darpariaeth drosiannol, darpariaeth ddarfodol neu ddarpariaeth arbed. Mae adran 22(3) yn caniatáu ar gyfer hynny.

Mae'n amlwg y gallai rhyw ddarpariaeth o'r math hwn fod yn "angenrheidiol". Ond byddai dangos bod pob un ddarpariaeth yn "angenrheidiol", yn hytrach nag yn fuddiol, yn hwylus neu'n ddefnyddiol, yn lleihau'r hyblygrwydd ac yn cynyddu'r risg y byddai'r diddymu yn arwain at ganlyniadau niweidiol nas rhagwelwyd, neu lyfr statud sydd wedi dyddio ac nad yw o gymorth. Mae i'r gair "hwylus" ei ystyr ei hun ac mae'n caniatáu ar gyfer gwelliannau a allai fod yn ddymunol, yn ddefnyddiol neu o fudd ymarferol, ond a allai fethu prawf "angenrheidrwydd" llym.

Rhaid cofio hefyd bod cwrpas y pŵer hwn yn gyfyngedig. Ni fyddai ond yn cael ei arfer pe bai darpariaethau'r isafbris yn cael eu diddymu gydag effaith ar ôl i'r cyfnod chwe mlynedd ddod i ben. Mewn achos o'r fath, byddai'n rhaid bod cysylltiad agos rhwng unrhyw ddarpariaeth a wneid o dan y pŵer hwn â diddymu'r Bil.

Rydym o'r farn, felly, ei bod yn bwysig cadw'r geiriad fel y mae, er mwyn caniatáu hyblygrwydd priodol i roi unrhyw ddiddymu ar waith yn y ffordd fwyaf priodol.

Mick Antoniw AC
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a
Deddfwriaethol

20 Mawrth 2018

Annwyl Mick

Y BIL OMBWDSMON GWASANAETHAU CYHOEDDUS (CYMRU)

Hoffwn ddiolch i'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol am ei ystyriaeth a'i adroddiad ar y darpariaethau is-ddeddfwriaeth o fewn y Bil Ombwdsman Gwasanaethau Cyhoeddus (Cymru).

Yn eich adroddiad, gwnaethoch un argymhelliad:

“Rydym yn argymhell y dylai'r Aelod sy'n gyfrifol gyflwyno gwelliant i'r Bil i ddileu'r geiriau “neu'n hwylus” yn adran 78(1).”

Credaf y bydd y pŵer i wneud darpariaeth yn ôl yr angen o dan adran 78 yn ddigonol i sicrhau gweithrediad effeithiol y Bil/Deddf. Felly, derbyniaf y gellid dileu'r pŵer i wneud darpariaeth sy'n "hwylus".

Fodd bynnag, o gofio bod hyn yn ymwneud â phwerau Gweinidogion Cymru, byddaf yn codi'r mater hwn gyda Llywodraeth Cymru fel rhan o drafodaethau cyffredinol ar y Bil.

Os bydd y Bil yn mynd ymlaen i Gyfnod 2, edrychaf ymlaen at weithio gydag aelodau'r Pwyllgor ar y ddeddfwriaeth yn y dyfodol.



Rwyf hefyd yn anfon copi o'r llythyr hwn at Gadeirydd y Pwyllgor Cydraddoldeb,
Llywodraeth Leol a Chymunedau.

Yn gywir



Simon Thomas AC

Cadeirydd

Croesewir gohebiaeth yn Gymraeg neu'n Saesneg.

We welcome correspondence in Welsh or English



Eitem 8.5

STATEMENT BY THE WELSH GOVERNMENT

TITLE Consultation on the Draft Legislation (Wales) Bill

DATE 20 March 2018

BY Jeremy Miles AM, Counsel General for Wales

A little over a year ago my predecessor as Counsel General announced that the Government was beginning a ground breaking process to create Codes of Welsh Law. This was the start of a long journey, and it is with great pleasure that I can now announce plans to embark upon an ambitious new leg to that journey.

Today I am launching a public consultation on the Draft Legislation (Wales) Bill. This Bill will impose obligations on the Welsh Ministers and the Counsel General to make Welsh laws more accessible, and also makes bespoke provision about the interpretation of Welsh legislation.

One of our most fundamental roles as a government is to protect the rule of law, and to do so we must ensure that devolved law is accessible and understandable.

We recognise that a clear, certain and accessible statute book is an economic asset. It gives those who wish to do business a more stable and settled legal framework. This in turn should help investment and growth. Public sector bodies and other organisations will more easily understand the legal context within which they need operate. Policy makers within government will have a clearer basis from which to develop new ideas. Legislators will find scrutiny of laws easier. And it would make an enormous difference to those of us who may wish to use the law in Welsh.

But this is first and foremost a question of social justice.

Making the law accessible is vital to enable citizens to understand their rights and responsibilities under the law – something that has become increasingly important since repeated cuts have been made to legal aid and to other services designed to advise those in need of assistance or representation.

We are the custodians of the Welsh “statute book”, made up not only of the laws made by this Assembly and the Welsh Ministers, but also those pre-devolution laws we have inherited. That element of the statute book, in particular, is not in a good state. In recent decades legislation has been allowed to proliferate without pausing to fully rationalise and integrate what is new with what had gone before.

The statute book of thousands of Acts and Statutory Instruments has long been difficult to navigate. But Welsh legislation is even more inaccessible due to our highly complex system of devolution and the absence – because of the single England and Wales legal jurisdiction – of a formal body of distinct Welsh law. It is difficult for the people of Wales to know what the law means and to understand who is responsible for what – which undermines democratic accountability.

This Government is committed to a systemic, ongoing and comprehensive consolidation of legislation within our competence, and the organisation of that law into subject specific Codes. While this will be ground breaking in the UK, at least in modern times, we would be following similar precedents set across the common law world. Jurisdictions in Australia and Canada, for example, have routinely consolidated their legislation since the beginning of the 20th century after inheriting laws of the UK Parliament in not dissimilar circumstances. And the United States went a step further and created a code of law in 1926 that has been maintained ever since.

But we need not only look afar for examples of good practice. The laws of Hywel Dda were organised in codes and the lawyers of the day had access to these laws in one book. So codification is an important part of our legal tradition. Our task now is to make sure it is a part of our legal future. We in Wales have done this before, and I am determined that we will do it again.

Our vision for making the Welsh law more accessible is not confined to rationalising legislation. A well-ordered and clearly drafted statute book must also be effectively published and supplementary material is often needed to set out context and fully explain the practical effect of the law. For this reason further improvements to the legislation.gov.uk website operated by The National Archives and to the “Cyfraith Cymru - Law Wales” website are intended to form part of the programme.

Making bespoke, bilingual provision about how our legislation should be interpreted is also part of our wider ambition to make Welsh law more accessible. An Interpretation Act was first enacted by the UK Parliament in 1850 and this practice has since been replicated in common law jurisdictions across the world, including in Scotland and Northern Ireland.

