

Agenda – Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Lleoliad:	I gael rhagor o wybodaeth cysylltwch a:
Ystafell Bwyllgora 1 – Y Senedd	Gareth Williams
Dyddiad: Dydd Llun, 5 Tachwedd 2018	Clerc y Pwyllgor
Amser: 14.30	0300 200 6362
	SeneddMCD@cynulliad.cymru

- 1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau
14.30
- 2 Offerynnau nad ydynt yn cynnwys materion i gyflwyno adroddiad
arnynt o dan Reol Sefydlog 21.2 na 21.3
14.30 (Tudalennau 1 – 4)
CLA(5)–27–18 – Papur 1 – Offerynnau statudol sydd ag adroddiadau clir
Offerynnau'r Penderfyniad Negyddol
 - 2.1 SL(5)260 – Gorchymyn Draenio Cynaliadwy (Cymeradwyo a Mabwysiadu)
(Cymru) 2018
 - 2.2 SL(5)261 – Rheoliadau Draenio Cynaliadwy (Cais am Ffioedd Cymeradwyo)
(Cymru) 2018
 - 2.3 SL(5)265 – Gorchymyn Esemptiad Eglwysig (Adeiladau Rhestredig ac
Ardaloedd Cadwraeth) (Cymru) 2018

Offerynnau'r Weithdrefn Penderfyniad Cadarnhaol
 - 2.4 SL(5)263 – Gorchymyn Draenio Cynaliadwy (Gorfodi) (Cymru) 2018
 - 2.5 SL(5)264 – Rheoliadau Draenio Cynaliadwy (Apelau) (Cymru) 2018



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

14.35

Offerynnau'r Penderfyniad Negyddol

3.1 SL(5)262 – Rheoliadau Draenio Cynaliadwy (Gweithdrefn Cymeradwyo a Mabwysiadu) (Cymru) 2018

(Tudalennau 5 – 80)

CLA(5)–27–18 – Papur 2 – Adroddiad

CLA(5)–27–18 – Papur 3 – Gorchymyn

CLA(5)–27–18 – Papur 4 – Memorandwm Esboniadol

3.2 SL(5)267 – Rheoliadau Meysydd Tref a Phentref (Datganiadau Perchnogion Tir) (Cymru) 2018

(Tudalennau 81 – 111)

CLA(5)–27–18 – Papur 5 – Adroddiad

CLA(5)–27–18 – Papur 6 – Rheoliadau

CLA(5)–27–18 – Papur 7 – Memorandwm Esboniadol

CLA(5)–27–18 – Papur 8 – Llythyr gan Arweinydd y Tŷ a'r Prif Chwip

3.3 SL(5)266 – Gorchymyn Pysgota Môr (Diwygiadau Amrywiol) (Cymru) 2018

(Tudalennau 112 – 124)

CLA(5)–27–18 – Papur 29 – Adroddiad

CLA(5)–27–18 – Papur 30 – Gorchymyn

CLA(5)–27–18 – Papur 31 – Memorandwm Esboniadol

4 Offerynnau Statudol sydd angen Cydsyniad yn unol â Rheol Sefydlog 30A – Ymadawiad yr UE

14.40

4.1 SICM(5)4 – Rheoliadau Asesiadau Amgylcheddol a Chynllunio Amrywiol (Diwygio (Ymadawiad â'r UE) 2018 (Saesneg yn unig)

(Tudalennau 125 – 144)

CLA(5)–27–18 – Papur 9 – Llythyr gan Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig

CLA(5)–27–18 – Papur 10 – Datganiad Ysgrifenedig gan Lywodraeth Cymru: Hysbysu mewn perthynas ag Offerynnau Statudol a wneir gan Weinidogion y DU mewn meysydd datganoledig o dan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 nas gosodir gerbron y Cynulliad

CLA(5)–27–18 – Papur 11 – Memorandwm Cydsyniad Offeryn Statudol

CLA(5)–27–18 – Papur 12 – Memorandwm Esboniadol

CLA(5)–27–18 – Papur 13 – Rheoliadau

4.2 SICM(5) 5 – Rheoliadau Ymchwiliadau a Chrwneriaid (Diwygio) (Ymadawiad â'r UE) 2018 (Saesneg yn unig)

(Tudalennau 145 – 164)

CLA(5)–27–18 – Papur 14 – Llythyr gan Brif Weinidog Cymru

CLA(5)–27–18 – Papur 15 – Datganiad Ysgrifenedig gan Lywodraeth Cymru: Hysbysu mewn perthynas ag Offerynnau Statudol a wneir gan Weinidogion y DU mewn meysydd datganoledig o dan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 nas gosodir gerbron y Cynulliad

CLA(5)–27–18 – Papur 16 – Memorandwm Cydsyniad Offeryn Statudol

CLA(5)–27–18 – Papur 17 – Memorandwm Esboniadol

CLA(5)–27–18 – Papur 18 – Rheoliadau

5 Datganiadau ysgrifenedig yn unol â Rheol Sefydlog 30C – Ymadawiad â'r UE

14.50

5.1 Rheoliadau Ïoneiddio Ymbelydredd (Safonau Diogelwch Sylfaenol) (Darpariaethau Amrywiol) (Diwygio) (Ymadawiad â'r UE) 2018 (Saesneg yn unig)

(Tudalennau 165 – 166)

CLA(5)–27–18 – Papur 19 – Datganiad

**5.2 Rheoliadau Llywodraeth Leol (Diwygiadau Amrywiol) (Ymadawiad â'r UE) 2018
(Saesneg yn unig)**

(Tudalennau 167 – 168)

CLA(5)–27–18 – Papur 20 – Datganiad

6 Bil Amaethyddiaeth y DU: Sesiwn dystiolaeth

15.00

(Tudalennau 169 – 194)

Lesley Griffiths AC, Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion
Gwledig;

Tim Render, Llywodraeth Cymru;

Peter McDonald, Llywodraeth Cymru.

CLA(5)–27–18 – Papur briffio

CLA(5)–27–18 – Papur briffio gan y Gwasanaeth Ymchwil

**CLA(5)–27–18 – Papur 21 – Llythyr gan Ysgrifennydd y Cabinet dros Ynni,
Cynllunio a Materion Gwledig, 24 Medi 2018**

**CLA(5)–27–18 – Papur 22 – Llythyr gan Ysgrifennydd y Cabinet dros Ynni,
Cynllunio a Materion Gwledig, 11 Hydref 2018**

**7 Gohebiaeth ynglŷn ag Offerynnau Statudol Cyfansawdd ac
Offerynnau Statudol ar y Cyd**

16.00

(Tudalennau 195 – 199)

**CLA(5)–27–18 – Papur 23 – Llythyr gan Charles Walker AS, Cadeirydd y
Pwyllgor Gweithdrefnau yn Nhŷ'r Cyffredin, 25 Hydref 2018.**

**CLA(5)–27–18 – Papur 24 – Llythyr gan Gadeirydd y Pwyllgor Gweithdrefnau,
15 Ionawr 2018.**

8 Papurau i'w nodi

16.10

- 8.1 Llythyr gan y Gymdeithas Awtistiaeth Genedlaethol: Bil Awtistiaeth**
(Tudalennau 200 – 202)
CLA(5)–27–18 – Papur 25 – Llythyr gan y Gymdeithas Awtistiaeth
Genedlaethol
- 8.2 Llythyr at y Pwyllgor Cyllid gan Ysgrifennydd y Cabinet dros Gyllid: Bondiau
ar gyfer Gwariant ar Fuddsoddi Cyfalaf**
(Tudalennau 203 – 204)
CLA(5)–27–18 – Papur 26 – Llythyr gan Ysgrifennydd y Cabinet dros Gyllid
- 8.3 Adroddiad gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi:
Gohebiaeth: Deddfwriaeth ddirprwyedig o dan Ddeddf yr Undeb Ewropeaidd
(Ymadael) 2018**
(Tudalennau 205 – 210)
CLA(5)–27–18 – Papur 27 – Adroddiad
- 9 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y
cyhoedd o'r cyfarfod ar gyfer y mater a ganlyn:**
16.20
- 10 Trafod y dystiolaeth: Bil Amaethyddiaeth y DU**
- 11 Offerynnau Statudol sydd angen Cydsyniad: Brexit a Datganiadau
a wneir o dan Reol Sefydlog 30C: Ymdrin â'r Mater**
(Tudalennau 211 – 216)
CLA(5)–27–18 – Papur 28 – Ymdrin ag Offerynnau Statudol sydd angen
Cydsyniad: Brexit a Datganiadau a wneir o dan Reol Sefydlog 30C
- 12 Memorandwm Cydsyniad Deddfwriaethol – Bil Ifori (Saesneg yn
unig)**
(Tudalennau 217 – 221)
CLA(5)–27–18 – Papur briffio

Offerynnau Statudol sydd ag Adroddiadau Clir 05 Tachwedd 2018

SL(5)260 – Gorchymyn Draenio Cynaliadwy (Cymeradwyo a Mabwysiadu) (Cymru) 2018

Gweithdrefn: Negyddol

Mae'r Gorchymyn hwn yn ffurfio rhan o gyfres o offerynnau statudol sy'n ymwneud â systemau draenio cynaliadwy ac yn gwneud darpariaeth mewn perthynas â'r gofyniad i gymeradwyo, a cheisiadau am fabwysiadu, systemau o'r fath o dan Atodlen 3 i Ddeddf Rheoli Llifogydd a Dŵr 2010 (p.29).

Daw'r Gorchymyn hwn i rym ar 7 Ionawr 2019.

Rhiant–Ddeddf: Deddf Rheoli Llifogydd a Dŵr 2010

Fe'u gwnaed ar: 10 Hydref 2018

Fe'u gosodwyd ar: 15 Hydref 2018

Yn dod i rym ar: 07 Ionawr 2019

SL(5)261 – Rheoliadau Draenio Cynaliadwy (Cais am Ffioedd Cymeradwyo) (Cymru) 2018

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn rhan o gyfres o reoliadau sy'n gwneud darpariaeth mewn perthynas â draenio cynaliadwy. Maent yn ffurfio rhan o amcan Llywodraeth Cymru o greu strategaeth genedlaethol ar gyfer rheoli'r perygl o lifogydd yng Nghymru.

Mae'r Rheoliadau hyn yn gwneud darpariaeth i gorff cymeradwyo godi ffioedd mewn perthynas â cheisiadau i gymeradwyo systemau draenio cynaliadwy yn unol ag Atodlen 3 i Ddeddf Rheoli Llifogydd a Dŵr 2010.

Rhiant–Ddeddf: Deddf Rheoli Llifogydd a Dŵr 2010



Fe'u gwnaed ar: 10 Hydref 2018

Fe'u gosodwyd ar: 15 Hydref 2018

Yn dod i rym ar: 07 Ionawr 2018

SL(5)263 – Gorchymyn Draenio Cynaliadwy (Gorfodi) (Cymru) 2018

Gweithdrefn: Cadarnhaol

Mae'r Gorchymyn hwn yn ffurfio rhan o gyfres o is-ddeddfwriaeth sy'n gwneud darpariaeth mewn perthynas â draenio cynaliadwy.

Mae'r Gorchymyn hwn yn darparu ar gyfer gorfodi torri'r gofyniad am gymeradwyaeth o dan baragraff 7(1) o Atodlen 3 i Ddeddf Rheoli Llifogydd a Dŵr 2010 mewn perthynas â systemau draenio ar gyfer gwaith adeiladu.

Rhiant–Ddeddf: Deddf Rheoli Llifogydd a Dŵr 2010

Fe'u gwnaed ar:

Fe'u gosodwyd ar: 15 Hydref 2018

Yn dod i rym ar: 07 Ionawr 2019

SL(5)264 – Rheoliadau Draenio Cynaliadwy (Apelau) (Cymru) 2018

Gweithdrefn: Cadarnhaol

Mae'r Rheoliadau hyn yn rhan o gyfres o reoliadau sy'n gwneud darpariaeth mewn perthynas â draenio cynaliadwy. Maent yn ffurfio rhan o amcan Llywodraeth Cymru o greu strategaeth genedlaethol ar gyfer rheoli'r perygl o lifogydd yng Nghymru.

Mae'r Rheoliadau hyn yn darparu hawl i apelio i Weinidogion Cymru yn erbyn penderfyniad corff cymeradwyo o dan Atodlen 3 i Ddeddf Rheoli Llifogydd a



Dŵr 2010 mewn perthynas â cheisiadau am gymeradwyaeth neu mewn perthynas â'r ddyletswydd i fabwysiadu mewn cysylltiad â systemau draenio cynaliadwy.

Rhiant–Ddeddf: Deddf Rheoli Llifogydd a Dŵr 2010

Fe'u gwnaed ar:

Fe'u gosodwyd ar: 15 Hydref 2018

Yn dod i rym ar: 07 Ionawr 2019

SL(5)265 – Gorchymyn Esemptiad Eglwysig (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) (Cymru) 2018

Gweithdrefn: Negyddol

Mae'r Gorchymyn hwn yn dirymu ac yn disodli Gorchymyn Esemptiad Eglwysig (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) 1994 ar gyfer Cymru.

Mae adran 60(1) a (2) o Ddeddf Cynllunio (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) 1990 ("Deddf 1990") yn darparu nad yw adeiladau eglwysig sydd am y tro yn cael eu defnyddio at ddibenion eglwysig yn ddarostyngedig i adrannau 3A, 4, 7 i 9, 47, 54 a 59 o Ddeddf 1990. Mae hyn wedi ei ddiffinio yn erthygl 2 fel esemptiad eglwysig adeiladau rhestredig. Mae'r adrannau hynny yn ymwneud â rheoli adeiladau rhestredig, gan gynnwys: hysbysiadau diogelu adeilad; cyfyngiadau ar waith dymchwel, addasu neu estyn; caffael yn orfodol adeiladau y mae angen eu hatgyweirio; gwaith cadwraeth brys gan awdurdod lleol a Gweinidogion Cymru; a throseddau mewn perthynas â difrod bwriadol.

Mae adran 75 o Ddeddf 1990 yn darparu nad yw adeiladau eglwysig sydd am y tro yn cael eu defnyddio at ddibenion eglwysig yn ddarostyngedig i adran 74 o Ddeddf 1990. Mae adran 74 yn ymwneud â rheoli dymchwel adeiladau mewn ardaloedd cadwraeth. Hwn yw'r esemptiad eglwysig cydsyniad ardal gadwraeth.



Mae'r Gorchymyn hwn yn dileu'r esemptiad eglwysig adeiladau rhestredig yn achos pob adeilad eglwysig ac eithrio ar gyfer yr achosion hynny sy'n dod o fewn erthygl 4. O dan erthygl 4 cedwir yr esemptiad mewn cysylltiad ag adeiladau eglwys yr Eglwys yng Nghymru, Eglwys Loegr, yr Eglwys Gatholig, yr Eglwys Fethodistaidd, Undeb Bedyddwyr Prydain Fawr ac Undeb Bedyddwyr Cymru ar yr amod mai'r prif ddefnydd a wneir o'r adeilad o dan sylw yw fel man addoli, ac yn ddarostyngedig i'r cyfyngiadau a nodir yn yr erthygl honno.

Rhiant-Ddeddf: Deddf Cynllunio (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) 1990

Fe'u gwnaed ar: 15 Hydref 2018

Fe'u gosodwyd ar: 16 Hydref 2018

Yn dod i rym ar: 01 Ionawr 2019



SL(5)262 - Rheoliadau Draenio Cynaliadwy (Gweithdrefn Cymeradwyo a Mabwysiadu) (Cymru) 2018

Cefndir a Diben

Mae'r Rheoliadau hyn yn ffurfio rhan o gyfres o offerynnau statudol sy'n ymwneud â systemau draenio cynaliadwy a darpariaethau Atodlen 3 i Ddeddf Rheoli Llifogydd a Dŵr 2010 (p.29).

Mae'r Rheoliadau hyn yn gwneud darpariaeth:

- ar gyfer y weithdrefn mewn perthynas â phenderfyniad cyrff cymeradwyo am geisiadau i gymeradwyo systemau draenio cynaliadwy ac i fabwysiadu systemau draenio o'r fath, a materion ategol; ac
- mewn perthynas â gwaith statudol ar dir cyhoeddus a allai gael effaith ar systemau o'r fath.

Daw y Rheoliadau hyn i rym ar 7 Ionawr 2019.

Y weithdrefn

Negyddol.

Materion technegol: craffu

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

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

Mae rheoliad 13 yn diffinio "ymgymerwr statudol" fel person sydd â hawl i wneud gwaith statudol ar dir cyhoeddus o dan ddarpariaeth deddfiad a restrir yn Rheoliad 16 o'r Rheoliadau hyn. Fodd bynnag, nid yw Rheoliad 16 yn rhestru unrhyw ddeddfiadau.

Rhinweddau: craffu

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

Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

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

Ymateb y Llywodraeth

Dylai rheoliad 13 gyfeirio at reoliad 14, yn hytrach na rheoliad 16. Gwall teipio yw hwn, ac fe fyddwn yn ei gywiro drwy ddefnyddio slip cywiro.

Cynghorwyr Cyfreithiol





OFFERYNNAU STATUDOL
CYMRU

2018 Rhif 1077 (Cy. 226)

Y DIWYDIANT DŴR, CYMRU

**Rheoliadau Draenio Cynaliadwy
(Gweithdrefn Cymeradwyo a
Mabwysiadu) (Cymru) 2018**

NODYN ESBONIADOL

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

Mae'r Rheoliadau hyn yn gwneud darpariaeth ar gyfer y weithdrefn mewn perthynas â phenderfyniad cyrff cymeradwyo am geisiadau i gymeradwyo systemau draenio cynaliadwy ac i fabwysiadu systemau draenio o'r fath, yn unol ag Atodlen 3 i Ddeddf Rheoli Llifogydd a Dŵr 2010 (p. 29) ("y Ddeddf").

Mae rheoliad 3 yn darparu y caiff corff cymeradwyo wrthod penderfynu ar gais am gymeradwyaeth nad yw'n unol â pharagraff 9 neu 10 o Atodlen 3 i'r Ddeddf.

Mae rheoliad 4 yn darparu gweithdrefn i'r corff cymeradwyo ei dilyn mewn perthynas â cheisio ymatebion gan yr ymgylgoreion statudol a bennir ym mharagraff 11(3) o Atodlen 3 i'r Ddeddf.

Mae rheoliad 5(1)(a) yn darparu ar gyfer y terfyn amser y mae rhaid penderfynu ar gais am gymeradwyaeth sy'n ymwneud â datblygiad sy'n destun Asesiad o'r Effaith Amgylcheddol o fewn iddo. Mae rheoliad 5(1)(b) yn darparu ar gyfer y terfyn amser ar gyfer penderfynu ar unrhyw fath arall o gais am gymeradwyaeth. Mae rheoliad 5(2) yn darparu y caiff y ceisydd a'r corff cymeradwyo, yn y naill achos neu'r llall, gytuno ar gyfnod amser hwy ar gyfer penderfynu ar y cais.

Mae rheoliad 5(3) yn darparu yr ystyrir bod corff cymeradwyo sy'n methu â phenderfynu ar gais o fewn y terfyn amser perthnasol yn gwrthod y cais.

Mae rheoliad 6 yn darparu ar gyfer yr wybodaeth i'w chynnwys mewn hysbysiad i ddatblygwr am benderfyniad mewn perthynas â mabwysiadu, pan fo datblygwr yn gofyn i gorff cymeradwyo fabwysiadu

system ddraenio, neu pan fo'r corff cymeradwyo yn mabwysiadu system ddraenio ar ei gymhelliad ei hun.

Mae rheoliad 7(1) yn darparu ar gyfer y cyfnod amser i ryddhau bond methu â chyflawni gan gorff cymeradwyo yn dilyn hysbysiad o benderfyniad mewn perthynas â mabwysiadu system ddraenio, ac eithrio pan fo'r corff cymeradwyo wedi ardystio nad yw'r system ddraenio wedi ei hadeiladu yn unol â'r cynigion a gymeradwywyd neu nad yw'n debygol y bydd yn cael ei chwblhau, a bod y corff cymeradwyo wedi gwneud gwaith i sicrhau bod y system ddraenio wedi ei chwblhau yn y fath fodd fel ei bod yn debygol o gydymffurfio â'r safonau cenedlaethol.

O dan yr amgylchiadau hynny, mae rheoliad 7(3) yn darparu i'r corff cymeradwyo roi cyfrif i'r datblygwr am symiau a ddefnyddiwyd i ddiwallu cost y gwaith, bod y balans yn cael ei ddychwelyd a bod y bond methu â chyflawni yn cael ei ryddhau.

Mae rheoliad 8 yn darparu bod rhaid i'r corff cymeradwyo, o fewn 4 wythnos i roi gwybod i ddatblygwr am benderfyniad i fabwysiadu system ddraenio (boed hynny ar gais neu ar ei gymhelliad ei hun), drefnu i'r system ddraenio gael ei nodi ar y gofrestr a gedwir o dan adran 21 o'r Ddeddf, trefnu i awdurdod dynodi wneud dynodiad dros dro o dan baragraff 7 o Atodlen 1 i'r Ddeddf, a rhoi hysbysiad o fwriad i ddynodi unrhyw ran o'r system ddraenio sy'n stryd, o fewn ystyr adran 48 o Ddeddf Ffyrdd Newydd a Gwaith Stryd 1991.

Mae rheoliad 9 yn darparu diffiniad o systemau draenio "eiddo unigol" at ddibenion esemptiad rhag y ddyletswydd i fabwysiadu, yn unol â pharagraff 18 o Atodlen 3.

Mae rheoliad 10(1) yn darparu ar gyfer y cyfnod amser i gorff cymeradwyo ryddhau bond methu â chyflawni pan fo system ddraenio wedi ei chwblhau yn unol â'r cynigion a gymeradwywyd. Mae rheoliad 10(2) yn darparu ar gyfer yr achos pan fo corff cymeradwyo wedi gwneud gwaith i sicrhau bod system ddraenio yn cael ei chwblhau yn y fath fodd fel ei bod yn debygol o gydymffurfio â'r safonau cenedlaethol. Yn yr amgylchiadau hynny, mae rheoliad 10(3) yn darparu ar gyfer yr amser i gorff cymeradwyo roi cyfrif i'r datblygwr am arian a ddefnyddiwyd i gyflawni'r gwaith, dychwelyd unrhyw swm dros ben a rhyddhau'r bond methu â chyflawni.

Mae rheoliad 11 yn darparu bod rhaid i gorff cymeradwyo roi gwybod i'r personau ym mharagraff 24(2) o Atodlen 3 cyn gynted ag y bo'n ymarferol ar ôl arfer ei bŵer i fabwysiadu system ddraenio nad yw'r ddyletswydd i fabwysiadu yn gymwys iddi ac mae rheoliad 13(2) yn pennu cynnwys yr hysbysiad.

Mae rheoliad 12 yn darparu ar gyfer y cyfnod amser i'r awdurdod llifogydd lleol arweiniol gofrestru system ddraenio, ac i awdurdod dynodi ddynodi dros dro system ddraenio o dan baragraff 7 o Atodlen 1 i'r Ddeddf, yn dilyn mabwysiadu gwirfoddol.

Mae rheoliad 13 yn darparu diffiniad o "statutory undertaker".

Mae rheoliad 14 yn darparu diffiniad o "statutory works".

Mae rheoliadau 15(1) i (3) yn darparu i ymgwymerwr statudol hysbysu'r corff cymeradwyo am y bwriad i ddechrau ar waith statudol ar dir cyhoeddus, gan gynnwys mewn argyfwng, pan fo'r cyfryw waith yn effeithio ar system ddraenio gynaliadwy, neu pan allai wneud hynny. Mae rheoliadau 15(4) i (6) yn gwneud darpariaeth ar gyfer cymeradwyo a hysbysu am waith ailadeiladu mewn perthynas â systemau draenio cynaliadwy yn dilyn gwaith statudol.

Mae rheoliad 16(1) yn darparu pŵer i'r corff cymeradwyo ei gwneud yn ofynnol i ymgwymerwr statudol wneud gwaith adferol. Pan na chydymffurfir â chais o'r fath, mae rheoliad 16(2) yn darparu pŵer pellach i gorff cymeradwyo wneud gwaith adferol ac adennill costau'r gwaith gan yr ymgwymerwr statudol.

Mae rheoliad 17(1) yn ei gwneud yn ofynnol i gorff cymeradwyo benderfynu, o fewn 12 mis i gwblhau'r gwaith statudol, a yw'n fodlon bod y gofynion yn rheoliad 17(2) wedi eu bodloni. Y gofynion yw bod system ddraenio newydd neu un a ailadeiladwyd yn gweithredu yn unol â'r cynnig a gymeradwywyd; bod system newydd, os nad yw wedi ei hadeiladu yn unol â'r cynnig a gymeradwywyd, yn cydymffurfio â'r safonau cenedlaethol, neu os yw'n system ddraenio gynaliadwy a ailadeiladwyd, os nad yw wedi ei hadeiladu yn unol â'r cynnig cymeradwy, wedi ei hailadeiladu i'r cyflwr yr oedd ynddo cyn i'r gwaith statudol ddechrau.

Mae rheoliad 17(3) yn darparu pŵer, pan na fo corff cymeradwyo yn fodlon mewn perthynas â rheoliad 17(2), i'r corff cymeradwyo ei gwneud yn ofynnol i ymgwymerwr statudol wneud gwaith ailadeiladu neu waith adferol o fewn cyfnod amser penodedig. Os na chydymffurfir â chais o'r fath, mae rheoliad 17(4) yn darparu pŵer i'r corff cymeradwyo wneud y gwaith, ac adennill y costau gan yr ymgwymerwr statudol.

Lluniwyd asesiad effaith rheoleiddiol, o ran Cymru, o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn. Gellir cael copi oddi wrth Lywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ ac mae wedi ei gyhoeddi ar www.llyw.cymru.

OFFERYNNAU STATUDOL
CYMRU

2018 Rhif 1077 (Cy. 226)

Y DIWYDIANT DŴR, CYMRU

**Rheoliadau Draenio Cynaliadwy
(Gweithdrefn Cymeradwyo a
Mabwysiadu) (Cymru) 2018**

Gwnaed *10 Hydref 2018*

*Gosodwyd gerbron Cynulliad Cenedlaethol
Cymru* *15 Hydref 2018*

Yn dod i rym *7 Ionawr 2019*

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir gan adrannau 32 a 48(2) o Ddeddf Rheoli Llifogydd a Dŵr 2010⁽¹⁾, a pharagraffau 4(a), 11(5), 17(5), 18(3), 23(7), 24(5) a 28 o Atodlen 3 iddi, yn gwneud y Rheoliadau a ganlyn.

RHAN 1

Cyflwyniad

Enwi a chychwyn

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Draenio Cynaliadwy (Gweithdrefn Cymeradwyo a Mabwysiadu) (Cymru) 2018.

(2) Daw'r Rheoliadau hyn i rym ar 7 Ionawr 2019.

Dehongli

2.—(1) Yn y Rheoliadau hyn—

ystyr “Atodlen 3” (“*Schedule 3*”) yw Atodlen 3 i'r Ddeddf;

ystyr “cais am gymeradwyaeth” (“*application for approval*”) yw—

(1) 2010 p. 29. Diwygiwyd Atodlen 3 gan adrannau 21(3), 88(a) ac 88(b) o Ddeddf Dŵr 2014 (p. 21) ac O.S. 2012/1659 a 2013/755 (Cy. 90).

(a) cais am gymeradwyaeth a wneir yn unol â pharagraff 9 o Atodlen 3, neu

(b) y rhan honno o gais cyfun a wneir yn unol â pharagraff 10 o Atodlen 3 y gwneir cais am gymeradwyaeth mewn perthynas â hi—

ac mae cyfeiriad at “cais dilys” (“*valid application*”) i’w ddehongli yn unol â hynny;

ystyr “ceisydd” (“*applicant*”) yw person sy’n gwneud cais am gymeradwyaeth;

ystyr “cymeradwyaeth” (“*approval*”) yw’r gymeradwyaeth sy’n ofynnol o dan baragraff 7(1) o Atodlen 3 am system ddraenio⁽¹⁾ i waith adeiladu⁽²⁾;

ystyr “cynnig a gadarnhawyd” (“*confirmed proposal*”) yw cynnig i wneud gwaith ailadeiladu a gadarnhawyd o dan reoliad 15;

mae i “datblygiad” yr ystyr a roddir i “development” yn adran 55 o Ddeddf Cynllunio Gwlad a Thref 1990⁽³⁾;

mae i “datblygwr” yr ystyr a roddir i “developer” ym mharagraff 23(2)(b) o Atodlen 3;

ystyr “y Ddeddf” (“*the Act*”) yw Deddf Rheoli Llifogydd a Dŵr 2010;

ystyr “diwrnod gwaith” (“*working day*”) yw diwrnod nad yw’n ddydd Sadwrn, yn ddydd Sul nac yn ŵyl banc o fewn ystyr adran 1 o Ddeddf Bancio a Thrafodion Ariannol 1971⁽⁴⁾, nac yn ŵyl gyhoeddus arall yng Nghymru;

ystyr “gwaith ailadeiladu” (“*reconstruction work*”) yw gwaith a wneir—

(a) i ailadeiladu system ddraenio gynaliadwy i’r cyflwr yr oedd ynddo cyn i’r gwaith statudol ddechrau, neu

(b) i adeiladu system ddraenio gynaliadwy newydd yn unol â’r safonau cenedlaethol i weithredu yn lle’r system ddraenio gynaliadwy yr effeithiwyd arni gan y gwaith statudol;

ystyr “gwaith adferol” (“*remedial work*”) yw gwaith a wneir ar system ddraenio gynaliadwy—

(a) i unioni difrod a achoswyd gan waith statudol, a

(b) i sicrhau bod y system ddraenio gynaliadwy yn cydymffurfio â’r safonau cenedlaethol;

mae i “gwaith statudol” (“*statutory works*”) yr ystyr a roddir iddo yn rheoliad 14;

(1) Diffinnir “drainage system” ym mharagraff 1 o Atodlen 3.
 (2) Diffinnir “construction work” ym mharagraff 7(1)(a) o Atodlen 3.
 (3) 1990 p. 8.
 (4) 1971 p. 80.

ystyr “safonau cenedlaethol” (“*national standards*”) yw’r safonau cenedlaethol ar gyfer draenio cynaliadwy a gyhoeddir o dan baragraff 5 o Atodlen 3;

ystyr “system ddraenio gynaliadwy” (“*sustainable drainage system*”) yw’r rhannau hynny o system ddraenio nad ydynt wedi eu breinio mewn ymgwymerwr carthffosiaeth yn unol â chytundeb o dan adran 104 o Ddeddf y Diwydiant Dŵr 1991(1);

mae i “ymgymerwr statudol” (“*statutory undertaker*”) yr ystyr a roddir iddo yn rheoliad 13.

(2) Yn y Rheoliadau hyn mae cyfeiriad at “gwaith adeiladu” i’w ddehongli fel cyfeiriad at waith adeiladu sydd â goblygiadau draenio(2).

RHAN 2

Penderfynu ar geisiadau am gymeradwyaeth

Gwrthod penderfynu ar gais am gymeradwyaeth

3.—(1) Caiff corff cymeradwyo(3) wrthod penderfynu ar gais am gymeradwyaeth nad yw’n cael ei wneud yn unol â pharagraff 9(2) neu 10(2) (yn ôl y digwydd) o Atodlen 3.

(2) Pan fo corff cymeradwyo yn gwrthod penderfynu ar gais yn unol â pharagraff (1), rhaid iddo, cyn gynted ag y bo’n ymarferol—

- (a) rhoi gwybod i’r ceisydd bod y cais wedi ei wrthod a rhoi’r rhesymau dros hynny, a
- (b) dychwelyd unrhyw ffi am gais sy’n mynd gyda’r cais.

Dyletswydd i ymgynghori cyn penderfynu ar gais am gymeradwyaeth

4.—(1) Rhaid i gorff cymeradwyo, pan fydd yn gwneud cais am ymateb gan berson yr ymgynghorir ag ef o dan baragraff 11(3) o Atodlen 3 (“ymgynghorai”), bennu dyddiad ar gyfer ymateb sydd o fewn 3 wythnos gan ddechrau ar y diwrnod gwaith cyntaf ar ôl iddo anfon y cais.

(2) Cyn diwedd y cyfnod a bennir o dan baragraff (1), caiff y corff cymeradwyo a’r ymgynghorai gytuno ar ddyddiad gwahanol ar gyfer ymateb.

(1) 1991 p. 56. Amnewidiwyd adran 104(1) gan adran 96(4)(a) o Ddeddf Dŵr 2003 (p. 37). Mae diwygiadau eraill nad ydynt yn berthnasol i’r Rheoliadau hyn.

(2) Diffinnir “drainage implications” ym mharagraff 7(2)(b) o Atodlen 3.

(3) Diffinnir “approving body” ym mharagraff 6 o Atodlen 3.

(3) Caiff y corff cymeradwyo ddiystyru ymateb a geir gan ymgynghorai ar ôl y terfyn amser perthnasol.

(4) Yn y rheoliad hwn, ystyr “terfyn amser perthnasol” yw—

- (a) cyfnod a bennir o dan baragraff (1), neu
- (b) unrhyw gyfnod arall y cytunir arno o dan baragraff (2).

Terfynau amser ar gyfer penderfynu ar geisiadau am gymeradwyaeth

5.—(1) Rhaid i gorff cymeradwyo benderfynu ar—

- (a) cais am gymeradwyaeth sy’n ymwneud â datblygiad sy’n destun Asesiad o’r Effaith Amgylcheddol o dan Reoliadau Cynllunio Gwlad a Thref (Asesu Effeithiau Amgylcheddol) (Cymru) 2017⁽¹⁾ (“Rheoliadau 2017”) o fewn cyfnod o 12 wythnos sy’n dechrau ar y diwrnod gwaith cyntaf ar ôl iddo gael cais dilys, neu
- (b) unrhyw gais arall am gymeradwyaeth o fewn y cyfnod o 7 wythnos sy’n dechrau ar y diwrnod gwaith cyntaf ar ôl iddo gael cais dilys.

(2) Cyn diwedd y cyfnod a bennir yn is-baragraff (a) neu (b) (yn ôl y digwydd) o baragraff (1), caiff y corff cymeradwyo a’r ceisydd gytuno ar gyfnod hwy ar gyfer penderfynu ar gais.

(3) Ystyrir bod corff cymeradwyo sy’n methu â phenderfynu ar gais o fewn y terfyn amser perthnasol yn gwrthod y cais.

(4) Yn y rheoliad hwn—

mae i “Asesiad o’r Effaith Amgylcheddol” (“*Environmental Impact Assessment*”) yr ystyr a roddir yn rheoliad 2 o Reoliadau 2017;

mae i “datblygiad” yr ystyr a roddir i “development” yn adran 55(1) o Ddeddf Cynllunio Gwlad a Thref 1990⁽²⁾;

ystyr “terfyn amser perthnasol” (“*relevant time limit*”)yw—

- (a) cyfnod a bennir ym mharagraff (1), neu
- (b) unrhyw gyfnod hwy y cytunir arno o dan baragraff (2).

(1) O.S. 2017/567 (Cy. 136).

(2) 1990 p. 8.

RHAN 3

Dyletswydd i fabwysiadu

Hysbysu am benderfyniad i fabwysiadu

6. Rhaid i hysbysiad o dan baragraff 23(4)(b) neu (5) o Atodlen 3 bennu—

- (a) y rhesymau dros y penderfyniad, a
- (b) dyddiad y penderfyniad.

Rhyddhau bond methu â chyflawni pan fo'r ddyletswydd i fabwysiadu yn gymwys

7.—(1) Ac eithrio pan fo paragraff (3) yn gymwys, rhaid i'r corff cymeradwyo ryddhau bond methu â chyflawni o fewn 4 wythnos gan ddechrau ar y diwrnod gwaith cyntaf ar ôl rhoi hysbysiad o dan baragraff 23(4)(b) neu (5) o Atodlen 3.

(2) Mae paragraff (3) yn gymwys os gwnaeth y corff cymeradwyo—

- (a) dyroddi tystysgrif o dan baragraff 12(2) o Atodlen 3, a
- (b) gwneud gwaith i sicrhau bod y system ddraenio wedi ei chwblhau yn y fath fodd fel ei bod yn debygol o gydymffurfio â'r safonau cenedlaethol o ran ei gweithredoedd.

(3) Rhaid i'r corff cymeradwyo, o fewn 4 wythnos gan ddechrau ar y diwrnod gwaith cyntaf ar ôl cwblhau'r gwaith—

- (a) anfon cyfrif llawn at y datblygwr o unrhyw symiau a gafwyd o dan y bond sydd wedi eu defnyddio i ddiwallu cost gwneud y gwaith,
- (b) talu unrhyw swm dros ben i'r datblygwr, ac
- (c) rhyddhau'r bond methu â chyflawni.

Cofrestru a dynodi pan fo'r ddyletswydd i fabwysiadu yn gymwys

8. O fewn 4 wythnos gan ddechrau ar y diwrnod gwaith cyntaf ar ôl rhoi hysbysiad o dan baragraff 23(4)(b) neu (5) o Atodlen 3, rhaid i gorff cymeradwyo—

- (a) trefnu—
 - (i) i'r awdurdod llifogydd lleol arweiniol⁽¹⁾ gynnwys y system ddraenio yn y gofrestr a gedwir o dan adran 21 o'r Ddeddf,

(1) Diffinnir "lead local flood authority" yn adran 6(9) o'r Ddeddf.

- (ii) i awdurdod dynodi⁽¹⁾ ddynodi dros dro o dan baragraff 7 o Atodlen 1 i'r Ddeddf unrhyw ran o'r system ddraenio (pa un a yw honno'n rhan a fabwysiadwyd ai peidio) sy'n gymwys i'w dynodi ac nad yw'r corff cymeradwyo yn berchen arni, a
- (b) yn unol â rheoliadau a wneir o dan adran 63 o Ddeddf Ffyrdd Newydd a Gwaith Stryd 1991⁽²⁾, rhoi hysbysiad o fwriad i ddynodi, o dan yr adran honno, unrhyw ran o'r system ddraenio a fabwysiadwyd sy'n stryd o fewn ystyr adran 48 o'r Ddeddf honno.

RHAN 4

Pan na fo'r ddyletswydd i fabwysiadu yn gymwys

Eithriad ar gyfer eiddo unigol

9. At ddibenion paragraff 18(1) neu (2) o Atodlen 3, mae system ddraenio neu unrhyw ran o system ddraenio i'w thrin fel pe bai wedi ei dylunio i ddarparu draeniad i eiddo unigol yn unig os yw wedi ei dylunio i ddarparu draeniad i unrhyw adeiladau neu strwythurau eraill y bydd y canlynol, ar ôl cwblhau'r gwaith adeiladu, yn berchen arnynt, yn eu rheoli neu â rheolaeth drostynt—

- (a) person unigol, neu
- (b) dau berson neu ragor gyda'i gilydd.

Rhyddhau bond methu â chyflawni pan na fo'r ddyletswydd i fabwysiadu yn gymwys

10.—(1) Ac eithrio pan fo paragraff (3) yn gymwys, rhaid i gorff cymeradwyo ryddhau bond methu â chyflawni o fewn 4 wythnos gan ddechrau ar y diwrnod gwaith cyntaf ar ôl cwblhau system ddraenio a adeileidir yn unol â chynigion a gymeradwywyd.

(2) Mae paragraff (3) yn gymwys os gwnaeth y corff cymeradwyo—

- (a) dyroddi tystysgrif o dan baragraff 12(2) o Atodlen 3, a
- (b) gwneud gwaith i sicrhau bod y system ddraenio wedi ei chwblhau yn y fath fodd fel ei bod yn debygol o gydymffurfio â'r safonau cenedlaethol o ran ei gweithredoedd.

(1) Diffinnir "designating authority" ym mharagraff 1 o Atodlen 1 i'r Ddeddf.
 (2) 1991 p. 22. Mewnosodwyd adran 63(5) gan baragraff 27 o Atodlen 3 i'r Ddeddf.

(3) Rhaid i'r corff cymeradwyo, o fewn 4 wythnos gan ddechrau ar y diwrnod gwaith cyntaf ar ôl cwblhau'r gwaith—

- (a) anfon cyfrif llawn at y datblygwr o unrhyw symiau a gafwyd o dan y bond sydd wedi eu defnyddio i ddiwallu cost gwneud y gwaith,
- (b) talu unrhyw swm dros ben i'r datblygwr, ac
- (c) rhyddhau'r bond methu â chyflawni.

(4) Yn y rheoliad hwn—

ystyr “cynigion a gymeradwywyd” (“*approved proposals*”) yw cynigion a gymeradwywyd o dan baragraff 7(1) o Atodlen 3, gan gynnwys unrhyw amodau ynghylch y gymeradwyaeth;

mae “system ddraenio” (“*drainage system*”) i'w dehongli fel system ddraenio nad yw'r ddyletswydd i fabwysiadu yn gymwys iddi.