To date Wales has not had its own Interpretation Act, rather we rely on legislation enacted by the UK Parliament in 1978 and later modified in an attempt to take the existence of Welsh legislation into account. In light of our rapidly developing body of Welsh legislation, I believe it is now time to correct that anomaly and develop our own specific provisions for Wales.

I believe, therefore, as a matter of principle that our legislation should be accompanied by its own provisions on how it should be interpreted. Further, the 1978 Act is now 40 years old and in need of modernisation – which we are taking the opportunity to do in our Bill. Importantly the existing arrangements do not properly take into account the bilingual nature of our legislation, and the equal status of the Welsh and English language texts. The 1978 Act was of course made in English only and defines terms in Welsh legislation in the English language only. This must be

remedied, something I know that was of concern to the Constitutional and Legislative Affairs Committee of the Fourth Assembly and to the Law Commission.

I am sure you will join me in marking this important milestone in the development of devolved government in Wales. The Draft Bill is designed to help make Welsh law fit for the future and will, I'm sure, become a foundation stone for the emerging Welsh legal jurisdiction. It is a Draft Bill both of constitutional significance and practical importance to the people of Wales.

I invite Members to consider not only the Draft Bill that is published today but also the vision for the future that underpins it. And I encourage all interested parties from across Wales and further afield to help shape a Bill that will improve the way Welsh law works and, most fundamentally, will help all those affected by the law to find it and understand it.

Mark Drakeford AC/AM
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance



Llywodraeth Cymru
Welsh Government

Ein Cyf: MA-L/MD/0160/18

Mick Antoniw AC
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Tŷ Hywel
Cynulliad Cenedlaethol Cymru
Caerdydd
CF99 1NA

15 Mawrth 2018

Annwyl Mick,

BIL CYFRAITH SY'N DEILLIO O'R UNDEB EWROPEAIDD (CYMRU)

Diolch am adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ar y Bil Cyfraith sy'n Deillio o'r Undeb Ewropeaidd (Cymru).

Rwy'n ddiolchgar iawn i'r Pwyllgor am ei ymdrechion i gynhyrchu'r adroddiad hwn ar rybudd mor fyr, ac fe hoffwn longyfarch Aelodau'r Pwyllgor am eu craffu trylwyr a'r adroddiad ei hun, gan ystyried bod yr amser mor brin. Heb unrhyw amheuaeth, bydd yr adroddiad yn ein helpu i gryfhau'r Bil a sicrhau ei fod yn ddarn mor gadarn â phosib o ddeddfwriaeth.

Rwyf wedi ystyried yr wyth argymhelliad yn yr adroddiad yn ofalus iawn, ac wedi ymateb yn fanwl i bob un isod.

Argymhelliad 1. *Rydym yn argymhell bod Ysgrifennydd y Cabinet, yn ystod dadl Cyfnod 1, yn cadarnhau bod ein dealltwriaeth o ddefnyddio'r pŵer o dan adran 4 o'r Bil yn gywir.*

Dywedais yn ystod dadl Cyfnod 1 bod y pŵer yn adran 4 i wneud addasiadau neu ddarpariaeth bellach ond yn medru cael ei ddefnyddio i sicrhau bod deddfiadau wedi'u

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

hailddatgan yn gweithredu'n effeithiol. Rwy'n barod i gadarnhau hynny eto nawr yn ysgrifenedig.

Argymhelliad 2. *Rydym yn argymhell bod Ysgrifennydd y Cabinet yn egluro yn ystod dadl Cyfnod 1 a yw'r ordinhadau hunan-gyfyngu (fel y'u disgrifiwyd gan Ysgrifennydd y Cabinet) a gynhwysir yn y Bil yn fwy cyfyng na'r rhai a geir ym Mil yr UE (Ymadael).*

Yn ystod dadl Cyfnod 1 dywedais fod sylwadau'r Pwyllgor, a'r Cynulliad yn ehangach, wedi cael eu hystyried yn ofalus wrth i ni baratoi ein Bil, ac roedd hyn yn cynnwys cyfyngu ar gwmpas y pwerau, gan ystyried yn benodol y pryderon a godwyd ynghylch ystod y pwerau yn y Bil i Ymadael â'r UE. Yna dywedais fy mod yn cadarnhau bod y pwerau yn y Bil hwn yn fwy cyfyng yn gyffredinol na phwerau yn y Bil i Ymadael â'r UE.

Argymhelliad 3. *Rydym yn argymhell bod Ysgrifennydd y Cabinet yn cyfiawnhau yn ystod dadl Cyfnod 1 pam na ellir defnyddio deddfwriaeth sylfaenol i sicrhau cydweddiad rheoleiddiol fesul achos yn hytrach na'r is-ddeddfwriaeth a ragwelir ar hyn o bryd o dan adran 11.*

Yn unol ag argymhelliad y Pwyllgor, yn ystod dadl Cyfnod 1 gosodais yn llawn fy nghyfiawnhad dros ddefnyddio, yn y lle cyntaf, is-ddeddfwriaeth yn hytrach na deddfwriaeth sylfaenol i gynnal cydweddiad rheoleiddiol â'r Undeb Ewropeaidd.

Yr ystyriaeth unigol bwysicaf ar hyn o bryd yw swm yr is-ddeddfwriaeth sy'n debygol o fod o'n blaen. Rydym eisoes yn gyfrifol am wneud nifer fawr o offerynnau statudol bob blwyddyn er mwyn gweithredu cyfarwyddebau'r UE. Os ydym i lwyddo yn ein nod o sicrhau bod busnesau Cymru'n parhau i gael mynediad llawn a dirwystr at farchnadoedd yr UE, byddai angen ychwanegu at y ffigur hwnnw holl reoliadau'r UE, penderfyniadau'r UE a deddfwriaeth drydyddol yr UE sy'n cael eu mabwysiadu bob blwyddyn ar lefel yr UE. Gan ystyried y swm sylweddol o waith mae hyn yn ei olygu, nid wyf o'r farn y byddai deddfwriaeth sylfaenol yn gyfrwng deddfwriaethol ymarferol ar gyfer cynnal cydweddiad ar hyn o bryd. Er mwyn bod yn sicr bod modd i ni ddarparu'r parhad hwnnw, a pharhau i gael mynediad at farchnadoedd yr UE i'n busnesau, rwy'n ystyried bod y pwerau yn adran 11 yn hanfodol yn y dyfodol agos. Fodd bynnag, fel y gwelir yn fy ymateb i argymhelliad 5 isod, mae'n bosib bod ateb arall yn y tymor hir.

Argymhelliad 4. *Rydym yn argymhell y dylai Ysgrifennydd y Cabinet gyflwyno gwelliant i adran 11 o'r Bil, os caiff ei dargadw, i gyfyngu ei gwmpas i faterion sy'n sicrhau cydweddiad rheoleiddiol â'r Undeb Ewropeaidd yn unig, fel y nodir yn y Memorandwm Esboniadol.*

Rwyf wedi rhoi ystyriaeth ofalus i'r argymhelliad hwn, sy'n adlewyrchu elfen ganolog o fwriad polisi adran 11. Rwyf o'r farn, fodd bynnag, nad yw'n briodol ceisio cyfyngu'n ffurfiol ar gwmpas y pŵer yn y modd hwnnw. Y rheswm am hynny yw bod yr iaith ynghylch 'cynnal cydweddiad rheoleiddiol' yn amhendant yn ei hanfod, ac y byddai'n creu ansicrwydd cyfreithiol ynghylch dilysrwydd y mesurau i'w cymryd. Nid wyf yn gweld unrhyw iaith gyfyngol a fyddai'n cynnal y sicrwydd cyfreithiol hwnnw.

I'r graddau y gellir ei ddiffinio'n glir, mae'n ymddangos i mi ei fod hefyd o bosib yn culhau cwmpas y pŵer yn ddiangen, ac y gallai atal gwneud deddfwriaeth, er enghraifft, i gadw i fyny â gwelliannau i hawliau cymdeithasol sy'n cael eu mabwysiadu gan yr UE (mater y cyfeiriwyd ato yn ein dadl Cyfnod 1).

Felly nid wyf yn cynnig derbyn y gwelliant hwn - rwyf o'r farn bod y pŵer eisoes yn cynnwys cafeatau pwysig, y bydd y Cynulliad yn eu gweld fel mesurau i ddiogelu rhag yr hyn y byddai'n ystyried fel defnydd amhriodol o'r pŵer. Yn eu plith mae cyfyngiadau mewn perthynas â threthiant, darpariaeth ôl-weithredol a throseddau (adran 11(4)) a'r rhwymedigaeth i ymgynghori (adran 11(5)). Mae'n bwysig tu hwnt nodi nad oes modd defnyddio'r pŵer hwn heb i'r Cynulliad gymeradwyo ei ddefnydd dan y weithdrefn uwch. Yn hytrach na gosod profion cyfreithiol amhendant, rwy'n meddwl mai dyna'r ffordd gywir i ymdrin â'r mater y mae'r Pwyllgor yn gwbl gywir i'w godi: rhoi pŵer i'r Cynulliad graffu ac, os oes angen, i wrthod deddfwriaeth ddrafft os yw'n ystyried bod Llywodraeth Cymru wedi cymryd cam yn rhy bell.

Argymhelliad 5. *Rydym yn argymell y dylai Ysgrifennydd y Cabinet gyflwyno gwelliannau i'r Bil i ddarparu:*

(i) bod adran 11 yn cael ei diddymu ar ôl 5 mlynedd o'r diwrnod ymadael oni bai bod rheoliadau, yn ddarostyngedig i'r weithdrefn gadarnhaol, yn darparu fel arall;

(ii) bod rhaid i reoliadau a wneir mewn perthynas ag (i) gael eu llywio gan adolygiad ynghylch yr angen parhaus am y pwerau a ddarperir gan adran 11 o'r Bil.

(iii) y dylai'r adolygiad yn (ii) gael ei gynnal gan bwyllgor o'r Cynulliad Cenedlaethol a chynnwys ymgynghoriad cyhoeddus llawn.

Rwyf wedi bod yn meddwl am yr ystyriaeth ofalus a roddodd y Pwyllgor i'r mater hwn a'r ddadl resymegol a gafwyd yn y Cyfarfod Llawn ddydd Mawrth. Rwy'n cytuno bod modd cryfhau'r Bil ar y mater hwn, felly rwy'n ymrwmo i weithio gydag Aelodau'r Cynulliad ar welliant a fydd yn bodloni argymhelliad y Pwyllgor.

Rwy'n nodi bod y Pwyllgor yn argymell y dylai pwyllgor o'r Cynulliad gynnal adolygiad o'r angen parhaus am y pŵer. Rwyf o'r farn y byddai'n fwy priodol gosod y cyfrifoldeb o gynnal adolygiad ar ysgwyddau Gweinidogion Cymru. Gallai gofyn i bwyllgor o'r Cynulliad gynnal adolygiad godi cwestiynau anfwriadol am bwerau pwyllgorau'r Cynulliad i gynnal adolygiadau o'r fath. Swyddogaeth y Cynulliad, gan gynnwys ei bwyllgorau, yw craffu ar y Llywodraeth a'i dal i gyfrif. Nid wyf yn disgwyl i hyn fod yn wahanol yn achos adran 11 o'r Bil.

Felly rwy'n cynnig y byddai'r gwelliant yn rhoi dyletswydd ar Weinidogion Cymru i osod adroddiad gerbron y Cynulliad yn amlinellu barn Llywodraeth Cymru am weithrediad ac effaith y pŵer ac a oes ei angen o hyd. Bydd hynny'n galluogi pwyllgor i graffu ar yr adroddiad hwnnw a chynnal unrhyw adolygiadau pellach y mae'n eu hystyried yn briodol yn unol â'r systemau sydd ar gael. Rwyf hefyd yn cynnig y dylai'r rheoliadau i barhau ag effaith y pŵer fod yn ddarostyngedig i'r weithdrefn uwch sy'n rhoi digon o amser i'r Cynulliad graffu ar y rheoliadau a'r adroddiad cyn penderfynu a yw'r pŵer i barhau i fod mewn grym.

Argymhelliad 6. *Rydym yn argymell bod Ysgrifennydd y Cabinet:*

- yn cyfiawnhau pam nad oes gan y Cynulliad Cenedlaethol rôl gydsynio o dan adrannau 13 ac 14, yn arbennig lle mae Gweinidogion y DU yn diwygio deddfwriaeth sylfaenol, gan gynnwys Deddfau a Mesurau'r Cynulliad Cenedlaethol;*
- yn egluro sut y mae rôl gydsynio Gweinidogion Cymru o dan adrannau 13 ac 14 yn cyd-fynd â'r broses gydsynio mewn perthynas ag offerynnau statudol a nodir yn Rheol Sefydlog 30A.*

Rydym wedi nodi'r pwyntiau a wnaed yn yr argymhellion hwn a'u hystyried yn ofalus.

Yn y bôn, mae'r pwynt hwn yn ymwneud â swyddogaeth y Cynulliad - yn wahanol i Weinidogion Cymru - wrth gydsynio i ddeddfwriaeth Llywodraeth y DU.

Mae angen edrych ar yr holl fater hwn yng nghyd-destun cyfraith sy'n deillio o'r UE, ac yng nghyd-destun yr hyn sy'n angenrheidiol ac yn briodol i ddiogelu deddfwriaeth a'r cynlluniau rheoleiddiol sy'n gweithredu mewn meysydd datganoledig dan gyfraith yr UE ar hyn o bryd (fel yr amgylchedd, bwyd, ffermio) pan fydd y DU yn ymadael â'r UE.