Hysbysu am fabwysiadu gwirfoddol

11.—(1) Rhaid i gorff cymeradwyo roi unrhyw hysbysiad o dan baragraff 24(2) o Atodlen 3 cyn gynted ag y bo'n ymarferol ar ôl penderfynu mabwysiadu system ddraenio nad yw'r ddyletswydd i fabwysiadu yn gymwys iddi.

(2) Rhaid i'r hysbysiad bennu—

- (a) y rheswm dros fabwysiadu, a
- (b) y dyddiad mabwysiadu.

Cofrestru a dynodi yn dilyn mabwysiadu gwirfoddol

12. O fewn 4 wythnos gan ddechrau ar y diwrnod gwaith cyntaf ar ôl rhoi hysbysiad o dan baragraff 24(2) o Atodlen 3, rhaid i gorff cymeradwyo drefnu—

- (a) i'r awdurdod llifogydd lleol arweiniol gynnwys y system ddraenio yn y gofrestr a gedwir o dan adran 21 o'r Ddeddf, a
- (b) i awdurdod dynodi ddynodi dros dro o dan baragraff 7 o Atodlen 1 unrhyw ran o'r system ddraenio (pa un a yw honno'n rhan a fabwysiadwyd ai peidio) sy'n gymwys i'w dynodi ac nad yw'r corff cymeradwyo yn berchen arni.

RHAN 5

Gwaith ar dir cyhoeddus

Ystyr “statutory undertaker”

13. At ddiben paragraff 28(3)(a) o Atodlen 3, ystyr “statutory undertaker” yw person sydd â'r hawl o dan

ddarpariaeth mewn deddfiad a restrir yn rheoliad 16 i wneud gwaith statudol ar dir cyhoeddus.

Ystyr “statutory works”

14. At ddiben paragraff 28(3)(b) o Atodlen 3, ystyr “statutory works” yw gwaith y caniateir ei wneud gan berson o dan unrhyw un neu ragor o’r darpariaethau a ganlyn—

- (a) adran 159 o Ddeddf y Diwydiant Dŵr 1991⁽¹⁾ (pŵer i osod, arolygu, cynnal a chadw etc. bibelli);
- (b) Atodlen 4 i Ddeddf Nwy 1986⁽²⁾ (pŵer i dyllu strydoedd);
- (c) paragraff 10(4) o Atodlen 4 i Ddeddf Trydan 1989⁽³⁾ (pŵer i wneud tyllau turio);
- (d) Atodlen 3A i Ddeddf Cyfathrebiadau 2003⁽⁴⁾.

Hysbysu am waith statudol a chynigion ar gyfer gwaith ailadeiladu

15.—(1) Ac eithrio mewn argyfwng, ni chaiff ymgymwrwr statudol ddechrau ar waith statudol a fydd yn effeithio ar weithrediad system ddraenio gynaliadwy neu a allai wneud hynny, ar unrhyw dir cyhoeddus, oni bai ei fod o leiaf 4 wythnos cyn i’r gwaith statudol ddechrau, yn hysbysu’r corff cymeradwyo ar gyfer y system ddraenio honno am—

- (a) y gwaith statudol arfaethedig, a
- (b) y cynnig i wneud gwaith ailadeiladu.

(2) Rhaid i’r hysbysiad a roddir o dan baragraff (1) ddod i ben ar y diwrnod gwaith cyn y diwrnod y mae’r gwaith statudol i ddechrau.

(3) Os dechreuir y gwaith statudol mewn argyfwng, rhaid i’r ymgymwrwr statudol, cyn gynted ag y bo’n ymarferol ar ôl i’r gwaith statudol ddechrau, hysbysu’r corff cymeradwyo—

- (a) bod y gwaith statudol wedi dechrau, a
- (b) am y cynnig i wneud gwaith ailadeiladu.

(4) Ni chaniateir dechrau ar waith ailadeiladu oni bai bod y corff cymeradwyo wedi cadarnhau’r cynnig i wneud y gwaith ailadeiladu.

(1) 1991 p. 56. Diwygiwyd adran 159 gan adran 97(1) a (5) o Ddeddf Dŵr 2003 (p. 37).

(2) 1986 p. 44. Diwygiwyd Atodlen 4 gan baragraffau 1 a 2(1) o Ran 1 o Atodlen 6 i Ddeddf Cyfleustodau 2000 (p. 27), a chan baragraff 119 o Atodlen 8 i Ddeddf Ffyrdd Newydd a Gwaith Stryd 1991 (p. 22). Mae diwygiadau eraill nad ydynt yn berthnasol i’r Rheoliadau hyn.

(3) 1989 p. 29.

(4) 2003 p. 21. Mewnosodwyd Atodlen 3A gan Atodlen 1 i Ddeddf yr Economi Ddigidol 2017 (p. 30).

(5) Oni bai bod y corff cymeradwyo wedi hysbysu'r ymgymwrwr statudol fel arall, cymerir bod cynnig i wneud gwaith ailadeiladu wedi ei gadarnhau—

- (a) mewn perthynas â chynnig yr hysbysir amdano o dan baragraff (1)(b), 4 wythnos gan ddechrau ar y diwrnod gwaith cyntaf ar ôl i'r hysbysiad gael ei roi;
- (b) mewn perthynas â chynnig yr hysbysir amdano o dan baragraff (3)(b), 48 awr ar ôl i'r corff cymeradwyo gael yr hysbysiad.

(6) Rhaid i'r ymgymwrwr statudol, cyn gynted ag y bo'n rhesymol ymarferol ar ôl gwneud y gwaith ailadeiladu, hysbysu'r corff cymeradwyo am y dyddiad y cwblhawyd y gwaith statudol.

Gofyniad i ymgymryd â gwaith adferol

16.—(1) Os yw ymgymwrwr statudol yn methu â gwneud gwaith ailadeiladu yn unol â'r cynnig a gadarnhawyd, caiff y corff cymeradwyo ei gwneud yn ofynnol i'r ymgymwrwr wneud gwaith adferol o fewn amserlen benodedig.

(2) Os yw ymgymwrwr statudol yn methu â chydymffurfio â gofyniad o dan baragraff (1), caiff y corff cymeradwyo—

- (a) gwneud gwaith adferol, a
- (b) adennill unrhyw gostau yr aed iddynt wrth wneud y gwaith hwnnw fel dyled gan yr ymgymwrwr.

Gwaith statudol i gydymffurfio â'r safonau cenedlaethol

17.—(1) O fewn 12 mis ar ôl i'r gwaith statudol gael ei gwblhau, rhaid i'r corff cymeradwyo benderfynu a yw wedi ei fodloni bod y gofynion ym mharagraff (2) wedi eu bodloni.

(2) Mae'r gofynion fel a ganlyn—

- (a) bod system ddraenio newydd neu un a ailadeiladwyd yn gweithredu yn unol â'r cynnig a gadarnhawyd,
- (b) bod system ddraenio gynaliadwy newydd, os nad yw wedi ei hailadeiladu yn unol â'r cynnig a gadarnhawyd, yn cydymffurfio â'r safonau cenedlaethol, neu
- (c) bod system ddraenio gynaliadwy a ailadeiladwyd, os nad yw wedi ei hadeiladu yn unol â'r cynnig a gadarnhawyd, wedi ei hailadeiladu i'r cyflwr yr oedd ynddo cyn i'r gwaith statudol ddechrau.

(3) Os nad yw corff cymeradwyo wedi ei fodloni bod y gofynion ym mharagraff (2) wedi eu bodloni, caiff ei gwneud yn ofynnol i'r ymgymwrwr statudol

wneud gwaith ailadeiladu neu waith adferol o fewn amserlen benodedig.

(4) Os yw ymgymwrwr statudol yn methu â chydymffurfio â gofyniad o dan baragraff (3), caiff y corff cymeradwyo—

- (a) gwneud gwaith adferol, a
- (b) adennill unrhyw gostau yr aed iddynt wrth wneud y gwaith hwnnw fel dyled gan yr ymgymwrwr.

Hannah Blythyn

Gweinidog yr Amgylchedd, o dan awdurdod
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a
Materion Gwledig, un o Weinidogion Cymru
10 October 2018

Schedule 3 of the Flood and
Water Management Act 2010
for sustainable drainage,
explanatory memorandum,
incorporating the regulatory
impact assessment and
explanatory notes,
October 2018

© Crown copyright 2018 WG36003 Digital ISBN 978 1 78964 146 2
Mae'r ddogfen yma hefyd ar gael yn Gymraeg / This document is also available in Welsh.

Explanatory Memorandum to:

- 1. The Sustainable Drainage (Approval and Adoption) (Wales) Order 2018**
- 2. The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018**
- 3. The Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018**
- 4. The Sustainable Drainage (Enforcement) (Wales) Order 2018**
- 5. The Sustainable Drainage (Appeals) (Wales) Regulations 2018**

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

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

1. The Sustainable Drainage (Approval and Adoption) (Wales) Order 2018
2. The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018
3. The Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018
4. The Sustainable Drainage (Enforcement) (Wales) Order 2018
5. The Sustainable Drainage (Appeals) (Wales) Regulations 2018

I am satisfied that the benefits justify the likely costs.

Hannah Blythyn AM
Minister for Environment

15 October 2018

CONTENTS

PART 1 – Explanatory Memorandum

1. Description
2. Matters of special interest
3. Legislative background
4. Purpose and intended effect of the provisions
5. Consultation

PART 2 – Regulatory Impact Assessment

6. Policy options considered
7. Cost-benefit analysis of options
8. Summary of responses to consultations and the Government response
9. Competition assessment
10. Specific impact assessments
11. Post implementation review

Annex 1 – Housing development

Annex 2 – Commercial and industrial development

Annex 3 – Developers in Wales

PART 1 – Explanatory Memorandum

1. Description

- 1.1 Schedule 3 of the Flood and Water Management Act 2010 (the 2010 Act) relates to provisions for sustainable drainage (SuDS). These include the establishment of a SuDS Approving Body (SAB) to be set up within the local authority alongside their lead local flood authority (LLFA) duty. SAB approval will be required before construction of drainage systems can commence on new and redeveloped sites. Provided appropriate statutory National SuDS Standards (SuDS standards) are met, the SAB will be required to adopt and maintain the approved SuDS that serve more than one property.
- 1.2 SuDS can provide a range of benefits, including *reducing damage from flooding, improving water quality, protecting and improving the environment, improving health and well-being, and ensuring the stability and resilience of drainage systems*. These are consistent with both the well-being goals and the sustainable development principles contained within the Well-being of Future Generations (Wales) Act 2015¹. They are also consistent with the Natural Resources Policy for Wales².
- 1.3 SuDS, in contrast to conventional piped drainage, seek to manage rainfall in a way similar to natural processes, making use of the landscape and natural vegetation to control the flow and volume of surface water. To date, the use of SuDS on new developments has been non-mandatory. As a result, the use of SuDS is limited and systems are not always compliant with SuDS Standards³. This is due, in large part, to uncertainty around adoption and ongoing maintenance.
- 1.4 This is a single explanatory memorandum for the suite of Statutory Instruments needed to implement Schedule 3 of the 2010 Act. Once commenced these instruments, together [with the relevant provisions in Schedule 3] provide for the following:
- Establish a SuDS Approving Body (SAB) in county and county borough councils.
 - Provides that drainage systems for managing rainwater (including rainwater, snow and other precipitations) for new developments must be approved by the SAB before construction begins.
 - Requires the Welsh Ministers to publish National SuDS Standards (SuDS Standards) for the design, construction, operation and maintenance of SuDS. In order to be approved by the SAB the proposed drainage system must meet the SuDS Standards.
 - Places a duty on the SAB to adopt and maintain approved SuDS that serve more than one property. In order to be adopted by the SAB the drainage system must be constructed and function as approved in accordance with the SuDS Standards.
 - Inserts a new section 106A into the Water Industry Act 1991 which supplements the existing provisions in section 106 of that Act making the right to connect

¹ Welsh Government (2015) Well-being of Future Generations (Wales) Act 2015

² Welsh Government (2017) Natural Resources Policy

³ Welsh Government (2016) Recommended non-statutory standards for sustainable drainage (SuDS) in Wales

surface water to public sewers conditional on the drainage system being approved by the SAB as meeting the SuDS Standards.

- Sets out Sewerage Undertakers, Natural Resources Wales, British Waterways and Highway Authorities as statutory consultees to the SAB.
- Establishes a SAB enforcement and appeals regime.
- Provides a mechanism for the recovery of reasonable costs incurred by the SAB in carrying out its function.

1.5 The Order commencing Schedule 3 of the Flood and Water Management Act 2010 for Wales was made on 1 May 2018. The legislation, along with the regulations necessary for its implementation, will come into effect on 7 January 2019. This is to give sufficient time to local authorities to establish the SAB approval mechanism. It is also to give developers time to become aware of the changes and prepare for mandatory SuDS Standards and the requirement for SAB approval before beginning construction.

1.6 It is proposed that the requirement for SAB approval will not apply to single dwellings and developments with a construction area of less than 100 square meters.

1.7 Transitional provisions have been inserted so that after the coming into force date SAB approval will not be required for the following:

- New developments that were already granted planning permission before the coming into force date, or
- New developments with one or more reserve matters where an application for approval of the reserve matter(s) is made within the period of 12 months after the coming into force date, or
- New developments where a valid planning application has been submitted before the coming into force date.

1.8 Exemption provisions have been inserted so that SAB approval will not be required for the following:

- Construction related to major roads (built by the Welsh Government), Network Rail railways and activities of internal drainage boards (delivered by Natural Resources Wales).
- Permitted developments which involve the construction of a building or other structure covering an area of land of less than 100 square meters.

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

2.1 The 2010 Act is an existing UK Act of Parliament, these Statutory Instruments together are needed to implement Schedule 3 of the 2010 Act in Wales and apply only to Wales. The Flood and Water Management Act 2010 (Commencement no.2) (Wales) Order 2018 was made on 1 May 2018. The Order commenced Schedule 3 of the Act with effect from the day after the day on which it was made, for the purpose of making subordinate legislation, and for remaining purposes with effect from 7 January 2019.

2.2 Schedule 3 of the 2010 Act could apply in England but has not been commenced. SuDS measures in England remain under review by the UK Government and have been the subject of scrutiny by the Environment, Food and Rural Affairs (EFRA) Parliamentary Committee. The Committee concluded the UK Government's policy on SuDS is failing and made recommendations on the need to make standards for SuDS mandatory to improve the quality of SuDS schemes.

2.3 The UK Government has since published a review⁴ on the application and effectiveness of its approach, which seeks to implement SuDS on major new developments and to prioritise the use of SuDS in areas at risk of flooding through non statutory planning policy. A number of findings have emerged as summarised below:

:

- 80% of adopted Local Planning Authorities (LPAs) local plan policies reflected the policy that SuDS are to be provided in major new developments.
- 70-75% of LPAs have **no** monitoring or reporting of the take-up of SuDS.
- A considerable number of LPAs reported their time, expertise and resources were under pressure with assessing planning applications.
- The report noted that Lead Local Flood Authorities (LLFAs) were concerned that SuDS were not being incorporated at the master planning stage, with a lack of detail and consideration at early planning.
- The report noted a shortfall where LPAs are not ensuring that maintenance arrangements for SuDS schemes are put in place for the life-time of the development.

3. Legislative background

3.1 Schedule 3 of the 2010 Act is given effect by Section 32 of that Act. Section 49(3)(i) of the 2010 Act provides that Section 32 and Schedule 3 come into force in relation to Wales in accordance with provisions made by order of the Welsh Ministers.

3.2 Schedule 3 of the 2010 Act confers powers on the Welsh Ministers to make subordinate legislation in relation to Wales on a number of matters:

- Paragraph 7(4) contains provision amongst other things, for regulations to be made about exemptions to the requirement for approval. Paragraph 11(5) provides for regulations to be made about timing and procedure for determination of applications for approval, including the consequences of failure to comply with them.
- Paragraph 13(1) requires regulations to be made for fees for applications for approval.
- Paragraph 18(3) provides that regulations may be made for determining when a drainage system is to be treated as designed for a single property. Paragraph 20 provides that additional exceptions to the adoption duty may be made by Order.

⁴ <https://www.gov.uk/government/publications/a-review-of-the-application-and-effectiveness-of-planning-policy-for-sustainable-drainage-systems>

Paragraph 23(7) and 24(5) provide that regulations may be made about the timing and manner of notice given by the SAB concerning adoption.

- Paragraph 14(1) requires an order to be made for the enforcement of the requirement for approval.
- Paragraph 25(1) requires regulations to be made providing a right of appeal against certain decisions made by the SAB.

3.3 The Assembly legislative procedure for making the instruments is as follows:

- By virtue of section 48(5) of the 2010 Act, the Sustainable Drainage (Approval and Adoption) (Wales) Order 2018, The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018, and The Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018 follow the negative resolution procedures.
- By virtue of section 48(6)(a) of, and paragraphs 14(5)(b) and 25(3)(b) of Schedule 3 to the 2010 Act, the Sustainable Drainage (Enforcement) (Wales) Order 2018 and the Sustainable Drainage (Appeals) (Wales) Regulations 2018 follow the affirmative resolution procedure.

3.4 These instruments deal with surface water drainage in Wales only. This differs from all other aspects of sewerage and drainage which are provided by sewerage undertakers under the Water Industry Act 1991 (WIA). Under the WIA, Welsh Ministers are responsible for the regulation of water and sewerage undertakers who operate wholly or mainly in Wales and the Secretary of State has responsibility for water and sewerage companies operating wholly or mainly in England. As a result, for drainage services provided by the water and sewerage undertakers, those parts of England served by Dŵr Cymru Welsh Water are the responsibility of Welsh Ministers. Related provisions in the Wales Act 2017 once commenced will align regulation of sewerage undertakers with the geographical national border, instead of wholly or mainly.

3.5 Schedule 3 of the Act uses the term “Minister” to denote both the Welsh Ministers and the Secretary of State. The term “Minister” is used in this document to denote the Welsh Ministers.

4. Purpose and intended effect

The problem the legislation seeks to address

4.1 Around 163,000 properties in Wales are at risk of surface water flooding (120,000 residential & 43,000 non-residential)⁵. The cost of damages associated with local

⁵ Natural Resources Wales Reports, Evidence and Data on Flooding:
<https://naturalresources.wales/evidence-and-data/research-and-reports/reports-evidence-and-data-on-flooding/december-floods-fact-sheet/?lang=en>

flooding events in Wales was found to be as much as £71 million for the period 2011-2014⁶.

- 4.2 The risk of flooding is increasing, largely due to climate change and urbanisation. Surface runoff can be a major source of pollution; both directly and from overwhelmed sewers discharging into rivers. Pressure to take action on water quality, for example by increasing the capacity of the sewerage system, also stems from the present need to comply with EU legislation, in particular the Water Framework Directive.
- 4.3 According to Natural Resources Wales⁷ “*there is distinct lack of ‘public clarity’ over responsibilities (‘who does what’), particularly in relation to the management of (coastal and) surface water flooding*” “the creation of sustainable drainage approval bodies” is identified as a key measure which could help improve flood risk management. **The approval and adoption of SuDS schemes by an approving body established in local authorities is an objective of the national strategy for flood risk management in Wales**⁸. Of particular concern is the current lack of clear responsibilities for maintaining and operating surface water drainage systems that are not defined as traditional piped or sewered drains that connect to the public sewer system or otherwise.
- 4.4 SuDS reduce the rate and volume of surface runoff from developments to more closely match ‘greenfield’ sites. This generally means lower or slower discharges compared with conventional piped drainage. They are a more sustainable and resilient form of drainage and typical components include ponds, permeable paving and swales⁹.
- 4.5 Schedule 3 of the 2010 Act includes a provision that requires developers to seek drainage approval from a SAB before starting any construction work that has drainage implications. The SAB must determine if the application meets mandatory SuDS Standards. Under the legislation all approved SuDS which serve more than one property must be adopted and maintained by the SAB.
- 4.6 Exemptions to the regime may be allowed by regulation and the 2010 Act specifically allows for phased commencement to manage impacts on Local Authorities and businesses.
- 4.7 The Pitt review¹⁰, which followed the 2007 floods, made specific recommendations with regards to surface runoff, including the need to:
- Clarify the responsibility for the adoption and maintenance of sustainable drainage systems; and
 - Remove the automatic right to connect to surface public water sewers (Section 106 and Section 115 of the Water Industry Act 1991).

Which will be implemented by commencing Schedule 3 to the 2010 Act.

Why Government needs to intervene

⁶ Natural Resources Wales Reports, Evidence and Data on Flooding:
<https://naturalresources.wales/evidence-and-data/research-and-reports/reports-evidence-and-data-on-flooding/december-floods-fact-sheet/?lang=en>

⁷ <https://naturalresources.wales/media/680131/flood-coastal-erosion-risk-management-in-wales-2014-2016.pdf>

⁸ <https://gov.wales/docs/desh/publications/111114floodingstrategyen.pdf>

⁹ CIRIA (2015) The SuDS Manual (C753)

¹⁰ Cabinet Office (2008) The Pitt Review: Learning the Lessons from the 2007 Floods

- 4.8 The justification for, and use of, SuDS is well established in the planning system, which includes TAN 15 and Approved Document H of the Building Regulations, as well as voluntary standards such as the Home Quality Mark. However, the current uptake of SuDS is low, limiting the potential contribution of SuDS to mitigating flood risk from surface run-off and the risk of sewer overload, or to protecting water quality.
- 4.9 In the past, most developments have been built with separate drains for foul water and surface runoff, although some 70% of the UK's sewer network is combined, so many surface water drains connect into existing combined sewers. A relatively low proportion (around 20-40% based on anecdotal evidence) can be described as SuDS that comply with national standards¹¹. The market has been slow in voluntarily integrating SuDS into development plans. The market has been constrained by:
- Information failure – currently, there is a lack of consistent use of recommended standards. Despite the existence of good practice, bad practice is also evident and contributes to a perception that SuDS are expensive and entail non-essential costs.
 - Externalities – there is a disconnect between those who manage and/or pay for surface water drainage and those who benefit from sustainable management. The benefits are often public and generally accrue further downstream, i.e. some way away from the point at which the rain falls and is dealt with.
 - Lack of a statutory requirement and coherent arrangements for the adoption and ongoing maintenance of drainage - currently, developers or local authorities have to make arrangements to finance the ongoing maintenance of SuDS, where they are built. However, the arrangements for this are highly variable and ad-hoc.
- 4.10 In addition to the constraints mentioned above, there are also weak market drivers for the management of surface water runoff:
- The legacy of draining surface water runoff into our sewers means that foul water and surface runoff are often seen as a single problem. However, over recent years there has been little change in the amount of water each person uses at home¹² i.e. little improvement in water efficiency per person. In contrast, Ofwat predict a significant increase in sewer flooding from climate change going forward¹³. Thus the influence of surface runoff (influenced by the pattern of climate change, as well as urban creep) on our sewers will increase relative to the amounts of foul water to be handled.
 - Current arrangements for flood insurance cover are highly cross-subsidised by those not at risk and this dis-incentivises the uptake of management measures, including SuDS.

¹¹ Welsh Government (2016) Recommended non-statutory standards for sustainable drainage (SuDS) in Wales

¹² Environment Agency (2008) Water resources in England and Wales research on current state and future pressures
<http://webarchive.nationalarchives.gov.uk/20140329213237/http://cdn.environment-agency.gov.uk/geho1208bpas-e-e.pdf>

¹³ Ofwat has published research illustrating the predicted scale of increased sewer flooding risks due to climate change https://www.ofwat.gov.uk/wp-content/uploads/2015/11/rpt_com201106mottmacsewer.pdf

Policy Objective

4.11 Commencement of Schedule 3 is intended to:

- Move provision of SuDS from a non-statutory to a statutory requirement;
- Ensure compliance with and consistency of standards for long term surface water management;
- Provide certainty for developers that SuDS will be adopted without the need for lengthy negotiation or significant expense;
- Reduce the risk of localised, surface water flooding;
- Mitigate pollution that may arise from surface water runoff;
- Reduce extra load on public sewers and the need for additional capacity; and
- Help safeguard water supplies.

4.12 Other, indirect benefits include:

- Help achieve the goals of the Well-being of Future Generations (Wales) Act 2015, and in particular the **Welsh Government Well-being Objective** to connect communities through sustainable and resilient infrastructure.
- Contribute to the commitment to take action to improve management of our water environment, made in the **Welsh Government Programme for Government 2016-2021**. This also identifies green infrastructure (such as SuDS) as an opportunity to address poverty, housing and infrastructure drivers, whilst meeting broader longer term objectives.
- Contribute to the commitment to implement nature based solutions, a national priority in the Welsh Government **Natural Resources Policy (2017)** for Wales, and related wider long-term **Prosperity for All** objectives including supporting sustainable communities, promoting green growth, supporting a more resource efficient economy and maintaining healthy, active and connected communities¹⁴.
- Contribute to the goals of the **Water Strategy for Wales**, which sets out strategic direction for water policy over the next 20 years and beyond.
- Contribute to delivering objectives of the **National Strategy of Flood and Coastal Erosion Risk Management in Wales**.
- Achieve compliance with the **Planning (Wales) Act 2015**, which imposes duties requiring “*sustainable development*” consistent with SuDS features on new developments.
- Achieve compliance with the duty to maintain and enhance bio-diversity and promote the resilience of eco-systems, established under the **Environment (Wales) Act 2016**.
- Help meet the goals of the **EU Water Framework Directive**.
- Reduce air pollution through the increased use of green infrastructure, contributing to achieving the **Air Quality Standards (Wales) Regulations 2010**.
- Help meet **Welsh Housing Quality Standards**, which state that new homes constructed for Registered Social Landlords (housing associations) for both social housing and sale on the open market must be “*located in attractive and safe*”

¹⁴ In particular, the Policy states that “increasing access to green spaces and providing community facilities to bring people together is highlighted as a ‘best buy’ to prevent mental ill health and improving mental well-being by Public Health Wales. The World Health Organisation suggests that public health approaches with health, social, economic and environmental benefits, such as safe green spaces and active transport, have been shown to be cost-effective with potential returns on investment. Studies also suggest that people living closer to good-quality green space are more likely to have higher levels of physical activity, and are more likely to use it and more frequently”.

environments”, use “soft and hard landscaping with planting in protected areas” and provide “adequate, practical and maintainable communal areas”;

- Help Wales to achieve **carbon reduction objectives**¹⁵ and adapt to climate change.
- Increase wetland habitats and urban green space contributing to the aims of the **National Biodiversity Strategy and Action Plan for Wales** (the Nature Recovery Plan for Wales) and the commitments to the **Habitats and Birds Directives**.

Why SuDS?

- 4.13 Flood damage from surface runoff is predicted to increase due to climate change and continued urbanisation¹⁶.
- 4.14 SuDS can reduce this increase by storing runoff, slowing the rate at which runoff enters water bodies and helping runoff infiltrate into the ground. In case studies SuDS has been shown in particular circumstances to reduce runoff by as much as 50%¹⁷.
- 4.15 The majority of towns and cities in Wales were constructed with combined sewers where surface runoff mixes with foul water and is then transported to a treatment plant that extracts clean water. In around half of the network, current sewerage systems are at or beyond capacity.
- 4.16 In these situations, during periods of intense rain, the combined sewers quickly become full. When this happens, untreated sewage and foul water discharges to streams and rivers through engineered overflows (intended to prevent similar flooding in properties). During floods, this will combine with flood waters and in a small number of cases it can also flood homes directly.
- 4.17 The extent of legal discharges is limited by Natural Resources Wales permits and is constrained by the following directives:
- Bathing Water Directive;
 - Shellfish Directive;
 - Water Framework Directive; and
 - Urban Waste Waters Treatment Directive.
- 4.18 The sewage network in England and Wales is valued at around £174 billion, substantial additional sewerage capacity is needed to address the predicted increase in flooding due to climate change, urban creep and new connections. However if new connections were not made (through introducing SuDS) this will reduce the pressures on the sewers which could save billions in investment from water and sewerage companies.

¹⁵ Consistent with the advice set out Committee on Climate Change (2017) Advice on the Design of Welsh Carbon Targets

¹⁶ The Welsh Government National Strategy for Flood and Coastal Erosion Risk Management 2011
<https://gov.wales/docs/desh/publications/111114floodingstrategyen.pdf>

¹⁷ See for example EPC (2017) Sustainable Drainage Systems on new developments, analysis of evidence
<https://gov.wales/docs/desh/publications/170209-suds-evidence-epc-final-report-en.pdf>

4.19 SuDS provide an opportunity to avoid many of the new connections and to develop an alternative infrastructure to public sewers – offering significant savings in investment.

5. Consultation

5.1 In developing the evidence to support the Regulatory Impact Assessment (RIA)¹⁸, consultation has taken place with a wide range of organisations and sectors, including:

- Local authorities
- Developers and home builders
- Water and sewerage companies
- Natural Resources Wales
- Non-government organisations and the third sector
- Consumer bodies
- Academia
- Sector professionals

5.2 The RIA has been completed alongside this Explanatory Memorandum. Further details of the consultations undertaken are included in the RIA below (Part 2).

¹⁸ See for example EPC (2017) Sustainable Drainage Systems on new developments, analysis of evidence <https://gov.wales/docs/desh/publications/170209-suds-evidence-epc-final-report-en.pdf>.

PART 2 – Regulatory Impact Assessment

Section	Page
Policy options considered	13
The preferred option	14
Cost-benefit analysis of options	14
Option 1 – Do Nothing	19
Option 2 – Commence Schedule 3 of the 2010 Act	20
Option 3 – Planning Approach	34
Summary of costs and benefits	43
Summary of responses to consultations and the Government response	45
Competition assessment	50
Specific impact assessments	51
Post implementation review	55

Annexes

Annex 1 – Housing development

Annex 2 – Commercial and industrial development

Annex 3 – Developers in Wales

6. Policy options considered

6.1 The Welsh Government has considered three main policy options (Table 1).

Table 1: Summary of policy options considered

Policy option	Name	Description
1	Do nothing	The baseline option, involving continuation of current non-regulatory policy.
2	Commence Schedule 3	Mandatory use of SuDS compliant with national standards on all minor and major development (more than 1 dwelling or sites larger than 0.1 hectares).
3	Planning approach	Expectation that SuDS will be provided on all minor and major development wherever this is appropriate and unless demonstrated to be inappropriate. Use of planning conditions or planning obligations to ensure that there are clear arrangements in place for ongoing maintenance over the lifetime of the development.

6.2 In addition to the three options outlined above, a number of other options were discussed but excluded from full consideration in the RIA. However, some of these may not be inconsistent with the policy options set out above, and these are discussed in the broader consultation paper. These options, and the reason for their exclusion, are shown in Table 2.

Table 2: Options discussed but excluded from full consideration in RIA

Option	Description	Reason for exclusion
Water company adoption	Water and sewerage company (WaSC) required to adopt, and responsible for maintaining, certain SuDS (e.g. below ground, proprietary) compliant with standards.	Options for voluntary adoption of SuDS and maintenance by water company are considered in the broader consultation paper. Non-voluntary adoption would need a change in primary legislation (S104 of the Water Industry Act 1991), and legislation to remove automatic right to connect. Creates incentive to install systems where adoption more certain (likely to be below ground, as in Scotland).
Amended Schedule 3	SAB established for SuDS approval, but SuDS adopted by different groups, such as local authority, WaSC or housing association,	Options for amending Schedule 3, e.g. through regulations and orders, are discussed in broader consultation paper.

	depending on functionality, benefits, etc.	High risk of differing approaches in different areas and duplication of standards. Also proliferation of bodies with SuDS responsibilities likely to create confusion.
Sewers for adoption	Update Sewers for Adoption (guidance for design and construction of sewers that will be adopted by Sewerage Undertakers in accordance with Section 104 of the Water Industry Act 1991) to include SuDS.	No mandatory requirement, so unlikely to significantly change current situation.

What is the preferred option?

- 6.3 Option 2 is the preferred option. The NPV (net present value) for Option 2 is estimated to be £164.9m (range £82.6m to £961.4m). It is positive suggesting that the net benefits to society outweigh the net costs to society. The NPV for Option 1 is zero. The NPV for Option 3 is estimated to be £54.3m, i.e. around one-third of the benefits of the preferred option (although the range at £20.4m to £460.4m overlaps with Option 2).

7. Cost benefit analysis of options

- 7.1 We have used guidance provided by HM Treasury¹⁹ to carry out a Cost Benefit Analysis (CBA) for the three policy options.
- 7.2 The appraisal period is assumed to run from 2018 to 2026. The final year (2026) was chosen as this correlates with the end-point of many of the local development plans in Wales, i.e. there is greater certainty regarding the scale and extent of housing and other development over this period. Of course, a longer appraisal period could be justifiable and may be appropriate, although the scale and extent of new development and exogenous changes would be more uncertain. Nevertheless, adopting a longer period would give greater importance to those impacts recurring over time. This is examined through sensitivity analysis.
- 7.3 The impacts of the options have been classed as either:
- One-off – impacts are assumed at the start of the appraisal period (2018); or
 - Recurring – impacts are assumed to occur each year (from 2018 to 2026 inclusive).

¹⁹ HM Treasury (2011) Green Book

- 7.4 In accordance with HM Treasury guidance, a discount rate of 3.5% has been applied to future costs and benefits, in order to calculate the present value (PV) of the impacts. Changing this rate is examined through sensitivity analysis.
- 7.5 Total estimated figures given throughout the RIA are rounded so may not sum precisely with values in supporting tables.
- 7.6 The focus in the RIA is on additional/marginal costs and benefits associated with options 2 and 3. Therefore, any costs/benefits under Option 1 (the 'Do Nothing' option) are not additional to current situation and are assumed to be zero.
- 7.7 The costs and benefits accruing to a number of key groups and organisations have been considered. These are
- Welsh Government
 - Local authorities/SABs
 - Developers
 - Water and sewerage companies
 - Property owners/occupiers
 - Natural Resources Wales
 - General population
- 7.8 The specific impacts considered in the RIA draws on engagement with stakeholders, a range of previous work, including Defra (2010)²⁰, the SuDS Manual²¹ and the CIRIA Benefits of SuDS Tool (BeST), and expert knowledge. The full list of impacts considered is shown in Table 3.

Table 3: Impacts considered (full list)

Potential impacts	Description
Construction	Construction of compliant SuDS
Fees (developers)	Application/approval/certification/inspection/adoption fee
Land take	Additional land take from SuDS
Start-up (developers)	Capacity building, upskilling and training
Connection charges (developers)	Avoided surface water connection applications/charges
Adoption, O&M (developers)	Reduced operation and monitoring (O&M), and certainty of adoption, leading to efficiencies in planning process and development, as well as reduced or simplified interaction with a complex array of interests, including the WaSC, Planning

²⁰ Commencement of the Flood and Water Management Act 2010, Schedule 3 for Sustainable Drainage: Impact Assessment

²¹ CIRIA (2015) The SuDS Manual (C753)

	Authority, Highways Authority and NRW.
Start-up (local authorities/SABs)	Establish SAB, including administration, accounting, legal fees, registration charges, advertising, promotional activity, engagement, employee training, etc
O&M (local authorities/SABs)	Operation and maintenance of SuDS
Adoption (local authorities/SABs)	Additional duty/responsibility to maintain, potentially offset by reduced risk from orphaned or abandoned schemes
Revenue (local authorities/SABs)	Revenue from application/approval fees
Monitoring & enforcement (local authorities/SABs)	All aspects of monitoring and enforcement of SuDS, including appeals and ensuring proper functioning (e.g. porous pavements and soakaways)
Consultation (local authorities/SABs)	Additional costs of consultation as LLFAs become statutory consultee on all planning applications in relation to surface water drainage. Also, costs of additional planning conditions/funding agreements for construction and maintenance of the drainage system on all developments.
Consultation (others)	Additional costs of consultation on planning applications for statutory and other consultees. It is likely that most consultation requirements will be dealt with through standing advice, as with existing planning processes. Therefore, no significant additional costs are expected as a result of the proposed changes.
Asset base (WaSC)	Opportunity cost of foregone increase in asset base, on which companies can earn a return
Connection charges (WaSC)	Reduced revenue from surface water connection applications/charges
Infrastructure	Reduced/deferred future investment need in sewerage infrastructure, reduced O&M costs for conventional sewers (e.g. pumping, treatment) and improved ability to take an integrated approach to urban water systems.
Monitoring & enforcement (WaSC)	Reduced need for monitoring and enforcement of sewer connections
Surface water charges	Reduction in charges paid by property owners/occupiers for surface water drainage
Flood risk	Avoided damage and associated impacts (e.g. on psychological health) from reduced flood risk
Amenity	Enhanced attractiveness and liveability of developments

O&M (property owners/occupiers)	Added responsibilities for surface water in curtilage
Building temperature	Impact of SuDS on cooling (summer) or insulation (winter)
Crime	Reduced crimes against property or people
Traffic calming	Risk of road accidents or street-based recreation opportunities
Infraction	Avoided risk of infraction of water quality related EU directives
Growth	Economic growth
Enabling development	Contribution to affordable housing targets
Appeals	Costs of establishing and running Planning Inspectorate (PINS) to deal with appeals
Wider benefits	Related to goals in the Well-being of Future Generations Act 2015, including prosperous, resilient, healthier Wales, etc
Rainwater harvesting	Reduced flows, pollution or mains consumption
Tourism	Attractiveness of tourist sites
Regulation	Improved ability of NRW to tackle diffuse pollution, surface water flood risk and deliver ecosystem benefits
Flood risk	Increased risk of flooding in public areas (e.g. roads) due to exceedance
Biodiversity	New or enhanced habitats and opportunities for wildlife
Carbon	Reduction or sequestration of greenhouse gas emissions resulting from reduced pumping/treatment or new/additional planting
Education	Increased opportunities for learning and development
Climate change	Enhanced ability to mitigate or adapt to the expected impacts of climate change
Water quantity	Additional surface or groundwater available for abstraction, or to help alleviate drought/water scarcity
Health	Improved health and well-being due to increased/enhanced access and use of green space or, depending on type of SuDS used, improved air quality and temperature regulation (e.g. using green roofs)
Recreation	Improved or enhanced recreational opportunities (e.g. walking, fishing, watersports)
Water quality	Reduced sewer/surface water overflows and natural infiltration of surface water before it enters watercourses, leading to improved

	or enhanced water quality of surface, ground, transitional or coastal waters, consistent with objectives of Water Framework Directive
--	---

7.9 A proportionate approach has been taken, with the impacts above 'screened' for significance. Where costs and benefits are likely to be small, or impacts considered likely to affect only a few organisations/firms, or many organisations/firms to a very small degree, these have not been valued. Significant environmental and social impacts have been valued using BeST.

7.10 In many cases, there is no overall net change anticipated, although some degree of redistribution (a 'transfer' of costs and benefits from one group to another) is expected. In these cases, the effects have been assessed in the RIA.

7.11 For the purposes of the RIA, which is concerned with net impacts across the economy, aggregated estimates of costs and benefits across the country are appropriate. However, we recognise that individual groups and organisations associated with the list in paragraph 7.7 will be impacted differently by the proposals.

7.12 Each valued impact in the RIA comprises two components:

- A quantified estimate of the annual impact; and
- A monetary unit value.

These are multiplied together to calculate a monetised annual value for each significant impact. Where possible, low and high estimates for each component are considered (as well as the central or best estimate). As a result, the RIA includes a range for each monetised annual value. Further sensitivity analysis, considering changes to the key parameters of the discount rate and the assessment period, has also been undertaken.

7.13 In the analysis and presentation that follows, positively valued impacts indicate a benefit, whilst impacts with a negative value indicate a cost.

Assumptions

7.14 The key assumptions applied in undertaking the RIA are set out in Table 4.

Table 4: Key assumptions in RIA

General assumptions	
1	Administrative changes expected to be cost neutral
2	All valued impacts are presented as benefits. Therefore, costs appear as negative values.
3	Significant wider benefits assessed using BeST. These include amenity, education and carbon.
4	Commercial and industrial developments include those over 0.1ha (1,000m ²).

5	Benefits are assumed to start accruing from 2018, the first year of the appraisal period.
6	The timescale for the assessment is 2026, to maintain consistency with the end date for the majority of local development plans in Wales.
7	Historic values have been updated to 2016 prices using Bank of England online inflation calculator.
8	Weighted average salary and salary-related costs for employers (e.g. NI contributions), of SAB officer ranges from £30,369 (av salary of civil engineer) to £61,467 (Defra, 2010) (£72,326 in 2016 prices), mean (central) £51,348. Salaries likely to vary across Wales.
9	SAB running costs - Based on Defra (2010), we assume 1 Full Time Employee (FTE) per 100 major or 150 major and minor drainage applications/ year.
10	The average number of applications requiring SAB approval will be between 100 and 150 (central estimate 125) per year (though recognising that individual local authorities may see significantly fewer or more applications than this average).
11	Current situation (baseline) includes compliant SuDS on 20% to 40% of new development. Anecdotal evidence suggests that this may be optimistic (so the benefits of the two policy options may be larger than those estimated here).
12	Planning option will lead to compliant SuDS on 30% (low), 40% (central) or 50% (high) of new development
13	Estimates for projections for housing development are set out in Annex 1, and for commercial and industrial development in Annex 2. These projections are generally higher than actual construction over recent years and, as such, may be challenging to achieve.
14	Evidence relating to costs of construction and operation are largely based on EPC (2017) report. This report is based on a comparison of the costs of SuDS and non-SuDS approaches at an overall scheme/development level, rather than the costs of specific or individual measures or technologies.