Pan fo Llywodraeth y DU yn cynnig is-ddeddfwriaeth sy'n diwygio deddfwriaeth sylfaenol o fewn cymhwysedd datganoledig (sef Deddfau'r DU neu Ddeddfau'r Cynulliad), mae gan y Cynulliad rôl gydsynio drwy rinwedd Rheol Sefydlog 30A (y broses Cynnig Cydsyniad Offeryn Statudol). Mae'n fesur diogelu pwysig, ond nid yn un sy'n cael effaith fel cyfyngiad cyfreithiol. Ac nid oes proses gyfatebol pan fo is-ddeddfwriaeth y DU *ddim ond* yn diwygio is-ddeddfwriaeth o fewn cymhwysedd datganoledig. Mae hynny'n broblem ynddo'i hun, i ddechrau gan fod y gwahaniaeth rhwng deddfwriaeth sylfaenol ac is-ddeddfwriaeth yn aml iawn yn wahaniaeth cwbl dechnegol. Yng nghyd-destun ymadael â'r UE, gyda llawer o'r deddfwriaeth yn is-ddeddfwriaeth, mae'n bwysig iawn diogelu deddfwriaeth ddatganoledig a chynlluniau rheoleiddiol sy'n gweithredu mewn meysydd datganoledig sydd ar hyn o bryd yn dod o dan gyfraith yr UE.

Pwrpas adrannau 13 ac 14, fel y gwelir yn glir, yw y dylai Llywodraeth y DU, fel mater o gyfraith, orfod cael cydsyniad mewn perthynas ag is-ddeddfwriaeth o fewn cwmpas cyfraith yr UE a wneir dan bwerau newydd. Mae hynny'n fesur diogelu sylfaenol bwysig ar gyfer y cynlluniau rheoleiddiol datganoledig hynny ac ati.

Dan ein darpariaeth, Gweinidogion Cymru yn hytrach na'r Cynulliad ddylai roi cydsyniad. Nid yw hynny'n amharu ar y broses Cynnig Cydsyniad Offeryn Statudol, felly pan fo deddfwriaeth y DU yn diwygio deddfwriaeth sylfaenol, mae rôl bresennol y Cynulliad yn parhau. Yn fwy cyffredinol, mae'n briodol i'r broses gydsynio ar gyfer is-ddeddfwriaeth y DU gael ei chynnal rhwng Llywodraethau, yn hytrach na deddfwrfeydd.

Argymhelliad 7. *Rydym yn argymhell y dylai Ysgrifennydd y Cabinet gyflwyno gwelliant i'r Bil, sy'n ei gwneud yn ofynnol i'r Memoranda Esboniadol sy'n cyd-fynd â rheoliadau a wneir o dan y Bil, fod yn glir ac yn dryloyw o ran:*

- *pam y dylai'r weithdrefn gadarnhaol fod yn gymwys;*
- *pa newidiadau sy'n cael eu gwneud gan y rheoliadau, gan gynnwys yr hyn sy'n cael ei newid, pam ei fod yn cael ei newid a'r effaith y bydd y newid yn ei chael;*
- *a fu ymgynghori digonol a beth oedd yr ymateb i'r ymgynghoriad;*
- *yr effaith y gall y rheoliadau ei chael ar gydraddoldeb a hawliau dynol;*
- *p'un a yw'r rheoliadau'n codi materion o bwys cyhoeddus, gwleidyddol neu gyfreithiol.*

Rwy'n cytuno y gellid gwneud darpariaeth bellach ar y mater hwn er mwyn galluogi'r Cynulliad i wneud penderfyniadau fel rhan o'r weithdrefn uwch. Dan y Bil, y Cynulliad sy'n penderfynu a ddylai'r weithdrefn uwch fod yn gymwys ai peidio, nid Gweinidogion Cymru. Felly yn hytrach nag egluro pam y dylai'r weithdrefn gadarnhaol fod yn gymwys, rwy'n cynnig y dylid gosod cyfrifoldeb ar Weinidogion Cymru i egluro a ydynt o'r farn y dylai'r weithdrefn uwch fod yn gymwys. Gallai hyn helpu'r Cynulliad i benderfynu a yw'r weithdrefn

uwch i fod yn gymwys. Rwy'n cyflwyno gwelliant gan y Llywodraeth yn unol â hyn yn ystod Cyfnod 2.

Nid wyf wedi fy argyhoeddi bod dyletswydd i ddarparu'r wybodaeth arall sy'n cael ei nodi yn angenrheidiol. Mae'r wybodaeth hon, a mwy, yn cael ei darparu ar hyn o bryd mewn perthynas â phob offeryn statudol sy'n cael ei osod gerbron y Cynulliad. Nid wyf yn dymuno dechrau cyfyngu ar yr hyn y dylid neu na ddylid ei osod mewn memoranda esboniadol. Dylai'r Pwyllgor fedru craffu ar bob offeryn statudol a'r memorandwm perthnasol ar ei rinweddau ei hun.

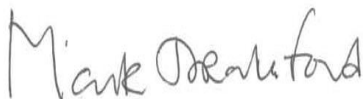
Argymhelliad 8. *Rydym yn argymhell y dylai Ysgrifennydd y Cabinet gyflwyno gwelliant i'r Bil, sy'n ei gwneud yn ofynnol i'r Memoranda Esboniadol sy'n cyd-fynd â rheoliadau a wneir o dan y Bil, fod yn glir ac yn dryloyw o ran:*

- *pam y dylai'r weithdrefn frys fod yn gymwys;*
- *pa newidiadau sy'n cael eu gwneud gan y rheoliadau, gan gynnwys yr hyn sy'n cael ei newid, pam ei fod yn cael ei newid a'r effaith y bydd y newid yn ei chael;*
- *a fu ymgynghori digonol a beth oedd yr ymateb i'r ymgynghoriad;*
- *yr effaith y gall y rheoliadau ei chael ar gydraddoldeb a hawliau dynol;*
- *p'un a yw'r rheoliadau'n codi materion o bwys cyhoeddus, gwleidyddol neu gyfreithiol.*

Rwy'n cynnig dull gweithredu tebyg i argymhelliad 7. Rwy'n cyflwyno gwelliant a fydd yn ei gwneud yn ofynnol i Weinidogion Cymru roi rhesymau pam y dylai'r weithdrefn frys fod yn gymwys. Am yr un rhesymau â'r rhai a nodwyd mewn perthynas ag argymhelliad 7, nid wyf yn ystyried y byddai'n angenrheidiol nac yn ddefnyddiol gosod dyletswyddau ar gynnwys memoranda esboniadol.

Gobeithio bod yr ymatebion hyn yn dangos fy ymrwymiad i wrando ac i weithio gyda'n gilydd i gyflwyno darn effeithiol o ddeddfwriaeth sy'n sicrhau parhad cyfreithiol. Edrychaf ymlaen at barhau i weithio gyda'r Aelodau wrth i'r Bil symud ymlaen drwy'r camau nesaf.