Option 1: Do nothing

- 7.15 This is the baseline option and involves a continuation of current non-regulatory policy.
- 7.16 Although there will be costs and benefits associated with this option (for example due to urban growth or climate change), they are assumed to impact on all options equally. Therefore, they are not considered to be additional and are not analysed in the RIA.

Option 2: Commence Schedule 3

- 7.17 This is the preferred option and involves the mandatory use of SuDS compliant with national standards on all minor and major development (more than 1 dwelling or sites larger than 0.1 hectares).
- 7.18 A summary of the impacts considered likely under Option 2 is shown in Table 5 below. This also includes the group impacted, a description of the impact, whether the impact is likely to be a cost or a benefit to the impacted group, whether the impact is one-off or recurrent, whether it has been valued and comments setting out the reasons for this.

Table 5: Impacts of Option 2

Group	Impact	Description	Cost or Benefit?	One-off or recurrent?	Value in RIA?	Comments
Developers	Construction	Construction of compliant SuDS	Benefit	Recurrent	Yes	Evidence from EPC (2017) report ²² suggests capital costs are lower for compliant SuDS than for conventional systems. Some of this benefit may accrue to water and sewerage companies, so could also be some redistributive impact.
	Fees	Application/approval/certification/inspection/adoption fee	Cost	Recurrent	Yes	Administrative changes expected to be cost neutral, so costs will be offset by SAB revenue and no overall net change. However, will be redistributive impact so effects need to be assessed.
	Land take	Additional land take from SuDS	Cost	Recurrent	Yes (sensitivity only)	CIWEM (2017) concludes that "We consider that arguments for not delivering SuDS on the basis of site constraints may be overstated... with good planning there may be no additional requirement for land or that the additional land needed for SuDS can be small and affordable". If SuDS are planned into developments from the outset, and there is clarity of requirements for SuDS in the planning process, there appears to be no impact on the number of units, and this appears to be a perceived cost which is therefore not valued. However, evidence subsequently provided by the House Builders Federation (HBF), based on information previously provided to Defra, suggests there are examples where SuDS have reduced number of units on developments. This evidence is therefore used for sensitivity analysis.
	Start-up	Capacity building, upskilling and training	Cost	One-off	Yes	Include in RIA

²² <https://gov.wales/docs/desh/publications/170209-suds-evidence-epc-final-report-en.pdf>

	Connection charges	Avoided surface water connection applications/charges	Benefit	Recurrent	Yes	May be offset by any potential reduction in water and sewerage company revenue.
	Adoption, O&M	Reduced O&M, and certainty of adoption, leading to efficiencies in planning process and development, as well as reduced/simplified interaction with a complex array of interests, including the WaSC, Planning Authority, Highways Authority and NRW	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
Local authorities/SABs	Start-up	Establish SAB, including administration, accounting, legal fees, registration charges, advertising, promotional activity, engagement, employee training, etc	Cost	One-off	Yes	Include in RIA
	O&M	Operation and maintenance of SuDS	Benefit	Recurrent	Yes	Evidence from EPC report suggests O&M costs are lower for compliant SuDS than conventional systems (so no increase in commuted sums paid to local authorities is expected). Some of this benefit may accrue to water and sewerage companies, so could be some distributional impact.
	Adoption	Additional duty/responsibility to maintain, potentially offset by reduced risk from orphaned or abandoned schemes	Cost or benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
	Revenue	Revenue from application/approval fees	Benefit	Recurrent	Yes	Administrative changes expected to be cost neutral, so benefits will be offset by developer costs and no overall net change. However, will be redistributional impact so effects need to be assessed.
	Monitoring & enforcement	All aspects of monitoring and enforcement of SuDS, including appeals and ensuring proper functioning (e.g. porous pavements and soakaways)	Cost	Recurrent	Yes	May be offset by any potential increase in water and sewerage company revenue.
	Asset base	Opportunity cost of foregone increase in asset base, on which companies can earn a return	Cost	Recurrent	No	Any savings to companies would be returned to customers through regulatory process, resulting in no net gain.
Water and sewerage companies	Connection charges	Reduced revenue from surface water connection applications/charges	Cost	Recurrent	No	Under this option, most developments would still connect to the foul/combined public sewer, so it is likely that water and sewerage companies would still need to consent and charge for connections and inspection (although companies could see

						reduction in adoption fees). Any potential impacts therefore not valued.
	Infrastructure	Reduced/deferred future investment need in sewerage infrastructure, reduced O&M costs for conventional sewers (e.g. pumping, treatment) and improved ability to take an integrated approach to urban water systems.	Benefit	Recurrent	No	Already largely captured in construction benefit to developers and O&M benefit to local authorities/SABs
	Monitoring & enforcement	Reduced need for monitoring and enforcement of sewer connections	Benefit	Recurrent	No	Under this option, most developments would still connect to the foul/combined public sewer, so it is likely that water and sewerage companies would still have the same asset base and still need to undertake the same level of inspection, monitoring and enforcement. Any potential impacts therefore not valued.
Property owners/occupiers	Surface water charges	Reduction in charges paid for surface water drainage	Benefit	Recurrent	No	Any reduction in charges paid to water and sewerage company likely to be offset by development management charge, so no overall impact.
	Flood risk	Avoided damage and associated impacts (e.g. on psychological health) from reduced flood risk	Benefit	Recurrent	No	Any benefit should be equal for both SuDS and piped systems (unless standards are higher for properties than for sewers, which is unlikely). Therefore, no net benefit anticipated.
	Amenity	Enhanced attractiveness and liveability of developments	Benefit	Recurrent	Yes	Valued in BeST using estimates of willingness of pay of residents for 'street improvements through greening'. These may capture elements of other benefits to the wider population (particularly biodiversity, health, recreation and water quality), so these are not valued separately due to risk of double counting.
	O&M	Added responsibilities for surface water in curtilage	Cost	Recurrent	No	Unlike pipes, SuDS cannot be ignored and, although this may be perceived as an additional cost/nuisance (at least initially), it could equally be a benefit as there is less likelihood/consequence of problems from SuDS. So overall, no net impact assumed.

	Building temp	Impact of SuDS on cooling (summer) or insulation (winter)	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
	Crime	Reduced crimes against property or people	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
	Traffic calming	Risk of road accidents or street-based recreation opportunities	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
Welsh Government	Infraction	Avoided risk of infraction of water quality related EU directives	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
	Growth	Economic growth	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
	Enabling development	Contribution to affordable housing targets	Benefit	Recurrent	No	Any reduced housing construction costs already counted (under 'developers') and could be offset by possible reduced housing densities (also counted under 'developers')
	Appeals	Costs of establishing and running Planning Inspectorate (PINS) to deal with appeals	Cost	Recurrent	No	PINS work funded by cost recovery on case-by-case basis. No 'set-up' costs or impacts on Welsh Government.
	Wider benefits	Related to WBFG Act goals, including prosperous, resilient, healthier Wales, etc	Benefit	Recurrent	No	Overlaps with impacts on 'general population', so high risk of double counting if included here.
	Rainwater harvesting	Reduced flows, pollution or mains consumption	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
	Tourism	Attractiveness of tourist sites	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
NRW	Regulation	Improved ability to tackle diffuse pollution, surface water flood risk and deliver ecosystem benefits	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
General population	Flood risk	Increased risk of flooding in public areas (e.g. roads) due to exceedance	Cost	Recurrent	No	Likely to be offset by any reduced risk of hydraulic overload flooding resulting from lower volumes in sewerage system
	Biodiversity	New or enhanced habitats and opportunities for wildlife	Benefit	Recurrent	No	Not valued due to potential for double counting with amenity benefit to property owners/occupiers.
	Carbon	Reduction or sequestration of greenhouse gas emissions resulting from reduced pumping/treatment or new/additional planting	Benefit	Recurrent	Yes	Include in RIA
	Education	Increased opportunities for learning and development	Benefit	Recurrent	Yes	Include in RIA
	Climate change	Enhanced ability to mitigate or adapt to the expected impacts of climate change	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.

	Water quantity	Additional surface or groundwater available for abstraction, or to help alleviate drought/water scarcity	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
	Health	Improved health and well-being due to increased/enhanced access and use of green space or, depending on type of SuDS used, improved air quality and temperature regulation (e.g. using green roofs)	Benefit	Recurrent	No	Not valued due to potential for double counting with amenity benefit to property owners/occupiers.
	Recreation	Improved or enhanced recreational opportunities (e.g. walking, fishing, watersports)	Benefit	Recurrent	No	Not valued due to potential for double counting with amenity benefit to property owners/occupiers.
	Water quality	Reduced sewer overflows and natural infiltration of surface water before it enters watercourses, leading to improved or enhanced water quality of surface, ground, transitional or coastal waters, consistent with objectives of Water Framework Directive	Benefit	Recurrent	No	Not valued due to potential for double counting with amenity benefit to property owners/occupiers.

7.19 Table 6 summarises the PV impacts for Option 2. Each valued impact is considered, in turn, below Table 6. The NPV for Option 2 is estimated to be £164.9 million (range £82.6m to £961.4m). It is positive suggesting that the net benefits to society outweigh the net costs to society.

Table 6: Summary table of PV impacts for Option 2 (2018-2026)

Group	Impact	Total PV impact (£ million)		
		Low	Central	High
Developers	Construction	80.3	160.5	955.9
	Fees	- 9.9	- 14.1	- 19.0
	Start-up	- 0.1	- 0.3	- 0.5
	Connection charges	5.6	15.0	27.5
Local authorities/SABs	Start-up	- 0.4	- 0.5	- 0.6
	O&M	- 0.1	0.2	0.3
	Revenue	9.9	14.1	19.0
	Monitoring & enforcement	- 5.0	- 15.3	- 29.9
Property owners/occupiers	Amenity	2.1	4.7	7.5
General population	Carbon	0.1	0.3	0.6
	Education	0.1	0.2	0.6
	TOTAL	82.6	164.9	961.4

7.20 Developers: Construction of SuDS

The annual impact on developers associated with the construction of SuDS is as follows.

Residential

Low: £9,594,000
Central: £19,597,000
High: £117,083,000

Commercial and industrial

Low: £606,000
Central: £785,000
High: £4,315,000

These estimates are based on the information provided in Table 7.

Table 7: Impact on developers: Construction of SuDS

		Value	Units	Source	Assumptions
Quantified estimate of impact (residential)	Low	5,220	New homes per year	Public Policy Institute for Wales (2015) ²³	Assume compliant SuDS currently on 20-40% of new developments, so option applies to additional 60% (low), 70% (central) and 80% (high) of new development ²⁴ .
	Central	10,010		Housing White Paper (2012) ²⁵	
	High	12,946		Information from local development plans provided by WG (March, 2017)	
Monetary value (residential)	Low	1,838	Capex saving per unit £	EPC (2017) ²⁶	Outliers removed
	Central	1,958			Median value
	High	9,044			Mean value
Quantified estimate of impact (commercial & industrial)	Low	330	New developments per year	New industrial and commercial orders for construction 2018-2026 (min) ²⁷	Assume compliant SuDS currently on 20-40% of new developments, so option applies to additional 60% (low), 70% (central) and 80% (high) of new development.
	Central	401		As above (mean)	
	High	477		As above (max)	
Monetary value (commercial & industrial)	Low	1,838	Capex saving per unit £	EPC (2017)	Outliers removed
	Central	1,958			Median value
	High	9,044			Mean value

7.21 Developers: SAB fees

The annual impact on developers associated with SAB fees is as follows.

Low:	- £1,254,000
Central:	- £1,787,000
High:	- £2,409,000

These estimates are based on the information provided in Table 8.

²³ Public Policy Institute for Wales (2015) Future Need and Demand for Housing in Wales

²⁴ The figures in the 'value' column have been adjusted to reflect the assumption (low value multiplied by 0.6, central by 0.7 and high by 0.8).

²⁵ Based on Holmans, A. and Monk, S. (2010) Housing need and demand in Wales 2006–2026. Social Research Number 03/2010. Cardiff: Welsh Government

²⁶ Sustainable Drainage Systems on new developments, Analysis of evidence including costs and benefits of SuDS construction and adoption. Final Report for the Welsh Government, January 2017. This report is based on a comparison of the costs of SuDS and non-SuDS approaches at an overall scheme/development level, rather than the costs of specific or individual measures or technologies. It also encompasses all expected capital costs (e.g. off-site disposal of excavation arisings).

²⁷ ONS, NEWOGOR New Orders for Construction: by Government Office Region (Wales), accessed April 2017

Table 8: Impact on developers: SAB fees

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	2,100	Applications per year	Consultation with local authorities	Average number of applications requiring SAB approval (though recognising that individual local authorities may see significantly fewer or more applications than this average). Low 100, central 125, high 150, across 21 local authorities
	Central	2,625			
	High	3,150			
Monetary value	Low	- 597	Fee per application	Defra (2010)	Original value (£507) updated to 2016 prices
	Central	- 681			Average of low and high
	High	- 765			Original value (£650) updated to 2016 prices

7.22 Developers: start-up

The one-off impact on developers associated with start-up costs is as follows.

Low:	- £76,766
Central:	- £259,593
High:	- £548,472

These estimates are based on the information provided in Table 9.

Table 9: Impact on developers: start-up

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	4,550	Total days	WG analysis of IDBR (see Annex 2)	Number of developers (910) assumed to be those involved in 'Development of building projects'. We assume each developer invests 5 (low), 10 (central) or 15 (high) person-days of transitional, one-off time (for training, skills, etc)
	Central	9,100			
	High	13,650			
Monetary value	Low	- 16.9	Cost per day	Defra (2010)	Annual salary/related costs of staff: Min £30,369 (av salary of civil engineer), max £61,467 (£72,326 in 2016 prices), mean (central) £51,348. Assume
	Central	- 28.5			
	High	- 40.2			

					1,800 days per FTE p.a. (8 hours/day x 5 days/week x 45 weeks/year)
--	--	--	--	--	---

7.23 Developers: connection charges avoided

The annual impact on developers associated with connection charges is as follows.

Low:	£716,000
Central:	£1,905,000
High:	£3,499,000

These estimates are based on the information provided in Table

10. *Table 10: Impact on developers: Connection charges*

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	2,100	Applications per year	Consultation with local authorities	Average number of applications requiring SAB approval (though recognising that individual local authorities may see significantly fewer or more applications than this average). Low 100, central 125, high 150, across 21 ²⁸ local authorities
	Central	2,625			
	High	3,150			
Monetary value	Low	341	Charge per development	Defra (2010), using data from DCWW ²⁹ and SVT ³⁰	Assume each development with compliant SuDS would save one application charge, one sewer connection charge and inspection charge. For DCWW and SVT, these are, respectively: £155 (DCWW) and £114.90 (SVT); £183 (DCWW) and £455.67 (SVT); £43 (DCWW) and £500 (SVT). We take the average of each to generate a central value (£135 + £319 + £272 = £726), and low and high estimates for each to generate low (£341) and high (£1,111).
	Central	726			
	High	1,111			

²⁸ Based on the local authorities listed in Annex 1

²⁹ Developer services schedule of charges 2016-17

³⁰ Developer charges 2015/16

7.24 Local authorities/SABs: start-up

The one-off impact on local authorities/SABs associated with start-up costs is as follows.

Low: - £420,000

Central: - £525,000

High: - £630,000

These estimates are based on the information provided in Table

11. *Table 11: Impact on local authorities/SABs: start-up*

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	21	Number of local authorities	-	-
	Central	21			
	High	21			
Monetary value	Low	- 20,000	Cost per local authority	Consultation with local authorities	Cost of 1 FTE for approx 3 months, plus additional set-up costs (e.g. IT, training)
	Central	- 25,000			
	High	- 30,000			

7.25 Local authorities/SABs: Operation and maintenance of SuDS

The annual impact on local authorities/SABs associated with the operation and maintenance of SuDS is as follows.

Residential

Low: - £13,000

Central: £29,000

High: £38,000

Commercial and industrial

Low: - £813

Central: £1,000

High: £1,000

These estimates are based on the information provided in Table 12.

Table 12: Impact on local authorities/SABs: Operation and maintenance of SuDS

		Value	Units	Source	Assumptions
Quantified estimate of impact (residential)	Low	5,220	New homes per year	Public Policy Institute for Wales (2015)	Assume compliant SuDS currently on 20-40% of new developments, so option applies to additional 60% (low), 70% (central) and 80% (high) of new development.
	Central	10,010		Housing White Paper (2012)	
	High	12,946		Information from local development plans provided by WG (March, 2017)	
Monetary value (residential)	Low	- 2.5	Opex saving per unit £	EPC (2017)	Median value
	Central	2.9			Outliers removed
	High	2.9			Mean value
Quantified estimate of impact (commercial & industrial)	Low	330	New developments per year	New industrial and commercial orders for construction 2018-2026 (min)	Assume compliant SuDS currently on 20-40% of new developments, so option applies to additional 60% (low), 70% (central) and 80% (high) of new development.
	Central	401		As above (mean)	
	High	477		As above (max)	
Monetary value (commercial & industrial)	Low	- 2.5	Opex saving per unit £	EPC (2017)	Median value
	Central	2.9			Outliers removed
	High	2.9			Mean value

7.26 Local authorities/SABs: Revenue from application/approval fees

The annual impact on local authorities/SABs associated with revenue from application/approval fees is as follows.

Low: £1,254,000

Central: £1,787,000

High: £2,409,000

These estimates are based on the information provided in Table 13.

Table 13: Impact on local authorities/SABs: Revenue from application/approval fees

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	2,100	Applications per year	Consultation with local authorities	Average number of applications requiring SAB approval (though recognising that individual local authorities may see significantly fewer or more applications than this average). Low 100, central 125, high 150, across 21 local authorities
	Central	2,625			
	High	3,150			
Monetary value	Low	597	Per application	Defra (2010)	Original value (£507) updated to 2016 prices
	Central	681			Average of low and high
	High	765			Original value (£650) updated to 2016 prices

7.27 Local authorities/SABs: Monitoring and enforcement

The annual impact on local authorities/SABs associated with monitoring and enforcement is as follows.

Low:	- £638,000
Central:	- £1,941,000
High:	- £3,797,000

These estimates are based on the information provided in Table 14.

Table 14: Impact on local authorities/SABs: Monitoring and enforcement

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	21	Total FTEs (full-time equivalents)	Info provided by LAs (4 Apr 2017)	Each of 21 local authorities/SABs in Wales requires 1.8 FTEs (min 1, max 2.5)
	Central	38			
	High	53			
Monetary value	Low	- 30,369	Per FTE	Defra (2010)	Annual salary/related costs of staff: Min £30,369 (av salary of civil engineer), max £61,467 (£72,326 in 2016 prices), mean (central) £51,348.
	Central	- 51,348			
	High	- 72,326			

7.28 Property owners/occupiers: Amenity

The annual impact on property owners/occupiers associated with amenity is as follows.

Low:	£269,000
Central:	£595,000
High:	£955,000

These estimates are based on the information provided in Table 15.

Table 15: Impact on property owners/occupiers: Amenity

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	13,050	Residents	Public Policy Institute for Wales (2015)	Assume compliant SuDS currently on 20-40% of new developments, so option applies to additional 60% (low), 70% (central) and 80% (high) of new development. Assume 2.5 residents per property
	Central	25,025		Housing White Paper (2012)	
	High	32,365		Information from local development plans provided by WG (March, 2017)	
Monetary value	Low	20.64	Per resident per year	BeST	Use values in BeST associated with 'street improvements through greening'
	Central	23.76			
	High	29.52			

7.29 General population: Carbon

The PV impact on the general population associated with carbon is as follows.

Low: £96,000 (1,918 tonnes carbon sequestered)

Central: £336,000 (6,711 tonnes carbon sequestered)

High: £642,000 (12,845 tonnes carbon sequestered)

These estimates are based on the information provided in Table 16.

Table 16: Impact on general population: Carbon

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	6,868	Additional trees	As per previous impacts for residential and commercial & industrial development	Assume additional 1 (low), 2 (central) and 3 (high) medium-sized trees per new home, and 5 (low), 10 (central) and 15 (high) trees per new commercial and industrial development.
	Central	24,030			
	High	45,995			
Monetary value	Low	34	£ per tonne CO2e	Based on values in BeST for non-traded price of carbon (2020) (values vary slightly from 2018 to 2026)	PV calculated automatically in BeST
	Central	67			
	High	101			

7.30 General population: Education

The annual impact on the general population associated with education is as follows.

Low:	£10,000
Central:	£30,000
High:	£73,000

These estimates are based on the information provided in Table 17.

Table 17: Impact on general population: Education

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	600	Student visits per year	-	Assume 2 (low), 5 (central) and 10 (high) schools built with compliant SuDS per year, each leading to additional 300 student visits (10 visits for 30 children each) to see and study SuDS
	Central	1,500			
	High	3,000			
Monetary value	Low	15.94	Value of visit	BeST	Use values in BeST associated with 'value of visit'
	Central	20.16			
	High	24.38			

Option 3: Planning approach

7.31 This option provides an expectation that SuDS will be provided on all minor and major development (more than 1 dwelling or sites larger than 0.1 hectares) wherever this is appropriate and unless demonstrated to be inappropriate. It entails the use of planning conditions or planning obligations to ensure that there are clear arrangements in place for ongoing maintenance over the lifetime of the development where SuDS are used. Where SuDS are not used, current arrangements (e.g. related to O&M) are expected to continue (i.e. no change from the baseline).

7.32 The impacts considered likely under Option 3 are largely the same as those considered likely under Option 2 and included in Table 5. The differences under Option 3 compared with Option 2 are that, under Option 3, we assume:

- There are no start-up costs for SABs or developers;
- There are no SAB-related fees for developers or concurrent revenue for SABs;
- Construction and O&M costs are applicable to 30% (low), 40% (central) and 50% (high) of the developments that would achieve compliant SuDS under Option 2 (i.e. 50-70% of new developments do not include compliant SuDS);

- Additional/reduced connection charges are applicable to 30% (low), 40% (central) and 50% (high) of the developments that would achieve compliant SuDS under Option 2;
- Amenity, carbon and education impacts are applicable to 30% (low), 40% (central) and 50% (high) of the developments that would achieve compliant SuDS under Option 2; and
- There are additional, recurring costs to local authorities/SABs of consultation, planning conditions and funding agreements in relation to surface water drainage on all planning applications. General consultation requirements, and consultation requirements for statutory and other consultees, are expected to be dealt with through standing advice, as with existing planning processes.

7.33 Table 18 summarises the PV impacts for Option 3. Each valued impact is considered, in turn, below Table 18. The NPV for Option 3 is estimated to be £54.3m (range £20.4m to £460.4m). It is positive suggesting that the net benefits to society outweigh the net costs to society.

Table 18: Summary table of PV impacts for Option 3 (2018-26)

Group	Impact	Total PV impact (£ million)		
		Low	Central	High
Developers	Construction	24.1	64.2	477.9
	Connection charges	1.7	6.0	13.8
Local authorities/SABs	Consultation	- 1.0	- 2.8	- 6.0
	O&M	- 0.0	0.1	0.2
	Monitoring & enforcement	- 5.0	- 15.3	- 29.9
Property owners/occupiers	Amenity	0.6	1.9	3.8
General population	Carbon	0.0	0.1	0.3
	Education	0.0	0.1	0.3
	TOTAL	20.4	54.3	460.4

7.34 Developers: Construction of SuDS

The annual impact on developers associated with the construction of SuDS is as follows.

Residential

Low: £2,878,000

Central: £7,839,000

High: £58,541,000

Commercial and industrial
 Low: £182,000
 Central: £314,000
 High: £2,158,000

These estimates are based on the information provided in Table 19.

Table 19: Impact on developers: Construction of SuDS

		Value	Units	Source	Assumptions
Quantified estimate of impact (residential)	Low	1,566	New homes per year	Public Policy Institute for Wales (2015)	Under this option, assume 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS compared to Option 1.
	Central	4,004		Housing White Paper (2012)	
	High	6,473		Information from local development plans provided by WG (March, 2017)	
Monetary value (residential)	Low	1,838	Capex saving per unit £	EPC (2017)	Outliers removed
	Central	1,958			Median value
	High	9,044			Mean value
Quantified estimate of impact (commercial & industrial)	Low	99	New developments per year	New industrial and commercial orders for construction 2018-2026 (min)	Under this option, assume 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS compared to Option 1.
	Central	160		As above (mean)	
	High	239		As above (max)	
Monetary value (commercial & industrial)	Low	1,838	Capex saving per unit £	EPC (2017)	Outliers removed
	Central	1,958			Median value
	High	9,044			Mean value

7.35 Developers: connection charges avoided

The annual impact on developers associated with connection charges is as follows.

Low: £215,000
 Central: £762,000
 High: £1,749,000

These estimates are based on the information provided in Table 20.

Table 20: Impact on developers: Connection charges

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	630	Applications per year	Consultation with local authorities	Average number of applications requiring SAB approval (though recognising that individual local authorities may see significantly fewer or more applications than this average). Low 100, central 125, high 150, across 21 local authorities. Assume 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS
	Central	1,050			
	High	1,575			
Monetary value	Low	341	Charge per development	Defra (2010), using data from DCWW ³¹ and SVT ³²	Assume each development with compliant SuDS would save one application charge, one sewer connection charge and inspection charge. For DCWW and SVT, these are, respectively: £155 (DCWW) and £114.90 (SVT); £183 (DCWW) and £455.67 (SVT); £43 (DCWW) and £500 (SVT). We take the average of each to generate a central value (£135 + £319 + £272 = £726), and low and high estimates for each to generate low (£341) and high (£1,111).
	Central	726			
	High	1,111			

7.36 Local authorities/SABs: consultation

The annual impact on local authorities/SABs associated with consultation is as follows.

Low:	- £128,000
Central:	- £359,000
High:	- £759,000

These estimates are based on the information provided in Table 21.

³¹ Developer services schedule of charges 2016-17

³² Developer charges 2015/16

Table 21: Impact on local authorities/SABs: Consultation

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	4.2	Number of FTEs required	Consultation with local authorities and Defra (2010)	Assume 30% take-up of compliant SuDS. 1 FTE per 150 major and minor drainage applications/year
	Central	7.0			Assume 40% take-up of compliant SuDS. 1 FTE per 150 major and minor drainage applications/year
	High	10.5			Assume 50% take-up of compliant SuDS. 1 FTE per 150 major and minor drainage applications/year
Monetary value	Low	- 30,369	Per FTE	Defra (2010)	Annual salary/related costs of staff: Min £30,369 (av salary of civil engineer), max £61,467 (£72,326 in 2016 prices), mean (central) £51,348.
	Central	- 51,348			
	High	- 72,326			

7.37 Local authorities/SABs: Operation and maintenance of SuDS

The annual impact on local authorities/SABs associated with the operation and maintenance of SuDS is as follows.

Residential

Low:	- £4,000
Central:	£12,000
High:	£19,000

Commercial and industrial

Low:	- £244
Central:	£467
High:	£694

These estimates are based on the information provided in Table 22.

Table 22: Impact on local authorities/SABs: Operation and maintenance of SuDS

		Value	Units	Source	Assumptions
Quantified estimate of impact (residential)	Low	1,566	New homes per year	Public Policy Institute for Wales (2015)	Under this option, assume 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS compared to Option 1.
	Central	4,004		Housing White Paper (2012)	
	High	6,473		Information from local development plans provided by WG (March, 2017)	
Monetary value (residential)	Low	- 2.5	Opex saving per unit £	EPC (2017)	Median value
	Central	2.9			Outliers removed
	High	2.9			Mean value
Quantified estimate of impact (commercial & industrial)	Low	99	New developments per year	New industrial and commercial orders for construction 2018-2026 (min)	Under this option, assume 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS compared to Option 1.
	Central	160		As above (mean)	
	High	239		As above (max)	
Monetary value (commercial & industrial)	Low	- 2.5	Opex saving per unit £	EPC (2017)	Median value
	Central	2.9			Outliers removed
	High	2.9			Mean value

7.38 Local authorities/SABs: Monitoring and enforcement

The annual impact on local authorities/SABs associated with monitoring and enforcement is as follows.

Low: - £638,000
Central: - £1,941,000
High: - £3,797,000

These estimates are based on the information provided in Table 23.

Table 23: Impact on local authorities/SABs: Monitoring and enforcement

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	21	Total FTEs (full-time equivalents)	Info provided by LAs (4 Apr 2017)	Each of 21 local authorities/SABs in Wales requires 1.8 FTEs (min 1, max 2.5)
	Central	38			
	High	53			
Monetary value	Low	- 30,369	Per FTE	Defra (2010)	Annual salary/related costs of staff: Min £30,369 (av salary of civil engineer), max £61,467 (£72,326 in 2016 prices), mean (central) £51,348.
	Central	- 51,348			
	High	- 72,326			

7.39 Property owners/occupiers: Amenity

The annual impact on property owners/occupiers associated with amenity is as follows.

Low:	£81,000
Central:	£238,000
High:	£478,000

These estimates are based on the information provided in Table 24.

Table 24: Impact on property owners/occupiers: Amenity

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	3,915	Residents	Public Policy Institute for Wales (2015)	Assume 2.5 residents per property. Under this option, assume 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS compared to Option 1.
	Central	10,010		Housing White Paper (2012)	
	High	16,182		Information from local development plans provided by WG (March, 2017)	
Monetary value	Low	20.64	Per resident per year	BeST	Use values in BeST associated with 'street improvements through greening'
	Central	23.76			
	High	29.52			

7.40 General population: Carbon

The PV impact on the general population associated with carbon is as follows.

Low:	£29,000 (575 tonnes carbon sequestered)
Central:	£134,000 (2,684 tonnes carbon sequestered)
High:	£321,000 (6,422 tonnes carbon sequestered)

These estimates are based on the information provided in Table

25. Table 25: Impact on general population: Carbon

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	2,060	Additional trees	As per previous impacts for residential and commercial & industrial development	Assume additional 1 (low), 2 (central) and 3 (high) medium-sized trees per new home, and 5 (low), 10 (central) and 15 (high) trees per new commercial and industrial development. Under this option, assume 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS compared to Option 1.
	Central	9,612			
	High	22,997			
Monetary value	Low	34	£ per tonne CO2e	Based on values in BeST for non-traded price of carbon (2020) (values varies slightly from 2018 to 2026)	PV calculated automatically in BeST
	Central	67			
	High	101			

7.41 General population: Education

The annual impact on the general population associated with education is as follows.

Low:	£3,000
Central:	£12,000
High:	£37,000

These estimates are based on the information provided in Table 26.

Table 26: Impact on general population: Education

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	180	Student visits per year	-	Assume additional visits based on 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS compared to Option 1.
	Central	600			
	High	1,500			
Monetary value	Low	15.94	Value of visit	BeST	Use values in BeST associated with 'value of visit'
	Central	20.16			
	High	24.38			

Non-monetised impacts

7.42 A number of potential impacts have not been valued, largely due to difficulties in quantifying/monetising the possible change with any certainty, and the risk of double counting with other (valued) impacts. These non-monetised impacts would be more likely to be positive impacts (benefits) than negative. Furthermore none of the negative impacts (if they could be monetised) would be expected to be significant enough to overturn the net benefit identified above. These include:

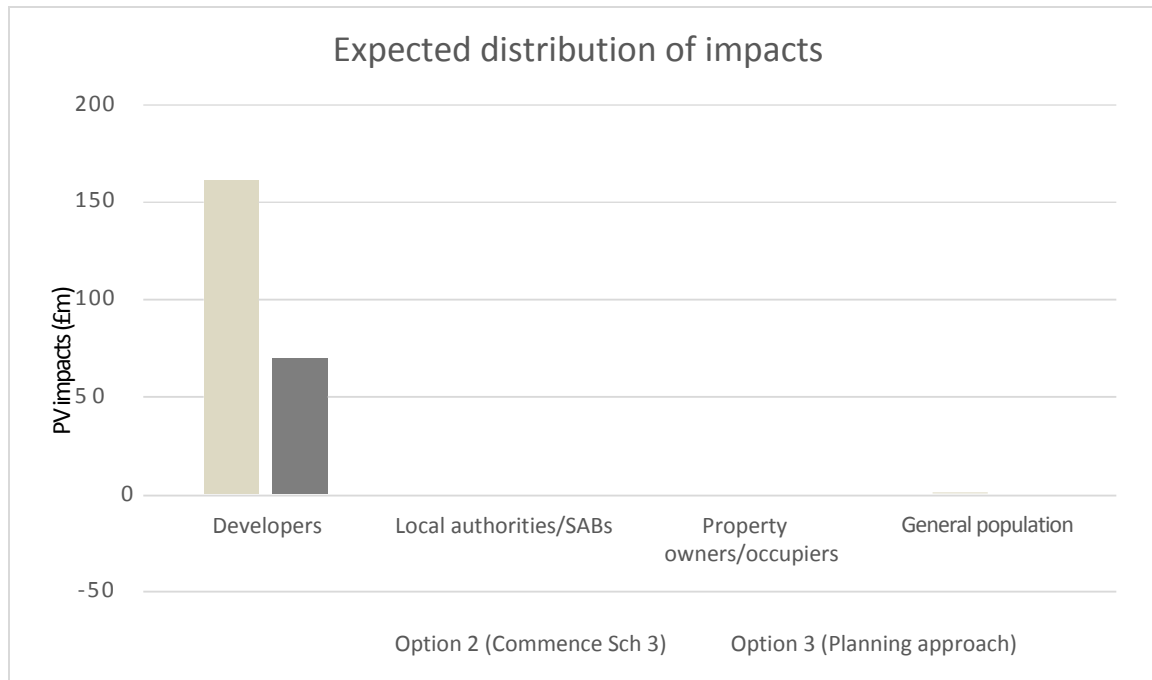
- Potential impacts on water and sewerage companies, e.g. reduced revenue from surface water connection applications/charges (a transfer from developers to the water and sewerage companies), or the reduced need for monitoring and enforcement of sewer connections. This is because, even under the policy changes considered, most developments would still connect to the foul/combined public sewer. It is therefore likely that companies would still need to consent and charge for connections and inspection, and would still have the same asset base and need to undertake the same level of inspection, monitoring and enforcement.
- Certainty of adoption for developers, leading to efficiencies in planning process and development, as well as reduced/simplified interaction with a complex array of interests, including the WaSC, Planning Authority, Highways Authority and NRW;
- Reduced risk to local authorities from orphaned or abandoned schemes;
- General consultation requirements, and consultation requirements for statutory and other consultees. These are expected to be dealt with through standing advice, as with existing planning processes.
- Avoided risk of infraction of water quality related EU directives;
- Economic growth;
- Biodiversity - new or enhanced habitats and opportunities for wildlife;
- Enhanced ability to mitigate or adapt to the expected impacts of climate change;

- Additional surface or groundwater available for abstraction, or to help alleviate drought/water scarcity;
- Improved health and well-being due to increased/enhanced access and use of green space or, depending on type of SuDS used, improved air quality and temperature regulation (e.g. using green roofs). Where assessed, the benefits to health from SuDS and green infrastructure can be substantial, to the extent that they may dominate financial benefits;
- Improved or enhanced recreational opportunities (e.g. walking, fishing, watersports); and
- Reduced sewer overflows and natural infiltration of surface water before it enters watercourses, leading to improved or enhanced water quality of surface, ground, transitional or coastal waters, consistent with objectives of Water Framework Directive.

Summary of costs and benefits

- 7.43 Option 2 is the preferred option. The NPV (net present value) for Option 2 is estimated to be £164.9m (range £82.6m to £961.4m). It is positive suggesting that the net benefits to society outweigh the net costs to society. The NPV for Option 1 is zero, and the NPV for Option 3 is estimated to be £54.3m, i.e. around one-third of the benefits of the preferred option and lacking the security of outcomes of Option 2.
- 7.44 Sensitivity analysis has been applied to these results by adjusting two of the key parameters used in the appraisal, the timeframe for the appraisal period and the discount rate. As indicated in table 19 construction cost savings are identified as the main financial / quantified benefit, but even if construction costs were found to be neutral there would still be a net benefit from the proposal and wider unquantified benefits.
- 7.45 Extending the appraisal by 10 years (so that it becomes from 2018 to 2035) results in an increase in NPV for Option 2 to £286.8m (central estimate), an increase of 74%. The NPV for Option 3 increases to £94.2m, a similar percentage increase. This provides an even stronger justification for the preferred option.
- 7.46 Reducing the discount rate from 3.5% to 2% increases the NPV for Option 2 to £174.4m and for Option 3 to £57.4m. Increasing the discount rate to 5% decreases the NPV for Option 2 to £156.3m and for Option 3 to £51.5m, i.e. the impact is marginal and the relative situation does not change. Option 2 is still strongly preferred.
- 7.47 As indicated in Table 5, sensitivity analysis has also been applied to the potential impact of SuDS on land take. This is based on an additional cost to developers of £900 (low), £1,200 (central) or £1,500 (high) per dwelling. This results in a significant decrease in NPV for Option 2 to £70.0m, and for Option 3 to £10.5m (central estimates). However, the NPV is still positive in all cases and Option 2 remains the strongly preferred option.
- 7.48 The expected distribution of impacts across the key groups considered is shown in Figure 1. This suggests that developers are expected to benefit significantly

(especially under Option 2), primarily due to reduced construction costs. Local authorities may incur a small net cost (slightly larger under Option 3), largely due to the impact of additional monitoring and enforcement. The overall monetised impacts to property owners/occupiers and the general population are expected to be relatively modest, albeit positive and significant. The benefits to these groups are expected to be larger under Option 2. In short, all impacted groups are expected to be better off under Option 2 than they would be under Option 3.



8. Summary of responses to consultations and the Government response

First consultation

- 8.1 The Welsh Government consulted on the proposed approach for delivering effective SuDS on new developments, for 12 weeks starting on 19 May 2017. There were 43 responses to the consultation, the largest proportion of which were from local authorities. Other responses included non-governmental organisations, professional and industry representative bodies, consultants, utilities, trade bodies and individuals.
- 8.2 The summary of responses to the consultation and the Government response is available at <https://beta.gov.wales/implementation-sustainable-drainage-systems-new-developments>. An outline in respect of key proposals is provided below:

Commence Schedule 3 of the 2010 Act for sustainable drainage:

- 8.3 Overall there was strong support for implementing Schedule 3 of the 2010 Act . The majority (64%) of those who responded supported our proposal to commence Schedule 3. A number of local authority responses conveyed a sense of urgency and a need to provide clarity and certainty for surface water management for new developments for both developers and local authorities. The single industry response expressed concern over potential land take for SuDS and disagreed with assumptions in the impact assessment. In the Government response we noted that the industry response did not provide any Welsh supporting evidence and that it focussed largely on the approach in England, which contrasts substantially to the proposals for Wales. Sewage utilities expressed support but were concerned that they would potentially lose control over connections to their networks.
- 8.4 Following the consultation we further engaged industry and amended the RIA to take into account additional evidence provided by developers on land take.
- 8.5 We have also met sewerage undertakers on the issue of control over connections to their networks. Schedule 3 to the 2010 Act, once commenced will make the right to connect surface water to the public sewer network conditional on receiving approval from the SAB. The sewerage undertaker will be a statutory consultee in the SuDS approval process which will enable the sewerage undertaker to ensure suitable measures to protect the sewerage network are communicated to the SAB. We will monitor this matter closely as Schedule 3 is implemented and will seek evidence from the undertakers to inform the post implementation review (see paragraph 11). Ultimately, sewerage undertakers will benefit from the significant reduction in flows afforded by surface water systems for new and redeveloped sites approved and built to the SuDS Standards.
- 8.6 Taking into account the overall strong support for implementing Schedule 3 to the 2010 Act, the Government response to the consultation outlined our intention to move forward with a second stage consultation to further engage stakeholders on the draft statutory instruments needed for its implementation.

The body appointed to approve and adopt SuDS (the SAB):

- 8.7 Under Schedule 3 to the 2010 Act, the local authority becomes responsible for the duties of the SAB. Over half of all local authority responses indicated the local authority is best placed to undertake the SAB function. Most saw the benefit of taking responsibility for the SAB role, citing close links to their Lead Local Flood Authority (LLFA) Role, planning responsibilities and highways function. However a significant proportion expressed concerns over funding, staff skills and implementation costs. A number felt our impact assessment had not adequately represented this.
- 8.8 We have continued to develop the RIA in close consultation with the SuDS Advisory Group, which is representative of key stakeholders including the Welsh Local Government Association, local authorities, developers, water utilities and other regulators. In the Government response we outlined our approach to engaging further with the Advisory Group and more widely with local authorities during the second stage consultation to improve the evidence base on their resource and support needs and costs. The estimates in the final RIA have since been adjusted to reflect the additional input, although the overall findings and conclusions in the RIA do not change as a result.
- 8.9 Our approach enables the SAB to fully recover costs incurred in undertaking its approval and inspection functions. The fee rate set in the regulations has been developed through the first and second consultations and in working closely with the SuDS Advisory Group. Setting a national fee rate was broadly welcomed in consultation responses as it was felt this would provide consistency for developers and ensure fairness and transparency. There was also support for our proposal that the application of fees by SABs should be subject to reporting and review. Going forward with implementation we shall be working closely with SABs to gather information needed to report initially on an annual basis.
- 8.10 We have also developed a guidance and training package to support local authorities with implementing Schedule 3 to the 2010 Act. This work has been informed by the SuDS Advisory Group, responses received during consultation and through a series of workshops held during the second consultation. We have continued to work closely with stakeholders to ensure the package meets the needs of local authorities and is available before regulations come into effect.