Yn gywir,



Mark Drakeford AC/AM

Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance

The impact of the EU Withdrawal Bill on the devolved legislatures and their respective powers

Briefing to the All Party Parliamentary Group on Reform, Decentralisation and Devolution on 26th February 2018 at the House of Lords, in partnership with Cardiff University's Wales Governance Centre

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Page 13: Professor Colin Harvey (Professor of Human Rights Law at Queen's University Belfast)

IWA Event Note on the Impact of the EU Withdrawal Bill on the devolved legislatures and their respective powers

Brexit negotiations, both parliamentary and international, have felt so long and protracted, and their presence in the media so ever present and dominating, that it begins to seem like, under its great centripetal force, the issue will engulf all others. So we can no longer have discussions merely about agricultural policy, rather about our post-Brexit agriculture; and the regime of austerity – the focus of bitter political discussion and one of the most seismic shifts in the UK in recent times – although not yet disappeared has now become absorbed into a discussion on how to mitigate the effects of Brexit on the economy.

It was the refreshing *reversal* of this hierarchy that made Lord Foulkes’s opening statement welcoming all attendees to the most recent meeting of the APPG for Reform, Decentralisation and Devolution in the UK, organised in association with the Institute of Welsh Affairs and the Wales Governance Centre, notable: ‘We couldn’t have a better time to discuss devolution with relation to the Withdrawal Bill’. In this spirit, what was notable about the meeting’s speakers and their contributions was that very reversal: not what Brexit will do to devolution, but rather what devolution means Brexit *must look like*. Through robust discussion of the shortcomings of the EU Withdrawal Bill, the speakers proposed concrete ways forward to meet the UK’s coming constitutional challenges.

The meeting, held in the House of Lords on 26 February 2018, brought legal experts from Wales, Scotland and Northern Ireland in conversation with the parliamentary members of the APPG. Giving evidence were Dr Jo Hunt, Reader in Law at Cardiff University, Alan Page, Professor of Public Law at the University of Dundee, and Colin Harvey, Professor of Human Rights Law at Queen’s University Belfast, and the message they issued collectively was a stark one. Not only does the EU Withdrawal Bill in its present form present an unworkable, inconsistent model for devolution going forwards, but, as Colin Harvey stated, it has become clear that ‘the processes for intergovernmental cooperation in the UK are not fit for purpose’. Without descending into hyperbole, the three speakers made clear that the process of Brexit, as well as its eventual effects upon the distribution of power within the UK, must reflect the considerable shift in constitutional make-up that the UK has experienced in the past twenty years as a result of devolution, a shift that many in Westminster and more widely in England are not truly cognizant of.

Beginning the session, Colin Harvey focused on the fraught issue of the place of Northern Ireland in the negotiations. As Professor Harvey noted, many of the issues circling around Northern Ireland have actually been at the heart of discussions not just in Westminster but also in Brussels, affecting as they do a current and future EU member – the Republic of Ireland. However, Northern Ireland has had no assembly and no executive throughout these discussions. For Harvey, this is at the heart of the issue: the ‘carefully crafted powersharing arrangements’ set out twenty years ago in the Good Friday Agreement have been found wanting in a situation where the UK Government has unashamedly tied its own political future to the support of one of the parties of government in Northern Ireland, the DUP. This leads to a ‘rather stark constitutional imbalance around the discussions’, where Sinn Fein has turned its back on the Westminster system almost entirely as a result. It is ‘merely a factual statement’, he said, that one community has effectively been silenced by the DUP’s cooperation with the Conservative government: ‘the DUP does not speak for the majority in Northern Ireland that voted remain’.

In the face of this intractable situation, Harvey underlined the importance of the Good Friday Agreement. When the Northern Irish institutions of government are eventually reconstituted, they will still have to follow that agreement, and its principles are as pertinent now as they were in 1998. In a practical sense, Harvey called for respect for the Good Friday Agreement to find a place in the EU Withdrawal Bill. Clarifying what this might mean, Harvey argued that the Agreement needs legal expression and legislative recognition of the institutions it enshrines. The Northern Irish Brexit settlement will clearly be unique in certain ways: Harvey insisted that the promise of ‘no diminution’ of rights for Northern Irish citizens necessarily means, given the spirit of cooperation across communities enshrined in the Good Friday Agreement, that the EU Charter of Human Rights should be brought into domestic law.

However, Colin Harvey also stressed the wider significance from the Good Friday Agreement, and its possible utility across the UK. In pointing out the unsuitability of current systems of intergovernmental cooperation to the post-devolution, post-Brexit situation, Harvey highlighted a lack of trust and a failure to grapple constitutionally with the complexity of the UK since devolution that make structures such as the Joint Ministerial Council, which has taken on much greater significance during Brexit than it has previously, insufficiently flexible to deal with the levels of cooperation that the return of EU frameworks to domestic control will necessarily require. Business will not go back to how it was previously; all speakers made clear that more open and structured negotiation and discussion between the UK governments will be necessary from now on. Pushed on the issue by Baroness Janke, Harvey said that in practice this should

mean having the discussion about the common frameworks first and legislating when agreement is reached. Necessarily therefore, and in agreement with the other speakers, Harvey was calling here for the removal of Clause 11 from the EU Withdrawal Bill.

In a much anticipated speech happening at the same time as the meeting was held, David Lidington, the Cabinet Office minister, promised the repatriation of ‘the vast majority’ of powers to the devolved administrations (without specifying which), whilst also stressing the need for control over ‘common UK frameworks’ in order to protect the UK common market. Quick to pick up on this, Dr Jo Hunt began her statement by pointing out that these powers had indeed been exercised by the devolved administrations on behalf of the EU for many years; thus the Bill proposes to ‘effectively recentralise powers that had previously been devolved’. Lidington’s supposed concession, far from the forward step it appears, moves us in the opposite direction of travel to the last twenty years of decentralisation and devolution. What the bill makes ‘startlingly clear’, Hunt argued, was that Westminster parliamentary supremacy still exists above the ‘permanent’ devolved administrations.

Dr Hunt’s key focus was on the issue of divergence within frameworks – a key feature of current EU frameworks such as the Common Agricultural Policy, which sees an ‘un-common’ approach to regulation of the common market. Similarly, the forms of free movement currently in place in the single market allow for local measures that may indeed hinder trade. For example, minimum alcohol pricing may be an obstacle to free movement of goods, but the health benefits it brings can trump that concern. Clause 11 as it stands does not allow for such flexibility. As Hunt argued, ‘what do we know about a UK internal market, and will it come with the guarantees that such protections can be recognised?’ ‘The lack of transparency and any meaningful explanation of what the concept of the UK internal or common market is, beyond a ready appeal to it by politicians to justify harmonising UK wide measures is concerning’, Hunt stated.

The internal market, an increasingly important concept for the UK, must be seen as a political as well as economic construction, revealing what will be valued and what will be protected against the demands for frictionless trade. The EU’s model holds free movement rights against other objectives and principles, something there is no sign of in Government discourse surrounding the emergent UK internal market. Dr Hunt argued that ‘we need to think about ways that these interests can be anchored down so that values can underpin a UK internal market. The adoption of amendments to the Withdrawal Bill which would provide for continued respect for such critical values should be strongly considered’.

And what is at risk if the Bill is not significantly amended? Professor Alan Page answered succinctly in beginning his statement, saying that ‘Brexit has the potential to weaken if not subvert the UK territorial constitution’. This is in part because of the number of powers that shall be reserved without amendment to the Scotland, and Wales, Acts – far more than will be devolved according to research undertaken by Professor Page – but also because of the fundamental weakness of UK intergovernmental relations. Even where powers are reserved, functioning intergovernmental relations would ensure the voice of devolved nations were heard. The EU Withdrawal Bill, which according to Page ‘has been drafted with scant regard to the principles on which the devolution settlements are based’, will serve only to further impoverish these relations. In place of Clause 11, Page called for a standstill agreement while frameworks and the necessary revisions to repatriated EU law are worked out between the UK governments.

Professor Page’s most striking intervention, however, was over the law-making powers UK Government ministers will gain over areas of devolved competence. Under the provisions of the Withdrawal Bill, they will gain powers ‘in areas in which ministerial responsibility has been transferred’ to the devolved ministers. The current proposal that these powers are only checked by a ‘non-binding requirement of consultation’ and no devolved parliamentary scrutiny is ‘contrary to the principles on which the devolution settlement is based’. Instead, and as Page pointed out, as has been proposed by the Welsh and Scottish Governments, these powers, necessary to correct imported law, should only be exercised in areas of devolved competence with explicit consent of relevant devolved ministers.

Clearly convinced of the deficiencies of the current proposed legislation in dealing with the complexities of UK intergovernmental relations, Lord Purvis asked what can be done to improve this, and what structures could be put in place or added to the Bill. Jo Hunt responded that ‘we’ve heard time and again about the lack of trust so it’s about constructing institutions that people can have trust in’; there is a good case therefore, Alan Page argued, for putting such structures of intergovernmental relations on a statutory basis. Statutory requirements for meetings and discussions to take place between the UK governments at significant junctures – rather than the rather piecemeal pattern of the Joint Ministerial Committee – could form the basis for future adjudication of disputes in the UK common market. UK courts have been involved in the adjudication of EU trade issues.

Lord Foulkes suggested that perhaps the eventual structure this formalisation of intergovernmental relations implies is federalism, ensuring a devolved settlement that addresses

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England too. However, what was clear from the preceding discussion was that first there needs to evolve a mature form of arbitration between the competing needs of the various governments of the UK: as Colin Harvey summarised, ‘powersharing needs to find a place within the UK arrangement’. We will be looking, no matter what, at a ‘remodelled UK’.

Merlin Gable, IWA

Professor Alan Page (Professor of Public Law at the University of Dundee) - Brexit and the territorial constitution

I start from the observation that Brexit has the potential to seriously weaken if not to undermine the UK's territorial constitution. I say that for two reasons.

First because it will alter the balance of powers and responsibilities between the UK parliament on the one hand and the devolved legislatures on the other, regardless of the outcome of the current dispute over whether EU competences in the devolved areas should be allowed to lie where they fall under the devolution settlements. That was the conclusion I drew from the analysis I did for the Scottish Parliament's European and External Relations Committee after the referendum, which showed that the majority of EU competences are reserved and will therefore fall to London rather than Edinburgh, Cardiff or Belfast. The Committee's interest understandably was in the powers that would fall to Scottish Parliament in the absence of any amendment to the Scotland Act but for me what was more striking was the extent of powers that would fall to the UK Parliament. The powers that are the subject of dispute – in agriculture, fisheries and the environment for example – are only a small proportion of those that will be repatriated.

The second is because of the weakness of UK intergovernmental relations. One of the purposes of a properly functioning system of intergovernmental relations should be to ensure that the interests of the devolved nations are taken into account in the exercise of non-devolved or reserved responsibilities, but that is a role which the current 'not fit for purpose' system performs patchily at best.

Allied to which there is a sense of a European Union (Withdrawal) Bill (EUWB) which has been drafted with scant regard to the principles on which the devolution settlements are based.

There is a long list of issues we might discuss. Let me pick out three: Clause 11 and the destination of repatriated competences; the proposed power of UK ministers to legislate in the devolved areas; and the protection of the devolved nations' interests in relation to reserved matters.

Issue 1: Clause 11 and the destination of repatriated competences

The 'debate' over Clause 11, much of which has been conducted behind closed doors, is revealing of a deep-seated lack of trust between the UK Government and the devolved administrations over the repatriation of competences.

On the one side, fear on the part of the UK Government that the devolved administrations – and an SNP Government in particular – will seize the opportunity provided by the repatriation of

competences to make mischief if they possibly can. In an effort to forestall this it is therefore proposing that EU competences should first be repatriated to London before any decision is taken on where they should finally sit.

On the other side, suspicion on the part of the devolved administrations that Clause 11 is not so much about legal certainty as stripping the devolved administrations of the leverage they would otherwise possess when it comes to the negotiation of common frameworks – the need for which, it should not be forgotten, is accepted by both sides to the current dispute.

The devolved administrations also fear that Whitehall departments will find it convenient to hang on to repatriated competences rather than pass them on, quite apart from which the grafting of a conferred powers model onto a reserved powers model will reduce the intelligibility of the settlement,¹ as well as make more difficult for the devolved administrations to carry out the responsibilities which in the original scheme of the Scotland Act certainly were regarded as theirs.

In any consideration of this issue it is important not to exaggerate the threat to the integrity of the UK single market posed by the repatriation of EU competences in the devolved areas. In particular, sight should not be lost of the part played by the reserved matters listed in Schedule 5 to the Scotland Act, for example, in maintaining the UK single market – many of which have a single market rationale as I explained in my paper for the Scottish Parliament’s Europe and External Relations Committee in 2016. Once allowance is made for the part played by the reserved matters, it seems to me that the UK Government’s ‘guiding principle’ can be more felicitously secured by a combination of the existing reservations and a ‘standstill agreement’ whereby the UK Government and the devolved administrations agree not to introduce, in the Prime Minister’s words, ‘new barriers to living and doing business within our own Union’ while the business of common frameworks – and, no less importantly, the necessary revisions to retained EU law – are being worked out. As well as preserving the integrity of the UK single market, the combination of reserved matters and a standstill agreement would avoid the undeniably damaging consequences of Clause 11.