The requirement for SAB approval:

- 8.11 Schedule 3, once commenced will require drainage systems for managing surface water for new developments of more than 1 dwelling or of an area equal to or larger than 100 square meters to be approved by the SAB before construction begins.
- 8.12 Over half of those responding agreed with our proposal to exempt three specific types of development from the requirement for SAB approval:
- Trunk roads and motorways managed by the Welsh Government in Wales,
 - Construction work carried out by Natural Resources Wales as the internal drainage board in exercise of its functions under the Land Drainage Act 1991, and
 - Construction of a railway.

- 8.13 A number of responses highlighted the cumulative impact of small scale developments and wanted clarity on the interface with permitted development rights and the status of single domestic dwellings. The Government response to the consultation outlined our approach to engage further on whether exemptions should include single domestic dwellings and works carried out by LLFAs. We also clarified our intention that exceptions from the requirement for approval would not extend to permitted developments exceeding 100 square meters, which addresses concerns that multiple benefits of SuDS may not otherwise be realised for larger scale permitted development.
- 8.14 Most responders agreed that time-limits for when the SAB must determine applications for approval should be set. A number of responses highlighted the issue of adequate resources for the SAB to deliver these timescales and the links and potential impact on planning processes. The Government response outlined our approach to include time-limits in the statutory instruments, which were the subject of our second consultation. Our response also clarified that SAB approval may be sought entirely separately from planning permission and that the time-limits are aimed at ensuring the SuDS approval process does not impact on overall development time-scales. Information on this is also provided in the guidance we have developed with the WLGA and local authorities.

Mandatory National SuDS Standards:

- 8.15 Schedule 3 to the 2010 Act, requires the Welsh Ministers to publish mandatory National SuDS Standards for the design, construction, operation and maintenance of SuDS. In the consultation response, those with experience of the planning system and the current interim SuDS Standards (published as voluntary National SuDS Standards in January 2016) reported they were not being used due to their voluntary status and they needed statutory status to be effective. There was consensus that the interim SuDS standards if made mandatory could deliver sustainable and affordable surface water management. An overwhelming majority (81%) of those responding agreed with the principles in the interim SuDS Standards and expressed support for implementing mandatory SuDS standard so the principles become a statutory requirement for new developments.

Second consultation

- 8.16 The Welsh Government undertook a further consultation for 12 weeks starting on 16 November 2017 on the draft statutory instruments and National SuDS Standards needed to implement Schedule 3. There were 42 responses to this consultation. Most responses were again from local authorities and a good spread of responses was also received from non-governmental organisations, professional and industry representative bodies, consultants, utilities, trade bodies and individuals.
- 8.17 The summary of responses to the consultation and the Government response is available at <https://beta.gov.wales/implementation-sustainable-drainage-systems-new-developments-draft-regulations-and-national>. An outline in respect of key proposals is provided below:

Commence Schedule 3 of the 2010 Act in May 2018 and bring forward the statutory instruments needed for its implementation:

- 8.18 The majority who responded agreed our proposed timescale for commencing Schedule 3 was reasonable. Many of the local authorities suggested implementation six months after the statutory instruments are laid would allow adequate time to establish the SAB and new approval processes. A number suggested a longer period and highlighted issues relating to training and support for implementation. Some statutory consultees expressed concern about workloads. Developers wanted all related information and guidance to be published before commencement.
- 8.19 In the Government response to the consultation we confirm our aim to commence Schedule 3 in May 2018 and lay related statutory instruments so that these come into effect in January 2019. This takes into account the time local authorities have indicated is needed to prepare for implementation.
- 8.20 Views were also sought on transitional arrangements for the implementation of the new requirement for SAB approval. The proposed arrangements have been widened in response to the consultation to support our objective that we do not adversely impact on planned development. The regulations now provide that SAB approval will not be required for any development for which there is an existing planning permission or for which a valid application has been made before the SuDS requirement comes into force. With the exception of single dwellings and sites with a construction area equal to or larger than 100 square meters, all new planning applications made following the coming into force date will require SAB approval.

Exemptions from the requirement for SAB approval:

- 8.21 Views were sought on whether LLFAs should be exempt from the requirement for SAB approval. However no clear evidence was provided to support the need for such an exemption and those opposed to an exemption cited transparency and accuracy as important factors. We have therefore decided against exempting LLFAs at this stage. We will invite any new evidence to be submitted to inform the post implementation review.
- 8.22 Further views have also been sought on the proposed exemption of single domestic dwellings from the requirement for SAB approval. Taking into account input from the SuDS Advisory Group and other stakeholders at the series of workshops held during the second consultation period we have included in regulations the exemption for single domestic dwellings. This addresses concerns some local authorities raised in relation to developing capacity to deal with SuDS approval for single domestic dwellings.

Enforcement and appeals regime:

8.23 The majority of responses agreed SAB enforcement powers should be given to both the SAB and the local planning authority (LPA). This will enable the SAB and the LPA to deal more efficiently with enforcement action in circumstances where this concerns both SuDS and planning applications. This proposal has therefore been included in regulations.

8.24 There was clear support for the proposed framework powers for SAB enforcement which include:

- powers of entry,
- a four year time-limit on when the SAB is able to issue an enforcement notice,
- provisions for compensation to be sought by the developer or other person where a loss is suffered as a result of the SAB exercising its powers for entry and stop notices, and
- the duty on the SAB to maintain a register of SuDS enforcement notices.

The majority of responses agreed our proposed regulations are proportionate and align with requirements under similar regimes. We have therefore included these provisions in regulations.

8.25 There is an increased risk of flooding and water pollution in the event of a development not complying with the law. Most responders did not answer our question about the proposed non-criminal sanctions and criminal sanctions which we believe are necessary for encouraging compliance. Those that did answer largely agreed the proposals were appropriate and proportionate and in line with those used for planning enforcement. The proposed intervention powers have therefore been included in regulations.

8.26 There was clear support for the proposed right to appeal against SAB decisions with most responders welcoming the proposed appeal processes which align closely with those in place for planning. We have therefore included the proposed provisions in regulations.

SAB adoption duty and administrative processes:

8.27 In Schedule 3 to the 2010 Act, SuDS that serve properties within a single curtilage are excluded from the SAB adoption duty. The majority of responders agreed with our proposed definition of a single property drainage system which will help determine the types of development that will be exempt from the duty to adopt. However many responses mistakenly conflated this adoption exemption with the SAB approval process, it is therefore evident that further clarity is needed, which we will provide in guidance.

8.28 The proposed four week time-limit for the SAB to complete administrative processes including returning any non-performance bond to the developer was also somewhat misunderstood. We will be making it clear in guidance that the four week time-limit only takes effect from the date when the SAB conditions of

approval are met; this may include an appropriate time period for the effectiveness of the drainage system to be proven (known as the defect period).

Statutory works:

8.29 Those who commented on our proposals in relation to works undertaken by statutory undertakers provided useful information which we have taken into account as follows;

- Telecommunications has been added to the list in regulations to safeguard SuDS on public land owned by local authorities in respect of work undertaken by statutory undertakers.
- We have decided at this stage to include in regulations the proposed four weeks timeframe within which statutory undertakers must notify the SAB of works that may affect the SuDS operation. Going forward we will monitor the situation which will include inviting evidence to be submitted to inform the post implementation review.
- We have amended the timescale in regulations to allow a three year period for the SAB to determine if it is satisfied that the SuDS reinstated following works by a statutory undertaker functions in accordance with the SuDS Standards. This aligns with similar provisions under highway legislation.

Consultation workshops

8.30 A series of consultation workshops were held across Wales in February 2018, around 120 people attended in total from local government (60%), civil engineering and consultants, water industry, the construction sector, design/planning consultancies, environmental NGOs and regulators. Although invited, no one from the agriculture industry attended.

8.31 A full report of the workshops is available from the Welsh Government on request. In summary the following themes which have informed our approach to implementation were discussed:

- Cost impacts for local authorities and developers,
- The importance of communicating the new process,
- Training and the need for skilled staff,
- The need for consistency across SABs,
- Dealing with single properties for approvals and adoption,
- Links with the planning process and its distinction from the SAB role, a technical approval process which is independent of planning, and
- Guidance and information requirements for SABs

9. Competition Assessment

9.1 Expected impacts on competition are set out in Table 27 below.

Table 27: Competition filter test

Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	Yes

9.2 The regulation is likely to create a shift away from the use of underground proprietary SuDS products, and more traditional engineering-based drainage solutions, towards novel, greener above-ground solutions and products. However, the analysis presented here suggests that this move is likely to result in lower costs for developers, their supply chains and others. In addition, no restrictions on the type or price of existing or new products associated with the regulation are foreseen or expected.

9.3 In summary, the regulation is unlikely to have a significant detrimental effect on competition.

10. Specific impact assessments

Small Firms Impact Test

10.1 The start-up costs for developers are based on an estimate of 5 (low), 10 (central) or 15 (high) person-days of transitional, one-off time (for training, skills, etc). The start-up costs for local authorities/SABs are based on the cost of 1 FTE for approximately 3 months, plus additional set-up costs (e.g. IT, training). These costs are likely to have a larger impact on smaller firms or local authorities with fewer employees than a larger organisation.

10.2 However, the analysis presented here suggests that any additional costs will be more than offset by reduced construction costs and other impacts.

Greenhouse Gas Assessment

10.3 The preferred option is likely to provide benefits in terms of both climate change adaptation and mitigation. The analysis presented here suggests that between 1.9 and 12.8 thousand tonnes of carbon could be sequestered under the preferred option over the eight year period analysed, although this benefit would continue beyond this period.

Wider Environmental Issues Impact Test

10.4 As highlighted in the analysis and the non-monetised section above, the increased use of good quality compliant SuDS under the preferred option is likely to have a number of positive environmental impacts, including supporting localised biodiversity, reducing air pollution and improving the quality of water.

10.5 Evidence of the potential multiple and wide ranging benefits of SuDS is further illustrated in the EPC report. Overall the findings indicate use of SuDS on new developments in Wales is variable in quality and performance. There is currently a preponderance of ‘hard’ SuDS (largely comprising underground measures and attenuation ponds), with fewer ‘landscaped’ (vegetated) SuDS that can potentially deliver multiple benefits, including enhanced biodiversity.

10.6 Potential benefits of good quality SuDS are similarly emphasised in SuDS guidance “Maximising the potential for people and wildlife” (RSPB and WWT, 2012)³³. This concludes that, where SuDS are designed to integrate surface water management and water quality improvements with people and wildlife, they have the potential to:

- manage volume and flow rates of run-off to reduce the downstream flow and destructive power of surface water, and reduce the risk of flooding,
- improve water quality by reducing pollution locally and downstream in streams, rivers and estuaries,
- encourage natural groundwater recharge to help maintain river and stream flows in periods of dry weather, and support wetlands in the wider landscape,
- protect and enhance water quality and provide significant opportunities for wetland habitat creation,
- support the well-being of people and communities and increase the amenity value of developed land, and
- increase evapotranspiration and climate regulation in urban areas.

10.7 Numerous studies highlight key concerns about the significant effects of entrapment in conventional drainage of wildlife. A recent survey³⁴ in a single local authority area found these “*number in the hundreds over the course of a single year*”, posing a key risk to amphibians and small mammals, some of which are protected species. In conclusion the study recommended that the implementation of good quality SuDS designed for wildlife, as well as for flood risk, is undertaken.

³³ https://www.rspb.org.uk/Images/SuDS_report_final_tcm9-338064.pdf

³⁴ PKC SuDS Biodiversity Review and Report, A Study of Mitigation, Tayside Biodiversity Partnership, August 2015

Also that the requirement for SuDS on new developments has the potential to provide a valuable new resource to halt the recent global amphibian declines associated with habitat loss.

Health and Well-being Impact Test

10.8 As highlighted in the non-monetised section above, the increased use of SuDS under the preferred option is likely to have a number of positive impacts on health and well-being. Due to the risk of double counting (particularly with amenity benefits to property owners/occupiers), these impacts have not been monetised, though they could be very substantial.

Further, the Natural Resource Policy (2017) for Wales states that “increasing access to green spaces and providing community facilities to bring people together is highlighted as a ‘best buy’ to prevent mental ill health and improving mental well-being by Public Health Wales. The World Health Organisation suggests that public health approaches with health, social, economic and environmental benefits, such as safe green spaces and active transport, have been shown to be cost-effective with potential returns on investment. Studies also suggest that people living closer to good-quality green space are more likely to have higher levels of physical activity, and are more likely to use it and more frequently”.

By helping to adapt to flooding, extreme weather events and climate change, SuDS can reduce risks to public health and associated burdens upon health services³⁵. Further, where opportune, SUDS schemes should include or link with initiatives with other population health benefits e.g. including the creation of greener, cleaner and tranquil spaces, to mitigate population exposure to environmental noise³⁶, air pollution and any potential for a respite location during heat-waves.

Human Rights Impact Test

10.9 It is envisaged that the preferred option will have no impact on human rights.

Justice Impact Test

10.10 It is envisaged that the preferred option will have no impact on the justice system.

Rural Proofing Impact Test

³⁵ UK Climate Change Risk Assessment 2017: Evidence Report Summary for Wales
<https://www.theccc.org.uk/wp-content/uploads/2016/07/UK-CCRA-2017-Wales-National-Summary.pdf>

PB5: Risks to people, communities and buildings from flooding

<http://gov.wales/docs/desh/publications/131217noise-action-plan-for-wales-en.pdf>

³⁶ A noise action plan for Wales 2013–2018 December 2013

<http://gov.wales/topics/environmentcountryside/epq/noiseandnuisance/environmentalnoise/noisemonitoring/mapping/noise-action-plan/?lang=en>

10.11 The preferred policy option is to make the use of SuDS mandatory for all new developments. There are no specific impacts on rural communities, the requirement for SAB approval will apply in both urban and rural areas for all minor and major development of more than a single dwelling and construction area equal to or larger than 100 square metres.

10.12 In response to our second consultation we have considered in earnest whether agricultural developments should be exempt from the requirement for SAB approval. Research indicates there is potential for industrial developments to benefit from effective SuDS. The opportunities for industrial developments are illustrated alongside other categories of development in evidence and case studies in the EPC³⁷ report. In particular the analysis shows good quality compliant SuDS can:

- Reduce contamination of groundwater sources used to provide drinking water,
- Improve water quality by reducing pollution locally and downstream in streams, rivers and estuaries,
- Manage flow rates to reduce the destructive power of surface water,
- Reduce sediment load in runoff,
- Reduce the risk of flooding,
- Save energy for heating and cooling by shading buildings, lowering summertime temperature, providing insulation in winter and reducing wind speeds,
- Contribute to reduced or sequestered greenhouse gas emissions.

It is our aim to keep exemptions from the requirement for SAB approval to a minimum in order to maximise the potential opportunities SuDS can deliver for all new developments.

Sustainable Development Impact Test

10.13 The preferred option supports and is fully consistent with the principles of sustainable development and will contribute to a more sustainable Wales.

10.14 Future generations are expected to benefit significantly from the preferred option.

10.15 It fully reflects the following principles which underpin the sustainable development principle in the Well-being of Future Generations (Wales) Act 2015:

- **Long-term thinking:** ensuring a greater emphasis on long-term outcomes, the proposed policy to make mandatory the requirement for sustainable drainage on new developments fully reflects the need to protect and enhance the environment for present and future generations. A principle of the national standards is to ensure that the design of the SuDS take account of the likely impacts of climate change. Adapting to a changing climate is an important safeguard of lives and property over the long-term.

³⁷ <https://gov.wales/docs/desh/publications/170209-suds-evidence-epc-final-report-en.pdf>

- **Integration:** the evidence suggests good quality, SuDS compliant with the national standards may have multiple benefits, integrating:
 - Social issues, SuDS may result in increased amenity through enhanced attractiveness and liveability of developments, improved or enhanced recreational opportunities, increased educational opportunities for learning and development.
 - Environmental issues, evidence suggests SuDS may contribute to reduced or sequestered greenhouse gas emissions and positive impacts on water quality, new or enhanced opportunities for habitat and wildlife.
 - Economic issues, through balancing positive impacts of SuDS in the community, for developers and householders, against the marginal increase in costs for Local Authorities for undertaking enforcement and monitoring.
- **Working across organisational boundaries:** the preferred option has been developed with the involvement of government, private and voluntary organisations and individuals who are representative of stakeholders in the sector.
- **Focusing on prevention:** the preferred option focuses on implementing good quality sustainable drainage. It is envisaged this will have positive impacts, ranging from climate change mitigation to improved health and well-being and protecting habits and wildlife.
- **Engagement and involvement:** Implementation of Schedule 3 of the 2010 Act continues to be informed by an advisory group representing a wide range of stakeholders in the sector.

Welsh Language

10.16 It is not envisaged that the preferred option will have any impact on the Welsh language.

Statutory Equality Duties Impact Test

10.17 It is envisaged that preferred option will have no impact on statutory equality duties.

11. Post Implementation Review

11.1 The Welsh Government will undertake a review of the usage of these regulations. In particular we will ask the SAB and other stakeholders to assess the effectiveness of these regulations; this will include inviting evidence to be submitted on key aspects of the regulations. We will also ask the SAB to provide information to the Welsh Government on the application of fees which will inform a review by the Welsh Government of the level of fees.

11.2 It is our intention to conduct the review at least two years following the date when the regulations come into effect. This is to ensure sufficient evidence is available to inform the review.

Annex 1: Housing development

Residential							
	Local authority	Date of adoption of LDP	LDP Period	Housing allocations	Delivery since start of plan to April 2016	Estimated new homes to end LDP period	Estimated new homes per year
South Wales							
1	Caerphilly	Nov-10	2006-2021	8,625	4,239	4,386	877
2	Rhondda Cynon Taf	Mar-11	2006-2021	14,385	4,645	9,740	1,948
3	Merthyr Tydfil	May-11	2006-2021	3964	1580	2,384	477
4	Blaenau Gwent	Nov-12	2006-2021	3,500	1,084	2,416	483
5	Bridgend	Sep-13	2006-2021	9,690	4,589	5,101	1,020
6	Torfaen	Dec-13	2006-2021	3,897	1888	2,009	402
7	Monmouthshire	Feb-14	2011-2021	4,500	1,265	3,235	647
8	Newport	Jan-15	2011-2026	10,350	2,697	7,653	765
9	Cardiff	Jan-16	2006-2026	41,415	13,585	27,830	2,783
10	Vale of Glamorgan	Expected 2017	2011-2026	9,460	1,358	8,102	810
West Wales							
11	Swansea	Expected 2018	2010-2025			0	-
12	Carmarthenshire	Dec-14	2006-2021	13,352	5,606	7746	1,549
13	Ceredigion	Apr-13	2007-2022	6,000	1,745	4255	709
14	Neath Port Talbot	Jan-16	2011-2026	7,800	1,501	7798	780
15	Powys	Expected 2017/18	2011-2016			0	-
16	Pembrokeshire	Feb-13	2011-2021	5,724	2,052	3672	734
North Wales							
17	Flintshire	Expected 2019	2015-2030			0	-
18	Denbighshire	Jun-13	2006-2021	7,000	2,227	4773	955
19	Wrexham	Expected 2018	2013-2028			0	-
20	Conway	Oct-13	2007-2022	6,520	2,274	4246	708
21	Gwynedd/Anglesey	Expected 2017				0	-
National Parks							
	Brecon Beacons	Dec-13	2007-2022	2,045	526	1,519	253
	Pembrokeshire CNP	Sep-10	2006-	1,600	485	1,115	223

			2021				
	Snowdonia	Jul-11	2007-2022	800	448	352	59
	TOTALS			160,627	52,295	108,332	16,182

The Principal Projection of Additional Homes Required by period

		2011-2031	per year
Total New Dwellings Required	%	174000	8,700
Market sector	63	109000	5,500
Social sector	37	65000	3,300
Source			

Public Policy Institute for Wales (2015) Future Need and Demand for Housing in Wales

The Principal Projection of Additional Homes Required by period

	per year
Total New Dwellings Required	14,300
Market sector	9,200
Social sector	5,100

Housing White Paper (2012) - most recent published strategy

Based on Holmans, A. and Monk, S. (2010) Housing need and demand in Wales 2006–2026. Social Research Number 03/2010. Cardiff: Welsh Government

Annex 2: Commercial and industrial development

		Industrial	Commercial
Actual	2010	74	528
	2011	73	359
	2012	82	462
	2013	73	562
	2014	116	360
	2015	180	337
	2016	105	555
Projections	2017	111	455
	2018	117	454
	2019	126	432
	2020	128	447
	2021	117	469
	2022	120	451
	2023	122	451
	2024	122	450
	2025	122	453
	2026	121	455
	Source	ONS, NEWOGOR New Orders for Construction: by Government Office Region (Wales), accessed April 2017	
	Notes	New orders in the construction industry estimates are a short-term indicator of construction contracts for new construction work awarded to main contractors by clients in both the public and private sectors within the UK. The estimates are produced and published both seasonally and non-seasonally adjusted at current prices (including inflationary price effects) and at constant prices (with inflationary effects removed). Since quarter 2 (Apr to Jun) 2013 these data have been supplied by Barbour ABI.	
		Projections based on average over previous 5 years	

Figures for RIA

Commercial	Industrial	
Estimated new developments per year		
117	432	Low
122	451	Central
128	469	High

Annex 3: Developers in Wales

Description	SIC Wales	Employee Sizeband	Enterprises	Total
Development of building projects	41100	0	585	910
	41100	1-4	245	
	41100	5-9	45	
	41100	10-19	25	
	41100	20 - 49	10	
	41100	50 - 99	0	
	41100	100 - 199	0	
	41101	200 - 249	0	
	41102	250 - 499	0	
	41103	500 - 999	0	
	41104	1,000 +	0	
Construction of commercial buildings	41201	0	205	590
	41201	1-4	290	
	41201	5-9	65	
	41201	10-19	15	
	41201	20 - 49	10	
	41201	50 - 99	5	
	41201	100 - 199	0	
	41201	200 - 249	0	
	41201	250 - 499	0	
	41201	500 - 999	0	
	41201	1,000 +	0	
Construction of domestic buildings	41202	0	550	1570
	41202	1-4	710	
	41202	5-9	160	
	41202	10-19	70	
	41202	20 - 49	40	
	41202	50 - 99	20	
	41202	100 - 199	10	
	41202	200 - 249	0	
	41202	250 - 499	0	
	41202	500 - 999	0	
	41202	1,000 +	10	

Source: WG analysis of IDBR (Inter-Departmental Business Register), ONS

Notes: Figures include a small number of enterprises where the headquarters is outside Wales but have economic activity inside Wales. Figures are rounded to the nearest five (so zeros may not be true zeros), are for 2016 and sourced from the IDBR (ONS). The SIC code used is based on the Welsh part of the business.

SL(5)267 - Rheoliadau Meysydd Tref a Phentref (Datganiadau Perchnogion Tir) (Cymru) (Rhif 2) 2018

Cefndir a Diben

Caniateir i dir gael i gofrestru fel maes tref neu bentref o dan yr amgylchiadau a bennir yn adran 15 o Ddeddf Tiroedd Comin 2006 ("Deddf 2006"). Un o nodweddion pob un o'r amgylchiadau hynny yw bod rhaid bod nifer sylweddol o drigolion unrhyw ardal leol, neu unrhyw gymdogaeth o fewn ardal leol, wedi cymryd rhan mewn chwaraeon a gweithgareddau hamdden cyfreithlon 'drwy hawl' ar y tir o dan sylw am gyfnod o 20 mlynedd o leiaf.

Mae Adran 15A(1) o Ddeddf 2006 yn caniatáu i berchennog tir o'r fath adneuo datganiad gyda'r awdurdod cofrestru tiroedd comin, ac effaith hynny yw dwyn i ben unrhyw gyfnod lle mae personau wedi cymryd rhan mewn chwaraeon a gweithgareddau hamdden cyfreithlon drwy hawl ar y tir y mae'r datganiad yn ymwneud ag ef. Rhaid i fap fynd gyda'r datganiad.

Mae'r Rheoliadau hyn yn gwneud darpariaeth mewn cysylltiad ag adneuo datganiadau o dan adran 15A(1) o Ddeddf 2006 a materion cysylltiedig.

Y weithdrefn

Negyddol.

Materion technegol: craffu

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

Rhinweddau: craffu

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

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

Rydym yn croesawu'r newidiadau a wneir gan y Rheoliadau hyn o ran y pryderon preifatrwydd a hawliau dynol a godwyd gennym wrth graffu ar fersiwn wreiddiol Rheoliadau Meysydd Tref a Phentref (Datganiadau Perchnogion Tir) (Cymru) 2018.

Rydym hefyd yn croesawu ymateb cyflym Llywodraeth Cymru i'r pryderon a godwyd. Yn hynny o beth, rydym yn cytuno bod cyfiawnhad dros dorri'r rheol 21 diwrnod (hy y rheol y dylid gadael o leiaf 21 diwrnod rhwng gosod offerynnau'r weithdrefn penderfyniad negyddol gerbron y Cynulliad a'r dyddiad y daw i rym) yn yr achos hwn.

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.



Ymateb y Llywodraeth

Nid oes angen ymateb y llywodraeth.

Cynghorwyr Cyfreithiol

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

26 Hydref 2018



National Assembly for Wales

Constitutional and Legislative Affairs Committee

Tudalen y pecyn 82

OFFERYNNAU STATUDOL
CYMRU

2018 Rhif 1100 (Cy. 230)

TIROEDD COMIN, CYMRU

**Rheoliadau Meysydd Tref a
Phentref (Datganiadau Perchnogion
Tir) (Cymru) (Rhif 2) 2018**

NODYN ESBONIADOL

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

Caniateir i dir gael ei gofrestru fel maes tref neu bentref o dan yr amgylchiadau a bennir yn adran 15 o Ddeddf Tiroedd Comin 2006 (“Deddf 2006”). Un o nodweddion pob un o'r amgylchiadau hynny yw bod rhaid bod nifer sylweddol o drigolion unrhyw ardal leol, neu unrhyw gymdogaeth o fewn ardal leol, wedi cymryd rhan mewn chwaraeon a gweithgareddau hamdden cyfreithlon ‘drwy hawl’ ar y tir o dan sylw am gyfnod o 20 mlynedd o leiaf.

Mae adran 15A(1) o Ddeddf 2006 yn caniatáu i berchennog tir o'r fath adneuo datganiad gyda'r awdurdod cofrestru tiroedd comin, ac effaith hyn yw dwyn i ben unrhyw gyfnod lle mae personau wedi cymryd rhan mewn chwaraeon a gweithgareddau hamdden cyfreithlon drwy hawl ar y tir y mae'r datganiad yn ymwneud ag ef. Rhaid i fap fynd gyda'r datganiad.

Mae'r Rheoliadau hyn yn gwneud darpariaeth mewn cysylltiad ag adneuo datganiadau o dan adran 15A(1) o Ddeddf 2006 a materion cysylltiedig.

Mae rheoliad 3 yn rhagnodi ffurf y datganiad y caniateir ei adneuo gyda'r awdurdod cofrestru tiroedd comin a ffurf y map y mae'n rhaid iddo fynd gyda'r datganiad.

Mae rheoliad 4 yn galluogi'r awdurdod cofrestru tiroedd comin i ragnodi ffi resymol mewn perthynas ag adneuo datganiad.

Mae rheoliad 5 yn gwneud darpariaeth sy'n ymwneud â phryd y mae datganiad i'w drin fel pe bai wedi ei adneuo gyda'r awdurdod cofrestru tiroedd comin.

Mae rheoliad 6 yn gwneud darpariaeth sy'n ymwneud â'r modd y mae'n rhaid i'r awdurdod cofrestru tiroedd comin reoli'r broses o adneuo datganiad, a rhoi cyhoeddusrwydd iddi.

Mae rheoliad 7 yn cynnwys gofynion sy'n ymwneud â gwybodaeth benodol y mae'n rhaid ei chynnwys yn y gofrestr sy'n ofynnol o dan adran 15B(1) o Ddeddf 2006.

Mae rheoliad 8 yn gwneud darpariaeth sy'n ymwneud â'r modd y mae'n rhaid i'r awdurdod cofrestru tiroedd comin gadw'r gofrestr honno sy'n ofynnol o dan adran 15B(1) o Ddeddf 2006, gan gynnwys gofynion sy'n ymwneud â fersiynau papur a fersiynau electronig.

Mae rheoliad 9 yn gwneud darpariaeth sy'n caniatáu i'r awdurdod cofrestru tiroedd comin dynnu cofnod o'r gofrestr honno, neu unrhyw ran o gofnod, yn achos camgymeriad perthnasol, yn ddarostyngedig i hysbysiad blaenorol.

Mae rheoliad 10 yn dirymu Rheoliadau Meysydd Tref a Phentref (Datganiadau Perchnogion Tir) (Cymru) 2018.

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 1100 (Cy. 230)

TIROEDD COMIN, CYMRU

**Rheoliadau Meysydd Tref a
Phentref (Datganiadau Perchnogion
Tir) (Cymru) (Rhif 2) 2018**

Gwnaed 17 Hydref 2018

*Gosodwyd gerbron Cynulliad Cenedlaethol
Cymru* 19 Hydref 2018

Yn dod i rym 22 Hydref 2018

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir i'r awdurdod cenedlaethol priodol gan adrannau 15A, 15B a 59 o Ddeddf Tiroedd Comin 2006(1), yn gwneud y Rheoliadau a ganlyn:

Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Meysydd Tref a Phentref (Datganiadau Perchnogion Tir) (Cymru) (Rhif 2) 2018 a deuant i rym ar 22 Hydref 2018.

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

Dehongli

2. Yn y Rheoliadau hyn—

ystyr “yr awdurdod” (“*the authority*”) yw'r awdurdod cofrestru tiroedd comin;

ystyr “cofrestr” (“*register*”) yw'r gofrestr y mae'n ofynnol i'r awdurdod ei chadw o dan adran 15B(1) o Ddeddf 2006 mewn cysylltiad â mapiau a

(1) 2006 p. 26. Mewnosodwyd adrannau 15A a 15B gan adran 15 o Ddeddf Twf a Seilwaith 2013 (p. 27). Diwygiwyd adran 15A gan adran 53 o Ddeddf Cynllunio (Cymru) 2015 (decc 4) (“Deddf 2015”). Gweler adrannau 15A(9) a 15B(5) am y diffiniad o “prescribed”. Gweler y diffiniadau o “regulations” ac “appropriate national authority” yn adran 61(1). Mae adran 55 o Ddeddf 2015, a pharagraff 9 o Atodlen 7 iddi, yn diwygio adran 61(1) fel bod “appropriate national authority” yn golygu Gweinidogion Cymru o ran Cymru.

datganiadau a adneuir o dan adran 15A o'r Ddeddf honno;

ystyr "datganiad" ("*statement*") yw datganiad o dan adran 15A(1) o Ddeddf 2006;

ystyr "Deddf 2006" ("*the 2006 Act*") yw Deddf Tiroedd Comin 2006;

mae i "hysbysiad adneuo" ("*notice of deposit*") yr ystyr a roddir yn rheoliad 6(3)(b);

ystyr "perchennog perthnasol" ("*relevant owner*") yw'r perchennog sy'n adneuo datganiad;

ystyr "tir perthnasol" ("*relevant land*") yw'r tir y mae'r datganiad o dan sylw yn ymwneud ag ef.

Ffuriau rhagnodedig y datganiad a'r map

3.—(1) Rhaid i ddatganiad o dan adran 15A(1) o Ddeddf 2006—

- (a) bod ar y ffurf a nodir yn Atodlen 1, neu ar ffurf y mae ei heffaith yn sylweddol debyg iddi, gyda'r mewnosodiadau neu'r hepgoriadau hynny sy'n angenrheidiol mewn achos penodol; a
- (b) cael ei lofnodi—
 - (i) gan bob un o berchnogion y tir perthnasol sy'n unigolyn, neu gan gynrychiolydd iddo a awdurdodwyd yn briodol; a
 - (ii) gan ysgrifennydd neu ryw swyddog arall a awdurdodwyd yn briodol pob un o berchnogion y tir perthnasol sy'n gorff corfforaethol neu'n gymdeithas anghorfforedig.

(2) Rhaid i'r map y mae'n rhaid iddo fynd gyda'r datganiad yn unol ag adran 15A(3) o Ddeddf 2006 fod yn Fap Ordians, ar raddfa o ddim llai nag 1:10,560, sy'n dangos ffin y tir perthnasol ag ymyl lliwiedig.

Ffioedd

4.—(1) Caiff yr awdurdod bennu ffi resymol am adneuo datganiad.

(2) Rhaid i'r perchennog perthnasol dalu unrhyw ffi a bennir yn unol â pharagraff (1) i'r awdurdod.

Amseru adneuo

5. Mae datganiad i'w ystyried fel pe bai wedi ei adneuo o dan adran 15A(1) o Ddeddf 2006 ar y diwrnod pan fydd y canlynol wedi dod i law'r awdurdod—

- (a) datganiad sy'n cydymffurfio â rheoliad 3(1);
- (b) map sy'n cydymffurfio â rheoliad 3(2); ac
- (c) unrhyw ffi sy'n daladwy yn unol â rheoliad 4.

Rheoli'r datganiad a rhoi cyhoeddusrwydd iddo

6.—(1) Pan fo'r awdurdod yn ystyried na chydymffurfiwyd ag unrhyw un neu ragor o'r gofynion y cyfeirir atynt yn rheoliad 3 neu 4(2), rhaid iddo roi hysbysiad i'r perchennog perthnasol i'r perwyl hwnnw.

(2) Rhaid i hysbysiad o'r fath—

- (a) nodi'r gofyniad o dan sylw; a
- (b) nodi'r rhesymau pam y mae'r awdurdod yn ystyried na chydymffurfiwyd ag unrhyw ofyniad.

(3) Cyn gynted ag y bo'n ymarferol ar ôl cael datganiad yn unol â rheoliad 3(1), map yn unol â rheoliad 3(2) ac unrhyw ffi sy'n ofynnol gan reoliad 4, rhaid i'r awdurdod—

- (a) anfon cydnabyddiaeth eu bod wedi dod i law at y perchennog perthnasol; a
- (b) rhoi hysbysiad bod datganiad wedi ei adneuo ("hysbysiad adneuo") yn unol â pharagraff (4).

(4) Rhaid i'r awdurdod—

- (a) cyhoeddi hysbysiad adneuo ar ei wefan;
- (b) cyflwyno hysbysiad adneuo i unrhyw berson sydd wedi gofyn yn flaenorol am gael ei hysbysu am bob datganiad sydd wedi ei adneuo gyda'r awdurdod ac sydd wedi rhoi cyfeiriad e-bost neu gyfeiriad post i'r awdurdod at y diben hwnnw;
- (c) arddangos hysbysiad adneuo am 60 o ddiwrnodau o leiaf—
 - (i) wrth o leiaf un fynedfa amlwg i'r tir perthnasol, neu yn ei hymyl; neu
 - (ii) mewn unrhyw achos lle na cheir lleoedd o'r fath, mewn o leiaf un lle amlwg ar ffin neu yn ymyl ffin tir o'r fath.

(5) Rhaid i'r hysbysiadau sy'n ofynnol gan baragraff (4) fod ar y ffurf a nodir yn Atodlen 2, neu ar ffurf y mae ei heffaith yn sylweddol debyg iddi, gyda'r mewnosodiadau neu'r hepgoriadau hynny sy'n angenrheidiol mewn lle penodol.

(6) Pan fo hysbysiad sy'n cael ei arddangos o dan baragraff (4)(c), heb unrhyw fai na bwriad ar ran yr awdurdod, yn cael ei dynnu, ei guddio neu ei ddifwyno cyn i'r cyfnod o 60 o ddiwrnodau ddod i ben, mae'r awdurdod i'w drin fel pe bai wedi cydymffurfio â gofynion y paragraff hwnnw.

Yr wybodaeth sydd i'w chynnwys yn y gofrestr

7.—(1) Rhaid i'r gofrestr gynnwys—

- (a) manylion cyswllt y person yn yr awdurdod y caniateir gwneud ymholiadau iddo ynghylch y gofrestr;
- (b) mynegai i'r gofrestr; ac
- (c) unrhyw wybodaeth arall y mae'r awdurdod yn ystyried ei bod yn briodol.

(2) Rhaid i'r gofrestr gynnwys yr wybodaeth a ganlyn mewn cysylltiad â phob map a datganiad a adneuir gyda'r awdurdod—

- (a) copi o'r map ac unrhyw allwedd sy'n mynd gyda'r map neu'n ffurfio rhan ohono;
- (b) copi o Ran B o'r datganiad;
- (c) enw a chyfeiriad y perchennog perthnasol, gan gynnwys ei god post;
- (d) y dyddiad y cafodd y datganiad a'r map eu hadneuo gyda'r awdurdod;
- (e) manylion y tir a amlinellir ar y map, gan gynnwys—
 - (i) cyfeirnod grid chwe ffigur yr Arolwg Ordnans o bwynt o fewn yr ardal a amlinellir;
 - (ii) enw'r ward etholiadol, y dosbarth neu'r gymuned y mae'r tir ynddo neu ynddi;
 - (iii) cyfeiriad a chod post yr adeiladau hynny ar y tir y neilltuwyd cod post iddynt; a
 - (iv) enw'r dref neu'r ddinas sydd agosaf at y pwynt y cyfeirir ato ym mharagraff (i).

Y modd y cedwir y gofrestr

8.—(1) Rhaid i'r gofrestr—

- (a) cael ei chadw ar ffurf electronig ac ar bapur;
- (b) cael ei chadw mewn rhannau fel bod pob rhan—
 - (i) yn ymwneud â thir o fewn ward etholiadol benodol, dosbarth penodol neu gymuned benodol; a
 - (ii) yn cynnwys yr wybodaeth y cyfeirir ati yn rheoliad 7.

(2) Rhaid i'r awdurdod gadw'r gofrestr mewn modd sy'n addas i alluogi i gopi o unrhyw fanylion sydd wedi eu cynnwys ar y gofrestr gael ei gymryd gan unrhyw berson, neu ar gyfer unrhyw berson, sy'n gofyn am gopi yn bersonol yn y swyddfa berthnasol.

(3) Rhaid i fersiwn bapur y gofrestr gael ei chadw yn y swyddfa berthnasol.

(4) Yn y rheoliad hwn ystyr "swyddfa berthnasol" ("*relevant office*") yw—

- (a) pan fo'r awdurdod wedi pennu swyddfa at ddiben y Rheoliadau hyn ar ei wefan, y swyddfa a bennwyd felly;

(b) fel arall, prif swyddfa'r awdurdod.

Tynnu cofnodion o'r gofrestr

9.—(1) Caiff yr awdurdod dynnu cofnod, neu unrhyw ran o gofnod, o'r gofrestr os yw wedi ei fodloni bod y map neu'r datganiad o dan sylw yn cynnwys camgymeriad perthnasol.

(2) Cyn tynnu cofnod o'r gofrestr, rhaid i'r awdurdod roi rhybudd o ddim llai na 28 o ddiwrnodau i'r perchennog perthnasol o'i fwriad i wneud hynny.

Dirymu Rheoliadau Meysydd Tref a Phentref (Datganiadau Perchnogion Tir) (Cymru) 2018

10. Mae Rheoliadau Meysydd Tref a Phentref (Datganiadau Perchnogion Tir) (Cymru) 2018⁽¹⁾ wedi eu dirymu.

Lesley Griffiths

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig, un o Weinidogion Cymru
17 Hydref 2018

⁽¹⁾ O.S. 2018/1021 (Cy. 212).

ATODLEN 1

Ffurfl y Datganiad

Rheoliad 3(1)(a)

Ffurfl y datganiad o dan adran 15A(1) o Ddeddf Tiroedd Comin 2006

Darllenwch y canllawiau a ganlyn cyn llenwi'r ffurflen hon

1. Rhaid llenwi Rhannau A i C ym mhob achos.
2. Rhaid i'r datganiad gael ei lofnodi a'i ddyddio gan bob un o berchnogion y tir y mae'r datganiad yn ymwneud ag ef sy'n unigolyn, neu gan gynrychiolydd iddo a awdurdodwyd yn briodol; a chan ysgrifennydd, neu ryw swyddog arall a awdurdodwyd yn briodol, pob un o berchnogion y tir y mae'r datganiad yn ymwneud ag ef pan fo'r perchennog hwnnw yn gorff corfforaethol neu'n gymdeithas anghorfforedig.
3. Yn achos tir sydd o dan gydberchnogaeth, rhaid i'r holl gydberchnogion llenwi paragraffau 2 a 3 o Ran A a llenwi a llofnodi Rhan C, oni bai bod cynrychiolydd a awdurdodwyd yn briodol yn llenwi ac yn llofnodi'r ffurflen ar ran holl berchnogion y tir. Rhaid i baragraff 2 o Ran A gael ei llenwi yn llawn er mwyn egluro'n glir swyddogaeth y person sy'n cyflwyno'r datganiad ar gyfer ei adneuo (e.e., ymddiriedolwr, asiant rheoli'r perchennog tir, ysgutor etc.).
4. Diffinnir perchennog ('owner') yn adran 61(3) o Ddeddf Tiroedd Comin 2006 a'i ystyr yn fras yw perchennog cyfreithiol y buddiant rhydd-ddaliadol yn y tir.
5. Pan fo'r datganiad yn ymwneud â mwy nag un parcel o dir, dylid cynnwys disgrifiad o bob parcel ym mharagraff 5 o Ran A a dylid llenwi gweddill y ffurflen mewn modd sy'n nodi'n glir pa ddatganiad sy'n ymwneud â pha barsel o dir. Gallai hyn olygu mewnosod geiriau ychwanegol. Rhaid nodi parseli lluosog o dir yn glir drwy gyfrwng ymyl lliwiedig ar unrhyw fap sy'n mynd gyda'r datganiad.
6. Rhaid i fap ordnans, y mae'n rhaid iddo fod ar raddfa o ddim llai nag 1:10,560, sy'n dangos ffin y tir y mae'r datganiad yn ymwneud ag ef ag ymyl lliwiedig, fynd gyda'r datganiad.
7. Rhaid i'r ffi ofynnol fynd gyda datganiad – cysylltwch â'r Awdurdod Cofrestru Tiroedd Comin perthnasol i gael manylion pellach.

RHAN A: Gwybodaeth sy'n ymwneud â'r person sy'n cyflwyno'r datganiad i'w adneuo a'r tir y mae'r datganiad yn ymwneud ag ef

1. Enw'r awdurdod neu'r awdurdodau cofrestru tiroedd comin y mae'r datganiad wedi ei gyfeirio ato neu atynt:
2. Statws y person sy'n cyflwyno'r datganiad i'w adneuo (ticiwch y blwch neu'r blychau perthnasol):
 - (a) Fi yw perchennog y tir a ddisgrifir ym mharagraff 5 ☐
 - (b) Rwy'n cyflwyno'r datganiad i'w adneuo ar ran [rhowch enw'r perchennog tir] sy'n berchen ar y tir a ddisgrifir ym mharagraff 5 yn fy swyddogaeth fel [rhowch y manylion]



3. Enw, cyfeiriad post llawn (gan gynnwys y cod post), cyfeiriad e-bost a rhif ffôn cyswllt perchennog neu berchnogion y tir y mae'r datganiad yn ymwneud ag ef. Os oes mwy nag un perchennog tir, rhaid nodi enwau, cyfeiriadau post llawn (gan gynnwys y codau post), cyfeiriadau e-bost a rhifau ffôn cyswllt yr holl berchnogion tir:
4. Enw, cyfeiriad post llawn (gan gynnwys y cod post), cyfeiriad e-bost a rhif ffôn cyswllt unrhyw berson sy'n cyflwyno'r datganiad i'w adneuo ar ran y perchennog neu'r perchnogion:
5. Disgrifiad o'r tir y mae'r datganiad yn ymwneud ag ef (gan gynnwys y cyfeiriad llawn a'r cod post):
6. Cyfeirnod neu gyfeirnodau grid chwe ffigur yr Arolwg Ordnans ar gyfer pwynt sydd o fewn arwynebedd y tir y mae'r datganiad yn ymwneud ag ef (os yw neu os ydynt yn wybyddus):

RHAN B: Datganiad o dan adran 15A(1) o Ddeddf Tiroedd Comin 2006

[Fi yw / *[rhowch enw'r perchennog]* yw] perchennog y tir a ddisgrifir ym mharagraff 5 o Ran A o'r ffurflen hon ac a ddangosir wedi ei liwio mewn *[rhowch y lliw]* ar y map sy'n mynd gyda'r datganiad hwn.

[Rwyf / Mae *[rhowch enw perchennog y tir]*] yn dymuno dwyn i ben unrhyw gyfnod lle gallai personau fod wedi cymryd rhan mewn chwaraeon a gweithgareddau hamdden cyfreithlon drwy hawl ar y tir cyfan neu unrhyw ran o'r tir a ddangosir wedi ei liwio mewn *[rhowch y lliw]* ar y map sy'n mynd gyda'r datganiad hwn.

(dilëwch y geiriau o fewn cromfachau petryal fel y bo'n briodol a/neu rhowch wybodaeth yn ôl y gofyn)

RHAN C: Datganiad o wirionedd

Os ydych yn rhoi gwybodaeth mewn modd anonest neu'n gwneud datganiad yr ydych yn gwybod ei fod, neu y gallai fod, yn anwir neu'n gamarweiniol, ac yn bwriadu drwy hynny wneud budd i chi eich hun neu i berson arall, neu beri colled neu'r perygl o golled i berson arall, gallech fod yn cyflawni'r drosedd o dwyll o dan adran 1 o Ddeddf Twyll 2006, a'r gosb uchaf am hynny yw carchar am 10 mlynedd neu ddirwy ddiderfyn, neu'r ddau.

Rwy'n credu bod y ffeithiau a'r materion a gynhwysir ar y ffurflen hon yn wir

Llofnod (y person sy'n gwneud y datganiad o wirionedd):

Enw llawn (priflythrennau):

Dyddiad (diwrnod / mis / blwyddyn):

Dylech gadw copi o'r ffurflen sydd wedi ei chwblhau

RHAN D: Gwybodaeth ychwanegol sy'n berthnasol i'r datganiad

Rhowch unrhyw wybodaeth ychwanegol sy'n berthnasol i'r datganiad

ATODLEN 2

Rheoliad 6(5)

Ffurf yr Hysbysiad Adneuo

Hysbysiad am adneuo gan berchnogion tir o dan adran 15A(1) o Ddeddf Tiroedd Comin 2006

[*Rhowch enw'r Awdurdod Cofrestru Tiroedd Comin perthnasol*]

Mae datganiad o dan adran 15A(1) o Ddeddf Tiroedd Comin 2006 ("Deddf 2006") wedi ei adneuo mewn perthynas â'r tir a ddisgrifir isod ac a ddangosir mewn [*rhowch y lliw*] ar y map sy'n mynd gyda'r datganiad.

BYDDWCH CYSTAL Â NODI:

Gall adneuo a wneir o dan adran 15A(1) o Ddeddf 2006 effeithio ar y gallu i gofrestru tir o'r fath fel maes tref neu bentref o dan adran 15 o'r Ddeddf honno.

Disgrifiad o'r tir neu'r tiroedd (gan gynnwys y cyfeiriad llawn a'r cod post):

Cyflwynwyd y datganiad [i'w adneuo gan [*rhowch enw'r perchennog*] / [ar ran [*rhowch enw'r perchennog a nodir*]] a daeth i law'r awdurdod hwn ar [*rhowch y dyddiad*].

Mae'r awdurdod yn cynnal cofrestr o fapiau a datganiadau o dan adran 15B o Ddeddf 2006.

Gellir gweld y gofrestr ar-lein yn [*rhowch gyfeiriad y wefan a'r ddolen*] neu gellir edrych arni yn rhad ac am ddim yn y cyfeiriad isod ac ar yr adegau a nodir isod:

[*Rhowch y cyfeiriad lle gellir gweld y gofrestr*]

[*Rhowch amserau agor y cyfeiriad lle gellir gweld y gofrestr*]

Llofnodwyd ar ran [*enw'r awdurdod*]:

Enw a swydd y llofnodwr:

Dyddiad:

Explanatory Memorandum to:

The Town and Village Greens (Landowner Statements) (Wales) (No.2) Regulations 2018

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018.

I am satisfied the benefits justify the likely costs.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs
19 October 2018

Part 1 – Explanatory Memorandum

1. Description

- 1.1 The Town and Village Greens (Landowner Statements) (Wales) Regulations (No.2) 2018 (“the Regulations”):
- prescribe the form of landowner statements, which when deposited with commons registration authorities, have the effect of bringing to an end any period during which persons have indulged in lawful sports or pastimes on the land as of right, thereby restricting the ability for land to be registered as a town or village green; and
 - Detail the processes and procedures required for landowner statements to be submitted.

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

- 2.1 The Explanatory Memorandum covers the following statutory instrument:
- The Town and Village Greens (Landowner Statements) (Wales) (No.2) Regulations 2018.
- 2.2 The Regulations are subject to the negative resolution procedure and are therefore subject to annulment by a resolution in accordance with Standing Order 27.2
- 2.3 The Regulations replace with amendments the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018. The amendments remove the requirement for a landowner’s telephone number and email address to be published on a public register.
- 2.4 Further details regarding the amendments are contained in paragraphs 4.6 – 4.14.

3. Legislative background

- 3.1 The Welsh Ministers make the Regulations in exercise of the powers conferred on them by the following provisions of the Commons Act 2006 (“the 2006 Act”):
- Section 15A(1) (as amended by section 52(1) of the Planning (Wales) Act 2015), (3), (6), 7(3)(c) and (d), and (9);
 - Section 15B(1), (4)(b) and (5); and

- Section 59(2).
- 3.2 In accordance with section 59(6) of the 2006 Act, the Regulations are subject to the negative procedure.

4. Purpose and intended effect of the legislation

Policy rationale

- 4.1 The general purpose of the legislation is to:
- Prevent the town and village green registration system being used to stop or delay planned development;
 - Reduce the financial burden on local authorities in considering applications, as well as the costs to landowners whose land is affected by applications; and
 - Remove the unnecessary uncertainty and delays, which are difficult for those affected in the community.

Effect of legislation

- 4.2 Section 15(1) of the 2006 Act provides that any person may apply to the commons registration authority to register land where, amongst other things, a significant number of inhabitants of any locality, or any neighbourhood within a locality have indulged in lawful sports or pastimes on the land for a period of at least 20 years.
- 4.3 In broad terms, section 29 of the Commons Act 1876 and section 12 of the Inclosure Act 1857 provide that development on town or village greens constitutes nuisance. It is therefore the case that development can be wilfully frustrated by registering the land in question as a town or village green.
- 4.4 However, section 15A(1) enables the owner of any such land to deposit with the authority a statement, the effect of which is to bring to an end any period during which persons have indulged in lawful sports or pastimes on the land to which the statement relates. Under section 15(3), the statement must be accompanied by a map identifying the land to which the statement relates.
- 4.5 The Regulations therefore provide for:
- Prescribing the form in which a statement and map must be deposited with the commons registration authority (regulation 3 and Schedule 1);

- enabling the authority to specify a reasonable fee for the deposit of a statement (regulation 4);
- a statement is to be regarded as having been deposited with the authority when a compliant statement, map and fee have been received by the authority (regulation 5);
- the manner in which the deposit of a statement is to be managed and publicised by the authority, including various notice requirements (regulation 6 and Schedule 2);
- the information that is to be contained in the register that is required to be kept by the authority under section 15B of the 2006 Act (regulation 7);
- the manner in which that register is to be kept by the authority (regulation 8);
- removal of an entry (or any part of an entry) from the register by the authority if it is satisfied that the statement or map contains a material error, and notice requirements relevant to their removal (regulation 9); and
- the revocation of the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018 (regulation 10).

Amendments to the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018

- 4.6 The Town and Village Greens (Landowner Statements) (Wales) Regulations 2018 contained a provision which required a degree of personal information about a landowner depositing a statement under section 15B(1) of the Commons Act 2006, or a person depositing such a statement on the landowner's behalf, to be set out in the register required to be kept by a commons registration authority.
- 4.7 Upon their consideration of the original Regulations 2018, the Assembly's Constitutional and Legislative Affairs Committee produced a draft report raising concerns regarding the extent of the personal information to be published on a public register and how this could potentially amount to interference with the privacy rights of landowners under Article 8 of the European Convention on Human Rights.
- 4.8 The Government response to the report accepted amendments were required.
- 4.9 Therefore, the Town and Village Greens (Landowner Statements) (Wales) (No.2) Regulations 2018 do not require landowners' telephone number and email addresses to be published on a public register, nor will any personal information be required to be kept on the register in respect of any person depositing a statement on behalf of a landowner.
- 4.10 However, there will remain a requirement for landowners' names and postal addresses to be published on a public register.

- 4.11 The justification for doing so is because the deposit of a statement by a landowner under section 15A(1) the Commons Act 2006 (“2006 Act”) brings to an end any period during which persons have indulged as of right in lawful sports or pastimes on the land to which the statement relates.
- 4.12 The exercise of a landowner’s discretion under section 15A(1) therefore itself removes a right previously enjoyed by the local community and by members of the public generally. As such, it is in the public interest for those whose rights may be curtailed, to know who has deposited the statement, and to enable the making of informal representations and enquiries should they so wish.
- 4.13 This represents the least intrusive means of facilitating the public interest objective and strikes a fair balance between the rights of the landowner and the interests of the community.
- 4.14 Additional personal information, including telephone numbers and email addresses, will remain part of the information required to submit a landowner statement to the Commons Registration Authority. It is advantageous for all parties involved if Commons Registration Authorities have the ability to contact landowners and their representatives quickly and at short notice if required for administration queries. However, there will be no requirement for this additional personal information to be published on a public register as the information is required solely to assist Commons Registrations Authorities in their administrative procedures.

5. Consultation

- 5.1 Proposals to reform the Town and Village regime in Wales were first consulted on in December 2013 as part of the ‘Positive Planning’ consultation paper, containing the draft Planning (Wales) Bill.
- 5.2 The ‘Positive Planning’ consultation paper proposed amending the Commons Act 2006, in relation to Wales, to:
- Prohibit applications being made to register land as a town or village green, where land has entered the planning system i.e. been identified for development in a development plan or has received planning permission; and
 - Enable landowners to submit declarations to Commons Registration Authorities, which would have the effect of rendering all use of land indicated inconsistent with the ‘as of right’ criterion required for town and village green registration.
- 5.3 The proposals put forward in the consultation paper were well received by respondents, with the majority agreeing with the proposals to reform the town and village green regime in Wales. The proposals were carried forward into the Planning (Wales) Act 2015.

- 5.4 The ‘Town and Village Greens’ consultation paper was launched on 23 October 2017 and was open for responses until 2 February 2018. The consultation paper proposed commencing the relevant sections from the Planning (Wales) Act 2015 relating to town and village greens, and set out detailed proposals for the processes and procedures for submitting landowner statements.
- 5.5 In considering those stakeholders most likely to be impacted by the proposals (both individuals and organisations), a list was drawn up which included all LPAs in Wales, public bodies and special interest groups. Consultees were asked to assign themselves to one of six broad categories indicated in the table below, which shows the breakdown of responses by category. The consultation generated 22 responses.
- 5.6 A summary of the consultation and government response will be published alongside this Explanatory Memorandum and Regulatory Impact Assessment and can be found here:
- <https://beta.gov.wales/registration-town-and-village-greens>
- 5.7 Overall, there was clear support for the proposals set out in the consultation paper, with each of the 7 questions receiving positive responses (either “Yes” or “Yes, subject to comment”). These proposals included:
- The information contained within a landowner statement and how one should be deposited;
 - The ability for Commons Registration Authorities (“CRAs”) to charge fees;
 - How registers should be kept and what information they should contain; and
 - Procedures when submitting incorrect or incomplete information.

REGULATORY IMPACT ASSESSMENT

Town and Village Greens

- 6.1 Information contained in this Regulatory Impact Assessment has been taken from the Explanatory Memorandum and Regulatory Impact Assessment which accompanied the Planning (Wales) Act 2015, to reflect more recent data.
- 6.2 Two options have been considered:
- Option 1 – Do nothing, retain the status quo and not commence relevant sections from the Planning (Wales) Act 2015.
 - Option 2 – Commence relevant sections from the Planning (Wales) Act 2015.

Option 1 – Do nothing, retain the status quo and not commence relevant sections from the Planning (Wales) Act 2015.

Description

- 6.3 Under this option there would be no changes to the town and village green system in Wales as set out in section 15 of the Commons Act 2006 (“the 2006 Act”).
- 6.4 Commons Registration Authorities (“CRAs”) are responsible for maintaining the registers of Common Land and Town or Village Greens (“TVGs”) in Wales. There are 22 CRAs in Wales, corresponding with each Unitary Authority. They undertake the determination process for applications to register land as a TVG.
- 6.5 At present, anyone can apply to a CRA for land to be registered as a TVG under section 15(1) of the 2006 Act if specific criteria apply, and there is no fee for doing so. The process is quasi-judicial in that applications require appraisal of both the facts and the law for a decision to be made. The criteria for determining TVG applications are that the local inhabitants have used the land ‘as of right’ for a period of at least 20 years. This assumes long, uninterrupted use, without permission, force or secrecy.
- 6.6 Where a site is registered as a TVG, it is granted protection by the Inclosure Act 1857 and the Commons Act 1876 from development or disturbance. The site may be de-registered under section 16 of the Commons Act 2006 in exchange for other land which will be registered as a TVG by order of the Welsh Ministers.

Cost

Welsh Government

- 6.7 There is no cost to the Welsh Government in relation to applications for TVG registration as they have no role to play in their determination. CRAs may engage a Planning Inspector to hold an inquiry into an application for registration, with the Inspector reporting to the CRA and not the Welsh Government or Planning Inspectorate. The CRA will reimburse the Planning Inspectorate directly for the Inspector's costs.

Local Planning Authorities

- 6.8 Although the CRA is normally within the same authority as the Local Planning Authority ("LPA"), they must both co-operate on applications where land is registered as a TVG. The cost of the LPA contacting the CRA where there is a planning proposal would form part of their administrative duties, this is anticipated to be a standardised notification memorandum or letter for a national park authority, and is estimated to cost local planning authorities £49 a year.
- 6.9 The estimated cost of an LPA producing a notification letter is based on 10 minutes for a planning officer to check if land has entered the planning system and 20 minutes to form a response. A planning officer has an average hourly rate of £17. Therefore, to respond to town and village green applications per year for LPAs would be:

$$£8 \times 6.1 \text{ (average number of applications per year)} = £49$$

Commons Registration Authorities

- 6.10 The 22 CRAs are responsible for maintaining the register of TVGs in Wales under section 1 of the Commons Act 2006. They bear the cost of the registration process, which can include administrative and management-level staff processing the application, internal and external legal advice, and the costs associated with a public inquiry and/or committee hearing, where applicable.
- 6.11 An application to register land as a TVG is often administered by a legal officer of a CRA and is decided by the authority. Some TVG applications are decided through a public inquiry, often in cases where the CRA owns the land or to demonstrate transparency in reaching a decision.
- 6.12 Evidence that we have received from 19 of the 22 CRAs suggests that there were 16 TVG applications between 2015 and 2016 in Wales. This equates to 5.3 applications per year. Assuming an equal distribution of applications and adjusting the figures to reflect the remaining 3 CRAs, suggests a total of 6.1 applications per year in Wales. Each application took an average of 2 years to consider.

- 6.13 The cost of administering an application for a TVG may vary on a case by case basis, depending on whether that application went to a public inquiry or otherwise. The cost to the Planning Inspectorate of undertaking a public inquiry has not been assessed as part of this impact assessment, as their costs are borne by the CRAs.

Table 1

A	Number of TVG applications per year	6.1	Average number of applications received per year from 19 CRA returns (5.3), averaged to 22 CRAs. $((22 / 19) \times 5.3)$
B	Share of applications going to public inquiry	49%	Average number of applications going to inquiry per year (2.6) divided by the 5.3 TVG applications per year
C	Estimated average cost of public inquiries	£29,000	Based on the average of the case studies received from CRAs which went to public inquiry.
D	Basic CRA processing costs, excluding public inquiries	£1,400	Based on CIPFA benchmarking survey of CRAs.
E	Estimated cost to CRA per application	£15,600	$(B \times C) + D$
F	Total annual cost to CRAs	£95,200	A x E

Development Industry

- 6.14 There are direct costs to landowners and developers arising from the current TVG registration system, irrespective of the outcome of an application. Such costs are incurred through activities such as objecting to a TVG application, legal costs, delays to development or even the total abandonment of a project.
- 6.15 Developers acquire land at a certain value, which reflects the potential of that land for development. The potential development value of land can reduce, in some cases significantly, upon registration as a TVG. This is perceived to be due to the difficulties in being able to develop land registered as a TVG because of the protection afforded to it. This can leave developers with a devalued area of land which can be difficult to dispose of. Whilst this cost is not quantified due to the commercially sensitive nature of land transactions, it is an issue that has been raised by developers when making observations on the TVG regime.

- 6.16 The most frequent direct costs to landowners or developers arise from professional fees paid to address objections to TVG applications. This may involve the instruction of a solicitor, Counsel, a surveyor and providing evidence to prove that the land has not been in uninterrupted recreational use, without permission, force or secrecy for 20 years. Those costs will increase further where the application is heard at a public inquiry.
- 6.17 Other costs to landowners or developers relate to the abandonment or delaying of plans to develop land. Such costs are difficult to quantify and vary depending on the development type and financial model of each proposal, as well as the length of delay or whether the development must be restricted or abandoned altogether. Losses to developers resulting from delays may include contracting costs, the loss of potential rental or investment income, extra finance costs and project management fees. Abandonment of a development where building work is completed, or partially completed may result in further costs, including the total loss of investment and depreciation in land value.
- 6.18 Evidence submitted by developers in England to DEFRA's consultation on the registration of new town or village greens indicated that the average cost of a TVG application to the developer is £48,588. This cost does not include the loss of development land value. There is no reason to assume that this figure would be substantially different for applications in Wales given that the procedure for the determination of TVG applications follows a similar process.

Table 2

A	Number of TVG applications per year	6.1	Average number of applications received per year from 19 CRA returns (5.8), averaged to 22 CRAs $((22 / 19) \times 5.3)$
B	Estimates cost to developer per TVG application	£48,588	Based on consultation responses to DEFRA's consultation on the registration of new TVG (July 2011)
C	Costs to the developer	£296,400	A x B

Applicants for TVG registration

- 6.19 Responses to DEFRA's consultation on the registration of town and village greens (TVGs) indicated that the time taken to produce a TVG application ranges from 9 days to 22 days, based on three responses. It is assumed that a similar figure applies to Wales, given the similar requirements to put together an application. However, this range and amount of responses is not considered sufficient to provide quantified estimates of applicants' costs.

Further, it is difficult to estimate the cost of a person's time, given that little is known of their background, skills, qualifications and availability.

- 6.20 Whilst there is no application fee for the production of a TVG application, it is expected that an applicant collects evidence forms from residents, generates support, prepares an application, gives evidence at a public inquiry and incurs legal costs.

Third Parties

- 6.21 There are costs to third parties for engaging in the process in terms of time spent and any donation that they make towards a campaign for the registration of a TVG.
- 6.22 It is difficult to quantify the cost of third party participation in the process as there is no evidence available as to the average amount of time that a member of the public would spend contesting or supporting a TVG application. Much is dependent on whether third parties share similar characteristics to either the applicant or the developer.

Benefits

Welsh Government

- 6.23 There are no identifiable benefits to the Welsh Government.

Local Planning Authorities

- 6.24 The existing TVG registration system impacts on LPAs by introducing delays where an application to register a TVG is made where land has entered the planning system.

Commons Registration Authorities

- 6.25 There are no known benefits to CRAs.

Development Industry

- 6.26 Unless a landowner voluntarily registers their land as a TVG, there are very few benefits that the landowner may accrue from the registration of a TVG. Aside from the recreational benefit that registration as a TVG may bring the development value of that land may decrease.
- 6.27 Whilst our evidence suggests that the determination of an application to register a TVG may be costly and time-consuming, the determination of such an application will resolve any uncertainty about the status of the land, be it a

successful or unsuccessful application. This will provide the landowners with certainty and confidence in any future plans for their sites.

- 6.28 For those developers who are looking to gain consent for development on their land, a disadvantage will arise through the increased difficulty in gaining permission for development on that land and through the time spent objecting to applications to register a TVG.

Applicants for TVG registration

- 6.29 Whilst there are no evident financial benefits to the present system, benefits to the applicant arise in situations where the land is registered as a TVG, and is protected from development and interference. This may promote health and wellbeing locally, or may be motivated by a desire to maintain the value of existing property in the area.
- 6.30 Where an application is unsuccessful, any delay caused by the period for determination of the TVG application may be seen as generating short-term benefits. Any delay allows for continued use for recreation, and the potential for the abandonment of development proposals, should the delay cause a scheme to be unviable. Any delay caused may also allow time for publicity and for local support to be generated to secure the land for future recreational use.
- 6.31 There is presently no fee for TVG applications, allowing any potential applicant to register a TVG at no cost.
- 6.32 Whilst there is a cost to the applicant (reflecting the time spent completing the application and gathering evidence), the perceived benefit to them far outweighs the costs incurred to register a TVG.

Third Parties

- 6.33 Depending on the stance of the third party, they will share similar assessed benefits to either the landowner or to the applicant for a TVG registration.

Option 2 – Commence relevant sections from the Planning (Wales) Act 2015.

Description

- 6.34 This option would see the commencement of sections 52 and 53 of, and Schedule 6 to the 2015 Act, together with relevant subordinate legislation.
- 6.35 Section 52 of the 2015 Act amends section 15A of the 2006 Act so the ability to deposit landowner statements applies in Wales. The deposit of a landowner statement brings an end to any period during which persons have undertaken

sports and pastimes on the land in question as of right and limits the time period in which an application to register land as a TVG can be submitted.

- 6.36 Section 53 of the 2015 Act amends section 15C of the 2006 Act and introduces Schedule 6 to the 2015 Act into the 2006 Act. Section 15C of the 2006 Act excludes the right of a person to apply for the registration of a TVG, in certain circumstances (trigger events), unless a corresponding terminating event is applied.
- 6.37 Regulations will provide the necessary detail for deposit of landowner statements under section 15A of the 2006 Act.

Cost

Welsh Government

- 6.38 This option will result in a one-off cost to the Welsh Government by providing guidance on the reforms this option proposes for CRAs.
- 6.39 Based on the average daily salary for a HEO grade officer and the time taken to produce guidance, it is estimated to cost the Welsh Government will be approximately £1200¹.

Local Planning Authorities

- 6.40 LPAs would incur similar costs as those identified in Option 1, however, we would expect to see a reduction in the number of applications submitted to register land as a town or village green under this option. Therefore, we would anticipate the £49 cost to LPAs in Option 1 to be reduced.

Commons Registration Authorities

- 6.41 CRAs would expect to incur similar costs to those identified in Option 1, however, as with LPAs, these cost would be expected to reduce based on the anticipated reduction of applications submitted to register land as a town or village green. However, as we are unable to calculate a projected reduction in application numbers, we cannot put a monetary figure to these costs.
- 6.42 Similarly, there will no additional costs to CRAs for undertaking the work which would arise from this option, as they would have the ability to charge a relevant fee to applicants which would recover their costs for providing this service.

¹ Based on the average weekly salary of an HEO employee, multiplied by 2 weeks to produce guidance

Development Industry

- 6.43 Where a landowner wishes to deposit a statement to a CRA under this option, they will also be required to submit a relevant fee to offset the costs incurred by the CRA.
- 6.44 However, it is not possible to quantify these costs to applicants as our evidence indicates CRAs have different people in different roles undertaking work relating to commons land, which results in different costs. For example, there may be solicitors, rights of way officers and dedicated commons land officers doing the same work and setting standard fees would not achieve true cost recovery.
- 6.45 Therefore, any fee set by CRAs to achieve cost recovery will vary from authority to authority. For example, a sample of CRAs in England sees fees ranging from £220 to £504, however, these costs are discretionary and will only apply if landowners deposit a statement.

Applicants for TVG registration

- 6.46 The costs to applicants to register land as a TVG will be the same as option 1. However, because this option seeks to prevent applications being submitted to register land as a TVG solely as a means to prevent lawful development, we would anticipate there being a reduction in the number of these applications being submitted due to the implementation of trigger events.

Third parties

- 6.47 There are no identifiable costs to third parties under this option.

Benefits

Welsh Government

- 6.48 This option will have a positive impact to the Welsh Government as the overlap between the commons registration system and the planning regime will be removed.
- 6.49 Furthermore, it also provides greater certainty for proposed developments which may be put before the Welsh Ministers. For example, if a large housing development was proposed, the Welsh Government can have greater certainty this development will go ahead, without the threat of a TVG application being put forward to prevent development.

Local Planning Authorities

- 6.50 The main benefit to LPAs is land allocated for development in their Local Development Plans will no longer be subject to potential TVG applications.
- 6.51 This allows Local Development Plans to be implemented as adopted and would reduce the amount of abortive work carried out by LPAs where proposed development, as allocated in a development plan, is subsequently restricted or abandoned because the land becomes registered as a TVG.

Commons Registration Authorities

- 6.52 This option will result in a reduction of applications submitted to register land as a TVG. However, although CRAs would now have to process landowner statements deposited under section 15A of the Commons Act 2006, they would require far less time and resource, when compared to TVG applications.

Development Industry

- 6.53 Where an application is submitted to register land as a TVG, this creates uncertainty among the development industry as to the future of the land, particularly where it has entered the planning process. This option will therefore provide more certainty for developers.
- 6.54 Furthermore, the submission of landowner statements under section 15A of the Commons Act 2006 will be entirely at the discretion of landowners. They would be able to protect their land from TVG registration and retain the development value of the land, which would be lost as a result of TVG registration.

Applicants for TVG registration

- 6.55 Although this option seeks to prevent the submission of applications to register land as a TVG solely to prevent lawful development, there will continue to be opportunities for these applications to be submitted within a prescribed timeframe.
- 6.56 Similarly, landowners may also allow continued recreational use of their land by the public if they wish, which is a benefit to the community.

Justification for two options

- 6.57 The principle for reforming the TVG system in Wales has already been established through the implementation of the 2015 Act².
- 6.58 Therefore, the only potential options available would be to retain the current system for TVG, or bring into force those relevant provisions contained within the 2015 Act which seek to address the issues surround the registration of TVGs creating barriers to development.

Summary and preferred option

- 6.59 The current TVG registration system provides legal protection to land from development and interference on sites which have been used for recreational purposes by local or nearby residents for the preceding 20 years, or over.
- 6.60 Registered TVGs can have positive impacts on people and communities, though promoting health and wellbeing, as well as providing a public good.
- 6.61 There is however, evidence that the TVG registration system is being used as a method for preventing the development of land. TVGs can be registered on sites which have deemed planning permission, on which building work may have commenced or have been completed. The system may also be used to undermine land which is subject to a Local Development Order or a Development Consent Order. The Commons Act 2006 and planning legislation are at cross purposes. Development which is considered acceptable under planning legislation can be subject to delays and abandonment with associated economic benefits. It also places a burden of substantial costs on developers and landowners.
- 6.62 Landowners can also suffer a significant loss in the value of their land following registration as a TVG, given that it would be extremely difficult to develop that land thereafter. In those circumstances, a TVG can be proven to be a barrier to development.
- 6.63 Option 2 is the preferred option as it will allow for continued recreational use of land by the public while giving landowners a proactive mechanism for working constructively with the community. Option 2 is considered to be a less restrictive approach to the community and those who engage in the planning system. Whilst it does not address all issues of overlap between the TVG registration system and the planning system, additional protection to development from such applications would be added compared with the existing situation.
- 6.64 Option 2 also draws a clear line that an application to register a TVG cannot be made where relevant trigger events have occurred.

² Sections 52 and 53 of, and Schedule 6 to the Planning (Wales) Act 2015.



Ein cyf/Our ref: MA-L-LG-0624-18

Elin Jones AC
Llywydd
Cynulliad Cenedlaethol Cymru

19 Hydref 2018

Annwyl Elin,

Rheoliadau Meysydd Trefi a Phentrefi (Datganiadau Perchenogion Tir) (Cymru) (Rhif 2) 2018

Rwy'n eich hysbysu y caiff y rheol 21 niwrnod ei thorri mewn perthynas â'r Rheoliadau uchod. Gwnaed y Rheoliadau ar ac maent i fod dod i rym ar 22 Hydref 2018. Maent yn disodli ac yn diddymu Rheoliadau Meysydd Trefi a Phentrefi (Datganiadau Perchenogion Tir) (Cymru) 2018.

Gwnaed Rheoliadau Meysydd Trefi a Phentrefi (Datganiadau Perchenogion Tir) (Cymru) 2018 (O.S. 2018/1021 (Cy. 212)) ar 21 Medi a'u gosod gerbron Cynulliad Cenedlaethol Cymru ar 24 Medi. Roedd y Rheoliadau i fod dod i rym ar 22 Hydref.

Wrth adolygu'r Rheoliadau, gwelodd a chofnododd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol dramgwydd posib o Erthygl 8 y Confensiwn Ewropeaidd ar Hawliau Dynol o ran cynnwys manylion personol mewn cofrestr gyhoeddus pan nad oedd modd cyfiawnhau eu cynnwys, gan godi amheuan drwy hynny ynghylch y pŵer i wneud y Rheoliadau.

Gwnaed y ddwy set o Rheoliadau o dan adran 15A Deddf Tiroedd Comin 2006. Mae Adran 15A yn ymwneud â chofrestru meysydd trefi a phentrefi. Mae'n caniatáu i berchennog tir ddod ag unrhyw gyfnod y câi pobl gymryd rhan drwy hawl mewn chwaraeon a gweithgareddau hamdden cyfreithiol ar ei dir i ben, trwy adneuo datganiad gyda'r awdurdod cofrestru tiroedd comin. Rhaid i'r datganiad ddilyn y ffurf ragnodedig. Mae gwelliannau i'r adran hon gan adran 52 Deddf Cynllunio (Cymru) 2015 yn cael yr effaith gyfreithiol o gymhwyso'r adran mewn perthynas â thir yng Nghymru. Daw Adran 52 i rym ar 22 Hydref 2018 trwy erthygl 2 Gorchymyn Deddf Cynllunio (Cymru) 2015 (Cychwyn Rhif 5 a Darpariaethau Trosiannol) 2018 (O.S. 2018/1022 (Cy. 213)). Mae'n hanfodol bod ffurf datganiadau perchenogion y tir yn cael ei rhagnodi yn y rheoliadau o dan adran 15A ar 22 Hydref 2018. Gallai peidio â rhagnodi'r ffurf ar y dyddiad hwnnw wneud adran 15A yn ddi-rym mewn perthynas â Chymru.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

Gohebiaeth.Jane.Hutt@llyw.cymru
Correspondence.Jane.Hutt@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.

Mae Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig wedi ystyried y sylwadau a wnaed gan CLAC ac wedi ailystyried cynnwys manylion personol yn y gofrestr gyhoeddus. Mae'r Rheoliadau ar eu newydd wedd yn diddymu'r gofyn i gynnwys cyfeiriadau ebyst a rhifau ffôn perchenogion tir mewn cofrestr gyhoeddus. Mae Ysgrifennydd y Cabinet yn credu bod cynnwys enwau a chyfeiriadau post perchenogion y tir yn amcan dilys digonol i gyfiawnhau unrhyw dramgwydd hawliau posib o dan Erthygl 8.

Mae'n hanfodol bod ffurf datganiadau perchenogion y tir yn cael ei rhagnodi ar y diwrnod y daw adran 15A i rym, er mwyn rhoi'r adran honno ar waith yn llawn. Am y rheswm hwnnw, ystyrir bod angen torri'r rheol 21 niwrnod er mwyn gallu diddymu'r Rheoliadau cynharaf ar 22 Hydref 2018 ac i'r Rheoliadau sy'n cymryd eu lle allu dod i rym ar y diwrnod hwnnw.

Mae Memorandwm Esboniadol wedi'i baratoi ac mae hwn wedi'i osod, ynghyd â'r Rheoliadau, yn y Swyddfa Gyflwyno.

Mae copi o'r llythyr hwn yn cael ei anfon at Mick Antoniw AC, Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol a Sian Wilkins, Pennaeth Gwasanaethau'r Siambr a'r Pwyllgorau.

Yn gywir,



Julie James AC / AM

Arweinydd y Tŷ a'r Prif Chwip
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.Jane.Hutt@llyw.cymru
Correspondence.Jane.Hutt@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.

Eitem 3.3

SL(5)266 - Gorchymyn Pysgota Môr (Diwygiadau Amrywiol) (Cymru) 2018

Cefndir a Diben

Mae'r Gorchymyn hwn yn diwygio Rheoliadau Cofrestru Prynwyr a Gwerthwyr Pysgod a Dynodi Safleoedd Arwerthu Pysgod (Cymru) 2006 (O.S. 2006/1495 (W. 145)) er mwyn cywiro gwallau a diweddarau cyfeiriadau at ddeddfwriaeth berthnasol yr UE, i sicrhau gorfodi cywir.

Mae hefyd yn diwygio Gorchymyn Cŵn Gleision (Gwahardd eu Pysgota) (Cymru) 2008 (O.S. 2008/1438 (W. 150)) a Gorchymyn Rhwydi Pysgota Perdys (Cymru) 2008 (O.S. 2008/1811 (W. 175)) er mwyn diweddarau cyfeiriadau at ddeddfwriaeth berthnasol yr UE.

Y weithdrefn

Negyddol.

Craffu ar faterion technegol

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

Rhinweddau: craffu

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

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

Rydym yn croesawu cynnwys map yn y Memorandwm Esboniadol, sy'n dangos crynodeb hawdd o'r ardaloedd o'r môr sydd wedi'u cynnwys ym mharth Cymru.

Goblygiadau sy'n deillio o adael yr Undeb Ewropeaidd

Mae'r Gorchymyn hwn yn gweithredu rhwymedigaethau amrywiol yr UE mewn perthynas â physgota môr, felly bydd y Gorchymyn hwn yn rhan o gyfraith yr UE a gedwir ar ôl y diwrnod gadael.

Mae'r Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin yn darparu bod rheoli a chefnogi pysgodfeydd yn faes polisi sy'n debygol o fod yn ddarostyngedig i reoliadau a wnaed o dan adran 12 o Ddeddf yr UE (Ymadael) 2018. Felly, mae'r gyfraith sy'n dod o dan y Gorchymyn hwn yn debygol o fod yn faes o gyfraith yr UE sy'n cael ei rewi tra bod fframweithiau cyffredin yn cael eu rhoi ar waith.

Ymateb y Llywodraeth

Nid oes angen ymateb y llywodraeth.

Cynghorwyr Cyfreithiol

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol





OFFERYNNAU STATUDOL
CYMRU

2018 Rhif 1095 (Cy. 228)

**PYSGODFEYDD MÔR,
CYMRU**

**Gorchymyn Pysgota Môr
(Diwygiadau Amrywiol) (Cymru)
2018**

NODYN ESBONIADOL

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

Mae'r Gorchymyn hwn yn diwygio Rheoliadau Cofrestru Prynwyr a Gwerthwyr Pysgod a Dynodi Safleoedd Arwerthu Pysgod (Cymru) 2006 (O.S. 2006/1495 (Cy. 145)) er mwyn cywiro gwallau a diweddarau cyfeiriadau at ddeddfwriaeth berthnasol yr UE. Mae hefyd yn diwygio Gorchymyn Cŵn Gleision (Gwahardd eu Pysgota) (Cymru) 2008 (O.S. 2008/1438 (Cy. 150)) a Gorchymyn Rhwydi Pysgota Perdys (Cymru) 2008 (O.S. 2008/1811 (Cy. 175)) er mwyn diweddarau cyfeiriadau at ddeddfwriaeth berthnasol yr UE.