Issue 2: the proposed power of UK ministers to legislate in the devolved areas

Under the EUWB UK ministers will gain far-reaching powers to legislate in the devolved areas, powers which are said to be justified by the scale of the challenge represented by Brexit and the shortness of the time within which it may have to be completed. To fully appreciate how radical

¹ ‘One fears that only lawyers and Civil Servants, but by no means all of them, will be able to work out or give reliable advice on the full meaning of the affirmations as qualified by the negations. Beyond doubt, this complexity and difficulty of comprehension is a defect of the Act. It infringes the principle of intelligibility of law, a principle most to be prized in constitutional enactments’: Neil MacCormick quoted in Page, *Constitutional Law of Scotland* (W Green 2015) p 115, fn 14. MacCormick was writing about the Scotland Act 1978, but the comment would apply equally to the Scotland Act 1998, as it is proposed to be amended by the EU (Withdrawal) Bill.

a departure this represents from the principles on which the devolution settlement is based we need to recall that there is no subordinate law-making equivalent of the ‘sovereign’ power of the UK Parliament to make laws for Scotland (SA 1998, s 28(7)).

UK ministers accordingly have only limited subordinate law making powers in the devolved areas, the principal one being in respect of the implementation of EU obligations, which may be exercised by UK ministers concurrently with their devolved counterparts (SA 1998, 57(1)). Under the EUWB, however, they will gain powers to correct deficiencies in retained EU law, to ensure continued compliance with the UK’s international obligations, and to implement the withdrawal agreement in devolved as well as reserved areas, i.e. in areas in which ministerial responsibility has been transferred to the Scottish ministers as well as in areas in which it has been retained. It is contrary to the principles on which the devolution settlement is based therefore for these powers to be exercisable, as is currently proposed, subject only to a non-binding requirement of consultation with Scottish ministers – and with no provision for Scottish parliamentary scrutiny of their exercise (below). Instead, as the Scottish and Welsh governments have proposed, they should be exercisable only with the consent of the Scottish and Welsh ministers.

Issue 3: The protection of the devolved nations’ interests in relation to reserved matters

As I have indicated the policy responsibilities that will fall to London following Brexit will far exceed in importance those that will fall to Edinburgh, Cardiff and Belfast. As well as the four freedoms, they include responsibilities in respect of immigration, competition policy, financial assistance to industry, and the negotiation and conclusion of trade agreements with non-EU countries to name only a few. The UK’s intended withdrawal from the EU raises in a new and acute form the question of the protection of the devolved nations’ interests in relation to matters decided at Westminster, an issue which in Scotland’s case is as old as the (Anglo-Scottish) Union itself. The negotiation and conclusion of trade agreements with non-EU countries, in particular, is likely to be a matter keen interest to Scotland and the other devolved nations.

In the 2013 Memorandum of Understanding which governs relations between the UK government and the devolved administrations, the UK Government ‘recognises that the devolved administrations will have an interest in international and European policy making in relation to devolved matters, notably where implementing action by the devolved administrations may be required’, before undertaking to involve them ‘as fully as possible in discussions about the formulation of the UK’s policy position on all EU and international issues which touch on devolved matters (paras 18 and 20).

But whereas JMC machinery has been put in place for involving the devolved administrations in (UK) decision making on EU matters, no comparable machinery exists for involving the

devolved administrations in UK decision-making on international matters. That may be because such machinery has not been thought necessary hitherto, notwithstanding the breach of the Concordat on International Relations revealed by the 2001 Labour Government's 'deal in the desert', but with the UK's intended withdrawal from the EU the lack of such machinery, and with it the overhaul of the 'not fit for purpose' system of intergovernmental relations, will need to be addressed as matters of urgency.

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Dr. Jo Hunt (Reader in Law at Cardiff University) - Devolution: The Withdrawal Bill and the concept of the UK Common Market

David Lidington's speech on 26 February 2017 makes the promise of a 'considerable offer' to the devolved administrations in the form of a 'very big change' to the approach taken so far by HM Government to the repatriation of competences under the Withdrawal Bill. Under the original version of the Bill, Clause 11, which makes the exercise of devolved competence subject to the constraints of needing to respect 'retained EU law' (whilst the Westminster Parliament remains unshackled by any such requirement) effectively recentralises powers which have previously been devolved. The existing body of EU-derived rules continue to apply and constrain the devolved administrations and legislatures across policy areas which have previously been devolved to them, until such a point as Westminster or Whitehall agree to a release. In constitutional terms, the Clause moves the UK, in the opposite direction of travel to that of the last 20 years of devolution, which had been seeing an ongoing process concretising and solidifying of redistribution and resettlement of power and authority within the UK's territorial constitution.

The Withdrawal Bill makes startlingly clear the vulnerabilities of this order against what may be a version of the UK constitution centred on a still all powerful notion of Westminster Parliamentary supremacy. The devolution settlements, set out in the Scotland Act, the Government of Wales Act and the Northern Ireland Act have all seen ongoing reform and expansion, confirmed through successive referenda, and have now reached the point where their institutions are acknowledged as permanent, with primary legislative powers to exercise across a range of devolved areas. But these settlements are contained in Acts of Parliament and under a reading of the UK constitution which continues to reify a parliamentary sovereignty located in Westminster alone there is little to defend them against being undone by another Act of Parliament, and potentially, and particularly controversially, by secondary powers under the Withdrawal Bill. Other approaches to understanding the locus of sovereignty and the status of the devolved nations are held, and the current period is one of that could see these crystallise and replace the Westminster norm, but to date the debate in Westminster and Whitehall has discounted them as yet unformed and at best imminent.

The Clause 11 restrictions have been justified by HM Government as being needed to provide stability and consistency as the scaffolding of EU law is knocked away. Until now, EU law and the discipline of the EU's internal market has meant that the scope for differentiation within the UK has been minimised. Frameworks have been set by EU measures across the fields of agricultural policy, and environmental policy for example, which have placed limitation on how divergent the policy and law making by the different powers in the UK may be in those areas. As these frameworks are moved away from, HM Gov maintains there is a need to ensure that the

devolved nations do not use their devolved powers in such a way as to create new barriers to trade within the UK – that they respect the ‘constitutional integrity’ of the UK’s internal or common market.

It is not yet clear what HM Government’s new form of Clause 11 looks like. It has said that the starting point now is that powers returning from Brussels are to devolved, rather than held at Westminster. An approach to the creation of common frameworks which would be considerably more sensitive to the approach taken to date would simply see the removal of the Clause 11 constraint on the devolveds to comply with retained EU law. As things currently stand, where frameworks are needed the Westminster Parliament could legislate, with devolved involvement drawn in through respect for the Sewel Convention. However, this does not go as far as the means of participation in matters of EU governance held by the devolved nations. They currently are able to engage directly and indirectly in the policy processes that set EU wide common frameworks within an EU governance system, which, crucially has a constitutional orientation towards subsidiarity, that decisions should be taken at the lowest effective level. There is a strong case to consider amendments to the Bill that write in formal mechanisms for devolved involvement in making of common frameworks, and that these extend to both intergovernmental and interparliamentary relations.

Observers of the EU will know just how powerful the legal concept of the EU’s internal market had been. To date, and through the adoption of harmonising legislation and through the reach of the enforcement of the free movement provisions, EU law has created a level playing field for trade across the Member States. But we need to acknowledge that this EU internal market does not necessarily demand uniformity, and gives space to local divergence and differentiation. That space for difference may be built into the legislation itself – whether in provisions of environmental legislation that allow for local variation, or in the rules of the CAP, which sees an increasingly ‘un-common’ approach to farming support and its related regulatory structures. Divergence may also be seen in the way the free movement provisions apply and the space for justification which may be afforded to protect local measures which hinder trade. So for example, Scotland may be recognised under EU internal market rules as being justified on public health grounds on introducing a minimum price per unit for alcohol – the public policy objectives outweighing the impact on trade, but what do we know about a U.K. internal market, and will it come with the guarantees that such protections can be recognised? The lack of transparency and any meaningful explanation of what the concept of the UK internal or common market is, beyond a ready appeal to it by politicians to justify harmonising UK wide measures is concerning.

It must be recognised that an internal market – any internal market, whether the UK’s or the EU’s – is not simply an economic construction, it is also profoundly political. It reflects a set of

choices, about what will be valued and what interests will be protected against the pressures of ensuring freedom of movement. When looking at the EU, we know the free movement rights within its internal market are not unconditional. The internal market is placed in a constitutional setting alongside other objectives and principles, including the mainstreaming of equality, promoting environmental sustainability, and subsidiarity. The UK notion of a common market is not, as far as we are aware from the way it has been presented to date, grounded in anything like this. So we need to think about ways that these interests can be anchored down, that values can underpin a UK internal market. The adoption of amendments to the Withdrawal Bill which would provide for continued respect for such critical values should be strongly considered.

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Dr. Colin Harvey (Professor of Human Rights Law at Queen’s University Belfast) - Brexit, the EU (Withdrawal) Bill and Northern Ireland

Brexit has brought the position of Northern Ireland to the centre of an intense EU-wide debate that at present is circling around the nature of the border on the island of Ireland. The EU (Withdrawal) Bill, currently making its way through Westminster, is only one part of a bigger picture. It is the piece of Brexit legislation that aims to bring clarity and certainty but which seems to have succeeded in creating widespread confusion and disharmony. The focus here is on Northern Ireland, and I will concentrate on three themes: context; the Bill; and ways forward.

First, let us reflect on context. There is currently no government in Northern Ireland, in the sense that there is no functioning Executive or Assembly. Northern Ireland does have a Secretary of State, of course, and the Westminster Parliament is currently stepping in when required (for example, on the budget). Since the resignation of the late Martin McGuinness in January 2017 as deputy First Minister there have been ongoing attempts to re-establish the institutions. The latest effort failed, so at the time of writing there is much consideration of what next for power-sharing government.

Brexit has re-opened the British–Irish national identity fault line at the heart of Northern Irish politics in problematic ways. The majority voted to remain but the two main communities were notably divided. The Democratic Unionist Party (DUP) supported the Leave campaign and Sinn Féin argued for a Remain vote. The outcome means that Northern Ireland did not consent to leave, and given the contentious politics and history of that concept that fact still matters (in ways that transcend debates over the Sewel convention). There is a wider constitutional imbalance that also requires careful thought; the DUP has reached a ‘confidence and supply’ arrangement with the Conservative Party. In this deal the DUP has agreed to support the Government’s Brexit legislation. In this the DUP is departing from the majority view in Northern Ireland. At a time of heightened anxiety about the future of the peace process, the agreement with the Conservative Party has done little to reassure those who are worried that the Westminster Government can act impartially with respect to Northern Ireland. When you add to this general scene the fact that nationalism/republicanism in Northern Ireland opted for candidates who stood clearly on an abstentionist platform and that unionism lost its overall majority in the Assembly elections of March 2017 then the complexities multiply. This all now combines to create a real risk of upsetting the fragile cross-community balances that exist in Northern Ireland. Although many will be reflecting on the Good Friday Agreement this year (2018 is its twentieth anniversary) it increasingly seems as if the fundamentals of the peace process are steadily being abandoned.

Second, many of the questions raised by the EU (Withdrawal) Bill are now well known. These include clarity around the status of retained EU law, the power of Ministers (both devolved and Westminster), the claim of a ‘power grab’ by the centre, the decision to exclude the Charter of

Fundamental Rights of the EU and a concern that insufficient recognition has been given domestically to the Good Friday Agreement (and subsequent agreements). There is some protection in the Bill for the Northern Ireland Act 1998, and it has been amended, but many of the concerns remain. It must be recalled that this will not be the only piece of legislation dealing with Brexit, and it seems increasingly clear that Northern-Ireland-specific legislation may be needed to address a range of issues emerging from Brexit and the collapse of the recent political negotiations. The elements noted above do need to be considered in this Bill but thought must also turn now to the sort of measures that may be required to secure the special arrangements for Northern Ireland that may flow from the EU–UK negotiations. There is additionally the matter of trust. The UK’s flexible constitution comes under strain when trust breaks down to the extent that it now has, particularly between the constituent parts of the territorial constitution. The current efforts to secure a negotiated way forward, on common frameworks and Clause 11, are revealing the flaws in the UK’s system of intergovernmentalism. This requires urgent attention.

Finally, what about ways forwards? An obvious point is that the Bill should be amended to reflect devolved concerns. The work around this will send an important signal about the sort of UK that might evolve on the other side of Brexit. Given the continuing discussions regarding the position of Ireland/Northern Ireland it would make sense to prepare the ground for the sort of special arrangements that logically follow the agreements reached thus far between the EU and the UK. In general, and with much reflection on the state of the Northern Ireland peace process, it may well be wise to return to the spirit of the Good Friday Agreement. That document has a determined focus on relationships across these islands and the sorts of values that would provide helpful guidance (including on human rights and equality). Recall the scale of the current constitutional imbalance within this ongoing process. There is a need to ensure voices are heard at Westminster across all communities, however this is achieved. On this issue, among others, the DUP (with its impressive electoral mandate) simply does not speak for Northern Ireland. A question for the Westminster Parliament is how it can mitigate the problems identified and show genuine respect for the power-sharing principles that are central to the peace process. There is also the urgent need for enhanced British-Irish intergovernmental cooperation, and on this the Good Friday Agreement provides an answer: the British-Irish Intergovernmental Conference. It is time for a meeting of this body to be arranged.

These are challenging times for Northern Ireland but concerns have plainly been heard in Dublin and Brussels. If it is to demonstrate respect for the peace process the Westminster Government will have to take care that it acts with ‘rigorous impartiality’ and that the fundamental principles flowing from the Good Friday Agreement are central to whatever happens next.

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