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

OFFERYNNAU STATUDOL
CYMRU

2018 Rhif 1095 (Cy. 228)

**PYSGODFEYDD MÔR,
CYMRU**

**Gorchymyn Pysgota Môr
(Diwygiadau Amrywiol) (Cymru)
2018**

Gwnaed *16 Hydref 2018*

*Gosodwyd gerbron Cynulliad Cenedlaethol
Cymru* *18 Hydref 2018*

Yn dod i rym *20 Tachwedd 2018*

Mae Gweinidogion Cymru yn gwneud y Gorchymyn a ganlyn drwy arfer y pwerau a roddir gan adrannau 3(1), 5(1), 5(6), 6(1), 6(1A) a 15(3) o Ddeddf Pysgod Môr (Cadwraeth) 1967(1), a freiniwyd bellach ynddynt

-
- (1) 1967 p. 84 ("Deddf 1967"). Diwygiwyd adran 3(1) gan erthygl 4 o O.S. 1999/1820 a pharagraff 43(1) a (2)(b) o Ran 1 o Atodlen 2 iddo. Amnewidiwyd adran 5(1) gan adran 198(1) a (2) o Ddeddf y Môr a Mynediad i'r Arfordir 2009 (p. 23) ("Deddf 2009"). *Gweler* adran 5(9) o Ddeddf 1967 am ddiffiniad o "the appropriate national authority". Mewnosodwyd adran 5(9) gan adran 198(3) o Ddeddf 2009 ac fe'i diwygiwyd gan erthygl 4(2) a (4) o O.S. 2010/760. Diwygiwyd adran 5(6) gan adran 22(2) o Ddeddf Pysgodfeydd 1981 (p. 29) ac adran 201 o Ddeddf 2009 a pharagraffau 3(1) a 4(a), (b) ac (c) o Atodlen 15 iddi. Diwygiwyd adran 6(1) gan erthygl 4 o O.S. 1999/1820 a pharagraff 43(1) a (6)(a) o Ran 1 o Atodlen 2 iddo. Mewnosodwyd adran 6(1A) gan adran 23(2) o Ddeddf Pysgodfeydd 1981 ac fe'i diwygiwyd gan erthygl 4 o O.S. 1999/1820 a pharagraff 43(1) a (2)(b) o Ran 1 o Atodlen 2 iddo. Amnewidiwyd adran 15(3) gan adran 22(1) o Ddeddf Pysgodfeydd Môr 1968 (p. 77) a Rhan 2 o Atodlen 1 iddi, ac fe'i diwygiwyd gan adran 9(1) o Ddeddf Terfynau Pysgodfeydd 1976 (p. 86), a pharagraff 16(1) o Atodlen 2 iddi, ac fe'i diwygiwyd ymhellach gan erthygl 4 o O.S. 1999/1820 a pharagraffau 43(1) a (2)(b) o Atodlen 2 iddo. *Gweler* adran 22(2) o Ddeddf 1967 am ddiffiniad o "the Ministers" at ddibenion adrannau 3, 5, 6 a 15(3) o'r Ddeddf honno. Diwygiwyd adran 22(2) gan adrannau 19(2)(d), 45(a), (b) ac (c) a 46(2) o Ddeddf Pysgodfeydd 1981, a Rhan 2 o Atodlen 5 iddi, a chan erthygl 4 o O.S. 1999/1820, a pharagraff 43(1) a (12) o Ran 1 a Rhan 4 o Atodlen 2 iddo.

hwy(1), ac adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972(2) (“Deddf 1972”), a pharagraff 1A o Atodlen 2 iddi(3).

Mae Gweinidogion Cymru wedi eu dynodi at ddibenion adran 2(2) o Ddeddf 1972 mewn perthynas â pholisi amaethyddol cyffredin yr Undeb Ewropeaidd(4).

Mae’r Gorchymyn hwn yn gwneud darpariaeth at ddiben a grybwyllir yn adran 2(2) o Ddeddf 1972, ac mae’n ymddangos i Weinidogion Cymru ei bod yn hwylus i unrhyw gyfeiriad yn y Gorchymyn hwn, yn Rheoliadau Cofrestru Prynwyr a Gwerthwyr Pysgod a Dynodi Safleoedd Arwerthu Pysgod (Cymru) 2006(5), yng Ngorchymyn Cŵn Gleision (Gwahardd eu Pysgota) (Cymru) 2008(6) neu yng Ngorchymyn Rhwydi Pysgota Perdys 2008(7), at y Rheoliadau a ganlyn gael ei ddehongli fel cyfeiriad at y Rheoliadau hynny fel y’u diwygir o bryd i’w gilydd—

- (a) Rheoliad y Comisiwn (EC) Rhif 517/2008 dyddiedig 10 Mehefin 2008 sy’n gosod rheolau manwl ar gyfer gweithredu Rheoliad y Cyngor (EC) Rhif 850/98 o ran penderfynu ar faint rhwyllau ac asesu trwch cortynnau rhwydi pysgota(8), a

-
- (1) Yn rhinwedd erthygl 2(a) o Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672) trosglwyddwyd y swyddogaethau sy’n arferadwy o dan adrannau 3, 5, 6 a 15 o Ddeddf 1967 i Gynulliad Cenedlaethol Cymru (fel y’i cyfansoddwyd o dan Ddeddf Llywodraeth Cymru 1998 (p. 38)) i’r graddau y maent yn arferadwy o ran Cymru (gan weithredu ar y cyd ag unrhyw Weinidog y Goron y maent yn arferadwy ganddo mewn perthynas ag adran 15(3)). Trosglwyddwyd y swyddogaethau hynny a oedd gan Gynulliad Cenedlaethol Cymru i Weinidogion Cymru yn rhinwedd adran 162 o Ddeddf Llywodraeth Cymru 2006 (p. 32) (“Deddf 2006”) a pharagraff 30 o Atodlen 11 iddi. Yn rhinwedd erthyglau 4(1)(b) a 5(1)(b) o Orchymyn Parth Cymru (Ffiniau a Throsglwyddo Swyddogaethau) 2010 (O.S. 2010/760), cafodd swyddogaethau sy’n arferadwy o dan adrannau 3, 5, 6 a 15 o Ddeddf 1967 eu trosglwyddo ymhellach i Weinidogion Cymru i’r graddau y maent yn arferadwy mewn perthynas â pharth Cymru (gan weithredu ar y cyd ag unrhyw Weinidog y Goron y maent yn arferadwy ganddo mewn perthynas ag adran 15(3)).
 - (2) 1972 p. 68; diwygiwyd adran 2(2) gan adran 27(1)(a) o Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006 (p. 51) ac adran 3(3) o Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008 (p. 7) a Rhan 1 o’r Atodlen iddi. Mae wedi ei diddymu yn rhagolygol gan adran 1 o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16) o’r diwrnod ymadael (*gweler* adran 20 o’r Ddeddf honno).
 - (3) Mewnosodwyd paragraff 1A o Atodlen 2 gan adran 28 o Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006 ac fe’i diwygiwyd gan adran 3(3) o Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008 a Rhan 1 o’r Atodlen iddi a chan erthygl 3 o O.S. 2007/1388 a pharagraff 1 o Atodlen 1 iddo. Mae wedi ei ddiddymu yn rhagolygol gan adran 1 o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 o’r diwrnod ymadael (*gweler* adran 20 o’r Ddeddf honno).
 - (4) O.S. 2010/2690.
 - (5) O.S. 2006/1495 (Cy. 145).
 - (6) O.S. 2008/1438 (Cy. 150).
 - (7) O.S. 2008/1811 (Cy. 175).
 - (8) OJ Rhif L 151, 11.6.2008, t. 5.

- (b) Rheoliad y Cyngor (EC) Rhif 1224/2009 dyddiedig 20 Tachwedd 2009 sy'n sefydlu system o reolaeth Gymunedol er mwyn sicrhau cydymffurfiaeth â rheolau'r polisi pysgodfeydd cyffredin⁽¹⁾.

Enwi, cymhwyso, dehongli a chychwyn

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Pysgota Môr (Diwygiadau Amrywiol) (Cymru) 2018.

(2) Ac eithrio fel a ddarperir ym mharagraff (3), mae'r Gorchymyn hwn yn gymwys o ran Cymru a pharth Cymru.

(3) Mae erthyglau 3 a 4 o'r Gorchymyn hwn yn gymwys o ran Cymru.

(4) Yn yr erthygl hon, mae i "Cymru" yr ystyr a roddir i "Wales" ac mae i "parth Cymru" yr ystyr a roddir i "Welsh zone" yn adran 158(1) o Ddeddf Llywodraeth Cymru 2006⁽²⁾.

(5) Daw'r Gorchymyn hwn i rym ar 20 Tachwedd 2018.

Diwygiadau i Reoliadau Cofrestru Prynwyr a Gwerthwyr Pysgod a Dynodi Safleoedd Arwerthu Pysgod (Cymru) 2006

2.—(1) Mae Rheoliadau Cofrestru Prynwyr a Gwerthwyr Pysgod a Dynodi Safleoedd Arwerthu Pysgod (Cymru) 2006⁽³⁾ wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 1 (enwi, cychwyn a chymhwyso), ym mharagraff (2), ar ôl "Chymru" mewnosoder "a pharth Cymru".

(3) Yn rheoliad 2 (dehongli)—

(a) ym mharagraff (1)—

(i) hepgorer y diffiniad o "Erthygl 9";

(ii) hepgorer y diffiniad o "y Rheoliad CFP";

(iii) mewnosoder yn y lle priodol yn nhrefn yr wyddor—

(1) OJ Rhif L 343, 22.12.2009, t. 1, fel y'i diwygiwyd ddiwethaf gan Reoliad (EU) 2015/812 (OJ Rhif L 133, 29.5.2015, t. 1).

(2) 2006 p. 32. Mae diwygiadau i adran 158 nad ydynt yn berthnasol i'r diffiniad hwn. At ddibenion y diffiniad o "Wales" yn adran 158(1) o Ddeddf 2006, y ffin rhwng y rhannau hynny o'r môr o fewn Aberoedd Hafren a Dyfrdwy sydd i'w trin fel rhai sy'n gyfagos i Gymru a'r rhai nad ydynt i'w trin felly yw, ym mhob achos, llinell a dynnir rhwng y cyfesurynnau a nodir yn Atodlen 3 i Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672). Yn rhinwedd adran 162 o Ddeddf 2006, a pharagraff 26 o Atodlen 11 iddi, mae O.S. 1999/672 yn parhau i gael effaith. Mewnosodwyd y diffiniad o "Welsh zone" yn adran 158(1) gan adran 43 o Ddeddf 2009. Pennir parth Cymru yng Ngorchymyn Parth Cymru (Ffiniau a Throsglwyddo Swyddogaethau) 2010 (O.S. 2010/760).

(3) O.S. 2006/1495 (Cy. 145).

“mae i “Cymru” yr un ystyr ag a roddir i “Wales” yn rhinwedd adran 158 o Ddeddf Llywodraeth Cymru 2006;”;

“mae i “parth Cymru” yr un ystyr ag a roddir i “Welsh zone” yn rhinwedd adran 158 o Ddeddf Llywodraeth Cymru 2006;”;

“ystyr “y Rheoliad Rheolaeth” (*“the Control Regulation”*) yw Rheoliad y Cyngor (EC) Rhif 1224/2009 dyddiedig 20 Tachwedd 2009 sy’n sefydlu system o reolaeth Gymunedol er mwyn sicrhau cydymffurfiaeth â rheolau’r polisi pysgodfeydd cyffredin, fel y’i diwygir o bryd i’w gilydd.”;

(iv) yn y diffiniad o “darpariaethau cywerth”, yn lle “Erthygl 9, neu Erthygl 22 o’r Rheoliad CFP” rhodder “Pennod II o Deitl V”; a

(v) yn y diffiniad o “pysgod”, yn lle “mae Erthygl 9 neu Erthygl 22 o’r Rheoliad CFP” rhodder “mae’r Rheoliad Rheolaeth”;

(b) yn lle paragraff (3) rhodder—

“(3) Mae i’r termau a ddefnyddir yn y Rheoliadau hyn, nad ydynt wedi eu diffinio ym mharagraff (1) na (2) ac sy’n ymddangos yn y Rheoliad Rheolaeth, yr un ystyr yn y Rheoliadau hyn ag sydd iddynt at ddibenion y Rheoliad Rheolaeth.

(4) Yn y Rheoliadau hyn, mae cyfeiriad at Erthygl yn golygu Erthygl o’r Rheoliad Rheolaeth, ac mae cyfeiriad at Bennod II o Deitl V yn golygu Pennod II o Deitl V o’r Rheoliad Rheolaeth.”

(4) Yn rheoliad 3 (cofrestru gwerthwyr pysgod)—

(a) ym mharagraff (1), yn lle “Erthygl 9” rhodder “Pennod II o Deitl V (Rheoli marchnata: gweithgareddau ar ôl glanio)”;

(b) ym mharagraff (4), yn lle “Erthygl 9, Erthygl 22 o’r Rheoliad CFP” rhodder “Erthyglau 59, 62, 63, 64, 66 a 67”; ac

(c) ym mharagraff (8)(b) yn lle “Erthygl 9, Erthygl 22 o’r Rheoliad CFP” rhodder “Erthyglau 59, 62, 63, 64, 66 neu 67”.

(5) Yn rheoliad 5 (cadw cofnodion gan werthwr pysgod cofrestredig), ym mharagraff (3), yn lle “hyd ddiwedd yr ail flwyddyn galendr yn dilyn y gwerthiant hwnnw” rhodder “am 3 blynedd”.

(6) Yn rheoliad 6 (dynodi safleoedd arwerthu pysgod)—

(a) ym mharagraff (1), yn lle “Erthygl 9 ac Erthygl 22 o’r Rheoliad CFP” rhodder “Pennod II o Deitl V”;

- (b) ym mharagraff (3), yn lle “gydag Erthygl 9, Erthygl 22 y Rheoliad CFP” rhodder “gyda Phennod II o Deitl V”; ac
- (c) ym mharagraff (7)(b), yn lle “Erthygl 9, Erthygl 22 o’r Rheoliad CFP” rhodder “Pennod II o Deitl V”.

(7) Yn rheoliad 7 (cofrestru prynwyr pysgod)—

- (a) ym mharagraff (1), yn lle “Erthygl 22(2)(b) o’r Rheoliad CFP” rhodder “Erthygl 59”;
- (b) ym mharagraff (3), yn lle “Erthygl 9, Erthygl 22 y Rheoliad CFP” rhodder “Erthyglau 62, 63, 64, 66 a 67”; ac
- (c) ym mharagraff (7)(b), yn lle “Erthygl 9, Erthygl 22 o’r Rheoliad CFP” rhodder “Erthyglau 62, 63, 64, 66 neu 67”.

(8) Yn lle rheoliad 8 (prynu pysgod gan brynwr anghofrestredig) rhodder—

“**8.** Bydd unrhyw berson sy’n prynu pysgod yn groes i Erthygl 59(2) yn euog o drosedd, oni bai bod yr esemptiad yn Erthygl 59(3) yn gymwys.”

(9) Yn rheoliad 9 (cadw cofnodion gan brynwr pysgod cofrestredig), ym mharagraff (3), yn lle “hyd ddiwedd yr ail flwyddyn galendr yn dilyn y gwerthiant hwnnw” rhodder “, am 3 blynedd”.

(10) Yn rheoliad 13 (pwerau swyddogion pysgodfeydd môr Prydain mewn cysylltiad â chychod pysgota), ym mharagraff (1), ar ôl “Cymru” mewnosoder “a pharth Cymru”.

(11) Yn lle rheoliad 15 (pwerau swyddogion pysgod môr Prydain i atafaelu pysgod) rhodder—

“**15.** Caiff unrhyw swyddog pysgod môr Prydain atafaelu unrhyw bysgod (gan gynnwys unrhyw gynhwysydd sy’n dal y pysgod) y mae gan y swyddog achos rhesymol dros amau y cyflawnwyd trosedd mewn cysylltiad â hwy o dan y Rheoliadau hyn neu o dan unrhyw ddarpariaeth gywerth.”

(12) Yn Atodlen 1 (amodau perthnasol i gofrestriadau gwerthwyr pysgod), ym mharagraff 2, yn lle “Erthygl 9” rhodder “Erthyglau 62 i 64”.

(13) Yn Atodlen 3 (amodau perthnasol i gofrestriadau prynwyr pysgod), ym mharagraff 2, yn lle “Erthygl 22(2) o’r Rheoliad Cyngor (EC) 2371/2002” rhodder “Erthyglau 62 i 64”.

Diwygiadau i Orchymyn Cŵn Gleision (Gwahardd eu Pysgota) (Cymru) 2008

3. Yng Ngorchymyn Cŵn Gleision (Gwahardd eu Pysgota) (Cymru) 2008(1), yn erthygl 1 (enwi, cychwyn a chymhwyso), yn lle paragraff (3) rhodder—

“(3) Nid yw’r Gorchymyn hwn ond yn gymwys i gychod pysgota Prydeinig sydd naill ai—

- (a) wedi eu cofrestru yn y Deyrnas Unedig o dan Ran 2 o Ddeddf Llongau Masnach 1995(2); neu
- (b) o dan berchnogaeth lwyr personau sy’n gymwys i berchnogi llongau Prydeinig at ddibenion y Rhan honno o’r Ddeddf honno.”

Diwygiadau i Orchymyn Rhwydi Pysgota Perdys (Cymru) 2008

4. Yng Ngorchymyn Rhwydi Pysgota Perdys (Cymru) 2008(3), yn erthygl 2 (dehongli), ym mharagraff (2), yn lle’r geiriau o “Rheoliad y Comisiwn (EC) Rhif 129/2003” hyd at y diwedd, rhodder “Rheoliad y Comisiwn (EC) Rhif 517/2008 dyddiedig 10 Mehefin 2008 sy’n gosod rheolau manwl ar gyfer gweithredu Rheoliad y Cyngor (EC) Rhif 850/98 o ran penderfynu ar faint rhwyllau ac asesu trwch cortynnau rhwydi pysgota”.

Lesley Griffiths

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig, un o Weinidogion Cymru
16 Hydref 2018

(1) O.S. 2008/1438 (Cy. 150).

(2) 1995 p. 21.

(3) O.S. 2008/1811 (Cy. 175); yr offerynnau diwygio perthnasol yw O.S. 2008/3144 (Cy. 279) a 2011/1043.

Explanatory Memorandum to The Sea Fishing (Miscellaneous Amendments)(Wales) Order 2018.

This Explanatory Memorandum has been prepared by the Marine and Fisheries Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Sea Fishing (Miscellaneous Amendments)(Wales) Order 2018.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs

18 October 2018

Description

1. This Order amends the following existing pieces of fisheries legislation in order to correct errors and update references to the relevant EU legislation following the introduction of Council Regulation (EC) No 1224/2009):
 - The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006
 - The Tope (Prohibition of Fishing)(Wales) Order 2008
 - The Shrimp Fishing Nets (Wales) Order 2008

Matters of special interest to the Constitutional and Legislative Affairs Committee

2. None.

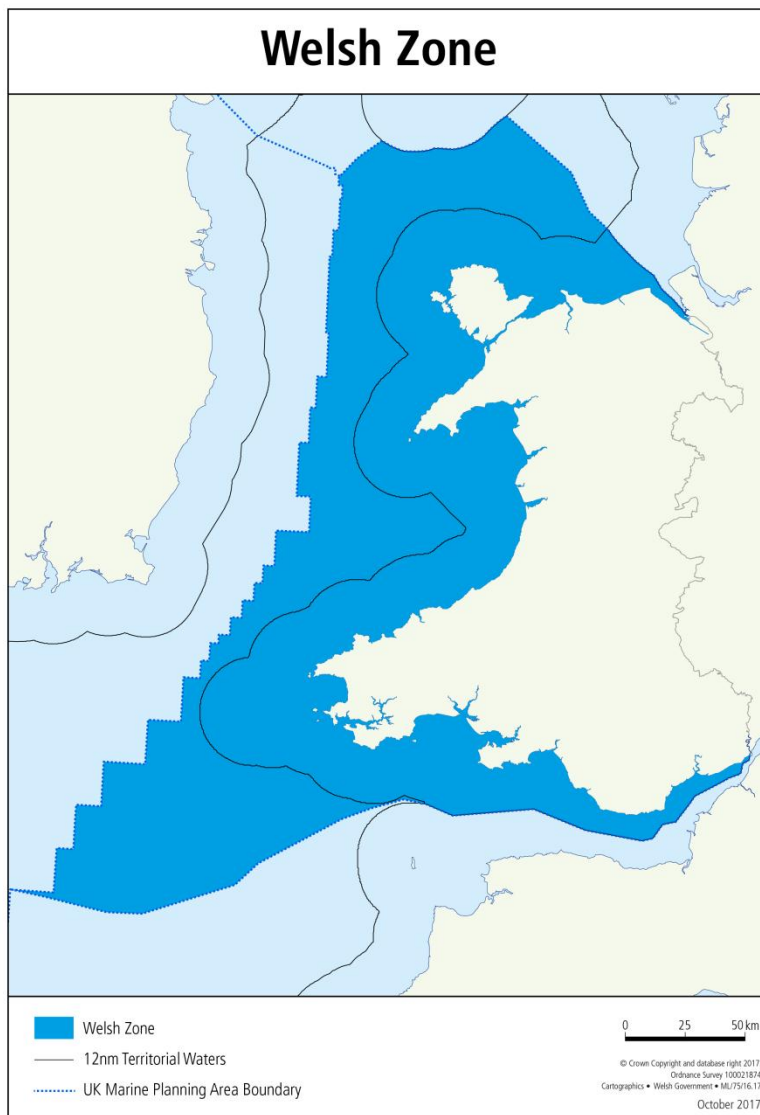
Legislative background

3. This Order is made in exercise of the powers conferred by Sections 5(1), 5(6), 6(1), 6(1A) and 15(3) of the Sea Fish Conservation Act 1967 and Section 2(2) of, and paragraph 1A of Schedule 2 to the European Communities Act 1972.
4. The Order follows the negative resolution procedure (pursuant to section 316(8) of the 2009 Act).

Purpose & intended effect of the legislation

5. The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006 No.1495 (W.145), provides that any individual or company purchasing first sale fish for commercial purposes must be a registered buyer of fish and provide sales notes to Welsh Government. The submission of sales notes is the main mechanism for monitoring the exploitation of fisheries resources to ensure compliance with national quotas. This is an important part of the audit process to ensure all fish landed in Wales is legitimately sourced.
6. The Registration of Buyers and Sellers (RBS) is an EU requirement through the Common Fisheries Policy and associated Control Regulations. Member States are required to ensure this requirement is met through domestic legislation where necessary.
7. The above Statutory Instrument (No.1495 (W.145)) currently makes reference to the former EU Regulations (Council Regulation (EEC) No. 2847/93 and Council Regulation 2371/2002) rather than the current Regulation (Council Regulation (EC) No 1224/2009). Therefore there is a significant risk the current regulations cannot be enforced until an amendment is made.
8. In addition, the 2006 SI extends to “Wales” but that term is not defined in the Regulations. Consequently, the Interpretation Act definition of “Wales” applies and the 2006 SI is, therefore, limited to the land mass of Wales only. A definition of “Wales” was omitted in error when those Regulations were originally made. Since that time the Welsh Zone has also been

created (as defined by the Government of Wales Act 2006 and illustrated below). The existing English Legislation (SI 2005/1605 as amended) does not apply to either Wales or the Welsh Zone.



9. At present, therefore, there is no Registered Buyers and Sellers regime which applies throughout the territorial waters of Wales or the Welsh Zone. The purpose of this legislation is to reinstate the regime and ensure it applies throughout the territorial waters of Wales and the Welsh Zone.
10. The Tope (Prohibition of Fishing) (Wales) Order 2008 No.1438 (W.150), prohibits fishing for Tope (a species of shark) in Welsh waters other than by rod and line. The Order also prohibits the landing of Tope caught by rod and line. It allows for a small by-catch for commercial vessels (45kg per day). The Order therefore prevents a targeted fishery, while allowing recreational rod and line vessels to target Tope for catch and release fishing. The Order currently references the previous Common Fisheries Policy and this reference needs updating to ensure it applies in Welsh waters.

11. The Shrimp Fishing Nets (Wales) Order 2008 No. 1811 (W.175) regulates the carriage and use of any fishing nets with mesh size between 16 and 31 millimeters. The Order applies to British fishing boats in Wales and prohibits them from carrying or using such nets, other than in certain specified circumstances. The Order currently references a previous EU regulation which lays down detailed rules for determining the mesh size and thickness of twine of fishing nets. This reference needs updating to the current EU regulation to ensure it applies in Welsh waters

Consultation

12. The amendments required are of a technical nature and do not alter the intended purpose of the specified Regulations. Therefore, no consultation process was considered necessary.

Regulatory Impact Assessment (RIA)

13. The amendments required within this regulation are of a technical nature and do not alter the intended purpose of the specified Regulations. There are no costs or benefits associated with its introduction, therefore there is not requirement to carry out a Regulatory Impact Assessment. This legislation has no impact on the statutory duties (sections 77-79 GOWA 06) or statutory partners (sections 72-75 GOWA 06)

Ein cyf/Our ref MA - L/LG/0654/18

Mick Antoniwn AC
Cadeirydd
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Cynulliad Cenedlaethol Cymru

SeneddCLA@cynulliad.cymru

29 Hydref 2018

Annwyl Mick

Diben y llythyr hwn yw rhoi gwybod i chi fy mod wedi gosod Memorandwm Cydsyniad Offeryn Statudol yng Nghynulliad Cenedlaethol Cymru mewn perthynas â'r Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018, fel sy'n ofynnol o dan Reol Sefydlog 30A.

Nid wyf yn bwriadu gosod cynnig i drafod yr OS hwn yn yr achos yma. Rwyf wedi gwneud y penderfyniad hwnnw ar sail y ffaith mai'r unig ffordd a wnelo'r OS â ni yw ei fod yn cywiro cyfeiriadau a fydd wedi dyddio mewn cyfraith oherwydd bod y DU yn ymadael â'r UE.

Mae'r darpariaethau yn yr OS yn rhai technegol eu natur, ac nid oes unrhyw wahaniaeth o ran polisi rhwng Llywodraeth Cymru a Llywodraeth y DU yn yr achos hwn.

O ystyried faint o ddeddfwriaeth y mae'r Cynulliad yn ei hystyried, nid wyf o'r farn y byddai dadl am yr OS hwn yn ddefnydd cynhyrchiol o amser gwerthfawr y Cyfarfod Llawn. Fodd bynnag, mae RhS 30A y darparu y caiff unrhyw aelod gyflwyno cynnig i drafod yr OS hwn, a byddwn yn fwy na pharod i gymryd rhan mewn dadl, os caiff un ei chynnal.

Cofion

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs



Llywodraeth Cymru
Welsh Government

DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

TEITL Hysbysu mewn perthynas ag Offerynnau Statudol a wneir gan Weinidogion y DU mewn meysydd datganoledig o dan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 na chânt eu gosod gerbron y Cynulliad

DYDDIAD 30 Hydref 2018

GAN Julie James AC, Arweinydd y Tŷ a'r Prif Chwip

Rheoliadau Asesiadau Amgylcheddol a Chynllunio Amrywiol (Diwygio) (Ymadael â'r UE) 2018

Effaith yr OS o ran Cymru:

O ran effaith yr OS yng Nghymru, ei unig effaith yw gwneud cywiriad technegol i'r diffiniad o wastraff yn adran 336 o Town and Country Planning Act 1990, sy'n gymwys i Gymru ac i Loegr. Mae angen gwneud y cywiriad er mwyn sicrhau bod y llyfr statud yn parhau'n gyfredol.

Unrhyw effaith y gall yr OS ei chael ar gymhwysedd deddfwriaethol y Cynulliad a/neu ar gymhwysedd gweithredol Gweinidogion Cymru

Mae'r OS (pan fo'n berthnasol i Gymru) yn gwneud darpariaeth sydd o fewn cymhwysedd deddfwriaethol, fodd bynnag, o dan yr amgylchiadau eithriadol hyn pan fo gofyn inni ystyried a chywiro nifer digyffelyb o ddarnau deddfwriaeth o fewn amserlen dynn gan ddefnyddio adnoddau cyfyngedig, egwyddor gyffredinol Llywodraeth Cymru yw ei bod yn briodol inni ofyn i Lywodraeth y DU ddeddfu ar ein rhan ar gyfer nifer mawr o offerynnau statudol.

Gan fod peth deddfwriaeth gyfatebol yn ei lle yng Nghymru, bwriedir mynd i'r afael â chywiriadau i ddiffygion yn y ddeddfwriaeth honno drwy wneud Offerynnau Statudol Ymadael â'r UE ar gyfer Cymru.

Diben y diwygiad

Diben yr OS hwn (y weithdrefn negyddol), a fydd yn cael ei gyflwyno gan y Weinyddiaeth Dai, Cymunedau a Llywodraeth Leol, yw mynd i'r afael â methiannau cyfraith yr UE a ddargedwir i weithredu'n effeithiol, ac â diffygion eraill sy'n codi yn sgil y ffaith bod y DU yn ymadael â'r UE.

Diben y ddarpariaeth, sy'n gymwys yng Nghymru, yw cywiro cyfeiriad sydd wedi dyddio at ddeddfwriaeth yr UE. Mae'n cael ei wneud o dan European Union (Withdrawal) Act 2018 and the European Communities Act 1972. Ni fydd yr offeryn yn cyflwyno unrhyw newidiadau polisi.

Mae'r OS a'r Memorandwm Esboniadol sy'n cyd-fynd ag ef, ac sy'n nodi effaith y diwygiad hwn, i'w gweld yma:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-environmental-assessments-and-miscellaneous-planning-amendment-eu-exit-regulations-2018>

Pam y rhoddwyd cydsyniad

Rhoddwyd cydsyniad i Lywodraeth y DU wneud y cywiriad hwn o ran, ac ar ran Cymru, am resymau'n ymwneud ag effeithlonrwydd, hwylustod ac oherwydd ei fod yn fân ddiwygiad sy'n un technegol ei natur. Byddai gwneud OSau statudol ar wahân yng Nghymru a Lloegr yn arwain at ddyblygu, ac at gymhlethu'r llyfr statud yn ddiangen.

Diben y diwygiad hwn yw diweddarau cyfeiriad sydd wedi dyddio, ac mae angen gwneud hynny er mwyn sicrhau y bydd y ddeddfwriaeth yn gallu gweithredu'n effeithiol ar ôl i'r DU ymadael â'r UE. Mae'r diwygiad wedi cael ei ystyried yn llawn ac nid oes unrhyw wahaniaeth o ran polisi rhwng Llywodraeth Cymru a Llywodraeth y DU. Mae'n briodol, felly, i Lywodraeth y DU wneud yr OS yn yr achos hwn.

MEMORANDWM CYDSYNIAD OFFERYN STATUDOL

Rheoliadau Asesiadau Amgylcheddol a Chynllunio Amrywiol (Diwygio) (Ymadael â'r UE) 2018

1. Mae'r Memorandwm Cydsyniad Offeryn Statudol hwn yn cael ei osod o dan Reol Sefydlog ("RhS") 30A.2. Mae Rheol Sefydlog 30A yn rhagnodi bod yn rhaid gosod Memorandwm Cydsyniad Offeryn Statudol ac y caiff Cynnig Cydsyniad Offeryn Statudol ei gyflwyno gerbron Cynulliad Cenedlaethol Cymru ("y Cynulliad") os bydd unrhyw un neu rai o Offerynnau Statudol y DU yn gwneud darpariaeth, mewn perthynas â Chymru, sy'n diwygio deddfwriaeth sylfaenol sydd o fewn cymhwysedd deddfwriaethol y Cynulliad.
2. Cafodd yr Rheoliadau Asesiadau Amgylcheddol a Chynllunio Amrywiol (Diwygio) (Ymadael â'r UE) 2018 eu cyflwyno gerbron Senedd y DU ar 24 Hydref 2018. Mae'r Rheoliadau i'w gweld yma:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-environmental-assessments-and-miscellaneous-planning-amendment-eu-exit-regulations-2018>

Crynodeb o'r Offeryn Statudol a'i amcan

3. Amcan yr OS yw mynd i'r afael â methiannau cyfraith yr UE a ddargedwir i weithredu'n effeithiol, ac â diffygion eraill sy'n codi yn sgil y ffaith bod y DU yn ymadael â'r Undeb Ewropeaidd, fel y darperir ar gyfer hynny gan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018. Mae hefyd yn cywiro cyfeiriadau wedi dyddio at ddeddfwriaeth yr UE.
4. Mae'r OS yn diwygio nifer o ddarnau o ddeddfwriaeth:
 - Deddf Cynllunio Gwlad a Thref 1990;
 - Deddf Cynllunio a Phrynu Gorfodol 2004;
 - Deddf Cynllunio 2008;
 - Rheoliadau Asesiadau Amgylcheddol o Gynlluniau a Rhaglenni 2004;
 - Rheoliadau Cynllunio Gwlad a Thref (Asesu Effeithiau Amgylcheddol) 2017, a
 - Rheoliadau Cynllunio Seilwaith (Asesu Effeithiau Amgylcheddol) 2017.

Darpariaeth berthnasol i'w gwneud gan yr OS

5. Yn benodol, mae'r OS hwn yn gwneud cywiriad technegol i'r diffiniad o wastraff yn adran 336 o Ddeddf Cynllunio Gwlad a Thref 1990, sy'n gymwys i Gymru ac i Loegr. Mae angen gwneud y cywiriad er mwyn sicrhau bod y llyfr statud yn parhau'n gyfredol.

6. Mae Llywodraeth Cymru o'r farn bod y ddarpariaeth a ddisgrifir yn y paragraff uchod yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru i'r graddau y mae'n ymwneud â chynllunio; nad yw'n cael ei restru'n fater penodol a gedwir yn ôl o dan Ran 7 o Atodlen 7A i Ddeddf Llywodraeth Cymru 2006, fel y'i diwygiwyd gan Ddeddf Cymru 2017.
7. Pan fo deddfwriaeth gyfatebol yn ei lle yng Nghymru, ymdrinnir â chywiriadau i ddiffygion drwy wneud Offerynnau Statudol Ymadael â'r UE ar gyfer Cymru.

Pam mae'n briodol i'r OS wneud y ddarpariaeth hon

8. Nid oes unrhyw wahaniaeth rhwng Llywodraeth Cymru a Llywodraeth y DU o ran y polisi sy'n gysylltiedig â'r cywiriad. Felly, byddai gwneud Offerynnau Statudol ar wahân yng Nghymru a Lloegr i gywiro'r cyfeiriad o dan sylw yn arwain at ddyblygu, ac at gymhlethu'r llyfr statud yn ddiangen. Mae rhoi cydsyniad i'r OS hwn yn sicrhau mai un fframwaith deddfwriaethol a fydd yn bodoli ar draws Cymru a Lloegr, ac mae hynny'n hyrwyddo eglurder a hygyrchedd yn ystod y cyfnod hwn o newid. O dan yr amgylchiadau eithriadol hyn, mae Llywodraeth Cymru o'r farn ei bod yn briodol i Lywodraeth y DU ddeddfu ar ein rhan yn yr achos hwn.

Lesley Griffiths AC
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig

Hydref 2018

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL ASSESSMENTS AND MISCELLANEOUS PLANNING
(AMENDMENT) (EU EXIT) REGULATIONS 2018
2018 No. [XXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Committees on the UK's exit from the European Union.

2. Purpose of the instrument

- 2.1 This instrument uses powers in the European Union (Withdrawal) Act 2018 to make necessary changes, which arise as a result of the UK leaving the European Union, in the following pieces of legislation:

The main part of this instrument amends the following:

- The Town and Country Planning (Environmental Impact Assessment) Regulations 2017, S.I. 2017/571
- The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, S.I. 2017/572
- The Environmental Assessment of Plans and Programmes Regulations 2004, S.I. 2004/1633 ("SEA Regulations")

The instrument also contains amendments to:

- The Town and Country Planning Act 1990
- The Planning and Compulsory Purchase Act 2004
- The Planning Act 2008

- 2.2 The instrument (in regulations 2(3) and 5(3)(a)) also uses section 2(2) of the European Communities Act 1972 to update references. The amendment in regulation 2(3) reflects an amendment to Directive 2008/98/EC of the European Parliament and of the Council on waste. The amendment in regulation 5(3)(a) replaces an out of date reference in regulation 3 of the SEA Regulations to Council Directive 85/337/EEC with Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment. These provisions come into force before exit day.

- 2.3 Explanations

What did any relevant EU law do before exit day?

This instrument principally concerns the Environmental Impact Assessment and Strategic Environmental Assessment regimes.

Directive 2011/92/EU¹ of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”) is implemented, as respects developments of land, by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/571) and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572). The EIA Directive requires that development consent for public or private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of these projects has been carried out. The two sets of regulations apply to the environmental impact assessment of certain public or private projects which are given development consent through the town and country planning regime and through the Nationally Significant Infrastructure Planning regime respectively. These two sets of Regulations provide that development consent must not be granted until an assessment has been carried out. They set out what an environmental impact assessment is, what it must identify, describe and assess, what is to be included in any environmental report prepared and the public consultation and other procedures relating to environmental impact assessments.

Directive 2001/42/EC² of the European Parliament and Council on the assessment of the effects of certain plans and programmes on the environment (“the SEA Directive”) is implemented by the SEA Regulations. The SEA Directive aims to ensure that Member States integrate environmental assessment into their plans and programmes at the earliest stages. The Regulations apply to any plan or programme prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, which sets the framework for future development consent of certain projects. The projects being those listed in Annex I or II of the EIA Directive and are either—

- (a) subject to preparation or adoption by an authority at national, regional or local level; or
- (b) prepared by an authority for adoption, through a legislative procedure by Parliament or Government.

These Regulations set out what a strategic environmental assessment must include and the public consultation and other procedures relating to such assessments.

In relation to the other amendments in this instrument, across the UK’s domestic planning regime there are a number of references to complying with obligations under EU law which this instrument amends to become references to complying with retained EU law. Namely these are references to complying with EU obligations in:

- sections 61E and 336 of, and paragraphs 8 and 13B of Schedule 4B and paragraph 10 of Schedule 4C to, the Town and Country Planning Act 1990,
- section 38A of, and Schedule A2 to, the Planning and Compulsory Purchase Act 2004, and
- paragraph 3 of Schedule 6 to the Planning Act 2008.

¹ OJ No L 26, 28.1.2012, p. 1.

² OJ No L 197, 21.7.2001, p. 30

Why is it being changed?

This instrument uses powers in the European Union (Withdrawal) Act to make necessary changes to the above legislation to ensure that the law functions correctly after the UK has left the European Union. In particular the amendments update references in UK legislation to EU law, Member States and related terms to reflect the UK leaving the European Union. No substantive changes are being made by this instrument to the way the EIA or SEA regimes operate or the other legislation amended by this instrument. The changes remove unnecessary references, for example to the United Kingdom being a Member State.

What will it now do?

The SEA and EIA regimes amended by this instrument will continue to function as they did before Exit. The changes are:

- references to complying with EU obligations have been replaced with references to complying with retained EU law (regulations 5(3), 5(4), 5(7), 5(8), 6(2), 6(3), 6(4), 6(6), 6(8), 6(9), 6(13), 6(14), 7(2), 7(3), 7(4), 7(5), 7(6), 7(10) and 7(11))
- references to requests made and documents provided, pursuant to EU law, to the UK from other Member States are amended (regulations 5(6), 6(8), 6(9) and 7(6))
- references to Directives are amended to make clear to readers they are referring to the version in force immediately before exit day (regulations 5(2), 6(2), 6(11) and 6(12) and 7(2), 7(8) and 7(9))
- references to the UK as a Member State are amended (regulations 5(5), 5(6), 5(8), 6(5), 6(7), 6(8), 6(9), 6(10), 6(14), 7(6), 7(7) and 7(11)).

In relation to the other amendments in this instrument they relate to references to obligations in EU law which are redundant or no longer appropriate. Namely these are references to complying with EU obligations etc have been replaced with references to complying with retained EU obligations etc (regulations 2(2), 2(4), 2(5), 3, and 4).

3. Matters of special interest to Parliament

Matters of special interest to the Committees on the UK's exit from the European Union

- 3.1 This instrument is being laid for sifting as required under the European Union (Withdrawal) Act 2018. A statement regarding the use of the legislative powers in that Act is contained in Part 2 of the Annex to this memorandum.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The amendments made by this instrument have the same extent and territorial application as the instruments which they amend.

5. European Convention on Human Rights

- 5.1 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Kit Malthouse, has made the following statement regarding human rights:

“In my view the provisions of the Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018 and section 2(2) of the European Communities Act 1972.
- 6.2 The European Union (Withdrawal) Act 2018 makes provision for repealing the European Communities Act 1972 and will preserve EU law, as it stands at the moment of exit, in UK law. The European Union (Withdrawal) Act 2018 creates a new body of domestic legislation from directly applicable EU law being brought into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the UK's obligations as a member of the European Union; together this will be retained EU law.
- 6.3 The European Union (Withdrawal) Act 2018 contains a temporary power to make secondary legislation to deal with deficiencies in this retained EU law. This instrument makes a number of amendments to legislation in the field of environmental assessments and the planning regime in order to ensure that the legislation continues to function properly following the exit of the United Kingdom from the European Union. These amendments relate to matters which have been identified as deficiencies in the legislation arising from that withdrawal from the European Union. See paragraph 2 above for further details.

7. Policy background

What is being done and why?

- 7.1 This instrument makes amendments to correct deficiencies in certain environmental and planning related legislation. The purpose of the amendments is to ensure that the relevant legislation is still operable i.e. it remains coherent and workable following the United Kingdom's exit from the European Union. Details of the amendments are set out in paragraph 2 above.
- 7.2 The instrument also makes provisions under section 2(2) of the European Communities Act 1972, to bring references to EU law up to date before exit day – details of these amendments are provided in paragraph 2 above. The purpose of these amendments is to ensure that UK legislation includes the up to date reference to EU law.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this memorandum.

- 8.2 Alongside the European Union (Withdrawal) Act 2018 powers the instrument is also being made under section 2(2) of the European Communities Act 1972 to bring references to EU law up to date before exit day – more details on these amendments are provided in paragraph 2.

9. Consolidation

- 9.1 There are no current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 A public consultation was not considered necessary because the instrument makes minor technical amendments to an existing regime to maintain the status quo as far as possible. No impact upon stakeholders is envisaged. The devolved administrations were consulted at an early stage and are content with the approach taken.

11. Guidance

- 11.1 No guidance is necessary. The existing planning practice guidance will be updated where necessary to reflect the amendments made by this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private or voluntary sector is foreseen due to the nature of the operability fixes contained within this instrument. This conclusion has been verified by an internal panel of economists.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses, however the amendments introduced by this instrument seek only to maintain the way the current regimes function, as such it is not necessary to take any steps to minimise impacts. The approach of this instrument (i.e. to ensure the continuation of the relevant regimes as they currently function) will be communicated to the public in order to mitigate the risk of confusion or costs incurred.

14. Monitoring & review

- 14.1 In relation to the amendments to secondary legislation made by this instrument under section 2(2) of the European Communities Act 1972, the amendments made by this instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Kit Malthouse MP has made the following statement:

“Having had regard to the Small Business, Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it is not appropriate to make a provision for review in this instrument because it would be disproportionate taking into account the economic impact of the amendments made by this instrument. There are no substantive policy

changes and the amendments to legislation are being made to ensure that the existing position is maintained. Furthermore, as this is an EU Exit related instrument and is merely updating existing references to EU law, as such the measure has no, or no significant regulatory impact, and consequently a review clause would not be appropriate.”

- 14.2 As the remainder of this instrument is made under the European Union (Withdrawal) Act 2018 no review clause is required.

15. Contact

- 15.1 David Hughes at the Ministry of Housing, Communities and Local Government. Telephone: 0303 444 0282 or email: david.hughes@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Simon Gallagher, Director for Planning at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kit Malthouse MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

Annex 1

Statements under the European Union (Withdrawal) Act 2018

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

1. Sifting statement

- 1.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
“In my view the Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.
- 1.2 This is the case because the instrument does not fall within the categories for which use of the affirmative procedure is required under the European Union (Withdrawal) Act 2018. These Regulations correct deficiencies in retained planning legislation arising out of the UK’s withdrawal from the European Union. The instrument makes changes of a minor and technical nature to ensure the continued effective operability of the relevant legislation.

2. Appropriateness statement

- 2.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
“In my view the Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate”.
- 2.2 This is the case because the amendments the instrument makes are minor and do no more than is strictly necessary to ensure the legislation amended functions correctly once the UK has left the European Union. In particular the amendments update references in UK legislation to EU law, Member States and related terms to reflect the UK leaving the European Union.

3. Good reasons

- 3.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 3.2 These are ensuring that the legislation amended by this instrument continues to function correctly once the UK has left the European Union and ensuring clarity for the public and stakeholders. In particular the amendments update references in UK

legislation to EU law, Member States and related terms to reflect the UK leaving the European Union.

4. Equalities

- 4.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement:

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

- 4.2 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

5. Explanations

- 5.1 The explanations statement has been made in paragraph 2 of the main body of this explanatory memorandum.

2018 No.

EXITING THE EUROPEAN UNION

ENVIRONMENTAL PROTECTION

TOWN AND COUNTRY PLANNING

**The Environmental Assessments and Miscellaneous Planning
(Amendment) (EU Exit) Regulations 2018**

Sifting requirements satisfied [?? November 2018]

Made - - - - [?? November 2018]

Laid before Parliament [?? November 2018]

Coming into force in accordance with regulation 1

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018(a) (relating to the appropriate Parliamentary procedure for these regulations) have been satisfied.

The Secretary of State has been designated(b) for the purposes of section 2(2) of the European Communities Act 1972(c) in relation to the environment.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 8(1) of the European Union (Withdrawal) Act 2018.

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018.

(2) Subject to paragraph (3), these Regulations come into force on exit day.

(3) Regulations 2(3) and 5(3)(a) come into force on 31st December 2018.

(a) 2018 c. 16.

(b) S.I. 2008/301.

(c) 1972 c.68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51); and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

(4) The amendments made by these Regulations have the same extent as the provisions they amend.

PART 2

Amendments to primary legislation

Amendments to the Town and Country Planning Act 1990

2.—(1) The Town and Country Planning Act 1990(**a**) is amended as follows.

(2) In section 61E(8) (neighbourhood development orders) for “EU obligation” substitute “retained EU obligation”.

(3) In section 336(1) (interpretation), in the definition of “waste” at the end of paragraph (a), before the “and” insert “as last amended by Council Regulation (EU) 2017/997,”.

(4) In Schedule 4B (process for making neighbourhood development orders), in paragraphs 8(2)(f), 13B(1)(c)(ii) and 13B(6)(a), for “EU obligations” substitute “retained EU obligations”.

(5) In Schedule 4C (community right to build orders), in paragraph 10(5)(a), for “EU obligations” substitute “retained EU obligations”.

Amendments to the Planning and Compulsory Purchase Act 2004

3.—(1) The Planning and Compulsory Purchase Act 2004(**b**) is amended as follows.

(2) In section 38A(6) (meaning of “neighbourhood development plan”) for “EU obligation” substitute “retained EU obligation”.

(3) In Schedule A2 (modification of neighbourhood development plans)—

(a) in paragraphs 11(2)(d) and 14(6)(a), for “EU obligations” substitute “retained EU obligations”; and

(b) in paragraph 14(4), for “EU obligation” substitute “retained EU obligation”.

Amendments to the Planning Act 2008

4.—(1) The Planning Act 2008(**c**) is amended as follows.

(2) In Schedule 6 (changes to, and revocation of, orders granting development consent)—

(a) in paragraph 3(7)(a) for “EU law” substitute “relevant retained EU law”; and

(b) in paragraph 3(8) for the definition of “EU law” substitute—

““relevant retained EU law” means—

(a) any right, power, obligation, liability or restriction that—

(i) was created or arose by or under the EU Treaties before exit day, and

(ii) forms part of retained EU law, and

(b) any remedy or procedure that—

(i) was provided for by or under the EU Treaties before exit day, and

(ii) forms part of retained EU law,

as modified from time to time.”.

(a) 1990 c. 8. Section 61E was inserted by paragraph 2 of Schedule 9 to the Localism Act 2011 (c. 20). Schedule 4B and 4C were inserted by Schedules 10 and 11 to the Localism Act 2011. Paragraph 13B was inserted by section 141 of the Housing and Planning Act 2016 (c. 22).

(b) 2004 c. 5. Section 38A was inserted by paragraph 7 of Schedule 9 to the Localism Act 2011. Schedule A2 was inserted by section 4(10) of, and Schedule 1 to, the Neighbourhood Planning Act 2017 (c. 20).

(c) 2008 c. 29. Paragraph 3 of Schedule 6 was amended by S.I. 2011/1043. There are other amendments not relevant to this instrument.

PART 3

Amendments to secondary legislation

Amendments to the Environmental Assessment of Plans and Programmes Regulations 2004

5.—(1) The Environmental Assessment of Plans and Programmes Regulations 2004(a) are amended as follows.

(2) In regulation 2(1)—

- (a) at the end of the definition of “the Environmental Assessment of Plans and Programmes Directive” add “, as it had effect immediately before exit day”; and
- (b) in the definition of “the Habitats Directive” for “as last amended by Council Directive 97/62/EC” substitute “as it had effect immediately before exit day”.

(3) In regulation 5—

- (a) in paragraph (2)(b), for “Council Directive 85/337/EEC(b) on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC(c)” substitute “Directive 2011/92/EU(d) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment”; and
- (b) in paragraph (3) after “pursuant to” insert “any law that implemented”.

(4) In regulation 12(4) for “EU legislation” substitute “retained EU law”.

(5) In regulation 14, in paragraphs (1) and (3)(a), for “another” substitute “a”.

(6) In regulation 15—

- (a) in the heading, omit “other”;
- (b) in paragraph (1), omit the words from “in that behalf” to “Directive”; and
- (c) in paragraph (4)—
 - (i) in sub-paragraph (b) for “under Article 7.1 of the Environmental Assessment of Plans and Programmes Directive” substitute “by the Member State”;
 - (ii) in sub-paragraph (d) for “under Article 7.1 of the Environmental Assessment of Plans and Programmes Directive” substitute “by the Member State”.

(7) In Schedule 1, in paragraph 1(e), for “EU legislation” substitute “retained EU law”.

(8) In Schedule 2—

- (a) in paragraph 4, for the words “such as” to the end substitute “such as a European site (within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2017(e))”; and
- (b) in paragraph 5, for “Member State” substitute “national”.

Amendments to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017

6.—(1) The Town and Country Planning (Environmental Impact Assessment) Regulations 2017(f) are amended as follows.

(2) In regulation 2(1)—

-
- (a) S.I. 2004/1633, amended by S.I. 2011/1043; there are other amending instruments but none is relevant to this instrument.
 - (b) OJ No L 175, 5.7.1985, p. 40.
 - (c) OJ No L 73, 14.3.1997, p. 5.
 - (d) OJ No L 26, 28.1.2012, p. 1
 - (e) S.I. 2017/1012.
 - (f) S.I. 2017/571.

- (a) at the end of the definition of “the Directive” add “as it had effect immediately before exit day”;
- (b) for the definition of “EU environmental assessment” substitute—

““EU environmental assessment” means an assessment of the effect of anything on the environment carried out under retained EU law other than any law of any part of the United Kingdom that implemented the Directive;”.
- (3) In regulation 4(2)(b) after “under” insert “any law that implemented”.
- (4) In regulation 26(3)(c) after the second occurrence of “under” insert “any law that implemented”.
- (5) In regulation 32(6)(n)(i), in the text substituting regulation 58(1)(a), for “another” substitute “an”.
- (6) In regulation 35—
 - (a) after “requirements” insert “of any law that implemented the Directive”; and
 - (b) after “and” insert “the”.
- (7) In regulation 46(a), in the text substituting regulation 58(1)(a), for “another” substitute “an”.
- (8) In regulation 58—
 - (a) in the heading and in paragraphs (1) and (2), for “another”, in each place it occurs, substitute “an”;
 - (b) in paragraph (4) for “referred to in Article 6(1) of the Directive” substitute “which the EEA State designated to be consulted about the project”;
 - (c) in paragraph (5)—
 - (i) omit “in accordance with Article 7(4) of the Directive”; and
 - (ii) in sub-paragraph (b) omit “other”.
- (9) In regulation 59—
 - (a) in the heading for “another” substitute “an”;
 - (b) in paragraph (1)—
 - (i) for “another” substitute “an”;
 - (ii) omit “, pursuant to Article 7(1) or 7(2) of the Directive,”;
 - (iii) omit “, in accordance with Article 7(4) of the Directive”;
 - (iv) in sub-paragraph (b)—
 - (aa) for “in that EEA State” substitute “(which the EEA State designated as responsible for performing the duties arising from the Directive)”;
 - (bb) omit “pursuant to Article 7(3)(b) of the Directive”; and
 - (c) in paragraph (2)(c) omit “in order to comply with Article 9(2) of the Directive”.
- (10) In regulation 63—
 - (a) in paragraphs (3)(b) and (5)(b) for “another”, in each place it occurs, substitute “an”; and
 - (b) omit paragraph (6).
- (11) In Schedule 1—
 - (a) in paragraph 22 after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008(a) and any law that implemented”; and
 - (b) in paragraph 23 for “pursuant to Directive 2009/31/EC(b)” substitute “(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented Directive 2009/31/EC)”.

(a) 2008 c. 32.

(b) OJ No L 140, 5.6.2009, p. 114.

(12) In Schedule 2, in the table in paragraph 1 in item 3(j), for “pursuant to Directive 2009/31/EC” substitute “(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented Directive 2009/31/EC)”.

(13) In Schedule 3, in paragraph 2(1)(c)(vi), for “Union legislation” substitute “retained EU law”.

(14) In Schedule 4—

(a) in paragraph 5—

- (i) for “or Member State” substitute “level (as they had effect immediately before exit day) or United Kingdom”;
- (ii) after “those established under” insert “the law of any part of the United Kingdom that implemented”; and

(b) in paragraph 8—

- (i) for “EU legislation such as” substitute “retained EU law such as any law that implemented”; and
- (ii) after “requirements of” insert “any law that implemented”.

Amendments to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

7.—(1) The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(a) are amended as follows.

(2) In regulation 3(1)—

- (a) at the end of the definition of “the Directive” add “as it had effect immediately before exit day”;
- (b) for the definition of “EU environmental assessment” substitute—
““EU environmental assessment” means an assessment of the effect of anything on the environment carried out under retained EU law other than any law of any part of the United Kingdom that implemented the Directive;”.

(3) In regulation 5(2)(b) after “under” insert “any law that implemented”; and

(4) In regulation 21(3)(c) after “other than under” insert “any law that implemented”.

(5) In regulation 25(3)(c) after “other than under” insert “any law that implemented”.

(6) In regulation 32—

- (a) in paragraphs (1) and (3) for “another”, in each place it occurs, substitute “an”;
- (b) in paragraph (5) for “referred to in Article 6(1) of the Directive” substitute “which the EEA State designated to be consulted about the project”; and
- (c) in paragraph (6)—
 - (i) omit “in accordance with Article 7(4) of the Directive”; and
 - (ii) in sub-paragraph (b) omit “other”.

(7) In regulation 33—

- (a) in paragraphs (3)(b) and (5)(b) for “another”, in each place it occurs, substitute “an”; and
- (b) omit paragraph (6).

(8) In Schedule 1—

- (a) in paragraph 22 after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented”; and

(a) S.I. 2017/572.

- (b) in paragraph 23 for “pursuant to Directive 2009/31/EC(a)” substitute “(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented Directive 2009/31/EC)”.

(9) In Schedule 2, in paragraph 3(j), for “pursuant to Directive 2009/31/EC” substitute “(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented Directive 2009/31/EC)”.

(10) In Schedule 3, in paragraph 2(1)(c)(vi), for “Union legislation” substitute “retained EU law”.

(11) In Schedule 4—

(a) in paragraph 5—

- (i) for “or Member State” substitute “level (as they had effect immediately before exit day) or United Kingdom”;
- (ii) after “those established under” insert “the law of any part of the United Kingdom that implemented”; and

(b) in paragraph 8—

- (i) for “EU legislation such as” substitute “retained EU law such as any law that implemented”; and
- (ii) after “requirements of” insert “any law that implemented”.

Signed by authority of the Secretary of State for Housing, Communities and Local Government

Address
Date

Name
Parliamentary Under Secretary of State
Ministry of Housing, Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. Apart from regulations 2(3) and 5(3)(a), these Regulations are made under section 8 of that Act and correct deficiencies of the type mentioned in section 8(2)(a) and (g) of that Act – matters which have no practical application to the United Kingdom or are otherwise redundant, and EU references which are no longer appropriate.

These Regulations make amendments to legislation in the field of town and country planning and infrastructure planning.

These Regulations are also made under section 2(2) of the European Communities Act 1972. Regulations 2(3) and 5(3)(a), which come into force on 31st December 2018, are made under that Act. The amendment in regulation 2(3) reflects an amendment to Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No L 312, 22.11.2008, p 3). The amendment in regulation 5(3)(a) reflects the repeal and replacement of Council Directive 85/337/EEC (OJ L 175, 5th July 1985, p.40) on the assessment of the effects of certain public and private projects on the environment, by Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28th January 2012, p.1).

Part 2 of these Regulations amends primary legislation. In particular it amends sections 61E and 336 of, and paragraphs 8 and 13B of Schedule 4B and paragraph 10 of Schedule 4C to, the Town

(a) OJ No L 140, 5.6.2009, p. 114.

and Country Planning Act 1990, section 38A of the Planning and Compulsory Purchase Act 2004, and paragraph 3 of Schedule 6 to the Planning Act 2008 so that references to complying with EU obligations have been replaced with references to complying with retained EU obligations (regulations 2(2), 2(4), 2(5), 3 and 4).

Part 3 of these Regulations amends subordinate legislation. In particular, the references to complying with or having regard to EU or union law have been replaced with references to complying with or having regard to retained EU law such as domestic law which implemented Directives (regulations 5(3), 5(4), 5(7), 5(8), 6(2)(b), 6(3), 6(4), 6(6), 6(8), 6(9), 6(13), 6(14), 7(2)(b), 7(3), 7(4), 7(5), 7(6), 7(10) and 7(11)); references to requests made and documents provided, pursuant to EU law, to the UK from other Member States are amended (regulations 5(6), 6(8), 6(9) and 7(6)); amending references to certain Directives (regulations 5(2), 6(2)(a), (11) and (12) and 7(2)(a), (8) and (9)); references to the UK as a Member State has been amended (regulations 5(5), 5(6), 5(8), 6(5), 6(7), 6(8), 6(9), 6(10), 6(14), 7(6), 7(7) and 7(11)) and removing requirements to notify the European Commission (regulations 6(10)(b) and 7(7)(b)).

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

Ein cyf/Our ref: MA-(L) FM -/0641/18

Mick Antoniwn AC
Cadeirydd
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Cynulliad Cenedlaethol Cymru

SeneddCLA@cynulliad.cymru

31 Hydref 2018

Annwyl Mick

Diben y llythyr hwn yw rhoi gwybod ichi fy mod wedi gosod Memorandwm Cydsyniad Offeryn Statudol yng Nghynulliad Cenedlaethol Cymru mewn perthynas â'r Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018, fel sy'n ofynnol o dan Reol Sefydlog 30A.

Rwyf yn ysgrifennu atoch i roi gwybod ichi nad wyf yn bwriadu gosod cynnig i drafod yr OS hwn yn yr achos hwn. Rwyf wedi gwneud y penderfyniad hwnnw ar sail y ffaith mai'r unig ffordd a wnelo'r OS â ni yw ei fod yn cywiro cyfeiriadau a fydd wedi dyddio mewn cyfraith oherwydd bod y DU yn ymadael â'r UE.

Mae'r darpariaethau yn yr OS yn rhai technegol eu natur, ac nid oes unrhyw wahaniaeth o ran polisi rhwng Llywodraeth Cymru a Llywodraeth y DU yn yr achos hwn.

O ystyried faint o ddeddfwriaeth y mae'r Cynulliad yn ei hystyried, nid wyf o'r farn y byddai dadl am yr OS hwn yn ddefnydd cynhyrchiol o amser gwerthfawr y Cyfarfod Llawn. Fodd bynnag, mae RhS 30A y darparu y caiff unrhyw aelod gyflwyno cynnig i drafod yr OS hwn, a byddwn yn fwy na pharod i gymryd rhan mewn dadl, os caiff un ei chynnal.

Yn gywir



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.



Llywodraeth Cymru
Welsh Government

DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

TEITL Hysbysu mewn perthynas ag Offerynnau Statudol a wneir gan Weinidogion y DU mewn meysydd datganoledig o dan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 na chânt eu gosod gerbron y Cynulliad

DYDDIAD 31 Hydref 2018

GAN Julie James AC, Arweinydd y Tŷ a'r Prif Chwip

Rheoliadau Ymchwiliadau a Chrwneriaid (Diwygio) (Ymadael â'r UE) 2018

Cyfraith yr UE a ddargedwir sy'n cael ei diwygio

- Deddf Ymchwiliadau 2005
- Deddf Crwneriaid a Chyfiawnder 2009
- Deddf Crwneriaid (Gogledd Iwerddon) 1959.

Unrhyw effaith y gall yr OS ei chael ar gymhwysedd deddfwriaethol y Cynulliad a/neu gymhwysedd gweithredol Gweinidogion Cymru

Nid yw'r OS yn cael unrhyw effaith ar gymhwysedd deddfwriaethol y Cynulliad Cenedlaethol na chymhwysedd gweithredol Gweinidogion Cymru gan mai un o natur dechnegol ydyw.

Diben y diwygiadau

Diben y diwygiadau yw cywiro diffygion mewn deddfwriaeth sy'n codi wrth i'r DU ymadael â'r Undeb Ewropeaidd, mewn perthynas ag ymchwiliadau cyhoeddus. Bydd y rheoliadau yn newid cyfeiriadau at "EU obligations" ac "enforcable EU obligations" i "retained EU obligations" a "retained enforcable EU obligations".

Mae'r OS a'r Memorandwm Esboniadol cysylltiedig, sy'n nodi effaith pob diwygiad, ar gael yma: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-inquiries-and-coroners-amendment-eu-exit-regulations-2018>

Mae Memorandwm Cydsyniad Offeryn Statudol hefyd wedi'i osod yn y Cynulliad Cenedlaethol mewn perthynas â'r diwygiadau i Ddeddf Ymchwiliadau 2005.

Mae'r OS hefyd yn gwneud cywiriadau technegol i Ddeddf Crwneriaid a Chyfiawnder 2009 a Deddf Crwneriaid (Gogledd Iwerddon) 1959, ond gan nad oedd modd i'r diwygiadau hyn gael eu gwneud gan Weinidogion Cymru (gan eu bod y tu allan i'r cymhwysedd datganoledig) nid oes angen cymeradwyaeth ar eu cyfer.

Pam y rhoddwyd cydsyniad

Nid oes gwahaniaeth rhwng ymagwedd Llywodraeth Cymru a Llywodraeth y DU ar y polisi i'w gywiro. O ganlyniad, byddai gwneud OSau ar wahân yng Nghymru ac yn Lloegr yn arwain at ddyblygu gwaith a chymhlethdod diangen i'r llyfr statud. Mae cydsynio i OS ar draws y DU yn sicrhau bod dull gweithredu cydlynus lle bo modd wrth baratoi'r llyfr statud fel ei fod yn gweithio'n iawn ar ôl i'r DU ymadael â'r UE. Bydd y dull gweithredu hwn yn helpu i wneud y ddeddfwriaeth yn eglur ac yn hygyrch ledled y DU. O dan yr amgylchiadau eithriadol hyn, mae Llywodraeth Cymru yn ystyried ei bod yn briodol i Lywodraeth y DU ddeddfu ar ein rhan yn yr achos hwn.

MEMORANDWM CYDSYNIAD OFFERYN STATUDOL

Rheoliadau Ymchwiliadau a Chwerneriaid (Diwygio) (Ymadael â'r UE) 2018

1. Gosodir y Memorandwm Cydsyniad Offeryn Statudol hwn o dan Reol Sefydlog ("RhS") 30A. Mae RhS 30A yn rhagnodi bod rhaid gosod Memorandwm Cydsyniad Offeryn Statudol, ac y ceir cyflwyno Cynnig Cydsyniad Offeryn Statudol, gerbron y Cynulliad Cenedlaethol os yw un o Offerynnau Statudol (OS) y DU yn gwneud darpariaeth mewn perthynas â Chymru sy'n diwygio deddfwriaeth sylfaenol sydd o fewn cymhwysedd deddfwriaethol y Cynulliad.
2. Rheoliadau Ymchwiliadau a Chwerneriaid (Diwygio) (Ymadael â'r UE) 2018 gerbron Senedd y DU ar 29 Hydref ac mae'n cael ei osod gerbron y Cynulliad yn awr. Mae'r gorchymyn ar gael yn: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-inquiries-and-coroners-amendment-eu-exit-regulations-2018>

Crynodeb o'r Offeryn Statudol a'i nod

3. Nod yr OS yw cywiro diffygion mewn deddfwriaeth sy'n codi wrth i'r DU ymadael â'r Undeb Ewropeaidd, mewn perthynas ag ymchwiliadau cyhoeddus a chwestau crwneriaid.
4. Mae'r OS hwn yn gwneud cywiriadau technegol i Ddeddf Ymchwiliadau 2005. Mae gofyn gwneud y cywiriadau hyn er mwyn sicrhau bod y llyfr statud yn parhau i weithio ar ôl i'r DU ymadael â'r UE.
5. Mae'r OS hefyd yn gwneud cywiriadau technegol i Ddeddf Crwneriaid a Chyfiawnder 2009 a Deddf Crwneriaid (Gogledd Iwerddon) 1959, ond gan na fyddai modd i'r diwygiadau hyn gael eu gwneud gan Weinidogion Cymru (gan eu bod y tu allan i'r cymhwysedd datganoledig) nid oes angen cymeradwyaeth ar eu cyfer.

Y ddarpariaeth berthnasol sydd i'w gwneud gan yr OS

6. Mae Rheoliadau Ymchwiliadau a Chwerneriaid (Diwygio) (Ymadael â'r UE) 2018 yn diwygio adrannau 19, 22 a 25 o Ddeddf Ymchwiliadau 2005 drwy newid cyfeiriadau at "EU obligations" a "an enforceable EU obligation" i "retained EU obligations" a "a retained enforceable EU obligation."

 - Mae adran 19 o Ddeddf Ymchwiliadau 2005 yn nodi pwerau Gweinidogion (gan gynnwys Gweinidogion Cymru) a chadeiryddion ymchwiliadau i gyfyngu ar fynediad y cyhoedd i ymchwiliadau. Mae adran 19(3)(a) yn cyfyngu ar y pwerau hyn drwy ddatgan na ddylai cyfyngiadau o'r fath ond ymwneud â meysydd a gwmpesir gan "any statutory provision, enforceable EU obligation or rule of law". Bydd y cyfeiriad at "enforceable EU obligation" yn cael ei newid i "retained enforceable EU obligation".
 - Mae adran 22(1)(b) o Ddeddf Ymchwiliadau 2005 yn darparu na ellir ei gwneud yn ofynnol i berson roi tystiolaeth i ymchwiliad pe bai gofyniad o'r

fath yn anghydnaws ag un o rwymedigaethau'r UE. Mae'r ddarpariaeth hon yn cael ei diwygio gan y rheoliadau er mwyn sicrhau y bydd yn parhau'n gymwys i "retained EU obligations".

- Mae Adran 25 o Ddeddf Ymchwiliadau 2005 yn galluogi personau i gadw elfennau o adroddiad ymchwiliad yn ôl lle bo hynny'n ofynnol gan rwymedigaeth UE orfodadwy. Bydd y rheoliadau yn sicrhau bod personau o'r fath yn dal i allu dal gwybodaeth yn ôl yn unol â rhwymedigaeth UE orfodadwy a ddargedwir.
7. Mae'r diwygiadau hyn yn cadw'r status quo yn dilyn ymadawiad y DU â'r Undeb Ewropeaidd.
 8. Mae Llywodraeth Cymru o'r farn bod y darpariaethau a ddisgrifir ym mharagraff 5 uchod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru i'r graddau y maent yn ymwneud ag ymchwiliadau cyhoeddus.

Pam y mae'n briodol i'r OS wneud y ddarpariaeth hon

9. Nid oes gwahaniaeth rhwng ymagwedd Llywodraeth Cymru a Llywodraeth y DU ar y polisi i'w gywiro. O ganlyniad, byddai gwneud OSau ar wahân yng Nghymru ac yn Lloegr yn arwain at ddyblygu gwaith a chymhlethdod diangen i'r llyfr statud. Mae cydsynio i OS ar draws Cymru a Lloegr yn sicrhau bod un fframwaith deddfwriaethol ar draws y DU sy'n hybu eglurder a hygyrchedd yn ystod y cyfnod hwn o newid. O dan yr amgylchiadau eithriadol hyn, mae Llywodraeth Cymru yn ystyried ei bod yn briodol i Lywodraeth y DU ddeddfu ar ein rhan yn yr achos hwn.

Carwyn Jones AC
Prif Weinidog Cymru
Hydref 2018

EXPLANATORY MEMORANDUM TO
THE INQUIRIES AND CORONERS (AMENDMENT) (EU EXIT) REGULATIONS
2018

[2018] No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Committees on the UK's exit from the European Union (EU).

2. Purpose of the instrument

- 2.1 This instrument amends references to “obligations” and “enforceable obligations” under EU law in the Inquiries Act 2005 and the Coroners and Justice Act 2009, and amends references to “community obligations” in the Coroners Act (Northern Ireland) 1959, to ensure reference is now made to “retained EU obligations” and to “retained enforceable EU obligations” following the United Kingdom's withdrawal from the European Union. It also amends s43 of the Inquiries Act 2005 to provide a definition of ‘retained enforceable EU obligation’ for the purposes of this SI with reference to the European Union (Withdrawal) Act 2018.
- 2.2 In the Inquiries Act 2005 the amendments relate to powers restricting public access to proceedings, producing evidence and publishing the inquiry report. In the Coroners and Justice Act 2009 and the Coroners Act (Northern Ireland) 1959 the amendment relates to coroners' powers to require the production of evidence or documents.
- 2.3 Explanations
 - *What did any relevant EU law do before exit day?* Before exit day a person could rely on an EU obligation or an enforceable EU obligation under the sections listed below. In relation to the Inquiries Act 2005, there are four relevant sections:
 - Section 19, which gives a minister or an inquiry chair powers to restrict public access to an inquiry's proceedings. One of these powers is where a restriction is required by an enforceable EU obligation. Other reasons to restrict attendance include that the Minister or chairman considers it to be conducive to the inquiry fulfilling its terms of reference or it is necessary in the public interest.
 - Section 22, which says that a person cannot be required to produce evidence to an inquiry if it would be incompatible with an EU obligation. Other reasons include that the evidence or document could not be required in civil court proceedings or it is in the public interest not to produce it.
 - Section 25, where the person whose duty it is to arrange for the publication of a report – such as a minister publishing the Inquiry Report – may withhold material in the report from publication where this is required by an enforceable

EU obligation. Other reasons include that it would not be in the public interest to publish the material.

- It also amends section 43(1) (interpretation) to define “retained enforceable EU obligation” as “an obligation (as modified from time to time) which forms part of retained EU law by virtue of section 3 or 4 of the European Union (Withdrawal) Act 2018;”.

In relation to the Coroners and Justice Act 2009, there is one relevant Schedule:

- Schedule 5, which gives a coroner the power to require the production of evidence or documents, and provides that a person may not be required to give, produce or provide any evidence or document if the requirement would be incompatible with an EU obligation. Other reasons include that it could not be required in civil court proceedings or it is in the public interest not to produce evidence.

In relation to the Coroners Act (Northern Ireland) 1959, there is one relevant provision:

- Section 17B(2)(b). Section 17A gives a coroner the power to require the production of evidence or documents, section 17B contains further provisions including restrictions on the power of a coroner providing, in section 17B(2)(b), that a person cannot be required to give or produce any evidence or document if to do so would be incompatible with a Community obligation. Other reasons in section 17B include that it could not be required in civil court proceedings or it is in the public interest not to produce evidence.

We believe that the ability to rely on an EU obligation or enforceable EU obligation in relation to the above is not used in practice, rather inquiries and inquests use the other reasons within the sections for when evidence could be restricted, for example when public access is restricted or when certain materials are withheld from publication, such as on reasons of national security.

Why is it being changed?

The references to EU obligations and enforceable EU obligations need to be amended to ensure retained EU law continues to apply to these Acts once the UK leaves the EU. If the references to EU obligations and enforceable EU obligations are not amended then the relevant provisions will no longer operate correctly because those terms will no longer have a clear meaning. The terms need to be amended to refer to the new terminology relating to retained EU law to be introduced by the European Union (Withdrawal) Act 2018.

What will it now do?

Where the UK decides to keep an EU obligation or enforceable EU obligation as retained EU law on exiting the EU, a person could rely on those obligations under the sections/Schedules above.

3. Matters of special interest to Parliament

Matters of special interest to the Committees on the UK's exit from the European Union/

- 3.1 None.
- 3.2 This instrument is being laid in draft for sifting under the European Union (Withdrawal) Act 2018 by the ESIC and SLSC.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.
- 3.4 We consider the negative resolution procedure is appropriate as the changes it makes are technical to fix defects in these three Acts following withdrawal of the United Kingdom from the EU. It does not make substantive policy changes. The choice of procedure has been guided by the power to make regulations in section 43 of the Coroners and Justice Act 2009, the power in section 41 of the Inquiries Act 2005 and the power in section 36A of the Coroners Act (Northern Ireland) 1959 to make rules, all of which are subject to the negative resolution procedure.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is the United Kingdom (in respect of the Regulation amending the Inquiries Act 2005), England and Wales (in respect of the Regulation amending the Coroners and Justice Act 2009) and Northern Ireland (in respect of the Regulation amending the Coroners Act (Northern Ireland) 1959).

5. European Convention on Human Rights

- 5.1 Lucy Frazer QC MP has made the following statement regarding Human Rights:
“In my view the provisions of The Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

Inquiries Act 2005

- 6.1 The Inquiries Act 2005 established a statutory framework for the conduct of public inquiries in the UK. From time to time events occur which are of such concern that it is in the public interest to establish an inquiry to examine what happened and make recommendations, with a view to ensuring that lessons are learned to prevent recurrence and to restore public confidence.
- 6.2 Whilst most inquiries are established under the Inquiries Act 2005, Ministers are not bound to use it. They may rely instead on specific legislation or establish non-statutory inquiries or a Royal Commission. There have been a number of non-statutory inquiries established since the Act came into force, for example the Chilcot Inquiry. Section 15 provides a means for a non-statutory inquiry to be converted into a statutory inquiry.

- 6.3 The 2005 Act extends to the whole of the UK, and governs the establishment of inquiries by UK Ministers, as well as Ministers of the devolved administrations (s1). S33 makes provision for inquiries involving more than one administration.
- 6.4 The Act makes provision for the establishment and constitution of an inquiry (ss.1-14), conversion of non-statutory inquiries into inquiries under the Act (ss.15-16), inquiry proceedings (ss.17-23), inquiry reports (ss.24-26), inquiries in the devolved administrations (ss.27-31), inquiries for which more than one Minister is responsible (ss.31-34), and supplementary provision (ss.35-51).
- 6.5 Section 19 provides that restrictions may be imposed on attendance at an inquiry, or particular parts of an inquiry, or disclosure of any evidence. Section 22 provides for evidence not to be disclosed in certain circumstances. Section 25 provides for the publication of the Report and makes provision on withholding material from publication.
- 6.6 The Inquiry Rules 2006 deal with matters of evidence and procedure and apply to inquiries established under the 2005 Act by UK Ministers. The Inquiries (Scotland) Rules 2007 apply to inquiries established under the 2005 Act by Scottish Ministers. Northern Ireland and Wales have not so far made Rules for inquiries established under the 2005 Act by Welsh Ministers.
- 6.7 Twenty three inquiries have been established under the 2005 Act, some of which were established under other legislation but were subsequently converted into 2005 Act inquiries. The most recent 2005 Act Inquiries are the Grenfell Tower Inquiry (established 14 June 2017) and the Infected Blood Inquiry (established 8 February 2018).

Coroners and Justice Act 2009

- 6.8 Part 1 of the Coroners and Justice Act 2009 provides for the duties and powers of coroners in England and Wales. Coroners have a duty to investigate deaths in certain circumstances, such as where the death is violent or unnatural. Section 1(1) of the CJA places a duty on a senior coroner who is made aware that the body of a deceased person is within that coroner's area to conduct, as soon as practicable, an investigation into the person's death if one of the triggers in section 1(2) for an investigation applies. The triggers in section 1 are that the coroner has reason to suspect that:
 - (a) the deceased died a violent or unnatural death;
 - (b) the cause of death is unknown; or
 - (c) the deceased died while in custody or otherwise in state detention.
- 6.9 Under section 5(1) of the CJA the purpose of a coroner's investigation is to determine:
 - (a) who the deceased was;
 - (b) how, when and where the deceased came by his or her death; and
 - (c) the particulars (if any) required by the Births and Deaths Registration Act 1953 to be registered concerning the death.
- 6.10 Under section 5(2), where necessary in order to avoid a breach of any Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)), the purpose in paragraph (b) above is to be read as including the purpose of ascertaining in what circumstances the deceased came by his or her death.

6.11 An inquest must be held as part of all investigations, subject to section 4(3)(a). Section 4(3)(a) provides that a coroner may discontinue an investigation without holding an inquest if the cause of death is revealed by a post-mortem examination and the death was not violent, unnatural or in custody or otherwise in state detention. Section 10 sets out the determinations and findings to be made at the inquest and they cover the same matters as the purposes of the investigation under section 5.

6.12 Schedule 5 provides further powers including powers relating to the production of evidence and circumstances when it may not need to be disclosed.

There is further detail on coroners' powers in the Coroners (Investigations) Regulations 2013 (SI 2013/1629) (made under section 43 of the CJA). There are also the Coroners (Inquests) Rules 2013 (SI 2013/1616) (made under section 45 of the CJA

The Coroners Act (Northern Ireland) 1959

6.13 The Coroners Act (Northern Ireland) 1959 sets out the law in Northern Ireland in relation to Coroners' appointment and powers.

6.14 Amendments to the Coroners Act (Northern Ireland) 1959 were introduced by section 49 of the Coroners and Justice Act 2009. Section 49(2) of the Coroners and Justice Act 2009 introduced Schedule 11, which substituted for section 17 of the Coroners Act (Northern Ireland) 1959 new sections 17A to 17C to make provision concerning witnesses, evidence and related offences in relation to inquests in Northern Ireland. The amendments brought Northern Ireland in line with the reformed system in England and Wales as the provisions in sections 17A-C are broadly equivalent to those contained in Schedule 5 to the Coroners and Justice Act 2009.

7. Policy background

What is being done and why?

7.1 Whilst this SI ensures that people can rely on retained and enforceable EU obligations, in theory the ability to rely on these is wide and would cover any aspect of EU law. We would expect that an obligation would be used in circumstances around data protection or subject specific areas. For example, the UK Air Accidents Investigation Branch (AAIB) operates under EU Regulations on the investigation and prevention of accidents and incidents in civil aviation. Evidence from the AAIB may be used as part of the coroner's inquest or in a public inquiry. It is not the purpose of this SI to decide whether or not the policy under this EU Regulation, or any other Regulations, should continue post-exit from the EU. Rather the policy is that if the provisions in such Regulations are retained post-exit, then they should continue to be used to not provide evidence etc in accordance with the Acts. Where the UK decides to keep an EU obligation or enforceable EU obligation as retained EU law on exiting the EU, that obligation should still be able to be relied on in the Inquiries Act 2005, the Coroners and Justice Act 2009 and the Coroners Act (Northern Ireland) 1959.

7.2 However, we believe that the ability to rely on an EU obligation or enforceable EU obligation in relation to the above provisions is not used in practice. Our discussions with operational colleagues have not brought up any circumstances in which either has been used. In practice, we believe inquiries and inquests use the other reasons within the sections for evidence/documents being restricted, public access restricted or material withheld from publication, such as on reasons of national security. These

reasons are unaffected by the changes the SI makes. Inquiries and inquests can still operate as they do currently under these sections. For example, at an inquiry or an inquest restricted evidence can be given and an inquiry can withhold material from publication in the report on grounds of national security.

- 7.3 If the references to EU obligations and enforceable EU obligations are not amended then the relevant provisions will no longer operate correctly because those terms will no longer have a clear meaning. The terms need to be amended to refer to the new terminology relating to retained EU law to be introduced by the European Union (Withdrawal) Act 2018.
- 7.4 This instrument applies to functions of the Department of Justice and the Advocate General for Northern Ireland in the Coroners Act (Northern Ireland) 1959 and transferred matters for Northern Ireland under Article 12, Schedule 14 and Article 15(1) Schedule 17 of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I No.976/2010). The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the EU

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the EU. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 These regulations amend primary legislation and are not being consolidated. In due course changes will appear on the legislation.gov.uk website.

10. Consultation outcome

- 10.1 A public consultation was not undertaken for these changes which are minimal and technical. This instrument corrects what will be defects in the three Acts to ensure retained EU law continues to apply in these Acts following withdrawal of the United Kingdom from the EU. We discussed the proposed changes with operational colleagues in inquests and inquiries, and those in Government responsible for sponsorship of inquiries, to ask whether an EU obligation or enforceable EU obligation has ever been used in the circumstances set out in the Acts. They were not

aware of examples of these being used. There are no substantive policy changes and we are confident that the Acts can continue to operate effectively once these changes are made. Therefore we consider this SI will not attract the interest of key stakeholders. However, once the SI is laid, we will notify all relevant parties across Government, the Chief Coroner's office and the Chairs of current inquiries under the Inquiries Act 2005. At the same time, Northern Ireland colleagues will engage with stakeholders in Northern Ireland.

11. Guidance

- 11.1 No guidance will be provided on the amendments made by these regulations. In relation to the Inquiries Act 2005, the Cabinet Office provides guidance on inquiries to government departments and inquiries on setting up and running an inquiry, which includes guidance on taking and hearing evidence and publishing the inquiry report. The Inquiries Act 2005 is also supported by the Inquiry Rules 2006 which provide procedures to follow on, among other things, disclosure of potentially restricted evidence.
- 11.2 In relation to the changes to the Coroners and Justice Act 2009, the Chief Coroner has provided a Guide to the Coroners and Justice Act 2009 which includes taking and hearing evidence and disclosure. The Act is also supported by the Coroners (Investigations) Regulations 2013 which contain provisions on the disclosure and provision of information.
- 11.3 No guidance will be provided on the amendments made by these regulations to the Coroners Act (Northern Ireland) 1959. In relation to the Coroners Service in Northern Ireland guidance is provided on <https://www.justice-ni.gov.uk/articles/coroners-service-northern-ireland>. The Act is supported by the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 (S.R. & O. 199/1963).

12. Impact

- 12.1 A full impact assessment has not been published for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that it will not be monitored as the change is technical and minimal.
- 14.2 As this instrument is made under the European Union Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Michelle English at the Ministry of Justice Telephone: 020 3334 5610 or email: Michelle.English3@justice.gov.uk can be contacted with any queries regarding the elements of the instrument related the Coroners and Justice Act 2009 and the Inquiries Act 2005. For matters related to the Coroners (Northern Ireland) Act 1959 contact Janine McGahan at the Department of Justice: email: janine.mcghan@justice-ni.x.gsi.gov.uk

- 15.2 Richard Mason at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lucy Frazer QC MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

Annex A

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

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

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State at the Ministry of Justice, Lucy Frazer QC MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 1.2 “In my view the Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”. This is the case because the SI only makes minor, technical changes in order to ensure that retained EU law continues to apply in the three Acts following withdrawal of the United Kingdom from the EU. In practice, we believe that there have not been any occasions to date in which ‘EU obligations’ or ‘enforceable EU obligations’ have been cited as a reason for acting on the relevant exceptions in any of the Acts, rather the other reasons within the Acts are used for when evidence could be restricted, public access restricted or material withheld from publication, such as on reasons of national security. These reasons are unaffected by the changes the SI makes and so inquiries and inquests can still operate as they do currently.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State at the Ministry of Justice, Lucy Frazer QC MP, has made the following statement regarding use the of legislative powers in the European Union (Withdrawal) Act 2018:
- 2.2 “In my view the Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”. This is the case because the technical SI corrects deficiencies to ensure retained EU law continues to apply in these Acts following withdrawal of the United Kingdom from the EU. It does not make any policy change.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State at the Ministry of Justice, Lucy Frazer QC MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. These are: they will correct deficiencies to ensure retained EU law continues to apply to these Acts following withdrawal of the United Kingdom from the EU and they bring clarity and accuracy to ensure the Acts operate correctly post exit.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State at the Ministry of Justice, Lucy Frazer QC MP, has made the following statement(s) “The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

- 4.2 The Parliamentary Under Secretary of State at the Ministry of Justice, Lucy Frazer QC MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 4.3 “In relation to the draft instrument, I, Parliamentary Under Secretary of State at the Ministry of Justice, Lucy Frazer QC MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.
- 4.4 There is no disproportionate impact on any of the protected characteristics from these changes. The changes are intended to make the Inquiries Act 2005, the Coroners and Justice Act 2008 and the Coroners Act (Northern Ireland) 1959 operate correctly after the UK leaves the EU and will apply equally to all inquiries and inquests, and all individuals whether or not there are protected characteristics.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

2018 No.

EXITING THE EUROPEAN UNION

INQUIRIES

CORONERS, ENGLAND AND WALES

CORONERS, NORTHERN IRELAND

**The Inquiries and Coroners (Amendment) (EU Exit)
Regulations 2018**

Sift requirements satisfied ***

Made - - - - - ***

Laid before Parliament ***

Coming into force in accordance with regulation 1

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018^(a) (relating to the appropriate Parliamentary procedure for these regulations) have been satisfied.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of that Act.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018 and come into force on exit day.

(2) Any amendment of an enactment made by these Regulations has the same extent as the enactment specified.

Amendment of the Inquiries Act 2005

2. The Inquiries Act 2005^(b) is amended as follows—

- (a) in section 19(3)(a) (restrictions on public access etc.), for “enforceable EU obligation” substitute “retained enforceable EU obligation”;

^(a) 2018 c. 16.

^(b) 2005 c. 12. The relevant sections have been amended by S.I. 2011/1043. There are other amendments to the Act that are not relevant to this instrument.

- (b) in section 22(1)(b) (privileged information etc.), for “an EU obligation” substitute “a retained EU obligation”;
- (c) in section 25(4)(a) (publication of reports), for “enforceable EU obligation” substitute “retained enforceable EU obligation”, and
- (d) in section 43(1) (interpretation), after the definition of “responsible” insert—
“retained enforceable EU obligation” means an obligation (as modified from time to time) which forms part of retained EU law by virtue of section 3 and 4 of the European Union (Withdrawal) Act 2018;”.

Amendment of the Coroners and Justice Act 2009

3. In paragraph 2(1)(b) of Schedule 5 to the Coroners and Justice Act 2009^(a) (powers of coroners: power to require evidence to be given or produced), for “an EU obligation” substitute “a retained EU obligation”.

Amendment of the Coroners Act (Northern Ireland) 1959

4. In section 17B(2)(b) of the Coroners Act (Northern Ireland) 1959^(b) (giving or producing evidence: further provision), for “Community obligation” substitute “retained EU obligation”.

Signed by authority of the Secretary of State for Justice.

Name

Parliamentary Under Secretary of State

Date

Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular as described in paragraph (g) of section 8(2)) arising from the withdrawal of the United Kingdom from the European Union.

Regulation 2 amends the Inquiries Act 2005 (c.12) (“the 2005 Act”), regulation 3 amends the Coroners and Justice Act 2009 (c.25) (“the 2009 Act”) and regulation 4 amends the Coroners Act (Northern Ireland) 1959 (c.15) (N.I.) (“the 1959 Act”). Section 19 of the 2005 Act relates to restricting public access to an inquiry’s proceedings or evidence. Under this section a restriction notice order may be made if required by an enforceable EU obligation. Section 25 of the 2005 Act is concerned with the publication of inquiry reports. Under this section material can be withheld from publication if required by an enforceable EU obligation. Both these references are replaced by a new concept (defined in section 43 of the 2005 Act) of retained enforceable EU obligation.

Section 22 of the 2005 Act relates to restrictions on production of evidence to inquiries. Paragraph 2 of Schedule 5 to the 2009 Act is concerned with the powers of a coroner in England and Wales to require the production of evidence or documents. These provisions provide (amongst other things) that a person cannot be required to take action (such as providing a document) if to do so would be incompatible with an EU obligation. Section 17B of the 1959 Act makes provision on

(a) 2009 c. 25. Paragraph 2 of Schedule 5 has been amended by S.I. 2011/1043.

(b) 1959 c. 15 (N.I.). Section 17B(2)(b) was inserted by section 49(2) and paragraph 1 of Schedule 11 to the Coroners and Justice Act 2009.

giving or producing evidence to a coroner in Northern Ireland. Section 17B(2) in particular provides (amongst other things) that a person cannot be required to give or produce any evidence or document if to do so would be incompatible with a Community obligation. Amendments made by these Regulations replaces the references to an “EU obligation” in the 2005 Act and the 2009 Act and the reference to a “Community obligation” in the 1959 Act with references to a “retained EU obligation”, which, as a result of amendments made by the European Union (Withdrawal) Act 2018, is defined by the Interpretation Act 1978.

A full impact assessment has not been published for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

DRAFT

DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

TEITL	Hysbysu mewn perthynas ag Offerynnau Statudol a wneir gan Weinidogion y DU mewn meysydd datganoledig o dan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 na chânt eu gosod gerbron y Cynulliad
DYDDIAD	31 Hydref 2018
GAN	Julie James AC, Arweinydd y Tŷ a'r Prif Chwip

Rheoliadau loneiddio (Safonau Diogelwch Sylfaenol) (Darpariaethau Amrywiol) (Diwygio) (Ymadael â'r UE) 2018

Cyfraith [yr UE a ddargedwir] sy'n cael ei diwygio

Rheoliadau loneiddio (Safonau Diogelwch Sylfaenol) (Darpariaethau Amrywiol) (Diwygio) (Ymadael â'r UE) 2018

Unrhyw effaith y gall yr OS ei chael ar gymhwysedd deddfwriaethol y Cynulliad a/neu ar gymhwysedd gweithredol Gweinidogion Cymru

Mae'r OSau (pan fônt yn berthnasol i Gymru) o fewn cymhwysedd deddfwriaethol, fodd bynnag, o dan yr amgylchiadau eithriadol hyn pan fo gofyn inni ystyried a chywiro nifer digyffelyb o ddarnau deddfwriaeth o fewn amserlen dynn gan ddefnyddio adnoddau cyfyngedig, egwyddor gyffredinol Llywodraeth Cymru yw ein bod yn gofyn i Lywodraeth y DU ddeddfu ar ein rhan ar gyfer nifer mawr o offerynnau statudol.

Diben y diwygiadau

Diben y diwygiadau yw cywiro diffygion mewn deddfwriaeth sy'n codi oherwydd bod y DU yn ymadael â'r Undeb Ewropeaidd ac sy'n ymwneud â 'materion na ellir eu gweithredu' yn yr Rheoliadau loneiddio (Safonau Diogelwch Sylfaenol) (Darpariaethau Amrywiol) (Diwygio) (Ymadael â'r UE) 2018 (IRR (BSSD) 2018).

Mae'r OSau a'r Memorandwm Esboniadol sy'n mynd gyda nhw, ac sy'n nodi effaith pob un o'r diwygiadau, ar gael yma: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

Pam y rhoddwyd cydsyniad

Rhoddwyd cydsyniad i Lywodraeth y DU wneud y cywiriadau hyn o ran ac ar ran Cymru, am resymau'n ymwneud ag effeithlonrwydd, hwylustod ac oherwydd natur dechnegol y diwygiadau. Mae'r diwygiadau wedi cael eu hystyried yn llawn; ac nid oes unrhyw wahaniaeth o ran polisi. Diben y diwygiadau hyn yw sicrhau bod y llyfr statud yn parhau i weithio ar ôl i'r DU ymadael â'r UE. Mae hyn yn unol â'r egwyddorion ar gyfer cywiro y cytunwyd arnynt ym mis Mai gan Is-bwyllgor y Cabinet ar Bontio Ewropeaidd.

DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

TEITL	Hysbysu mewn perthynas ag Offerynnau Statudol a wneir gan Weinidogion y DU mewn meysydd datganoledig o dan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 na chânt eu gosod gerbron y Cynulliad
DYDDIAD	31 Hydref 2018
GAN	Julie James AC, Arweinydd y Tŷ a'r Prif Chwip

Rheoliadau Llywodraeth Leol (Diwygiadau Amrywiol) (Ymadael â'r UE) 2018

Y Gyfraith sy'n cael ei diwygio

- Gorchymyn Awdurdodau Lleol (Contractio Allan o Swyddogaethau Buddsoddi) 1996
- Gorchymyn Treth Gyngor (Diystyru Gostyngiad) 1992

Unrhyw effaith y gall yr OS ei chael ar gymhwysedd deddfwriaethol y Cynulliad a/neu gymhwysedd gweithredol Gweinidogion Cymru

Ni fydd y diwygiadau arfaethedig yn cael unrhyw effaith ar gymhwysedd deddfwriaethol y Cynulliad a/neu ar gymhwysedd gweithredol Gweinidogion Cymru.

Diben y diwygiadau

Diben yr OS (gweithdrefn negyddol) hwn yw cywiro diffygion yn neddfwriaeth y DU, yn ddarostyngedig i ymadael â'r Undeb Ewropeaidd, yn ymwneud â chyllid llywodraeth leol.

I grynhoi, bydd yr OS hwn yn diddymu cyfeiriadau at gwmnïau wedi'u rheoleiddio dan yr Ardal Economaidd Ewropeaidd nad ydynt wedi'u hawdurdodi i gynnal gweithgareddau wedi'u rheoleiddio yn y DU, fel mai cwmnïau wedi'u hawdurdodi gan yr Awdurdod Ymddygiad Ariannol yn unig fydd yn gymwys i weithredu fel contractwyr ar gyfer swyddogaethau buddsoddi llywodraeth leol.

Bydd yr OS hefyd yn sicrhau bod myfyrwyr sy'n astudio mewn sefydliadau addysgol sydd wedi'u lleoli yn y DU ac yn Aelod-wladwriaethau'r UE yn parhau i gael eu diystyru at ddibenion y dreth gyngor. Bydd hyn yn golygu newid y cyfeiriad at "Aelod-wladwriaeth" i "awdurdod perthnasol" a diffinio'r awdurdod perthnasol i olygu Cymru, Lloegr, yr Alban neu Ogledd Iwerddon neu Aelod-wladwriaeth.

Mae'r OS a'r Memorandwm Esboniadol sy'n cyd-fynd ag ef, ac sy'n nodi effaith y diwygiad hwn, i'w gweld yma: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-local-government-miscellaneous-amendments-eu-exit-regulations-2018>

Pam y rhoddwyd cydsyniad

Nid oes gwahaniaeth rhwng ymagwedd Llywodraeth Cymru a Llywodraeth y DU ar y polisi i'w gywiro, ac fe wnaed y ddeddfwriaeth wreiddiol cyn datganoli. O ganlyniad, byddai gwneud OS ar wahân yn arwain at ddyblygu gwaith a chymhlethdod diangen i'r llyfr statud. O dan yr amgylchiadau eithriadol hyn, mae Llywodraeth Cymru yn ystyried ei bod yn briodol i Lywodraeth y DU ddeddfu ar ein rhan yn yr achos hwn.

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon

Lesley Griffiths AC
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a
Materion Gwledig

24 Medi 2018

Annwyl Lesley,

Bil Amaethyddiaeth y DU

Yng nghyfarfod y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yr wythnos diwethaf, trafododd yr aelodau eich datganiad ysgrifenedig a gyhoeddwyd ar 12 Medi 2018 yn ymwneud â Chyflwyno Bil Amaethyddiaeth y DU. Trafododd yr Aelodau hefyd y datganiad ar y cyd gan Lywodraeth y DU a Llywodraeth Cymru a gyhoeddwyd ym mis Medi 2018 yn rhoi'r wybodaeth ddiweddaraf am hynt y Fframwaith Amaethyddol.

Rydym wedi nodi y bydd Gweinidogion Cymru, drwy Fil y DU, yn cael pwerau dirprwyedig sylweddol mewn nifer o feysydd arwyddocaol. Mae'r meysydd hyn yn cynnwys pwerau ariannol newydd ar gyfer cynlluniau amaethyddol yn y dyfodol, gosod safonau marchnata, cynorthwyo cymunedau gwledig, ac addasu cyfraith yr UE a dargedwir yn ymwneud â Chynllun Taliad Sylfaenol y PAC.

Rydym hefyd wedi nodi y bydd Bil y DU yn rhoi pwerau eang i Weinidogion Cymru roi cymorth ariannol i'r diwydiant amaethyddol yng Nghymru heb orfod cyflwyno deddfwriaeth sylfaenol a allai fod yn destun gwaith craffu llawn gan y Cynulliad Cenedlaethol. Wrth dynnu sylw at y pwynt hwn, rydym yn cydnabod y bydd y Cynulliad yn cael cyfle, er mai cyfle cyfyngedig fydd hwn, i drafod Bil Amaethyddiaeth y DU fel rhan o'r broses cydsyniad deddfwriaethol.

Er y bydd nifer o'r pwerau hyn yn golygu y bydd is-ddeddfwriaeth a wneir gan Weinidogion Cymru o dan Fil Amaethyddiaeth y DU yn ddarostyngedig i'r weithdrefn gadarnhaol yn y Cynulliad Cenedlaethol, rydym wedi nodi y bydd Bil y DU, fel y'i drafftwyd, yn galluogi Gweinidogion Cymru i gyflwyno is-ddeddfwriaeth gan ddefnyddio'r weithdrefn negyddol mewn nifer o feysydd



allweddol. Mae'r rhain yn cynnwys addasu deddfwriaeth sy'n llywodraethu cynllun y taliad sylfaenol, a newid Rheoliad yr UE ar ariannu, rheoli a monitro'r polisi amaethyddol cyffredin. Yn y cyswllt hwn, byddem yn ddiolchgar pe baech yn esbonio'ch rhesymau dros ofyn i Lywodraeth y DU gynnwys pwerau o'r fath yn y Bil.

Nodwyd ymhellach nad ydych yn bwriadu cyflwyno rheoliadau (os daw Bil yr UE i rym) nes y bydd proses datblygu polisi Llywodraeth Cymru wedi dod i ben. Yn eich datganiad, rydych wedi ailadrodd yr ymrwymiad yn "Brexit a'n tir" i gyflwyno papur gwyn yn nhymor y gwanwyn 2019. Fel y Pwyllgor sy'n gyfrifol am graffu ar ddeddfwriaeth ddirprwyedig yn y Cynulliad Cenedlaethol, byddwn yn ddiolchgar pe baech yn rhoi gwybod i ni am yr amserlenni ar gyfer cyflwyno'r rheoliadau hyn.

Mae eich datganiad ysgrifenedig chi a'r datganiad ar y cyd yn datgan bod Llywodraeth Cymru a Llywodraeth y DU o'r farn y bydd y rhan fwyaf o'r fframwaith amaethyddol yn y dyfodol yn cael ei reoli drwy waith anneddfwriaethol, rhynglywodraethol. Byddem yn ddiolchgar pe gallech ymhelaethu ac esbonio pam, a rhoi manylion yr ychydig feysydd hynny y credwch y bydd angen eu seilio ar ddeddfwriaeth.

Fe wyddoch, o bosibl, fod y Pwyllgor hwn wrthi'n cwblhau cytundeb ysgrifenedig â Llywodraeth Cymru (dan arweiniad Ysgrifennydd y Cabinet dros Gyllid) a fydd yn cynrychioli'r safbwynt y mae Cynulliad Cenedlaethol Cymru a Llywodraeth Cymru wedi cytuno arno o ran y wybodaeth y bydd Llywodraeth Cymru yn ei rhoi i'r Cynulliad Cenedlaethol mewn perthynas â'i chyfranogiad mewn cyfarfodydd, concordatiau, cytundebau a memorandwm dealltwriaeth rhynglywodraethol. Felly, byddem hefyd yn ddiolchgar pe baech yn rhoi gwybod inni am unrhyw gytundebau rhynglywodraethol sy'n cael eu trafod ar hyn o bryd mewn perthynas ag amaethyddiaeth.

Yn olaf, rydym yn nodi eich bod yn parhau i weithio gyda Llywodraeth y DU i ddatrys rhai materion sy'n parhau i beri pryder (sef darpariaethau sy'n ymwneud â Chytundeb Sefydliad Masnach y Byd (WTO) ar Amaethyddiaeth a'r Ardoll Cig Coch) cyn cyflwyno cyngor i'r Cynulliad ar gydsyniad deddfwriaethol. Edrychwn ymlaen at drafod unrhyw Femorandwm Cydsyniad Deddfwriaethol ar gyfer y Bil DU hwn pan gaiff Memorandwm o'r fath ei osod gerbron y Cynulliad.

Mae Cadeirydd y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig wedi cael copi o'r llythyr hwn.



Yn gywir,



Mick Antoniw

Cadeirydd

Croesewir gohebiaeth yn Gymraeg neu'n Saesneg.
We welcome correspondence in Welsh or English



Lesley Griffiths AC/AM

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs



Llywodraeth Cymru
Welsh Government

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

11 Hydref 2018

Annwyl Mick

Bil Amaethyddiaeth

Diolch i chi am eich llythyr dyddiedig 24 Gorffennaf. Rwy'n croesawu'r cyfle i egluro'r darpariaethau ymhellach.

Fel y gwelwch, natur atodlen Cymru yw cyflwyno cyfres o bwerau dirprwyedig i Weinidogion Cymru. Mae'r pwerau'n weddol debyg i rai Llywodraeth y DU ar gyfer Lloegr. Mae'r darpariaethau sydd ar gael yn adlewyrchu ansicrwydd Brexit a'r ffaith bod polisïau Cymru yn parhau i fod yn destun ymgynghoriad. Rwy'n credu ei fod yn ddoeth i dderbyn y pwerau ond rwy'n gwybod nad oes penderfyniadau polisi wedi'u gwneud.

Fel yr ydych yn nodi, fy mwriad o hyd yw cyflwyno Bil Amaethyddiaeth (Cymru) i'r Cynulliad unwaith y bydd Llywodraeth Cymru wedi cwblhau'r ymgynghoriadau a'r asesiadau effaith angenrheidiol. Mae "Brexit a'n Tir" yn nodi'r ymgynghoriad cyntaf, lefel uchel ac rwy'n disgwyl rhagor o ddogfennau i ddilyn. Yr ymgynghoriad nesaf fydd Papur Gwyn yn ystod Gwanwyn 2019.

O ran awdurdod dirprwyedig, y dull cyffredinol sy'n cael ei ddefnyddio yn y Bil yw defnyddio'r weithdrefn gadarnhaol ar gyfer pwerau creu rheoliadau i sefydlu fframweithiau newydd (er enghraifft, cymorth ariannol a fframweithiau casglu gwybodaeth) a'r weithdrefn negyddol ar gyfer materion technegol sy'n gysylltiedig yn bennaf â gweinyddu taliadau o dan y ddeddfwriaeth bresennol. Rwy'n disgwyl i'r gwahaniaeth hwn gael ei drafod yn Senedd y DU yn ystod taith y Bil drwy'r Senedd, yn benodol y Pwerau Dirprwyedig a'r Pwyllgor Diwygio Rheoleiddio.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@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.

Rwyf wedi ymrwymo i sicrhau bod gan y Cynulliad y cyfleoedd priodol i graffu ar y darpariaethau hyn drwy'r broses Cynnig Cydsyniad Deddfwriaethol ac rwyf wedi darparu memorandwm. Mae hyn yn cynnwys cyfeirio at y ddau fater sy'n weddill: Sefydliad Masnach y Byd a darpariaethau y Lefi Cig Coch. Byddaf yn hysbysu'r Cynulliad a'r Pwyllgor wrth i drafodaethau ddatblygu gyda Llywodraeth y DU ar y ddau fater hwn.

Byddaf hefyd yn rhoi'r newyddion diweddaraf i'r Cynulliad ar fy nhrafodaethau rhwng y gweinidogion ar fframweithiau ar draws y DU. Ochr yn ochr â chyhoeddi y Bil Amaethyddiaeth, cyhoeddais ddatganiad ar y cyd gyda'r Ysgrifennydd Gwladol ar y materion hyn sydd ar gael ar wefan Llywodraeth Cymru ar

<https://gov.wales/about/cabinet/cabinetstatements/2018/introukagribill/?skip=1&lang=cy>

Cofion

A handwritten signature in grey ink, appearing to read 'Lesley', with a large, sweeping flourish underneath.

Lesley Griffiths AC/AM

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs



Procedure Committee

Journal Office, House of Commons London SW1A 0AA

Tel 020 7219 3351/3319 Fax 020 7219 2269 Email proccom@parliament.uk Website www.parliament.uk

Eitem 7

From Charles Walker OBE MP, Chair of the Committee

Mick Antoniw AM

Chair, Constitutional and Legislative Affairs Committee

National Assembly for Wales

Cardiff Bay

Cardiff

CF99 1NA

25th /

October 2018

Composite and Joint Statutory Instruments

Thank you for your letter of 15 January. I must first of all apologise for the long time it has taken to reply to you.

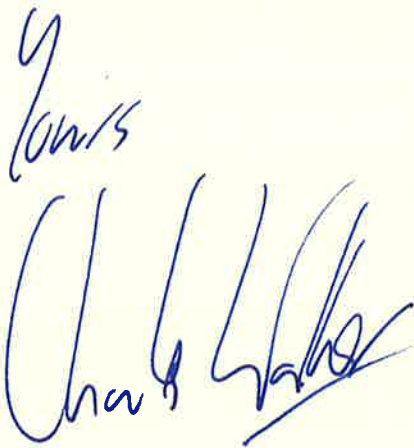
I am not party to the advice which formed the basis of the then First Minister's assertion to your predecessor Committee to the effect that the UK Parliament "will not scrutinise general statutory instruments in languages other than English.". I understand that the Welsh Government maintains this position and has recently reasserted it.

House of Commons officials have considered the matter in detail and advise me that there is no bar in the standing orders, resolutions or practice of the House to prohibit the laying of general statutory instruments before the House of Commons in a bilingual form. Where there is a statutory requirement to lay material before the House in both languages, or where the Welsh is required in part of the material, it seems odd to assert, as the Welsh Government seems to, that the House of Commons will not scrutinise such material: the principal purpose of requiring such material to be laid is surely to allow it to be examined by parliamentarians as well as to make it available to the general public.

It would in the first instance be the responsibility of the drafting Department to vouch for the accuracy of any drafting in a language other than English which is to have statutory effect.

I cannot of course speak for the current practices of committees of this House which undertake scrutiny of delegated legislation: the degree to which such instruments are examined in detail will depend on the composition of the committees and their staff. You will no doubt be aware of the case where the Joint Committee on Statutory Instruments reported a defect in the Registration of Marriages (Amendment) Regulations 1997 on the grounds of material discrepancies between the English and Welsh forms of the Regulations: the discrepancy was discovered as a result of a close reading of both texts by a Welsh-speaking member of the Committee.

Should the Welsh Government require clarification as to the practices of the House of Commons regarding the laying of papers in languages other than English, and of committees in scrutinising bilingual instruments, I am sure that the officials of the House of Commons Service would be happy to assist.

A handwritten signature in blue ink, appearing to read 'Charles Walker', with a stylized flourish at the end.

Charles Walker OBE MP

Charles Walker AS
Cadeirydd y Pwyllgor Gweithdrefnau, Tŷ'r Cyffredin

15 Ionawr 2018

Annwyl Charles,

Offerynnau Statudol Cyfunol ac ar y Cyd

Rydym yn aml fel rhan o'n rôl ffurfiol yn craffu ar offerynnau statudol cyfansawdd ac ar y cyd sydd wedi'u gosod gerbron y Cynulliad Cenedlaethol, yn ogystal â Thŷ'r Cyffredin a Thŷ'r Arglwyddi.

Bydd offerynnau statudol o'r fath yn effeithio ar gymunedau ledled Cymru a gallant ymwneud â meysydd pwysig megis yr amgylchedd, iechyd, gofal cymdeithasol a chyflenwad dŵr a gorfodi traffig ar y ffyrdd.

O ran pob offeryn statudol a osodir gerbron y Cynulliad Cenedlaethol, mae gofynion ein Rheolau Sefydlog yn ei gwneud yn ofynnol i ni roi gwybod os na chaiff offerynnau o'r fath eu gosod yn y Gymraeg a'r Saesneg. Mae Gweinidogion Cymru bob amser yn gosod offerynnau cyfansawdd ac ar y cyd yn Saesneg yn unig, ac felly rydym yn adrodd i'r Cynulliad Cenedlaethol ar y sail honno.

Mewn llythyr i'r pwyllgor a oedd yn rhagflaenydd i ni ym mis Tachwedd 2011, dywedodd y Prif Weinidog fod offerynnau cyfansawdd yn cael eu gosod yn Saesneg yn unig gan na fydd Senedd y DU yn craffu ar offerynnau statudol cyffredinol mewn ieithoedd heblaw'r Saesneg.

Mae enghreifftiau diweddar o offerynnau statudol cyfansawdd yr ydym wedi craffu arnynt ac nad ydynt yn cael eu gwneud yn ddwyieithog, yn cynnwys:



- The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution (Amendment) gorchymyn 2017 (SI 2017 No. 959)

Dywedodd y Memorandwm Esboniadol a oedd yn cyd-fynd â'r Gorchymyn, "fel Gorchymyn Cyfansawdd, ni fydd yr Offeryn yn ddwyieithog ac mae'r Prif Weinidog wedi cadarnhau'r sefyllfa hon yn flaenorol i'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol."

- Rheoliadau Tynnu Dŵr (Darpariaethau Trosiannol) 2017 (OS 2017 Rhif. 1047)

Nododd y Memoranda Esboniadol a oedd yn cyd-fynd â'r offeryn statudol hwn, gan ei fod yn berthnasol i Gymru a Lloegr, ac yn destun cymeradwyaeth y Cynulliad Cenedlaethol a'r Senedd, ni ystyrir felly ei fod yn rhesymol ymarferol iddo gael ei wneud yn ddwyieithog.

Rydym hefyd yn ymwybodol o offerynnau statudol cyfansawdd a osodwyd gerbron y Cynulliad Cenedlaethol a Senedd y DU yn Saesneg yn unig ond sydd, serch hynny, yn cynnwys rhywfaint o destun Cymraeg. Er enghraifft, Rheoliadau Gwarchod Cynefinoedd a Rhywogaethau 2017 (OS 2017 1012) a'r Rheoliadau Trwyddedu Amgylcheddol (Cymru a Lloegr) (Diwygio) 2018 (heb eu gwneud eto).

Yn ogystal, rydym wedi dod yn ymwybodol o offeryn statudol – European Qualifications (Health and Social Care Professions) Regulations 2016 (SI 2016 No. 1030) a wnaed gan Lywodraeth y DU sy'n defnyddio pwerau Harri VIII i ddiwygio Deddf ddwyieithog y Cynulliad ac o ganlyniad mae llawer o dudalennau o destun Cymraeg.

Mae rhai o'r offerynnau hyn felly'n enghreifftiau o Senedd y DU yn craffu ar offerynnau statudol sy'n cynnwys yr iaith Gymraeg.



O dan yr amgylchiadau, byddwn yn ddiolchgar pe gallech gadarnhau a oes unrhyw rwystrau i offerynnau statudol dwyieithog cyfansawdd neu ar y cyd yn cael eu gosod yn Nhŷ'r Cyffredin.

Mae hyn wrth gwrs yn bwysig yng nghyd-destun y DU yn ymadael â'r UE a chraffu ar is-ddeddfwriaeth a wneir gan Weinidogion y DU sy'n codi o'r Bil UE (Ymadael), boed yn gweithredu'n annibynnol mewn meysydd datganoledig o dan bwerau Cymal 7 neu ar y cyd â Gweinidogion Cymru mewn meysydd datganoledig o dan bwerau Atodlen 2.

Yr wyf yn anfon llythyrau tebyg at Gadeiryddion y Pwyllgor Offerynnau Statudol (Tŷ'r Cyffredin), Pwyllgor Craffu ar Is-ddeddfwriaeth (Tŷ'r Arglwyddi) a'r Cyd-bwyllgor ar Offerynnau Statudol.

Edrychaf ymlaen at glywed gennych yn fuan.

Yn gywir



Mick Antoniw

Cadeirydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Eitem 8.1



National Autistic Society Cymru

2nd Floor / 2il Lawr
Lancaster House / Ty Lancaster
106 Maes-y-Coed Road /
106 Ffordd Maes-y-Coed
Heath / Y Waun
Cardiff / Caerdydd
CF14 4HE

Tel / Ffôn: 029 2062 9300

Email / Ebo: wales@nas.org.uk

23 October 2018

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
CF99 1NA

SeneddCLA@assembly.wales

Annwyl Mick,

I noted with interest the evidence provided to the Committee from the Cabinet Secretary for Health and Social Services, Vaughan Gething AM, on the Autism (Wales) Bill, on 15 October.

On behalf of our members and supporters, I would like to extend our gratitude for the work that the Committee is undertaking to ensure that, if passed, the Autism (Wales) Bill will be as strong and effective as possible and make a significant difference to the lives of autistic people across Wales.

In this spirit, I hope the Committee will allow me to address a number of comments made during the evidence session on the 15 October.

Remedy

It was noted by the Cabinet Secretary that the only remedy option, where it appears duties within the Bill aren't adhered to, is Judicial Review. Similar is ultimately true of a whole range of legislation. Suzy Davies AM pointed out that this could be said of the Social Services and Well Being Act, under which the proposed code of practice will be published. As you will know public services have their own complaint resolution mechanisms that aim to resolve concerns at an early stage.

In this context we would urge the Committee to consider the role that legislation has on behaviour change. We very much view the Bill as a driver that will lead to improvements in service delivery and support. Autistic people and their families will have their rights strengthened and made clearer through this legislation. In our view, this could lead to less cause for remedial action, or remedy at an early stage.



Patron: HRH The Countess of Wessex. Chairman: Dr Carol Homden. President: Jane Asher.
Chief Executive: Mark Lever. National Autistic Society is a charity registered in England and Wales (269425) and in Scotland (SC039427) and a company limited by guarantee registered in England (No.1205298), registered office 393 City Road, London, EC1V 1NG



It is worth noting that the main vehicle through which the strategy, as proposed by the Bill, will be monitored is through independent evaluation, with a duty to reflect any recommendations made. The Bill also includes the power for the Welsh Minister to make regulations, if approved by the Assembly.

Diagnosis

In his evidence the Cabinet Secretary said that Bill provided for services and support to be made available only once 'over the gate' in terms of diagnosis, and that this was a fundamental concern about the Bill. This, we feel, is an unfair summation of the Bill. The Bill clearly states in section 2.1(c): "this shall not prevent the provision of other services prior to diagnosis assessment".

We agree with the Cabinet Secretary when he says that services should take into account the needs of the individual and ensure services are put in place to meet those needs. However, this assumes that professionals understand and can accommodate these needs without the benefit of a diagnostic assessment. This is where autistic people are failed by the current system.

A timely diagnosis is of fundamental importance in fully understanding the needs of an autistic person and shapes and informs any subsequent support. As Dai Lloyd AM said, 'on the ground' a diagnosis is key. It is also crucial in enabling autistic people to better understand themselves.

The current Welsh Government waiting time standard for children and adults is 26 weeks from referral to first assessment. The Bill proposes that the wait between a referral and first assessment should be determined by NICE guidelines and quality standards. This is currently 13 weeks. However, it is important to note that this timescale is not on the face of the Bill, and as clinical best practice changes, as determined by NICE, this can be reflected in the requirements of the Bill.

Examples of other UK Autism-specific legislation

The Cabinet Secretary said that he disagreed with the principle of condition-specific legislation and suggested that autism legislation in England and Northern Ireland had not led to 'visible improvements'. There are many examples of where clear and tangible duties included in those Acts have led to clear and tangible outcomes for autistic people. One clear example, to take the England Act, is that, prior to the 2009 Act, only 14 areas of England had an established adult Autism diagnostic pathway. As a result of the Act, only three areas do not have a diagnostic pathway.

There is also no evidence to support the Cabinet Secretary's concern that the Bill will lead to more condition specific legislation. This simply hasn't been the case elsewhere.

The status of a Bill, Code or Action Plan

The Cabinet Secretary has committed to consulting on a code of practice in November 2018. Our chief concern is the confusion that this may cause to our members and supporters who feel that they have already given their views on the improvements they would like to see and the vehicle through which they think these improvements should occur, through the three consultations already held in relation to the Autism Bill

In our evidence to the Health, Social Care and Sport Committee, we suggested that it may be helpful for the Committee to have sight of the proposed code so that they could assess it alongside the Bill. We would encourage the Constitutional and Legislative Affairs Committee to also consider this course of action. From our initial understanding we feel that the scope, permanence and enforcement of any such code would be limited in comparison to the Bill.

I hope you find this information useful to your consideration of the legislation. I would of course be happy to provide the Committee with any further information as required.

Cofion cynnes,

Meleri Thomas
External Affairs Manager

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



Llywodraeth Cymru
Welsh Government

Llŷr Gruffydd
Y Pwyllgor Cyllid
Cynulliad Cenedlaethol Cymru
Bae Caerdydd
CF991NA

SeneddCyllid@Cynulliad.Cymru

24 Hydref 2018

Yn gynharach eleni, ysgrifennais i'r Pwyllgor Cyllid i roi gwybod iddo fy mod wedi gofyn i Ysgrifennydd Gwladol Cymru gyflwyno is-ddeddfwriaeth i alluogi Gweinidogion Cymru i gyhoeddi bondiau ar gyfer gwariant buddsoddi cyfalaf.

Rwy'n ysgrifennu i roi gwybod i'r pwyllgor bod y gorchymyn drafft wedi'i osod yn Nhŷ'r Cyffredin. Os caiff ei gymeradwyo, bydd y gorchymyn yn dod i rym o 1 Rhagfyr 2018.

Fel yr wyf wedi dweud sawl gwaith wrth ymddangos gerbron y pwyllgor, pan fo'n fater o ddefnyddio cyfalaf i ariannu buddsoddiadau mewn seilwaith yng Nghymru, byddwn ni wastad yn defnyddio cyfalaf confensiynol i ddechrau ac yna'r ffynonellau benthyca hynny sy'n rhoi'r gwerth ariannol gorau i'r trethdalwyr, er mwyn lleihau'r goblygiadau ariannol i gyllideb Llywodraeth Cymru yn y tymor hir.

Rwy'n bwriadu parhau i fenthyca gan Drysorlys EM, drwy'r Gronfa Benthyciadau Cenedlaethol, tra bydd honno'n cynnig y ffynhonnell gyllido rataf sydd ar gael inni. Fodd bynnag bydd y gallu i gyhoeddi bondiau yn rhoi'r amrywiaeth lawn o bwerau benthyca i Lywodraeth Cymru at y dyfodol.

Byddaf yn parhau i roi gwybodaeth i'r Pwyllgor Cyllid ynglŷn â'n bwerau benthyca fel rhan o broses arferol y gyllideb.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.Drakeford@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Os byddwch chi'n ysgrifennu yn Gymraeg, byddwch chi'n derbyn ymateb yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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

Rwy'n anfon copi o'r llythyr hwn at gadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol er gwybodaeth.

In gywir,
Mark.

Mark Drakeford AM/AC

Ysgrifennydd y Cabinet dros Gyllid.

Cabinet Secretary for Finance

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

42nd Report of Session 2017–19

**Correspondence:
Delegated legislation
under the European
Union (Withdrawal)
Act 2018**

Ordered to be printed 30 October 2018 and published 1 November 2018

Published by the Authority of the House of Lords

Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European Withdrawal Act 2018.

And, to scrutinise –

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Rt Hon. Lord Chartres

Rt Hon. Lord Cunningham of Felling

Lord Faulkner of Worcester

Baroness Finn

Lord Goddard of Stockport Baroness O'Loan

Lord Haskel

Rt Hon. Lord Janvrin

Lord Kirkwood of Kirkhope

Lord Sherbourne of Didsbury

Rt Hon. Lord Trefgarne (Chairman)

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at <http://www.parliament.uk/seclegpublications>

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Paul Bristow (Adviser), Nadine McNally (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant) and Ben Dunleavy (Committee Assistant).

Information and Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hlseclegscrutiny@parliament.uk.

Forty Second Report

CORRESPONDENCE

1. In our Report entitled ‘Sifting “proposed negative instruments” laid under the European Union (Withdrawal) Act 2018: criteria and working arrangements’,¹ we stated that we have “pressed the Government to ensure that the flow of instruments laid under the withdrawal Act should be properly managed, without surges which could place an unacceptable pressure on the Committee’s capacity.” We therefore asked the Government for clarification about anticipated flow and volume of instruments. We have received correspondence from Mr Chris Heaton-Harris MP, Parliamentary Under Secretary of State at the Department for Exiting the European Union, on the expected flow of instruments, which we are publishing at Appendix 1. We are grateful to the Minister for his reply.

¹ [37th Report](#), Session 2017–19 (HL Paper 174) paras 59–62.

APPENDIX 1: DELEGATED LEGISLATION UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018

Letter from Mr Chris Heaton-Harris MP, Parliamentary Under Secretary of State for Exiting the European Union

Delegated legislation under the European Union (Withdrawal) Act 2018

Following our recent meetings, and the Leader of the House of Commons' private meeting with the European Statutory Instrument Committee on 17 October, I am writing to provide more detail on the flow of proposed negative statutory instruments (SIs) to be laid under the European Union (Withdrawal) Act 2018. Robin Walker also made a commitment to write to the Procedure Committee during the discussion on the forthcoming EU (Withdrawal Agreement) Bill on 10 October regarding the flow of SIs, and this letter serves that purpose.

As you know, the Government has stated there will be between 800–1,000 EU exit-related SIs laid (not all of which will be under the EU (Withdrawal) Act) ahead of exit day to ensure a functioning statute book, and the Leader of the House of Commons has stated the final volume will be closer towards the lower end of that range.

The Government expects to see a steady increase in the number of EU exit SIs being laid through the autumn, and we are working hard to ensure a manageable flow over each sitting week. As is usual and largely unavoidable for secondary legislation, the precise volume to be laid each month will fluctuate, and we must be careful not to mislead Parliament and stakeholders.

That said, it is possible to give the range of the remaining EU exit SIs we are currently expecting to lay:

- 50–100 SIs, of which 55% are likely to be negative under the EUWA in October;
- 150–200 SIs, of which 55% are likely to be negative under the EUWA in November;
- 100–150 SIs, of which 35% are likely to be negative under the EUWA in December;
- 100–150 SIs, of which 25% are likely to be negative under the EUWA in January;
- 10–50 SIs, of which 20% are likely to be negative under the EUWA in February;
- 10–50 SIs, of which 30% are likely to be negative under the EUWA in March.

As mentioned by the Leader, this programme of secondary legislation is necessarily flexible, enabling individual SIs to be moved around in the general flow to ensure it is manageable. While it is not possible to confirm the volume for each department each month as this is liable to change, I can confirm the majority of SIs will be from Defra [Department for Environment, Food and Rural Affairs], HMRC [HM Revenue and Customs], HMT [HM Treasury], BEIS [Department for Business, Energy and Industrial Strategy] and DfT [Department for Transport], and we are continuing to work collectively to ensure a manageable flow.

Tudalen y pecyn 208

More widely, we have been doing a great deal of work to improve our management of SIs, and as part of this we work closely with departments to ensure they prioritise only the essential non-exit secondary legislation to be laid in Parliament. This will ensure that Parliament focuses on the critical SIs we need between now and exit day.

25 October 2018

APPENDIX 2: MEMBERS INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon