Agenda – Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Lleoliad:

Ystafell Bwyllgora 1 – y Senedd

Dyddiad: Dydd Llun, 13 Mai 2019

Amser: 11.00

I gael rhagor o wybodaeth cysylltwch a:

Gareth Williams

Clerc y Pwyllgor

0300 200 6362

SeneddMCD@cynulliad.cymru

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datganiadau o fuddiant

2 Bil Deddfwriaeth (Cymru): trafodion Cyfnod 2

(11.00–14.00)

Jeremy Miles AC, y Cwnsler Cyffredinol

Dylan Hughes, Prif Gwnsler Deddfwriaethol, Llywodraeth Cymru

Claire Fife, Cynghorwr Polisi i'r Cwnsler Cyffredinol, Llywodraeth Cymru

Ar 1 Ebrill 2019, cytunodd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol, o dan Reol Sefydlog 26.21, mai'r drefn ar gyfer trafod trafodion Cyfnod 2 fydd: Adrannau 1 i 5; Atodlen 1; Adrannau 6 i 39; Atodlen 2; Adrannau 40 i 43; Teitl hir

Mae dogfennau sy'n berthnasol i drafodion Cyfnod 2 ar gael ar dudalen y Bil.

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

14.00–14.10

Offerynnau'r Weithdrefn Penderfyniad Negyddol

3.1 SL(5)410 – Rheoliadau Gwasanaethau Rheoleiddiedig (Hysbysiadau Cosb) (Cymru) 2019

(Tudalennau 1 – 41)

CLA(5)-15-19 – Papur 1 – Adroddiad

CLA(5)-15-19 – Papur 2 – Rheoliadau

CLA(5)-15-19 – Papur 3 – Memorandwm Esboniadol

3.2 SL(5)411 - Rheoliadau Addysg (Cymorth i Fyfyrwyr) (Graddau Meistr Ôl-raddedig) (Cymru) 2019

(Tudalennau 42 - 121)

CLA(5)-15-19 – Papur 4 – Adroddiad

CLA(5)-15-19 – Papur 5 – Rheoliadau

CLA(5)-15-19 – Papur 6 – Memorandwm Esboniadol

4 Offerynnau Statudol sydd angen cydsyniad: Brexit

14.10-14.15

4.1 SICM(5)22 Rheoliadau Gorfodi'r Gyfraith a Diogelwch (Diwygio) (Ymadael â'r UE) 2019

(Tudalennau 122 - 227)

CLA(5)-15-19 – Papur 7 – y Memorandwm Cydsyniad Offeryn Statudol

CLA(5)-15-19 – Papur 8 – Rheoliadau

CLA(5)-15-19 – Papur 9 – Memorandwm Esboniadol

CLA(5)-15-19 – Papur 10 – Llythyr gan y Gweinidog Tai a Llywodraeth Leol, 2 Mai 2019

CLA(5)-15-19 – Papur 11 – Datganiad ysgrifenedig

CLA(5)-15-19 – Papur 12 – Sylwadau

5 Papur(au) i'w nodi

14.15-14.25

5.1 Llythyr gan Gadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol: presenoldeb Gweinidogion mewn pwyllgorau ar ddydd Llun

(Tudalennau 228 - 229)

CLA(5)-15-19 – Papur 13 – Llythyr gan Gadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol, 30 Ebrill 2019

5.2 Llythyr gan y Cwnsler Cyffredinol: Bil Deddfwriaeth (Cymru)

(Tudalennau 230 - 236)

CLA(5)-15-19 – Papur 14 – Llythyr gan y Cwnsler Cyffredinol, 3 Mai

5.3 **Llythyr gan Ganghellor Dugiaeth Caerhirfryn: Ymgysylltiad rhwng gweinyddiaethau'r DU**

(Tudalennau 237 - 240)

CLA(5)-15-19 - Papur 15 - Llythyr gan Ganghellor Dugiaeth Caerhirfryn, 3 Mai 2019

5.4 **Llythyr gan Gadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol at Weinidog y Gymraeg a Chysylltiadau Rhyngwladol: Bil Masnach - cydsyniad deddfwriaethol**

(Tudalennau 241 - 242)

CLA(5)-15-19 - Papur 16 - Llythyr gan Gadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol, 7 Mai 2019

5.5 **Llythyr gan y Llywydd: cymhwyso Rheol Sefydlog 30A**

(Tudalennau 243 - 247)

CLA(5)-15-19 - Papur 17 - Llythyr gan y Llywydd, 7 Mai 2019

CLA(5)-15-19 - Papur 18 - Llythyr gan Gadeirydd y Pwyllgor at y Llywydd, 25 Mawrth 2019

5.6 **Llythyr gan y Cwnsler Cyffredinol: Y Cyd-bwyllgor y Gweinidogion (Negodiadau Ewropeaidd)**

(Tudalen 248)

CLA(5)-15-19 - Papur 19 - Llythyr gan y Cwnsler Cyffredinol, 8 Mai 2019

5.7 **Llywodraeth Cymru: Ymateb Interim i Adroddiad Comisiwn y Gyfraith ar Gyfraith Cynllunio yng Nghymru**

(Tudalennau 249 - 254)

CLA(5)-15-19 - Papur 20 - Datganiad Ysgrifenedig ac Ymateb Interim

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

14.25

7 Memorandwm Cydsyniad Deddfwriaethol Atodol ar y Bil Amaethyddiaeth

14.25 - 14.40 (Tudalennau 255 - 272)

CLA(5)-15-19 – Papur 21 – Memorandwm Cydsyniad Deddfwriaethol Atodol

CLA(5)-15-19 – Papur 22 – Nodyn cyfreithiol

CLA(5)-15-19 – Papur 23 – Llythyr gan Weinidog yr Amgylchedd, Ynni a Materion Gwledig, 26 Mawrth 2019

8 Ystyried yr ymateb i'r llythyr gan Bruce Crawford ASA, Cynullydd y Pwyllgor Cyllid a'r Cyfansoddiad

14.40–14.50 (Tudalennau 273 – 284)

CLA(5)-15-19 – Papur 24 – Llythyr gan Bruce Crawford ASA, 26 Mawrth 2019

CLA(5)-15-19 – Papur 25 – Ymateb drafft

9 Blaenraglen waith

14.50–15.00 (Tudalennau 285 – 287)

CLA(5)-15-19 – Papur 26 – Blaenraglen waith

Dyddiad y cyfarfod nesaf – 20 Mai

SL(5)410 - Rheoliadau Gwasanaethau Rheoleiddiedig (Hysbysiadau Cosb) (Cymru) 2019

Cefndir a Diben

Mae Deddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 ("y Ddeddf") yn diwygio'r gyfundrefn rheoleiddio ac arolygu gofal cymdeithasol yng Nghymru ac yn darparu'r fframwaith statudol ar gyfer rheoleiddio ac arolygu gwasanaethau gofal cymdeithasol a'r gweithlu gofal cymdeithasol.

Mae'r Rheoliadau hyn yn rhagnodi manylion system hysbysiadau cosb, lle gall Gweinidogion Cymru roi cosb i ddarparwyr ac unigolion cyfrifol gwasanaethau rheoledig yn hytrach na dwyn achos trosedd, os digwydd rhai rheoliadau yn cael eu torri. Mae'r Rheoliadau hyn yn rhagnodi'r troseddau lle y gellir rhoi hysbysiad cosb.

Bydd y Rheoliadau hyn yn disodli'r Rheoliadau Gwasanaethau Rheoleiddiedig (Hysbysiadau Cosb) (Cymru) 2017 presennol.

Gweithdrefn

Negyddol.

Craffu ar faterion technegol

Nodwyd dau bwynt i gyflwyno adroddiad arnynt 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 ddiffygiol neu ei fod yn methu â bodloni gofynion statudol

Mae rheoliad 8(1) yn nodi troseddau rhagnodedig o dan Reoliadau Gwasanaethau Eirioli Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019, ond mae'n nodi bod y troseddau rhagnodedig hyn " at ddibenion rheoliad 12". Mae rheoliad 12 yn ymwneud â'r cyfnod pan na chaniateir cychwyn achos. Dylai'r cyfeiriad cywir gyfeirio at adran 3 52(1) o'r Ddeddf.

2. Rheol Sefydlog 21.2(vii) – ei bod yn ymddangos bod anghysondebau rhwng ystyr testun Cymraeg a thestun Saesneg

Gallai'r testun Cymraeg o'r drosedd "mynd yn groes i'r gofynion i gael polisïau a gweithdrefnau penodedig yn eu lle, neu fethiant i gydymffurfio â hwy" yn atodlenni 1 i 5 o'r Rheoliadau beri dryswch. Oherwydd y ffordd y mae wedi'i ddrafftio, nid yw'n glir a yw'r methiant i gydymffurfio yn ymwneud â'r gofynion i gael polisïau a gweithdrefnau ar waith, neu mewn perthynas â'r polisïau a'r gweithdrefnau eu hunain.

Rhinweddau: craffu

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

Goblygiadau sy'n deillio o adael yr Undeb Ewropeaidd

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

Ymateb y Llywodraeth

Mae angen ymateb gan y Llywodraeth.

Cynghorwyr Cyfreithiol
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
3 Mai 2019

OFFERYNNAU STATUDOL CYMRU

2019 Rhif 887 (Cy. 159)

GOFAL CYMDEITHASOL, CYMRU

Rheoliadau Gwasanaethau Rheoleiddiedig (Hysbysiadau Cosb) (Cymru) 2019

NODYN ESBONIADOL

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

Mae Rhan 1 o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 ("y Ddeddf") yn sefydlu system newydd o reoleiddio ac arolygu gwasanaethau gofal cymdeithasol yng Nghymru, sy'n disodli'r system a sefydlwyd o dan Ddeddf Safonau Gofal 2000.

Mae adran 2 o'r Ddeddf ac Atodlen 1 iddi yn pennu'r gwasanaethau sy'n "gwasanaethau rheoleiddiedig" at ddibenion y Ddeddf. Y rhain yw gwasanaeth cartref gofal, gwasanaeth llety diogel, gwasanaeth canolfan breswyl i deuluoedd, gwasanaeth mabwysiadu, gwasanaeth maethu, gwasanaeth lleoli oedolion, gwasanaeth eirioli a gwasanaeth cymorth cartref.

O dan adran 3(1)(c) o'r Ddeddf, cyfeirir at berson sydd wedi ei gofrestru i ddarparu gwasanaeth rheoleiddiedig fel "darparwr gwasanaeth". Mae rheoliadau a wneir o dan adran 27 o'r Ddeddf yn gosod gofynion ar ddarparwyr gwasanaethau mewn cysylltiad â'r gwasanaethau rheoleiddiedig y maent yn eu darparu.

Mae adran 6 o'r Ddeddf yn ei gwneud yn ofynnol i ddarparwr gwasanaeth ddynodi unigolyn fel yr "unigolyn cyfrifol" mewn cysylltiad â phob man y mae gwasanaeth rheoleiddiedig i'w ddarparu ynddo, ohono neu mewn perthynas ag ef. Mae rheoliadau a wneir o dan adran 28 o'r Ddeddf yn gosod gofynion ar yr unigolyn cyfrifol mewn perthynas â'r gwasanaethau rheoleiddiedig y mae'n gyfrifol amdanynt.

Mae adran 45 o'r Ddeddf yn galluogi Gweinidogion Cymru i wneud rheoliadau sy'n darparu ei bod yn drosedd i ddarparwr gwasanaeth fethu â chydymffurfio â darpariaeth benodedig mewn rheoliadau a wneir o

dan adran 27. O dan adran 46 o'r Ddeddf, caiff Gweinidogion Cymru hefyd wneud rheoliadau sy'n darparu ei bod yn drosedd i unigolyn cyfrifol fethu â chydymffurfio â darpariaeth benodedig mewn rheoliadau a wneir o dan adran 28 o'r Ddeddf.

Mae Rheoliadau Gwasanaethau Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2017 ("Rheoliadau 2017") yn darparu ei bod yn drosedd i ddarparwyr gwasanaethau ac unigolion cyfrifol dynodedig ar gyfer gwasanaethau cartrefi gofal, gwasanaethau llety diogel, gwasanaethau canolfannau preswyl i deuluoedd a gwasanaethau cymorth cartref rheoleiddiedig fethu â chydymffurfio ag unrhyw un neu ragor o'r darpariaethau a bennir yn rheoliadau 85 a 86 yn y drefn honno o'r Rheoliadau hynny.

Mae Rheoliadau Gwasanaethau Mabwysiadu Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019 ("y Rheoliadau Gwasanaethau Mabwysiadu") yn darparu ei bod yn drosedd i ddarparwyr gwasanaethau ac unigolion cyfrifol dynodedig ar gyfer gwasanaethau mabwysiadu rheoleiddiedig fethu â chydymffurfio ag unrhyw un neu ragor o'r darpariaethau a bennir yn rheoliadau 54 a 55 yn y drefn honno o'r Rheoliadau hynny.

Mae Rheoliadau Gwasanaethau Lleoli Oedolion (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019 ("y Rheoliadau Gwasanaethau Lleoli Oedolion") yn darparu ei bod yn drosedd i ddarparwyr gwasanaethau ac unigolion cyfrifol dynodedig ar gyfer gwasanaethau lleoli oedolion rheoleiddiedig fethu â chydymffurfio ag unrhyw un neu ragor o'r darpariaethau a bennir yn rheoliadau 64 a 65 yn y drefn honno o'r Rheoliadau hynny.

Mae Rheoliadau Gwasanaethau Eirioli Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019 ("y Rheoliadau Gwasanaethau Eirioli") yn darparu ei bod yn drosedd i ddarparwyr gwasanaethau ac unigolion cyfrifol dynodedig ar gyfer gwasanaethau eirioli rheoleiddiedig fethu â chydymffurfio ag unrhyw un neu ragor o'r darpariaethau a bennir yn rheoliadau 55 a 56 yn y drefn honno o'r Rheoliadau hynny.

Mae Rheoliadau Gwasanaethau Maethu Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019 ("y Rheoliadau Gwasanaethau Maethu") yn darparu ei bod yn drosedd i ddarparwyr gwasanaethau ac unigolion cyfrifol dynodedig ar gyfer gwasanaethau maethu rheoleiddiedig fethu â chydymffurfio ag unrhyw un neu ragor o'r darpariaethau a bennir yn rheoliadau 68 a 69 yn y drefn honno o'r Rheoliadau hynny.

Mae adran 52(1) o'r Ddeddf yn rhoi'r pŵer i Weinidogion Cymru i roi hysbysiad cosb i berson yn lle dwyn achos am drosedd, ond dim ond mewn perthynas â'r troseddau hynny a ragnodir mewn rheoliadau. O dan adran 52(2), dim ond troseddau o dan adrannau 47 (datganiadau anwir), 48 (methiant i gyflwyno datganiad blynyddol) neu 49 (methiant i ddarparu gwybodaeth) neu o dan reoliadau a wneir o dan adrannau 45 neu 46 o'r Ddeddf y caniateir iddynt gael eu rhagnodi felly.

Mae'r Rheoliadau hyn yn rhagnodi'r troseddau y caniateir i hysbysiad cosb gael ei roi i berson ar eu cyfer yn lle dwyn achos mewn perthynas â'r drosedd.

Mae rheoliadau 3 a 4 yn rhagnodi'r troseddau yn y Ddeddf y caiff Gweinidogion Cymru roi hysbysiad cosb i berson mewn cysylltiad â hwy. Mae'r Rheoliadau hyn hefyd yn pennu swm y gosb sy'n daladwy mewn cysylltiad â phob un o'r troseddau rhagnodedig.

Mynegir swm y gosb sy'n daladwy mewn cysylltiad â phob un o'r troseddau a ragnodir yn y Rheoliadau hyn fel lluosrifau o'r swm sy'n cyfateb i lefel 4 ar y raddfa safonol (ac maent yn amrywio rhwng lluosrifau o un i ddwywaith a hanner).

Mae rheoliad 5 a'r golofn gyntaf yn y tabl yn Atodlen 1 yn rhagnodi'r troseddau yn Rheoliadau 2017 y caiff Gweinidogion Cymru roi hysbysiad cosb i'r darparwr gwasanaeth neu i'r unigolyn cyfrifol dynodedig mewn cysylltiad â hwy. Mae'r ail golofn a'r drydedd golofn yn cynnwys disgrifiad o'r drosedd ragnodedig a swm y gosb sy'n daladwy mewn cysylltiad â phob trosedd.

Mae rheoliad 6 a'r golofn gyntaf yn y tabl yn Atodlen 2 yn rhagnodi'r troseddau yn y Rheoliadau Gwasanaethau Mabwysiadu y caiff Gweinidogion Cymru roi hysbysiad cosb i'r darparwr gwasanaeth neu i'r unigolyn cyfrifol dynodedig ar eu cyfer. Mae'r ail golofn a'r drydedd golofn yn cynnwys disgrifiad o'r drosedd ragnodedig a swm y gosb sy'n daladwy mewn cysylltiad â phob trosedd.

Mae rheoliad 7 a'r golofn gyntaf yn y tabl yn Atodlen 3 yn rhagnodi'r troseddau yn y Rheoliadau Gwasanaethau Lleoli Oedolion y caiff Gweinidogion Cymru roi hysbysiad cosb i'r darparwr gwasanaeth neu i'r unigolyn cyfrifol dynodedig ar eu cyfer. Mae'r ail golofn a'r drydedd golofn yn cynnwys disgrifiad o'r drosedd ragnodedig a swm y gosb sy'n daladwy mewn cysylltiad â phob trosedd.

Mae rheoliad 8 a'r golofn gyntaf yn y tabl yn Atodlen 4 yn rhagnodi'r troseddau yn y Rheoliadau Gwasanaethau Eirioli y caiff Gweinidogion Cymru roi hysbysiad cosb i'r darparwr gwasanaeth neu i'r unigolyn cyfrifol dynodedig ar eu cyfer. Mae'r ail

golofn a'r drydedd golofn yn cynnwys disgrifiad o'r drosedd ragnodedig a swm y gosb sy'n daladwy mewn cysylltiad â phob trosedd.

Mae rheoliad 9 a'r golofn gyntaf yn y tabl yn Atodlen 5 yn rhagnodi'r troseddau yn y Rheoliadau Gwasanaethau Maethu y caiff Gweinidogion Cymru roi hysbysiad cosb i'r darparwr gwasanaeth neu i'r unigolyn cyfrifol dynodedig ar eu cyfer. Mae'r ail golofn a'r drydedd golofn yn cynnwys disgrifiad o'r drosedd ragnodedig a swm y gosb sy'n daladwy mewn cysylltiad â phob trosedd.

Mae rheoliadau 10 ac 11 yn gwneud darpariaeth ynghylch yr amser erbyn pryd y mae rhaid talu hysbysiad cosb ac yn pennu'r ffordd y caniateir i swm gael ei dalu ynddi.

Mae rheoliad 12 yn gwneud darpariaeth ynghylch y cyfnod pan na chaniateir i achos gael ei gychwyn am y drosedd y mae'r hysbysiad cosb yn ymwneud â hi.

Mae rheoliad 13 yn gwneud darpariaeth ynghylch yr amgylchiadau pan ganiateir i hysbysiad cosb gael ei dynnu'n ôl wedi iddo gael ei roi, canlyniadau'r tynnu'n ôl hwnnw, ac yn pennu pa bryd y caniateir i achos gael ei gychwyn neu ei barhau mewn cysylltiad â'r drosedd y mae'r hysbysiad cosb yn ymwneud â hi.

Mae rheoliad 14 yn nodi'r gofynion ar gyfer cynnwys hysbysiad cosb.

Mae rheoliad 15 yn nodi'r gofynion o ran y cofnodion sydd i'w cadw gan Weinidogion Cymru mewn cysylltiad ag unrhyw hysbysiad cosb a roddir.

Mae rheoliad 16 yn dirymu Rheoliadau Gwasanaethau Rheoleiddiedig (Hysbysiadau Cosb) (Cymru) 2017.

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: Yr Adran Iechyd a Gwasanaethau Cymdeithasol, Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

OFFERYNNAU STATUDOL CYMRU

2019 Rhif 887 (Cy. 159)

GOFAL CYMDEITHASOL, CYMRU

Rheoliadau Gwasanaethau Rheoleiddiedig (Hysbysiadau Cosb) (Cymru) 2019

Gwnaed	*25 Ebrill 2019*
Gosodwyd gerbron Cynulliad Cenedlaethol Cymru	*26 Ebrill 2019*
Yn dod i rym	*1 Gorffennaf 2019*

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir gan adrannau 52(1) a (6) a 187(1) o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016(**1**), yn gwneud y Rheoliadau a ganlyn(**2**):

Enwi a chychwyn

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Gwasanaethau Rheoleiddiedig (Hysbysiadau Cosb) (Cymru) 2019.

(2) Daw'r Rheoliadau hyn i rym ar 1 Gorffennaf 2019.

Dehongli

2. Yn y Rheoliadau hyn—

mae i "cyfnod talu" ("*payment period*") yr ystyr a roddir yn rheoliad 10;

ystyr "darparwr gwasanaeth" ("*service provider*") yw person y mae ei gais i gofrestru fel darparwr gwasanaeth rheoleiddiedig wedi cael ei ganiatáu o dan adran 7(1) o'r Ddeddf;

(**1**) 2016 dccc 2.
(**2**) *Gweler* adran 189 o'r Ddeddf am y diffiniad o "a ragnodir" a "rhagnodedig".

ystyr "derbynnydd" ("*recipient*") yw person y rhoddir hysbysiad cosb iddo yn unol ag adran 52 o'r Ddeddf;

ystyr "y Ddeddf" ("*the Act*") yw Deddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016;

ystyr "hysbysiad cosb" ("*penalty notice*") yw hysbysiad cosb a roddir yn unol ag adran 52 o'r Ddeddf;

ystyr "Rheoliadau 2017" ("*the 2017 Regulations*") yw Rheoliadau Gwasanaethau Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2017(**1**);

ystyr "y Rheoliadau Gwasanaethau Eirioli" ("*the Advocacy Services Regulations*") yw Rheoliadau Gwasanaethau Eirioli Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019(**2**);

ystyr "y Rheoliadau Gwasanaethau Lleoli Oedolion" ("*the Adult Placement Services Regulations*") yw Rheoliadau Gwasanaethau Lleoli Oedolion (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019(**3**);

ystyr "y Rheoliadau Gwasanaethau Mabwysiadu" ("*the Adoption Services Regulations*") yw Rheoliadau Gwasanaethau Mabwysiadu Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019(**4**);

ystyr "y Rheoliadau Gwasanaethau Maethu" ("*the Fostering Services Regulations*") yw Rheoliadau Gwasanaethau Maethu Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019(**5**);

ystyr "trosedd" ("*offence*") yw trosedd ragnodedig.

Troseddau o dan y Ddeddf

3. Mae trosedd a gyflawnir o dan adran 47 (gwneud datganiadau anwir) o'r Ddeddf wedi ei rhagnodi'n drosedd at ddibenion adran 52(1) o'r Ddeddf honno. Y gosb i'w thalu yw swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar y raddfa safonol(**6**).

4. Mae trosedd a gyflawnir o dan adran 48 (methiant i gyflwyno datganiad blynyddol) neu 49 (methiant i

(**1**) O.S. 2017/1264 (Cy. 295).
(**2**) O.S. 2019/165 (Cy. 41).
(**3**) O.S. 2019/163 (Cy. 40).
(**4**) O.S. 2019/762 (Cy. 145)
(**5**) O.S. 2019/169 (Cy. 42).
(**6**) *Gweler* adran 37 o Ddeddf Cyfiawnder Troseddol 1982 (p. 48) ("Deddf 1982"); ar y dyddiad y daw'r Rheoliadau hyn i rym, mae lefel 4 ar y raddfa safonol wedi ei phennu'n £2,500 (caniateir i'r ffigur hwn gael ei gynyddu yn rhinwedd diwygiad i Ddeddf 1982).

ddarparu gwybodaeth) o'r Ddeddf wedi ei rhagnodi'n drosedd at ddibenion adran 52(1) o'r Ddeddf honno. Y gosb i'w thalu yw swm sy'n cyfateb i lefel 4 ar y raddfa safonol.

Troseddau o dan Reoliadau 2017

5.—(1) Mae'r troseddau o dan ddarpariaethau Rheoliadau 2017 a restrir yng ngholofn gyntaf y tabl yn Atodlen 1 wedi eu rhagnodi'n droseddau at ddibenion adran 52(1) o'r Ddeddf.

(2) Mae ail golofn y tabl yn Atodlen 1 yn cynnwys disgrifiad o'r drosedd ragnodedig.

(3) Mae swm y gosb sydd i'w dalu ar gyfer pob trosedd wedi ei bennu yn nhrydedd golofn y tabl yn Atodlen 1.

Troseddau o dan y Rheoliadau Gwasanaethau Mabwysiadu

6.—(1) Mae'r troseddau o dan ddarpariaethau'r Rheoliadau Gwasanaethau Mabwysiadu a restrir yng ngholofn gyntaf y tabl yn Atodlen 2 wedi eu rhagnodi'n droseddau at ddibenion adran 52(1) o'r Ddeddf.

(2) Mae ail golofn y tabl yn Atodlen 2 yn cynnwys disgrifiad o'r drosedd ragnodedig.

(3) Mae swm y gosb sydd i'w dalu ar gyfer pob trosedd wedi ei bennu yn nhrydedd golofn y tabl yn Atodlen 2.

Troseddau o dan y Rheoliadau Gwasanaethau Lleoli Oedolion

7.—(1) Mae'r troseddau o dan ddarpariaethau'r Rheoliadau Gwasanaethau Lleoli Oedolion a restrir yng ngholofn gyntaf y tabl yn Atodlen 3 wedi eu rhagnodi'n droseddau at ddibenion adran 52(1) o'r Ddeddf.

(2) Mae ail golofn y tabl yn Atodlen 3 yn cynnwys disgrifiad o'r drosedd ragnodedig.

(3) Mae swm y gosb sydd i'w dalu ar gyfer pob trosedd wedi ei bennu yn nhrydedd golofn y tabl yn Atodlen 3.

Troseddau o dan y Rheoliadau Gwasanaethau Eirioli

8.—(1) Mae'r troseddau o dan ddarpariaethau'r Rheoliadau Gwasanaethau Eirioli a restrir yng ngholofn gyntaf y tabl yn Atodlen 4 wedi eu rhagnodi'n droseddau at ddibenion rheoliad 12.

(2) Mae ail golofn y tabl yn Atodlen 4 yn cynnwys disgrifiad o'r drosedd ragnodedig.

(3) Mae swm y gosb sydd i'w dalu ar gyfer pob trosedd wedi ei bennu yn nhrydedd golofn y tabl yn Atodlen 4.

Troseddau o dan y Rheoliadau Gwasanaethau Maethu

9.—(1) Mae'r troseddau o dan ddarpariaethau'r Rheoliadau Gwasanaethau Maethu a restrir yng ngholofn gyntaf y tabl yn Atodlen 5 wedi eu rhagnodi'n droseddau at ddibenion adran 52(1) o'r Ddeddf.

(2) Mae ail golofn y tabl yn Atodlen 5 yn cynnwys disgrifiad o'r drosedd ragnodedig.

(3) Mae swm y gosb sydd i'w dalu ar gyfer pob trosedd wedi ei bennu yn nhrydedd golofn y tabl yn Atodlen 5.

Y cyfnod ar gyfer talu'r gosb

10.—(1) Yr amser erbyn pryd y mae'r gosb a bennir mewn hysbysiad cosb i'w thalu yw diwedd y cyfnod o 28 o ddiwrnodau sy'n dechrau â'r dyddiad y ceir yr hysbysiad ("cyfnod talu").

(2) Mae adran 184 o'r Ddeddf(**1**) yn gymwys i hysbysiad cosb fel y mae'n gymwys i hysbysiad y mae'n ofynnol ei roi o dan y Ddeddf.

Talu'r gosb

11.—(1) Rhaid talu'r gosb a bennir mewn hysbysiad cosb i Weinidogion Cymru drwy'r dull a bennir yn yr hysbysiad.

(2) Mewn unrhyw achos, mae tystysgrif yr honnir ei bod wedi ei llofnodi gan Weinidogion Cymru neu ar eu rhan, sy'n datgan i daliad cosb ddod i law neu na ddaeth i law erbyn y dyddiad a bennir yn y dystysgrif, yn dystiolaeth o'r ffeithiau a ddatgenir.

Y cyfnod pan na chaniateir i achos gael ei gychwyn

12. Pan fo derbynnydd yn cael hysbysiad cosb, ni chaniateir i achos am y drosedd y mae'r hysbysiad yn ymwneud â hi gael ei gychwyn yn erbyn y derbynnydd cyn diwedd y cyfnod talu.

(**1**) Mae adran 184 o'r Ddeddf (cyflwyno dogfennau etc.) yn pennu y caniateir i hysbysiadau gael eu traddodi â llaw, cael eu gadael yng nghyfeiriad y derbynnydd, cael eu hanfon drwy'r gwasanaeth danfon cofnodedig neu, os yw'r derbynnydd wedi cytuno i'w cael ar ffurf electronig, drwy gael eu hanfon yn electronig i gyfeiriad a ddarperir at y diben hwnnw; mae is-adran (8) yn darparu pan fo hysbysiad yn cael ei anfon drwy'r gwasanaeth danfon cofnodedig neu'n electronig fod rhaid barnu bod yr hysbysiad wedi ei gael 48 awr ar ôl iddo gael ei anfon (oni ddangosir i'r gwrthwyneb).

Tynnu hysbysiad cosb yn ôl

13.—(1) Caiff Gweinidogion Cymru dynnu hysbysiad cosb yn ôl drwy roi hysbysiad ysgrifenedig o'r tynnu'n ôl i'r derbynnydd—

(a) os yw Gweinidogion Cymru yn penderfynu—

(i) na ddylai fod wedi cael ei roi, neu

(ii) na ddylai fod wedi cael ei roi i'r person a enwir fel y derbynnydd; neu

(b) os yw'n ymddangos i Weinidogion Cymru fod yr hysbysiad yn cynnwys gwallau perthnasol.

(2) Caniateir i hysbysiad cosb gael ei dynnu'n ôl yn unol â pharagraff (1) pa un a yw'r cyfnod talu wedi dod i ben ai peidio, a pha un a yw'r gosb wedi cael ei thalu ai peidio.

(3) Pan fo hysbysiad cosb wedi cael ei dynnu'n ôl yn unol â pharagraff (1), rhaid i Weinidogion Cymru ad-dalu unrhyw swm sydd wedi ei dalu fel cosb yn unol â'r hysbysiad hwnnw, i'r person a'i talodd.

(4) Ac eithrio fel y darperir ym mharagraff (5), ni chaniateir i achos gael ei gychwyn neu ei barhau yn erbyn derbynnydd am y drosedd y mae'r hysbysiad cosb yn ymwneud â hi pan fo'r hysbysiad wedi cael ei dynnu'n ôl yn unol â pharagraff (1).

(5) Pan fo hysbysiad cosb wedi cael ei dynnu'n ôl o dan baragraff (1)(b), caniateir i achos gael ei gychwyn neu ei barhau am y drosedd y rhoddwyd yr hysbysiad cosb hwnnw mewn cysylltiad â hi os yw hysbysiad cosb pellach wedi cael ei roi mewn cysylltiad â'r drosedd ac nad yw'r gosb wedi ei thalu cyn diwedd y cyfnod talu.

Cynnwys hysbysiad cosb

14.—(1) Rhaid i hysbysiad cosb roi'r manylion hynny am yr amgylchiadau yr honnir eu bod yn drosedd y mae'n ymddangos i Weinidogion Cymru eu bod yn rhesymol ofynnol i roi gwybodaeth i'r derbynnydd amdani.

(2) Rhaid i hysbysiad cosb ddatgan—

(a) enw a chyfeiriad y derbynnydd;

(b) swm y gosb;

(c) y cyfnod talu;

(d) y bydd talu o fewn y cyfnod hwnnw yn rhyddhau unrhyw atebolrwydd am y drosedd;

(e) y cyfnod pan na fydd achos yn cael ei ddwyn mewn cysylltiad â'r drosedd y mae'r hysbysiad yn ymwneud â hi;

(f) y canlyniadau os na chaiff y gosb ei thalu cyn i'r cyfnod ar gyfer ei thalu ddod i ben;

(g) y person y caniateir i'r gosb gael ei thalu iddo a'r cyfeiriad lle y caniateir ei thalu ac y caniateir anfon unrhyw ohebiaeth am yr hysbysiad cosb iddo;

(h) y dulliau a ganiateir ar gyfer talu'r gosb;

(i) ar ba seiliau y caniateir i'r hysbysiad cosb gael ei dynnu'n ôl.

Cofnodion

15. Rhaid i Weinidogion Cymru gadw cofnod o unrhyw hysbysiadau cosb a roddir, y mae rhaid iddo gynnwys—

(a) copi o bob hysbysiad cosb a roddir;

(b) cofnod o'r holl daliadau a wnaed a'r dyddiad pan y'u derbyniwyd;

(c) manylion unrhyw hysbysiad cosb sydd wedi ei dynnu'n ôl a'r seiliau dros hynny;

(d) manylion ynghylch a gafodd y derbynnydd ei erlyn am y drosedd y rhoddwyd yr hysbysiad cosb ar ei chyfer.

Dirymu

16. Mae Rheoliadau Gwasanaethau Rheoleiddiedig (Hysbysiadau Cosb) (Cymru) 2017(**1**) wedi eu dirymu.

Julie Morgan
Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol, o dan awdurdod y Gweinidog Iechyd a Gwasanaethau Cymdeithasol, un o Weinidogion Cymru
25 Ebrill 2019

(**1**) O.S. 2017/1292 (Cy. 298).

ATODLEN 1 Rheoliad 5

Troseddau rhagnodedig – gwasanaethau a reoleiddir o dan Reoliadau 2017

Y ddarpariaeth sy'n creu'r drosedd	*Natur gyffredinol y drosedd*	*Swm y gosb*
Rheoliad 7(3) a (5) o Reoliadau 2017	Mynd yn groes i'r gofynion mewn perthynas â'r datganiad o ddiben, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar y raddfa safonol
Rheoliad 11(3) o Reoliadau 2017	Mynd yn groes i'r gofynion mewn perthynas â chynaliadwyedd ariannol y gwasanaeth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i lefel 4 ar y raddfa safonol
Rheoliad 12(1) a (2) o Reoliadau 2017	Mynd yn groes i'r gofynion i gael polisïau a gweithdrefnau penodedig yn eu lle, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i lefel 4 ar y raddfa safonol
Rheoliad 19(1), (2), (3) o Reoliadau 2017	Mynd yn groes i'r gofynion mewn perthynas â darparu gwybodaeth am y gwasanaeth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 20(1) o Reoliadau 2017	Mynd yn groes i'r gofynion mewn perthynas â darparu cytundeb gwasanaeth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i lefel 4 ar y raddfa safonol
Rheoliad 35(1) o Reoliadau	Mynd yn groes i'r gofynion	Swm sy'n cyfateb i

2017	mewn perthynas ag addasrwydd staff, neu fethiant i gydymffurfio â hwy	ddwywaith a hanner lefel 4 ar y raddfa safonol
Rheoliad 38(1) o Reoliadau 2017	Mynd yn groes i'r gofynion mewn perthynas â darparu gwybodaeth ar gyfer staff, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 59(1), (2) a (3) o Reoliadau 2017	Mynd yn groes i'r gofynion mewn perthynas â chofnodion, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 60(1), (2) a (4) o Reoliadau 2017	Mynd yn groes i'r gofynion mewn perthynas â hysbysiadau, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 67(1) o Reoliadau 2017	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd unigolyn cyfrifol i benodi rheolwr, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar y raddfa safonol
Rheoliad 74(1) a (2) o Reoliadau 2017	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd unigolyn cyfrifol i adrodd am ddigonolrwydd yr adnoddau, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 75(1) o Reoliadau 2017	Mynd yn groes i'r gofynion mewn perthynas ag unigolyn cyfrifol yn gwneud	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol

	adroddiadau eraill i'r darparwr gwasanaeth, neu fethiant i gydymffurfio â hwy	
Rheoliad 80(4) o Reoliadau 2017	Mynd yn groes i'r gofynion mewn perthynas â llunio gan unigolyn cyfrifol adroddiad mewn cysylltiad ag adolygiad o ansawdd y gofal, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 81(1) o Reoliadau 2017	Mynd yn groes i'r gofynion mewn perthynas â llunio gan unigolyn cyfrifol ddatganiad o gydymffurfedd â'r gofynion o ran safonau gofal a chymorth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 84(1) a (3) o Reoliadau 2017	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd yr unigolyn cyfrifol i wneud hysbysiadau i'r rheoleiddiwr gwasanaethau, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol

ATODLEN 2 Rheoliad 6

Troseddau rhagnodedig – gwasanaethau mabwysiadu rheoleiddiedig

Y ddarpariaeth sy'n creu'r drosedd	*Natur gyffredinol y drosedd*	*Swm y gosb*
Rheoliad 5(3) a (5) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofyniad i roi hysbysiad o ddiwygiad i'r datganiad o ddiben, neu fethiant i gydymffurfio ag ef	Swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar y raddfa safonol
Rheoliad 9(3) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofyniad i ddarparu copïau o'r cyfrifon, neu fethiant i gydymffurfio ag ef	Swm sy'n cyfateb i lefel 4 ar y raddfa safonol
Rheoliad 10(1) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofynion i gael polisïau a gweithdrefnau penodedig yn eu lle, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i lefel 4 ar y raddfa safonol
Rheoliad 13(1), (2) a (3) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofynion mewn perthynas â darparu gwybodaeth am y gwasanaeth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 14(1) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofynion mewn perthynas â darparu cytundeb gwasanaeth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i lefel 4 ar y raddfa safonol
Rheoliad 23(1) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofynion mewn perthynas ag addasrwydd	Swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar

	staff, neu fethiant i gydymffurfio â hwy	y raddfa safonol
Rheoliad 26(1) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofynion mewn perthynas â darparu gwybodaeth ar gyfer staff, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 30(1) a (2) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofynion mewn perthynas â chofnodion, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 31(1), (2), (3) a (5) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofynion mewn perthynas â hysbysiadau, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 36(1) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd unigolyn cyfrifol i benodi rheolwr, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar y raddfa safonol
Rheoliad 43(1) a (2) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd unigolyn cyfrifol i adrodd am ddigonolrwydd yr adnoddau, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 44(1) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofynion mewn perthynas ag unigolyn cyfrifol yn gwneud adroddiadau eraill i'r	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol

	darparwr gwasanaeth, neu fethiant i gydymffurfio â hwy	
Rheoliad 49(4) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofynion mewn perthynas â llunio gan unigolyn cyfrifol adroddiad mewn cysylltiad ag adolygiad o ansawdd y gwasanaeth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 50(1) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofynion mewn perthynas â llunio gan unigolyn cyfrifol ddatganiad o gydymffurfedd â'r gofynion o ran safonau'r cymorth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 53(1) a (3) o'r Rheoliadau Gwasanaethau Mabwysiadu	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd yr unigolyn cyfrifol i wneud hysbysiadau i'r rheoleiddiwr gwasanaethau, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol

ATODLEN 3 Rheoliad 7

Troseddau rhagnodedig – gwasanaethau lleoli oedolion

Y ddarpariaeth sy'n creu'r drosedd	*Natur gyffredinol y drosedd*	*Swm y gosb*
Rheoliad 3(3) a (5) o'r Rheoliadau Gwasanaethau Lleoli Oedolion	Mynd yn groes i'r gofyniad i roi hysbysiad o ddiwygiad i'r datganiad o ddiben, neu fethiant i gydymffurfio ag ef	Swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar y raddfa safonol
Rheoliad 7(3) o'r Rheoliadau Gwasanaethau Lleoli Oedolion	Mynd yn groes i'r gofyniad i ddarparu copïau o'r cyfrifon, neu fethiant i gydymffurfio ag ef	Swm sy'n cyfateb i lefel 4 ar y raddfa safonol
Rheoliad 8(1) o'r Rheoliadau Gwasanaethau Lleoli Oedolion	Mynd yn groes i'r gofynion i gael polisïau a gweithdrefnau penodedig yn eu lle, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i lefel 4 ar y raddfa safonol
Rheoliad 11(1) o'r Rheoliadau Gwasanaethau Lleoli Oedolion	Mynd yn groes i'r gofynion mewn perthynas â darparu cytundeb gofalwr, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i lefel 4 ar y raddfa safonol
Rheoliad 16(1), (2) a (3) o'r Rheoliadau Gwasanaethau Lleoli Oedolion	Mynd yn groes i'r gofynion mewn perthynas â darparu gwybodaeth am y gwasanaeth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 28(1) o'r Rheoliadau Gwasanaethau Lleoli	Mynd yn groes i'r gofynion mewn perthynas ag addasrwydd	Swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar

Oedolion	staff, neu fethiant i gydymffurfio â hwy	y raddfa safonol
Rheoliad 31(1) o'r Rheoliadau Gwasanaethau Lleoli Oedolion	Mynd yn groes i'r gofynion mewn perthynas â darparu gwybodaeth ar gyfer staff, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 40(1) a (2) o'r Rheoliadau Gwasanaethau Lleoli Oedolion	Mynd yn groes i'r gofynion mewn perthynas â chofnodion, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 41(1) a (3) o'r Rheoliadau Gwasanaethau Lleoli Oedolion	Mynd yn groes i'r gofynion mewn perthynas â hysbysiadau, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 46(1) o'r Rheoliadau Gwasanaethau Lleoli Oedolion	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd unigolyn cyfrifol i benodi rheolwr, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar y raddfa safonol
Rheoliad 53(1) a (2) o'r Rheoliadau Gwasanaethau Lleoli Oedolion	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd unigolyn cyfrifol i adrodd am ddigonolrwydd yr adnoddau, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 54(1) o'r Rheoliadau Gwasanaethau Lleoli Oedolion	Mynd yn groes i'r gofynion mewn perthynas ag unigolyn cyfrifol yn gwneud adroddiadau eraill i'r	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol

	darparwr gwasanaeth, neu fethiant i gydymffurfio â hwy	
Rheoliad 59(4) o'r Rheoliadau Gwasanaethau Lleoli Oedolion	Mynd yn groes i'r gofynion mewn perthynas â llunio gan unigolyn cyfrifol adroddiad mewn cysylltiad ag adolygiad o ansawdd y gofal, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 60(1) o'r Rheoliadau Gwasanaethau Lleoli Oedolion	Mynd yn groes i'r gofynion mewn perthynas â llunio gan unigolyn cyfrifol ddatganiad o gydymffurfedd â'r gofynion o ran safonau gofal a chymorth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 63(1) a (3) o'r Rheoliadau Gwasanaethau Lleoli Oedolion	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd yr unigolyn cyfrifol i wneud hysbysiadau i'r rheoleiddiwr gwasanaethau, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol

ATODLEN 4 Rheoliad 8

Troseddau rhagnodedig – gwasanaethau eirioli rheoleiddiedig

Y ddarpariaeth sy'n creu'r drosedd	*Natur gyffredinol y drosedd*	*Swm y gosb*
Rheoliad 4(3) a (5) o'r Rheoliadau Gwasanaethau Eirioli	Mynd yn groes i'r gofyniad i roi hysbysiad o ddiwygiad i'r datganiad o ddiben, neu fethiant i gydymffurfio ag ef	Swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar y raddfa safonol
Rheoliad 8(3) o'r Rheoliadau Gwasanaethau Eirioli	Mynd yn groes i'r gofyniad i ddarparu copïau o'r cyfrifon, neu fethiant i gydymffurfio ag ef	Swm sy'n cyfateb i lefel 4 ar y raddfa safonol
Rheoliad 9(1) o'r Rheoliadau Gwasanaethau Eirioli	Mynd yn groes i'r gofynion i gael polisïau a gweithdrefnau penodedig yn eu lle, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i lefel 4 ar y raddfa safonol
Rheoliad 15(1), (2) a (3) o'r Rheoliadau Gwasanaethau Eirioli	Mynd yn groes i'r gofynion mewn perthynas â darparu gwybodaeth am y gwasanaeth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 24(1) o'r Rheoliadau Gwasanaethau Eirioli	Mynd yn groes i'r gofynion mewn perthynas ag addasrwydd staff, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar y raddfa safonol
Rheoliad 27(1) o'r Rheoliadau Gwasanaethau Eirioli	Mynd yn groes i'r gofynion mewn perthynas â darparu gwybodaeth ar	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol

	gyfer staff, neu fethiant i gydymffurfio â hwy	
Rheoliad 31(1) a (2) o'r Rheoliadau Gwasanaethau Eirioli	Mynd yn groes i'r gofynion mewn perthynas â chofnodion, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 32(1) a (3) o'r Rheoliadau Gwasanaethau Eirioli	Mynd yn groes i'r gofynion mewn perthynas â hysbysiadau, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 37(1) o'r Rheoliadau Gwasanaethau Eirioli	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd unigolyn cyfrifol i benodi rheolwr, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar y raddfa safonol
Rheoliad 44(1) a (2) o'r Rheoliadau Gwasanaethau Eirioli	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd unigolyn cyfrifol i adrodd am ddigonolrwydd yr adnoddau, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 45(1) o'r Rheoliadau Gwasanaethau Eirioli	Mynd yn groes i'r gofynion mewn perthynas ag unigolyn cyfrifol yn gwneud adroddiadau eraill i'r darparwr gwasanaeth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 50(4) o'r Rheoliadau Gwasanaethau Eirioli	Mynd yn groes i'r gofynion mewn perthynas â llunio gan	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa

	unigolyn cyfrifol adroddiad mewn cysylltiad ag adolygiad o ansawdd y gwasanaeth, neu fethiant i gydymffurfio â hwy	safonol
Rheoliad 51(1) o'r Rheoliadau Gwasanaethau Eirioli	Mynd yn groes i'r gofynion mewn perthynas â llunio gan unigolyn cyfrifol ddatganiad o gydymffurfedd â'r gofynion o ran safonau eiriolaeth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 54(1) a (3) o'r Rheoliadau Gwasanaethau Eirioli	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd yr unigolyn cyfrifol i wneud hysbysiadau i'r rheoleiddiwr gwasanaethau, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol

ATODLEN 5 Rheoliad 9

Troseddau rhagnodedig – gwasanaethau maethu rheoleiddiedig

Y ddarpariaeth sy'n creu'r drosedd	*Natur gyffredinol y drosedd*	*Swm y gosb*
Rheoliad 4(3) o'r Rheoliadau Gwasanaethau Maethu	Mynd yn groes i'r gofyniad i roi hysbysiad o ddiwygiad i'r datganiad o ddiben, neu fethiant i gydymffurfio ag ef	Swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar y raddfa safonol
Rheoliad 8(3) o'r Rheoliadau Gwasanaethau Maethu	Mynd yn groes i'r gofyniad i ddarparu copïau o'r cyfrifon, neu fethiant i gydymffurfio ag ef	Swm sy'n cyfateb i lefel 4 ar y raddfa safonol
Rheoliad 9(1) o'r Rheoliadau Gwasanaethau Maethu	Mynd yn groes i'r gofynion i gael polisïau a gweithdrefnau penodedig yn eu lle, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i lefel 4 ar y raddfa safonol
Rheoliad 12(1), (2) a (3) o'r Rheoliadau Gwasanaethau Maethu	Mynd yn groes i'r gofynion mewn perthynas â darparu gwybodaeth am y gwasanaeth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 30(1) o'r Rheoliadau Gwasanaethau Maethu	Mynd yn groes i'r gofynion mewn perthynas ag addasrwydd staff, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar y raddfa safonol
Rheoliad 33(1) o'r Rheoliadau Gwasanaethau Maethu	Mynd yn groes i'r gofynion mewn perthynas â darparu gwybodaeth ar	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol

	gyfer staff, neu fethiant i gydymffurfio â hwy	
Rheoliad 39(1) a (2) o'r Rheoliadau Gwasanaethau Maethu	Mynd yn groes i'r gofynion mewn perthynas â chofnodion, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 40(1), (2), (3), (4), (5) ac (8) o'r Rheoliadau Gwasanaethau Maethu	Mynd yn groes i'r gofynion mewn perthynas â hysbysiadau, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 50(1) o'r Rheoliadau Gwasanaethau Maethu	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd unigolyn cyfrifol i benodi rheolwr, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith a hanner lefel 4 ar y raddfa safonol
Rheoliad 57(1) a (2) o'r Rheoliadau Gwasanaethau Maethu	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd unigolyn cyfrifol i adrodd am ddigonolrwydd yr adnoddau, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 58(1) o'r Rheoliadau Gwasanaethau Maethu	Mynd yn groes i'r gofynion mewn perthynas ag unigolyn cyfrifol yn gwneud adroddiadau eraill i'r darparwr gwasanaeth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 63(4) o'r Rheoliadau Gwasanaethau Maethu	Mynd yn groes i'r gofynion mewn perthynas â llunio gan	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa

	unigolyn cyfrifol adroddiad mewn cysylltiad ag adolygiad o ansawdd y gofal, neu fethiant i gydymffurfio â hwy	safonol
Rheoliad 64(1) o'r Rheoliadau Gwasanaethau Maethu	Mynd yn groes i'r gofynion mewn perthynas â llunio gan unigolyn cyfrifol ddatganiad o gydymffurfedd â'r gofynion o ran safonau gofal a chymorth, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol
Rheoliad 67(1) a (4) o'r Rheoliadau Gwasanaethau Maethu	Mynd yn groes i'r gofynion mewn perthynas â dyletswydd yr unigolyn cyfrifol i wneud hysbysiadau i Weinidogion Cymru, neu fethiant i gydymffurfio â hwy	Swm sy'n cyfateb i ddwywaith lefel 4 ar y raddfa safonol

Explanatory Memorandum to:

The Regulated Services (Penalty Notices) (Wales) Regulations 2019

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

Deputy Minister's Declaration

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

The Regulated Services (Penalty Notices) (Wales) Regulations 2019

I am satisfied that the benefits justify the likely costs.

Julie Morgan
Deputy Minister for Health and Social Services

26 April 2019

Part 1 – OVERVIEW

1. Description

The Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act") reforms the regulation and inspection regime for social care in Wales and provides the statutory framework for the regulation and inspection of social care services and the social care workforce. It enables the Welsh Ministers to put in place a number of items of subordinate legislation through the making of regulations, the publication of guidance and the issuing of codes of practice.

This Explanatory Memorandum relates to *The Regulated Services (Penalty Notices) (Wales) Regulations 2019* ('the 2019 Regulations') which will come into force on 1 July 2019. These Regulations prescribe the details of a penalty notice system, whereby the regulator - the Care Inspectorate Wales (CIW) - may issue a penalty to providers and responsible individuals (RIs) of regulated services in lieu of prosecution, should certain regulatory breaches occur.

This Explanatory Memorandum and Regulatory Impact Assessment relate to penalty notices as may be issued to all services regulated under the 2016 Act. These are:

- Care home services;
- Secure accommodation services;
- Residential family centre services;
- Domiciliary support services;
- Adoption services;
- Fostering services;
- Advocacy services; and
- Adult placement services.

The 2019 Regulations will replace the current *Regulated Services (Penalty Notices) (Wales) Regulations 2017* which only apply to care home, secure accommodation, residential family centre and domiciliary support services.

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

No specific matters have been identified.

3. Legislative background

The powers enabling the 2019 Regulations to be made are contained in section 52 of the 2016 Act. Section 52 is a regulation making power to enable Welsh Ministers to prescribe offences in respect of which a penalty notice may be issued. Only offences committed under sections 47, 48 and 49 of the 2016 Act, and under Regulations made under sections 45 and 46 of the 2016 Act, may be so prescribed.

Further details about the relevant sections of the 2016 Act are set out below:

- section 47 - a person who knowingly makes false or materially misleading statements in relation to:
    - an application for registration as a service provider,
    - an application for variation or cancellation of registration,
    - an annual return,
    - responding to a requirement to provide information imposed by the Welsh Ministers;

- section 48 - failure of a service provider to submit an annual return in time;

- section 49 - failure to comply with a requirement to provide information imposed by the Welsh Ministers by:
    - a service provider;
    - a responsible individual;
    - a person employed by or otherwise working for a service provider; and
    - any person who has held any of these positions.

- Regulations made under section 45 of the 2016 Act detail which of the breaches of the requirements in regulations made under section 27 of the 2016 Act – requirements on regulated service providers – are criminal offences.

- Regulations under section 46 of the 2016 Act detail which of the breaches of the requirements in regulations made under section 28 of the 2016 Act - requirements on responsible individuals – are criminal offences.

A number of regulations made under section 45 and 46 of the 2016 Act provide that it is an offence to fail to comply with specified provisions of those regulations, including:

- *The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017*,
- *The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019,*
- *The Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019*,
- *The Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019* and
- *The Regulated Adoption Services (Service Providers and Responsible Individuals) Regulations 2019.*

The 2019 Regulations made under section 52 of the 2016 Act, set out which of the offences listed in the above regulations may be discharged by the service provider or responsible individual (as applicable) by payment of a penalty.

The purpose of the penalty notice is to offer the recipient of the notice the opportunity to discharge any liability for the offence by paying the sum specified in the notice. If the

person pays the sum specified in the notice as required, the person cannot be prosecuted for the offence to which the notice relates.

The 2019 Regulations are being laid under the negative procedure.

4. Purpose & intended effect of the legislation

The purpose of the 2019 Regulations is to set out the details of a penalty notice system, enabling CIW to issue a penalty notice to providers and responsible individuals of all services regulated under the 2016 Act, should certain offences occur.

The intention is to create a more flexible system of regulation so that CIW has a full range of powers at its disposal to deal with a failure by service providers and responsible individuals to comply with the requirements imposed on them under the 2016 Act and associated regulations.

Section 52(6) of the 2016 Act states that Welsh Ministers may by regulations make provision –

- as to the form and content of the penalty notices;
- as to the sum payable under a penalty notice and the time within which it is to be paid (including provision permitting a different sum to be payable in relation to different offences and according to the time by which it is paid);
- determining the ways in which a sum may be paid;
- as to the records to be kept in relation to penalty notices;
- about the circumstances in which a penalty notice may be withdrawn, including provision about –
    - the repayment of any sum paid before a notice is withdrawn, and
    - the circumstances in which proceedings for an offence may not be brought despite the withdrawal of a notice.

The approach in the 2019 Regulations is to provide clarity to both the regulator and the recipient of the penalty notice as to the way in which the scheme will operate.

Penalty amounts vary depending on the nature of the offence committed, but are currently capped at a maximum of two and a half times level 4 on the standard scale (Level 4 is currently set at £2,500).

Prescribing the amounts by reference to the standard scale means the 2019 Regulations will not need to be amended should the level change as a result of amendments being made to the Criminal Justice Act 1982.

5. Consultation

The suite of Regulations made under the 2016 Act were developed in three overlapping phases. During phase two of implementation, *The Regulated Services (Penalty Notices) (Wales) Regulations 2017* established a penalty notice system for care home services, domiciliary support services, secure accommodation services and residential family centre services. Those regulations were consulted on between 2 May and 15 July 2017. A summary of the comments that were made and the Welsh Government's response to

these is set out in the consultation summary report[1] published on the Welsh Government website on 21 November 2017.

The proposal to extend the penalty notice system to phase three services (adoption, fostering, adult placement and advocacy services) was also highlighted within the consultation documents for each set of Regulations at phase three of implementation.

The consultations for the regulations in relation to regulated fostering, adult placement and regulated advocacy services were held between 24 May and 16 August 2018. The regulations in relation to regulated adoption services were consulted on between 4 September and 27 November 2018.

The consultation summary reports have been published on the Welsh Government website at https://gov.wales/consultations.

[1] http://gov.wales/consultations/healthsocialcare/regulation-and-inspection-act/?lang=en

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option one: do not implement a penalty notice scheme for the remaining regulated services under the 2016 Act[2]

Under this option there would not be a penalty notice scheme in relation to adoption, fostering, adult placement and advocacy services under the 2016 Act. However, there would be a penalty notice scheme for care home services, domiciliary support services, secure accommodation services and residential family centres, as set out in the *Regulated Services (Penalty Notices) (Wales) Regulations 2017*, which are already in force.

Option two: create regulations which provide detail about how the penalty notice scheme will operate in relation to all regulated services.

Under option two, the Welsh Government would establish a penalty notice scheme for all regulated services under the 2016 Act and Regulations would be created that set out:

- the offences that can be dealt with via a penalty notice;
- the amount that can be charged for each of the offences;
- the form the penalty notice must take and the information that must be included in it;
- the payment methods that can be used to pay the penalty;
- the records CIW must keep in relation to issuing penalty notices; and
- the circumstances in which a penalty notice can be withdrawn.

Costs

Option one: do not implement a penalty notice scheme for the remaining regulated services under the 2016 Act

Under option one there would be no additional costs to the regulator or sector in relation to adoption, fostering, advocacy or adult placement services. The costs in relation to care home services, domiciliary support services, secure accommodation services and residential family centre services are set out in the Regulatory Impact Assessment for *the Regulated Services (Penalty Notices) (Wales) Regulations 2017* which can be accessed here: http://www.assembly.wales/laid%20documents/sub-ld11334-em/sub-ld11334-em-e.pdf

Option two: create regulations which provide detail about how the penalty notice scheme will operate in relation to all regulated services

Under this option there would be obvious costs to providers and RIs that receive penalty notices as a result of non-compliance with certain requirements. The penalty amounts would be set out in the 2019 Regulations. Section 54 of the 2016 Act restricts

[2] These are adoption services, fostering services, advocacy services and adult placement services.

the amount of the sum payable to two and a half times level 4 on the standard scale. Level 4 on the standard scale is currently £2,500.

The penalties listed in the 2019 Regulations would range from one to two and a half times level 4 on the standard scale, which means the penalties would range from £2,500 to £6,250 at the moment.

The frequency of issuing such fines would depend on how CIW implements the scheme. The Securing Improvement and Enforcement policy sets out CIW's proportionate approach to enforcement. The issuing of penalty notices is one of a suite of enforcement actions that is available to CIW. However, the issuing of a penalty notice will depend on the particular circumstances of each case as to whether this is most appropriate or whether an alternative enforcement action would be more appropriate.

Therefore, CIW will continue to apply the principles of its existing inspection process that enables providers the opportunity to remedy any non-compliance identified during an inspection before enforcement action is taken. To gauge the number of fines that may be issued under the new system we have looked at the level of non-compliance for similar offences under the Care Standards Act 2000 ("the 2000 Act") in 2016-17.

The 2000 Act was the legislative framework previously in operation. The table below shows the provisions creating penalties under the 2016 Act against the closest corresponding regulations in the 2000 Act and the number of non-compliance notices issued against these regulations in 2016-17. The services highlighted in bold relate to the additional regulated services to be included in the scope of the penalty notices scheme:

General nature of the offence	***Amount of penalty***	**Existing closest corresponding Regulation under the 2000 Act**	***No. of non-compliance notices issued in 2016-17***	***No. of non-compliance persisting over 12 months***	***Amount, if penalty notice issued***
Making false statements	An amount corresponding to two and a half times level 4 on the standard scale(1)	Adult care homes: regulation 7 Children's homes: regulation 6 Domiciliary support services: regulation 8 **Fostering services: 8**	None	None	£0
Failure to submit an annual return	An amount corresponding to level 4 on the standard scale	N/A as this is a new offence	N/A as this is a new offence	N/A	£0

Failure to provide information	An amount corresponding to level 4 on the standard scale	Adult care homes: regulations 11, 38, 39,40 Children's homes: regulations 10, 29, 36, 37 Domiciliary support services: regulations 12, 26, 27, 28 **Fostering services: 9, 43, 45, 46.**	4 for adult care homes	1 for adult care homes	£2500
Contravention of, or failure to comply with, requirements in relation to the statement of purpose	An amount corresponding to two and a half times level 4 on the standard scale	Adult care homes: regulation 4 Children's homes: regulation 4 Domiciliary support services: regulation 4 **Fostering services: 3**	1 for adult care homes 2 for children's homes 2 for domiciliary support services	1 for adult care homes 1 for domiciliary support services	£12,500
Contravention of, or failure to comply with, requirements in relation to the financial position of the service	An amount corresponding to level 4 on the standard scale	Adult care homes: regulation 26(2) Children's homes: regulation 35 Domiciliary support services: regulation 25 **Fostering services: 44**	None	None	£0
Contravention of, or failure to comply with, requirements to have in place specified	An amount corresponding to level 4 on the standard scale	Adult care homes: regulation 13(2), 23(1)	3 for adult care homes: 2 for children's homes	None	£0

policies and procedures		Children's homes: regulation 17, 11 **Fostering services: 44**			
Contravention of, or failure to comply with, requirements in relation to the provision of information about the service	An amount corresponding to two times level 4 on the standard scale	Adult care homes: regulation 5 Children's homes: regulation 4 Domiciliary support services: regulation 5 **Fostering services: 4**	None	None	£0
Contravention of, or failure to comply with, requirements in relation to the provision of a service agreement	An amount corresponding to level 4 on the standard scale	Adult care homes: regulation 5(1)(c) Children's homes: regulation 4 Domiciliary support services: regulation 5 **Fostering services: 4**	None	None	£0
Contravention of, or failure to comply with, requirements in relation to the fitness of staff	An amount corresponding to two and a half times level 4 on the standard scale	Adult care homes: regulation 19 Children's homes: regulation 26 Domiciliary support services: regulation 15 **Fostering services: 20**	6 for adult care homes 6 for domiciliary support services	None	£0

Contravention of, or failure to comply with, requirements in relation to the provision of information for staff	An amount corresponding to two times level 4 on the standard scale	Adult care homes: regulation 18(4) Children's homes: regulation 27 Domiciliary support services: regulation 16 **Fostering services: 21**	None	None	£0
Contravention of, or failure to comply with, requirements in relation to the making and maintenance of records	An amount corresponding to two times level 4 on the standard scale	Adult care homes: regulation 17 Children's homes: regulation 28 Domiciliary support services: regulation 20 **Fostering services: 22**	1 for adult care homes	None	£5000
Contravention of, or failure to comply with, requirements in relation to notifications to the service regulator	An amount corresponding to two times level 4 on the standard scale	Adult care homes: regulations 11, 38, 39,40 Children's homes: regulations 10, 29, 36, 37 Domiciliary support services: regulations 12, 26, 27, 28 **Fostering services: 9, 43, 45, 46**	None	None	£0
Contravention of, or failure to comply with, requirements in relation to	An amount corresponding to two and a half times level 4 on the	N/A as this is a new offence	N/A as this is a new offence	N/A	unknown

the duty of a responsible individual to appoint a manager	standard scale				
Contravention of, or failure to comply with, requirements in relation to the duty of a responsible individual to report the adequacy of resources	An amount corresponding to two times level 4 on the standard scale	N/A as this is a new offence	N/A as this is a new offence	N/A	unknown
Contravention of, or failure to comply with, requirements in relation to the making by a responsible individual of other reports to the service provider	An amount corresponding to two ties level 4 on the standard scale				
Contravention of, or failure to comply with, requirements in relation to the preparation by a responsible individual of a report in respect of a quality of care review	An amount corresponding to two times level 4 on the standard scale	[this is applicable currently to the registered person] Adult care homes: regulation 25 Children's homes: regulation 33 Domiciliary support services: regulation 23 **Fostering services: 42**	[this is applicable currently to the registered person] 9 for adult care homes 3 for children's homes	None	£0
Contravention of, or failure to comply with, requirements in relation to the preparation by a responsible individual of a statement of	An amount corresponding to two times level 4 on the standard scale	Adult care homes: regulation 27 Children's homes: regulation 32 Domiciliary	11 for adult care homes	1 for adult care homes	£5000

compliance with the requirements as to standards of care and support		support services: regulation 23 **Fostering services: 42**			
Contravention of, or failure to comply with requirements in relation to the responsible individual's duty to make notifications to the service regulator	An amount corresponding to two times level 4 on the standard scale	N/A as this is a new offence	N/A as this is a new offence	N/A	
			Total = 50		**£25,000**

The table shows that the total amount for fines for all services[3] over a year would be £25,000, if CIW focussed on non-compliance that persisted over 12 months. However, these fines relate to services which are already included in *The Regulated Services (Penalty Notices) (Wales) Regulations 2017*, which are already in force.

In relation to the additional services to be included in *The Regulated Services (Penalty Notices) (Wales) Regulations 2019*, there were no breaches which might have led to the issuing of a penalty notice. However, this table does not take into account some of the new offences under the 2016 Act or the offences that could be brought against Advocacy services which are a newly regulated service under the 2016 Act. As there are currently only two advocacy service providers that are likely to be required to register under the 2016 Act however, costs are likely to be minimal. Due to the lack of data it is not possible to estimate the level of non-compliance against these requirements.

Benefits

<u>Option one: Do not implement a penalty notice scheme for the remaining regulated services under the 2016 Act</u>

For some providers there would be cost savings in not having to pay fines for non-compliance of certain requirements. For CIW, there would be a small saving in terms of staff time, as the regulator would be able to focus their efforts more strongly on inspecting services and spend less time on administering a penalty notice system. However, implementing a penalty notice scheme could arguably reduce the number of prosecutions brought forward, as providers may opt to pay the penalty rather than go through the lengthy process of criminal proceedings.

[3] All services except Advocacy services which are a new type of regulated service and were not previously regulated under the Care Standards Act 2000.

Option two: create regulations which provide detail about how the penalty notice scheme will operate in relation to all regulated services

Establishing a penalty notice scheme for all regulated services is in keeping with the policy intention of ensuring consistency across the range of regulated services. A penalty notice scheme provides CIW with a more flexible and proportionate system of regulation so that the regulator has a full range of powers at its disposal to deal with regulatory breaches. Sometimes there may be a need for prosecution as an alternative to civil enforcement, to deal with more serious offences under the 2016 Act. At other times there may not be an overriding desire to pursue prosecution which is expensive and consumes valuable time and resources in preparing for prosecution. In these circumstances, the regulator can opt to issue a penalty notice which sends a clear message to providers and RIs who are failing to comply with their duties; this goes further than the issuing of a non-compliance notice under civil enforcement powers. Creating regulations about penalty notices would add clarity about the way in which the penalty notice system would operate. It would benefit both CIW and service providers who would have a better understanding of the circumstances in which it would be appropriate to issue a penalty notice, the amount that can be charged, the time limit within which to pay the penalty and the information the notice should contain.

Risks

Option one: Do not implement a penalty notice scheme for the remaining regulated services under the 2016 Act

Without a penalty notice scheme for the remaining regulated services there is a risk that unscrupulous providers who continually fail to comply with the regulations will not make the necessary improvements because the current enforcement mechanisms do not act as a sufficient deterrent to non-compliance. There is also a risk of not fulfilling the policy intention of the Regulation and Inspection of Social Care (Wales) Act 2016 to ensure a consistent approach across all regulated services.

Option two: create regulations which provide detail about how the penalty notice scheme will operate in relation to all regulated services.

There is a risk that providers could challenge the penalty notices issued which would result in CIW having to take forward criminal proceedings, which is costly and time-consuming. The risk has been mitigated by developing the Securing Improvement and Enforcement policy which sets out CIW's proportionate approach to enforcement, of which the issuing of penalty notices is a part. Service Providers and Responsible Individuals are likely to be given notice and time to address non-compliance before penalty notices are issued.

Conclusion

The preferred option is option two in all cases.

The 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?	Yes*
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Yes*
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	Yes*
Q4: Would the costs of the regulation affect some firms substantially more than others?	Yes
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	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 categorised 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?	No

*only in relation to advocacy services.

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

Post implementation review

CIW will monitor the implementation of these Regulations following their coming-into-force date of July 2019.

SL(5)421 – Rheoliadau Addysg (Cymorth i Fyfyrwyr) (Graddau Meistr Ôl-raddedig) (Cymru) 2019

Cefndir a Diben

Mae'r Rheoliadau hyn yn darparu ar gyfer gwneud grantiau a benthyciadau i fyfyrwyr sy'n preswylio fel arfer yng Nghymru ar gyfer cyrsiau gradd feistr ôl-raddedig sy'n dechrau ar neu ar ôl 1 Awst 2019.

Er mwyn cymhwyso i gael cymorth o dan y Rheoliadau hyn, rhaid i fyfyriwr fod yn "myfyriwr cymwys". I fod yn fyfyriwr cymwys, rhaid i berson fodloni'r darpariaethau cymhwystra ym Mhennod 2 o Ran 4 ac unrhyw ofynion cymhwystra eraill mewn mannau eraill yn y Rheoliadau. Rhaid i fyfyriwr cymwys fodloni hefyd y gofynion penodol sy'n gymwys i bob math o gymorth ariannol. Nid yw person yn fyfyriwr cymwys os, ymhlith pethau eraill, yw'r person hwnnw eisoes wedi ennill cymhwyster sy'n cyfateb i radd feistr neu'n uwch na gradd feistr.

Nid yw cymorth ond ar gael o dan y Rheoliadau hyn mewn cysylltiad â chyrsiau "dynodedig" o fewn ystyr rheoliadau 5 ac 8. Darperir cymorth i fyfyrwyr cymwys sy'n ymgymryd â chwrs dynodedig ble bynnag y bônt yn astudio yn y Deyrnas Unedig.

Mae'r Rheoliadau hefyd yn nodi darpariaethau ar gyfer, ymhlith pethau eraill:

- cyfrifiadau cymorth manwl
- trosglwyddiadau rhwng cyrsiau dynodedig
- terfynau amser ar gyfer ceisiadau
- casglu gwybodaeth
- taliadau, gordaliadau ac adennill taliadau
- carcharorion cymwys
- gwelliannau i Reoliadau Addysg (Benthyciadau Graddau Meistr Ôl-raddedig) (Cymru) 2017

Gweithdrefn

Negyddol.

Materion technegol: craffu

Nodwyd dau bwynt i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn:

1. Rheol Sefydlog 21.2(i): ei bod yn ymddangos bod amheuaeth a yw intra vires;

Mae eithriad 3 yn rheoliad 10(1), a rheoliad 13(1), yn rhoi disgresiwn i Weinidogion Cymru nad yw fel arall yn ddarostyngedig i feini prawf neu gyfyngiadau penodol (ac nid ymhelaethir arno yn y Memorandwm Esboniadol). Felly, ymddengys fod hyn yn rhoi disgresiwn sy'n golygu is-ddirprwyo o fath sy'n gofyn am bwerau galluogi penodol.

Nodir bod y pŵer galluogi[1] yn caniatáu i reoliadau wneud darpariaeth "ar gyfer penderfynu" ar gymhwystra sydd, mewn gwirionedd, yn caniatáu i Weinidogion Cymru is-ddirprwyo swyddogaeth ddewisol iddynt hwy eu hunain. Fodd bynnag, mae'r ragdybiaeth yn erbyn is-ddirprwyo yn un gref am resymau rheol y gyfraith, ac nid ymddengys ei bod wedi'i gwrthbrofi'n glir yn yr achos hwn dim ond drwy gyfeirio at ddarpariaeth "ar gyfer penderfynu" ar gymhwystra. Er y derbynnir na ellir yn hawdd nodi rhestr gynhwysfawr o feini prawf gwrthrychol yn y ddeddfwriaeth alluogi (er y gallai rheoliadau ei diwygio o bryd i'w gilydd), mae'r Pwyllgor o'r farn bod dadl barchus, sy'n cyfiawnhau adrodd ar y pwynt hwn, y dylai'r pŵer galluogi gyfeirio at feini prawf gwrthrychol yn hytrach na darparu disgresiwn agored yn unig.

Nodir bod Gweinidogion Cymru yn ddarostyngedig i gyfyngiadau cyffredinol cyfraith gyhoeddus, neu yn wir y gellid cyhoeddi canllawiau gyda'r bwriad o leihau'r disgresiwn, ond nid yw hyn yn mynd i'r afael â'r cwestiwn sylfaenol a yw'r pŵer galluogi yn ddigon eang i roi'r disgresiwn yn y lle cyntaf.

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

Yn y diffiniad o 'corff cyhoeddus' ym mharagraff 20 o Atodlen 3, cyfeirir at 'cenedlaethol, rhanbarthol neu leol'. Mae hyn yn amwys ac yn aneglur. Er enghraifft, nid yw'r ddarpariaeth yn ei gwneud yn glir a fwriedir i 'genedlaethol' gyfeirio at gyrff cyhoeddus Cymru, y DU neu gyrff cyhoeddus ehangach.

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.

Mae rheoliad 10(1), eithriad 11 yn dweud nad yw person yn gymwys am fenthyciad ar gyfer Gradd Ddoethurol Ôl-raddedig os yw wedi cyrraedd 60 oed ar ddiwrnod cyntaf y flwyddyn academaidd y mae'r cwrs yn dechrau.

1 Deddf Addysgu ac Addysg Uwch 1998, adran 22(2)(a)

Mae'r Pwyllgor yn mynegi'r pryderon hawliau dynol a chydraddoldeb a ganlyn o ran y terfyn oedran hwn.

Mae Erthygl 2 o Brotocol 1 y Confensiwn Ewropeaidd ar Hawliau Dynol (y Confensiwn) yn cynnwys hawl gyffredinol i addysg.

Mae Erthygl 14 y Confensiwn yn darparu y bydd yr hawliau a'r rhyddfreiniau a nodir yn y Confensiwn yn cael eu sicrhau yn ddiwahân, heb wahaniaethu ar sawl sail amrywiol a ddiogelir, gan gynnwys oedran.[2]

Mae adran 13(1) o Ddeddf Cydraddoldeb 2010 (Deddf Cydraddoldeb) yn gwahardd gwahaniaethu uniongyrchol ar sail oedran, oni bai y gellir ei gyfiawnhau o dan adran 13(2).

Mae'r Pwyllgor yn nodi bod y ffiniau o ran disgresiwn yn ehangu'n unol â lefel yr addysg dan sylw, a bod gradd feistr ar lefel uchel yng nghyd-destun addysg. Mae'r Pwyllgor hefyd yn nodi bod y mesur wedi'i fwriadu i gyflawni nodau polisi cymdeithasol fel y'u nodir yn y Memorandwm Esboniadol, sy'n gyson â'r gyfraith achosion arweiniol sy'n ymwneud â chymhwyso Erthygl 6(1) o Gyfarwyddeb 2000/78/EC.

Mae'r Pwyllgor o'r farn bod y materion a godwyd gan reoliad 10(1), eithriad 11 yn berthnasol i'r hawl i addysg. Mae gosod terfyn oedran uchaf o 60 yn wahaniaethol. Felly, mae'n angenrheidiol edrych a oes cyfiawnhad dros y terfyn oedran uchaf. Os gellir ei gyfiawnhau, nid yw'n groes i'r Confensiwn na'r Ddeddf Cydraddoldeb. Mae'r Goruchaf Lys wedi gosod prawf pedwar cwestiwn[3]:

a) A oes nod dilys i'r mesur a gymerir sy'n ddigonol i gyfiawnhau cyfyngiad ar hawl sylfaenol?

b) A yw'r mesur a gymerir wedi'i gysylltu yn rhesymegol â'r nod hwnnw?

c) A ellid defnyddio mesur llai ymwthiol?

d) A geir cydbwysedd teg?

Mae'r Memorandwm Esboniadol yn rhoi cyfiawnhad dros osod terfyn oedran o'r fath ar y sail:

a) Mai nod y cynllun yw cynyddu sgiliau lefel uchel ar gyfer yr economi yng nghyd-destun adnoddau cyfyngedig. Mae'r Llywodraeth yn datgan, er mwyn sicrhau gwerth am arian, fod angen cyllid cynaliadwy a bod terfyn oedran o 60 yn lliniaru'r risg y caiff benthyciadau anghymesur eu cymryd gan fyfyrwyr hŷn a fydd yn

[2] Mae Llys Hawliau Dynol Ewrop wedi dyfarnu bod y 'mathau eraill o statws' a nodir yn Erthygl 14 yn cynnwys 'oedran', (Schwizgebel v Y Swistir (Rhif 25762/07).
[3] R (ar gais Tigere) (Apelydd) v yr Ysgrifennydd Gwladol dros Fusnes, Arloesedd a Sgiliau (Ymatebydd) [2015] UKSC 57

annhebygol o ad-dalu swm y benthyciad yn llawn neu wneud ad-daliadau sylweddol, ac y byddai ganddynt nifer cyfyngedig o flynyddoedd gwaith lle byddai eu sgiliau ar gael i'r economi. Mae'r Memorandwm Esboniadol yn nodi canfyddiadau dadansoddiadau y mae'r Llywodraeth wedi'u gwneud, sy'n ei harwain at y casgliad hwn.

b) Mae angen sicrhau gwerth am arian i'r trethdalwr ac mae'r Llywodraeth o'r farn bod gosod y terfyn oedran yn gysylltiedig yn rhesymol â'r nod.

c) Ystyriwyd y posibilrwydd o nodi mesur llai ymwthiol i gyflawni'r nod. Y casgliad oedd y byddai system a oedd yn gofyn am ymchwiliad ac asesiad unigol yn creu baich gweinyddol trwm a allai ddefnyddio adnoddau prin. Gallai system o'r fath hefyd gyflwyno cyfle i wneud penderfyniadau anghyson.

d) Bydd swm o gyllid drwy Gyngor Cyllido Addysg Uwch Cymru (CCAUC) yn cael ei ddosbarthu i sefydliadau addysg uwch yng Nghymru i ddarparu bwrsariaeth na ellir ei had-dalu i fyfyrwyr cymwys, 60 oed a hŷn, sy'n astudio cyrsiau Meistr ôl-raddedig yng Nghymru sy'n dechrau yn y flwyddyn academaidd 2019/20. Yn ôl y Memorandwm Esboniadol, ar ôl hynny, nod y Llywodraeth yw darparu mynediad at elfennau grant cymorth Llywodraeth Cymru i fyfyrwyr 60 oed a throsodd.

e) Gan ystyried ei thystiolaeth sy'n ymwneud â chyfraddau ad-dalu benthyciadau, ond hefyd y cyfraddau cyflogaeth (nid diben y benthyciad yw hwyluso nifer y myfyrwyr sy'n derbyn cyrsiau gradd doethurol nad oes ganddynt fwriad penodol i ddychwelyd i'r gweithle), mae'r Llywodraeth yn ystyried bod y cyfyngiad oed yn taro cydbwysedd teg, ac y cyfiawnheir y terfyn oedran. Fodd bynnag, oherwydd oedran ymddeol cynyddol, mae'r Llywodraeth yn ymrwymo i adolygu pob terfyn oedran sy'n cael ei roi ar israddedigion amser llawn a rhan-amser yn ogystal â chymorth i fyfyrwyr Meistr ôl-raddedig.

Rydym yn croesawu'r cyfiawnhad a nodir yn y Memorandwm Esboniadol. Mae'r amcanion polisi a ddilynir gan y Llywodraeth yn ymddangos yn ddilys ac mae'r camau a gymerwyd gan y Rheoliadau i'w cyflawni wedi'u cysylltu'n rhesymegol â nodau o'r fath. Mae'r Pwyllgor yn nodi'r dadansoddiad opsiynau a amlinellir yn y Memorandwm Esboniadol sy'n rhoi tystiolaeth bod ystyriaeth briodol wedi'i rhoi i osod cyfundrefn eithaf cytbwys sy'n llai ymwthiol. Felly, mae'n ymddangos bod y Llywodraeth wedi rhoi ystyriaeth briodol a gofalus i'r cyfiawnhad o osod terfyn oedran uchaf o 60 yn y Rheoliadau hyn.

Y goblygiadau yn sgil ymadael â'r Undeb Ewropeaidd

Mae'r gofynion cymhwystra ar gyfer cyllid myfyrwyr wedi'u drafftio i roi ystyriaeth i aelodaeth y DU o'r Undeb Ewropeaidd. Felly, bydd ambell fyfyriwr o'r UE yn gymwys i gael cymorth o dan y Rheoliadau. Nid yw wedi ei gadarnhau ar hyn o bryd pa effaith y bydd Brexit yn ei chael ar

symudedd myfyrwyr, ond roedd datganiad gan Lywodraeth Cymru ar 2 Gorffennaf 2018 yn cadarnhau y bydd myfyrwyr yr UE yn parhau i fod â hawl i gymorth i fyfyrwyr yn y flwyddyn academaidd 19/20.

Ymateb y Llywodraeth

Mae angen ymateb y Llywodraeth i'r pwyntiau craffu technegol yn yr adroddiad hwn.

Cynghorwyr Cyfreithiol
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
8 Mai 2019

OFFERYNNAU STATUDOL
CYMRU

2019 Rhif 895 (Cy. 161)

ADDYSG, CYMRU

Rheoliadau Addysg (Cymorth i Fyfyrwyr) (Graddau Meistr Ôl-raddedig) (Cymru) 2019

NODYN ESBONIADOL

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

Mae'r Rheoliadau hyn yn darparu ar gyfer gwneud grantiau a benthyciadau i fyfyrwyr sy'n preswylio fel arfer yng Nghymru ar gyfer cyrsiau gradd feistr ôl-raddedig sy'n dechrau ar neu ar ôl 1 Awst 2019.

Er mwyn cymhwyso i gael cymorth o dan y Rheoliadau hyn, rhaid i fyfyriwr fod yn "myfyriwr cymwys". I fod yn fyfyriwr cymwys, rhaid i berson fodloni'r darpariaethau cymhwystra ym Mhennod 2 o Ran 4 ac unrhyw ofynion cymhwystra eraill mewn mannau eraill yn y Rheoliadau. Rhaid i fyfyriwr cymwys fodloni hefyd y gofynion penodol sy'n gymwys i bob math o gymorth ariannol.

I fod yn fyfyriwr cymwys, rhaid i berson ddod o fewn un o'r categorïau a nodir yn Atodlen 2. Mae'r rhan fwyaf o'r categorïau hynny yn ei gwneud yn ofynnol i'r person breswylio fel arfer yng Nghymru. At ddibenion y Rheoliadau hyn, ystyrir bod person sy'n preswylio fel arfer yng Nghymru, Lloegr, yr Alban, Gogledd Iwerddon, Ynysoedd y Sianel neu Ynys Manaw, o ganlyniad i symud o un o'r ardaloedd hynny at ddiben ymgymryd â chwrs dynodedig, yn preswylio fel arfer yn y lle y symudodd y person hwnnw ohono (Atodlen 2, paragraff 11(1)). Nid yw person yn fyfyriwr cymwys os, ymhlith pethau eraill, yw'r person hwnnw eisoes wedi ennill cymhwyster sy'n cyfateb i radd feistr neu'n uwch na gradd feistr.

Penderfynir ar y cyfnod y mae myfyriwr yn gymwys i gael cymorth ar ei gyfer o dan y Rheoliadau hyn yn unol â rheoliadau 11 i 14. O dan amgylchiadau penodol, caiff myfyriwr cymwys drosglwyddo o un cwrs dynodedig i gwrs dynodedig arall.

Nid yw cymorth ond ar gael o dan y Rheoliadau hyn mewn cysylltiad â chyrsiau "dynodedig" o fewn ystyr rheoliadau 5 ac 8. Darperir cymorth i fyfyrwyr cymwys sy'n ymgymryd â chwrs dynodedig ble bynnag y bônt yn astudio yn y Deyrnas Unedig. Mae rheoliadau 15 ac 16 yn nodi'r amgylchiadau y caiff myfyriwr gymhwyso i gael cymorth odanynt o dan y Rheoliadau hyn ar ôl i'r cwrs dynodedig ddechrau.

Mae Rhan 5 o'r Rheoliadau hyn yn gwneud darpariaeth ar gyfer ceisiadau am gymorth (rheoliad 18), terfynau amser ar gyfer ceisiadau (rheoliad 19) ac mae rheoliad 20 yn caniatáu i Weinidogion Cymru wneud unrhyw ymholiadau y maent yn meddwl eu bod yn angenrheidiol er mwyn gwneud penderfyniad ar gais ac er mwyn hysbysu ceisydd am benderfyniad. Mae'r Rhan hon hefyd yn gosod rhwymedigaethau ar fyfyrwyr cymwys i ddarparu gwybodaeth i Weinidogion Cymru (rheoliad 22) ac i ymrwymo i gontract ar gyfer benthyciad (rheoliad 23).

Mae cymorth o dan y Rheoliadau hyn ar gael ar ffurf y grantiau a'r benthyciadau a ganlyn—

(a) grant sylfaenol a grant cyfrannu at gostau (Rhan 6);

(b) benthyciad cyfrannu at gostau (Rhan 7).

Swm y grant sylfaenol sy'n daladwy i fyfyriwr cymwys yw £1,000 (rheoliad 25). Penderfynir ar swm y grant cyfrannu at gostau sy'n daladwy i fyfyriwr drwy gyfeirio at incwm aelwyd y myfyriwr a pha un a yw'n berson sy'n ymadael â gofal (rheoliad 27). Cyfrifir incwm aelwyd myfyriwr cymwys yn unol â Rhan 2 o Atodlen 3. Diffinnir "person sy'n ymadael â gofal" yn rheoliad 29.

Mae benthyciadau cyfrannu ar gostau yn daladwy i fyfyrwyr cymwys yn unol â Rhan 7 o'r Rheoliadau hyn. Cyfrifir swm y benthyciad cyfrannu at gostau yn unol â rheoliad 31.

Mae Rhan 8 o'r Rheoliadau hyn yn gwneud darpariaeth mewn cysylltiad â thaliadau, gordaliadau ac adennill taliadau. Mae rheoliad 33 yn rhoi'r pŵer i Weinidogion Cymru i dalu cymorth mewn rhandaliadau.

Mae rheoliad 34 yn darparu na chaiff Gweinidogion Cymru wneud unrhyw daliad cymorth hyd nes eu bod wedi cael cadarnhad gan yr awdurdod academaidd perthnasol o bresenoldeb y myfyriwr ar y cwrs dynodedig. Mae rheoliad 35 yn galluogi Gweinidogion Cymru i beidio â thalu rhagor o daliadau cymorth os ydynt yn cael hysbysiad ynghylch diffyg presenoldeb myfyriwr ar y cwrs, ac eithrio pan fônt yn ystyried ei bod yn briodol gwneud y taliadau hynny yn ystod absenoldeb y myfyriwr.

Mae rheoliad 36 yn nodi sut y mae hawlogaeth i gael cymorth yn newid pan fydd myfyriwr cymwys yn dod yn garcharor cymwys neu'n peidio â bod yn garcharor cymwys.

Mae Pennod 3 o Ran 8 yn nodi sut y gall Gweinidogion Cymru adennill unrhyw ordaliad o gymorth o dan y Rheoliadau hyn.

Mae Rhan 9 yn nodi'r gofynion gwybodaeth mewn perthynas â benthyciadau cyfrannu at gostau.

Mae Rhan 10 yn cynnwys diwygiadau i Reoliadau Addysg (Benthyciadau at Radd Feistr Ôl-raddedig) (Cymru) 2017.

Atodlen 4 yw'r atodlen olaf i'r Rheoliadau hyn ac mae'n cynnwys y mynegai o dermau wedi eu diffinio.

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: Yr Is-adran Addysg Uwch, Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

OFFERYNNAU STATUDOL CYMRU

2019 Rhif 895 (Cy. 161)

ADDYSG, CYMRU

Rheoliadau Addysg (Cymorth i Fyfyrwyr) (Graddau Meistr Ôl-raddedig) (Cymru) 2019

Gwnaed *29 Ebrill 2019*

Gosodwyd gerbron Cynulliad Cenedlaethol Cymru *30 Ebrill 2019*

Yn dod i rym *27 Mai 2019*

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir i'r Ysgrifennydd Gwladol gan adrannau 22 a 42(6) o Ddeddf Addysgu ac Addysg Uwch 1998(**1**), ac sydd bellach yn arferadwy ganddynt hwy(**2**), yn gwneud y Rheoliadau a ganlyn:

(**1**) 1998 p. 30; diwygiwyd adran 22 gan Ddeddf Dysgu a Sgiliau 2000 (p. 21), adran 146 ac Atodlen 11; Deddf Treth Incwm (Enillion a Phensiynau) 2003 (p. 1), Atodlen 6; Deddf Cyllid 2003 (p. 14), adran 147; Deddf Addysg Uwch 2004 (p. 8), adrannau 42 a 43 ac Atodlen 7; Deddf Prentisiaethau, Sgiliau, Plant a Dysgu 2009 (p. 22), adran 257; Deddf Addysg 2011 (p. 21), adran 76; O.S. 2013/1181 a Deddf Addysg Uwch ac Ymchwil 2017 (p. 29), adran 88. *Gweler* adran 43(1) o Ddeddf Addysgu ac Addysg Uwch 1998 am y diffiniad o "prescribed" a "regulations".

(**2**) Trosglwyddwyd swyddogaethau'r Ysgrifennydd Gwladol yn adran 22(2)(a) i (i) a (k) i Gynulliad Cenedlaethol Cymru i'r graddau y maent yn ymwneud â gwneud darpariaeth o ran Cymru gan adran 44 o Ddeddf Addysg Uwch 2004 (p. 8), ac mae is-adrannau (a), (c) a (k) yn arferadwy ar y cyd â'r Ysgrifennydd Gwladol. Trosglwyddwyd swyddogaeth yr Ysgrifennydd Gwladol yn adran 42, i'r graddau y mae'n arferadwy o ran Cymru, i Gynulliad Cenedlaethol Cymru gan O.S. 1999/672. Trosglwyddwyd swyddogaethau Cynulliad Cenedlaethol Cymru i Weinidogion Cymru yn rhinwedd paragraff 30 o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006 (p. 32).

RHAN 1

Cyffredinol

Enwi a chychwyn

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Addysg (Cymorth i Fyfyrwyr) (Graddau Meistr Ôl-raddedig) (Cymru) 2019.

(2) Daw'r Rheoliadau hyn i rym ar 27 Mai 2019.

Cymhwyso

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

(2) Mae'r Rheoliadau hyn yn gymwys i ddarparu cymorth i fyfyrwyr mewn perthynas â chwrs sy'n dechrau ar neu ar ôl 1 Awst 2019 pa un a gaiff unrhyw beth a wneir o dan y Rheoliadau hyn ei wneud cyn, ar neu ar ôl 1 Awst 2019.

(3) Ond nid yw'r Rheoliadau hyn yn gymwys i ddarparu cymorth i fyfyrwyr mewn perthynas â chwrs o'r fath os yw'r cwrs yn un y mae statws y myfyriwr wedi trosglwyddo mewn perthynas ag ef o dan reoliad 6 o Reoliadau Addysg (Benthyciadau at Radd Feistr Ôl-raddedig) (Cymru) 2017(**1**) ("Rheoliadau Benthyciadau at Radd Feistr 2017").

(4) Am ddarpariaeth ynghylch cymorth a ddarperir i fyfyrwyr mewn perthynas â chwrs—

(a) y mae paragraff (3) yn gymwys iddo, neu

(b) sy'n dechrau cyn 1 Awst 2019,

gweler Rheoliadau Benthyciadau at Radd Feistr 2017.

RHAN 2

Trosolwg

Trosolwg

3.—(1) Mae'r Rhannau sy'n weddill o'r Rheoliadau hyn wedi eu trefnu fel a ganlyn.

(2) Mae Rhan 3 yn cyflwyno 2 Atodlen—

(a) Atodlen 1, sy'n cynnwys darpariaethau ynghylch dehongli termau allweddol penodol;

(b) Atodlen 4, sy'n cynnwys mynegai o'r termau sydd wedi eu diffinio yn y Rheoliadau hyn.

(**1**) O.S. 2017/523 (Cy. 109), a ddiwygiwyd gan O.S. 2017/712 (Cy. 169), O.S. 2018/277 (Cy. 53) ac O.S. 2018/814 (Cy. 165).

(3) Mae 2 Bennod i Ran 4, sy'n cynnwys darpariaeth ynghylch y cysyniadau allweddol sy'n penderfynu ar gymhwystra i gael cymorth o dan y Rheoliadau hyn—

(a) mae Pennod 1 yn gwneud darpariaeth ynghylch penderfynu a yw cwrs yn gwrs dynodedig at ddibenion y Rheoliadau hyn ac felly yn gwrs y caiff myfyriwr fod yn gymwys i gael cymorth mewn cysylltiad ag ef;

(b) mae Pennod 2 yn gwneud darpariaeth ynghylch sut y caiff myfyriwr sy'n ymgymryd â chwrs dynodedig fod yn gymwys i gael cymorth o dan y Rheoliadau hyn.

(4) Mae Rhan 5 yn gwneud darpariaeth weinyddol ynghylch—

(a) ceisiadau am gymorth o dan y Rheoliadau hyn;

(b) gofynion a osodir ar geiswyr a myfyrwyr cymwys i ddarparu gwybodaeth;

(c) contractau ar gyfer benthyciadau y gwneir cais amdanynt o dan y Rheoliadau hyn.

(5) Mae Rhan 6 yn gwneud darpariaeth ynghylch y cymorth grant sydd ar gael i fyfyrwyr cymwys gan gynnwys darpariaeth ynghylch—

(a) yr amodau cymhwyso y mae rhaid i fyfyriwr eu bodloni er mwyn cymhwyso i gael grant;

(b) swm y grant sydd ar gael.

(6) Mae Rhan 7 yn gwneud darpariaeth ynghylch y cymorth benthyciad sydd ar gael i fyfyrwyr cymwys gan gynnwys darpariaeth ynghylch—

(a) yr amodau cymhwyso y mae rhaid i fyfyriwr eu bodloni er mwyn cymhwyso i gael benthyciad;

(b) swm y benthyciad sydd ar gael.

(7) Mae 3 Pennod i Ran 8 ynghylch taliadau, gordaliadau ac adennill gordaliadau, yn benodol—

(a) mae Pennod 1 yn gwneud darpariaeth sy'n caniatáu i daliadau gael eu gwneud ar sail penderfyniadau dros dro;

(b) mae Pennod 2 yn gwneud darpariaeth ynghylch talu grantiau a benthyciadau, gan gynnwys darpariaeth ynghylch pryd y caniateir i daliadau gael eu gwneud a'r gofynion sydd i'w bodloni cyn y gwneir taliadau;

(c) mae Pennod 3 yn gwneud darpariaeth ynghylch gordaliadau, gan gynnwys darpariaeth sy'n pennu'r hyn sy'n ordaliad a sut y caniateir i ordaliad gael ei adennill.

(8) Mae Rhan 9 yn nodi cyfyngiadau ar dalu benthyciadau, gan gynnwys darpariaeth sy'n—

(a) cyfyngu ar dalu benthyciad os yw'r myfyriwr yn methu â darparu rhif Yswiriant Gwladol;

(b) cadw taliad benthyciad yn ôl os yw'r myfyriwr yn methu â darparu gwybodaeth benodol y gofynnir amdani.

(9) Mae Rhan 10 yn cynnwys diwygiadau i Reoliadau Benthyciadau at Radd Feistr 2017.

RHAN 3

Dehongli a'r mynegai

Dehongli a'r mynegai

4.—(1) Mae Atodlen 1 yn gwneud darpariaeth ynghylch dehongli termau allweddol penodol at ddibenion y Rheoliadau hyn.

(2) Mae Atodlen 4, sef yr Atodlen olaf i'r Rheoliadau hyn, yn cynnwys y mynegai o dermau wedi eu diffinio.

RHAN 4

Cysyniadau allweddol

PENNOD 1

Cyrsiau dynodedig

Cyrsiau dynodedig

5. Yn y Rheoliadau hyn (ac at ddibenion adran 22 o Ddeddf Addysgu ac Addysg Uwch 1998 ("Deddf 1998")), mae cwrs yn gwrs dynodedig—

(a) os yw'n bodloni pob un o'r amodau yn rheoliad 6, a

(b) os nad yw'n dod o fewn unrhyw un neu ragor o'r eithriadau yn rheoliad 7.

Cyrsiau dynodedig – amodau

6.—(1) Yr amodau yw—

Amod 1

Mae'r cwrs yn un—

(a) sy'n arwain at ddyfarndal sydd wedi ei roi neu sydd i'w roi gan gorff sy'n dod o fewn

adran 214(2)(a) neu (b) o Ddeddf Diwygio Addysg 1988(**1**), a

(b) y mae'r addysgu a'r goruchwylio sy'n ffurfio'r cwrs wedi eu cymeradwyo gan y corff hwnnw.

Amod 2

Mae'r cwrs yn un o'r canlynol—

(a) cwrs llawnamser sy'n para un flwyddyn academaidd neu ddwy flynedd academaidd, neu

(b) cwrs rhan-amser y mae fel arfer yn bosibl ei gwblhau ymhen pedair blynedd academaidd.

Amod 3

Mae'r cwrs wedi ei ddarparu gan—

(a) sefydliad a gyllidir gan Gymru, sefydliad a gyllidir gan yr Alban, sefydliad a gyllidir gan Ogledd Iwerddon neu sefydliad rheoleiddiedig Seisnig (pa un ai ar ei ben ei hun neu ar y cyd â sefydliad sydd o fewn neu y tu allan i'r Deyrnas Unedig), neu

(b) sefydliad Seisnig cofrestredig ar ran darparwr cynllun Seisnig.

Amod 4

Mae o leiaf hanner yr addysgu a'r goruchwylio sy'n ffurfio'r cwrs yn cael ei ddarparu yn y Deyrnas Unedig.

(2) At ddibenion Amod 3—

(a) mae cwrs yn cael ei ddarparu gan sefydliad os yw'n darparu'r addysgu a'r goruchwylio sy'n ffurfio'r cwrs, pa un a yw'r sefydliad wedi ymrwymo i gytundeb â'r myfyriwr i ddarparu'r cwrs ai peidio;

(b) bernir bod prifysgol ac unrhyw goleg neu sefydliad cyfansoddol sydd o natur coleg prifysgol yn—

(i) sefydliad a gyllidir gan Gymru,

(ii) sefydliad a gyllidir gan yr Alban,

(iii) sefydliad a gyllidir gan Ogledd Iwerddon,

(iv) sefydliad rheoleiddiedig Seisnig,

(v) sefydliad Seisnig cofrestredig, neu

(vi) darparwr cynllun Seisnig,

os yw naill ai'r brifysgol neu'r coleg neu sefydliad cyfansoddol yn sefydliad o'r fath;

(**1**) 1998 p. 40; diwygiwyd adran 214(2) gan Ddeddf Addysg Bellach ac Uwch 1992 (p. 13), adran 93 ac Atodlen 8 a chan Ddeddf Addysg Uwch ac Ymchwil 2017 (p. 29), adran 53.

(c) ni fernir bod sefydliad yn sefydliad a gyllidir gan Gymru dim ond am ei fod yn cael arian oddi wrth gorff llywodraethu sefydliad addysg uwch fel sefydliad cysylltiedig yn unol ag adran 65(3A) a (3B) o Ddeddf Addysg Bellach ac Uwch 1992(**1**).

Cyrsiau dynodedig – eithriadau

7. Nid yw cwrs yn gwrs dynodedig os yw'n cael ei gydnabod yn gwrs dynodedig at ddibenion—

(a) rheoliad 5 neu 83 o Reoliadau Addysg (Cymorth i Fyfyrwyr) (Cymru) 2017(**2**) ("Rheoliadau Cymorth i Fyfyrwyr 2017");

(b) rheoliad 5 neu 8 o Reoliadau Addysg (Cymorth i Fyfyrwyr) (Cymru) 2018(**3**) ("Rheoliadau Cymorth i Fyfyrwyr 2018");

(c) rheoliad 4 o Reoliadau Addysg (Benthyciadau at Radd Ddoethurol Ôl-raddedig) (Cymru) 2018(**4**) ("Rheoliadau Benthyciadau at Radd Ddoethurol 2018").

Dynodi cyrsiau eraill

8.—(1) Caiff Gweinidogion Cymru bennu bod cwrs i'w drin fel pe bai'n gwrs dynodedig er gwaethaf y ffaith na fyddai fel arall yn gwrs dynodedig, oni bai am y pennu.

(2) Caiff Gweinidogion Cymru atal dros dro neu ddirymu pennu cwrs a wneir o dan baragraff (1).

PENNOD 2

Cymhwystra

Myfyrwyr cymwys

9.—(1) Mae person yn fyfyriwr cymwys mewn cysylltiad â chwrs dynodedig y mae'r person yn ymgymryd ag ef—

(a) os yw'r person yn dod o fewn un o'r categorïau o bersonau a nodir yn Atodlen 2, a

(**1**) 1992 p. 13; mewnosodwyd is-adrannau (3A) a (3B) o adran 65 gan Ddeddf Addysgu ac Addysg Uwch 1998 (p. 30), adran 27.
(**2**) O.S. 2017/47 (Cy. 21), a ddiwygiwyd gan O.S. 2018/191 (Cy. 42) ac O.S. 2018/814 (Cy. 165).
(**3**) O.S. 2018/191 (Cy. 42), a ddiwygiwyd gan O.S. 2018/813 (Cy. 164) ac O.S. 2018/814 (Cy. 165).
(**4**) O.S. 2018/656 (Cy. 124), a ddiwygiwyd gan O.S. 2018/814 (Cy. 165).

(b) os nad yw unrhyw un neu ragor o'r eithriadau a nodir yn rheoliad 10 yn gymwys i'r person.

(2) Dim ond mewn cysylltiad ag un cwrs dynodedig y caiff person fod yn fyfyriwr cymwys ar unrhyw un adeg.

Myfyrwyr cymwys – eithriadau

10.—(1) Nid yw person ("P") yn fyfyriwr cymwys os yw unrhyw un neu ragor o'r eithriadau a ganlyn yn gymwys—

Eithriad 1

Mae P wedi torri unrhyw rwymedigaeth i ad-dalu unrhyw fenthyciad.

Eithriad 2

Mae P wedi cyrraedd 18 oed ac nid yw wedi cadarnhau unrhyw gytundeb ar gyfer benthyciad a wnaed gyda P pan oedd P o dan 18 oed.

Eithriad 3

Mae Gweinidogion Cymru yn meddwl bod ymddygiad P o'r fath fel nad yw P yn addas i gael cymorth.

Eithriad 4

Mae P yn garcharor, oni bai bod P yn garcharor cymwys.

Eithriad 5

Mae P wedi ymrestru ar gwrs sy'n gwrs dynodedig o dan—

(a) rheoliad 5, 66 neu 83 o Reoliadau Cymorth i Fyfyrwyr 2017 ac yn cael cymorth o dan y Rheoliadau hynny ar gyfer y cwrs hwnnw;

(b) rheoliad 5 o Reoliadau Cymorth i Fyfyrwyr 2018 ac yn cael cymorth o dan y Rheoliadau hynny ar gyfer y cwrs hwnnw;

(c) rheoliad 4 o Reoliadau Benthyciadau at Radd Feistr 2017 ac yn cael cymorth o dan y Rheoliadau hynny ar gyfer y cwrs hwnnw;

(d) rheoliad 4 o Reoliadau Benthyciadau at Radd Ddoethurol 2018 ac yn cael cymorth o dan y Rheoliadau hynny ar gyfer y cwrs hwnnw.

Eithriad 6

Mae P eisoes wedi cael cymhwyster cyfatebol neu uwch.

Eithriad 7

Mae P eisoes wedi ymrestru ar gwrs dynodedig ac yn cael cymorth o dan y Rheoliadau hyn ar gyfer y cwrs hwnnw.

Eithriad 8

Mae P wedi cael cymorth yn flaenorol mewn cysylltiad â chwrs—

(a) o dan y Rheoliadau hyn,

(b) o dan Reoliadau Benthyciadau at Radd Feistr 2017, neu

(c) ar ffurf benthyciad a ddarparwyd o gronfeydd a ddarperir gan awdurdod llywodraeth o fewn y Deyrnas Unedig.

Ond caiff P fod yn fyfyriwr cymwys er gwaethaf yr eithriad hwn os yw Gweinidogion Cymru o'r farn nad oedd P wedi gallu cwblhau'r cwrs yr oedd y benthyciad blaenorol yn ymwneud ag ef o ganlyniad i resymau personol anorchfygol.

Eithriad 9

Mewn cysylltiad â P yn ymgymryd â'r cwrs dynodedig, rhoddwyd i P neu talwyd iddo—

(a) bwrsari gofal iechyd;

(b) unrhyw lwfans o dan Reoliadau Lwfansau Myfyrwyr Nyrsio a Bydwreigiaeth (Yr Alban) 2007(**1**);

(c) unrhyw lwfans, bwrsari neu ddyfarndal o ddisgrifiad tebyg a wneir o dan adran 67(4)(a) o Ddeddf Safonau Gofal 2000(**2**) ac eithrio i'r graddau y mae A yn gymwys i gael y taliad hwnnw mewn cysylltiad â threuliau teithio;

(d) unrhyw lwfans, bwrsari neu ddyfarndal o ddisgrifiad tebyg a wneir o dan adran 116(2)(a) o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016(**3**) ac eithrio i'r graddau y mae P yn gymwys i gael y taliad hwnnw mewn cysylltiad â threuliau teithio;

(e) unrhyw lwfans, bwrsari neu ddyfarndal a wneir o dan Gynllun KESS 2.

Eithriad 10

Mae'r cwrs dynodedig yn gwrs dysgu o bell ac nid yw P yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

Ond nid yw'r eithriad hwn yn gymwys pan—

(a) bo P neu berthynas agos i P yn aelod o'r lluoedd arfog,

(**1**) O.S.A. 2007/151, a ddiwygiwyd gan O.S.A. 2007/503, O.S.A. 2008/206, O.S.A. 2009/188, O.S.A 2009/309, O.S.A. 2012/72, O.S.A. 2013/80 ac O.S.A. 2017/180.

(**2**) 2000 p. 14; a ddiwygiwyd gan Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 (dccc 2), Atodlen 3(2), paragraff 43.

(**3**) 2016 dccc 2.

(b) na fo P yng Nghymru ar ddiwrnod cyntaf y flwyddyn academaidd gyntaf, ac

(c) na fo P yng Nghymru ar y diwrnod hwnnw oherwydd bod P neu'r berthynas agos yn gwasanaethu fel aelod o'r lluoedd arfog y tu allan i Gymru.

Eithriad 11

Mae P yn 60 oed neu drosodd ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs dynodedig.

(2) Yn Eithriadau 1 a 2, ystyr "benthyciad" yw benthyciad a wneir o dan unrhyw ddarpariaeth o'r ddeddfwriaeth ar fenthyciadau i fyfyrwyr.

(3) Ni chaiff Gweinidogion Cymru ond arfer eu disgresiwn o dan Eithriad 8 unwaith mewn cysylltiad â myfyriwr penodol.

Cyfnod cymhwystra – y rheol gyffredinol

11.—(1) Cedwir statws myfyriwr fel myfyriwr cymwys mewn cysylltiad â chwrs dynodedig tan ddiwedd cyfnod cymhwystra'r myfyriwr oni bai bod ei statws wedi ei derfynu yn unol â rheoliad 12 neu 13.

(2) Daw cyfnod cymhwystra myfyriwr i ben ar ddiwedd y flwyddyn academaidd y mae'r myfyriwr yn cwblhau'r cwrs dynodedig ynddi.

Terfynu cymhwystra yn gynnar

12.—(1) Mae cyfnod cymhwystra myfyriwr cymwys ("P") yn terfynu ar ddiwedd y diwrnod—

(a) pan fydd P yn tynnu'n ôl o'i gwrs dynodedig ac nad yw Gweinidogion Cymru yn trosglwyddo statws P fel myfyriwr cymwys o dan reoliad 17, neu

(b) pan fydd P yn cefnu ar ei gwrs dynodedig neu'n cael ei ddiarddel ohono.

(2) Pan—

(a) bo cwrs dynodedig myfyriwr cymwys ("P") yn gwrs dysgu o bell, a

(b) bo P yn ymgymryd â'r cwrs y tu allan i'r Deyrnas Unedig,

mae cyfnod cymhwystra P yn terfynu ar ddechrau'r diwrnod cyntaf pan fydd P yn ymgymryd â'r cwrs y tu allan i'r Deyrnas Unedig.

(3) Nid yw paragraff (2) yn gymwys pan fo P yn ymgymryd â chwrs dysgu o bell y tu allan i'r Deyrnas Unedig oherwydd bod P neu berthynas agos i P yn gwasanaethu fel aelod o'r lluoedd arfog.

Camymddwyn a methu â darparu gwybodaeth gywir

13.—(1) Caiff Gweinidogion Cymru derfynu cyfnod cymhwystra myfyriwr cymwys os ydynt wedi eu bodloni bod ymddygiad y myfyriwr o'r fath fel nad yw'r myfyriwr yn addas mwyach i gael cymorth.

(2) Mae paragraff (3) yn gymwys os yw Gweinidogion Cymru wedi eu bodloni bod myfyriwr cymwys—

(a) wedi methu â chydymffurfio â gofyniad i ddarparu gwybodaeth neu ddogfennaeth o dan y Rheoliadau hyn, neu

(b) wedi darparu gwybodaeth neu ddogfennaeth a oedd yn sylweddol anghywir.

(3) Pan fo'r paragraff hwn yn gymwys, caiff Gweinidogion Cymru—

(a) terfynu cyfnod cymhwystra'r myfyriwr;

(b) penderfynu nad yw'r myfyriwr yn cymhwyso i gael categori penodol o gymorth neu swm y cymorth hwnnw.

Adfer cymhwystra ar ôl terfynu

14. Pan fo cyfnod cymhwystra myfyriwr yn terfynu o dan reoliad 12 neu 13 yn ystod y flwyddyn academaidd y mae'r myfyriwr yn cwblhau'r cwrs dynodedig ynddi, caiff Gweinidogion Cymru adfer cyfnod cymhwystra'r myfyriwr am unrhyw gyfnod y maent yn meddwl ei fod yn briodol.

Myfyrwyr sy'n dod yn gymwys yn ystod cwrs

15. Pan fo un o'r digwyddiadau a restrir yn rheoliad 16(1) yn digwydd yn ystod cwrs myfyriwr, caiff myfyriwr gymhwyso i gael cymorth o dan y Rheoliadau hyn, ar yr amod bod y myfyriwr yn cydymffurfio â'r darpariaethau gwneud cais a nodir yn Rhan 5.

16.—(1) Y digwyddiadau yw—

(a) bod cwrs y myfyriwr yn dod yn gwrs dynodedig;

(b) bod y myfyriwr yn dod yn fyfyriwr cymwys ar y sail—

(i) bod y myfyriwr neu ei briod, ei bartner sifil neu ei riant yn cael ei gydnabod yn ffoadur, yn dod yn berson y rhoddwyd caniatâd iddo aros fel person diwladwriaeth neu'n dod yn berson sydd â chaniatâd i ddod i mewn neu i aros;

(ii) bod gwladwriaeth yn ymaelodi â'r UE pan fo'r myfyriwr yn wladolyn o'r

wladwriaeth honno neu'n aelod o deulu gwladolyn o'r wladwriaeth honno;

(iii) bod y myfyriwr yn dod yn aelod o deulu gwladolyn UE;

(iv) bod y myfyriwr yn ennill yr hawl i breswylio'n barhaol;

(v) bod y myfyriwr yn dod yn blentyn i weithiwr Twrcaidd;

(vi) bod y myfyriwr yn dod yn berson a ddisgrifir ym mharagraff 6(1)(a) o Atodlen 2;

(vii) bod y myfyriwr yn dod yn blentyn i wladolyn Swisaidd;

(viii) bod y myfyriwr neu riant y myfyriwr yn dod yn berson sydd â chaniatâd i aros o dan adran 67;

(c) bod y myfyriwr yn cychwyn cwrs dynodedig ar ôl dyddiad dechrau'r cwrs dynodedig am fod yr awdurdod academaidd perthnasol wedi caniatáu i'r myfyriwr gychwyn y cwrs ar y dyddiad dechrau diweddarach hwn.

(2) Yn y rheoliad hwn, mae i'r termau a ganlyn yr un ystyr ag yn Atodlen 2—

"aelod o deulu" ("*family member*") (o fewn yr ystyr a roddir gan baragraff 8(5) o Atodlen 2);

"ffoadur" ("*refugee*");

"gweithiwr Twrcaidd" ("*Turkish worker*");

"hawl i breswylio'n barhaol" ("*right of permanent residence*");

"person sydd â chaniatâd i aros o dan adran 67" ("*person with section 67 leave to remain*");

"person sydd â chaniatâd i ddod i mewn neu i aros" ("*person with leave to enter or remain*");

"person y rhoddwyd caniatâd iddo aros fel person diwladwriaeth" ("*person granted stateless leave*");

"plentyn" ("*child*");

"rhiant" ("*parent*").

Trosglwyddo statws

17.—(1) Pan fo myfyriwr cymwys ("P") yn trosglwyddo o gwrs dynodedig i gwrs dynodedig arall ("y cwrs newydd"), rhaid i Weinidogion Cymru drosglwyddo statws y myfyriwr fel myfyriwr cymwys i'r cwrs newydd—

(a) os ydynt yn cael cais oddi wrth y myfyriwr i wneud hynny,

(b) os ydynt wedi eu bodloni bod un o'r seiliau trosglwyddo yn gymwys (gweler paragraff (2)), ac

(c) os nad yw cyfnod cymhwystra'r myfyriwr wedi terfynu.

(2) Y seiliau dros drosglwyddo yw—

(a) bod P, ar argymhelliad yr awdurdod academaidd, yn rhoi'r gorau i un cwrs dynodedig ac yn dechrau ymgymryd â chwrs dynodedig arall yn yr un sefydliad; neu

(b) bod P yn dechrau ymgymryd â chwrs dynodedig mewn sefydliad arall.

(3) Pan fo P yn trosglwyddo o dan baragraff (1), mae hawlogaeth gan P, mewn cysylltiad â'r cwrs y mae P yn trosglwyddo iddo, i gael gweddill y cymorth, os oes unrhyw swm yn weddill, yn unol â rheoliad 33 a, phan fo'n berthnasol, reoliad 36, mewn cysylltiad â'r cwrs y mae P yn trosglwyddo ohono.

RHAN 5

Ceisiadau, darparu gwybodaeth a chontractau benthyciadau

Gofyniad i wneud cais am gymorth

18.—(1) Nid yw person yn cymhwyso i gael cymorth fel myfyriwr cymwys mewn perthynas â chwrs dynodedig oni bai bod y person yn gwneud cais am gymorth mewn perthynas â'r cwrs hwnnw.

(2) Rhaid i gais o dan baragraff (1)—

(a) bod ar y ffurf honno a chynnwys yr wybodaeth honno sy'n ofynnol gan Weinidogion Cymru,

(b) dod gydag unrhyw ddogfennaeth sy'n ofynnol gan Weinidogion Cymru,

(c) cyrraedd Gweinidogion Cymru o fewn y terfyn amser a bennir yn rheoliad 19, a

(d) datgan a yw'r person yn gwneud cais am—

(i) grant sylfaenol,

(ii) grant cyfrannu at gostau,

(iii) benthyciad cyfrannu at gostau, neu

(iv) unrhyw gyfuniad o'r uchod.

Terfynau amser

19.—(1) Yn ddarostyngedig i baragraff (2), rhaid i gais o dan reoliad 18(1) neu gais i ddiwygio swm y benthyciad o dan reoliad 31(4) gyrraedd Gweinidogion Cymru heb fod yn hwyrach na diwedd y nawfed mis o flwyddyn academaidd olaf y cwrs.

(2) Nid yw paragraff (1) yn gymwys pan fo Gweinidogion Cymru yn ystyried, ar ôl rhoi sylw i amgylchiadau'r achos penodol, na ddylai'r terfyn

amser fod yn gymwys ac, yn yr achos hwnnw, rhaid i'r cais i ddiwygio'r swm gyrraedd Gweinidogion Cymru heb fod yn hwyrach nag unrhyw ddyddiad a bennir ganddynt yn ysgrifenedig.

Penderfyniad Gweinidogion Cymru ar gais

20.—(1) Caiff Gweinidogion Cymru gymryd unrhyw gamau a gwneud unrhyw ymholiadau y maent yn meddwl eu bod yn angenrheidiol er mwyn gwneud penderfyniad ar gais o dan reoliad 18.

(2) Caiff y camau hynny gynnwys ei gwneud yn ofynnol i'r ceisydd ddarparu gwybodaeth neu ddogfennaeth bellach.

(3) Caiff Gweinidogion Cymru wneud penderfyniad dros dro ar gais o dan reoliad 18 (gweler rheoliad 32 am ddarpariaeth ynghylch taliadau a wneir ar sail penderfyniad dros dro).

(4) Caniateir i benderfyniad ar gais a wneir gan Weinidogion Cymru ar ôl i benderfyniad dros dro gael ei wneud—

(a) cadarnhau'r penderfyniad dros dro, neu

(b) rhoi penderfyniad gwahanol yn ei le.

(5) Rhaid i Weinidogion Cymru hysbysu'r ceisydd am benderfyniad (gan gynnwys penderfyniad dros dro) ar gais o dan reoliad 18.

(6) Rhaid i'r hysbysiad ddatgan—

(a) a yw Gweinidogion Cymru yn ystyried bod y ceisydd yn fyfyriwr cymwys,

(b) os felly, a yw'r myfyriwr cymwys yn cymhwyso i gael cymorth mewn perthynas â'r cwrs dynodedig,

(c) os yw'r myfyriwr yn cymhwyso, gategori'r cymorth y mae'r myfyriwr yn cymhwyso i'w gael a'r swm sy'n daladwy,

(d) yn achos penderfyniad dros dro, y ffaith bod y penderfyniad yn un dros dro a chanlyniadau'r ffaith honno.

21.—(1) Mae paragraff (2) yn gymwys—

(a) pan fo person ("P") yn gwneud cais am gymorth yn unol â rheoliad 18,

(b) pan na fo unrhyw wybodaeth neu ddogfennaeth a ddarperir gan P yn y cais, neu mewn cysylltiad ag ef, yn sylweddol anghywir, ac

(c) pan fo P yn cael hysbysiad gan Weinidogion Cymru o dan reoliad 20(5) sy'n datgan yn anghywir fod P yn fyfyriwr cymwys.

(2) Pan fo'r paragraff hwn yn gymwys, er bod yr hysbysiad yn datgan yn anghywir fod P yn fyfyriwr

cymwys, caiff Gweinidogion Cymru, at ddibenion y Rheoliadau hyn, drin P fel pe bai'n fyfyriwr cymwys.

Gofynion ar fyfyrwyr cymwys i ddarparu gwybodaeth

22.—(1) Cyn gynted ag y bo'n rhesymol ymarferol ar ôl cael cais i wneud hynny, rhaid i fyfyriwr cymwys ddarparu i Weinidogion Cymru unrhyw wybodaeth neu ddogfennaeth sy'n ofynnol gan Weinidogion Cymru—

(a) at ddibenion penderfynu—

(i) cymhwystra myfyriwr;

(ii) a yw myfyriwr yn cymhwyso i gael cymorth;

(iii) y math o gymorth a swm y cymorth sy'n daladwy i fyfyriwr;

(iv) a yw gordaliad wedi cael ei wneud i fyfyriwr;

(b) at unrhyw ddiben sy'n ymwneud ag adennill gordaliad;

(c) at unrhyw ddiben sy'n ymwneud ag addalu benthyciad;

(d) at unrhyw ddiben arall sy'n ymwneud â'r Rheoliadau hyn y mae Gweinidogion Cymru yn meddwl ei fod yn briodol.

(2) Caniateir i gais o dan baragraff (1) gynnwys gofyn i fyfyriwr cymwys am gael gweld—

(a) ei basbort dilys a ddyroddwyd gan y wladwriaeth y mae'r myfyriwr hwnnw yn wladolyn ohoni,

(b) ei gerdyn adnabod cenedlaethol dilys, neu

(c) ei dystysgrif geni.

(3) Pan fo digwyddiad a grybwyllir ym mharagraff (4) yn digwydd mewn cysylltiad â myfyriwr cymwys, rhaid i'r myfyriwr roi gwybod i Weinidogion Cymru cyn gynted ag y bo'n rhesymol ymarferol ar ôl y digwyddiad.

(4) Y digwyddiadau yw—

(a) bod y myfyriwr yn tynnu'n ôl o'i gwrs, yn cael ei atal dros dro ohono, yn cefnu arno neu'n cael ei ddiarddel ohono;

(b) bod y myfyriwr yn trosglwyddo i gwrs arall (pa un ai yn yr un sefydliad neu mewn sefydliad gwahanol);

(c) bod y myfyriwr fel arall yn peidio ag ymgymryd â'i gwrs ac nad yw'n bwriadu parhau ag ef am weddill y flwyddyn academaidd neu na chaniateir iddo barhau ag ef am weddill y flwyddyn academaidd;

(d) bod y myfyriwr yn absennol o'r cwrs—

(i) am fwy na 60 niwrnod oherwydd salwch, neu

(ii) am unrhyw gyfnod am unrhyw reswm arall;

(e) bod y mis ar gyfer dechrau ar y cwrs neu ei gwblhau yn newid;

(f) bod y manylion a ganlyn, sef—

(i) cyfeiriad cartref y ceisydd neu ei gyfeiriad yn ystod y tymor,

(ii) rhif ffôn cartref y ceisydd neu ei rif ffôn yn ystod y tymor, neu

(iii) cyfeiriad e-bost cartref y ceisydd neu ei gyfeiriad e-bost yn ystod y tymor,

yn newid;

(g) bod y ceisydd yn dod yn garcharor neu'n peidio â bod yn garcharor.

(5) Rhaid darparu gwybodaeth neu ddogfennaeth y mae'n ofynnol iddi gael ei darparu i Weinidogion Cymru o dan y Rheoliadau hyn ar y ffurf honno a bennir gan Weinidogion Cymru.

(6) Caiff Gweinidogion Cymru ei gwneud yn ofynnol bod rhaid llofnodi—

(a) cais o dan reoliad 18;

(b) unrhyw ddogfennaeth arall a ddarperir iddynt o dan y Rheoliadau hyn,

yn y modd (gan gynnwys ar ffurf electronig) a bennir ganddynt.

(7) Mae'r cyfeiriad at fyfyriwr cymwys ym mharagraff (1) i'w drin fel pe bai'n cynnwys person sy'n gwneud cais o dan reoliad 18 hyd yn oed os penderfyniad Gweinidogion Cymru ar y cais yw nad yw'r person yn fyfyriwr cymwys.

(8) Gweler rheoliad 13 am ddarpariaeth ynghylch canlyniadau methu â chydymffurfio â gofyniad a osodir gan y rheoliad hwn.

Gofyniad i ymrwymo i gontract ar gyfer benthyciad

23.—(1) Ni chaiff myfyriwr cymwys gael benthyciad cyfrannu at gostau o dan y Rheoliadau hyn oni bai bod y myfyriwr yn ymrwymo i gontract ar gyfer y benthyciad â Gweinidogion Cymru.

(2) O ran y contract—

(a) rhaid iddo fod ar y ffurf ac ar y telerau, a

(b) caiff fod yn ofynnol iddo gael ei lofnodi yn y modd (gan gynnwys ar ffurf electronig),

a bennir gan Weinidogion Cymru.

RHAN 6

Y grant sylfaenol a'r grant cyfrannu at gostau

PENNOD 1

Amodau cymhwyso

Y grant sylfaenol a'r grant cyfrannu at gostau

24. Grantiau sy'n cael eu rhoi ar gael gan Weinidogion Cymru i fyfyriwr cymwys mewn perthynas â chwrs dynodedig yw'r grant sylfaenol a'r grant cyfrannu at gostau.

PENNOD 2

Y grant sylfaenol

Swm y grant sylfaenol

25. Swm y grant sylfaenol sydd ar gael i fyfyriwr cymwys yw £1,000.

PENNOD 3

Grant cyfrannu at gostau

Amodau cymhwyso i gael grant cyfrannu at gostau

26. Mae myfyriwr cymwys yn cymhwyso i gael grant cyfrannu at gostau mewn perthynas â chwrs dynodedig oni bai bod y myfyriwr cymwys yn garcharor cymwys.

Swm y grant cyfrannu at gostau

27.—(1) Uchafswm y grant cyfrannu at gostau sydd ar gael i fyfyriwr cymwys yw £5,885.

(2) Pan—

(a) na fo incwm aelwyd y myfyriwr yn fwy na £18,370, neu

(b) bo'r myfyriwr yn berson sy'n ymadael â gofal,

swm y grant cyfrannu at gostau yw £5,885.

(3) Pan fo incwm aelwyd y myfyriwr yn fwy na £18,370 ond yn llai na £59,200, swm y grant cyfrannu at gostau sy'n daladwy i'r myfyriwr yw uchafswm y grant cyfrannu at gostau, wedi ei ostwng £1 am bob £6.937 o incwm aelwyd sy'n fwy na £18,370.

(4) Pan fo incwm aelwyd y myfyriwr cymwys yn £59,200 neu ragor, swm y grant cyfrannau at gostau sy'n daladwy yw £0.

Incwm yr aelwyd

28. Gweler Atodlen 3 am ddarpariaeth ynghylch cyfrifo incwm aelwyd myfyriwr cymwys.

Ystyr person sy'n ymadael â gofal

29. Mae myfyriwr cymwys yn "person sy'n ymadael â gofal"—

(a) os yw'r myfyriwr o dan 25 oed ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs dynodedig,

(b) os yw'r myfyriwr yn gategori o berson ifanc, neu wedi bod yn gategori o berson ifanc, a ddiffinnir yn adran 104 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014(**1**), neu yn rhinwedd yr adran honno, ac

(c) os, rhwng pen-blwydd y myfyriwr yn 14 oed a diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs—

(i) oedd y myfyriwr yn derbyn gofal, wedi ei faethu neu wedi ei letya (o fewn ystyr adrannau 74 a 104 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014) am gyfnod cyfanredol o 13 wythnos neu ragor, neu

(ii) oedd y myfyriwr yn berson yr oedd gorchymyn gwarcheidiaeth arbennig (o fewn yr ystyr a roddir i "special guardianship order" gan adran 14A o Ddeddf Plant 1989(**2**)) mewn grym mewn cysylltiad ag ef am gyfnod o 13 wythnos neu ragor.

RHAN 7

Benthyciad cyfrannu at gostau

Benthyciad cyfrannu at gostau

30. Mae benthyciad cyfrannu at gostau yn fenthyciad sy'n cael ei roi ar gael gan Weinidogion Cymru i fyfyriwr cymwys mewn cysylltiad â chwrs dynodedig.

(**1**) 2014 dccc 4.

(**2**) 1989 p. 41; mewnosodwyd adran 14A gan Ddeddf Mabwysiadu a Phlant 2002 (p. 38) ac fe'i diwygiwyd gan Ddeddf Plant a Theuluoedd 2014 (p. 6) a Deddf Plant a Phobl Ifanc 2008 (p. 23).

Swm y benthyciad cyfrannu at gostau

31.—(1) Cyfrifir swm y benthyciad cyfrannu at gostau sy'n daladwy i fyfyriwr cymwys fel a ganlyn—

Uchafswm y benthyciad cyfrannu at gostau sydd ar gael i'r myfyriwr mewn cysylltiad â chwrs dynodedig.

Minws

Swm y grant cyfrannu at gostau sy'n daladwy i'r myfyriwr o dan reoliad 27.

(2) Yn ddarostyngedig i baragraff (3), uchafswm y benthyciad cyfrannu at gostau yw £16,000.

(3) Pan fo carcharor cymwys yn gwneud cais am fenthyciad cyfrannu at gostau, ni chaiff swm y benthyciad fod yn fwy na'r lleiaf o'r canlynol—

(a) y ffioedd sy'n daladwy mewn cysylltiad â'r cwrs dynodedig minws swm y grant sylfaenol sy'n daladwy i'r carcharor cymwys o dan reoliad 25, a

(b) £16,000.

(4) Ac eithrio pan fo rheoliad 36(5) i (10) yn gymwys, caiff myfyriwr cymwys wneud cais i Weinidogion Cymru i ddiwygio swm y benthyciad cyfrannu at gostau y mae'r myfyriwr wedi gwneud cais amdano, ar yr amod—

(a) nad yw cyfanred symiau'r benthyciad cyfrannu at gostau y gwneir cais amdanynt yn fwy na'r symiau cymwys a nodir ym mharagraffau (2) a (3);

(b) bod cais o'r fath yn cael ei wneud yn unol â rheoliad 18(2).

RHAN 8

Taliadau, Gordaliadau ac Adennill

PENNOD 1

Taliad yn dilyn penderfyniad dros dro

Taliad ar sail asesiad dros dro

32. Pan fo Gweinidogion Cymru yn gwneud penderfyniad dros dro ar gais a wneir o dan reoliad 18, caiff Gweinidogion Cymru wneud taliad sy'n seiliedig ar y penderfyniad hwnnw.

PENNOD 2

Talu grantiau a benthyciadau

Talu grantiau a benthyciadau

33.—(1) Rhaid i Weinidogion Cymru dalu swm y grant sylfaenol, y grant cyfrannu at gostau neu'r benthyciad cyfrannu at gostau i fyfyriwr cymwys pan fo'n daladwy i'r myfyriwr.

(2) Yn ddarostyngedig i baragraff (3), caiff Gweinidogion Cymru dalu'r swm hwnnw—

(a) naill ai fel cyfandaliad neu mewn rhandaliadau, a

(b) ar unrhyw adegau, ac mewn unrhyw fodd, y mae Gweinidogion Cymru yn ystyried eu bod yn briodol.

(3) Caiff Gweinidogion Cymru ei gwneud yn amod o'r hawlogaeth i gael taliad bod yn rhaid i'r myfyriwr cymwys ddarparu i Weinidogion Cymru fanylion cyfrif banc neu gyfrif cymdeithas adeiladu yn y Deyrnas Unedig y gall taliadau gael eu talu iddo drwy drosglwyddiad electronig.

(4) Yn achos carcharor cymwys, rhaid i Weinidogion Cymru dalu'r grant sylfaenol a'r benthyciad cyfrannu at gostau y mae carcharor cymwys yn cymhwyso i'w cael i'r sefydliad y mae'r carcharor cymwys yn atebol i wneud taliad o'r ffioedd sy'n daladwy mewn cysylltiad â'r cwrs dynodedig iddo neu i unrhyw drydydd parti y mae Gweinidogion Cymru yn ystyried ei fod yn briodol at ddiben sicrhau y telir y ffioedd hynny i'r sefydliad perthnasol.

Cadarnhad o bresenoldeb

34.—(1) Ni chaiff Gweinidogion Cymru dalu'r grant neu'r benthyciad neu unrhyw randaliad o'r grant neu'r benthyciad y mae myfyriwr cymwys yn cymhwyso i'w gael oni bai eu bod wedi cael gan yr awdurdod academaidd perthnasol gadarnhad (ar y ffurf sy'n ofynnol gan Weinidogion Cymru) o bresenoldeb y myfyriwr ar y cwrs dynodedig.

(2) Rhaid i'r awdurdod academaidd roi gwybod i Weinidogion Cymru ar unwaith a darparu manylion i Weinidogion Cymru os yw'r myfyriwr yn tynnu'n ôl o'r cwrs dynodedig, yn cael ei atal dros dro neu ei ddiarddel ohono, neu os yw fel arall yn absennol.

(3) Nid yw myfyriwr cymwys i'w ystyried yn absennol o'i gwrs os nad yw'n gallu bod yn bresennol oherwydd salwch ac nad yw'r myfyriwr cymwys wedi bod yn absennol am fwy na 60 niwrnod.

Absenoldeb o'r cwrs

35.—(1) Yn ddarostyngedig i baragraffau (2) i (4), os yw Gweinidogion Cymru yn cael hysbysiad o dan reoliad 34(2) neu o dan reoliad 22(3) mewn perthynas â digwyddiad a restrir yn rheoliad 22(4)(a) i (d), ni chaiff Gweinidogion Cymru wneud unrhyw daliad pellach o'r grant sylfaenol, y grant cyfrannu at gostau neu'r benthyciad cyfrannu at gostau mewn cysylltiad â'r myfyriwr cymwys y mae'r hysbysiad yn ymwneud ag ef.

(2) Caniateir gwneud taliadau pellach er gwaethaf diffyg presenoldeb y myfyriwr os, ym marn Gweinidogion Cymru, byddai'r taliadau hynny yn briodol o dan yr holl amgylchiadau yn ystod absenoldeb y myfyriwr.

(3) Os yw'r myfyriwr cymwys yn ailgychwyn y cwrs dynodedig, rhaid i'r myfyriwr hysbysu Gweinidogion Cymru a rhoi manylion llawn am hyd ac achos yr absenoldeb blaenorol.

(4) Ar ôl ystyried hysbysiad y myfyriwr o dan baragraff (3), caiff Gweinidogion Cymru ailgychwyn unrhyw daliadau sy'n weddill o'r grant sylfaenol, y grant cyfrannu at gostau neu'r benthyciad cyfrannu at gostau o dan reoliad 33 os, ym marn Gweinidogion Cymru, byddai'n briodol o dan yr holl amgylchiadau i'r taliad hwnnw gael ei wneud.

Effaith dod, neu beidio â bod, yn garcharor cymwys

36.—(1) Mae paragraff (2) yn gymwys pan fo myfyriwr cymwys sy'n cael grant sylfaenol, grant cyfrannu at gostau neu fenthyciad cyfrannu at gostau yn dod yn garcharor cymwys ac yn parhau i ymgymryd â chwrs dynodedig.

(2) Rhaid i Weinidogion Cymru—

(a) peidio â gwneud unrhyw daliad yn y dyfodol o'r grant cyfrannu at gostau,

(b) addasu taliad o'r grant sylfaenol a'r benthyciad cyfrannu at gostau yn y dyfodol neu daliadau yn y dyfodol o randaliadau'r grant sylfaenol a'r benthyciad cyfrannu at gostau, fel nad yw cyfanswm y cymorth a geir gan y myfyriwr cymwys yn fwy na'r swm y mae hawlogaeth gan y myfyriwr, fel carcharor cymwys, i'w gael o dan reoliad 31(3), ac

(c) gwneud unrhyw daliadau yn y dyfodol o'r grant sylfaenol neu'r benthyciad cyfrannu at gostau, yn unol â rheoliad 33(4).

(3) Mae paragraffau (4) i (10) yn gymwys pan fo carcharor cymwys sy'n cael grant sylfaenol neu fenthyciad cyfrannu at gostau yn peidio â bod yn

garcharor cymwys ac yn aros yn fyfyriwr cymwys, ac yn parhau i ymgymryd â chwrs dynodedig.

(4) Rhaid i Weinidogion Cymru wneud unrhyw daliadau o'r grant sylfaenol, y benthyciad cyfrannu at gostau a'r grant cyfrannu at gostau yn y dyfodol, os oes rhai, yn unol â rheoliad 33(2).

(5) Pan fo myfyriwr cymwys ("P") yn peidio â bod yn garcharor cymwys caiff P, yn ddarostyngedig i baragraffau (6) i (8) wneud cais am grant cyfrannu at gostau.

(6) Yn ddarostyngedig i baragraff (8), cyfrifir swm y grant cyfrannu at gostau sy'n daladwy i P drwy gyfeirio at y fformiwla a ganlyn—

$$G\ x\ (\frac{R}{T})$$

pan fo—

G yn gyfwerth ag uchafswm y grant cyfrannu at gostau sy'n daladwy i P yn unol â pharagraff (7);

T yn gyfwerth â chyfanswm nifer y diwrnodau y mae'r cwrs dynodedig yn para;

R yn gyfwerth â nifer y diwrnodau o'r cwrs dynodedig sy'n weddill pan fydd P yn peidio â bod yn garcharor cymwys.

(7) Uchafswm y grant cyfrannu at gostau sy'n daladwy i P yw—

(a) £5,885 pan na fo incwm aelwyd y myfyriwr yn fwy na £18,370;

(b) £5,885 wedi ei ostwng £1 am bob £6.937 o incwm aelwyd sy'n fwy na £18,370;

(c) £0 pan fo incwm aelwyd y myfyriwr yn £59,200 neu ragor.

(8) Ni chaiff swm y grant cyfrannu at gostau sy'n daladwy i fyfyriwr o dan baragraff (6) fod yn fwy nag £16,000 minws A, pan A yw swm y benthyciad cyfrannu at gostau y mae'r myfyriwr eisoes wedi ei gael pan fydd yn peidio â bod yn garcharor cymwys.

(9) Pan fo P yn peidio â bod yn garcharor cymwys caiff P, yn ddarostyngedig i baragraff (10), wneud cais i swm y benthyciad cyfrannu at gostau gael ei gynyddu.

(10) Cyfrifir yr uchafswm cynnydd ym menthyciad cyfrannu at gostau P y caiff P wneud cais amdano o dan baragraff (9) drwy gyfeirio at y fformiwla a ganlyn—

$$(J - F)x(\frac{R}{T})$$

pan fo—

J yn gyfwerth ag £16,000 minws uchafswm y grant cyfrannu at gostau sy'n daladwy i P o dan baragraff (7);

F yn gyfwerth â swm y benthyciad cyfrannu at gostau y mae P yn cymhwyso i'w gael fel carcharor cymwys;

T yn gyfwerth â chyfanswm nifer y diwrnodau y mae'r cwrs dynodedig yn para;

R yn gyfwerth â nifer y diwrnodau o'r cwrs dynodedig sy'n weddill pan fydd P yn peidio â bod yn garcharor cymwys.

PENNOD 3

Gordaliadau ac adennill

Gordaliadau – cyffredinol

37.—(1) Pan fo myfyriwr cymwys wedi cael swm unrhyw grant neu unrhyw fenthyciad cyfrannu at gostau sy'n fwy na'r swm y mae gan y myfyriwr hawlogaeth i'w gael o dan y Rheoliadau hyn, rhaid i'r myfyriwr ad-dalu'r swm dros ben os yw Gweinidogion Cymru yn ei gwneud yn ofynnol iddo wneud hynny.

(2) Yn y Bennod hon, mae cyfeiriadau at fyfyriwr cymwys i'w trin fel pe baent yn cynnwys person sydd wedi cael cymorth ond nad yw'n fyfyriwr cymwys neu nad yw'n fyfyriwr cymwys mwyach.

Adennill grantiau sydd wedi cael eu gordalu

38.—(1) Rhaid i Weinidogion Cymru adennill unrhyw ordaliad o grant oni bai eu bod yn meddwl nad yw'n briodol gwneud hynny.

(2) Mae taliad o grant sydd wedi ei wneud cyn y diwrnod y mae'r cwrs yn dechrau arno yn ordaliad os yw'r myfyriwr yn tynnu'n ôl o'r cwrs cyn y diwrnod hwnnw.

(3) Caniateir adennill gordaliad o grant drwy ddidynnu'r gordaliad o unrhyw grant sy'n daladwy i'r myfyriwr cymwys o bryd i'w gilydd o dan y Rheoliadau hyn neu unrhyw reoliadau eraill a wneir gan Weinidogion Cymru o dan adran 22 o Ddeddf 1998.

(4) Nid yw paragraff (3) yn rhwystro Gweinidogion Cymru rhag adennill gordaliad drwy unrhyw ddull arall sydd ar gael iddynt.

Adennill gordaliad o'r benthyciad cyfrannu at gostau

39.—(1) Caiff Gweinidogion Cymru adennill unrhyw ordaliad o fenthyciad cyfrannu at gostau oddi wrth—

(a) y sefydliad neu'r trydydd parti a gafodd arian y benthyciad cyfrannu at gostau pan wnaed taliad i'r sefydliad hwnnw neu'r trydydd parti hwnnw, neu

(b) y myfyriwr a gafodd y benthyciad cyfrannu at gostau.

(2) Caniateir adennill gordaliad o fenthyciad cyfrannu at gostau oddi wrth fyfyriwr o dan baragraff (1)(b) ym mha un bynnag neu ym mha rai bynnag o'r ffyrdd a ganlyn y mae Gweinidogion Cymru yn ystyried eu bod yn briodol o dan yr holl amgylchiadau—

(a) drwy ddidynnu'r gordaliad o unrhyw swm o'r benthyciad cyfrannu at gostau sy'n weddill i'w dalu;

(b) drwy ddidynnu'r gordaliad o unrhyw fath o grant neu fenthyciad sy'n daladwy i'r myfyriwr o bryd i'w gilydd yn unol â rheoliadau a wneir gan Weinidogion Cymru o dan adran 22 o Ddeddf 1998;

(c) drwy ei gwneud yn ofynnol i'r myfyriwr ad-dalu'r benthyciad cyfrannu at gostau yn unol â rheoliadau a wneir o dan adran 22 o Ddeddf 1998;

(d) drwy gymryd unrhyw gamau gweithredu eraill i adennill y gordaliad sydd ar gael iddynt.

Ad-dalu

40.—(1) Caiff Gweinidogion Cymru ar unrhyw adeg ei gwneud yn ofynnol i geisydd neu fyfyriwr cymwys ymrwymo i gytundeb i ad-dalu benthyciad cyfrannu at gostau drwy ddull penodol.

(2) Pan fo Gweinidogion Cymru wedi ei gwneud yn ofynnol cael cytundeb ynghylch y dull ad-dalu o dan y rheoliad hwn, caiff Gweinidogion Cymru gadw'n ôl unrhyw daliad o fenthyciad cyfrannu at gostau hyd nes bod y ceisydd neu'r myfyriwr cymwys yn darparu'r hyn a wnaed yn ofynnol.

RHAN 9

Cyfyngiadau sy'n ymwneud â benthyciadau cyfrannu at gostau

Gofyniad i ddarparu rhif yswiriant gwladol

41.—(1) Caiff Gweinidogion Cymru ei gwneud yn amod o'r hawlogaeth i gael taliad o'r benthyciad cyfrannu at gostau neu unrhyw randaliad o'r benthyciad fod yn rhaid i fyfyriwr cymwys ddarparu iddynt ei rif yswiriant gwladol yn y Deyrnas Unedig.

(2) Os yw'r amod hwnnw wedi ei osod, ni chaiff Gweinidogion Cymru wneud unrhyw daliad o'r benthyciad cyfrannu at gostau hyd nes bod y myfyriwr cymwys wedi cydymffurfio ag ef, oni bai bod Gweinidogion Cymru wedi eu bodloni, oherwydd amgylchiadau eithriadol, y byddai'n briodol gwneud taliad er na chydymffurfiwyd â'r amod.

Gofynion gwybodaeth sy'n ymwneud â benthyciadau

42.—(1) Pan fo Gweinidogion Cymru wedi ei gwneud yn ofynnol darparu gwybodaeth neu ddogfennaeth o dan reoliad 22(1), at unrhyw un neu ragor o'r dibenion a grybwyllir ym mharagraff (2) o'r rheoliad hwn, cânt gadw yn ôl unrhyw daliad o fenthyciad cyfrannu at gostau neu grant cyfrannu at gostau hyd nes bod y myfyriwr yn cydymffurfio â'r gofyniad neu'n darparu esboniad boddhaol dros beidio â gwneud hynny.

(2) Y dibenion yw—

(a) penderfynu a yw'r myfyriwr yn fyfyriwr cymwys sy'n cymhwyso i gael benthyciad;

(b) penderfynu ar swm y benthyciad sy'n daladwy i'r myfyriwr;

(c) unrhyw fater sy'n ymwneud â thalu benthyciad gan y myfyriwr.

RHAN 10

Diwygiadau i Reoliadau Addysg (Benthyciadau at Radd Feistr Ôl-raddedig) (Cymru) 2017

Diwygiadau i Reoliadau Addysg (Benthyciadau at Radd Feistr Ôl-raddedig) (Cymru) 2017

43. Mae Rheoliadau Benthyciadau at Radd Feistr 2017 wedi eu diwygio fel a ganlyn.

44. Yn rheoliad 1 (enwi, cychwyn a chymhwyso), ar ôl paragraff (3) mewnosoder—

"(4) Nid yw'r Rheoliadau hyn yn gymwys i ddarparu benthyciadau at radd feistr ôl-raddedig i fyfyrwyr mewn perthynas â chyrsiau sy'n dechrau ar neu ar ôl 1 Awst 2019 oni bai bod rheoliad 2(3) o Reoliadau Addysg (Cymorth i Fyfyrwyr) (Graddau Meistr Ôl-raddedig) (Cymru) 2019 yn gymwys i'r cwrs."

45. Yn rheoliad 2 (dehongli), ym mharagraff (1)—

(a) yn lle'r diffiniad o "ffioedd" rhodder—

"mae i "ffioedd" ("*fees*") yr ystyr a roddir yn adran 57(1) o Ddeddf Addysg Uwch (Cymru) 2015(**1**);";

(b) yn y lle priodol mewnosoder—

"ystyr "person sydd â chaniatâd i aros o dan adran 67" ("*person with section 67 leave to remain*") yw person—

(a) y mae ganddo ganiatâd cyfredol i aros yn y Deyrnas Unedig o dan adran 67 o Ddeddf Mewnfudo 2016(**2**) ac yn unol â'r rheolau mewnfudo(**3**); a

(b) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod ers i'r caniatâd hwnnw gael ei roi i'r person;".

46. Yn rheoliad 4—

(a) yn lle paragraff (1)(b) rhodder—

"(b) os yw'n cael ei ddarparu yn gyfan gwbl gan sefydliad yn y Deyrnas Unedig a oedd cyn 1 Awst 2019 yn sefydliad a oedd yn cael ei gyllido'n gyhoeddus (pa un ai ar ei ben ei hun neu ar y cyd â sefydliad arall o'r fath neu â sefydliad sydd y tu allan i'r Deyrnas Unedig);";

(b) yn lle paragraff (3)(d) rhodder—

"(d) ni fernir bod sefydliad wedi cael ei gyllido'n gyhoeddus cyn 1 Awst 2019 dim ond am ei fod wedi cael arian o gronfeydd cyhoeddus cyn y dyddiad hwnnw gan gorff llywodraethu sefydliad addysg uwch yn unol ag adran 65(3A) o Ddeddf Addysg Bellach ac Uwch 1992; ac".

47. Yn rheoliad 8 (digwyddiadau), ar ôl paragraff (b) mewnosoder—

"(ba)bod y myfyriwr neu riant y myfyriwr yn dod yn berson sydd â chaniatâd i aros o dan adran 67;".

(**1**) 2015 dccc 1.
(**2**) 2016 p. 19.
(**3**) *Gweler* paragraffau 352ZG i 352ZS.

48. Yn Atodlen 1, ar ôl paragraff 5 (personau sydd â chaniatâd i ddod i mewn neu i aros ac aelodau o'u teuluoedd) mewnosoder—

"**Personau sydd â chaniatâd i aros o dan adran 67**

5A.—(1) Person—

(a) sy'n berson sydd â chaniatâd i aros o dan adran 67;

(b) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs; ac

(c) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

(2) Person—

(a) sy'n blentyn i berson sydd â chaniatâd i aros o dan adran 67;

(b) a oedd, ar ddyddiad y cais i gael caniatâd i aros, o dan 18 oed ac yn blentyn i'r person sydd â chaniatâd i aros o dan adran 67;

(c) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs; a

(d) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

(3) Yn y paragraff hwn, ystyr "dyddiad y cais i gael caniatâd i aros" yw'r dyddiad y gwnaeth y person sydd â chaniatâd i aros o dan adran 67 y cais a arweiniodd at y person hwnnw yn cael caniatâd i aros yn y Deyrnas Unedig."

Kirsty Williams
Y Gweinidog Addysg, un o Weinidogion Cymru
29 Ebrill 2019

YR ATODLENNI

ATODLEN 1 Rheoliad 4(1)

Dehongli

Ystyr blwyddyn academaidd

1.—(1) Penderfynir ar "blwyddyn academaidd", mewn cysylltiad â chwrs, fel a ganlyn—

(a) nodi'r cyfnod yng Ngholofn 2 o Dabl 1 y mae'r flwyddyn academaidd yn dechrau ynddo mewn gwirionedd;

(b) y flwyddyn academaidd yw'r cyfnod o 12 mis sy'n dechrau ar y dyddiad a bennir yn y cofnod yng Ngholofn 1 o'r Tabl sy'n cyfateb i'r cyfnod a nodir yng Ngholofn 2.

(2) Mae unrhyw gyfeiriad yn y Rheoliadau hyn at "blwyddyn academaidd" yn gyfeiriad at flwyddyn y penderfynir arni yn unol ag is-baragraff (1).

Tabl 1

Colofn 1 *Dyddiad dechrau'r flwyddyn academaidd at ddibenion y Rheoliadau hyn*	*Colofn 2* *Y cyfnod y mae'r flwyddyn academaidd yn dechrau ynddo*
1 Medi	Ar neu ar ôl 1 Awst ond cyn 1 Ionawr
1 Ionawr	Ar neu ar ôl 1 Ionawr ond cyn 1 Ebrill
1 Ebrill	Ar neu ar ôl 1 Ebrill ond cyn 1 Gorffennaf
1 Gorffennaf	Ar neu ar ôl 1 Gorffennaf ond cyn 1 Awst

Sefydliadau addysgol

2.—(1) Yn y Rheoliadau hyn—

(a) ystyr "sefydliad a gyllidir gan Gymru" yw sefydliad a gynhelir neu a gynorthwyir gan grantiau rheolaidd o gronfeydd a ddarperir gan Weinidogion Cymru;

(b) ystyr "sefydliad a gyllidir gan yr Alban" yw sefydliad a gynhelir neu a gynorthwyir gan grantiau rheolaidd o gronfeydd a ddarperir gan Weinidogion yr Alban;

(c) ystyr "sefydliad a gyllidir gan Ogledd Iwerddon" yw sefydliad a gynhelir neu a gynorthwyir gan grantiau rheolaidd o

gronfeydd a ddarperir gan Weithrediaeth Gogledd Iwerddon;

(d) ystyr "sefydliad rheoleiddiedig Seisnig" yw sefydliad Seisnig cofrestredig sy'n ddarostyngedig i amod terfyn ffioedd o dan adran 10 o Ddeddf Addysg Uwch ac Ymchwil 2017(**1**);

(e) ystyr "sefydliad Seisnig cofrestredig" yw sefydliad sydd wedi ei gofrestru gan y Swyddfa Fyfyrwyr(**2**) yn y gofrestr;

(f) ystyr "darparwr cynllun Seisnig" yw sefydliad Seisnig cofrestredig sydd â chynllun mynediad a chyfranogiad a gymeradwywyd gan y Swyddfa Fyfyrwyr o dan adran 29 o Ddeddf Addysg Uwch ac Ymchwil 2017 ac sy'n parhau mewn grym.

(2) Yn y paragraff hwn, mae unrhyw gyfeiriad at y gofrestr yn gyfeiriad at y gofrestr a sefydlwyd ac a gynhelir gan y Swyddfa Fyfyrwyr o dan adran 3 o Ddeddf Addysg Uwch ac Ymchwil 2017.

Dehongli termau allweddol eraill

3.—(1) Yn y Rheoliadau hyn—

ystyr "aelod o'r lluoedd arfog" ("*member of the armed forces*") yw aelod o lynges, byddin neu lu awyr rheolaidd y Goron;

ystyr "awdurdod academaidd" ("*academic authority*"), mewn perthynas â sefydliad, yw'r corff llywodraethu neu gorff arall a chanddo swyddogaethau corff llywodraethu ac mae'n cynnwys person sy'n gweithredu gydag awdurdod y corff hwnnw;

ystyr "blwyddyn academaidd gyfredol" ("*current academic year*") yw blwyddyn academaidd y cwrs dynodedig y mae'r myfyriwr yn gwneud cais am gymorth ynddi;

ystyr "bwrsari gofal iechyd" ("*healthcare bursary*") yw bwrsari neu ddyfarndal o ddisgrifiad tebyg o dan adran 63(6) o Ddeddf Gwasanaethau Iechyd ac Iechyd y Cyhoedd 1968(**3**) neu Erthygl 44 o Orchymyn Gwasanaethau Iechyd a Chymdeithasol Personol (Gogledd Iwerddon) 1972(**4**);

ystyr "carcharor" ("*prisoner*") yw person sy'n bwrw dedfryd mewn carchar yn y Deyrnas Unedig gan gynnwys person sy'n cael ei gadw'n gaeth

(**1**) 2017 p. 29.
(**2**) Mae'r Swyddfa Fyfyrwyr yn gorff corfforedig a sefydlwyd o dan adran 1 o Ddeddf Addysg Uwch ac Ymchwil 2017.
(**3**) 1968 p. 46.
(**4**) O.S. 1972/1265 (G.I. 14).

mewn sefydliad troseddwyr ifanc (ac mae "carchar" i'w ddehongli yn unol â hynny);

ystyr "carcharor cymwys" ("*eligible prisoner*") yw carcharor—

(a) sy'n dechrau cwrs dynodedig ar neu ar ôl 1 Awst 2019,

(b) sydd wedi ei awdurdodi gan Lywodraethwr neu Gyfarwyddwr y carchar neu gan awdurdod priodol arall i astudio'r cwrs dynodedig, ac

(c) y mae ei ddyddiad rhyddhau cynharaf o fewn 4 blynedd i ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs dynodedig;

ystyr "cronfeydd cyhoeddus" ("*public funds*") yw arian a ddarperir gan Senedd y Deyrnas Unedig gan gynnwys cronfeydd a ddarperir gan Weinidogion Cymru;

ystyr "cwrs" ("*course*"), oni fydd y cyd-destun yn mynnu fel arall, yw rhaglen astudio a gaiff ei haddysgu, rhaglen ymchwil, neu gyfuniad o'r ddwy, ac a gaiff gynnwys un neu ragor o gyfnodau o brofiad gwaith, ac sy'n arwain, ar ôl eu cwblhau'n llwyddiannus, at ddyfarnu gradd feistr ôl-raddedig;

ystyr "cwrs dysgu o bell" ("*distance learning course*") yw cwrs nad yw'r sefydliad sy'n darparu'r cwrs yn ei gwneud yn ofynnol i fyfyriwr sy'n ymgymryd â'r cwrs fod yn bresennol mewn perthynas ag ef, ac eithrio i fodloni unrhyw ofyniad a osodir gan y sefydliad i fod yn bresennol mewn unrhyw sefydliad—

(a) at ddiben cofrestru, ymrestru neu unrhyw arholiad, neu

(b) ar benwythnos neu yn ystod unrhyw wyliau;

ystyr "cyfnodau o brofiad gwaith" ("*periods of work experience*") yw—

(a) cyfnodau o brofiad diwydiannol, proffesiynol neu fasnachol sy'n gysylltiedig â'r cwrs dynodedig mewn sefydliad, ond mewn man y tu allan i'r sefydliad hwnnw;

(b) cyfnodau pan fydd myfyriwr yn cael ei gyflogi ac yn preswylio mewn gwlad y mae ei hiaith yn un y mae'r myfyriwr yn ei hastudio ar gyfer cwrs dynodedig y myfyriwr hwnnw (ar yr amod bod y cyfnod preswylio yn y wlad honno yn un o ofynion cwrs y myfyriwr hwnnw a bod astudio un neu ragor o ieithoedd modern yn cyfrif am ddim llai na hanner cyfanswm yr amser a dreulir yn astudio ar y cwrs);

ystyr "cymhwyster cyfatebol neu uwch" ("*equivalent or higher qualification*") yw cymhwyster y penderfynir yn unol â pharagraff (2) ei fod yn gymhwyster cyfatebol neu uwch;

ystyr "cymorth" ("*support*"), ac eithrio pan nodir fel arall, yw cymorth ariannol ar ffurf grant neu fenthyciad a wneir gan Weinidogion Cymru o dan—

(a) y Rheoliadau hyn, neu

(b) unrhyw reoliadau eraill a wneir o dan adran 22 o Ddeddf 1998;

ystyr "Cynllun KESS 2" ("*KESS 2 Scheme*") yw Cynllun Ysgoloriaethau Sgiliau Economi Gwybodaeth 2 a gyllidir, yn rhannol, gan Gronfa Gymdeithasol Ewrop(**1**);

ystyr "dyfarndal statudol" ("*statutory award*") yw unrhyw ddyfarndal a roddir, unrhyw grant a delir, neu unrhyw gymorth arall a ddarperir, yn rhinwedd Deddf 1998 neu Ddeddf Addysg 1962(**2**), neu unrhyw ddyfarndal, grant neu gymorth arall cyffelyb, mewn cysylltiad ag ymgymryd â chwrs sy'n cael ei dalu o gronfeydd cyhoeddus;

ystyr "y ddeddfwriaeth ar fenthyciadau i fyfyrwyr" ("*student loans legislation*") yw Deddf Addysg (Benthyciadau i Fyfyrwyr) 1990(**3**), Gorchymyn Addysg (Benthyciadau i Fyfyrwyr) (Gogledd Iwerddon) 1990(**4**), Deddf Addysg (Yr Alban) 1980(**5**) a rheoliadau a wneir o dan y Deddfau hynny neu'r Gorchymyn hwnnw, Gorchymyn Addysg (Cymorth i Fyfyrwyr) (Gogledd Iwerddon) 1998(**6**) a rheoliadau a wneir o dan y Gorchymyn hwnnw neu Ddeddf 1998 a rheoliadau a wneir o dan Ddeddf 1998;

mae i "ffioedd" ("*fees*") yr ystyr a roddir yn adran 57(1) o Ddeddf Addysg Uwch (Cymru) 2015(**7**);

ystyr "gwladolyn UE" ("*EU national*") yw gwladolyn o Aelod-wladwriaeth o'r UE;

(**1**) Mae Cronfa Gymdeithasol Ewrop wedi ei sefydlu o dan Erthygl 162 o'r Cytuniad ar Weithrediad yr Undeb Ewropeaidd.

(**2**) 1962 p. 12 (a ddiddymwyd bellach).

(**3**) Fe'i diddymwyd gan Ddeddf Addysgu ac Addysg Uwch 1998 (p. 30), Atodlen 4, gydag arbedion *gweler* Gorchymyn Deddf Addysgu ac Addysg Uwch 1998 (Cychwyn Rhif 2 a Darpariaethau Trosiannol) 1998 (O.S. 1998/2004) (C. 46).

(**4**) O.S. 1990/1506 (G.I. 11), a ddiwygiwyd gan O.S. 1996/274 (G.I. 1), Atodlen 5 Rhan 2, O.S. 1996/1918 (G.I. 15), Erthygl 3 a'r Atodlen ac O.S. 1998/258 (G.I. 1), Erthyglau 3 i 6 ac a ddirymwyd, gydag arbedion, gan Rh.St. (G.I.) 1998 Rhif 306.

(**5**) 1980 p. 44.

(**6**) O.S. 1998/1760 (G.I. 14) y mae diwygiadau iddo nad ydynt yn berthnasol i'r Rheoliadau hyn.

(**7**) 2015 dccc 1.

mae "gwybodaeth" ("*information*") yn cynnwys dogfennau;

ystyr "perthynas agos" ("*close relative*") (mewn perthynas â pherson ("P")) yw—

(a) priod neu bartner sifil P;

(b) person sy'n byw fel arfer gyda P fel pe bai'r person yn briod neu'n bartner sifil i P;

(c) rhiant P, pan fo P o dan 25 oed;

(d) plentyn P, pan fo P yn ddibynnol ar y plentyn hwnnw.

(2) Caiff Gweinidogion Cymru benderfynu bod cymhwyster yn gymhwyster cyfatebol neu uwch—

(a) os oes gan fyfyriwr cymwys gymhwyster uwch o unrhyw sefydliad pa un a yw yn y Deyrnas Unedig ai peidio, a

(b) os yw'r cymhwyster y cyfeirir ato ym mharagraff (a) yn radd feistr ôl-raddedig o sefydliad yn y Deyrnas Unedig neu os yw o lefel academaidd sydd, ym marn Gweinidogion Cymru, yn cyfateb i gymhwyster y mae'r cwrs dynodedig yn arwain ato neu'n uwch na'r cymhwyster hwnnw.

ATODLEN 2 Rheoliad 9(1)(a)

Categorïau o fyfyrwyr cymwys

Categori 1 – Personau sydd wedi setlo yn y Deyrnas Unedig

1.—(1) Person—

(a) sydd ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs—

(i) wedi setlo yn y Deyrnas Unedig ac eithrio am y rheswm ei fod wedi ennill yr hawl i breswylio'n barhaol, a

(ii) yn preswylio fel arfer yng Nghymru,

(b) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, ac

(c) na fu'n preswylio yn y Deyrnas Unedig a'r Ynysoedd, yn ystod unrhyw ran o'r cyfnod y cyfeirir ato ym mharagraff (b), yn gyfan gwbl neu'n bennaf at ddiben cael addysg lawnamser (oni bai bod y person yn cael ei drin fel pe bai'n preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd yn unol â pharagraff 11(2)).

(2) Person—

(a) sydd wedi setlo yn y Deyrnas Unedig yn rhinwedd ennill yr hawl i breswylio'n barhaol,

(b) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs,

(c) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, a

(d) mewn achos pan oedd ei breswylio fel arfer, y cyfeirir ato ym mharagraff (c), yn gyfan gwbl neu'n bennaf at ddiben cael addysg lawnamser, a oedd yn preswylio fel arfer yn y diriogaeth sy'n ffurfio'r AEE a'r Swistir yn union cyn y cyfnod o breswylio fel arfer y cyfeirir ato ym mharagraff (c).

Categori 2 – Ffoaduriaid ac aelodau o'u teuluoedd

2.—(1) Person—

(a) sy'n ffoadur,

(b) sy'n preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd ac nad yw wedi peidio â phreswylio felly ers i'r person gael ei gydnabod yn ffoadur, ac

(c) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

(2) Person—

(a) sy'n briod neu'n bartner sifil i ffoadur,

(b) a oedd yn briod neu'n bartner sifil i'r ffoadur ar y dyddiad y gwnaeth y ffoadur y cais am loches,

(c) sy'n preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd ac nad yw wedi peidio â phreswylio felly er pan gafodd ganiatâd i aros yn y Deyrnas Unedig, a

(d) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

(3) Person—

(a) sy'n blentyn i ffoadur neu'n blentyn i briod neu i bartner sifil ffoadur,

(b) ar y dyddiad y gwnaeth y ffoadur y cais am loches, a oedd yn blentyn i'r ffoadur neu'n blentyn i berson a oedd yn briod neu'n bartner sifil i'r ffoadur ar y dyddiad hwnnw,

(c) a oedd o dan 18 oed ar y dyddiad y gwnaeth y ffoadur y cais am loches,

(d) sy'n preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd ac nad yw wedi peidio â phreswylio felly er pan gafodd ganiatâd i aros yn y Deyrnas Unedig, ac

(e) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

Categori 3 – Personau y rhoddwyd caniatâd iddynt aros fel personau diwladwriaeth ac aelodau o'u teuluoedd

3.—(1) Person y rhoddwyd caniatâd iddo aros fel person diwladwriaeth—

(a) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, a

(b) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

(2) Person—

(a)—(i) sy'n briod neu'n bartner sifil i berson y rhoddwyd caniatâd iddo aros fel person diwladwriaeth, a

(ii) a oedd, ar ddyddiad y cais i gael caniatâd i aros, yn briod neu'n bartner sifil i berson y rhoddwyd caniatâd iddo aros fel person diwladwriaeth,

(b) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, ac

(c) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

(3) Person—

(a)—(i) sy'n blentyn i berson y rhoddwyd caniatâd iddo aros fel person diwladwriaeth neu'n blentyn i briod neu i bartner sifil person y rhoddwyd caniatâd iddo aros fel person diwladwriaeth, a

(ii) a oedd, ar ddyddiad y cais i gael caniatâd i aros, yn blentyn i berson y rhoddwyd caniatâd iddo aros fel person diwladwriaeth neu'n blentyn i berson a oedd, ar ddyddiad y cais i gael caniatâd i aros, yn briod neu'n bartner sifil i berson y rhoddwyd caniatâd iddo aros fel person diwladwriaeth,

(b) a oedd o dan 18 oed ar ddyddiad y cais i gael caniatâd i aros,

(c) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, a

(d) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

(4) Yn y paragraff hwn—

(a) ystyr "person y rhoddwyd caniatâd iddo aros fel person diwladwriaeth" yw person—

(i) y mae ganddo ganiatâd cyfredol i aros fel person diwladwriaeth o dan y rheolau mewnfudo, a

(ii) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod ers i'r caniatâd hwnnw gael ei roi i'r person;

(b) ystyr "dyddiad y cais i gael caniatâd i aros" yw'r dyddiad y gwnaeth person y rhoddwyd caniatâd iddo aros fel person

diwladwriaeth gais i aros yn y Deyrnas Unedig fel person diwladwriaeth o dan y rheolau mewnfudo.

Categori 4 – Personau sydd â chaniatâd i ddod i mewn neu i aros ac aelodau o'u teuluoedd

4.—(1) Person—

(a) sydd â chaniatâd i ddod i mewn neu i aros,

(b) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, ac

(c) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

(2) Person—

(a) sy'n briod neu'n bartner sifil i berson sydd â chaniatâd i ddod i mewn neu i aros,

(b) a oedd yn briod neu'n bartner sifil i'r person sydd â chaniatâd i ddod i mewn neu i aros ar ddyddiad y cais i gael caniatâd i ddod i mewn neu i aros,

(c) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, a

(d) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

(3) Person—

(a) sy'n blentyn i berson sydd â chaniatâd i ddod i mewn neu i aros neu sy'n blentyn i briod neu i bartner sifil person sydd â chaniatâd i ddod i mewn neu i aros,

(b) a oedd, ar ddyddiad y cais i gael caniatâd i ddod i mewn neu i aros, o dan 18 oed ac yn blentyn i'r person sydd â chaniatâd i ddod i mewn neu i aros neu'n blentyn i berson a oedd yn briod neu'n bartner sifil i'r person sydd â chaniatâd i ddod i mewn neu i aros ar y dyddiad hwnnw,

(c) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, a

(d) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

(4) Yn y paragraff hwn, ystyr "person sydd â chaniatâd i ddod i mewn neu i aros" yw person ("P")—

(a) sydd—

(i) wedi gwneud cais am statws ffoadur ond sydd, o ganlyniad i'r cais hwnnw, wedi ei hysbysu'n ysgrifenedig gan berson sy'n gweithredu o dan awdurdod Ysgrifennydd Gwladol yr Adran Gartref, er yr ystyrir nad yw P yn cymhwyso i gael ei gydnabod yn ffoadur, y credir ei bod yn iawn caniatáu iddo ddod i mewn i'r Deyrnas Unedig neu aros ynddi ar sail diogelwch dyngarol neu ganiatâd yn ôl disgresiwn, ac y mae caniatâd wedi ei roi iddo i ddod i mewn neu i aros yn unol â hynny,

(ii) heb wneud cais am statws ffoadur ond sydd wedi ei hysbysu'n ysgrifenedig gan berson sy'n gweithredu o dan awdurdod Ysgrifennydd Gwladol yr Adran Gartref y credir ei bod yn iawn caniatáu i P ddod i mewn i'r Deyrnas Unedig neu aros ynddi ar sail caniatâd yn ôl disgresiwn, ac y mae caniatâd wedi ei roi iddo i ddod i mewn neu i aros yn unol â hynny,

(iii) wedi cael caniatâd i aros ar sail bywyd preifat o dan y rheolau mewnfudo,

(iv) wedi ei hysbysu'n ysgrifenedig gan berson sy'n gweithredu o dan awdurdod Ysgrifennydd Gwladol yr Adran Gartref, er yr ystyrir nad yw P yn cymhwyso i gael caniatâd i aros ar sail bywyd preifat o dan y rheolau mewnfudo, fod P wedi cael caniatâd i aros y tu allan i'r rheolau(**1**) ar sail Erthygl 8 o'r Confensiwn Ewropeaidd ar Hawliau Dynol,

(b) nad yw cyfnod ei ganiatâd i ddod i mewn neu i aros wedi dod i ben, neu y mae'r cyfnod hwnnw wedi ei adnewyddu ac nad yw'r cyfnod y cafodd ei adnewyddu ar ei gyfer wedi dod i ben, neu y mae apêl yn yr arfaeth (o fewn ystyr adran 104 o Ddeddf Cenedligrwydd, Mewnfudo a Lloches 2002(**2**)) mewn cysylltiad â'i ganiatâd i ddod i mewn neu i aros, ac

(**1**) Mae paragraff 276BE(2) o'r Rheolau Mewnfudo yn cyfeirio at hyn.

(**2**) 2002 p. 41. Diwygiwyd adran 104 gan Ddeddf Lloches a Mewnfudo (Trin Ceiswyr etc.) 2004 (p. 19), Atodlenni 2 a 4, Deddf Mewnfudo, Lloches a Chenedligrwydd 2006 (p. 13), adran 9, O.S. 2010/21, Deddf Mewnfudo 2014 (p. 22), Atodlen 9.

(c) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod ers i P gael caniatâd i ddod i mewn neu i aros.

(5) Yn y paragraff hwn, ystyr "dyddiad y cais i gael caniatâd i ddod i mewn neu i aros" yw'r dyddiad y gwnaeth y person sydd â chaniatâd i ddod i mewn neu i aros y cais a arweiniodd at y person hwnnw yn cael caniatâd i ddod i mewn i'r Deyrnas Unedig neu aros ynddi.

Categori 5 – Personau sydd â chaniatâd i aros o dan adran 67

5.—(1) Person—

(a) sydd â chaniatâd i aros o dan adran 67,

(b) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, ac

(c) sydd wedi bod yn preswylio yn y Deyrnas Unedig drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

(2) Person—

(a) sy'n blentyn i berson sydd â chaniatâd i aros o dan adran 67,

(b) a oedd, ar ddyddiad y cais i gael caniatâd i aros, o dan 18 oed ac yn blentyn i'r person sydd â chaniatâd i aros o dan adran 67,

(c) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, a

(d) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

(3) Yn y paragraff hwn—

(a) ystyr "person sydd â chaniatâd i aros o dan adran 67" yw person—

(i) y mae ganddo ganiatâd cyfredol i aros yn y Deyrnas Unedig o dan adran 67 o Ddeddf Mewnfudo 2016(**1**) ac yn unol â'r rheolau mewnfudo, a

(ii) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod ers i'r caniatâd hwnnw gael ei roi i'r person;

(b) ystyr "dyddiad y cais i gael caniatâd i aros" yw'r dyddiad y gwnaeth y person sydd â

(**1**) 2016 p. 19.

chaniatâd i aros o dan adran 67 y cais a arweiniodd at y person hwnnw yn cael caniatâd i aros yn y Deyrnas Unedig.

Categori 6 – Gweithwyr, personau cyflogedig, personau hunangyflogedig ac aelodau o'u teuluoedd

6.—(1) Person—

(a) sy'n un o'r canlynol—

(i) gweithiwr mudol AEE neu berson hunangyflogedig AEE, sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs;

(ii) person cyflogedig Swisaidd neu berson hunangyflogedig Swisaidd, sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs;

(iii) aelod o deulu person a grybwyllir yn is-baragraff (i) neu (ii), sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs;

(iv) gweithiwr trawsffiniol AEE neu berson hunangyflogedig trawsffiniol AEE;

(v) person cyflogedig trawsffiniol Swisaidd neu berson hunangyflogedig trawsffiniol Swisaidd;

(vi) aelod o deulu person a grybwyllir yn is-baragraff (iv) neu (v), a

(b) sydd wedi bod yn preswylio fel arfer yn y diriogaeth sy'n ffurfio'r AEE a'r Swistir drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

(2) Person—

(a) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs,

(b) sydd wedi bod yn preswylio fel arfer yn y diriogaeth sy'n ffurfio'r AEE a'r Swistir drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, ac

(c) sydd â hawlogaeth i gael cymorth yn rhinwedd Erthygl 10 o Reoliad (EU) Rhif 492/2011 Senedd Ewrop a'r Cyngor ar ryddid gweithwyr i symud o fewn yr Undeb, fel y'i hestynnwyd gan Gytundeb yr AEE(**1**).

(**1**) OJ Rhif L141, 27.05.2011, t. 1.

(3) Yn is-baragraff (1)—

ystyr "aelod o deulu" ("*family member*") yw—

(a) mewn perthynas â gweithiwr trawsffiniol AEE, gweithiwr mudol AEE, person hunangyflogedig trawsffiniol AEE neu berson hunangyflogedig AEE—

(i) priod y person neu ei bartner sifil,

(ii) disgynyddion uniongyrchol y person neu ddisgynyddion uniongyrchol priod neu bartner sifil y person sydd o dan 21 oed neu sy'n 21 oed a throsodd ac sy'n ddibynyddion y person neu'n ddibynyddion priod neu bartner sifil y person, neu

(iii) perthnasau uniongyrchol dibynnol yn llinach esgynnol y person neu yn llinach esgynnol priod neu bartner sifil y person;

(b) mewn perthynas â pherson cyflogedig trawsffiniol Swisaidd, person cyflogedig Swisaidd, person hunangyflogedig trawsffiniol Swisaidd neu berson hunangyflogedig Swisaidd—

(i) priod y person neu ei bartner sifil, neu

(ii) plentyn y person neu blentyn priod neu bartner sifil y person;

ystyr "gweithiwr mudol AEE" ("*EEA migrant worker*") yw gwladolyn AEE sy'n weithiwr, ac eithrio gweithiwr trawsffiniol AEE, yn y Deyrnas Unedig;

ystyr "gweithiwr trawsffiniol AEE" ("*EEA frontier worker*") yw gwladolyn AEE sydd—

(a) yn weithiwr yng Nghymru, a

(b) yn preswylio yn y Swistir neu yn nhiriogaeth Gwladwriaeth AEE ac eithrio'r Deyrnas Unedig ac sy'n dychwelyd i'w breswylfa yn y Swistir neu'r Wladwriaeth AEE honno, yn ôl y digwydd, o leiaf unwaith yr wythnos;

ystyr "person cyflogedig Swisaidd" ("*Swiss employed person*") yw gwladolyn Swisaidd sy'n berson cyflogedig, ac eithrio person cyflogedig trawsffiniol Swisaidd, yn y Deyrnas Unedig;

ystyr "person cyflogedig trawsffiniol Swisaidd" ("*Swiss frontier employed person*") yw gwladolyn Swisaidd sydd—

(a) yn berson cyflogedig yng Nghymru, a

(b) yn preswylio yn y Swistir neu yn nhiriogaeth Gwladwriaeth AEE ac eithrio'r Deyrnas Unedig ac sy'n dychwelyd i'w breswylfa yn y Swistir neu'r Wladwriaeth AEE honno, yn ôl y digwydd, o leiaf unwaith yr wythnos;

ystyr "person hunangyflogedig AEE" ("*EEA self-employed person*") yw gwladolyn AEE sy'n berson hunangyflogedig, ac eithrio person hunangyflogedig trawsffiniol AEE, yn y Deyrnas Unedig;

ystyr "person hunangyflogedig Swisaidd" ("*Swiss self-employed person*") yw gwladolyn Swisaidd sy'n berson hunangyflogedig, ac eithrio person hunangyflogedig trawsffiniol Swisaidd, yn y Deyrnas Unedig;

ystyr "person hunangyflogedig trawsffiniol AEE" ("*EEA frontier self-employed person*") yw gwladolyn AEE sydd—

(a) yn berson hunangyflogedig yng Nghymru, a

(b) yn preswylio yn y Swistir neu yn nhiriogaeth Gwladwriaeth AEE ac eithrio'r Deyrnas Unedig ac sy'n dychwelyd i'w breswylfa yn y Swistir neu'r Wladwriaeth AEE honno, yn ôl y digwydd, o leiaf unwaith yr wythnos;

ystyr "person hunangyflogedig trawsffiniol Swisaidd" ("*Swiss frontier self-employed person*") yw gwladolyn Swisaidd sydd—

(a) yn berson hunangyflogedig yng Nghymru, a

(b) yn preswylio yn y Swistir neu yn nhiriogaeth Gwladwriaeth AEE ac eithrio'r Deyrnas Unedig ac sy'n dychwelyd i'w breswylfa yn y Swistir neu'r Wladwriaeth AEE honno, yn ôl y digwydd, o leiaf unwaith yr wythnos.

(4) At ddibenion is-baragraff (3)—

ystyr "gweithiwr" yw "worker" o fewn ystyr Erthygl 7 o Gyfarwyddeb 2004/38 neu Gytundeb yr AEE, yn ôl y digwydd;

ystyr "gwladolyn AEE" ("*EEA national*") yw gwladolyn o Wladwriaeth AEE ac eithrio'r Deyrnas Unedig;

ystyr "person cyflogedig" ("*employed person*") yw person cyflogedig o fewn ystyr Atodiad 1 i Gytundeb y Swistir;

ystyr "person hunangyflogedig" ("*self-employed person*") yw—

(a) mewn perthynas â gwladolyn AEE, person sy'n hunangyflogedig o fewn ystyr Erthygl 7 o Gyfarwyddeb 2004/38 neu Gytundeb yr AEE, yn ôl y digwydd, neu

(b) mewn perthynas â gwladolyn Swisaidd, person sy'n berson hunangyflogedig o fewn ystyr Atodiad 1 i Gytundeb y Swistir.

Categori 7 – Personau sydd wedi setlo yn y Deyrnas Unedig ac sydd wedi arfer hawl i breswylio yn rhywle arall

7.—(1) Person—

(a) sydd wedi setlo yn y Deyrnas Unedig,

(b) a oedd yn preswylio fel arfer yng Nghymru ac wedi setlo yn y Deyrnas Unedig yn union cyn ymadael â'r Deyrnas Unedig ac sydd wedi arfer hawl i breswylio,

(c) sy'n preswylio fel arfer yn y Deyrnas Unedig ar y diwrnod y mae'r cwrs yn dechrau,

(d) sydd wedi bod yn preswylio fel arfer yn y diriogaeth sy'n ffurfio'r AEE a'r Swistir drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, ac

(e) mewn achos pan oedd ei breswylio fel arfer, y cyfeirir ato ym mharagraff (d), yn gyfan gwbl neu'n bennaf at ddibenion cael addysg lawnamser, a oedd yn preswylio fel arfer yn y diriogaeth sy'n ffurfio'r AEE a'r Swistir yn union cyn y cyfnod o breswylio fel arfer y cyfeirir ato ym mharagraff (d).

(2) At ddibenion y paragraff hwn, mae person wedi arfer hawl i breswylio os yw is-baragraff (3) neu (4) yn gymwys i'r person.

(3) Mae'r is-baragraff hwn yn gymwys i berson sydd—

(a) yn wladolyn o'r Deyrnas Unedig,

(b) yn aelod o deulu gwladolyn o'r Deyrnas Unedig at ddibenion Erthygl 7 o Gyfarwyddeb 2004/38 (neu ddibenion cyfatebol o dan Gytundeb yr AEE neu Gytundeb y Swistir), neu

(c) yn berson sydd wedi arfer hawl i breswylio'n barhaol,

sydd wedi arfer hawl o dan Erthygl 7 o Gyfarwyddeb 2004/38 neu unrhyw hawl gyfatebol o dan Gytundeb yr AEE neu Gytundeb y Swistir mewn gwladwriaeth ac eithrio'r Deyrnas Unedig.

(4) Mae'r paragraff hwn yn gymwys i berson ("P")—

(a) sydd wedi setlo yn y Deyrnas Unedig a chanddo hawl i breswylio'n barhaol, a

(b) sy'n mynd i'r wladwriaeth o fewn y diriogaeth sy'n ffurfio'r AEE a'r Swistir y mae P yn wladolyn ohoni neu y mae'r person y mae P yn aelod o deulu mewn perthynas ag ef yn wladolyn ohoni.

(5) At ddibenion is-baragraff (4), mae P yn aelod o deulu person arall ("Q") os yw P—

(a) yn briod neu'n bartner sifil i Q,

(b) yn ddisgynnydd uniongyrchol Q neu'n ddisgynnydd uniongyrchol priod neu bartner sifil Q a bod P—

(i) o dan 21 oed, neu

(ii) yn 21 oed neu drosodd ac yn ddibynnydd Q neu'n ddibynnydd priod neu bartner sifil Q, neu

(c) pan fo Q yn wladolyn UE sy'n dod o fewn Erthygl 7(1)(b) o Gyfarwyddeb 2004/38, yn berthynas uniongyrchol dibynnol yn llinach esgynnol Q neu yn llinach esgynnol priod neu bartner sifil Q.

Categori 8 – Gwladolion UE

8.—(1) Person—

(a) sydd naill ai—

(i) yn wladolyn UE ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, ac eithrio person sy'n wladolyn o'r Deyrnas Unedig nad yw wedi arfer hawl i breswylio, neu

(ii) yn aelod o deulu person o'r fath,

(b) sy'n ymgymryd â chwrs dynodedig yng Nghymru,

(c) sydd wedi bod yn preswylio fel arfer yn y diriogaeth sy'n ffurfio'r AEE a'r Swistir drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, a

(d) na fu'n preswylio fel arfer yn y diriogaeth sy'n ffurfio'r AEE a'r Swistir yn ystod unrhyw ran o'r cyfnod y cyfeirir ato ym mharagraff (c) yn gyfan gwbl neu'n bennaf at ddiben cael addysg lawnamser (oni bai bod y person yn cael ei drin fel pe bai'n preswylio fel arfer yn y diriogaeth honno yn unol â pharagraff 11(2)).

(2) Person—

(a) sy'n wladolyn UE ac eithrio gwladolyn o'r Deyrnas Unedig ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs,

(b) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs,

(c) sydd wedi bod yn preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd drwy gydol y cyfnod o dair blynedd yn union cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, a

(d) mewn achos pan oedd ei breswylio fel arfer, y cyfeirir ato ym mharagraff (c), yn gyfan gwbl neu'n bennaf at ddiben cael addysg lawnamser, a oedd yn preswylio fel arfer yn y diriogaeth sy'n ffurfio'r AEE a'r Swistir yn union cyn y cyfnod o breswylio fel arfer y cyfeirir ato ym mharagraff (c).

(3) Pan fo gwladwriaeth yn ymaelodi â'r Undeb Ewropeaidd ar ôl diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs a bod person yn wladolyn o'r wladwriaeth honno, trinnir y gofyniad yn is-baragraff (1)(a) neu (2)(a) fel gofyniad sydd wedi ei fodloni.

(4) At ddibenion is-baragraff (1)(a), nid yw gwladolyn o'r Deyrnas Unedig wedi arfer hawl i breswylio os nad yw'r person hwnnw wedi arfer hawl o dan Erthygl 7 o Gyfarwyddeb 2004/38 neu unrhyw hawl gyfatebol o dan Gytundeb yr AEE neu Gytundeb y Swistir mewn gwladwriaeth ac eithrio'r Deyrnas Unedig.

(5) At ddibenion is-baragraff (1)(a), mae person ("P") yn aelod o deulu person arall ("Q") os yw—

(a) P yn briod neu'n bartner sifil i Q,

(b) P yn ddisgynnydd uniongyrchol Q neu'n ddisgynnydd uniongyrchol priod neu bartner sifil Q a bod P—

(i) o dan 21 oed, neu

(ii) yn 21 oed neu drosodd ac yn ddibynnydd Q neu'n ddibynnydd priod neu bartner sifil Q, neu

(c) mewn achos pan fo Q yn wladolyn UE sy'n dod o fewn Erthygl 7(1)(b) o Gyfarwyddeb 2004/38, P yn berthynas uniongyrchol dibynnol yn llinach esgynnol Q neu yn llinell esgynnol priod neu bartner sifil Q.

Categori 9 – Plant gwladolion Swisaidd

9. Person—

(a) sy'n blentyn i wladolyn Swisaidd y mae ganddo hawlogaeth i gael cymorth yn y Deyrnas Unedig yn rhinwedd Erthygl 3(6) o Atodiad 1 i Gytundeb y Swistir,

(b) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs,

(c) sydd wedi bod yn preswylio fel arfer yn y diriogaeth sy'n ffurfio'r AEE a'r Swistir drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, a

(d) mewn achos pan oedd ei breswylio fel arfer, y cyfeirir ato yn is-baragraff (c), yn

gyfan gwbl neu'n bennaf at ddiben cael addysg lawnamser, a oedd yn preswylio fel arfer yn y diriogaeth sy'n ffurfio'r AEE a'r Swistir yn union cyn y cyfnod o breswylio fel arfer y cyfeirir ato yn is-baragraff (c).

Categori 10 – Plant gweithwyr Twrcaidd

10.—(1) Person—

(a) sy'n blentyn i weithiwr Twrcaidd,

(b) sy'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs, ac

(c) sydd wedi bod yn preswylio fel arfer yn y diriogaeth sy'n ffurfio'r AEE, y Swistir a Thwrci drwy gydol y cyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs.

(2) Yn y paragraff hwn, ystyr "gweithiwr Twrcaidd" yw gwladolyn Twrcaidd—

(a) sy'n preswylio fel arfer yn y Deyrnas Unedig a'r Ynysoedd, a

(b) sy'n cael, neu sydd wedi cael, ei gyflogi'n gyfreithlon yn y Deyrnas Unedig.

Preswylio fel arfer – darpariaeth ychwanegol

11.—(1) At ddiben yr Atodlen hon, mae person sy'n preswylio fel arfer yng Nghymru, Lloegr, yr Alban, Gogledd Iwerddon neu'r Ynysoedd, o ganlyniad i fod wedi symud o un arall o'r ardaloedd hynny at ddiben ymgymryd—

(a) â'r cwrs dynodedig, neu

(b) gan ddiystyru unrhyw wyliau yn y cyfamser, â chwrs yr ymgymerodd y person ag ef yn union cyn ymgymryd â'r cwrs dynodedig,

i'w ystyried yn berson sy'n preswylio fel arfer yn y lle y mae'r person wedi symud ohono.

(2) At ddiben yr Atodlen hon, mae person ("P") i'w drin fel rhywun sy'n preswylio fel arfer yng Nghymru, y Deyrnas Unedig a'r Ynysoedd neu yn y diriogaeth sy'n ffurfio'r AEE, y Swistir a Thwrci pe bai P wedi bod yn preswylio felly oni bai am y ffaith bod—

(a) P,

(b) priod neu bartner sifil P,

(c) rhiant P, neu

(d) yn achos perthynas uniongyrchol dibynnol yn y llinach esgynnol, plentyn P neu briod neu bartner sifil plentyn P,

yn gyflogedig dros dro neu wedi bod yn gyflogedig dros dro y tu allan i Gymru, y Deyrnas Unedig a'r

Ynysoedd neu'r diriogaeth sy'n ffurfio'r AEE, y Swistir a Thwrci.

(3) At ddibenion is-baragraff (2), mae cyflogaeth dros dro y tu allan i Gymru, y Deyrnas Unedig a'r Ynysoedd neu'r diriogaeth sy'n ffurfio'r AEE, y Swistir a Thwrci yn cynnwys—

(a) yn achos aelodau o'r lluoedd arfog, unrhyw gyfnod pan fyddant yn gwasanaethu y tu allan i'r Deyrnas Unedig fel aelodau o luoedd o'r fath;

(b) yn achos aelodau o luoedd arfog rheolaidd Gwladwriaeth AEE neu'r Swistir, unrhyw gyfnod pan fyddant yn gwasanaethu y tu allan i'r diriogaeth sy'n ffurfio'r AEE a'r Swistir fel aelodau o luoedd o'r fath;

(c) yn achos aelodau o luoedd arfog rheolaidd Twrci, unrhyw gyfnod pan fyddant yn gwasanaethu y tu allan i'r diriogaeth sy'n ffurfio'r AEE, y Swistir a Thwrci fel aelodau o luoedd o'r fath.

(4) At ddibenion yr Atodlen hon, mae myfyriwr cymwys sy'n garcharor i'w ystyried fel pe bai'n preswylio fel arfer yn y rhan o'r Deyrnas Unedig lle yr oedd y carcharor yn preswylio cyn cael ei ddedfrydu.

(5) At ddibenion yr Atodlen hon, mae ardal—

(a) nad oedd gynt yn rhan o'r UE neu'r AEE, ond

(b) sydd ar unrhyw adeg cyn neu ar ôl i'r Rheoliadau hyn ddod i rym yn dod yn rhan o'r naill neu'r llall, neu o'r ddwy, o'r tiriogaethau hyn,

i'w hystyried fel pe bai bob amser wedi bod yn rhan o'r AEE.

Darpariaeth bellach ar breswylio fel arfer: personau sy'n ymadael â gofal

12.—(1) Caiff person sy'n ymadael â gofal ei drin fel pe bai'n preswylio fel arfer yng Nghymru ar ddiwrnod cyntaf blwyddyn academaidd gyntaf y cwrs dynodedig hyd yn oed os yw'r person sy'n ymadael â gofal, ar y diwrnod hwnnw—

(a) yn derbyn gofal y tu allan i Gymru (mewn achos pan fo rheoliad 29(c)(i) yn gymwys i'r myfyriwr), neu

(b) yn preswylio y tu allan i Gymru o dan orchymyn gwarcheidiaeth arbennig (mewn achos pan fo rheoliad 29(c)(ii) yn gymwys i'r myfyriwr),

o dan drefniadau a wneir gan awdurdod lleol Cymreig.

(2) Ym mharagraff (1)—

ystyr "awdurdod lleol Cymreig" ("*Welsh local authority*") yw awdurdod lleol o fewn yr ystyr a roddir gan adran 197(1) o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014;

mae i "derbyn gofal" ("*looked after*") yr ystyr a roddir yn adran 74 o'r Ddeddf honno;

mae i "person sy'n ymadael â gofal" ("*care leaver*") yr ystyr a roddir yn rheoliad 29.

Dehongli

13. Yn yr Atodlen hon—

ystyr "AEE" ("*EEA*") yw'r Ardal Economaidd Ewropeaidd, sef y diriogaeth a ffurfir gan y Gwladwriaethau AEE;

ystyr "Cyfarwyddeb 2004/38" ("*Directive 2004/38*") yw Cyfarwyddeb 2004/38/EC Senedd Ewrop a'r Cyngor ddyddiedig 29 Ebrill 2004 ar hawliau dinasyddion yr Undeb ac aelodau o'u teuluoedd i symud a phreswylio'n rhydd yn nhiriogaeth yr Aelod-wladwriaethau(**1**);

ystyr "Cytundeb y Swistir" ("*Swiss Agreement*") yw'r Cytundeb rhwng yr UE a'i Aelod-wladwriaethau, o'r naill ran, a Chydffederasiwn y Swistir, o'r rhan arall, ar Symudiad Rhydd Personau a lofnodwyd yn Lwcsembwrg ar 21 Mehefin 1999(**2**) ac a ddaeth i rym ar 1 Mehefin 2002;

ystyr "ffoadur" ("*refugee*") yw person a gydnabyddir gan lywodraeth Ei Mawrhydi yn ffoadur o fewn ystyr Confensiwn y Cenhedloedd Unedig sy'n ymwneud â Statws Ffoaduriaid a wnaed yng Ngenefa ar 28 Gorffennaf 1951(**3**) fel y'i hestynnwyd gan ei Brotocol 1967(**4**);

ystyr "hawl i breswylio'n barhaol" ("*right of permanent residence*") yw hawl sy'n codi o dan Gyfarwyddeb 2004/38 i breswylio yn y Deyrnas Unedig yn barhaol heb gyfyngiad;

ystyr "rheolau mewnfudo" ("*immigration rules*") yw'r rheolau a osodir gerbron Senedd y Deyrnas Unedig gan yr Ysgrifennydd Gwladol o dan adran 3(2) o Ddeddf Mewnfudo 1971(**5**);

mae "rhiant" ("*parent*") yn cynnwys gwarcheidwad, unrhyw berson arall a chanddo gyfrifoldeb rhiant dros blentyn ac unrhyw berson a chanddo ofal am blentyn ac mae "plentyn" i'w ddehongli yn unol â hynny;

(**1**) OJ Rhif L158, 30.04.2004, t. 77-123.
(**2**) Gorch. 4904 ac OJ Rhif L114, 30.04.02, t. 6.
(**3**) Gorchmn. 9171.
(**4**) Gorchmn. 3906, daeth y Protocol i rym ar 4 Hydref 1967.
(**5**) 1971 p. 77.

mae i "wedi setlo" yr ystyr a roddir i "settled" gan adran 33(2A) o Ddeddf Mewnfudo 1971(**1**);

ystyr "Ynysoedd" ("*Islands*") yw Ynysoedd y Sianel ac Ynys Manaw.

(**1**) 1971 p. 77; mewnosodwyd adran 33(2A) gan baragraff 7 o Atodlen 4 i Ddeddf Cenedligrwydd Prydeinig 1981 (p. 61).

ATODLEN 3 Rheoliad 28

Cyfrifo incwm

RHAN 1

Cyflwyniad

Trosolwg o'r Atodlen

1.—(1) Mae'r Atodlen hon wedi ei threfnu fel a ganlyn.

(2) Mae Rhan 2 yn gwneud darpariaeth ynghylch cyfrifo incwm aelwyd myfyriwr cymwys at ddibenion penderfynu ar swm y grant cyfrannu at gostau sy'n daladwy i'r myfyriwr.

(3) Mae Rhan 3 yn nodi ystyr "incwm trethadwy", sy'n ofynnol er mwyn cyfrifo incwm gweddilliol person.

(4) Mae Rhan 4 yn gwneud darpariaeth ynghylch cyfrifo incwm gweddilliol pan fo—

(a) Pennod 1 yn nodi sut i gyfrifo incwm gweddilliol myfyriwr cymwys at ddibenion cyfrifo incwm aelwyd y myfyriwr, a

(b) Pennod 2 yn nodi sut i gyfrifo incwm gweddilliol rhiant myfyriwr cymwys, partner myfyriwr cymwys neu bartner rhiant myfyriwr cymwys at ddibenion cyfrifo incwm aelwyd y myfyriwr.

(5) Mae Rhan 5 yn diffinio termau penodol a ddefnyddir yn yr Atodlen hon.

RHAN 2

Incwm yr aelwyd

Incwm aelwyd myfyriwr cymwys

2. Mae'r Rhan hon yn gwneud darpariaeth ynghylch cyfrifo incwm aelwyd myfyriwr cymwys.

Cyfrifo incwm yr aelwyd

3.—(1) Mae incwm aelwyd myfyriwr cymwys yn cael ei gyfrifo drwy gymhwyso'r camau a ganlyn—

Cam 1

Os nad yw'r myfyriwr yn fyfyriwr cymwys annibynnol (gweler paragraff 4), cyfrifo cyfanred incwm gweddilliol y personau a restrir yn Rhestr A.

Os yw'r myfyriwr yn fyfyriwr cymwys annibynnol, cyfrifo cyfanred incwm y personau a restrir yn Rhestr B.

Rhestr A

Y personau yw—

(a) y myfyriwr cymwys, plws

(b) naill ai—

(i) pob un o rieni'r myfyriwr cymwys (yn ddarostyngedig i baragraff 5), neu

(ii) pan fo rhieni'r myfyriwr wedi gwahanu, y rhiant a ddewisir o dan baragraff 6(3) a phartner y rhiant hwnnw (os oes un gan y rhiant hwnnw), (yn ddarostyngedig i baragraff 7).

Rhestr B

Y personau yw—

(a) y myfyriwr cymwys annibynnol, plws

(b) partner y myfyriwr (os oes un gan y myfyriwr), (yn ddarostyngedig i baragraffau 7 ac 8).

Cam 2

Cyfrifo swm cymwys didyniad plentyn dibynnol (gweler is-baragraffau (2) i (4)) a didynnu hynny o'r cyfanswm cyfanredol a gyfrifir o dan Gam 1.

Y canlyniad yw incwm aelwyd y myfyriwr cymwys.

(2) Mae didyniad plentyn dibynnol yn ddidyniad a wneir mewn cysylltiad â phob plentyn sy'n ariannol ddibynnol yn gyfan gwbl neu'n bennaf ar—

(a) y myfyriwr cymwys,

(b) partner y myfyriwr cymwys,

(c) rhiant y myfyriwr cymwys, neu

(d) partner rhiant y myfyriwr cymwys,

pan fo incwm y person hwnnw yn cael ei ystyried at ddiben cyfrifo incwm yr aelwyd.

(3) Ond nid oes didyniad i'w wneud mewn cysylltiad â phlentyn—

(a) rhiant y myfyriwr cymwys, neu

(b) partner rhiant y myfyriwr cymwys,

os y myfyriwr cymwys yw'r plentyn.

(4) Yn Nhabl 2, mae Colofn 2 yn nodi swm y didyniad plentyn dibynnol mewn cysylltiad â'r flwyddyn academaidd a nodir yn y cofnod cyfatebol yng Ngholofn 1.

Tabl 2

Colofn 1	*Colofn 2*
Blwyddyn academaidd	*Swm y didyniad plentyn dibynnol*
Sy'n dechrau ar neu ar ôl 1 Medi 2019	£1,130

Myfyrwyr cymwys annibynnol

4.—(1) Mae myfyriwr cymwys yn fyfyriwr cymwys annibynnol os yw un o'r achosion a ganlyn yn gymwys—

Achos 1

Mae'r myfyriwr yn 25 oed neu drosodd ar ddiwrnod cyntaf y flwyddyn academaidd gyfredol.

Achos 2

Mae'r myfyriwr yn briod neu mewn partneriaeth sifil cyn dechrau diwrnod cyntaf y flwyddyn academaidd gyfredol, pa un a yw'r briodas neu'r bartneriaeth sifil yn parhau i fod ar ôl y dyddiad hwnnw ai peidio.

Achos 3

Nid oes gan y myfyriwr riant sy'n fyw.

Achos 4

Mae Gweinidogion Cymru wedi eu bodloni—

(a) na ellir dod o hyd i'r naill na'r llall o rieni'r myfyriwr, neu

(b) nad yw'n rhesymol ymarferol cysylltu â'r naill na'r llall o rieni'r myfyriwr.

Achos 5

Naill ai—

(a) nid yw'r myfyriwr wedi cyfathrebu â'r naill na'r llall o'i rieni am gyfnod o flwyddyn neu fwy sy'n dod i ben ar y diwrnod cyn diwrnod cyntaf y flwyddyn academaidd gyfredol, neu

(b) ym marn Gweinidogion Cymru, mae'r myfyriwr wedi ymddieithrio oddi wrth ei rieni ar seiliau eraill fel nad oes modd cymodi.

Achos 6

Mae rhieni'r myfyriwr yn preswylio y tu allan i'r Undeb Ewropeaidd ac mae Gweinidogion Cymru wedi eu bodloni—

(a) y byddai asesu incwm yr aelwyd drwy gyfeirio at incwm y rhieni yn gosod y rhieni hynny mewn perygl, neu

(b) na fyddai'n rhesymol ymarferol i'r rhieni anfon arian i'r Deyrnas Unedig at ddibenion rhoi cymorth i'r myfyriwr.

Achos 7

Pan fo paragraff 6 (rhieni yn gwahanu) yn gymwys, mae'r rhiant a ddewisir gan Weinidogion Cymru o dan is-baragraff (3) o'r paragraff hwnnw wedi marw, ni waeth a oedd gan y rhiant hwnnw bartner ai peidio.

Achos 8

Ar ddiwrnod cyntaf y flwyddyn academaidd gyfredol, mae gan y myfyriwr ofal dros berson sydd o dan 18 oed.

Achos 9

Mae'r myfyriwr wedi cael ei gefnogi gan enillion y myfyriwr am unrhyw gyfnod o dair blynedd (neu gyfnodau sydd, gyda'i gilydd, yn dod i gyfanred o dair blynedd o leiaf) sy'n dod i ben cyn diwrnod cyntaf blwyddyn academaidd gyntaf y cwrs dynodedig.

Achos 10

Mae'r myfyriwr yn berson sy'n ymadael â gofal o fewn yr ystyr a roddir gan reoliad 29.

(2) At ddibenion Achos 9, mae myfyriwr cymwys yn cael ei drin fel pe bai'n cael ei gefnogi gan enillion y myfyriwr os, yn ystod y cyfnod neu'r cyfnodau y cyfeirir ato neu atynt yn Achos 9, yw un o'r seiliau a ganlyn yn gymwys—

Sail 1

Roedd y myfyriwr cymwys yn cymryd rhan mewn trefniadau ar gyfer hyfforddi personau di-waith o dan gynllun a weithredir, a noddir neu a gyllidir gan gorff cyhoeddus.

Sail 2

Roedd y myfyriwr cymwys yn cael budd-dal sy'n daladwy gan gorff cyhoeddus mewn cysylltiad â pherson sydd ar gael ar gyfer cyflogaeth ond sy'n ddi-waith.

Sail 3

Roedd y myfyriwr cymwys ar gael ar gyfer cyflogaeth ac wedi cydymffurfio ag unrhyw ofyniad cofrestru gan gorff cyhoeddus fel amod o hawlogaeth i gymryd rhan mewn trefniadau ar gyfer hyfforddiant neu i gael budd-daliadau.

Sail 4

Roedd gan y myfyriwr cymwys efrydiaeth wladol neu ddyfarndal cyffelyb.

Roedd y myfyriwr cymwys yn cael pensiwn, lwfans neu fudd-dal arall a delir oherwydd anabledd, anaf neu salwch y myfyriwr neu am reswm sy'n gysylltiedig â geni plentyn.

Rhiant myfyriwr cymwys yn marw gan adael rhiant sydd wedi goroesi

5.—(1) Pan fo—

(a) rhiant myfyriwr cymwys yn marw cyn y flwyddyn academaidd gyfredol, a

(b) incwm y rhiant wedi, neu y byddai incwm y rhiant wedi, cael ei ystyried at ddibenion penderfynu ar incwm yr aelwyd,

dim ond incwm gweddilliol y rhiant sydd wedi goroesi a gyfrifir yn gyfanred at ddibenion Cam 1 ym mharagraff 3(1).

(2) Pan fo'r rhiant yn marw yn ystod y flwyddyn academaidd gyfredol, incwm gweddilliol rhieni'r myfyriwr cymwys, at ddibenion Cam 1 ym mharagraff 3(1), yw cyfanred—

(a) incwm gweddilliol y ddau riant ar gyfer y flwyddyn ariannol gymwys wedi ei luosi ag X/52, a

(b) incwm gweddilliol y rhiant sydd wedi goroesi ar gyfer y flwyddyn ariannol gymwys wedi ei luosi ag Y/52,

pan—

X yw nifer yr wythnosau yn y flwyddyn academaidd gyfredol pan oedd y ddau riant yn fyw, ac

Y yw nifer yr wythnosau sy'n weddill yn y flwyddyn academaidd gyfredol.

Rhieni myfyriwr cymwys yn gwahanu

6.—(1) Pan fo rhieni'r myfyriwr cymwys wedi gwahanu drwy gydol y flwyddyn academaidd gyfredol, dim ond incwm gweddilliol y rhiant a ddewisir o dan is-baragraff (3) sy'n cael ei gyfrifo'n gyfanred at ddibenion Cam 1 ym mharagraff 3(1).

(2) Pan fo rhieni'r myfyriwr wedi gwahanu yn ystod y flwyddyn academaidd gyfredol, incwm gweddilliol rhieni'r myfyriwr cymwys, at ddibenion Cam 1 ym mharagraff 3(1), yw cyfanred—

(a) incwm gweddilliol y ddau riant ar gyfer y flwyddyn ariannol gymwys wedi ei luosi ag X/52, a

(b) incwm gweddilliol y rhiant a ddewisir o dan is-baragraff (3) ar gyfer y flwyddyn ariannol gymwys wedi ei luosi ag Y/52,

pan—

X yw nifer yr wythnosau yn y flwyddyn academaidd gyfredol pan nad oedd y rhieni wedi gwahanu, ac

Y yw nifer yr wythnosau yn y flwyddyn academaidd gyfredol pan oedd y rhieni wedi gwahanu.

(3) Pan fo is-baragraff (1) neu (2) yn gymwys, rhaid i Weinidogion Cymru ddewis y rhiant a chanddo'r incwm gweddilliol sydd fwyaf priodol ei ystyried o dan yr amgylchiadau.

Rhiant myfyriwr cymwys neu fyfyriwr cymwys annibynnol yn gwahanu o'i bartner

7.—(1) Pan fo—

(a) rhiant myfyriwr cymwys, neu

(b) myfyriwr cymwys annibynnol,

wedi gwahanu o'i bartner drwy gydol y flwyddyn academaidd gyfredol, nid yw incwm y partner yn cael ei gyfrifo'n gyfanred o dan Gam 1 ym mharagraff 3(1).

(2) Pan fo—

(a) rhiant y myfyriwr cymwys, neu

(b) myfyriwr cymwys annibynnol,

wedi gwahanu o'i bartner yn ystod y flwyddyn academaidd gyfredol, cyfrifir swm incwm gweddilliol y partner sydd i'w gyfrifo'n gyfanred o dan Gam 1 drwy gymhwyso'r fformiwla yn is-baragraff (3).

(3) Y fformiwla sydd i'w chymhwyso yw—

$$X \, x \, (\frac{C}{52})$$

Pan—

X yw incwm gweddilliol—

(a) partner rhiant y myfyriwr cymwys, pan fo Rhestr A o Gam 1 yn gymwys, neu

(b) partner y myfyriwr cymwys annibynnol, pan fo Rhestr B o Gam 1 yn gymwys,

ar gyfer y flwyddyn ariannol gymwys;

C yw nifer wythnosau cyflawn y flwyddyn academaidd gyfredol pan nad oedd—

(a) rhiant y myfyriwr cymwys a'i bartner, neu

(b) y myfyriwr cymwys annibynnol a phartner y myfyriwr,

wedi gwahanu.

(4) Pan fo gan fyfyriwr cymwys fwy nag un partner mewn unrhyw un flwyddyn academaidd, mae'r paragraff hwn a Cham 1 o baragraff 3(1) yn gymwys mewn perthynas â phob partner.

Myfyriwr cymwys annibynnol neu bartner yn rhiant i fyfyriwr cymwys

8. Pan fo—

(a) myfyriwr cymwys annibynnol ("A") neu bartner y myfyriwr cymwys annibynnol ("PA") yn rhiant i fyfyriwr cymwys ("M"), a

(b) dyfarndal statudol sy'n daladwy i M wedi ei gyfrifo drwy gyfeirio at incwm gweddilliol A neu PA, neu'r ddau,

nid yw incwm gweddilliol PA yn cael ei gyfrifo'n gyfanred o dan Restr B o Gam 1 ym mharagraff 3(1) at ddibenion cyfrifo incwm aelwyd A.

RHAN 3

Incwm trethadwy

Incwm trethadwy

9.—(1) Yn yr Atodlen hon, ystyr incwm trethadwy person yw—

(a) cyfanred—

(i) cyfanswm yr incwm y codir treth incwm ar y person amdano o dan Gam 1 o adran 23 o Ddeddf Treth Incwm 2007(**1**), a

(ii) os nad ydynt eisoes yn elfen o gyfanswm yr incwm o dan is-baragraff (i), daliadau a budd-daliadau eraill a bennir yn adran 401(1) o Ddeddf Treth Incwm (Enillion a Phensiynau) 2003(**2**) a geir gan y person neu sy'n cael eu trin fel pe baent wedi eu cael gan y person (ond diystyrir adran 401(2) o'r Ddeddf honno at ddibenion yr is-baragraff hwn), neu

(b) pan fo deddfwriaeth treth incwm Aelod-wladwriaeth arall yn gymwys i incwm y person, gyfanswm incwm y person o bob ffynhonnell fel y'i penderfynir at ddibenion deddfwriaeth treth incwm yr Aelod-wladwriaeth honno.

(**1**) 2007 p. 3; diwygiwyd adran 23 gan Ddeddf Cyllid 2009 (p. 10), Atodlen 1, paragraff 6(o)(i), Deddf Cyllid 2013 (p. 29), Atodlen 3, paragraff 2(2) a Deddf Cyllid 2014 (p. 26), Atodlen 17, paragraff 19.

(**2**) 2003 p. 1; diwygiwyd adran 401 gan O.S. 2005/3229, O.S. 2011/1037 ac O.S. 2014/211.

(2) At ddibenion is-baragraff (1)(b), pan fo deddfwriaeth treth incwm mwy nag un Aelod-wladwriaeth yn gymwys i'r person mewn cysylltiad â'r flwyddyn sydd o dan ystyriaeth, cyfanswm incwm y person o bob ffynhonnell yw'r swm sy'n deillio o'r penderfyniad sy'n arwain at swm mwyaf cyfanswm yr incwm, gan gynnwys unrhyw incwm y mae'n ofynnol ei ystyried o dan baragraff 18.

(3) Ond nid yw incwm trethadwy person yn cynnwys incwm a delir i berson arall o dan orchymyn trefniadau pensiwn.

RHAN 4

Incwm gweddilliol

PENNOD 1

Incwm gweddilliol myfyriwr cymwys

Cyfrifo incwm gweddilliol myfyriwr cymwys

10. At ddibenion cyfrifo incwm aelwyd myfyriwr cymwys o dan Ran 2, cyfrifir incwm gweddilliol y myfyriwr fel a ganlyn—

Incwm trethadwy'r myfyriwr cymwys mewn cysylltiad â'r flwyddyn academaidd gyfredol.

Plws

Incwm sy'n daladwy i'r myfyriwr cymwys o dan orchymyn trefniadau pensiwn yn ystod y flwyddyn academaidd gyfredol, ar ôl didynnu treth incwm.

Minws

Cyfanred y didyniadau a nodir ym mharagraff 11 (oni bai eu bod eisoes wedi eu didynnu at ddibenion penderfynu ar incwm trethadwy'r myfyriwr).

Didyniadau at ddiben cyfrifo incwm gweddilliol myfyriwr cymwys

11. At ddibenion cyfrifo incwm gweddilliol myfyriwr cymwys, y didyniadau yw—

Didyniad A

Tâl a roddir i'r myfyriwr cymwys yn y flwyddyn academaidd gyfredol am waith a wneir yn ystod unrhyw flwyddyn academaidd o'r cwrs, ond nid tâl mewn cysylltiad ag—

(a) unrhyw gyfnod o absenoldeb a gymerir gan y myfyriwr, neu

(b) unrhyw gyfnod arall pan fydd y myfyriwr wedi ei ryddhau o ddyletswydd i fod yn bresennol yn y gwaith,

fel y caiff y myfyriwr ymgymryd â'r cwrs.

Didyniad B

Swm gros unrhyw bremiwm neu swm a delir gan y myfyriwr cymwys yn ystod y flwyddyn academaidd gyfredol mewn perthynas â phensiwn—

(a) y rhoddir rhyddhad mewn cysylltiad ag ef o dan adran 188 o Ddeddf Cyllid 2004(**1**), neu

(b) pan fo incwm y myfyriwr yn cael ei gyfrifiannu at ddibenion deddfwriaeth treth incwm Aelod-wladwriaeth arall, y byddai rhyddhad yn cael ei roi mewn cysylltiad ag ef pe bai'r ddeddfwriaeth honno yn gwneud darpariaeth sy'n cyfateb i'r ddarpariaeth yn y Deddfau Treth Incwm,

ond nid yw'n cynnwys unrhyw swm a delir fel premiwm o dan bolisi aswiriant bywyd.

Incwm myfyriwr cymwys a geir mewn arian cyfred ac eithrio sterling

12.—(1) Pan fo'r myfyriwr cymwys yn cael incwm mewn arian cyfred ac eithrio sterling, gwerth yr incwm yw—

(a) swm y sterling y mae'r myfyriwr cymwys yn ei gael ar gyfer yr incwm, neu

(b) pan na fo'r myfyriwr yn troi'r incwm yn sterling, gwerth y sterling y byddai'r incwm yn ei brynu gan ddefnyddio cyfradd gyfnewid CThEM.

(2) Cyfradd gyfnewid CThEM(**2**) yw'r gyfradd a gyhoeddir gan Gyllid a Thollau Ei Mawrhydi ar gyfer y mis sy'n cyfateb i'r mis y ceir yr incwm ynddo.

PENNOD 2

Incwm gweddilliol personau ac eithrio myfyriwr cymwys

Personau y mae'r bennod hon yn gymwys iddynt

13. Mae'r Bennod hon yn gwneud darpariaeth ar gyfer cyfrifo incwm gweddilliol person ("P") pan fo P yn golygu'r canlynol—

(a) rhiant y myfyriwr cymwys,

(b) partner y myfyriwr cymwys, neu

(c) partner rhiant y myfyriwr cymwys,

(**1**) 2004 p. 12; diwygiwyd adran 188 gan Ddeddf Cyllid 2007 (p. 11), adrannau 68 a 114 ac Atodlenni 18, 19 a 27, Deddf Cyllid 2013 (p. 29), adran 52 a Deddf Cyllid 2014 (p. 26), Atodlen 7.

(**2**) *Gweler* https://www.gov.uk/government/collections/exchange-rates-for-customs-and-vat.

yn ôl y digwydd, a phan fo incwm P yn cael ei gyfrifo'n gyfanred o dan Gam 1 ym mharagraff 3(1) at ddiben cyfrifo incwm aelwyd myfyriwr cymwys.

Cyfrifo incwm gweddilliol personau ac eithrio myfyriwr cymwys

14. Cyfrifir incwm gweddilliol P fel a ganlyn—

Incwm trethadwy P ar gyfer y flwyddyn ariannol gymwys.

Plws

Incwm sy'n daladwy i P o dan orchymyn trefniadau pensiwn yn ystod y flwyddyn ariannol gymwys, ar ôl didynnu treth incwm.

Minws

Cyfanred y didyniadau a nodir ym mharagraff 15 (oni bai eu bod eisoes wedi eu didynnu at ddibenion penderfynu ar incwm trethadwy P).

Didyniadau at ddiben cyfrifo incwm gweddilliol personau ac eithrio myfyriwr cymwys

15.—(1) At ddiben cyfrifo incwm gweddilliol P, y didyniadau yw—

Didyniad A

Swm gros unrhyw bremiwm neu swm a delir gan P mewn cysylltiad â phensiwn yn ystod y flwyddyn ariannol gymwys—

(a) y rhoddir rhyddhad mewn perthynas ag ef o dan adran 188 o Ddeddf Cyllid 2004, neu

(b) pan fo incwm P yn cael ei gyfrifiannu at ddiben deddfwriaeth treth incwm Aelod-wladwriaeth arall, y byddai rhyddhad wedi cael ei roi mewn perthynas ag ef pe bai'r ddeddfwriaeth honno yn gwneud darpariaeth sy'n cyfateb i'r ddarpariaeth yn y Deddfau Treth Incwm,

ond nid yw'n cynnwys unrhyw swm a delir fel premiwm o dan bolisi aswiriant bywyd.

Didyniad B

Pan fo paragraff 18 yn gymwys, swm sy'n cyfateb i Ddidyniad A ar yr amod nad yw'r swm hwn yn fwy na'r didyniadau a fyddai'n cael eu gwneud pe bai holl incwm P yn incwm at ddibenion y Deddfau Treth Incwm mewn gwirionedd.

Didyniad C

£1,130, pan fo P—

(a) yn fyfyriwr cymwys mewn cysylltiad â'r flwyddyn academaidd gyfredol ond hefyd yn rhiant myfyriwr cymwys, neu

(b) wedi cael dyfarndal statudol mewn cysylltiad â'r un cyfnod.

Blynyddoedd ariannol cymwys: cyfrifo incwm gweddilliol personau ac eithrio myfyriwr cymwys

16.—(1) Mae'r paragraff hwn yn pennu'r flwyddyn ariannol gymwys at ddibenion cyfrifo incwm gweddilliol P.

(2) Oni bai bod is-baragraff (3) yn gymwys, y flwyddyn ariannol gymwys yw BF-1.

(3) Pan fo Gweinidogion Cymru wedi eu bodloni bod incwm gweddilliol P ar gyfer BG yn debygol o fod o leiaf 15% yn llai nag incwm gweddilliol P ar gyfer BF-1, y flwyddyn ariannol gymwys yw BG.

Incwm o fusnes neu broffesiwn

17.—(1) Mae is-baragraff (2) yn gymwys pan—

(a) y flwyddyn ariannol gymwys at ddibenion cyfrifo incwm gweddilliol P yw BF-1, a

(b) bo Gweinidogion Cymru wedi eu bodloni bod incwm P yn deillio'n gyfan gwbl neu'n bennaf o elw busnes neu broffesiwn a gynhelir gan P.

(2) Pan fo'r paragraff hwn yn gymwys, incwm gweddilliol P yw ei incwm ar gyfer y cyfnod cynharaf o ddeuddeng mis sy'n dod i ben yn BF-1 y cedwir cyfrifon mewn cysylltiad ag ef sy'n ymwneud â busnes neu broffesiwn P.

Trin incwm nas trinnir fel incwm at ddibenion treth incwm

18.—(1) Mae is-baragraff (3) yn gymwys pan fo P yn cael unrhyw incwm nad yw, am unrhyw un neu ragor o'r rhesymau a nodir yn is-baragraff (2), yn ffurfio rhan o incwm P at ddiben y Deddfau Treth Incwm neu ddeddfwriaeth treth incwm Aelod-wladwriaeth arall.

(2) Y rhesymau yw—

Rheswm 1

(a) nid yw P yn preswylio nac wedi ymgartrefu yn y Deyrnas Unedig, neu

(b) cyfrifiennir incwm P at ddibenion deddfwriaeth treth incwm Aelod-wladwriaeth arall ac nid yw P yn preswylio nac wedi ymgartrefu yn yr Aelod-wladwriaeth honno.

Rheswm 2

(a) nid yw incwm P yn codi yn y Deyrnas Unedig, neu

(b) nid yw incwm P yn codi yn yr Aelod-wladwriaeth y cyfrifiennir incwm P ynddi at ddibenion deddfwriaeth treth incwm y Wladwriaeth honno.

Rheswm 3

Mae'r incwm yn codi o swydd, gwasanaeth neu gyflogaeth y mae'r incwm ohoni neu ohono yn esempt rhag treth.

(3) Mae incwm trethadwy P i'w gymryd i gynnwys yr incwm a ddisgrifir yn is-baragraff (1) fel pe bai'n rhan o incwm P at ddibenion y Deddfau Treth Incwm neu ddeddfwriaeth treth incwm Aelod-wladwriaeth arall, yn ôl y digwydd.

Incwm P mewn arian cyfred ac eithrio sterling

19.—(1) Pan fo incwm P wedi ei gyfrifiannu at ddibenion deddfwriaeth treth incwm Aelod-wladwriaeth arall, mae incwm gweddilliol P i'w gyfrifo yn unol â'r Rhan hon yn arian cyfred yr Aelod-wladwriaeth honno ac i'w gymryd fel gwerth sterling yr incwm hwnnw a benderfynir yn unol â chyfradd berthnasol CThEM.

(2) Cyfradd berthnasol CThEM yw'r gyfradd gyfnewid ar gyfartaledd a ddyroddir gan Gyllid a Thollau Ei Mawrhydi ar gyfer y flwyddyn galendr sy'n dod i ben yn union cyn diwedd BF-1.

RHAN 5

Dehongli

Dehongli

20.—(1) Yn yr Atodlen hon, ystyr unrhyw gyfeiriad at bartner person ("A") yw—

(a) priod neu bartner sifil A, neu

(b) person sy'n byw fel arfer gydag A fel pe bai'r person yn briod neu'n bartner sifil A.

(2) Yn yr Atodlen hon—

ystyr "BF" ("*PY*") yw'r flwyddyn ariannol yn union cyn BG;

ystyr "BF-1" ("*PY-1*") yw'r flwyddyn ariannol yn union cyn BF;

ystyr "BG" ("*CY*") yw'r flwyddyn ariannol sy'n dechrau yn union cyn diwrnod cyntaf y flwyddyn academaidd gyfredol;

ystyr "blwyddyn ariannol" ("*financial year*") yw'r cyfnod o ddeuddeng mis y cyfrifiennir incwm person mewn cysylltiad ag ef at ddibenion y ddeddfwriaeth treth incwm sy'n gymwys iddo;

ystyr "blwyddyn ariannol gymwys" ("*applicable financial year*") yw'r flwyddyn ariannol y penderfynir arni yn unol â pharagraff 16;

ystyr "corff cyhoeddus" ("*public body*") yw awdurdod neu asiantaeth i'r wladwriaeth, boed yn genedlaethol, yn rhanbarthol neu'n lleol;

ystyr "gorchymyn trefniadau pensiwn" ("*pension arrangements order*") yw gorchymyn y mae person yn talu odano fudd-daliadau o dan drefniant pensiwn i berson arall o dan—

(a) adran 23 o Ddeddf Achosion Priodasol 1973(**1**) sy'n cynnwys darpariaeth a wneir yn rhinwedd adran 25B(4) (a chan gynnwys gorchymyn o'r fath fel y caiff effaith yn rhinwedd adran 25E(3) o'r Ddeddf honno)(**2**), neu

(b) Rhan 1 o Atodlen 5 i Ddeddf Partneriaeth Sifil 2004(**3**) sy'n cynnwys darpariaeth a wneir yn rhinwedd Rhan 6 o'r Atodlen honno (a chan gynnwys gorchymyn o'r fath fel y caiff effaith yn rhinwedd Rhan 7 o'r Atodlen honno).

(**1**) 1973 p. 18; diwygiwyd adran 23 gan Ddeddf Gweinyddu Cyfiawnder 1982 (p. 53), adran 16.

(**2**) Mewnosodwyd adran 25B gan Ddeddf Pensiynau 1995 (p. 20), adran 166(1) ac fe'i diwygiwyd gan Ddeddf Diwygio Lles a Phensiynau 1999 (p. 30), Atodlen 4. Mewnosodwyd adran 25E gan Ddeddf Pensiynau 2004 (p. 35), adran 319(1), Atodlen 12, paragraff 3 ac fe'i diwygiwyd gan Ddeddf Pensiynau 2008 (p. 30), Atodlen 6, paragraffau 1 a 6 ac Atodlen 11, Rhan 4.

(**3**) 2004 p. 33; addaswyd paragraff 25 o Atodlen 5 gan O.S. 2006/1934 a diwygiwyd paragraff 30 o Atodlen 5 gan Ddeddf Pensiynau 2008 (p. 30), Atodlenni 6 ac 11.

ATODLEN 4 Rheoliad 4(2)

Mynegai o dermau wedi eu diffinio

1. Mae Tabl 3 yn rhestru ymadroddion sydd wedi eu diffinio neu sydd wedi eu hesbonio fel arall yn y Rheoliadau hyn.

Tabl 3

Ymadrodd	*Wedi ei ddiffinio, neu y cyfeirir ato, yn...*
"AEE"	Atodlen 2, paragraff 13
"aelod o deulu"	Atodlen 2, paragraff 6(3)
"aelod o'r lluoedd arfog"	Atodlen 1, paragraff 3(1)
"awdurdod academaidd"	Atodlen 1, paragraff 3(1)
"awdurdod lleol Cymreig"	Atodlen 2, paragraff 12(2)
"benthyciad" (at ddibenion Eithriadau 1 a 2 yn rheoliad 10(1))	Rheoliad 10(2)
"benthyciad cyfrannu at gostau"	Rheoliad 30
"BF"	Atodlen 3, paragraff 20(2)
"BF–1"	Atodlen 3, paragraff 20(2)
"BG"	Atodlen 3, paragraff 20(2)
"blwyddyn academaidd"	Atodlen 1, paragraff 1
"blwyddyn academaidd gyfredol"	Atodlen 1, paragraff 3(1)
"blwyddyn ariannol"	Atodlen 3, paragraff 20(2)
"blwyddyn ariannol gymwys"	Atodlen 3, paragraff 20(2)
"bwrsari gofal iechyd"	Atodlen 1, paragraff 3(1)
"carcharor" a "carchar"	Atodlen 1, paragraff 3(1)
"carcharor cymwys"	Atodlen 1, paragraff 3(1)
"cofrestr"	Atodlen 1, paragraff 2(2)
"corff cyhoeddus"	Atodlen 3, paragraff 20(2)
"cronfeydd cyhoeddus"	Atodlen 1, paragraff 3(1)
"cwrs"	Atodlen 1, paragraff 3(1)
"cwrs dynodedig"	Pennod 1 o Ran 4
"cwrs dysgu o bell"	Atodlen 1, paragraff 3(1)
"cwrs newydd"	Rheoliad 17(1)
"Cyfarwyddeb 2004/38"	Atodlen 2, paragraff 13
"cyfnod cymhwystra"	Rheoliad 11
"cyfnodau o brofiad gwaith"	Atodlen 1, paragraff 3(1)
"cymhwyster cyfatebol neu uwch"	Atodlen 1, paragraff 3(1)
"cymorth"	Atodlen 1, paragraff 3(1)
"Cynllun KESS 2"	Atodlen 1, paragraff 3(1)
"Cytundeb y Swistir"	Atodlen 2, paragraff 13
"darparwr cynllun Seisnig"	Atodlen 1, paragraff 2(1)(f)
"Deddf 1998"	Rheoliad 5
"derbyn gofal"	Atodlen 2, paragraff 12(2)
"dyddiad y cais i gael caniatâd i aros" (at ddiben	Atodlen 2, paragraff 3(4)(b)

penderfynu a yw person yn aelod o deulu person y rhoddwyd caniatâd iddo aros fel person diwladwriaeth)	
“dyddiad y cais i gael caniatâd i aros” (at ddiben penderfynu a yw person yn blentyn i berson sydd â chaniatâd i aros o dan adran 67)	Atodlen 2, paragraff 5(3)(b)
“dyddiad y cais i gael caniatâd i ddod i mewn neu i aros” (at ddiben penderfynu a yw person yn aelod o deulu person sydd â chaniatâd i ddod i mewn neu i aros)	Atodlen 2, paragraff 4(5)
“dyfarndal statudol”	Atodlen 1, paragraff 3(1)
“y ddeddfwriaeth ar fenthyciadau i fyfyrwyr”	Atodlen 1, paragraff 3(1)
“ffioedd”	Atodlen 1, paragraff 3(1)
“ffoadur”	Atodlen 2, paragraff 13
“gorchymyn trefniadau pensiwn”	Atodlen 3, paragraff 20(2)
“grant cyfrannu at gostau”	Rheoliad 24
“grant sylfaenol”	Rheoliad 24
“gweithiwr”	Atodlen 2, paragraff 6(4)
“gweithiwr mudol AEE”	Atodlen 2, paragraff 6(3)
“gweithiwr trawsffiniol AEE”	Atodlen 2, paragraff 6(3)
“gweithiwr Twrcaidd”	Atodlen 2, paragraff 10(2)
“gwladolyn AEE”	Atodlen 2, paragraff 6(4)
“gwladolyn UE”	Atodlen 1, paragraff 3(1)
“gwybodaeth”	Atodlen 1, paragraff 3(1)
“hawl i breswylio’n barhaol”	Atodlen 2, paragraff 13
“incwm aelwyd”	Atodlen 3, Rhan 2
“incwm gweddilliol”	Atodlen 3, Rhan 4
“incwm trethadwy”	Atodlen 3, paragraff 9
“myfyriwr cymwys”	Rheoliad 9(1)
“myfyriwr cymwys annibynnol”	Atodlen 3, paragraff 4
“partner”	Atodlen 3, paragraff 20(1)
“person cyflogedig”	Atodlen 2, paragraff 6(4)
“person cyflogedig Swisaidd”	Atodlen 2, paragraff 6(3)
“person cyflogedig trawsffiniol Swisaidd”	Atodlen 2, paragraff 6(3)
“person hunangyflogedig”	Atodlen 2, paragraff 6(4)
“person hunangyflogedig AEE”	Atodlen 2, paragraff 6(3)
“person hunangyflogedig Swisaidd”	Atodlen 2, paragraff 6(3)
“person hunangyflogedig trawsffiniol AEE”	Atodlen 2, paragraff 6(3)
“person hunangyflogedig trawsffiniol Swisaidd”	Atodlen 2, paragraff 6(3)

“person sydd â chaniatâd i aros o dan adran 67”	Atodlen 2, paragraff 5(3)(a)
“person sydd â chaniatâd i ddod i mewn neu i aros”	Atodlen 2, paragraff 4(4)
“person sy’n ymadael â gofal”	Rheoliad 29
“person y rhoddwyd caniatâd iddo aros fel person diwladwriaeth”	Atodlen 2, paragraff 3(4)(a)
“perthynas agos”	Atodlen 1, paragraff 3(1)
“rheolau mewnfudo”	Atodlen 2, paragraff 13
“Rheoliadau Benthyciadau at Radd Ddoethurol 2018”	Rheoliad 7(c)
“Rheoliadau Benthyciadau at Radd Feistr 2017”	Rheoliad 2(3)
“Rheoliadau Cymorth i Fyfyrwyr 2017”	Rheoliad 7(a)
“Rheoliadau Cymorth i Fyfyrwyr 2018”	Rheoliad 7(b)
“rhiant” a “plentyn” (at ddibenion penderfynu ar gategori person o dan Atodlen 2)	Atodlen 2, paragraff 13
“sefydliad a gyllidir gan yr Alban”	Atodlen 1, paragraff 2(1)(b)
“sefydliad a gyllidir gan Gymru”	Atodlen 1, paragraff 2(1)(a)
“sefydliad a gyllidir gan Ogledd Iwerddon”	Atodlen 1, paragraff 2(1)(c)
“sefydliad rheoleiddiedig Seisnig”	Atodlen 1, paragraff 2(1)(d)
“sefydliad Seisnig cofrestredig”	Atodlen 1, paragraff 2(1)(e)
“wedi setlo”	Atodlen 2, paragraff 13
“Ynysoedd”	Atodlen 2, paragraff 13

Explanatory Memorandum to the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Higher Education 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 Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM
Minister for Education
30 April 2019

1. Description

The Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019, ('the Regulations') provide for the payment of postgraduate Master's degree loans and grants for courses beginning on or after 1 August 2019.

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

None.

3. Legislative background

Section 22 of the Teaching and Higher Education Act 1998 ('the 1998 Act') provides the Welsh Ministers with the power to make regulations authorising or requiring the payment of financial support to students studying courses of higher or further education designated by or under those regulations. In particular, this power enables the Welsh Ministers to prescribe the amount of financial support (grant or loan) and categories of attendance on higher education courses. This provision, together with section 42(6) of the 1998 Act, provide the Welsh Ministers with the power to make the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019.

Section 44 of the Higher Education Act 2004 ('the 2004 Act') provided for the transfer to the National Assembly for Wales of the functions of the Secretary of State under section 22 of the 1998 Act (except insofar as they relate to the making of any provision authorised by subsections (2)(a), (c), (j) or (k), (3)(e) or (f) or (5) of section 22). Section 44 of the 2004 Act also provided for the functions of the Secretary of State in section 22(2)(a), (c) and (k) to be exercisable concurrently with the National Assembly for Wales.

The functions of the Secretary of State under section 42(6) of the 1998 Act were transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32).

Each year, a number of functions of the Welsh Ministers in regulations made under section 22 of the 1998 Act are delegated to the Student Loans Company under section 23 of the 1998 Act.

This instrument will follow the Negative Resolution procedure.

4. Purpose and intended effect of the legislation

The Welsh Ministers intend to continue to support students undertaking a postgraduate Master's degree and have introduced a new package of support in response to the *Review of higher education and student finance arrangements in Wales* ('the Diamond Review'). The Diamond Review highlighted the financial barrier for students wishing to access postgraduate education and recommended that such students receive a similar level of support as undergraduate students.

The Regulations provide for the making of grants and loans to students who are ordinarily resident in Wales and those from the EU studying at a Welsh institution for postgraduate Master's degree courses which begin on or after 1 August 2019. To qualify for grants or loans, a student must be an 'eligible student' studying on a 'designated course'. Support under the Regulations is available to full-time students and part-time students studying at 50% or greater intensity.

Support is paid directly to the student and consists of a mixture of grant and loan support as a contribution to costs. A £1,000 non-means tested universal grant is available for all eligible students. The remaining support includes a means-tested grant up to a maximum of £5,885, available to those with a household income of up to £18,370. The grant reduces by £1 for every £6.937 of household income above that threshold. In addition to the grants a non-means tested contribution to costs loan is available to make up the difference between the total amount of grant support available to the student and the maximum total maintenance support of £17,000. Students who are eligible prisoners are in scope for support, including the £1,000 non-means tested universal grant and loan. However, they are not able to access the means-tested grant. Support for prisoners is capped at the fee amount charged which is paid directly to the student's higher education provider.

There is just one application per course, not per academic year. Full-time courses can be one or two years and part-time courses can be up to four years to be eligible for support. Students, who receive either the universal or means-tested grant, do not have to take out a loan. Students can transfer between eligible courses and change duration of the eligible course. No further support is available if a student withdraws, other than for Compelling Personal Reasons (CPR), which will be available only once.

Other key aspects are set out below:

- Available to students settled in the UK and ordinarily resident in Wales; to an EU national or family member of an EU national; to those with residency status as a refugee, a stateless person or with leave to enter

or remain (including leave to remain under section 67 of the Immigration Act 2016); to an EEA migrant worker or a Swiss worker; to a child of a Swiss national; and to a child of a Turkish worker.

- The loan and grant are available to students up to 60 years of age.
- Students must not have an equivalent level postgraduate qualification.
- Students must not have had a postgraduate Master's loan from Welsh Minister's or another UK administration previously.
- Students must not be in receipt of or have bestowed upon them other sources of funding.
- Available for study of postgraduate courses offered by providers based in the UK which meet certain designation criteria.
- Courses must be Master's degrees, including distance learning taught Master's degrees and research degrees leading to a Master's award.
- There is a 50% minimum requirement for courses which have an overseas study element, to be undertaken in the UK.

5. Consultation

The policy was consulted on during the Diamond Review.

6. Regulatory Impact Assessment

Participation in postgraduate higher education

For 2017/18, data from the Higher Education Statistics Authority shows that there were 16,665 Welsh domiciled postgraduate enrolments at UK Higher Education Institutions, an increase of 9% on 2016/17. This increase reverses recent declines to exceed the previous peak of 16,460 in 2010/11. These figures include enrolments on programmes that will be eligible for the support these regulations will provide (i.e. Master's level programmes), as well as those that will not (i.e. postgraduate qualifications below or above Master's level).

Options

Option 1: Do nothing

In the event of the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 not being made the principal implication is that the existing policy for student support would continue and the changes being proposed would not be implemented.

Currently eligible students in receipt of the postgraduate support are able to apply for a loan up to a maximum of £13,000. In the event of do nothing, postgraduate Master's students would not benefit from receiving an enhanced package of support through a mixture of grant and loan, up to a maximum of £17,000.

Option 2: Do minimum – make the Regulations

Making the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 ensures that the levels of postgraduate funding which the Cabinet Secretary for Education (now Minister for Education) agreed to following the Diamond Review are implemented in 2019/20 academic year providing parity with undergraduate support.

It is anticipated that this will contribute to maintaining and improving participation levels in postgraduate Master's courses in higher education. This will ensure that postgraduate Master's students benefit from the £1,000 universal grant available to all eligible students. Students then have a choice to be means tested for the remaining grant up to a maximum of £6,885 (including the universal element), depending on household income and a non-means tested contribution to costs loan is available to make up the difference between the maximum support available of £17,000 and the grant provision.

Costs and benefits

Option 1: Do nothing

Leaving the previous regulations in place would mean no additional costs are incurred via the student support system and students would only be able to access loans at the same value as in 2018/19, at £13,000. The recommendation to increase the value of support through a mixture of grant and loan for postgraduate Master's student support made as a result of the Diamond Review would not be implemented. There would be no benefit to Welsh students as a result.

Option 2: Do minimum – make the Regulations

By making the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 the Welsh Ministers ensure that policy commitments to higher education and students can be met. The Regulations will reflect the policy developed as a result of the Diamond Review by increasing support through grant for the less advantaged and loans for all. This will provide access to postgraduate study for all regardless of income and align with provision of undergraduate support. Students who are ordinarily resident in Wales and those from the EU studying at a Welsh institution will benefit from the changes to support outlined above. The benefits of a higher education to the individual, to the economy and to society are well established. The contribution to the economy is evidenced by statistics on UK graduates from higher education, which demonstrates a clear advantage to postgraduate leavers, compared with undergraduate leavers, with respect to employment and average salaries. Around 80% of 2016/17 postgraduate leavers were in employment (UK or

overseas), compared with around 65% of undergraduates, six months after graduation. This difference largely reflects the higher proportion of other undergraduate leavers that go on to further study, rather than employment. More than two thirds of 2016/17 postgraduate leavers employed full-time were earning an annual salary of at least £25,000, whereas a similar majority of undergraduate leavers were earning an annual salary below £25,000, six months after graduation.

Impact on students aged 60 and over

Those aged 60 and over are currently unable to access Welsh Government loan support for undergraduate and postgraduate degrees. Her Majesty's Treasury made funding available to the Welsh Government for the provision of loans, but stipulated that the net cost of the loan to Government should be zero. This meant that the Welsh Government had to carefully consider the cost of subsidising students who were unlikely to repay their student loan and a decision was made to align the age restriction for consistency with students in England.

The Regulations restrict eligibility for loan support to those under 60 years of age on the first day of the academic year in which the designated course starts. An age limit is discriminatory under the Equality Act 2010 and the European Convention on Human Rights (article 14 – prohibition on discrimination). Age discrimination can be justified if it meets a legitimate aim and is proportionate. The aim of the scheme is to increase, in the context of finite resources, high level skills for the economy. The Welsh Government considers that it is necessary to ensure value for money for the taxpayer and takes the view that the imposition of the age limit is rationally connected to that aim. To ensure value for money, sustainable funding is required and the age limit of 60 mitigates against the risk that loans are disproportionately taken out by older students who will be less likely to repay the loan in full or make significant repayments and who would have a limited number of working years in which their skills would be available to the economy.

Analysis carried out by The Welsh Government suggests that, on average, the older a borrower is, the less of their loan they are likely to repay. On average, younger borrowers are expected to repay more than they borrow (due to repaying the full loan plus interest on their account) while the oldest borrowers are likely to repay little of their loan. Although the data does not indicate a clear age at which to cap loans, less than 10% of any loans advanced to borrowers above the existing age 60 limit would be expected to be repaid. On average, younger borrowers contribute towards the loans that older borrowers (with age approaching the current limit) are unable to repay. Although those aged 60 years and over increasingly remain in work, thereby making an economic contribution, it is nevertheless evident that employment falls off after age 60,

from almost 80% of those aged 50–59, to around 50% for those aged 60–64, to around 10% for those aged 65 and over.

The possibility of a less intrusive measure to achieve the Welsh Government's aim has been considered. The conclusion was that a system which required individual investigation and assessment would create a heavy administrative burden which could consume scarce resources. Such a system might also introduce scope for inconsistent decision-making. Taking into account the evidence concerning not only repayment rates of loans but also employment rates (it is not the purpose of the loan to facilitate the uptake of Master's degree courses by students who have no particular intention to return to the workplace), the Welsh Government considers that the age restriction strikes a fair balance and is justified.

Eligible students aged 60 and over studying an undergraduate degree course can access the grant elements of Welsh Government support. It was intended to replicate this for eligible students studying a postgraduate Master's degree course. However, the Welsh Government has been unable to implement the necessary changes to the administrative system in time for the 2019/20 academic year and so interim arrangements are in place. An amount of funding via the Higher Education Funding Council for Wales (HEFCW) will be disseminated to higher education institutions in Wales to provide a non-repayable bursary to eligible students, aged 60 and over, studying postgraduate Master's courses in Wales which begin in the 2019/20 academic year.

The restriction in the Regulations of grant support to those aged under 60 is potentially discriminatory as described above. However, given the administrative restrictions on the student finance system, the only alternative would be not to implement the new package of postgraduate Master's support for any students. This was considered to be disproportionate and would not achieve the Welsh Government's aim. The additional funding provided via HEFCW means that postgraduate Master's students aged 60 and over will still be able to access non-repayable funding and so the Welsh Government consider the age restriction in the Regulations to be proportionate and justified.

The Minister for Education is aware that people are now working longer than they used to and so has made a commitment to keep under review all age limits that are placed on full-time and part-time undergraduate as well as postgraduate Master's student support.

Distributional impact and student debt

Currently postgraduate Master's students accessing support in Wales bear the cost of additional debt through loans. As a result of the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019, the majority of postgraduate Master's degree students will benefit from the universal grant and the means-tested grant based on household income, topped up with loan to the maximum amount. This means that students will have additional support (as a contribution to costs) available to them compared with a student continuing under the existing regulations. Part-time courses can be designated for support for up to four years, which will provide increased flexibility for those that choose this route to qualification.

Eligible postgraduate Master's students starting a designated course on or after 1 August 2019 will have more support available to them compared to a student continuing under the existing regulations. The increase in the maximum support available will amount to £4,000 for all new postgraduate Master's students, which could potentially increase the amount of debt a student incurs. However, this is dependent on household income and those with a lower household income will incur less debt as well as being able to access a grant of up to £6,885. This includes the universal grant of £1,000, which is available to all. Eligible students will continue to have the option to request a loan amount less than the maximum entitlement and do not have to apply for the loan in order to receive any of the grant.

Participation

Postgraduate loans for Welsh resident students were first introduced in 2017/18. Data is available to quantify the effect of providing this support on participation, which has shown that more Welsh residents will have enrolled on eligible programmes. It is anticipated that the new package of student support will at least maintain, and more likely further increase, participation in postgraduate study, particularly those from a low income. Enabling those choosing to study on four year part-time postgraduate Master's courses, which are currently ineligible, to access support may also increase participation.

Cost

The proposed changes to the postgraduate loan for academic year 2019/20 will require the provision of a similar level of cover for loans from Her Majesty's Treasury, compared with the 'do nothing' option. In addition, the Government subsidy on the provision of loans (Resource Accounting and Budgeting (RAB) charge, or non-cash) does not differ markedly from the 'do nothing' option. The provision of the means-tested contribution to costs grant is expected to cost around £12m in the 2019-20 financial year. These estimates are based on latest financial modelling inputs and assumptions, which are subject to routine

review and update as more information becomes available. The costs are very small in the context of overall student loan cover and write-off requirements of Welsh Government.

CONSULTATION

The policy was consulted on extensively as a result of the Diamond Review of higher education and student finance arrangements in Wales. The Review included full consultation with stakeholders both during the Review and following publication of the Report.

COMPETITION ASSESSMENT

The making of these Regulations has no impact on the competitiveness of businesses, charities or the voluntary sector.

POST-IMPLEMENTATION ASSESSMENT

The postgraduate Master's regulations will be subject to detailed review, both by policy officials and delivery partners in their practical implementation of the Regulations.

SUMMARY

The making of these regulations is necessary to update aspects of the higher education postgraduate Master's degree student support system for students ordinarily resident in Wales and EU students. The changes will apply in relation to courses beginning in the 2019/20 academic year.

MEMORANDWM CYDSYNIAD OFFERYN STATUDOL

Rheoliadau Gorfodi'r Gyfraith a Diogelwch (Diwygio) (Ymadael â'r UE) 2019

1. Gosodir y Memorandwm Cydsyniad Offeryn Statudol hwn o dan Reol Sefydlog ("RhS") 30A.2. Mae RhS 30A yn rhagnodi bod rhaid gosod Memorandwm Cydsyniad Offeryn Statudol, ac y ceir cyflwyno Cynnig Cydsyniad Offeryn Statudol, gerbron Cynulliad Cenedlaethol Cymru ("y Cynulliad") 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. Cafodd Rheoliadau Gorfodi'r Gyfraith a Diogelwch (Diwygio) (Ymadael â'r UE) 2019 eu gosod gerbron Senedd y DU ar 15 Ionawr ac maent bellach yn cael eu gosod gerbron y Cynulliad. Mae'r OS i'w weld yma:

http://www.legislation.gov.uk/ukdsi/2019/9780111178102/contents

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 â phlismona, ymchwiliadau troseddol, gorfodi'r gyfraith a diogelwch.

4. Mae'r OS hwn yn gwneud cywiriad technegol i Ddeddf Llywodraeth Leol (Darpariaethau Amrywiol) 1982. Mae angen y cywiriad hwn i sicrhau y bydd y llyfr statud yn parhau i weithredu ar ôl ymadael â'r UE.

Y ddarpariaeth berthnasol sydd i'w gwneud gan yr OS

5. Roedd y ddarpariaeth dan sylw yn gwneud diwygiadau mân iawn i baragraff 12(1)(c) a (d) o Atodlen 3 i Ddeddf Llywodraeth Leol (Darpariaethau Amrywiol) 1982. Ar hyn o bryd mae'r Ddeddf yn darparu y gellir ond rhoi trwydded ar gyfer sefydliad rhyw (sef lleoliadau adloniant rhywiol, sinemâu rhyw a siopau rhyw) i bersonau sy'n preswylio mewn gwladwriaeth AEE, neu i gyrff corfforaethol a gorfforwyd mewn gwladwriaeth AEE. Bydd y fersiwn ddiwygiedig yn darparu y gellir ond rhoi trwydded i bersonau sy'n preswylio yn y DU neu mewn gwladwriaeth AEE, neu i gyrff corfforaethol a gorfforwyd yn y DU neu mewn gwladwriaeth AEE.

6. Mae Llywodraeth Cymru o'r farn bod y darpariaethau a ddisgrifir ym mharagraff 5 uchod yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru i'r graddau y maent yn ymwneud â thrwyddedu sefydliadau rhyw.

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

7. Nid oes gwahaniaeth rhwng Llywodraeth Cymru a Llywodraeth y DU o ran y polisi i'w gywiro. Gan hynny, 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 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.

Julie James AC
Y Gweinidog Tai a Llywodraeth Leol
3 Mai 2019

Draft Regulations laid before Parliament under section 223(5) and (6) of the Extradition Act 2003 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION

ARMS AND AMMUNITION

CRIMINAL LAW

DANGEROUS DRUGS

INVESTIGATORY POWERS

POLICE

PROCEEDS OF CRIME

The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019

Made - - - - ***

Coming into force in accordance with Regulation 1

CONTENTS

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 1(1), 69(1), 71(4), 73(5), 84(7), 86(7) and 223(3) and (8) of the Extradition Act 2003(**a**), and by sections 8(1) and 23(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**b**).

A draft of these Regulations has been laid before Parliament and approved by a resolution of each House, in accordance with section 223(5) and (6) of the Extradition Act 2003 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

(**a**) 2003 c. 41.
(**b**) 2018 c. 16.

Extent

2.—(1) Subject to paragraphs (2) and (3), these Regulations extend to England and Wales, Scotland and Northern Ireland.

(2) Any amendment, repeal or revocation made by these Regulations has the same extent within the United Kingdom as the provision to which it relates, except that—

(a) regulation 107(5) (amendment of the Proceeds of Crime Act 2002(**a**)) extends to England and Wales and Scotland only;

(b) regulation 107(8) extends to England and Wales only, and

(c) regulation 109(1) to (3) (amendment of the Criminal Finances Act 2017(**b**)) extends to Northern Ireland only.

(3) Any saving or transitional provision in these Regulations has the same extent within the United Kingdom as the provision to which it relates, except that regulation 72 (saving provision – investigation teams operating in the UK after commencement day) extends to England and Wales, Scotland and Northern Ireland.

General interpretation

3. In these Regulations—

"the 1990 Schengen Convention" means the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders(**c**);

"the CJDP Regulations" means the Criminal Justice and Data Protection (Protocol No 36) Regulations 2014(**d**);

"commencement day" means the date and time on which these Regulations come into force;

"the Withdrawal Act" means the European Union (Withdrawal) Act 2018.

PART 2

Child Pornography

Amendment of Council Decision 2000/375/JHA

4.—(1) Council Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the internet is amended as follows.

(2) In Article 1—

(a) in paragraph 1—

(i) for "Within the framework of Decision No 276/1999/EC of the European Parliament and of the Council and in" substitute "In";

(ii) for "Member States" substitute "the Secretary of State";

(b) in paragraph 2 omit ", and taking account of the administrative structure of each Member State,";

(c) in paragraph 3 for "Member States" substitute "The Secretary of State".

(3) Omit Article 2.

(**a**) 2002 c. 29.
(**b**) 2017 c. 22.
(**c**) OJ L No 239, 23.9.2000, pp. 19-62.
(**d**) S.I. 2014/3141; as amended by paragraph 380 of Part 2 of Schedule 19 to the Data Protection Act 2018 (c. 12) and by S.I. 2014/3191 and 2016/992.

(4) In Article 3—

(a) in the paragraph before sub-paragraph (a)—

(i) for "Member States" in the first place where it occurs substitute "The Secretary of State";

(ii) omit the second sentence;

(iii) for "they" in the last sentence substitute "the Secretary of State";

(b) in sub-paragraph (c), omit "in accordance with the Council resolution of 17 January 1995 on the lawful interception of telecommunications".

(5) In Article 4, for "Member States" substitute "The Secretary of State".

(6) Omit Articles 5 to 8.

PART 3

Counter-Terrorism

Amendment of the Terrorism Act 2000

5.—(1) The Terrorism Act 2000(**a**) is amended as follows.

(2) In section 21E(**b**) (disclosures within an undertaking or group etc), in subsections (2)(b) and (4)(b), for "an EEA State" substitute "the United Kingdom or an EEA state".

(3) In section 21F(2)(c)(**c**) (other permitted disclosures between institutions etc), for "an EEA State" substitute "the United Kingdom or an EEA state".

(4) In section 123(2)(i) (orders and regulations), for "paragraphs 11A, 25A, 41A and" substitute "paragraph".

(5) In Schedule 3A(**d**) (regulated sector and supervisory authorities), in paragraph 1 (business in the regulated sector)—

(a) for sub-paragraph (1)(c), substitute—

"(c) the carrying on of activities by an authorised person (within the meaning of section 31 of the Financial Services and Markets Act 2000) who has permission under Part 4A of that Act to carry out or effect contracts of insurance, where those activities consist of carrying out or effecting contracts of long-term insurance;";

(b) in sub-paragraph (1)(d), for "(other than a person falling within Article 2 of the Markets in Financial Instruments Directive)" substitute "(other than a person falling within one of the exclusions to the definition of "investment firm" in article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544))";

(c) in sub-paragraph (1)(g), for "an EEA State" substitute "the United Kingdom";

(d) in sub-paragraph (2)(b), for "an EEA state" substitute "the United Kingdom";

(e) after sub-paragraph (2) insert—

"(2A) For the purposes of sub-paragraph (1)(c), "contract of long-term insurance" means any contract falling within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).";

(f) for sub-paragraph (5) substitute—

(**a**) 2000 c. 11.
(**b**) Section 21E was inserted by S.I. 2007/3398.
(**c**) Section 21F was inserted by S.I. 2007/3398.
(**d**) Schedule 3A was inserted by paragraph 6 of Schedule 2 to the Anti-terrorism, Crime and Security Act 2001 (c. 24).

"(5) For the purposes of sub-paragraph (4)(d) "regulated market" has the meaning given by regulation 3(1) (general interpretation) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692).";

(g) omit sub-paragraph (6).

(6) In Schedule 4 (forfeiture orders)—

(a) omit paragraphs 11A to 11G, 25A to 25G and 41A to 41G(**a**) (domestic and overseas freezing orders);

(b) in paragraph 14(2) (enforcement of orders made in designated countries), omit "(other than an overseas freezing order within the meaning of paragraph 11D)";

(c) in paragraph 28(2) (enforcement of orders made in designated countries), omit "(other than an overseas freezing order within the meaning of paragraph 25D)";

(d) in paragraph 44(2) (enforcement of orders made in designated countries), omit "(other than an overseas freezing order within the meaning of paragraph 41D)";

(e) in paragraph 45 (general), in the definition of "restraint order", in paragraph (c) omit "or an order which is enforceable in England and Wales, Scotland or Northern Ireland by virtue of paragraph 11G, 25G or 41G".

(7) In Schedule 6 (financial information), in paragraph 6 (financial institution)—

(a) in sub-paragraph (1), for sub-paragraphs (ha) and (i) substitute—

"(ha) an electronic money institution within the meaning of the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2(1)), and

(i) an authorised person (within the meaning of section 31 of the Financial Services and Markets Act 2000) who has permission under Part 4A of that Act to carry out or effect contracts of insurance, when carrying out or effecting any contract of long-term insurance.";

(b) after sub-paragraph (1A)(**b**) insert—

"(1AA) For the purposes of sub-paragraph (1)(i), "contract of long-term insurance" means any contract falling within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).".

(8) In Schedule 8A(**c**) (offence under section 58A: supplementary provisions)—

(a) in paragraph 1 (introduction), omit sub-paragraph (2);

(b) omit paragraph 2 (domestic service providers: extension of liability);

(c) in paragraph 3(1) (non-UK service providers: restriction on proceedings) omit "other than the United Kingdom";

(d) in paragraph 7 (interpretation)—

(i) in sub-paragraph (1), insert in the relevant place—

""the E-Commerce Directive" means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market(**d**);";

(ii) in sub-paragraph (2)—

(aa) in the words before paragraph (a), for "the United Kingdom, or in some other EEA state," substitute "an EEA state";

(bb) in paragraph (a), for "the United Kingdom, or in a particular EEA state," substitute "a particular EEA state";

(**a**) Paragraphs 11A to 11G, 25A to 25G and 41A to 41G were inserted by paragraphs 3, 5 and 7 of Schedule 4 to the Crime (International Co-operation) Act 2003 (c. 32).

(**b**) Sub-paragraph (1A) was inserted by paragraph 6(3) of Schedule 2 to the Anti-terrorism, Crime and Security Act 2001 (c. 24).

(**c**) Schedule 8A was inserted by Schedule 8 to the Counter-Terrorism Act 2008 (c. 28).

(**d**) O.J. L 178/1, 17.7.2000.

(cc) in sub-paragraph (i) of paragraph (a), for "the United Kingdom, or that EEA state," substitute "that EEA state".

Transitional provision in relation to amendment of Schedule 4 to the Terrorism Act 2000

6. Regulation 5(4) and (6) does not apply in relation to a case where, before commencement day, any of the following has occurred—

(a) the High Court has made a certificate under paragraph 11B(2) or 41B(2) of Schedule 4 to the Terrorism Act 2000 (domestic freezing orders: certification);

(b) the Secretary of State has received an overseas freezing order under paragraph 11D, 25D or 41D of that Schedule (overseas freezing orders), or

(c) the Court of Session has made a certificate under paragraph 25B(2) of that Schedule (domestic freezing orders: certification).

Amendment of the Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007

7.—(1) The Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007(**a**) are amended as follows.

(2) Omit regulation 3 (internal market: UK service providers).

(3) In regulation 4 (internal market: non-UK service providers)—

(a) in paragraph (5), omit "and" at the end of paragraph (a) and omit paragraph (b);

(b) in paragraph (6), omit "and" at the end of paragraph (a) and omit paragraph (b);

(c) in paragraph (8)—

(i) omit paragraph (a);

(ii) in paragraph (b) omit "other than the United Kingdom".

PART 4

Cross-border Surveillance

Revocation of Council Decisions relating to cross-border surveillance

8.—(1) The following Council Decisions are revoked but only so far as they relate to Articles 40, 42 and 43 of the 1990 Schengen Convention—

(a) Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis;

(b) Council Decision 2000/586/JHA of 28 September 2000 establishing a procedure for amending Articles 40(4) and (5), 41(7) and 65(2) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders;

(c) Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland.

(2) Council Decision 2003/725/JHA of 2 October 2003 amending the provisions of Article 40(1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders is revoked.

(**a**) S.I. 2007/1550.

Consequential amendment of the Regulation of Investigatory Powers Act 2000

9. In section 76A of the Regulation of Investigatory Powers Act 2000(**a**) (foreign surveillance operations)—

(a) in each of subsections (3) and (10)—

(i) omit paragraph (a) and the "or" at the end of that paragraph;

(ii) in paragraph (b), omit "other";

(b) in subsection (11), omit the definition of "the Schengen Convention".

Transitional provision – surveillance which is not completed before commencement day

10.—(1) Regulations 8 (revocation of Council Decisions relating to cross-border surveillance) and 9 (consequential amendment of the Regulation of Investigatory Powers Act 2000) do not apply to relevant surveillance by a relevant foreign police or customs officer which began but which is not completed before commencement day.

(2) In this Regulation—

"relevant foreign police or customs officer" means a police or customs officer who, in relation to a country or territory other than the United Kingdom, is an officer for the purposes of Article 40 of the 1990 Schengen Convention (police co-operation);

"relevant surveillance" means surveillance which is carried out lawfully in the United Kingdom by virtue of section 76A of the Regulation of Investigatory Powers Act 2000 (foreign surveillance operations).

PART 5

Drug Precursors and Psychoactive Substances

CHAPTER 1

Drug precursors

Amendment of the Controlled Drugs (Drug Precursors) (Intra-Community Trade) Regulations 2008

11.—(1) The Controlled Drugs (Drug Precursors) (Intra-Community Trade) Regulations 2008(**b**) are amended as follows.

(2) In regulation 3 (competent authorities)—

(a) in paragraph (2) for ", 9(3) and 13" substitute "and 9(3)";

(b) in paragraph (4) for ", 9(1) and 10" substitute "and 9(1)".

Amendment of the Controlled Drugs (Drug Precursors) (Community External Trade) Regulations 2008

12.—(1) The Controlled Drugs (Drug Precursors) (Community External Trade) Regulations 2008(**c**) are amended as follows.

(2) In regulation 2 (interpretation), omit the definition of "customs territory of the Community" and the word "and" immediately before it.

(**a**) 2000 c. 23. Section 76A was inserted by section 83 of the Crime (International Co-operation) Act 2003 (c. 32), and amended by paragraph 8 of Part 1 of Schedule 6 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp. 10), by paragraph 26 of Schedule 12 to the Serious Crime Act 2007 (c. 27), by paragraph 98 of Part 2 of Schedule 8 to the Crime and Courts Act 2013 (c. 22) and by S.I.2013/602.

(**b**) S.I. 2008/295. Regulation 3(3) and (4) was amended by paragraph 190 of Part 4 of Schedule 8 to the Crime and Courts Act 2013 (c. 22).

(**c**) S.I. 2008/296.

(3) In regulation 3(2) (competent authorities)—

(a) after "17" omit "(except references to competent authorities of a third country)";

(b) for "26(5) and 32" substitute "and 26(5)";

(c) omit paragraph (6).

(4) In regulation 6(2)(**a**) (requirements, offences and penalties: exports), omit "either" and "or other competent authorities at the point of exit from the customs territory of the European Union".

(5) In paragraph (1) and paragraph (2) of regulation 7 (requirements, offences and penalties: imports)(**b**), for "customs territory of the European Union" substitute "United Kingdom".

Amendment of Regulation (EC) 273/2004 of the European Parliament and Council

13.—(1) Council Regulation (EC) 273/2004 on drug precursors is amended as follows.

(2) In Article 1 (scope and objectives) for "for the intra-Union" substitute "in the United Kingdom for the".

(3) In Article 2 (definitions)—

(a) in point (a), in the definition of "scheduled substance", for all the words after "economically viable means" to the end of the definition substitute "medicinal products as defined in regulation 2 (medicinal products) of the Human Medicines Regulations 2012(**c**) and veterinary medicinal products as defined in regulation 2 of the Veterinary Medicines Regulations 2013(**d**).";

(b) in point (c), for "Union" in both places substitute "United Kingdom".

(4) In Article 3 (requirements for the placing on the market of scheduled substances)—

(a) in paragraph 2, omit "of the Member State in which they are established";

(b) in paragraph 6, omit "of the Member State in which they are established" in both places;

(c) omit paragraph 7;

(d) in paragraph 8—

(i) for "The Commission shall be empowered to adopt delegated acts in accordance with Article 15a concerning" substitute "The Secretary of State may prescribe by regulations";

(ii) omit sub-paragraph (c).

(5) In Article 4 (customer declaration)—

(a) in paragraph 1, for "Union" substitute "United Kingdom";

(b) in paragraph 3, for "Union" substitute "United Kingdom";

(c) for paragraph 4, substitute—

"4. The Secretary of State may prescribe by regulations requirements and conditions for obtaining and using customer declarations.".

(6) In Article 5 (documentation), for paragraph 7 substitute—

"7. The Secretary of State may prescribe by regulations requirements and conditions for the documentation of mixtures containing scheduled substances.".

(7) For the second unnumbered paragraph of Article 7 (labelling), substitute—

"The Secretary of State may prescribe by regulations requirements and conditions for the labelling of mixtures containing scheduled substances.".

(8) In Article 8 (notification of the competent authorities), for paragraph 3 substitute—

(**a**) "European Union" substituted by S.I. 2011/1043.
(**b**) "European Union" substituted by S.I. 2011/1043.
(**c**) S.I. 2012/1916.
(**d**) S.I. 2013/2033.

"3. The Secretary of State may prescribe by regulations the requirements and conditions for operators to provide information as referred to in paragraph 2 of this Article including, where relevant, the categories of personal data to be processed for that purpose and the safeguards for processing such personal data.".

(9) In Article 9 (guidelines), in paragraph 1 for "The Commission shall" substitute "The Secretary of State must".

(10) Omit Articles 10 (powers and obligations of competent authorities), 11 (cooperation between the Member States and the Commission) and 12 (penalties).

(11) For Article 13 (communications from Member States) substitute—

"Article 13

Report to International Narcotics Control Board

1. To permit the necessary adjustments to the arrangements for monitoring trade in scheduled substances and non-scheduled substances, the Secretary of State must draw up a report annually summarising all relevant information on the implementation of the monitoring measures laid down in this Regulation, in particular as regards the substances used for the illicit manufacture of narcotic drugs or psychotropic substances and methods of diversion and illicit manufacture, and their licit trade.

2. The report mentioned in paragraph 1 must be submitted by the Secretary of State to the International Narcotics Control Board in accordance with article 12(12) of the United Nationals Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988.".

(12) Omit Article 13a (European database on drug precursors).

(13) In Article 13b (data protection)—

(a) omit paragraph 1;

(b) in paragraph 2, for "Without prejudice to Article 13 of Directive 95/46/EC" substitute "Without prejudice to the Data Protection Act 2018(**a**)";

(c) omit paragraphs 3 and 4.

(14) Omit Articles 14 (implementing acts) and 14a (committee procedure).

(15) In Article 15 (adaptation of annexes), for "The Commission shall be empowered to adopt delegated acts in accordance with Article 15a in order to adapt" substitute "The Secretary of State may make regulations to amend".

(16) For Article 15a (exercise of the delegation) substitute—

"Article 15a

Regulations

1. A power of the Secretary of State to make regulations under this Regulation is to be exercised by statutory instrument which may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

2. Regulations may make different provision for different purposes and may include such incidental, supplemental, consequential, transitional, transitory or saving provision as the Secretary of State considers appropriate.".

(17) Omit Article 16 (information about measures adopted by Member States).

(18) In Article 18 (entry into force), omit the second unnumbered paragraph.

(**a**) 2018 c. 12.

Amendment of Council Regulation (EC) 111/2005

14.—(1) Council Regulation (EC) 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Union and third countries in drug precursors is amended as follows.

(2) In Article 1 for "Union" in both places substitute "United Kingdom".

(3) In Article 2—

(a) in point (a) in the definition of "scheduled substance", for all the words after "economically viable means," substitute "medicinal products as defined in regulation 2 (medicinal products) of the Human Medicines Regulations(**a**) and veterinary medicinal products as defined in regulation 2 of the Veterinary Medicines Regulations 2013(**b**);";

(b) for point (c) substitute—

"(c) 'import' means any entry of scheduled substances having the status of non-domestic goods into the United Kingdom;";

(c) for point (d) substitute—

"(d) 'export' means any departure of scheduled substances from the United Kingdom;";

(d) in point (e)—

(i) for "Union" substitute "United Kingdom";

(ii) for "customs territory of the Union" substitute "United Kingdom";

(e) after point (k) insert—

"(l) "special Customs procedures" means special Customs procedures within the meaning of section 3 of, and Schedule 2 to, the Taxation (Cross-border Trade) Act 2018(**c**) and "a special Customs procedure" is to be construed accordingly.".

(4) In Article 6—

(a) in paragraph 1—

(i) for "Union" substitute "United Kingdom";

(ii) omit "of the Member State in which the operator is established";

(iii) in the second unnumbered sub-paragraph for "The Commission shall be empowered to adopt delegated acts in accordance with Article 30b" substitute "The Secretary of State may make regulations";

(b) for paragraph 3 substitute—

"3. The Secretary of State must prescribe by regulations a model for licences.".

(5) In Article 7—

(a) in paragraph 1—

(i) for "Union" substitute "United Kingdom";

(ii) omit "in the Member State in which the operator is established";

(b) in the second unnumbered paragraph, for "The Commission shall be empowered to adopt delegated acts in accordance with Article 30b" substitute "The Secretary of State may make regulations".

(6) In Article 8—

(a) in paragraph 1—

(i) for "customs territory of the Union" substitute "United Kingdom";

(ii) omit "of control type I or a free warehouse";

(**a**) S.I.2012/1916.
(**b**) S.I.2013/2033.
(**c**) 2018 c. 22.

(b) in paragraph 2—

(i) for "The Commission shall be empowered to adopt delegated acts in accordance with Article 30b" substitute "The Secretary of State may make regulations";

(ii) for "customs territory of the Union" substitute "United Kingdom".

(7) In Article 9—

(a) in paragraph 1, for "Union" substitute "United Kingdom";

(b) in paragraph 2—

(i) in the first unnumbered sub-paragraph for "The Commission shall be empowered to adopt delegated acts in accordance with Article 30b to determine" substitute "The Secretary of State may set out";

(ii) omit the second unnumbered paragraph.

(8) In Article 10—

(a) for paragraph 1 substitute—

"1. In order to facilitate cooperation between the competent authorities, operators established in the United Kingdom and the chemical industry, in particular as regards non-scheduled substances, the Secretary of State must draw up and update guidelines.";

(b) in paragraph 4 for "the competent authorities of the Member State and the Commission may propose to" substitute "the Secretary of State may";

(c) in paragraph 5—

(i) for "Commission may" substitute "Secretary of State may by regulations";

(ii) omit "by means of delegated acts in accordance with Article 30b".

(9) In Article 11—

(a) in paragraph 1—

(i) omit "in the Union";

(ii) for "The Commission shall be empowered to adopt delegated acts in accordance with Article 30b of this Regulation to" substitute "The Secretary of State may make regulations";

(b) in the unnumbered sub-paragraph below omit "of the Member State of export";

(c) in paragraph 2—

(i) omit "of the Member State concerned";

(ii) for "authority" in the first place where it occurs in the unnumbered sub-paragraph substitute "Secretary of State";

(d) in paragraph 3, for "The Commission shall be empowered to adopt delegated acts in accordance with Article 30b" substitute "The Secretary of State may make regulations".

(10) In Article 12—

(a) in paragraph 1—

(i) for "customs territory of the Union" substitute "United Kingdom";

(ii) for "in a free zone of control type I or free warehouse" substitute "under a special customs procedure";

(b) in the unnumbered sub-paragraph below, for "suspensive procedure or under a free zone of control type II," substitute "special customs procedure";

(c) in paragraph 2, omit "of the Member State where the exporter is established".

(11) In Article 13, in paragraph 1(d) for "customs territory of the Union" substitute "United Kingdom".

(12) In Article 14, in paragraph 1—

(a) for "customs territory of the Union" substitute "United Kingdom";

(b) after that paragraph omit the unnumbered paragraph;

(c) in paragraph 2 and in the unnumbered paragraph after it, for "customs territory of the Union" substitute "United Kingdom".

(13) For Article 17 substitute—

"Article 17

Whenever, under an agreement between the United Kingdom and a third country, exports are not to be authorised unless an import authorisation has been issued by the competent authorities of that third country for the substances in question, the competent authorities in the United Kingdom shall satisfy themselves as to the authenticity of such import authorisation, if necessary by requesting confirmation from the competent authority of the third country.".

(14) In Article 18, for "customs territory of the Union" substitute "United Kingdom".

(15) In Article 19, for "The Commission shall be empowered to adopt delegated acts in accordance with Article 30b to" substitute "The Secretary of State may".

(16) In Article 20—

(a) in the first unnumbered paragraph—

(i) for "Union" substitute "United Kingdom";

(ii) omit "of the Member State where the importer is established";

(b) in the second unnumbered paragraph—

(i) before "stored in a free zone" insert "or";

(ii) omit "of control type I or a free warehouse, or placed under the external Union transit procedure".

(17) In Article 22—

(a) in the first unnumbered paragraph for "customs territory of the Union" substitute "United Kingdom";

(b) omit the last paragraph.

(18) In Article 25, for "customs territory of the Union" substitute "United Kingdom".

(19) In Article 26—

(a) in paragraph 1—

(i) omit "of each Member State";

(ii) for "customs territory of the Union" substitute "United Kingdom";

(b) omit paragraph 3;

(c) in paragraph 3a—

(i) omit "of each Member State";

(ii) for "customs territory of the Union" substitute "United Kingdom";

(iii) omit the first unnumbered sub-paragraph;

(d) omit paragraph 3b;

(e) omit paragraph 4.

(20) Omit Chapter IV.

(21) In Article 28—

(a) for "Commission shall be empowered to lay down, where necessary, by means of implementing acts, measures" substitute "Secretary of State may by regulations make provision";

(b) for "Union" substitute "United Kingdom";

(c) omit the last sentence.

(22) Omit Article 30.

(23) In Article 30a, for "The Commission shall be empowered to adopt delegated acts in accordance with Article 30b of this Regulation in order to adapt" substitute "The Secretary of State may by regulations make provision to amend".

(24) For Article 30b substitute—

"*Article 30b*

A power of the Secretary of State to make regulations under this Regulation is to be exercisable by statutory instrument which may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. Regulations may make different provision for different purposes and may include such incidental, supplemental, consequential, transitional, transitory or saving provision as the Secretary of State considers appropriate.".

(25) Omit Article 31.

(26) For Article 32 substitute—

"*Article 32*

The Secretary of State must draw up a report annually summarising all relevant information on the implementation of the monitoring measures laid down in this Regulation, in particular as regards the substances used for the illicit manufacture of narcotic drugs or psychotropic substances and methods of diversion and illicit manufacture, and their licit trade. The report must be submitted by the Secretary of State to the International Narcotics Control Board in accordance with Article 12(12) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988.".

(27) Omit Article 32a.

(28) In Article 33—

(a) in paragraph 1, omit "in the Member States";

(b) omit paragraph 2;

(c) omit paragraph 5.

(29) In Article 35, omit the third unnumbered paragraph.

Amendment of Commission Delegated Regulation (EU) 2015/1011

15.—(1) Commission Delegated Regulation (EU) 2015/1011 of 24 April 2015 supplementing Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and Council Regulation (EC) 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors, and repealing Commission Regulation (EC) 1277/2005 is amended as follows.

(2) In Article 2 (definitions), after the definition of "business premises", add as an unnumbered paragraph—

""Special Customs procedures" means special Customs procedures within the meaning of section 3 of, and Schedule 2 to, the Taxation (Cross-border Trade) Act 2018 and "a special Customs procedure" is to be construed accordingly.".

(3) In Article 3 (conditions for granting licences), in paragraph 7 for "Union" substitute "United Kingdom".

(4) In Article 9 (information required to monitor trade), in paragraph 2, in sub-paragraph (b), for "a free zone of control type II, placed into a suspensive procedure," substitute "a special customs procedure".

(5) In Article 10 (conditions for determining the lists of the countries of destination for exports of scheduled substances of Categories 2 and 3)—

(a) in paragraph (a) for "Union" substitute "United Kingdom";

(b) in the last sentence for "Commission" substitute "Home Office".

(6) In Article 12 (criteria for determining simplified procedures for export authorisations), in paragraph 1, for "Union" substitute "United Kingdom".

(7) Omit Article 13 (conditions and requirements concerning the information to be provided on the implementation of the monitoring measures).

(8) After Article 15 (entry into force and application) omit the unnumbered paragraph.

(9) In Annex II (form for declaration on the entry of scheduled substances)—

(a) in the form—

(i) omit the European Union flag;

(ii) in the heading, for "European Union" substitute "United Kingdom";

(iii) in the text below the heading, for "customs territory of the Union" substitute "United Kingdom";

(b) in the notes to the form, in the paragraphs under the heading "Personal data protection"—

(i) omit the first unnumbered paragraph;

(ii) omit the second unnumbered paragraph;

(iii) in the third unnumbered paragraph, for "Union" in both places substitute "United Kingdom";

(iv) in the fourth unnumbered paragraph omit "national" and the second sentence and the hyperlink immediately after it;

(v) in the fifth unnumbered paragraph for "Union" in both places substitute "United Kingdom" and for "the Commission and the competent authorities of the Member States" substitute "competent authorities";

(vi) in the sixth unnumbered paragraph for "or the national laws implementing Directive 95/46/E" substitute "or the Data Protection Act 2018";

(vii) omit from the tenth unnumbered paragraph to the end of the notes.

(10) In Annex III (form for multilateral chemical reporting notification)—

(a) in the form, omit the flag of the European Union;

(b) in the notes to the form, in the paragraphs under the heading "Personal data protection"—

(i) omit the first unnumbered paragraph;

(ii) omit the second unnumbered paragraph;

(iii) in the third unnumbered paragraph for "Union" in both places substitute "United Kingdom";

(iv) in the fourth unnumbered paragraph omit "authority" and the second sentence and hyperlink immediately after it;

(v) in the fifth unnumbered paragraph for "Union" in both places substitute "United Kingdom" and for "the Commission and the competent authorities of the Member States" substitute "competent authorities";

(vi) in the sixth unnumbered paragraph for "or the national laws implementing Directive 95/46/E" substitute "or the Data Protection Act 2018";

(vii) omit from the tenth unnumbered paragraph to the end of the notes.

Amendment of Commission Implementing Regulation (EU) 2015/1013

16.—(1) Commission Implementing Regulation (EU) 2015/1013 of 25 June 2015 laying down rules in respect of Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and of Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors is amended as follows.

(2) In Article 3 (licence granting procedure), in paragraph 2, for "Authorised Economic Operator" to the end of that paragraph substitute "Authorised Economic Operator for customs

simplification (AEOC), to the extent they are relevant for the examination of the conditions for granting a licence.".

(3) In the unnumbered paragraph after paragraph 2, for "AEO" substitute "AEOC".

(4) In Article 10 (information required to monitor trade), in paragraph 1 and 2 for "as prescribed by the Member State concerned" substitute "as specified by the Secretary of State".

(5) In Article 11 (export and import authorisations)—

(a) in paragraph 2, for "customs territory of the Union" substitute "United Kingdom";

(b) in paragraph 3, for "customs territory of the Union" substitute "United Kingdom";

(c) in paragraph 5—

(i) omit the first sentence;

(ii) in the next sentence, for "it" in the first place where it occurs substitute "an authorisation";

(d) in paragraph 6—

(i) for "A Member State" substitute "The Secretary of State";

(ii) omit "itself";

(iii) for "it" substitute "the Secretary of State";

(e) omit paragraph 7;

(f) in paragraph 9, omit the second sentence.

(6) Omit Article 12 (listing of operators and users in the European database on drug precursors).

(7) In the text following Article 13 (entry into force and application), omit "This Regulation shall be binding in its entirety and directly applicable in all Member States.".

(8) In Annex I (form for licence)—

(a) in the form—

(i) omit the European Union flag;

(ii) in the heading to the form, for "European Union" substitute "United Kingdom";

(b) in the notes to the form—

(i) omit paragraph 4;

(ii) in the paragraphs under the heading "Personal data protection"—

(aa) omit the first unnumbered paragraph;

(bb) omit the second unnumbered paragraph;

(cc) in the third unnumbered paragraph for "Union" in both places substitute "United Kingdom";

(dd) in the fourth unnumbered paragraph omit "national" and the second sentence and the hyperlink immediately after it;

(ee) in the fifth unnumbered paragraph for "Union" in both places substitute "United Kingdom" and for "the Commission and the competent authorities of the Member States" substitute "competent authorities";

(ff) in the sixth unnumbered paragraph for "or the national laws implementing Directive 95/46/E" substitute "or the Data Protection Act 2018";

(gg) in the tenth unnumbered paragraph omit the second sentence and the hyperlink immediately after it;

(hh) omit the eleventh unnumbered paragraph.

(9) In Annex II (registration form)—

(a) in the form—

(i) omit the European Union flag;

(ii) omit the heading "European Union";

(b) in the notes to the form—

(i) omit paragraph 4;

(ii) in the paragraphs under the heading "Persona data protection"—

(aa) omit the first unnumbered paragraph;

(bb) omit the second unnumbered paragraph;

(cc) in the third unnumbered paragraph, for "Union" in both places substitute "United Kingdom";

(dd) in the fourth unnumbered paragraph, omit "national" and the second sentence and the hyperlink immediately after it;

(ee) in the fifth unnumbered paragraph, for "Union" in both places substitute "United Kingdom" and for "the Commission and the competent authorities of the Member States" substitute "competent authorities";

(ff) in the sixth unnumbered paragraph, for "or the national laws implementing Directive 95/46/E" substitute "or the Data Protection Act 2018";

(gg) in the tenth unnumbered paragraph, omit the second sentence;

(hh) omit the eleventh unnumbered paragraph.

(10) In Annex III (forms for grant of export authorisation)—

(a) in each of the forms—

(i) in the heading, for "EUROPEAN UNION" substitute "UNITED KINGDOM";

(ii) in box 22—

(aa) for "EU" substitute "UK";

(bb) for "customs territory of the Union" substitute "United Kingdom";

(b) in the notes to the forms—

(i) omit paragraph 1;

(ii) in paragraph 2, for "customs territory of the Union" substitute "United Kingdom";

(iii) in paragraph 7, omit "Member State,";

(iv) in paragraph 14, in the second sub-paragraph, omit ", according to the modalities provided for by the Member State concerned," and "in the Member States";

(v) in the paragraphs under the heading "Personal data protection"—

(aa) omit the first unnumbered paragraph;

(bb) omit the second unnumbered paragraph;

(cc) in the third unnumbered paragraph, for "Union" in both places substitute "United Kingdom";

(dd) in the fourth unnumbered paragraph, omit "national" and the second sentence and the hyperlink immediately after it;

(ee) in the fifth unnumbered paragraph, for "Union" in both places substitute "United Kingdom" and for "the Commission and the competent authorities of the Member States" substitute "competent authorities";

(ff) in the sixth unnumbered paragraph, for "or the national laws implementing Directive 95/46/E" substitute "or the Data Protection Act 2018";

(gg) in the tenth unnumbered paragraph, omit the second sentence;

(hh) omit the eleventh unnumbered paragraph.

(11) In Annex IV (forms for grant of import authorisation)—

(a) in each of the forms—

(i) for the heading "EUROPEAN UNION" substitute "UNITED KINGDOM";

(ii) in box 9, for "customs territory of the Union" substitute "United Kingdom";

(b) in the notes to the forms—

(i) omit paragraph 1;

(ii) in paragraph 2, for "customs territory of the Union" substitute "United Kingdom";

(iii) in paragraph 7, omit "the Member State and";

(iv) in the second subparagraph under paragraph 12, omit ", according to the modalities provided for by the Member State concerned," and "in the Member States";

(v) in the paragraphs under the heading "Personal data protection"—

(aa) omit the first unnumbered paragraph;

(bb) omit the second unnumbered paragraph;

(cc) in the third unnumbered paragraph, for "Union" in both places substitute "United Kingdom";

(dd) in the fourth unnumbered paragraph, omit "national" and the second sentence and the hyperlink immediately after it;

(ee) in the fifth unnumbered paragraph, for "Union" in both places substitute "United Kingdom" and for "the Commission and the competent authorities of the Member States" substitute "competent authorities";

(ff) in the sixth unnumbered paragraph, for "or the national laws implementing Directive 95/46/E" substitute "or the Data Protection Act 2018";

(gg) in the tenth unnumbered paragraph, omit the second sentence;

(hh) omit the eleventh unnumbered paragraph.

CHAPTER 2

Psychoactive substances

Amendment of the Psychoactive Substances Act 2016

17.—(1) The Psychoactive Substances Act 2016(**a**) is amended as follows.

(2) In Schedule 1 (exempted substances), in paragraph 7 (food)—

(a) before the definition of "food" insert—

""enactment" includes—

(a) an enactment contained in subordinate legislation;

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;

(c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;

(d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;";

(b) in paragraph (b) of the definition of "prohibited ingredient", for "by an EU instrument" substitute "by an enactment".

(3) In Schedule 4 (providers of information society services)—

(a) omit paragraph 1 (domestic service providers: extension of liability);

(b) in paragraph 2(3) (non-UK service providers: restriction on institution of proceedings), in the definition of "non-UK service provider" omit "other than the United Kingdom";

(c) omit paragraph 6 (domestic service providers: extension of liability);

(d) in paragraph 7 (non-UK service providers: restriction on including terms in prohibition notice or order)—

(**a**) 2016 c.2.

(i) in sub-paragraph (5), omit paragraph (b) and the "and" immediately preceding that paragraph;

(ii) omit sub-paragraph (6);

(iii) in sub-paragraph (7)—

(aa) omit "or notification";

(bb) for "referred to in sub-paragraph (6)(b)" substitute "for the order or variation";

(iv) in sub-paragraph (8), in the definition of "non-UK service provider" omit "other than the United Kingdom";

(e) in paragraph 8(1) (protections for service providers of intermediary services), at the end insert ", reading those Articles as if the requirements imposed on a Member State were imposed on the person giving the notice or the court making the order.";

(f) in paragraph 8(2), for "covered by" substitute "falling within the descriptions contained in";

(g) in paragraph 11(1) (establishment of a service provider)—

(i) in the words before paragraph (a), for "in a particular part of the United Kingdom, or in a particular EEA state," substitute "in a particular EEA state";

(ii) in paragraph (a), for "that part of the United Kingdom, or that EEA state," substitute "that EEA state".

Revocation of Regulation (EC) No 1920/2006

18. Regulation (EC) No 1920/2006 of the European Parliament and of the Council of 12 December 2006 on the European Monitoring Centre for Drugs and Drug Addiction (recast) is revoked.

Revocation of Regulation (EU) 2017/2101

19. Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances is revoked.

PART 6

Eurojust

Interpretation

20. In this Part, "Eurojust Council Decision" means Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime.

Revocation of Eurojust Council Decision

21. Subject to regulation 22 (saving provisions – personal data received before commencement day), the Eurojust Council Decision is revoked.

Saving provisions – information received before commencement day

22.—(1) Article 22(1) of the Eurojust Council Decision (data security) continues to have effect in relation to personal data provided by Eurojust to the United Kingdom before commencement day with the following modifications—

(a) omit "Eurojust and,";

(b) the reference to "each Member State" is to be treated as a reference to "any person or body having functions of a public nature that received personal data provided by Eurojust prior to commencement day, or successor thereto,".

(2) Article 25 of the Eurojust Council Decision (confidentiality) continues to have effect with the following modifications—

(a) in paragraph 1, the reference to "the national members" is to be treated as a reference to "any former national member of the United Kingdom";

(b) in paragraph 4, after "all information received by Eurojust", add "before commencement day".

PART 7

European Agency for Law Enforcement Training (CEPOL)

Revocation of The European Police College (Immunities and Privileges) Order 2004

23. The European Police College (Immunities and Privileges) Order 2004(**a**) is revoked.

Revocation of Council Decision 2005/681/JHA

24. Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA is revoked.

PART 8

European Criminal Record Information System (ECRIS)

CHAPTER 1

Amendment of legislation extending to England and Wales, Scotland and Northern Ireland

Interpretation

25. In this Chapter—

"the Framework Decision" means Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States;

"UK Central Authority" means the authority designated as the "central authority" for the United Kingdom in regulation 63 of the CJPD Regulations as in force immediately before commencement day.

Revocation of Part 6 of the CJDP Regulations

26. Subject to regulations 27 (saving provisions - information transmitted to the UK Central Authority before commencement day) and 28 (transitional provisions - requests made before commencement day for information from the UK Central Authority), Part 6 of the CJDP Regulations (exchange of information relating to criminal convictions) is revoked.

(**a**) S.I. 2004/3334. Article 13 was amended by S.I. 2011/1043. S.I. 2004/3334 has not been commenced.

Saving provisions – information transmitted to the UK Central Authority before commencement day

27.—(1) This regulation applies in relation to information transmitted to the UK Central Authority before commencement day in accordance with Article 4(2), (3) or (4) of the Framework Decision (obligations of the convicting Member State) or Article 7(1), (2) or (4) of the Framework Decision (reply to a request for information on convictions).

(2) The following provisions of the CJDP Regulations continue to have effect in relation to information to which this regulation applies, subject to the modifications set out in paragraph (3)—

(a) regulation 62 (interpretation);

(b) regulation 63 (designation as a "central authority");

(c) regulation 68 (replies to a request for information by a third country);

(d) regulation 72 (conditions for the use of personal data).

(3) The modifications are that—

(a) the definition of "central authority" in regulation 62 is to be read as if, after "Framework Decision", there were inserted "or, for the United Kingdom, the authority designated under regulation 63";

(b) the heading of regulation 68 is to be read as if the words "under Article 6 of the Framework Decision" were omitted.

(4) The provisions referred to in paragraph (2) are to be construed as if the United Kingdom continued to be a Member State.

Transitional provisions – requests made before commencement day for information from the UK Central Authority

28.—(1) This regulation applies where—

(a) a request referred to in regulation 67(1) or (2) (replies to a request for information under Article 6 of the Framework Decision in relation to criminal proceedings and proceedings other than criminal proceedings) or regulation 69 (replies to a request for information under Article 6 of the Framework Decision to a central authority of a member State other than the member State of the person's nationality) of the CJPD Regulations was made to the UK Central Authority before commencement day, and

(b) the requested information was not transmitted before commencement day.

(2) The following provisions of the CJPD Regulations continue to have effect in relation to that request, so far as relevant, subject to the modification set out in paragraph (3)—

(a) regulation 62 (interpretation);

(b) regulation 63 (designation as a "central authority");

(c) regulation 67;

(d) regulation 69.

(3) The modification is that the definition of "central authority" in regulation 62 is to be read as if, after "Framework Decision", there were inserted "or, for the United Kingdom, the authority designated under regulation 63".

(4) The provisions referred to in paragraph (2) are to be construed as if the United Kingdom continued to be a member State.

Revocation of Council Decision 2009/316/JHA

29. Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA is revoked.

CHAPTER 2

Amendment of legislation extending to England and Wales and Northern Ireland only

Interpretation

30. In this Chapter, "the 2013 Regulations" means the Working with Children (Exchange of Criminal Conviction Information) (England and Wales and Northern Ireland) Regulations 2013(**a**).

Revocation of the Working with Children (Exchange of Criminal Conviction Information) (England and Wales and Northern Ireland) Regulations 2013

31. Subject to regulation 32 (transitional provision – requests made before commencement day), the 2013 Regulations 2013 are revoked.

Transitional provision – requests made before commencement day

32.—(1) This regulation applies where —

(a) a request referred to in regulation 3(1) of the 2013 Regulations (exchange of conviction and disqualification information) was made before commencement day, and

(b) the requested information was not transmitted before commencement day.

(2) The 2013 Regulations continue to have effect in relation to the request, subject to the modification set out in paragraph (3).

(3) The modification is that regulation 3(1) of the 2013 Regulations is to be read as if the words "in accordance with the procedures set out in the Framework Decision" were omitted.

PART 9

European Judicial Network

Revocation of Council Decision 2008/976/JHA

33. Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network is revoked.

PART 10

EU-LISA

Revocation of Regulation (EU) 2018/1726

34. Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 is revoked.

Revocation of Council Decisions 2010/779/EU and (EU) 2018/1600

35. The following Council Decisions are revoked—

(**a**) S.I. 2013/2945.

(a) Council Decision 2010/779/EU of 14 December 2010 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis relating to the establishment of a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice;

(b) Council Decision (EU) 2018/1600 of 28 September 2018 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* relating to the establishment of a European Union Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA).

PART 11

Europol

Interpretation

36. In this Part—

"Europol" means the European Union Agency for Law Enforcement Cooperation, as established by the Europol Regulation;

"Europol Regulation" means Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA.

Revocation of the Europol Regulation

37. Subject to regulation 40 (saving provisions – information provided before commencement day), the Europol Regulation is revoked.

Revocation of Europol Council Decisions

38. The following Council Decisions are revoked in so far as they are retained EU law—

(a) Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol);

(b) Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information;

(c) Council Decision 2009/935/JHA of 30 November 2009 determining the list of third States and organisations with which Europol shall conclude agreements;

(d) Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files;

(e) Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information.

Revocation of Commission Decision (EU) 2017/388

39. Commission Decision (EU) 2017/388 of 6 March 2017 confirming the participation of the United Kingdom of Great Britain and Northern Ireland in Regulation (EU) 2016/794 of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation (Europol) is revoked.

Saving provisions – information provided before commencement day

40.—(1) The following provisions of the Europol Regulation continue to have effect in relation to information provided by Europol to the United Kingdom before commencement day, with the modifications specified below—

(a) paragraph 3 of Article 20 (access by Member States and Europol's staff to information stored by Europol), with the modification that the reference to "Member States" is to be treated as a reference to "any person or body having functions of a public nature that received information provided by Europol prior to commencement day, or successor thereto,";

(b) for paragraph 7 of Article 23 (common provisions), substitute—

"7. Onward transfers of personal data held by Europol by any person or body having functions of a public nature that received information provided by Europol prior to commencement day, or successor thereto, shall be prohibited, unless Europol has given its prior explicit authorisation.";

(c) Article 30 (processing of special categories of personal data and of different categories of data subjects), with the following modifications—

(i) omit paragraphs 3 and 6;

(ii) in paragraph 4, omit "or Union";

(iii) in paragraph 5, the reference to "Chapter V" is to be treated as a reference to "national law";

(d) Article 32 (security of processing), with the following modifications—

(i) omit paragraph 1;

(ii) in paragraphs 2 and 3, omit "Europol and";

(iii) in paragraph 2, the reference to "each Member State" is to be treated as a reference to "any person or body having functions of a public nature that received information provided by Europol prior to commencement day, or successor thereto,";

(iv) in paragraph 3, the reference to "Member States" is to be treated as a reference to "any person or body having functions of a public nature that received information provided by Europol prior to commencement day, or successor thereto,".

(2) Article 42 of the Europol Regulation (supervision by the national supervisory authority) continues to have effect, with the modifications specified below—

(a) for paragraph 1, substitute—

"1. The Information Commissioner's Office shall have the task of monitoring independently, in accordance with national law, the permissibility of the transfer, the retrieval and any communication to Europol before the date on which regulation 37 of the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (revocation of the Europol Regulation) commenced of personal data by the United Kingdom, and of examining whether such transfer, retrieval or communication violates the rights of the data subjects concerned. For that purpose, the Information Commissioner's Office shall have access to data submitted by the United Kingdom to Europol in accordance with the relevant national procedures.";

(b) omit paragraphs 2 and 3;

(c) for paragraph 4, substitute—

"4. Any person shall have the right to request the Information Commissioner's Office to verify the legality of any transfer or communication to Europol before the date on which regulation 37 of the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (revocation of the Europol Regulation) commenced of data concerning him or her in any form and of access to those data by the United Kingdom. That right shall be exercised in accordance with national law.".

Revocation of additional legislation

41. The following Orders are revoked—

(a) The European Police Office (Legal Capacities) Order 1996(**a**);

(b) The European Communities (Immunities and Privileges of the European Police Office) Order 1997(**b**);

(c) The European Communities (Immunities and Privileges of the European Police Office) (Amendment) Order 2004(**c**).

PART 12

Exchange of Information and Intelligence between Law Enforcement Authorities and Disclosure in Foreign Proceedings

CHAPTER 1

Exchange of information and intelligence between law enforcement authorities

Introductory

42.—(1) In this Part, the expressions which are defined in regulation 53 of the CJDP Regulations (interpretation) have the meanings given in that regulation (disregarding for this purpose the revocation made by regulation 43 (revocation of Part 5 of the CJDP Regulations).

(2) Regulation 53 of the CJDP Regulations continues to apply for the purposes of any provision of Part 5 of the CJDP Regulations(**d**) (exchange of information and intelligence between law enforcement authorities) which is continued by this Part.

Revocation of Part 5 of the CJDP Regulations

43. Subject to regulations 44 to 47 (transitional and saving provisions), Part 5 of the CJDP Regulations is revoked.

Transitional provision – requests for information or intelligence received before commencement day

44.—(1) This regulation applies where—

(a) a request referred to in regulation 54(1) of the CJDP Regulations (duty to provide information or intelligence) was made to a UK competent authority before commencement day, and

(b) the information or intelligence was not provided before commencement day.

(2) The following provisions of the CJDP Regulations continue to have effect in relation to the request, subject to the modification in paragraph (3)—

(a) regulation 54;

(b) regulation 58(2) and (6) (requirements for the sharing of information or intelligence);

(c) regulation 59 (reasons to withhold information or intelligence).

(3) The modifications are that—

(a) paragraph (2) of regulation 58 is to be read as if the words "in accordance with the Framework Decision" were omitted;

(**a**) S.I. 1996/3157. S.I. 1997/2973 provides for the revocation of S.I. 1996/3157 but neither S.I. has been commenced.
(**b**) S.I. 1997/2973. S.I. 2004/3330 provides for the amendment of S.I. 1997/2973 but neither S.I. has been commenced.
(**c**) S.I. 2004/3330.
(**d**) Part 5 was amended by S.I. 2014/3191.

(b) paragraphs (3) and (4) of regulation 59 (reasons to withhold information or intelligence) are to be read as if the words "under the Framework Decision" in each paragraph were omitted.

(4) The provisions referred to in paragraph (2) are to be construed as if the United Kingdom continued to be a member State.

Saving provision – information and intelligence supplied before commencement day

45.—(1) This regulation applies in relation to information or intelligence supplied to a UK competent authority before commencement day in accordance with the Framework Decision.

(2) The following provisions of the CJDP Regulations continue to have effect in relation to the information or intelligence, subject to the modification in paragraph (3)—

(a) regulation 58(1), (4) and (5) (requirements for the sharing of information or intelligence);

(b) regulation 59 (reasons to withhold information or intelligence), in so far as it applies for the purposes of regulation 58(5).

(3) The modification is that paragraphs (3) and (4) of regulation 59 are to be read as if the words "under the Framework Decision" in each paragraph were omitted.

(4) The provisions referred to in paragraph (2) are to be construed as if the United Kingdom continued to be a member State.

Saving provision – representations concerning use of information or intelligence

46.—(1) This regulation applies where the UK competent authority has imposed conditions on the use of information or intelligence under regulation 58(2) of the CJDP Regulations (requirements for the sharing of information or intelligence), whether before commencement day or (in a case to which regulation 44 (transitional provision) applies) on or after commencement day.

(2) Regulation 58(3) continues to have effect with the omission of sub-paragraph (b) in relation to the use of the information or intelligence.

Saving provision – information obtained by a UK member of an international joint investigation team

47.—(1) This regulation applies in relation to information referred to in regulation 61(2) of the CJDP Regulations (joint investigation teams) which was lawfully obtained by a UK member (within the meaning of that regulation) before commencement day.

(2) Regulation 61 of the CJDP Regulations continues to have effect in relation to the information.

(3) The provision referred to in paragraph (2) is to be construed as if the United Kingdom continued to be a member State.

CHAPTER 2

Disclosure in foreign proceedings.

Amendment of the Anti-terrorism, Crime and Security Act 2001

48. In section 18(4)(b) of the Anti-terrorism, Crime and Security Act 2001(**a**) (restriction on disclosure of information for overseas purposes), for "an EU obligation" substitute "a retained EU obligation".

(**a**) 2001 c. 24. Section 18 was amended by S.I. 2011/1043.

PART 13

Explosive Precursors

Amendment of the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014

49.—(1) The Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014(**a**) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) omit the definition of "EEA State";

(b) omit the definition of "member State";

(c) in the definition of "the Precursors Regulation" omit ", as amended from time to time".

(3) In regulation 12 (supply of tier 1 substances)—

(a) in paragraph (5) for "another" substitute "a";

(b) in paragraph (6)(b) for "another" substitute "a".

(4) In regulation 13(2)(c) (supply of tier 2 substances), for "another" substitute "a".

(5) In regulation 14(1)(b) (supply of tier 1 substances for despatch or export: consent), for "another" substitute "a".

(6) In regulation 18(1) (application of enforcement provisions in the 1978 Order), after "competent authority" insert ", the United Kingdom".

(7) In regulation 24(1)(c) (guidance), omit "(incorporating any guidance issued by the European Commission in accordance with those Articles)".

Amendment of the Control of Poisons and Explosives Precursors Regulations 2015

50.—(1) The Control of Poisons and Explosives Precursors Regulations 2015(**b**) are amended as follows.

(2) In regulation 2(3) (supplies of substances involving despatch to Northern Ireland or export from the UK: modification of section 3A of the Act), for "another member State" substitute "a member State".

Amendment of Regulation (EU) No 98/2013

51.—(1) Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors is amended as follows.

(2) In Article 1 (subject matter), omit the second paragraph.

(3) In Article 2 (scope), for paragraph 1 substitute—

"1. This Regulation applies—

(a) in England and Wales and Scotland, in relation to the substances listed in Part 1 (regulated explosives precursors) and Part 3 (reportable explosives precursors) of Schedule 1A to the Poisons Act 1972(**c**), and to mixtures and substances containing them;

(b) in Northern Ireland, in relation to the substances listed in the Annexes, and to mixtures and substances containing them.

(**a**) S.R. 2014 No. 224.
(**b**) S.I. 2015/966.
(**c**) 1972 c. 66. Schedule 1A was inserted by paragraph 16 of Schedule 21 to the Deregulation Act 2015 (c. 20), and Parts 1 and 3 were amended by S.I. 2018/451.

1A. In relation to England and Wales and Scotland, any reference in this Regulation to—

(a) "the Annexes" is to be read as a reference to Parts 1 and 3 of Schedule 1A to the Poisons Act 1972;

(b) "Annex I" is to be read as a reference to Part 1 of Schedule 1A to that Act;

(c) "Annex II" is to be read as a reference to Part 3 of Schedule 1A to that Act.".

(4) In Article 3(5) (definitions), for "a Member State whether from another Member State or from a third country" substitute "the United Kingdom".

(5) In Article 4 (making available, introduction, possession and use)—

(a) in paragraph 2—

(i) for "a Member State" substitute "the Secretary of State";

(ii) for "a competent authority of the Member State" substitute "the Secretary of State";

(b) in paragraph 3, for "a Member State" substitute "the Secretary of State";

(c) omit paragraph 4;

(d) omit paragraph 5;

(e) for paragraph 6 substitute—

"6. Where a member of the general public intends to introduce a restricted explosives precursor into the territory of the United Kingdom, that person shall obtain and, if requested present to the Secretary of State, a licence issued in accordance with rules laid down in Article 7.";

(f) in paragraph 7, for "the Member State" to the end, substitute "the Secretary of State".

(6) In Article 6 (free movement)—

(a) for "Without prejudice to the second paragraph of Article 1 and to Article 13, and unless" substitute "Unless";

(b) for "or in other legal acts of the Union, Member States" substitute "the Secretary of State".

(7) In Article 7 (licences)—

(a) in paragraph 1—

(i) for "Each Member State" to "restricted explosives precursors" substitute "The Secretary of State";

(ii) for "competent authority of the Member State" substitute "Secretary of State";

(b) in paragraph 2, for "competent authority" in both places where it occurs substitute "Secretary of State";

(c) in paragraph 3, for "competent authorities" substitute "Secretary of State";

(d) in paragraph 4, for "competent authority" substitute "Secretary of State";

(e) omit paragraph 5;

(f) for paragraph 6 substitute—

"6. Licences granted by the competent authorities of a Member State or of any other country may be recognised in the United Kingdom.".

(8) In Article 8(3) (registration of transactions), for "competent authorities" substitute "Secretary of State".

(9) In Article 9 (reporting of suspicious transactions, disappearances and thefts)—

(a) in paragraph 2, for "Each Member State" substitute "The Secretary of State" and omit "national";

(b) in paragraph 3, for "the national contact point of the Member State where the transaction was concluded or attempted" substitute "a contact point established under Article 9(2)";

(c) in paragraph 4, for "the national contact point of the Member State" substitute "a contact point established under Article 9(2)";

(d) in paragraph 5—

(i) for the first sentence substitute "The Secretary of State shall draw up guidelines to assist the chemical supply chain.";

(ii) for "The Commission shall update" substitute "The Secretary of State shall update";

(e) in paragraph 6, for "competent authorities", in both places where it occurs, substitute "Secretary of State".

(10) In Article 10 (data protection)—

(a) for the first reference to "Member States" substitute "The Secretary of State";

(b) for the second reference to "Member States" substitute "the Secretary of State";

(c) for "Articles 8 and 17" substitute "Article 8".

(11) Omit Article 11 (penalties).

(12) For Article 12 (amendments to the annexes) substitute—

"*Article 12*

Amendments to the Annexes

1. In relation to Northern Ireland, the Secretary of State may by regulations amend the Annexes (whether to add, vary or remove a substance or concentration limit or make any other change).

2. In determining the distribution of substances as between Annex I and Annex II, the Secretary of State must have regard to the desirability of restricting Annex II to substances that meet each of the following criteria—

(a) they are in common use, or are likely to come into common use, for purposes other than the treatment of human ailments, and

(b) it is reasonably necessary to include them in Annex II if members of the general public are to have adequate facilities for obtaining them.

3. The power to make regulations under paragraph 1 includes power—

(a) to make different provision for different purposes,

(b) to make consequential, incidental or supplemental provision, and

(c) to make transitional, transitory or saving provision.

4. The power to make regulations under paragraph 1 is exercisable by statutory instrument.

5. An instrument containing regulations made under paragraph 1 is subject to annulment in pursuance of a resolution of either House of Parliament.".

(13) Omit Articles 13 to 18.

(14) In the text following Article 19 (entry into force), omit "This Regulation shall be binding in its entirety and directly applicable in all Member States.".

PART 14

Extradition

Interpretation

52. In this Part "the 2003 Act" means the Extradition Act 2003(**a**).

Amendment of the 2003 Act

53.—(1) The 2003 Act is amended as follows.

(2) In section 204 (transmission of warrant by electronic means)(**b**)—

(a) in subsection (1)—

(i) in paragraph (a), omit the words from "in a case" until the end;

(ii) in paragraph (b), for "and the alert are" substitute "is";

(b) omit subsection (2);

(c) in subsection (5), omit paragraph (a);

(d) in subsection (6), omit paragraph (a) together with the word "and" immediately after it.

(3) Omit section 212 (article 95 alerts)(**c**).

(4) In section 215 (European framework list), omit subsections (2) and (3).

(5) In section 223 (orders and regulations)(**d**), in subsection (6)(a), omit "section 215(2)".

Amendment of the Anti-social Behaviour, Crime and Policing Act 2014

54. In section 157 of the Anti-social Behaviour, Crime and Policing Act 2014 (proportionality)(**e**), omit subsection (4).

Amendment of the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003

55.—(1) The Extradition Act 2003 (Designation of Part 1 Territories) Order 2003(**f**) is amended as follows.

(2) For article 2 (designated territories) substitute—

"Gibraltar is designated for the purposes of Part 1 of the Extradition Act 2003.".

Amendment of the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003

56.—(1) The Extradition Act 2003 (Designation of Part 2 Territories) Order 2003(**g**) is amended as follows.

(2) In article 2(2) insert, in the appropriate places, the territories listed in paragraph (4).

(3) In article 3(2) insert, in the appropriate places, the territories listed in in paragraph (4).

(4) The territories are—

Austria;

Belgium;

(**a**) 2003 c. 41.
(**b**) Section 204 was amended by section 67 of the Policing and Crime Act 2009 (c. 26) and by section 170 of, and paragraph 120 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).
(**c**) Section 212 was amended by section 68 of the Policing and Crime Act 2009 (c. 26).
(**d**) Section 223 was amended but the amendments are not relevant for the purposes of this instrument.
(**e**) 2014 c. 12.
(**f**) S.I. 2003/3333, as amended by S.I. 2004/1898, 2005/365, 2005/2036, 2006/3451, 2007/2238, and 2013/1583.
(**g**) S.I. 2003/3334, as amended by section 43(1) of the Police and Justice Act 2006 (c. 48) and S.I. 2004/1898, 2005/365, 2005/2036, 2006/3451, 2007/2238, 2008/1589, 2010/861, 2013/1583, and 2015/992.

Bulgaria;
Croatia;
Cyprus;
Czech Republic;
Denmark;
Estonia;
Finland;
France;
Germany;
Greece;
Hungary;
Ireland;
Italy;
Latvia;
Lithuania;
Luxembourg;
Malta;
The Netherlands;
Poland;
Portugal;
Romania;
Slovakia;
Slovenia;
Spain;
Sweden.

Transitional provision

57. Regulations 53(2), 55, and 56 do not apply in a case where, before commencement day—

(a) a person has been arrested under a Part 1 warrant (within the meaning of the 2003 Act);

(b) a person has been arrested under section 5 of the 2003 Act (provisional arrest)(**a**), or

(c) a person has been extradited to or from the UK.

(**a**) Section 5 was amended by section 378 of, and Schedule 16 to, the Armed Forces Act 2006 (c.52).

PART 15

Firearms

CHAPTER 1

Amendment of legislation extending to England and Wales, Scotland and Northern Ireland

Amendment of Commission Implementing Regulation (EU) No 2015/2403

58.—(1) Commission Implementing Regulation (EU) No 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable is amended as follows.

(2) In Article 1 (scope), in paragraph 2—

(a) for "the date of its application" substitute "8 April 2016";

(b) for "to another Member State" substitute "outside of the United Kingdom".

(3) In Article 3 (verification and certification of deactivation of firearms)—

(a) in paragraph 1 for "Member States" substitute "The appropriate authority";

(b) in paragraph 2 for "Member States" substitute "the appropriate authority";

(c) omit paragraph 3;

(d) in paragraph 4—

(i) for "a deactivation certificate in accordance with the template set out in Annex III" substitute "certification in writing in accordance with the relevant legislation";

(ii) omit the final sentence;

(e) in paragraph 6 for "Member States" substitute "The appropriate authority";

(f) after paragraph 6 insert—

"7. In this Article—

"the appropriate authority" means, in relation to England and Wales and Scotland, the Secretary of State and, in relation to Northern Ireland, the Department of Justice in Northern Ireland;

"the relevant legislation" means, in relation to England and Wales and Scotland, section 8(b) of the Firearms (Amendment) Act 1988(**a**) and, in relation to Northern Ireland, Article 2(7) of the Firearms (Northern Ireland) Order 2004.".

(4) Omit Article 4 (requests for assistance).

(5) In Article 5 (marking of deactivated firearms)—

(a) the existing provision becomes paragraph 1;

(b) for "the template set out in Annex II" substitute "the relevant legislation";

(c) omit sub-paragraph (b);

(d) after sub-paragraph (c), insert—

"2. In this Article, "the relevant legislation" means, in relation to England and Wales and Scotland, section 8(a) of the Firearms (Amendment) Act 1988 and, in relation to Northern Ireland, Article 2(7) of the Firearms (Northern Ireland) Order 2004.".

(6) Omit Article 6 (additional deactivation measures).

(7) Omit Article 7 (transfer of deactivated firearms within the Union).

(8) Omit Article 8 (notification requirements).

(**a**) 1988 c. 45.

(9) After Article 9 (entry into force), omit "This Regulation shall be binding in its entirety and directly applicable in all Member States".

(10) In Annex I (technical specifications for the deactivation of firearms)—

(a) omit "as defined in Directive 91/477/EC";

(b) omit "In order to ensure a correct and uniform application of the deactivation operations of firearms, the Commission shall elaborate definitions in cooperation with the Member States.".

(11) Omit Annex II (template for marking of deactivated firearms).

(12) Omit Annex III (model certificate for deactivated firearms).

CHAPTER 2

Amendment of legislation extending to England and Wales and Scotland

Amendment of the Firearms Act 1968

59.—(1) The Firearms Act 1968(**a**) is amended as follows.

(2) In section 5A(**b**) (exemptions from requirement of authority under s.5), omit subsection (3).

(3) In section 22 (acquisition and possession of firearms by minors), omit subsection (1A)(**c**).

(4) In section 27 (special provisions about firearm certificates), omit subsection (1A)(**d**).

(5) In section 28 (special provisions about shot gun certificates), omit subsection (1C)(**e**).

(6) Omit section 32A (documents for European purposes)(**f**) and the italic cross-heading before that section.

(7) Omit section 32B (renewal of European firearms pass)(**g**).

(8) Omit section 32C (variation, endorsement etc. of European documents)(**h**).

(9) In section 42A (information as to transactions under visitors' permits)(**i**)—

(a) in subsection (1)(b)—

(i) omit "or (d)";

(ii) omit "or purchases or acquisitions by collectors etc";

(iii) for "the member States" substitute "Great Britain";

(b) in subsection (2)(b), for "the member State" substitute "Great Britain".

(10) In section 48 (production of certificates)(**j**) —

(a) omit subsection (1A);

(b) in subsection (2) omit "or document";

(c) omit subsection (4).

(11) In section 57 (interpretation)—

(a) in subsection (4)(**k**), omit the following definitions—

(**a**) 1968 c. 27.
(**b**) Section 5A was inserted by S.I. 1992/2823. Relevant amendments were made by sections 108(5) and 109(2)(a) of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).
(**c**) Section 22(1A) was inserted by S.I. 1992/2823.
(**d**) Section 27(1A) was inserted by S.I. 1992/2823.
(**e**) Section 28(1C) was inserted by S.I. 1992/2823 and amended by S.I. 2010/1759.
(**f**) Section 32A was inserted by S.I. 1992/2823 and amended by paragraph 6 of Schedule 2 to the Firearms (Amendment) Act 1997 (c. 5).
(**g**) Section 32B was inserted by S.I. 1992/2823.
(**h**) Section 32C was inserted by S.I. 1992/2823 and amended by paragraph 6 of Schedule 2 to the Firearms (Amendment) Act 1997 (c. 5).
(**i**) Section 42A was inserted by S.I 1992/2823 and amended by S.I. 2011/713.
(**j**) Section 48(1A) was inserted by S.I. 1992/2823.
(**k**) Section 57(4) was amended by S.I. 1992/2823.

(i) "another member State" and "other member States";

(ii) "Article 7 authority";

(iii) "European firearms pass";

(b) omit subsection (4A)(**a**).

(12) In Part 1 of Schedule 6 (prosecution and punishment of offences)(**b**), in the table, omit the entries relating to sections 32B(5), 32C(6) and 48(4) of that Act.

Saving provision – exemptions from requirement of authority under section 5 of the Firearms Act 1968

60.—(1) This regulation applies if, immediately before commencement day—

(a) a person has in the person's possession a prohibited weapon or prohibited ammunition within the meaning of the Firearms Act 1968, and

(b) subsection (3) of section 5A of that Act (exemptions from requirement of authority under section 5) applies in relation to that person's possession of the weapon or ammunition.

(2) Despite the repeal of that subsection by regulation 59 (amendment of the Firearms Act 1968), that subsection continues to have effect on and after commencement day in relation to the possession by that person of the weapon or ammunition.

Amendment of the Firearms (Amendment) Act 1988

61.—(1) The Firearms (Amendment) Act 1988(**c**) is amended as follows.

(2) In section 8A(**d**) (controls on defectively deactivated weapons), in each of subsections (2) and (3), for "the EU" in each place those words occur substitute "the United Kingdom".

(3) In section 17(**e**) (visitors' permits)—

(a) in subsection (1A)(**f**)—

(i) in paragraph (b), omit "to a place outside the member States without first being taken to another member State";

(ii) at the end of paragraph (b) insert "or";

(iii) omit paragraph (d) and the "or" immediately preceding that paragraph;

(b) omit subsection (3A)(**g**).

(4) In section 18(**h**) (firearms acquired for export)—

(a) omit subsection (1A)(**i**);

(b) in subsection (4)(**j**) omit "and, in a case where the transaction is one for the purposes of which a document such as is mentioned in subsection (1A)(a) above is required to be produced, particulars of the agreement contained in that document";

(c) omit subsection (6)(**k**).

(5) Omit section 18A(**l**) (purchase or acquisition of firearms in other member States).

(**a**) Section 4A was inserted by S.I. 1992/2823.
(**b**) The table in Part 1 of Schedule 6 was amended by S.I 1992/2823.
(**c**) 1988 c. 45.
(**d**) Section 8A was inserted by section 128 of the Policing and Crime Act 2017 (c. 3).
(**e**) Relevant amendments made by S.I. 1992/2823.
(**f**) Section 17(1A) was inserted by S.I. 1992/2823.
(**g**) Section 17(3A) was inserted by S.I. 1992/2823 and amended by S.I. 2011/2175.
(**h**) Relevant amendments made by S.I. 1992/2823.
(**i**) Section 18(1A) was inserted by S.I. 1992/2823.
(**j**) Section 18(4) was amended by S.I.1992/2823.
(**k**) Section 18(6) was inserted by S.I. 1992/2823.
(**l**) Section 18A was inserted by S.I. 1992/2823 and amended by S.I. 2011/713.

(6) In section 18B(**a**) (permitted electronic means), in subsection (1)—

(a) in the opening words omit "or 18A";

(b) in paragraph (a), for "the section concerned" substitute "that section".

Amendment to the Firearms Acts (Amendment) Regulations 1992

62. In the Firearms Acts (Amendment) Regulations 1992(**b**), omit regulation 10 (exchange of information).

Amendment to the Firearms (Amendment) Act 1988 (Amendment) Regulations 2011

63. In the Firearms (Amendment) Act 1988 (Amendment) Regulations 2011(**c**), omit regulation 3 (review).

CHAPTER 3

Amendment of legislation extending to Northern Ireland

Amendment to the Firearms (Northern Ireland) Order 2004

64.—(1) The Firearms (Northern Ireland) Order 2004(**d**) is amended as follows.

(2) In Article 2(2) (interpretation), omit the following definitions—

(a) "another member State";

(b) "Article 7 authority";

(c) "European firearms pass".

(3) In Article 15 (visitor's firearm permit)(**e**), omit paragraph (6).

(4) Omit Article 19 (issue of European firearms pass) and the italic cross-heading before Article 19.

(5) Omit Article 20 (duration of European firearms pass).

(6) Omit Article 21 (renewal of European firearms pass).

(7) Omit Article 22 (Article 7 authorities).

(8) Omit Article 23 (variation, endorsement, etc. of European documents)(**f**).

(9) Omit Article 43 (purchase or acquisition of firearms in other member States).

(10) In Article 44 (firearms acquired for export)—

(a) omit paragraph (2);

(b) in paragraph (5), omit sub-paragraph (b) and the "and" immediately preceding that sub-paragraph.

(11) In Article 46 (exemptions from requirement of authority under Article 45), omit paragraph (4).

(12) In Article 55 (production of certificates, etc.)—

(a) omit paragraphs (2) and (5);

(b) in paragraph (3)(a) omit "or document".

(13) In Schedule 5 (table of punishments) omit the entries relating to—

(a) Article 21(4);

(**a**) Section 18B was inserted by S.I. 2011/713 and amended by paragraphs 6 and 7(b) of Schedule 14 to the Policing and Crime Act 2017 and by S.I. 2013/602.
(**b**) S.I. 1992/2823.
(**c**) S.I. 2011/2175.
(**d**) S.I. 2004/702 (N.I. 3).
(**e**) Article 15 was amended by regulation 2 of S.R. 2012 No. 395.
(**f**) Article 23 was amended by S.I. 2010/976.

(b) Article 23(6);

(c) Article 43(5);

(d) Article 55(5).

Saving provision – exemptions from requirement of authority under Article 45 of the Firearms (Northern Ireland) Order 2004

65.—(1) This regulation applies if, immediately before commencement day—

(a) a person has in the person's possession a prohibited weapon or prohibited ammunition within the meaning of the Firearms (Northern Ireland) Order 2004, and

(b) paragraph (4) of Article 46 of that Order (exemptions from requirement of authority under Article 45) applies in relation to that person's possession of the weapon or ammunition.

(2) Despite the revocation of that paragraph by regulation 64 (amendment of the Firearms (Northern Ireland) Order 2004), that paragraph continues to have effect on and after commencement day in relation to the possession by that person of the weapon or ammunition.

PART 16

Football Disorder

Revocation of retained law relating to football disorder

66. The following Decisions are revoked—

(a) Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension;

(b) Council Decision 2007/412/JHA of 12 June 2007 amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension.

PART 17

Joint Investigation Teams

Amendment of the Police Act 1996

67.—(1) The Police Act 1996(**a**) is amended as follows.

(2) In section 88 (liability for wrongful acts of constables), in subsection (7), omit paragraphs (a) and (b) (together with the "or" at the end of paragraph (b)).

(3) In section 89 (assaults on constables), in subsection (5), omit paragraphs (a) and (b) (together with the "or" at the end of paragraph (b)).

Amendment of the Police (Northern Ireland) Act 1998

68.—(1) The Police (Northern Ireland) Act 1998(**b**) is amended as follows.

(2) In section 29 (liability for wrongful acts of constables), in subsection (7), omit paragraphs (a) and (b) (together with the "or" at the end of paragraph (b)).

(**a**) 1996 c. 16. Section 88(7) was inserted by section 103(1) of the Police Reform Act 2002 (c. 30) ("the PRA 2002") and amended by S.I. 2012/1809, and section 89(5) was inserted by section 104(1) of the PRA 2002 and amended by S.I. 2012/1809.

(**b**) 1998 c. 32. Section 29(7) was inserted by section 103(5) of the PRA 2002 and amended by S.I. 2010/976, and section 66(6) was inserted by section 104(3) of the PRA 2002 and amended by S.I. 2010/976.

(3) In section 66 (assaults on, and obstruction of constables, etc.), in subsection (6), omit paragraphs (a) and (b) (together with the "or" at the end of paragraph (b)).

Amendment of the Police and Fire Reform (Scotland) Act 2012

69. In the Police and Fire Reform (Scotland) Act 2012(**a**), in section 99 (interpretation of Part 1), in subsection (1), in the definition of "international joint investigation team" omit paragraphs (a) to (c).

Amendment of the Crime and Courts Act 2013

70. In Schedule 4 to the Crime and Courts Act 2013(**b**), in paragraph 5 (interpretation)—

(a) in sub-paragraph (1), omit paragraphs (a) and (b) (together with the "or" at the end of paragraph (b));

(b) omit sub-paragraph (2).

Revocation of the International Joint Investigation Teams (International Agreement) Order 2004

71. The International Joint Investigation Teams (International Agreement) Order 2004(**c**) is revoked.

Saving provision – investigation teams operating in the UK on or after commencement day

72. Regulations 67 to 69 and 71 do not apply in a case to which regulation 10 (transitional provision – surveillance which is not completed before commencement day) applies.

PART 18

Mutual Legal Assistance in Criminal Matters

CHAPTER 1

Interpretation

Interpretation

73. In this Part—

"the 2003 Act" means the Crime (International Co-operation) Act 2003(**d**);

"the 2017 Regulations" means the Criminal Justice (European Investigation Order) Regulations 2017(**e**);

"central authority" has the same meaning as in the 2017 Regulations;

"country" has the same meaning as in Part 1 of the 2003 Act;

"EU prisoner" has the same meaning as in the 2017 Regulations;

"participating State" has the same meaning as in the 2017 Regulations;

"prisoner" has the same meanings as in the 2017 Regulations.

(**a**) 2012 asp 8.
(**b**) 2013 c. 22.
(**c**) S.I. 2004/1127.
(**d**) 2003 c. 32.
(**e**) S.I. 2017/730 as amended by S.I. 2018/378.

CHAPTER 2

Revocation of the 2017 Regulations

Revocation of the 2017 Regulations

74. The 2017 Regulations are revoked.

CHAPTER 3

Amendment of primary legislation consequential upon amendments made by this Part

Amendment of the Criminal Justice Act 1987

75.—(1) The Criminal Justice Act 1987(**a**) is amended as follows.

(2) In section 2 (Director's investigation powers)(**b**)—

(a) in subsection (1A), for paragraph (b) substitute—

"(b) the Secretary of State acting under section 15(2) of the Crime (International Co-operation) Act 2003, in response to a request received from a person mentioned in section 13(2) of that Act (an "overseas authority").";

(b) in subsection (18), omit the definition of "overseas authority".

(3) In section 3(6) (disclosure of information)(**c**), in paragraph (n), for "the Treaty on European Union or any other" substitute "a".

Amendment of the Criminal Justice Act 1988

76. In Schedule 13 to the Criminal Justice Act 1988 (evidence before service courts)(**d**), in paragraph 6 (letters of request etc.), in sub-paragraph (1), omit ", and no order shall be made or validated under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017,".

Amendment of the Criminal Procedure (Scotland) Act 1995

77.—(1) The Criminal Procedure (Scotland) Act 1995(**e**) is amended as follows.

(2) In section 210(1) (consideration of time spent in custody)(**f**), in paragraph (c), omit "or regulation 20 or 54 of the Criminal Justice (European Investigation Order) Regulations 2017".

(3) In section 267A (citation of witnesses for precognition)(**g**), omit subsection (1A).

(4) In section 272 (evidence by letter of request or on commission)(**h**), omit subsection (14).

(5) In section 273 (television link evidence from abroad)(**i**), omit subsection (5).

(**a**) 1987 c. 38.

(**b**) Section 2(1A) was inserted by section 164(2)(c) of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by S.I. 2017/730. Section 2(18) was amended by S.I. 2017/730.There are other amendments not relevant to this instrument.

(**c**) Section 3(6) was amended by section 80(b) of the Crime (International Co-operation) Act 2003 (c. 32). There are other amendments not relevant to this instrument.

(**d**) 1988 c. 33. Paragraph 6 of Schedule 13 was amended by paragraph 6 of Schedule 4 to the Criminal Justice (International Co-operation) Act 1990 (c. 5), by paragraph 16 of Schedule 5 to the Crime (International Co-operation) Act 2003, and by S.I. 2017/730.

(**e**) 1995 c. 46.

(**f**) Section 210 was amended by section 12 of the Crime and Punishment (Scotland) Act 1997 (c. 48), by paragraph 8(14) of Schedule 4 and Part 1 of Schedule 5 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), by paragraph 65 of Schedule 5 to the Crime (International Co-operation) Act 2003, by section 172 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) and by S.I. 2017/730.

(**g**) Section 267A was inserted by section 22 of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5) and by S.I. 2017/730.

(**h**) Section 272 was amended by section 35(4) of the Criminal Proceedings etc (Reform) (Scotland) Act 2007 (asp 6) and by S.I. 2017/730.

(**i**) Section 273 was amended by section 91(2) of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13 and by S.I. 2017/730.

Amendment of the Criminal Law (Consolidation) (Scotland) Act 1995

78. In section 27 of the Criminal Law (Consolidation) Scotland Act 1995 (Lord Advocate's direction)(**a**), for subsection (2) substitute—

> "(2) The Lord Advocate may also give a direction under this section by virtue of section 15(4) of the Crime (International Co-operation) Act 2003 or on a request made by the Attorney-General of the Isle of Man, Jersey or Guernsey acting under legislation corresponding to this Part of this Act.".

Amendment of the Criminal Justice and Police Act 2001

79.—(1) Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (powers of seizure to which the additional powers in section 50 of that Act apply)(**b**) is amended as follows.

(2) In paragraph 73C(**c**), for "sections 17 and 22" substitute "section 17".

(3) Omit paragraph 73R(**d**).

Amendment of the Criminal Justice Act 2003

80. In section 117 of the Criminal Justice Act 2003 (hearsay evidence: business and other documents)(**e**), in subsection (4)(b)(iii) omit "an order under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017".

Amendment of the Criminal Justice (Evidence) (Northern Ireland) Order 2004

81. In article 21 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 (hearsay evidence: business and other documents)(**f**), in paragraph (4)(b)(iii) omit "an order under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017".

Amendment of the Investigatory Powers Act 2016

82.—(1) The Investigatory Powers Act 2016(**g**) is amended as follows.

(2) In section 10 (restriction on requesting assistance under mutual assistance agreements etc.)(**h**)—

(a) in subsection (1), omit paragraph (a) and the "and" at the end of that paragraph;

(b) in subsection (3), omit the definition of "EU mutual assistance instrument".

(3) In section 15(4) (warrants that may be issued under Chapter 1 of Part 2)—

(a) in paragraph (a), omit "an EU mutual assistance instrument or";

(b) in paragraph (b), omit "instrument or".

(4) In section 18(1)(h) (persons who may apply for issue of a warrant), omit "an EU mutual assistance instrument or".

(5) In section 20(3)(a) (grounds on which warrants may be issued by Secretary of State), omit "an EU mutual assistance instrument or".

(6) In section 21(4)(b)(i) (power of Scottish Ministers to issue warrants), omit "an EU mutual assistance instrument or".

(**a**) 1995 c. 39. Section 27 was amended by paragraph 62 of Schedule 5 to the Crime (International Co-operation) Act 2003 and by S.I. 2017/730.
(**b**) 2001 c. 16.
(**c**) Paragraph 73C was inserted by section 26(3)(b) of the Crime (International Co-operation) Act 2003.
(**d**) Paragraph 73R was inserted by S.I. 2017/730.
(**e**) 2003 c.44. Section 117 was amended by S.I. 2017/730.
(**f**) S.I. 2004/1501 (N.I. 10) was amended by S.I. 2017/730.
(**g**) 2016 c. 25.
(**h**) Section 10 was amended by S.I. 2017/730.

(7) In section 40 (special rules for certain mutual assistance warrants)—

(a) in subsection (1)(a), omit "an EU mutual assistance instrument or";

(b) in subsections (3)(a) and (5)(a), omit "an EU mutual assistance instrument or" and "(as the case may be)".

(8) In section 60(1) (Part 2: interpretation), omit the definition of "EU mutual assistance instrument".

CHAPTER 4

Saving provisions relating to European investigation orders

Outgoing European investigation orders (other than relating to the temporary transfer of a prisoner or EU prisoner)

83.—(1) This regulation applies in relation to a European investigation order transmitted under regulation 9 (transmission of a European investigation order) or 10 (variation or revocation of a European investigation order) of the 2017 Regulations before commencement day.

(2) Regulations 77(4) and (5) (amendment of the Criminal Procedure (Scotland) Act 1995), 80 (amendment of the Criminal Justice Act 2003), 81 (amendment of the Criminal Justice (Evidence) (Northern Ireland) Order 2004) and 82 (amendment of the Investigatory Powers Act 2016) of these Regulations do not apply.

(3) The following provisions of the 2017 Regulations continue to have effect—

(a) regulation 10 (variation or revocation of a European investigation order), but modified to read as if—

(i) the words "vary or" where they appear in each of paragraphs (1) and (2) were omitted;

(ii) paragraphs (6) and (7) were omitted;

(b) regulation 12 (use of evidence);

(c) regulations 2 and 5 (interpretation), Part 1 of Schedule 1 (designated public prosecutors) and Schedule 2 (participating States), but only for the purposes of the provisions which continue to have effect by virtue of sub-paragraphs (a) and (b).

(4) In this regulation, "European investigation order" has the meaning given by regulation 5(1)(a) of the 2017 Regulations.

Incoming European investigation order (other than relating to a request for the temporary transfer of a prisoner)

84.—(1) This regulation applies in relation to a European investigation order received before commencement day by a central authority in the United Kingdom, to the extent that the order does not relate to a request for the temporary transfer of a prisoner or an EU prisoner.

(2) Regulations 75 (amendment of the Criminal Justice Act 1987), 77(3) (amendment of the Criminal Procedure (Scotland) Act 1995), 78 (amendment of the Criminal Law (Consolidation) (Scotland) Act 1995) and 79(3) (amendment of the Criminal Justice and Police Act 2001) of these Regulations do not apply.

(3) The following provisions of the 2017 Regulations continue to have effect—

(a) Part 3 (recognition and execution of a European investigation order made in a participating State), except Chapter 7 of that Part;

(b) regulation 59 (designation for the purposes of the Investigatory Powers Act 2016);

(c) Part 4 of Schedule 1 (designated executing authorities);

(d) Schedule 4 (general grounds for refusal), Schedule 5 (receiving evidence before a nominated court), and Schedule 6 (hearing a person by video-link or telephone conference);

(e) regulation 2 (general interpretation) and Schedule 2 (participating States), but only for the purpose of the provisions which continue to have effect by virtue of sub-paragraphs (a) to (d).

(4) In this regulation "European investigation order" has the meaning given by regulation 25 of the 2017 Regulations (interpretation).

European investigation order made in the United Kingdom relating to the temporary transfer of a prisoner or EU prisoner

85.—(1) In relation to a prisoner temporarily transferred to a participating State pursuant to a European investigation order made and transmitted under regulation 22 of the 2017 Regulations (European investigation order for the temporary transfer of a prisoner) before commencement day—

(a) regulation 77(2) (amendment of the Criminal Procedure (Scotland) Act 1995) of these Regulations does not apply;

(b) the following provisions of the 2017 Regulations continue to have effect—

(i) regulation 20 (temporary transfer of UK prisoner to participating State for the purpose of UK investigation);

(ii) regulation 24 (time spent by UK prisoner in custody overseas);

(iii) regulations 2 and 5 (interpretation) and Schedule 2 (participating States), but only for the purpose of the other provisions which continue to have effect by virtue of this this sub-paragraph.

(2) In relation to an EU prisoner temporarily transferred to the United Kingdom pursuant to a European investigation order made and transmitted under regulation 22 of the 2017 Regulations before commencement day, the following provisions of those Regulations continue to have effect—

(a) regulation 21 (temporary transfer of EU prisoner to the UK for the purposes of UK investigation or proceedings);

(b) regulation 23 (restrictions on prosecution and detention for other matters);

(c) regulations 2 and 5 and Schedule 2, but only for the purpose of the provisions which continue to have effect by virtue of sub-paragraphs (a) and (b).

(3) In this regulation, "European investigation order" has the meaning given by regulation 5(1)(a) of the 2017 Regulations.

European investigation order made in a participating State relating to the temporary transfer of a prisoner or EU prisoner

86.—(1) In relation to a prisoner temporarily transferred to a participating State pursuant to a warrant issued by the Secretary of State or Scottish Ministers under regulation 54 of the 2017 Regulations (temporary transfer of UK prisoner to issuing State for the purpose of issuing State's investigation or proceedings) before commencement day—

(a) regulation 77(2) (amendment of the Criminal Procedure (Scotland) Act 1995) of these Regulations does not apply;

(b) the following provisions of the 2017 Regulations continue to have effect—

(i) regulation 54;

(ii) regulation 57 (time spent by UK prisoner in custody overseas);

(iii) regulations 2 and 25 (interpretation) and Schedule 2 (participating States), but only for the purpose of the other provisions which continue to have effect by virtue of this sub-paragraph.

(2) In relation to an EU prisoner temporarily transferred to the United Kingdom pursuant to a warrant issued by the Secretary of State or Scottish Ministers under regulation 55 of the 2017 Regulations (temporary transfer of EU prisoner to the UK for the purpose of issuing State's

investigation) before commencement day, the following provisions of those Regulations continue to have effect—

(a) regulation 55;

(b) regulation 56 (restrictions on prosecution and detention for other matters);

(c) regulations 2 and 25 (interpretation) and Schedule 2 (participating States), but only for the purpose of the provisions which continue to have effect by virtue of sub-paragraphs (a) and (b).

CHAPTER 5

Amendment of the 2003 Act

Amendment of the 2003 Act

87.—(1) The 2003 Act is amended as follows.

(2) In section 1 (service of overseas process)—

(a) in subsection (1)—

(i) omit "or other document";

(ii) omit "or document";

(b) in subsection (2), omit paragraphs (b), (c) and (d);

(c) in subsections (3) and (4), omit "or document".

(3) In section 7 (requests for assistance in obtaining evidence abroad), omit subsection (7).

(4) In section 8(3) (sending requests for assistance), omit paragraph (b) and the "or" immediately before it.

(5) Omit the following—

(a) section 10 (domestic freezing orders);

(b) section 11 (sending freezing orders);

(c) section 12 (variation or revocation of freezing orders);

(6) In section 13(3) (requests for assistance from overseas authorities), omit paragraph (b).

(7) In section 14 (powers to arrange for evidence to be obtained)—

(a) in subsection (1), omit paragraphs (b) and (c);

(b) in subsection (2)—

(i) omit "or (b)";

(ii) omit "An offence includes an act punishable in administrative proceedings.".

(8) Omit the following—

(a) section 20 (overseas freezing orders);

(b) section 21 (considering overseas freezing orders);

(c) section 22 (giving effect to overseas freezing orders);

(d) section 23 (postponement);

(e) section 24 (evidence seized by or produced to a constable);

(f) section 25 (release of evidence held);

(9) In section 26 (powers under warrants)—

(a) in subsection (1) omit "or 22";

(b) omit subsection (2).

(10) In section 28 (interpretation of Chapter 2)—

(a) in subsection (1), omit the following definitions—

(i) "domestic freezing order";

(ii) "overseas freezing order";

(iii) "the relevant Framework Decision";

(b) omit subsections (5) to (8).

(11) Omit Chapter 4 of Part 1 (information about banking transactions).

(12) In section 50(5) (subordinate legislation)(**a**), omit "designating a country other than a member State".

(13) In section 51 (general interpretation)(**b**)—

(a) in subsection (1), omit the following definitions—

(i) "the 2001 Protocol";

(ii) "administrative proceedings";

(iii) "clemency proceedings";

(iv) "criminal proceedings";

(v) "the Mutual Legal Assistance Convention";

(vi) "the Schengen Convention";

(b) in subsection (2)—

(i) omit paragraph (a) and the "and" at the end of that paragraph;

(ii) in paragraph (b), omit "other".

CHAPTER 6

Amendment and revocation of subordinate legislation made under the 2003 Act

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2009

88.—(1) The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2009(**c**) is amended as follows.

(2) For article 3 substitute—

"**3.** Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden are designated as participating countries under section 51(2)(b) of the 2003 Act for the purposes of sections 31, 47 and 48 of, and paragraph 15 of Schedule 2 to, that Act.".

(3) Omit article 4.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2009

89.—(1) The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales, and Northern Ireland) (No. 2) Order 2009(**d**) is amended as follows.

(2) In article 3—

(a) for "Iceland and Norway are designated as participating countries" substitute "Norway is designated as a participating country";

(b) omit "32, 35, 43, 44, 45,".

(**a**) There are amendments to section 50 not relevant for the purposes of this instrument.
(**b**) Section 51 was amended by S.I. 2013/602 and 2017/730.
(**c**) S.I. 2009/613 as amended by SI 2017/730.
(**d**) S.I. 2009/1764.

(3) Omit article 4.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2009

90.—(1) The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2009(**a**) is amended as follows.

(2) For article 2 substitute—

> "**2.** Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden are designated as participating countries under section 51(2)(b) of the 2003 Act for the purposes of sections 31, 47 and 48 of, and paragraph 15 of Schedule 2 to, that Act.".

(3) Omit article 3.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 2) Order 2009

91.—(1) The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 2) Order 2009(**b**) is amended as follows.

(2) In article 2—

(a) for "Iceland and Norway are designated as participating countries" substitute "Norway is designated as a participating country";

(b) omit paragraph (b);

(c) omit paragraph (c);

(d) omit paragraph (d);

(e) omit paragraph (e);

(f) omit paragraph (f).

(3) Omit article 3.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009

92.—(1) The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009(**c**) is amended as follows.

(2) In article 3, omit "Croatia".

(3) Omit article 4.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2010

93. In the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2010(**d**), omit article 5.

(**a**) S.S.I. 2009/106 as amended by S.I. 2017/730.
(**b**) S.S.I. 2009/206.
(**c**) S.S.I. 2009/441 as amended by S.I. 2017/730.
(**d**) S.I. 2010/36 as amended by S.I. 2017/730.

Revocation of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2011

94. The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2011(**a**) is revoked.

Revocation of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2011

95. The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2011(**b**) is revoked.

CHAPTER 7

Saving provisions relating to the amendment of the Crime (International Co-operation) Act 2003 and subordinate legislation

Freezing orders

96.—(1) Despite regulation 87(5) (amendment of the 2003 Act), section 12 of the 2003 Act (variation or revocation of freezing orders) continues to have effect in relation to a domestic freezing order made under section 10 of that Act (domestic freezing orders) and forwarded by the Secretary of State or the Lord Advocate under section 11 of that Act (sending freezing orders) before commencement day, but as if the words "vary or" in subsection (1) of section 12 were omitted.

(2) Despite regulations 87(8)(b) to (10), the provisions of the 2003 Act mentioned in paragraph (3) continue to have effect in relation to an overseas freezing order (within the meaning of section 20 of the 2003 Act (overseas freezing orders) received by the Secretary of State or Lord Advocate before commencement day.

(3) Those provisions are—

(a) sections 21 to 25;

(b) section 26 without the amendments made by regulation 87(9);

(c) section 28 without the amendments made by regulation 87(10).

(4) A provision mentioned in paragraph (3) has effect by virtue of paragraph (2) as if the country from which the overseas freezing order was received continued to be a participating country within the meaning of the 2003 Act.

Requests for information about financial accounts and transactions

97.—(1) Despite regulation 87(11) (amendment of the 2003 Act), sections 32 to 34 (customer information (England and Wales and Northern Ireland) and offences) and 42 (offence of disclosure) of the 2003 Act continue to have effect in relation to a request for customer information received by the Secretary of State under section 32 of that Act before commencement day.

(2) Despite regulation 87(11), sections 37 to 39 (customer information (Scotland) and offences) and 42 (offence of disclosure) of the 2003 Act continue to have effect in relation to a request for customer information received by the Lord Advocate under section 37 of that Act before commencement day.

(3) Despite regulation 87(11), sections 35 (account information: England and Wales and Northern Ireland), 36 (account monitoring orders: England and Wales and Northern Ireland) and 42 (offence of disclosure) of the 2003 Act continue to have effect in relation to a request for

(**a**) S.S.I. 2011/7.
(**b**) S.I. 2011/229.

account information received by the Secretary of State under section 35 of that Act before commencement day.

(4) Despite regulation 87(11), sections 40, 41 (account monitoring orders: Scotland) and 42 (offence of disclosure) of the 2003 Act continue to have effect in relation to a request for account information received by the Lord Advocate under section 40 of that Act before commencement day.

(5) A provision mentioned in this regulation has effect by virtue of this regulation as if the country from which the request was received continued to be a participating country within the meaning of the 2003 Act.

Certain mutual legal assistance requests from Iceland

98.—(1) Paragraph (2) applies where, before commencement day, by virtue of an agreement with the competent authority of Iceland—

(a) a person has been transferred to that country from the United Kingdom pursuant to a warrant issued under section 47 of the 2003 Act (transfer of UK prisoner to assist investigation abroad)(**a**), or

(b) a person has been transferred from that country to the United Kingdom pursuant to a warrant issued under section 48 of the 2003 Act (transfer of EU etc prisoner to assist UK investigation)(**b**).

(2) The provisions of the 2003 Act mentioned in paragraph (1) continue to have effect in relation to the person as if Iceland continued to be a participating country within the meaning of the 2003 Act.

(3) Paragraph (4) applies where, before commencement day, a request under section 31 of the 2003 Act (hearing witnesses in the UK by telephone) is received from an authority in Iceland.

(4) Section 31 of, and Part 2 of Schedule 2 to, the 2003 Act (evidence given by telephone link) continue to have effect in relation to the request as if Iceland continued to be a participating country within the meaning of the 2003 Act.

CHAPTER 8

Other retained EU law relating to mutual legal assistance in criminal matters and certain aspects of police cooperation

Provisions of the 1990 Schengen Convention relating to police cooperation and mutual legal assistance in criminal matters

99. The following decisions are revoked but only so far as they relate to Articles 39, 46 to 49 and 51 of the 1990 Schengen Convention—

(a) Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis;

(b) Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland;

(c) Council Decision 2014/857/EU of 1 December 2014 concerning the notification of the United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen acquis which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters and amending Decisions 2000/365/EC and 2004/926/EC.

(**a**) Section 47 of the Crime (International Co-operation) Act 2003 (c. 32) was amended by paragraph 237 of Schedule 16 to the Armed Forces Act 2006 (c. 52).

(**b**) Section 48 of the Crime (International Co-operation) Act 2003 was amended by paragraph 52 of Part 2 of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4).

Third Pillar Conventions

100.—(1) The following conventions established by the Council of the European Union under former Article 34 of the Treaty on European Union are revoked, to the extent that they have been saved by the Withdrawal Act—

(a) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Council Act of 29 May 2000);

(b) the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Council Act of 16 October 2001).

(2) Reference in this regulation to former Article 34 of the Treaty on European Union are references to that Article as it had effect at any time before the coming into force of the Treaty of Lisbon.

Consequential amendment of the Investigatory Powers (Consequential Amendments etc.) Regulations 2018

101. Regulation 5 of the Investigatory Powers (Consequential Amendments etc.) Regulations 2018 (designation of a relevant international agreement)(**a**) is omitted.

Saving provision: requests for the interception of telecommunications under the 2000 MLA Convention

102. Regulation 101 (consequential amendment of the Investigatory Powers (Consequential Amendments etc.) Regulations 2018) does not apply in relation to a request made under Article 18 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Council Act of 29 May 2000) (requests for interception of telecommunications) received by the Secretary of State before commencement day.

PART 19

Passenger Name Record Data

Amendment of the Immigration and Police (Passenger, Crew and Service Information) Order 2008

103.—(1) The Immigration and Police (Passenger, Crew and Service Information) Order 2008(**b**) is amended as follows.

(2) In regulation 7 (form and manner in which passenger and service information to be provided: police)—

(a) in paragraph (2), for "which conforms to the data formats and transmission protocols provided for in Article 1 of the Implementing Decision", substitute "that is compatible with the technology used by the recipient of the information";

(b) omit paragraph (7).

Amendment of the Passenger Name Record Data and Miscellaneous Amendments Regulations 2018

104.—(1) The Passenger Name Record Data and Miscellaneous Amendments Regulations 2018(**c**) are amended as follows.

(2) In regulation 2 (interpretation)—

(**a**) S.I. 2018/682.
(**b**) S.I. 2008/5. This instrument was amended by S.I. 2015/859 and 2018/598.
(**c**) S.I. 2018/598.

(a) at the appropriate places insert—

""serious crime" has the meaning given in the Passenger Name Record Directive;";

""terrorist offences" has the meaning given in the Passenger Name Record Directive;";

(b) omit the following definitions—

(i) "European Commission";

(ii) "Europol";

(iii) "non-UK PIU";

(c) for the definition of "non-UK competent authority", substitute—

""non-UK competent authority" means an authority based in a third country that is competent for the prevention, detection, investigation or prosecution of terrorist offences or serious crime;";

(d) in the definition of "PNR data", for "Annex I to the Passenger Name Record Directive" substitute "Schedules 2 or 4 to the 2008 Order";

(e) in the definition of "third country", for "a Member State" substitute "the United Kingdom";

(f) in the definition of "UK competent authority", omit all the words that appear after "serious crime";

(g) omit paragraph (2).

(3) In regulation 3 (designation of passenger information unit)—

(a) in paragraph (1), omit "for the United Kingdom";

(b) in paragraph (2), for sub-paragraph (d) substitute—

"(d) where appropriate, exchanging PNR data and the result of processing that data with a non-UK competent authority".

(4) In regulation 6 (processing of PNR data by the PIU), in paragraph (3)—

(a) for sub-paragraph (a) substitute—

"(a) carrying out an assessment of passengers prior to their scheduled arrival in, or departure from, the UK to identify persons who require further examination by a UK competent authority in view of the fact that such persons may be involved in a terrorist offence or serious crime;";

(b) in sub-paragraph (b) omit "or, where appropriate, Europol".

(5) Omit regulations 8 to 10 (exchange of data).

(6) In regulation 11 (requests for PNR data made by a UK competent authority to another Member State)—

(a) in the heading, for "another Member State" substitute "a non-UK competent authority";

(b) in paragraph (1), for "non-UK PIU" substitute "non-UK competent authority";

(c) in paragraph (2), for "non-UK PIU" substitute "non-UK competent authority";

(d) for paragraph (3) substitute—

"(3) The conditions are that—

(a) the request is made solely for the purposes of the prevention, detection, investigation or prosecution of terrorist offences or serious crime;

(b) the request is made in respect of a specific case;

(c) the request is duly reasoned, and

(d) a copy of the request is sent to the PIU.".

(7) In regulation 12 (transfers of PNR to third countries)—

(a) in the heading, for "third countries" substitute "non-UK competent authorities";

(b) for paragraphs (1) and (2) substitute—

"(1) The PIU may transfer PNR data or the result of processing that data to a non-UK competent authority if either of the conditions set out in paragraph (2) or (2A) is met.

(2) The first condition is that—

(a) the request from the non-UK competent authority is duly reasoned;

(b) the PIU is satisfied that the transfer is necessary for the prevention, investigation, detection or prosecution of terrorist offences or serious crime, and

(c) the non-UK competent authority agrees to transfer the data to another non-UK competent authority only where it is strictly necessary for the purposes described in sub-paragraph (b).

(2A) The second condition is that—

(a) following the assessment referred to in regulation 6(3)(a), a person is identified by the PIU as requiring further examination, and

(b) the PIU considers it necessary for the prevention, detection, investigation or prosecution of terrorist offences or serious crime for a non-UK competent authority to be notified of that fact.";

(c) in paragraph (4), for "third country" substitute "non-UK competent authority".

(8) In regulation 13(8)(b) (period of data retention and depersonalisation), for "non-UK PIU" substitute "non-UK competent authority".

(9) In regulation 14(3)(c) (protection of personal data) omit "and non-UK PIUs".

(10) Omit regulation 15 (supervisory authority).

Revocation of Council Decisions 2012/381/EU and 2012/472/EU

105. The following Council Decisions are revoked—

(a) Council Decision 2012/381/EU of 13 December 2011 on the conclusion of the Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service;

(b) Council Decision 2012/472/EU of 26 April 2012 on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security.

Revocation of Commission Implementing Decision 2017/759

106. Commission Implementing Decision (EU) 2017/759 of 28 April 2017 on the common protocols and data formats to be used by air carriers when transferring PNR data to Passenger Information Units is revoked.

PART 20

Proceeds of Crime

Amendment of the Proceeds of Crime Act 2002

107.—(1) The Proceeds of Crime Act 2002(**a**) is amended as follows.

(2) In section 67(**b**) (seized money: England and Wales)—

(a) in subsection (9), omit paragraph (c);

(**a**) 2002 c. 29.

(**b**) Section 67 was amended by section 14(1) to (3) of the Serious Crime Act 2015 (c. 9) and section 26 of the Criminal Finances Act 2017 (c. 22).

(b) in subsection (10), omit "or firm" in both places where those words occur.

(3) In section 131ZA(**a**) (seized money: Scotland)—

(a) in subsection (10), omit paragraph (c);

(b) in subsection (11), omit "or firm" in both places those words occur.

(4) In section 282D(**b**) (evidence overseas: interim receiver or interim administrator), in subsection (10), omit paragraph (b) and the "or" immediately preceding that paragraph.

(5) In section 303Z7(**c**) ("bank")—

(a) in subsection (2), omit paragraph (c);

(b) in subsection (3), omit "or firm" in both places those words occur.

(6) In section 333B(**d**) (disclosures within an undertaking or group etc), in subsections (2)(b) and (4)(b), for "an EEA State" substitute "the United Kingdom or an EEA state".

(7) In section 333C(**e**) (other permitted disclosures between institutions etc), in subsection (2)(c), for "an EEA State" substitute "the United Kingdom or an EEA state".

(8) In section 362B(**f**) (requirements for making of unexplained wealth order), in subsection (7)(a), for "the United Kingdom or another EEA State," substitute—

"—

(i) the United Kingdom, or

(ii) an EEA state,".

(9) In section 375A(**g**) (evidence overseas), in subsection (9), omit paragraph (b) and the "or" immediately preceding that paragraph.

(10) In section 396B(**h**) (requirements for making of unexplained wealth order), in subsection (7)(a), for "the United Kingdom or another EEA State," substitute—

"—

(i) the United Kingdom, or

(ii) an EEA state,".

(11) In section 408A(**i**) (evidence overseas), in subsection (9), omit paragraph (b) and the "or" immediately preceding that paragraph.

(12) In Schedule 3 (administrators: further provision), in paragraph 6—

(a) omit sub-paragraph (4)(c);

(b) in sub-paragraph (5), omit "or firm" in both places those words occur.

(13) In Schedule 9 (regulated sector and supervisory authorities), in paragraph 1 (business in the regulated sector)—

(a) for sub-paragraph (1)(c) substitute—

"(c) the carrying on of activities by an authorised person (within the meaning of section 31 of the Financial Services and Markets Act 2000(**j**)) who has permission under Part 4A of that Act to carry out or effect contracts of insurance, where those activities consist of carrying out or effecting contracts of long-term insurance;";

(**a**) Section 131ZA was inserted by section 28 of the Criminal Finances Act 2017.
(**b**) Section 282D was inserted by paragraph 6 of Schedule 18 to the Crime and Courts Act 2013 (c. 22).
(**c**) Section 303Z7 was inserted by section 16 of the Criminal Finances Act 2017.
(**d**) Section 333B was inserted by S.I. 2007/3398.
(**e**) Section 333C was inserted by S.I. 2007/3398.
(**f**) Section 362B was inserted by section 1 of the Criminal Finances Act 2017.
(**g**) Section 375A was inserted by paragraph 26 of Schedule 19 to the Crime and Courts Act 2013.
(**h**) Section 396B was inserted by section 4 of the Criminal Finances Act 2017.
(**i**) Section 408A was inserted by paragraph 28 of Schedule 19 to the Crime and Courts Act 2013.
(**j**) 2000 c.8.

(b) in sub-paragraph (1)(d), for "(other than a person falling within Article 2 of the Markets in Financial Instruments Directive)" substitute "(other than a person falling within one of the exclusions to the definition of "investment firm" in article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544))";

(c) in sub-paragraph (1)(g), for "an EEA State" substitute "the United Kingdom";

(d) in sub-paragraph (2)(b), for "an EEA state" substitute "the United Kingdom";

(e) after sub-paragraph (2) insert—

"(2A) For the purposes of sub-paragraph (1)(c), "contract of long-term insurance" means any contract falling within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).".

(f) for sub-paragraph (5) substitute—

"(5) For the purposes of sub-paragraph (4)(d) "regulated market" has the meaning given by regulation 3(1) (general interpretation) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692).";

(g) omit sub-paragraph (6).

Amendment of the Serious Organised Crime and Police Act 2005

108.—(1) The Serious Organised Crime and Police Act 2005(**a**) is amended as follows.

(2) Omit section 96 (mutual assistance in freezing property or evidence).

(3) In section 172 (orders and regulations), in subsection (5), omit paragraph (h).

Amendment of the Criminal Finances Act 2017

109.—(1) The Criminal Finances Act 2017(**b**) is amended as follows.

(2) In section 1(**c**) (unexplained wealth orders: England and Wales and Northern Ireland), in the text to be inserted as section 362B(7)(a) of the Proceeds of Crime Act 2002, for "the United Kingdom or another EEA State," substitute—

"—

(i) the United Kingdom, or

(ii) an EEA state,".

(3) In section 16(**d**) (forfeiture of money held in bank and building society accounts), in the text to be inserted as section 303Z7 of the Proceeds of Crime Act 2002—

(a) in subsection (2), omit paragraph (c);

(b) in subsection (3), omit "or firm" in both places those words occur.

(4) In section 27 (seized money: Northern Ireland)—

(a) in the text to be inserted as subsection (9) of section 215 of the Proceeds of Crime Act 2002, omit paragraph (c);

(b) in the text to be inserted as subsection (10) of that section, omit "or firm" in both places those words occur.

Amendment of the CJDP Regulations

110.—(1) Subject to regulation 111 (transitional provisions in relation to the amendment of the CJDP Regulations), the CJDP Regulations are amended as follows.

(**a**) 2005 c. 15.
(**b**) 2017 c. 22.
(**c**) Section 1 extends to England and Wales and Northern Ireland and was commenced in England and Wales only by S.I. 2018/78.
(**d**) Section 16 extends to the United Kingdom and was commenced in England and Wales and Scotland by S.I. 2018/78.

(2) Part 2 (proceeds of crime (foreign property and foreign orders)) is revoked.

(3) Schedule 1 (proceeds of crime (foreign property and foreign orders): Scotland) is revoked.

(4) Schedule 2 (proceeds of crime (foreign property and foreign orders): Northern Ireland) is revoked.

Transitional provisions in relation to amendment of the CJDP Regulations

111. Regulation 110 does not apply in relation to a case where, before commencement day, any of the following has occurred—

(a) the Crown Court makes a certificate under regulation 6(2) of the CJDP Regulations (domestic restraint orders: certification);

(b) a relevant prosecutor receives an overseas restraint order under regulation 8(1) of the CJDP Regulations (sending overseas restraint orders to the court);

(c) the Crown Court makes a certificate under regulation 11(2) of the CJDP Regulations (domestic confiscation orders: certification);

(d) a relevant prosecutor receives an overseas confiscation order under regulation 13(1) of the CJDP Regulations (sending overseas confiscation orders to the court);

(e) the court makes a certificate under paragraph 2(2) of Schedule 1 to the CJDP Regulations (domestic restraint orders: certification);

(f) the Lord Advocate receives an overseas restraint order under paragraph 4(1) of Schedule 1 to the CJDP Regulations (sending overseas restraint orders to the court);

(g) the court makes a certificate under paragraph 7(2) of Schedule 1 to the CJDP Regulations (domestic confiscation orders: certification);

(h) the Lord Advocate receives an overseas confiscation order under paragraph 9(1) of Schedule 1 to the CJDP Regulations (sending overseas confiscation orders to the court);

(i) the court makes a certificate under paragraph 2(2) of Schedule 2 to the CJDP Regulations (domestic restraint orders: certification);

(j) the relevant prosecutor receives an overseas restraint order under paragraph 4(1) of Schedule 2 to the CJDP Regulations (sending overseas restraint orders to the court);

(k) the court makes a certificate under paragraph 7(2) of Schedule 2 to the CJDP Regulations (domestic confiscation orders: certification), or

(l) the relevant prosecutor receives an overseas confiscation order under paragraph 9(1) of Schedule 2 to the CJDP Regulations (sending overseas confiscation orders to the court).

Revocation of Council Decision 2000/642/JHA and Council Decision 2007/845/JHA

112. Subject to regulation 113 (saving provision), the following are revoked—

(a) Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information;

(b) Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

Saving provision

113.—(1) Article 5 of Council Decision 2000/642/JHA (use of information or documents) continues to have effect in relation to information or documents obtained under Article 1 of that Council Decision (cooperation of financial intelligence units) before commencement day.

(2) Article 5 of Council Decision 2007/845/JHA (data protection) continues to have effect in relation to information exchanged under Article 3 (exchange of information between Asset

Recovery Offices on request) or 4 (Spontaneous exchange of information between Asset Recovery Offices) of that Council Decision before commencement day.

PART 21

Prüm – Exchange of Data Relating to DNA, Fingerprints and Vehicle Registration

Interpretation

114. In this Part, "the Prüm Decision" means Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

Revocation of the Prüm Decision and related Council Decisions

115. The following are revoked—

(a) the Prüm Decision;

(b) Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime;

(c) Council Decision 2014/836/EU of 27 November 2014 determining certain consequential and transitional arrangements concerning the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon;

(d) Council Decision 2014/837/EU of 27 November 2014 determining certain direct financial consequences incurred as a result of the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon.

Revocation of Commission Decision (EU) 2016/809

116. Commission Decision (EU) 2016/809 of 20 May 2016 on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in certain acts of the Union in the field of police cooperation adopted before the entry into force of the Treaty of Lisbon and which are not part of the Schengen acquis is revoked.

Revocation of Council Implementing Decisions

117. The following are revoked—

(a) Council Implementing Decision (EU) 2015/2009 of 10 November 2015 on the launch of automated data exchange with regard to dactyloscopic data in Poland;

(b) Council Implementing Decision (EU) 2015/2049 of 10 November 2015 on the launch of automated data exchange with regard to dactyloscopic data in Sweden;

(c) Council Implementing Decision (EU) 2015/2050 of 10 November 2015 on the launch of automated data exchange with regard to dactyloscopic data in Belgium;

(d) Council Implementing Decision (EU) 2016/254 of 12 February 2016 on the launch of automated data exchange with regard to vehicle registration data (VRD) in Latvia;

(e) Council Implementing Decision (EU) 2016/2047 of 18 November 2016 on the launch of automated data exchange with regard to DNA data in Denmark;

(f) Council Implementing Decision (EU) 2016/2048 of 18 November 2016 on the launch of automated data exchange with regard to dactyloscopic data in Denmark;

(g) Council Implementing Decision (EU) 2017/617 of 27 November 2017 on the launch of automated data exchange with regard to DNA data in Greece;

(h) Council Implementing Decision (EU) 2017/618 of 27 March 2017 on the launch of automated data exchange with regard to vehicle registration data in Denmark;

(i) Council Implementing Decision (EU) 2017/943 of 18 May 2017 on the automated data exchange with regard to vehicle registration data in Malta, Cyprus and Estonia, and replacing Decisions 2014/731/EU, 2014/743/EU and 2014/744/EU;

(j) Council Implementing Decision (EU) 2017/944 of 18 May 2017 on the automated data exchange with regard to dactyloscopic data in Latvia, and replacing Decision 2014/911/EU;

(k) Council Implementing Decision (EU) 2017/945 of 18 May 2017 on the automated data exchange with regard to DNA data in Slovakia, Portugal, Latvia, Lithuania, Czech Republic, Estonia, Hungary, Cyprus, Poland, Sweden, Malta and Belgium and replacing Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU;

(l) Council Implementing Decision (EU) 2017/946 of 18 May 2017 on the automated data exchange with regard to dactyloscopic data in Slovenia, Bulgaria, France, Czech Republic, Lithuania, the Netherlands, Hungary, Cyprus, Estonia, Malta, Romania and Finland and replacing Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU;

(m) Council Implementing Decision (EU) 2017/947 of 18 May 2017 on the automated data exchange with regard to vehicle registration data in Finland, Slovenia, Romania, Poland, Sweden, Lithuania, Bulgaria, Slovakia and Hungary and replacing Decisions 2010/559/EU, 2011/387/EU, 2011/547/EU, 2012/236/EU, 2012/664/EU, 2012/713/EU, 2013/230/EU, 2013/692/EU and 2014/264/EU;

(n) Council Implementing Decision (EU) 2017/1020 of 8 June 2017 on the launch of automated data exchange with regard to vehicle registration data in Croatia;

(o) Council Implementing Decision (EU) 2017/1866 of 12 October 2017 on the launch of automated data exchange with regard to vehicle registration data in the Czech Republic;

(p) Council Implementing Decision (EU) 2017/1867 of 12 October 2017 on the launch of automated data exchange with regard to dactyloscopic data in Portugal;

(q) Council Implementing Decision (EU) 2017/1868 of 12 October 2017 on the launch of automated data exchange with regard to dactyloscopic data in Greece;

(r) Council Implementing Decision (EU) 2018/1035 of 16 July 2018 on the launch of automated data exchange with regard to DNA data in Croatia.

PART 22

Schengen Information System (SIS II)

Introductory

118.—(1) In the provisions to which this regulation applies, the expressions which are referred to in Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) have the same meanings as they have in that decision (disregarding for this purpose the revocation of that decision by regulation 119 (revocation of retained EU law relating to SIS II)).

(2) This regulation applies to—

(a) regulations 120 (saving provision – SIS II data and national files) and 121 (saving provision – supplementary information and national files);

(b) any provision of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) which is continued by this Part.

Revocation of retained EU law relating to the Schengen information system (SIS II)

119.—(1) The following Decisions are revoked but only so far as they relate to the Schengen information system—

(a) Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis;

(b) Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland;

(c) Council Decision 2014/857/EU of 1 December 2014 concerning the notification of the United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen acquis which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters and amending Decisions 2000/365/EC and 2004/926/EC.

(2) Subject to regulations 120 (saving provisions – SIS II data and national files) and 121 (saving provisions – supplementary information and national files), the following Decisions are revoked—

(a) Commission Decision 2007/171/EC of 16 March 2007 laying down the network requirements for the Schengen Information System II (3rd pillar);

(b) Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II);

(c) Commission Implementing Decision 2013/115/EU of 26 February 2013 on the Sirene Manual and other implementing measures for the second generation Schengen Information System (SIS II);

(d) Council Decision 2013/157/EU of 7 March 2013 fixing the date of application of Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II);

(e) Council Implementing Decision (EU) 2015/215 of 10 February 2015 on the putting into effect of the provisions of the Schengen acquis on data protection and on the provisional putting into effect of parts of the provisions of the Schengen acquis on the Schengen Information System for the United Kingdom of Great Britain and Northern Ireland;

(f) Commission Implementing Decision (EU) 2015/450 of 16 March 2015 laying down test requirements for Member States integrating into the second generation Schengen Information System (SIS II) or changing substantially their directly related national systems;

(g) Commission Implementing Decision (EU) 2016/1345 of 4 August 2016 on minimum data quality standards for fingerprint records within the second generation Schengen Information System (SIS II).

(3) In this regulation, "Schengen information system" means any information system established under Title IV of the 1990 Schengen Convention, or any system established in its place in pursuance of any EU obligation.

Saving provisions – SIS II data and national files

120.—(1) This regulation applies in relation to—

(a) SIS II data in connection with which action was taken on the territory of the United Kingdom before commencement day;

(b) data contained in a particular alert issued in SIS II by the United Kingdom before commencement day.

(2) Subject to the modifications in paragraph (3), the following provisions of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) continue to have effect in relation to the data referred to in paragraph (1)—

(a) Article 46(1), (5), (6) and (7) (processing of SIS II data);

(b) Article 47 (SIS II data and national files);

(c) Article 54 (transfer of personal data to third parties).

(3) The modifications are that—

(a) Article 46 is to be read as if—

(i) in paragraph 1—

(aa) for the words "The Member States" there were substituted "The United Kingdom";

(bb) after the words "and 38" there were inserted "of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) as it applied in the European Union immediately before commencement day";

(ii) in paragraph 5, for the words "this Decision" there were substituted "Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) as it applied in the European Union immediately before commencement day";

(iii) in paragraph 7—

(aa) for the words "paragraphs 1 to 6" there were substituted "paragraphs 1, 4 and 5";

(bb) for the words "each Member State" there were substituted "the United Kingdom";

(b) Article 47 is to read as if—

(i) for the words "Article 46(2) shall not prejudice the right of a Member State to" (in each place) there were substituted "The United Kingdom may";

(ii) in paragraph 2, for the words "that Member State" there were substituted "the United Kingdom";

(c) Article 54 is to be read as if for the words "this Decision" there were substituted "Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) as it applied in the European Union before commencement day".

Saving provisions – supplementary information and national files

121.—(1) This regulation applies in relation to data relating to—

(a) an alert which the United Kingdom issued before commencement day, or

(b) an alert in connection with which action was taken on the territory of the United Kingdom before commencement day.

(2) Subject to the modifications in paragraph (3), the following provisions of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) continue to have effect in relation to the data referred to in paragraph (1)—

(a) Article 8(2) (exchange of supplementary information);

(b) Article 53(3) (purpose and retention period of supplementary information);

(c) Article 54 (transfer of personal data to third parties).

(3) The modifications are that—

(a) Article 53(3) is to be read as if—

(i) for the words "Paragraph 2 shall not prejudice the right of a Member State" there were substituted "The United Kingdom may";

(ii) for the words "that Member State" there were substituted "the United Kingdom";

(b) Article 54 is to be read as if for the words "this Decision" there were substituted "Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) as it applied in the European Union before commencement day".

PART 23

Serious Crime and Fraud

Amendment of the Serious Crime Act 2007

122.—(1) The Serious Crime Act 2007(**a**) is amended as follows.

(2) In section 34 (providers of information society services)—

(a) in subsection (1) omit "other than the United Kingdom";

(b) in subsection (3) omit paragraph (b) and the "and" immediately preceding that paragraph;

(c) in subsection (4) omit "or notification";

(d) in subsection (5), at the end insert ", reading those Articles as if the requirements imposed on a Member State were imposed on the court making the order";

(e) in subsection (6), for "covered by" substitute "falling within the descriptions contained in".

(3) In section 54 (institution of proceedings etc for an offence under Part 2), in subsection (5) omit "other than the United Kingdom".

(4) In section 69(2)(d) (offence for certain further disclosures of information), for "an EU obligation" substitute "a retained EU obligation".

Revocation of Council Regulation (EU) No 331/2014

123. Council Regulation (EU) No 331/2014 of the European Parliament and of the Council of 11 March 2014 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the 'Pericles 2020' programme) and repealing Council Decisions 2001/923/EC, 2001/924/EC, 2006/75/EC, 2006/76/EC, 2006/849/EC and 2006/850/EC is revoked.

(**a**) 2007 c. 27. Section 34 was amended by paragraph 24 of Schedule 1 to the Serious Crime Act 2015 (c. 9), and by S.I. 2011/1043 and 2012/1809.

PART 24

Miscellaneous

CHAPTER 1

Miscellaneous amendments to police legislation

SECTION 1

Amendment of primary legislation

Amendment of the Local Government (Miscellaneous Provisions) Act 1982

124. In Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982(**a**) (control of sex establishments), in paragraph 12(1)(c) and (d)(**b**), after "in" insert "the United Kingdom or".

Amendment of the Licensing Act 2003

125. In section 120 of the Licensing Act 2003(**c**) (determination of application for grant), in subsection (8)(c) omit "(other than the United Kingdom)".

Amendment of the Anti-social Behaviour, Crime and Policing Act 2014

126.—(1) Schedule 6A to the Anti-social Behaviour, Crime and Policing Act 2014(**d**) (anonymity of victims of forced marriage) is amended as follows.

(2) Omit paragraph 4 (domestic service providers: extension of liability).

(3) In paragraph 9 (interpretation)—

(a) in sub-paragraph (1)—

(i) omit the definition of "domestic service provider";

(ii) in the definition of "non-UK service provider" omit "other than the United Kingdom";

(b) in sub-paragraph (3)—

(i) in the words before paragraph (a), for "definitions of "domestic service provider" and "non-UK service provider"" substitute "definition of "non-UK service provider"";

(ii) in paragraph (a), for "in a particular part of the United Kingdom, or in a particular EEA state," substitute "in a particular EEA state";

(iii) in sub-paragraph (i) of paragraph (a), for "that part of the United Kingdom, or that EEA state," substitute "that EEA state".

Amendment of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

127.—(1) Schedule 3A to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015(**e**) (anonymity of victims of forced marriage) is amended as follows.

(2) Omit paragraph 4 (special rules for providers of information society services).

(3) In paragraph 9 (interpretation)—

(a) in sub-paragraph (1)—

(**a**) 1982 c. 30.
(**b**) Paragraph 12(1)(c) and (d) was amended by S.I. 2009/2999.
(**c**) 2003 c. 17. Section 120 was amended by paragraph 15(2) to (9) of Part 3 of Schedule 4 to the Immigration Act 2016 (c. 19).
(**d**) 2014 c. 12. Schedule 6A was inserted by section 173(2) of the Policing and Crime Act 2017 (c. 3).
(**e**) 2015 c. 2 (N.I.). Schedule 3A was inserted by section 174(2) of the Policing and Crime Act 2017 (c. 3).

(i) omit the definition of "domestic service provider";

(ii) in the definition of "non-UK service provider" omit "other than the United Kingdom";

(b) in sub-paragraph (3)—

(i) in the words before paragraph (a), for "definitions of "domestic service provider" and "non-UK service provider"" substitute "definition of "non-UK service provider"";

(ii) in paragraph (a), for "in a particular part of the United Kingdom, or in a particular EEA state," substitute "in a particular EEA state";

(iii) in sub-paragraph (i) of paragraph (a), for "that part of the United Kingdom, or that EEA state," substitute "that EEA state".

Amendment of the Policing and Crime Act 2017

128. In the Policing and Crime Act 2017(**a**), omit section 144 (powers to create offences under section 2(2) ECA 1972: maximum term of imprisonment).

SECTION 2

Amendment of secondary legislation

Amendment of the Police Pensions (Additional Voluntary Contributions) Regulations 1991

129.—(1) The Police Pensions (Additional Voluntary Contributions) Regulations 1991(**b**) are amended as follows.

(2) In regulation 2(3)(interpretation), in the definition of "insurance company"(**c**)—

(a) at the end of paragraph (a) omit "or";

(b) omit paragraph (b).

Amendment of the Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013

130.—(1) The Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013(**d**) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1) omit the definition of "UK national";

(b) in paragraph (2)—

(i) in the words before paragraph (a), for "in England and Wales or in an EEA state other than the United Kingdom" substitute "in an EEA state";

(ii) in paragraph (a), for "in England and Wales, or in a particular EEA state other than the United Kingdom," substitute "in a particular EEA state";

(iii) in sub-paragraph (i) of paragraph (a), for "in England Wales, or that EEA state," substitute "in that EEA state".

(3) Omit regulation 3 (internal market: England and Wales service providers).

(4) In regulation 4(1) (internal market: non-UK service providers), omit "other than the United Kingdom".

(**a**) 2017 c. 3.
(**b**) S.I. 1991/1304.
(**c**) The definition of "insurance company" was inserted in relation to England and Wales by S.I. 2003/27 and in relation to Scotland by SSI 2003/406.
(**d**) S.I. 2013/817 as amended by S.I. 2015/1472.

(5) In regulation 8 (review), omit paragraph (2).

Amendment of the Police Pensions Regulations 2015

131.—(1) The Police Pensions Regulations 2015(**a**) are amended as follows.

(2) In regulation 2(1) (interpretation), in the definition of "duly qualified medical practitioner", omit "or the equivalent EEA qualification".

CHAPTER 2

Miscellaneous amendments to investigatory powers legislation

Amendment of the Investigatory Powers Act 2016

132.—(1) The Investigatory Powers Act 2016(**b**) is amended as follows.

(2) In section 19 (power of Secretary of State to issue warrants), omit subsection (5).

(3) In section 102 (power to issue warrants to intelligence services: the Secretary of State), omit subsection (9).

Amendment of the Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018

133.—(1) The Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018(**c**) are amended as follows.

(2) In regulation 2 (interpretation), in the definition of "regulatory or self-regulatory practices or procedures", in paragraph (a)—

(a) in sub-paragraph (i), for the words from "provision" to "Area" substitute "enactment";

(b) in sub-paragraph (ii), for the words "a member" to "Area" substitute "the United Kingdom".

(3) In regulation 4 (restrictions on the lawful interception of communications), omit paragraph (2).

CHAPTER 3

International agreements

Revocation of rights etc.

134.—(1) Subject to regulation 135 (saving provision), to the extent that any rights, powers, liabilities, obligations, restrictions, remedies and procedures—

(a) continue by virtue of section 4(1) of the Withdrawal Act, and

(b) are derived from one of the international agreements to which this regulation applies,

those rights, powers, liabilities, obligations, restrictions, remedies and procedures cease to be recognised and available in domestic law.

(2) This regulation applies to—

(a) the Agreement concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway on the association of these two states to the implementation, to application and to the development of the acquis de Schengen – final Act(**d**);

(b) the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway on the establishment of rights and obligations

(**a**) S.I. 2015/445.
(**b**) 2016 c. 25.
(**c**) S.I. 2018/356.
(**d**) OJ L No 176, 10.07.1999, p.36.

between Ireland and the United Kingdom of Great Britain and Northern Ireland, on the one hand, and the Republic of Iceland and the Kingdom of Norway, on the other, in areas of the Schengen acquis which apply to these States(**a**);

(c) the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto(**b**);

(d) the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis(**c**);

(e) the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto(**d**);

(f) the Agreement between the European Union and Japan on mutual legal assistance in criminal matters(**e**);

(g) the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis(**f**).

Saving provision

135.—(1) This regulation applies to the extent that—

(a) a transitional or saving provision of these Regulations preserves a right, power, liability, obligation, restriction, remedy or procedure conferred or imposed by legislation which these Regulations revoke or amend, and

(b) a corresponding right, power, liability, obligation, restriction, remedy or procedure is derived from an instrument listed in regulation 134(2) and continues by virtue of section 4(1) of the Withdrawal Act.

(2) To the extent that this regulation applies, regulation 134(1) does not.

CHAPTER 4

Atlas – cooperation between special intervention units

Introductory

136. In this Chapter—

(a) "the Atlas Council Decision" means Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations(**g**);

(**a**) OJ L No 15, 20.01.2000, p. 2.
(**b**) OJ L No 26, 29.01.2004, p.3.
(**c**) OJ L No 53, 27.02.2008, p. 52.
(**d**) OJ L No 353, 31.12.2009, p.3.
(**e**) OJ L No 39, 12.02.2010, p. 20.
(**f**) OJ L No 160, 18.06.2011, p.3.
(**g**) "Atlas" is the name given to the network of special intervention units established in 2001 and formalised by the Atlas Council Decision.

(b) the expressions which are defined in Article 2 of the Atlas Council Decision (interpretation) have the meanings given in that provision (disregarding for this purpose the revocation of that decision by regulation 2).

Revocation of the Atlas Council Decision

137. Subject to regulations 138 (transitional provisions – assistance provided to member States on or after commencement day) and 139 (transitional provisions – assistance provided to the United Kingdom after commencement day), the Atlas Council Decision is revoked.

Transitional provisions – assistance provided to member States after commencement day

138.—(1) This regulation applies to a relevant case.

(2) For the purposes of this regulation, a "relevant case" is one in which, before commencement day—

(a) a member State made a request for assistance under Article 3(1) of the Atlas Council Decision (assistance to another member State) to the competent authority of the United Kingdom, and—

(b) either—

(i) the competent authority of the United Kingdom did not respond in relation to that request, or

(ii) the competent authority of the United Kingdom accepted the request for assistance or proposed a different kind of assistance, but some or all of the assistance has not been provided before commencement day.

(3) The following provisions of the Atlas Council Decision continue to have effect in relation to a relevant case (in so far as relevant in the circumstances of the case), subject to the modifications set out in paragraph (4)—

(a) Article 2 (definitions), in so far as relevant to the provision referred to in sub-paragraph (b);

(b) Article 3.

(4) The modifications are—

(a) paragraph 1 of Article 3 is to be read as if—

(i) the first sentence were omitted;

(ii) for the words "such a request" there were substituted "a request made by a Member State under Article 3(1)";

(iii) for the words "the requested Member State" there were substituted "the United Kingdom";

(b) paragraph 3 of Article 3 is to be read as if the words "be authorised to operate in a supporting capacity on the territory of the requesting Member State and" were omitted.

(5) The provisions referred to in paragraph (3) are to be construed (so far as necessary) as if the United Kingdom continued to be a member State.

Transitional provisions – assistance provided to the United Kingdom after commencement day

139.—(1) This regulation applies to a relevant case.

(2) For the purposes of this regulation, a "relevant case" is one in which—

(a) the competent authority of the United Kingdom made a request for assistance under Article 3(1) of the Atlas Council Decision (assistance to another member State) before commencement day, and

(b) the requested member State is willing to provide assistance of the kind referred to in Article 3(2) of the Atlas Council Decision in relation to that request on or after commencement day.

(3) The following provisions of the Atlas Council Decision continue to have effect in relation to a relevant case (in so far as relevant in the circumstances of the case), subject to the modifications set out in paragraph (4)—

(a) Article 2 (definitions), in so far as relevant to the provisions referred to in sub-paragraphs (b) to (d);

(b) Article 3(3);

(c) Article 4 (civil and criminal liability);

(d) Article 6 (costs).

(4) The modifications are—

(a) paragraph 3 of Article 3 is to be read as if—

(i) in the words before sub-paragraph (a), for the words "the requesting Member State" (in each place) there were substituted "the United Kingdom";

(ii) in sub-paragraph (a)—

(aa) for the words "the requesting Member State", in the first place it occurs, there were substituted "the competent authority of the United Kingdom";

(bb) for the words "the requesting Member State", in the second place it occurs, there were substituted "the United Kingdom";

(b) Article 4 is to be read as if—

(i) for the words "another Member State" there were substituted "the United Kingdom";

(ii) the words "under this Decision" were omitted;

(c) Article 6 is to be read as if for the words "The requesting Member State" there were substituted "The United Kingdom".

(5) The provisions referred to in paragraph (3) are to be construed (so far as necessary) as if the United Kingdom continued to be a member State.

Name
Minister of State
Home Office

Date

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations are made in exercise of the powers conferred by sections 8(1) and 23(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) ("the Withdrawal Act") in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a) to (d) and (g)) arising from the withdrawal of the UK from the European Union ("the EU"). Part 14 of these Regulations (extradition) is also made in part in reliance on various powers in the Extradition Act 2003 (c. 41) ("the 2003 Act").

Part 2 of these regulations amends the provisions of the Council Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the internet which remain appropriate for the UK after the date and time on which these Regulations come into force ("commencement day") and revokes those which provide for continued cooperation between member States after commencement day.

In Part 3, regulation 5 makes amendments to the Terrorism Act 2000 (c.11) ("TACT"). Minor amendments are made to sections 21E and 21F to reflect the fact that the UK will not be an EEA state after commencement day. Amendments are made to Schedule 3A which mirror those made by Part 20 of these Regulations to Schedule 9 to the Proceeds of Crime Act 2002 (c. 29)

("POCA"), to amend the definition of businesses in the "regulated sector" to appropriate domestic law-defined categories. Paragraphs 11A to 11G, 25A to 25G and 41A to 41G of Schedule 4 to TACT are omitted; these paragraphs collectively provide a mechanism to allow freezing orders to be sent to, and received from, Member States under Framework Decision 2003/577/JHA of 22nd July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.200 p.45-55) ("Framework Decision 2003/577/JHA") (see below), and transitional provision is made to preserve these paragraphs in respect of any requests sent or received prior to commencement day. The definition of "financial institution" in paragraph 6 of Schedule 6 to TACT is amended to replace reference to certain EU definitions with domestic definitions. Amendments are also made to Schedule 8A to TACT, to maintain certain exemptions to liability for the section 58A offence (eliciting, publishing or communicating information about members of the armed forces etc) for information service providers where those exemptions would otherwise have been required to be in place had the "E-Commerce Directive" (Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market) continued to bind the UK. Similar amendment is made by regulation 7 to the Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007 (S.I. 2007/1550), to preserve those liability exemptions in relation to the offences of encouraging terrorism and disseminating terrorist publications. Provisions in Schedule 8A and the 2007 Regulations which implemented requirements in Article 3 of the E-Commerce Directive to extend domestic courts' jurisdiction to service providers engaged in conduct in other EEA states have been omitted because such requirement represents a reciprocal arrangement which no longer works in a no-deal scenario.

Part 4 makes changes to retained EU law governing reciprocal arrangements for carrying out cross-border surveillance, including the limited circumstances under which law enforcement officers from another Member State can carry out surveillance here without prior authority. The principal source of EU law in this area is the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders ("the 1990 Schengen Convention"), applicable in part in the United Kingdom under Protocol 22 to the Treaties, and under Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis (which was made under Article 4 of that Protocol). In the absence of an agreement with the EU providing for continued cooperation under these instruments, on commencement day the UK will no longer need these arrangements.

Chapter 1 of Part 5 amends retained EU law which relates to, or was enacted to implement, the requirements of Regulation (EC) 273/2004 and (EC) 111/2005, which establishes processes and rules governing trade in drug precursors within the European Union (intra-community trade) and between the European Union and third countries (extra-community trade). Amendments deal with deficiencies arising in legislation, in particular by adjusting references to the UK as a Member State and to transfer powers from the Commission to the Secretary of State to amend annexes containing regulated drug precursors and to set out requirements and conditions relating to trade in the same. In the absence of an agreement with the EU providing for continued participation of the UK in intra-community trade, on commencement day differing rules governing trade with EU Member States are no longer appropriate and are amended so that trade in drug precursors with all countries is treated in the same way.

In Chapter 2 of Part 5, regulation 17(3) amends Schedule 4 to the Psychoactive Substances Act 2016 to remove the extension of liability in respect of the offences of supplying, of offering to supply, a psychoactive substance. Certain exemptions from liability for the offences are maintained where those exemptions would otherwise have been required to be in place had the E-Commerce Directive continued to bind the UK. Amendments are made to remove the extension of liability in respect of the offence of failing to comply with a prohibition order or premises. The restriction on a person's ability to impose conditions in a prohibition notice or order which is inconsistent with the liability exemptions in that Directive will also be maintained.

Regulation 18 revokes Regulation (EC) 1920/2006 of the European Parliament and of the Council of 12 December 2006 providing for the European Monitoring Centre for Drugs and Drug

Addiction (recast) and Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2007 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances. In the absence of an agreement with the EU providing for continued UK co-operation with, or participation in, the EMCDDA on commencement day the UK will no longer need these arrangements.

Part 6 of these Regulations revokes Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, subject to certain savings provisions relating to information received prior to commencement day. This measure establishes a unit, referred to as "Eurojust", as a body of the Union. Eurojust's objectives are: to stimulate and improve the coordination, between competent authorities of the Member States; to improve cooperation between the competent authorities of the Member States, in particular by facilitating the execution of requests for, and decisions on, judicial cooperation; and to further support the competent authorities of the Member States in order to render their investigations and prosecutions more effective. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will no longer need these reciprocal arrangements.

Part 7 of these Regulations revokes retained EU law concerning the European Police College ("CEPOL"), which was established to train senior officers of police forces of Member States. Regulation 23 revokes the European Police College (Immunities and Privileges) Order 2004, which remains uncommenced. Regulation 24 revokes Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will no longer need these arrangements.

Part 8 of these Regulations revokes retained EU law which relates to the European Criminal Records Information System ("ECRIS"), a system for the exchange of information extracted from criminal records between Member States. Chapter 1 of Part 8 revokes Part 6 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141) ("the CJDP Regulations"), which was enacted to implement the requirements of Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States, and Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA. Chapter 1 also makes saving provision in relation to information provided to the UK Central Authority before commencement day and transitional provision in relation to requests for information made before commencement day. Chapter 2 of Part 8 revokes the Working with Children (Exchange of Criminal Conviction Information) (England and Wales and Northern reland) Regulations 2013 (S.I. 2013/2945), which was enacted to implement Article 10(3) of Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA. This imposed additional information-sharing requirements via ECRIS. Chapter 2 also makes transitional provision in relation to requests for information made before commencement day. In the absence of an agreement with the EU providing for continued cooperation under ECRIS, on commencement day the UK will no longer need these arrangements.

Part 9 revokes Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network. This measure provides for a network of judicial contact points to improve judicial cooperation between EU Member States particularly in actions to combat forms of serious crime. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will no longer need these reciprocal arrangements. Part 10 revokes retained EU law relating to the establishment of a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice. In the absence of an agreement with the EU providing for continued coopeartion under this instrument, on commencement day the UK will no longer need these arrangements.

Part 10 revokes retained EU law relating to the establishment of a European Union Agency for the operational management of large-scale IT systems in the area of freedom, security and justice. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the need for these arrangements will cease to exist in so far as the UK is concerned.

Part 11 revokes Regulation 2016/794/EU of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, subject to certain saving provisions relating to information provided prior to commencement day. This Part also revokes a number of previous Europol measures to the extent they still apply in UK law. Europol is mandated to support cooperation among law enforcement authorities in the Union. Its objectives include to support Member States in the fight against serious crime, terrorism and other forms of crime such as drug trafficking, trafficking in human beings and forgery. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will no longer need these reciprocal arrangements.

Chapter 1 of Part 12 revokes retained EU law which was originally enacted to implement Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union and Council Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA). In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will no longer need these reciprocal arrangements.

Regulations 44 to 47 make transitional and saving provision. These regulations provide: for requests for information or intelligence received by a UK competent authority, but not responded to, before commencement day to be responded to after commencement day (regulation 44); for the UK competent authority to make representations concerning the use of information or intelligence provided before or after commencement day (regulation 45); for information and intelligence supplied to a UK competent authority before commencement day to remain subject to existing conditions on use (regulation 46); and for information obtained by a UK member of an international joint investigation team to remain subject to conditions on use (regulation 47).

Chapter 2 of Part 12 amends a provision in the Anti-terrorism, Crime and Security Act 2001 (c. 24) to ensure that certain disclosure in overseas proceedings will not be prohibited if required because of a retained EU obligation.

Part 13 of these Regulations makes amendments to deal with deficiencies arising in legislation regulating of access by members of the public to explosive precursors, in particular, by adjusting references to the UK as a Member State and to transfer a power for the Commission to amend annexes containing regulated explosive precursors to the Secretary of State for Northern Ireland (there is already a power for Ministers to amend such lists in the regime that applies to Great Britain).

Part 14 amends legislation in the field of extradition. The provisions in this Part make changes to primary legislation, including the 2003 Act and to secondary legislation made under that Act, namely the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003 (S.I. 2003/3333) ("the Part 1 Order") and the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 ("the Part 2 Order") (S.I. 2003/3334).

It is necessary to make changes to the domestic framework relating to extradition between the UK and other member States as, from commencement day, the UK will cease to participate in the European arrest warrant scheme ("EAW"), a reciprocal arrangement based on the mutual recognition of judicial decisions and governed by EU law. Accordingly, regulation 55 amends the Part 1 Order to remove member States as territories for the purposes of Part 1 of the 2003 Act, which implements the EAW scheme. Regulation 56 makes corresponding changes to the Part 2 Order necessary to designate the member States under Part 2 of the 2003 Act. Designation under Part 2 will enable the UK to comply with its obligations under the European Convention on

Extradition 1957, which will provide the basis for extradition between the UK and the member States once the EAW scheme ceases to apply. Re-categorisation of the member States is subject to the transitional provision in regulation 57. That provision will mean, for example, in the case of a person arrested under a Part 1 warrant prior to commencement day, a decision will be taken by the courts on that person's extradition in accordance with the Part 1 regime.

Part 15 amends legislation in the field of firearms. Chapter 1 makes amendments to Commission Implementing Regulation (EU) 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable, in particular by amending references to member States, to reflect the fact that the UK will no longer be a member State after commencement day, and to make changes which ensure the continuation of deactivation standards and techniques through domestic legislation. The amendments also omit Articles 4, 6, 7 and 8 of that Regulation as they will no longer have practical application in the UK after commencement day.

Regulation 59 amends the Firearms Act 1968 (c. 27) to remove references to European Weapons Directive and authorisations which are dependent on complying with the law of a Member State. References to the European Firearms Pass have also been removed. Where appropriate, references to Member states have been amended to references to Great Britain. Firearms Law is devolved to Northern Ireland.

Regulation 60 creates a saving provision in relation to the amendment to section 5A(3) of the Firearms Act 1968. Section 5A(3) provides that the authority of the Secretary of State or Scottish Ministers under section 5 of the Firearms Act 1968 is not required for any person to have in his possession, or to purchase or acquire certain weapons and ammunition, etc. if that person is recognised, for the purposes of the law of another member State relating to firearms, as a collector of firearms or a body concerned in the cultural or historical aspects of weapons. The saving provision will mean that individuals in lawful possession of such items before commencement day are able to continue to be in lawful possession afterwards. It will not apply in relation to the purchase and acquisition of such items on or after commencement day.

Regulation 61 amends the Firearms (Amendment) Act 1988 (c. 45) to change references to EU to United Kingdom. Section 17 is amended to remove references to member States. Section 18 is amended to omit subsection (1A) which dealt with restrictions on the purchase of a firearm which falls within category B for the purposes of Annex I to the European weapons directive, as well as omitting references to that subsection. Section 18A is omitted as are references to it in section 18B.

Regulation 62 amends the Firearms Acts (Amendment) Regulations 1992 (S.I. 1992/2823) to omit regulation 10 concerning the exchange of information. Regulation 63 amends the Firearms (Amendment) Act 1988 (Amendment) Regulations 2011 (S.I. 2011/2175) to omit regulation 3 concerning review.

Chapter 3 of Part 15 makes amendments to deal with deficiencies arising in the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3)) to reflect the fact that the UK will no longer be a member of the EU after commencement day. In particular it removes the provisions in relation to the European firearms pass and creates a saving provision in relation to the amendment to Article 46, similar to the saving provision made in respect of section 5A(3) of the Firearms Act 1968.

Part 16 of these Regulations revokes Council Decision 2002/348/JHA concerning security in connection with football matches with an international dimension and related legislation. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will no longer need these arrangements.

Part 17 of these Regulations revokes EU retained law relating to joint investigation teams. Regulations 67 to 69 revoke provisions in the laws of England and Wales, Northern Ireland and Scotland respectively which defined 'international joint investigation team' as teams formed in accordance with various EU instruments, namely under Article 34 of the Treaty on the European Union and the Convention on Mutual Assistance in Criminal Matters between the Member States

of the European Union (including the Protocol to that Convention). In the absence of an agreement with the EU providing for continued cooperation under these instruments, on commencement day the UK will no longer need these arrangements.

Regulation 70 makes similar provision in relation to the Crime and Courts Act 2013 (c. 22) amending the definition of 'international joint investigation team' for the purpose of that legislation. Regulation 71 makes consequential amendments revoking an Order specifying the Convention Implementing the Schengen Agreement for the purposes of section 88(7)(c) of the Police Act 1996 (c. 16). Regulation 72 makes saving provision with respect to regulations 67 to 69 and 71, so that they continue to apply in relation to investigation teams operating in the UK after commencement day pursuant to regulation 10 in Part 4 of these Regulations.

Part 18 makes amendments to deal with deficiencies in retained EU law relating to mutual legal assistance in criminal matters and some aspects of police cooperation. Chapter 2 revokes the Criminal Justice (European Investigation Order) Regulations 2017 (S.I. 2017/730), which transpose Directive 2014/41/EU on the European investigation order. The Directive creates a system for the mutual recognition of judicial decisions relating to evidence gathering for the purposes of criminal investigations and prosecutions. On commencement day, in the absence of an agreement with the EU providing for continued cooperation in relation to the European investigation order, the UK will no longer be obliged to recognise such decisions issued by other member States (and vice versa) and it is therefore no longer appropriate to maintain domestic law implementing the regime. Other regulations in this Part make consequential amendments to primary legislation (Chapter 3) and save aspects of the regime in order to allow the UK to give effect to orders received from other member States before commencement day and to allow UK courts to continue to revoke orders transmitted to other member States before commencement day (Chapter 4).

Chapter 5 of Part 18 makes amendments to parts of the Crime (International Co-operation) Act 2003 (c. 32) which implement existing EU law obligations in the field of mutual legal assistance and are therefore retained EU law for the purposes of the Withdrawal Act. The obligations include the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Council Act of 29 May 2000) ("the 2000 EU MLA Convention"), the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Council Act of 16 October 2001) ("the 2001 Protocol"), provisions of the 1990 Schengen Convention and Council Framework Decision 2003/577/JHA. Whilst these measures have to a large extent been replaced by the EIO Directive, they continue to apply, in some circumstances, to member States which do not participate in the Directive and to third countries to whom they have been extended by international agreement between the EU and the country concerned. All of these arrangements involve reciprocal rights and obligations which will no longer apply to the UK after commencement day. Accordingly, it is no longer appropriate to retain the relevant provision in domestic law. Regulations in Chapter 6 amend subordinate legislation made under the 2003 Act designating countries for the purposes of specific provisions in the Act. Where a member State has been designated solely on the basis of the UK's participation in one of the measures referred to above, the designations have been removed. Chapter 7 makes saving provision for various types of requests for assistance which may have been received, but not responded to, prior to commencement day.

Chapter 8 of Part 18 revokes retained EU law applying provisions of the 1990 Schengen Convention relating to mutual legal assistance and police cooperation to the United Kingdom, and any provisions of the 2000 EU MLA Convention or the 2001 Protocol which may, under the Withdrawal Act, be retained EU law. Regulation 101 removes the designation of the EU MLA Convention for the purposes of the Investigatory Powers Act 2016 (c. 25), subject to the saving provision in regulation 102.

Part 19 amends retained EU law which relates to, or was enacted to implement, the requirements of Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record data for the prevention, detection investigation and prosecution of terrorist offences and serious crime. This Directive establishes processes and rules for the processing of passenger name record data. In the absence of an agreement with the EU providing

for the continued operation of this instrument, on commencement day, data sharing obligations with EU Member States are no longer appropriate and are amended so that data sharing with all countries is treated in the same way.

In Part 20, regulation 107 makes the following amendments to POCA: the term "EEA Firms" is removed from the definition of "bank" in sections 67, 131ZA and 303Z7 of, and in paragraph 6 of Schedule 3 to, POCA. In sections 282D, 375A and 408A, which relate to the procedure by which assistance can be requested from overseas countries, references to individuals authorised under "EU Treaties" to receive such requests are removed. In sections 333B and 333C, which provide a defence to the offence of "tipping off" under section 333A, amendments are made to references to groups of companies to ensure that the defence will capture companies in the UK after commencement day. In sections 362B and 396B, which make provision for unexplained wealth orders, minor amendments are made to reflect the fact that the UK will not be an "EEA state" after commencement day. The amendments made to Schedule 9 to POCA are all made to ensure that the definition of a business operating in the "regulated sector" (which are subject to the offence in section 330 of failing to report suspicions of money laundering) cross-refers, where possible, to categories of business defined in domestic law rather than categories defined in EU law which will remain frozen in their meaning as of commencement day.

Regulation 108 omits section 96 of the Serious Organised Crime and Police Act 2005 (c.15). That section provides a power to allow the Secretary of State to make provision to give effect to rights and obligations arising under Framework Decision 2003/577/JHA). The UK will not participate in that Framework Decision after commencement day. For the same reason, regulation 110 revokes Part 2 of, and Schedules 1 and 2 to, the CJDP Regulations, which contain provisions allowing for freezing orders and confiscation orders to be sent to Member States, and for such orders received from Member States to be given effect in the UK, under that Framework Decision and Framework Decision 2006/783/JHA of 6th October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p. 59-78). After commencement day, the UK will not send or process any new requests under this mechanism, but transitional provision is made in Regulation 111 makes provision to ensure that the procedure in domestic law continues to apply where any request was sent or received prior to commencement day, or received prior to commencement day (regardless of whether the overseas restraint or overseas confiscation order has been registered by a domestic court).

Regulation 109 amends section 1 of the Criminal Finances Act 2017 (c. 22) to reflect the fact that the UK will not be an "EEA state" after commencement day. In addition, references to "EEA Firms" are removed from the definitions of "bank" in sections 16 and 27 of that Act; those sections make amendments to POCA which have not yet been commenced in Northern Ireland. Regulation 113 revokes Council Decisions 2000/642/JHA concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information and 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime. Regulation 114 makes saving provision to ensure that the provisions relating to the use of information (including personal data) in those Council Decisions is preserved in respect of any information provided under those procedures prior to commencement day.

Part 21 of these Regulations revokes Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ("the Prüm Decision") and related legislation. The Prüm Decision facilitates the exchange of DNA, fingerprints and vehicle registration data among EU Member States. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day these reciprocal arrangements will not be needed by the UK.

Part 22 revokes retained EU law relating to the Schengen information system, a real time system for circulating alerts relating to persons and objects of interest to law enforcement and other authorities in other states which participate in the system, subject to saving provisions. Most of the rules relating to the use of the Schengen information system are currently found in Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II), which is directly applicable in the UK. In the

absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will cease to have access to the system and it is therefore no longer appropriate for rules governing its use to continue to form part of domestic law.

In Part 23, regulation 122 makes amendments to the Serious Crime Act 2007 (c. 27) to ensure that notwithstanding the fact that the E-Commerce Directive will not bind the UK upon commencement day, the courts cannot impose conditions in Serious Crime Prevention Orders that are inconsistent with the liability exemptions in that Directive had it continued to bind the UK. Amendments are also made so as to omit provisions which implement a requirement in Article 3 of the E-Commerce Directive to extend domestic courts' jurisdiction to service providers engaged in conduct in other EEA states. These provisions have been omitted because such requirement represents a reciprocal arrangement which no longer works in a no-deal scenario. Regulation 122 also ensures that an offence of disclosing information received from anti-fraud agencies is not committed if the disclosure was required by a retained EU obligation. Regulation 123 revokes an EU Regulation which establishes an exchange, assistance and training programme for the protection of the euro against counterfeiting. This EU Regulation has no practical application in relation to the UK in a no-deal scenario.

Chapters 1 and 2 of Part 24 of these Regulations make miscellaneous amendments to retained EU law relating to the police (Chapter 1) and investigatory powers (Chapter 2). Chapter 3 of Part 24 revokes rights and obligations in a number of international agreements in the law enforcement and security sphere, to the extent that these are retained by the Withdrawal Act. The international agreements in question involve reciprocal rights and obligations which will no longer apply to the UK after commencement day. Accordingly, to the extent that these rights and obligations are retained by the Withdrawal Act, it is no longer appropriate to retain them in domestic law. Regulation 135 of Chapter 3 has the effect of preserving any rights and obligations which correspond to rights preserved elsewhere in these Regulations.

Chapter 4 of Part 23 revokes Council Decision 2008/617/JHA on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations (commonly referred to as "the Atlas Council Decision"). In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day these reciprocal arrangements will no longer be needed by the UK. Regulations 138 and 139 make transitional provision with respect to requests for assistance made to and from the UK before commencement day.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Home Office, 2 Marsham Street, London, SW1P 4DF and is published with the Explanatory Memorandum alongside this instrument at www.legislation.gov.uk.

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EXPLANATORY MEMORANDUM TO

THE LAW ENFORCEMENT AND SECURITY (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

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1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 The United Kingdom (UK) currently participates in around 40 European Union (EU) measures that support and enhance security, law enforcement and judicial cooperation in criminal matters. A number of these measures, and the tools they establish, work together to support the identification, pursuit and prosecution of criminals and terrorists. The UK also participates in a number of security-related EU regulatory systems.

2.2 Should the UK leave the EU without an agreement in March 2019 (a 'no deal' scenario), the UK's access to EU security, law enforcement and criminal justice tools and measures would cease, and the UK would no longer be bound by EU regulatory regimes. This would happen as a result of the UK having ceased to be an EU Member State, following the Article 50 notification made by the UK. This instrument plays no part in the UK leaving the EU, which will happen with or without it.

2.3 The overarching purpose of this instrument ('the Regulations') is to make amendments to the UK's domestic statute book, including retained EU legislation[1], to address deficiencies which arise from the UK ceasing to be an EU Member State. The instrument will do three main things:

- First, the Regulations will revoke or amend retained directly applicable EU legislation and domestic legislation in the area of security, law enforcement, criminal justice and some security-related regulatory systems to ensure that the statute book continues to function effectively in a no deal scenario. Amendments of this nature are made by all of the provisions included in this instrument;
- Second, where necessary, the Regulations include transitional or saving provisions to address 'live' or 'in flight' cases – i.e. how cases 'live' on exit day should be dealt with; or how data received before exit should be treated. Provisions of this nature are included in Parts 3, 4, 6, 8, 11, 12, 14, 15, 17, 18, 20, 22 and 24 of this instrument[2]; and
- Third, in the case of extradition, the Regulations ensure that the UK has the correct legal underpinning to operate the 'no deal' contingency arrangement (the 1957 Council of Europe Convention on Extradition) that would be used in lieu of the European Arrest Warrant (EAW). These changes are made in Part 14 of this instrument.

2.4 In summary, the instrument covers three linked policy areas:

[1] As retained by the European Union (Withdrawal) Act 2018.

[2] Part 3 – Counter-Terrorism (Regulation 6); Part 4 – Cross-border Surveillance (Regulation 10); Part 6 – Eurojust (Regulation 22); Part 8 – European Criminal Record Information System (ECRIS) (Regulations 27, 28, and 32); Part 11- Europol (Regulation 40); Part 12 – Exchange of information and intelligence between law enforcement authorities and disclosure in foreign proceedings (Regulations 44 - 47); Part 14 – Extradition (Regulation 57); Part 15 – Firearms (Regulations 60, and 65); Part 17 – Joint Investigation Teams (Regulation 72); Part 18 – Mutual Legal Assistance in Criminal Matters (Regulations 83-86, 96-98, and 102); Part 20 – Proceeds of Crime (Regulations 111 and 113); Part 22 – Schengen Information System (SIS II) (Regulations 120-121); and Part 24 – Miscellaneous (Regulations 135, 138, and 139).

- security, law enforcement and judicial cooperation in criminal matters currently underpinned by EU legislation in Parts 2-4, 6-12, 14, 16-23, and Chapters 3 and 4 of Part 24;
- security-related EU regulatory systems for which the Home Office is responsible (drug precursors and psychoactive substances, explosive precursors, and firearms) in Parts 5, 13 and 15; and
- domestic legislation affecting the police and affecting investigatory powers made deficient by EU exit, in Chapters 1 and 2 of Part 24.

Security, law enforcement and judicial cooperation in criminal matters currently underpinned by EU legislation (Parts 2-4, 6-12, 14, 16-23, and Chapters 3 and 4 of Part 24)

2.5 Parts 2-4, 6-12, 14, 16-22 and Chapters 3 and 4 of Part 24 of the Regulations address deficiencies in connection with EU measures made under Chapters 4 and 5 of Title V of the Treaty on the Functioning of the European Union. These measures are often referred to as having a Justice and Home Affairs or "JHA" legal base. They all relate in some way to law enforcement and security in their subject matter, and in many cases interact with each other at an operational level.

2.6 The effect of the UK's withdrawal from the EU is that the arrangements provided for in these EU measures – for example, extradition under the EAW – would no longer be available. Once the UK ceases to be an EU Member State, and in the absence of any alternative agreement (i.e. in a 'no deal' scenario) the UK would no longer have access to practical cooperation measures like the European Investigation Order (EIO), databases like the Schengen Information System (SIS II), or agencies like Europol, nor could the UK continue to expect reciprocal action from Member States on the terms set out in those EU measures.

2.7 The appropriate legislative response is therefore to revoke the relevant retained EU law to ensure that the domestic statute book operates effectively following the UK's withdrawal from the EU. Transitional or saving provisions are also established where necessary to address 'live' or 'in flight' cases – i.e. how cases 'live' on exit day should be dealt with; or how data received under EU measures before exit should be treated. These transitional and saving provisions are found in Parts 3, 4, 6, 8, 11,12, 14, 17, 18, 20, 22 and 24 of the instrument in respect of security, law enforcement and judicial cooperation matters.3

2.8 There are exceptions to this general position on revocation, in particular:

- Part 2 (Child Pornography) of the Regulations makes amendments to the retained EU legislation, so as to confirm that obligations to take measures to prevent and combat sexual abuse of children continue to apply within the UK.

[3] Part 3 – Counter-Terrorism (Regulation 6); Part 4 – Cross-border Surveillance (Regulation 10); Part 6 – Eurojust (Regulation 22); Part 8 – European Criminal Record Information System (ECRIS) (Regulations 27, 28, and 32); Part 11- Europol (Regulation 40); Part 12 – Exchange of information and intelligence between law enforcement authorities and disclosure in foreign proceedings (Regulations 44 - 47); Part 14 – Extradition (Regulation 57); Part 17 – Joint Investigation Teams (Regulation 72); Part 18 – Mutual Legal Assistance in Criminal Matters (Regulations 83-86, 96-98, and 102); Part 20 – Proceeds of Crime (Regulations 111 and 113); Part 22 – Schengen Information System (SIS II) (Regulations 120-121); and Part 24 – Miscellaneous (Regulations 135, 138, and 139).

- Part 19 (Passenger Name Record Data) of the Regulations will amend the retained Passenger Name Record (PNR) Directive Regulations to maintain most of the legislative framework governing the way the UK would treat PNR data from other countries. This includes retaining the data protection safeguards provided for in the PNR Directive but removing data sharing obligations that apply among EU Member States, as the latter represents a reciprocal arrangement which will lapse when the UK withdraws from the EU. This will enable the UK Passenger Information Unit to cooperate with EU Member States on the same terms as they would cooperate with the UK as a non-EU third country.

2.9 Additionally, Part 14 (Extradition) of the Regulations provides the necessary legislative underpinning to operate the 'no deal' contingency arrangement for extradition with EU Member States in a 'no deal' scenario, namely use of the 1957 Council of Europe Convention on Extradition. This will allow extradition requests from EU Member States to be administered based on extradition arrangements under the 1957 European Convention on Extradition.

2.10 Part 18 (Mutual Legal Assistance in Criminal Matters) of the Regulations will revoke the Criminal Justice (European Investigation Order) Regulations 2017 ('the EIO Regulations'), but also reverse a series of consequential amendments that were made when the EIO Regulations were implemented, in order to restore the ability to execute investigative measures (e.g. hearing witnesses in the UK by telephone) in response to requests from EU Member States.

2.11 Part 23(Serious Crime and Fraud) makes amendments to revoke legislation which implemented another type of EU measure in the law enforcement sphere, the EU Regulation which establishes an exchange, assistance and training programme for the protection of the euro against counterfeiting – a programme that would cease to be available to the UK after exit in a 'no deal' scenario.

2.12 In addition, some of the Parts in this first group also contain minor and technical amendments to domestic legislation, to ensure that the relevant law continues to operate effectively after the UK has withdrawn from the EU.

Security-related EU regulatory systems (drug precursors and psychoactive substances, explosive precursors, and firearms) in Parts 5, 13 and 15.

2.13 Amendments concerning security-related EU regulatory systems (drug precursors and psychoactive substances, explosive precursors, and firearms) are covered in Parts 5, 13 and 15 of this instrument.

2.14 The effect of the UK's withdrawal from the EU is that the UK would no longer be bound by EU regulatory regimes, and the UK can no longer expect reciprocal action from Member States on the terms provided for in those regimes.

2.15 The Regulations will maintain the existing regulatory regimes in the UK in significant part, while making amendments to address deficiencies in the statute book resulting from the UK's withdrawal from the EU. This includes:

- Part 5 (Drug Precursors and Psychoactive Substances) will make minor amendments to the regulatory regime governing psychoactive substances to ensure that the definition of a prohibited ingredient no longer refers to

substances prohibited by EU legislation, but to substances prohibited under domestic legislation.

- Part 13 (Explosive Precursors) will make amendments which ensure that the existing regulatory regime continues to operate in substantially the same manner as before exit day, but adjusts terminology which assumes that the UK is an EU Member State. In the case of Northern Ireland, the Regulations will transfer a power for the European Commission to amend annexes containing regulated explosive precursors to the Secretary of State for Northern Ireland (powers for Ministers to amend such lists in Great Britain already exist).
- Part 15 (Firearms) will retain necessary safeguards and controls on the possession etc, of firearms and shotguns, while removing provisions reflecting reciprocal arrangements which will no longer apply once the UK has withdrawn from the EU, such as those relating to the European Firearms Pass (EFP).

2.16 Part 5 (Drug Precursors and Psychoactive Substances) amends the retained EU law which governs the trade in drug precursors within the EU (intra-community trade), and between the EU and third countries (extra-community trade). The Regulations amend the existing regime so that trade in drug precursors with EU Member States is governed in the same way as the rest of the world (as in a 'no deal' scenario, the UK will no longer be able to participate in intra-community trade). The intra-community trade rules are retained in amended form for internal UK purposes. The Regulations also transfer powers from the European Commission to the Secretary of State to amend the lists of regulated drug precursors and makes technical amendments to adjust references to the UK as an EU Member State.

Domestic legislation affecting the police and affecting investigatory powers made deficient by EU exit in Chapters 1 and 2 of Part 24

2.17 Chapter 1 (Miscellaneous amendments to police legislation) and Chapter 2 of (Miscellaneous amendments to investigatory powers) of Part 24 of the Regulations constitute a miscellaneous group of amendments that seek to ensure that legislation in this area remains operable on exit. In the main, the deficiencies are not linked to a particular EU measure but derive from the assumption that the UK is an EU Member State or a member of the EEA. The amendments in Regulation 126 and Regulation 130 are a notable exception, because they relate to the UK's implementation of a particular instrument, namely the Electronic Commerce Directive.

Explanations

What did any relevant EU law do before exit day?

2.18 The UK currently participates in around 40 EU measures that support and enhance security, law enforcement and judicial cooperation in criminal matters, and in a number of security-related EU regulatory systems. A body of EU law, including Council Decisions, Directives, and EU Regulations, mostly but not exclusively with a 'Justice and Home Affairs' legal base, governs cooperation on these matters among participating countries.

Why is it being changed?

2.19 Should the UK leave the EU without an agreement in March 2019 (a 'no deal' scenario), the UK's access to EU security, law enforcement and criminal justice tools and measures would cease, and the UK would no longer be bound by EU regulatory regimes. The overarching purpose of this instrument is to make amendments to the UK's domestic statute book to reflect this.

What will it now do?

2.20 The Regulations make amendments to the UK's domestic statute book, including retained EU legislation, to address deficiencies which arise from the UK ceasing to be an EU Member State. This includes revoking or amending retained directly applicable EU legislation and domestic legislation in the area of security, law enforcement, criminal justice and some security-related regulatory systems.

2.21 The practical effect of these amendments is summarised in Section 12 (Impacts) of this Explanatory Memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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

3.2 The territorial application of this instrument varies between provisions.

3.3 Please see paragraphs 4.3 and 4.4 below for further details of the application of the provisions in this instrument.

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 England and Wales, Scotland and Northern Ireland.

4.3 The precise extent of each provision of this instrument varies, as set out in regulation 2 (Extent), and the territorial application of this instrument is not limited. In most cases, any amendment, repeal or revocation made by this instrument has the same extent within the UK as the provision to which it relates, with the exception of certain provisions relating to the Proceeds of Crime Act 2002 ('POCA') and the Criminal Finances Act 2017 ('CFA'). Regulation 107(5) and (8) of this instrument relates to provisions in POCA which were inserted by the CFA, but which have not yet commenced in Northern Ireland; accordingly, regulation 107(5) and (8) extends and applies to England and Wales and Scotland only. Similarly, the provisions in the CFA 2017 which are amended by regulation 109(1) to (3) of this instrument make changes to POCA but are not yet commenced in Northern Ireland. Accordingly, Regulation 109(1) and (3) of this instrument extends and applies to Northern Ireland only. Regulation 109(4) makes amendments to section 27 of the CFA, which itself only extends to Northern Ireland, so no further provision is required.

4.4 Any saving or transitional provision in this instrument has the same extent within the UK as the provision to which it relates, with the exception that regulation 72 (saving provision – investigation teams operating in the UK after exit day) extends and applies to England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1 The Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire, has made the following statement regarding Human Rights:

'In my view the provisions of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.'

6. Legislative Context

6.1 On 29 March 2019 the UK will cease to be an EU Member State, as a result of the Article 50 notification made by the UK.

6.2 The EU (Withdrawal) Act 2018 ('the Act') was introduced to ensure that the UK has a functioning statute book on exit day. The Act ends the supremacy of EU law in UK law, retains EU law (as it stands at exit) into domestic law, and preserves laws made in the UK to implement EU obligations.

6.3 The Act also created temporary powers to make secondary legislation, including the power in section 8, which enables corrections to be made to legislation that would otherwise fail to operate effectively or other legislative deficiencies arising from the withdrawal of the UK from the EU.

6.4 This instrument will utilise the power contained in section 8 of the Act in order to address failures of retained EU law to operate effectively or other legislative deficiencies arising from the withdrawal of the UK from the EU. It will also rely upon other relevant powers in the European Union (Withdrawal) Act 2018 and the Extradition Act 2003.

6.5 If the Regulations are made, failure of retained EU law to operate effectively, and other legislative deficiencies arising from the UK's withdrawal from the EU without an agreement (a 'no deal' scenario), would be addressed and rectified. In the case of extradition, the Regulations would also provide the correct legislative underpinning to operate the 'no deal' contingency arrangement for extradition with EU Member States (use of the 1957 Council of Europe Convention on Extradition).

6.6 The practical impact of making these Regulations would be to remove legal and operational uncertainty for the public sector, reduce legal uncertainty for business, provide the correct legal underpinning for extradition arrangements with EU Member States post-exit, and provide for transitional and saving provisions. For further detail please see Section 12 (Impacts) of this Explanatory Memorandum.

7. Policy background

7.1 The Government's view remains that withdrawing from the EU with an agreement is in the UK's best interests. However, the Government is preparing for all scenarios relating to the UK's withdrawal from the EU, including the scenario in which the UK leaves the EU without a deal in March 2019.

7.2 As part of these preparations, the Government is implementing a cross-Government programme of secondary legislation, which will ensure that, without prejudice to the

outcome of negotiations, there is an effectively functioning statute book on exit day. This instrument is part of that programme of secondary legislation, making amendments to the UK's domestic statute book, including retained EU legislation, to address the deficiencies which arise from the UK ceasing to be an EU Member State.

7.3 The practical impact of a 'no deal' exit on security, law enforcement and criminal justice cooperation with EU Member States is outside the scope of the provisions found in this instrument. The Government has separately published '*EU Exit: Assessment of the security partnership*'[4] providing its assessment of the implications of a 'no deal' scenario in this policy area compared against the proposed Future UK-EU Security Partnership (as set out in the Political Declaration). Should the UK leave the EU without an agreement in March 2019 (the 'no deal' scenario), the UK's access to EU security, law enforcement and criminal justice tools would cease. This loss of access would be by virtue of the UK having ceased to be an EU Member State, following the Article 50 notification made by the UK.

7.4 The assessment outlined that in a 'no deal' scenario there would not be an implementation period, and the UK would no longer be able to cooperate with the EU using EU law enforcement and criminal justice mechanisms such as the European Arrest Warrant (EAW) or the Schengen Information System (SIS II), a Europe-wide IT system which enables the sharing of alerts on wanted/missing persons and objects for law enforcement purposes. The UK would rely instead on alternative, non-EU mechanisms, where they exist. The assessment concludes that these mechanisms, which include Interpol and Council of Europe Conventions, would not provide the same level of capability as those envisaged in a deal scenario, and would risk increasing pressure on UK security, law enforcement and judicial authorities.

7.5 For the most part, contingency arrangements for security, law enforcement and criminal justice cooperation with EU Member States in a 'no deal' scenario do not require amendments to the UK's domestic legislation, as the relevant non-EU mechanisms that would be reverted to – such as Council of Europe Conventions, Interpol and bilateral channels – are already in use, including with non-EU countries. However, this instrument does legislate to ensure that the correct legal underpinning is in place to support use of the contingency arrangement for extradition to and from EU Member States (use of the 1957 Council of Europe Convention on Extradition). The impacts of reverting to this contingency arrangement (which already exists and is in use with countries outside the EU) are summarised in Section 12 (Impacts) of the Explanatory Memorandum, and in the Impact Assessment[5] published alongside this instrument.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. The instrument also relies on the powers in section 23(1) and (2) of, and paragraph 21

[4] 'EU Exit: Assessment of the security partnership (November 2018) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759760/28_November_EU_Exit_-_Assessment_of_the_security_partnership__2_.pdf

[5] Impact Assessment for The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 - https://www.legislation.gov.uk/ukdsi/2019/9780111178102/impacts

of Schedule 7 to, the Withdrawal Act 2018. 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.

8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under sections 1(1), 69(1), 71(4), 73(5), 84(7), 86(7) and 223(3) and (8) of the Extradition Act 2003. These powers are being used in relation to changes made in Part 14 of the Regulations, concerning extradition.

9. Consolidation

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

10. Consultation outcome

10.1 For security, law enforcement and criminal justice, the Home Office has fully engaged with operational partners and the Devolved Administrations on preparations for a scenario in which the UK withdraws from the EU without a deal in March 2019.

10.2 For the most part, the Regulations make changes to address failures of retained EU law to operate effectively, or to address other legislative deficiencies arising from the UK's withdrawal from the EU. For extradition, the Regulations will provide the legislative underpinning for the UK to transition its cooperation with EU Member States to a non-EU mechanism, and partners have been consulted on this as part of wider preparations for a 'no deal' scenario.

10.3 For the regulatory systems (drug precursor chemicals, firearms and explosive precursors) the Regulations are also seeking to address failures of retained EU law to ensure it operates effectively. As there is not a significant impact on businesses, the Home Office has not undertaken a formal consultation exercise. In addition, the impact of 'no deal' was communicated to licence holders and other stakeholders via Technical Notices published in September. As relevant, the Devolved Administrations and other government departments were consulted during the drafting of the Regulations. The Home Office will continue to informally engage with stakeholders and licence holders after this instrument comes into force.

11. Guidance

11.1 Guidance is not being provided in relation to this instrument.

12. Impact

12.1 The impact on business, charities or voluntary bodies may arise from some amendments made by this instrument, which may require (in some cases) changes to guidance, with associated costs for training and communication.

12.2 The impact on the public sector may arise from amendments made by this instrument, which may require changes to guidance, with associated costs for training and communication.

12.3 This instrument will also enable the implementation of the 'no deal' contingency arrangement for extradition to and from EU Member States (use of the 1957 Council of Europe Convention on Extradition).

12.4 A full Impact Assessment was submitted with the original Explanatory Memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

12.5 The main 'real-world' effect of this instrument, in the context of Justice and Home Affairs cooperation, will be to ensure that the correct legal underpinning - the 1957 Council of Europe Convention on Extradition - is in place for extraditions to and from EU Member States in a 'no deal' scenario. For this purpose, Part 14 of the Regulations adjusts the designation of EU Member States under the Extradition Act 2003 from Part 1 to Part 2. This change will give the UK the domestic legal basis to handle European Convention requests in the way set out in that Convention. Were this change not to be made, it is not clear that new incoming extradition requests from EU Member States could be lawfully processed. This could in turn put pressure on the system for outgoing extradition requests (from the UK to EU Member States) – if the UK is unable to cooperate reciprocally. In 2017/18, the UK arrested over 1,400 individuals on the basis of European Arrest Warrants (EAWs) issued by the other 27 EU Member States. In the same period, EU Member States arrested 183 individuals on the basis of EAWs issued by the UK.

12.6 Operating extradition arrangements with EU Member States under Part 2 of the Extradition Act 2003 would see the cost per incoming extradition case rising compared to the present operation of the European Arrest Warrant (EAW) under Part 1. However, in a 'no deal' scenario, the UK would not be able to use the EAW in any event, by virtue of the UK having withdrawn from the EU.

12.7 The Regulations also have a 'real-world' effect where they establish transitional provisions, ensuring that there is clarity over whether, and on what terms, cases or requests that are 'live' or 'in flight' on exit day should proceed. Again, this is particularly significant for extradition (Part 14) where the Regulations confirm that cases will proceed under Part 1 of the Extradition Act 2003 if the requested individual has been arrested before exit day. Further examples of areas where transitional provisions are being put in place by these Regulations include: criminal records requests received through the European Criminal Records Information System (ECRIS), requests from EU Member States for Mutual Legal Assistance in Criminal Matters, asset freezing and confiscation orders issued by EU Member States, and cross-border surveillance operations. In each case, the underlying policy objective is to provide clarity on the conditions under which requests received or cooperation commenced before exit can be completed (usually linked to having reached a particular procedural stage in an ongoing process), and thus to provide legal certainty. Were these amendments not to be made, operational partners who currently operate the relevant EU tools and measures would face uncertainty over how to treat cases and requests that are 'live' or 'in flight' at the point of exit, and would also face a higher risk of legal challenge.

12.8 A number of saving provisions are included in the Regulations for a similar reason – to put beyond doubt that certain obligations persist in a 'no deal' scenario. The saving provisions in the Regulations mostly relate to data protection - i.e. confirming that the data protection rules under which information was received by the UK pre-exit will continue to apply to that information post-exit. For example, provisions of this nature are included in relation to data and information received via Europol, Eurojust, Schengen Information System (SIS II), ECRIS, and Financial Intelligence Units (FIU's), as well the Swedish Initiative and the Passenger Name Record (PNR)

Directive. The 'real-world' effect of these saving provisions may in practice be limited, as the UK's Data Protection Act 2018 would in many cases impose equivalent obligations in any event. Including them in these Regulations will nonetheless ensure that no unintended 'gaps' arise and put the legal position beyond doubt. This will in turn provide clarity for operational partners and reduce the risk of successful legal challenge.

12.9 Where the Regulations address deficiencies in domestic law or retained EU law arising from the UK's withdrawal from the EU, they do so with the underlying policy objective of providing continuity as far as possible, and thus the 'real-world' effect of such changes is limited. To illustrate, the Regulations make a series of amendments to ensure that definitions are no longer tied to EU law (for example, in Part 5 (Drug Precursors and Psychoactive Substances), the definition of 'prohibited ingredients' used in food in respect of psychoactive substances). They also amend EEA references to reflect that the UK is no longer a member of the EEA (for example in amendments to the Serious Crime Act 2007, the Local Government (Miscellaneous Provisions) Act 1982, the Licensing Act 2003, the Police Pensions (Additional Voluntary Contributions) Regulations 1991 and the Police Pensions Regulations 2015) and remove references to the European Communities Act 1972 (for example in the Policing and Crime Act 2017 and in the Investigatory Powers Act 2016). Examples of more substantive corrections include ensuring that, as part of the licensing regime for explosive precursors in Northern Ireland, the Secretary of State can make amendments to the list of controlled substances and limit values (Part 13 - Explosive Precursors), and ensuring that the UK cooperates with EU Member States on the same terms as they would cooperate with the UK as a third country (for example in respect of PNR data in Part 19 (Passenger Name Record Data), and in respect of Drug Precursors in Part 5 (Drug Precursors and Psychoactive Substances)). In these cases, the real-world effect is not so much from making the changes in the Regulations, but from what the effect of not addressing those deficiencies would be (e.g. leaving a 'gap' in the licensing regime).

12.10 Where the Regulations revoke retained EU law or connected domestic law, this is not expected to have a 'real-world' effect, because the underlying EU instruments would cease to be available to the UK upon withdrawal from the EU in any event. For example, in a 'no deal' scenario, the UK's membership of Europol would cease on 29 March 2019 by virtue of the UK having ceased to be an EU Member State (i.e. as a result of the Article 50 notification). Relevant 'retained' EU law on the UK's domestic statute book would then become obsolete in the sense that even if, for example, the 'retained' Europol Regulation were left on the UK statute book, this would not preserve the UK's membership of Europol. By way of further illustration, the same principle applies to the revocation of the Council Decision establishing the European Criminal Records Information System (ECRIS) (Part 8) or the Council Implementing Decision which currently delivers the UK's access to the Schengen Information System (SIS II) (Part 22). Where revocation could have a 'real-world' effect on cases and requests that are 'live' or 'in flight' at the point of exit, this is addressed through the transitional and saving provisions described above.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 See paragraph 12.1 concerning the impacts on businesses. The changes made by the instrument applies to small businesses in the same way that it applies to other businesses.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Rachel Vickerstaff at the Home Office Telephone: 0207 035 3267 or rachel.vickerstaff@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rob Jones at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the 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 77	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule	Ministers of the Crown exercising clauses 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

	7	23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising clauses 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by 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 Not applicable. The instrument is being made under the draft affirmative procedure.

2. Appropriateness statement

2.1 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

'In my view The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate.'

2.2 This is the case because the instrument is being made to address deficiencies in retained EU law and makes appropriate transitional and saving provisions as detailed.

3. Good reasons

3.1 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd 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 that the instrument is being made to address deficiencies in retained EU law and makes appropriate transitional and saving provisions as detailed.

4. Equalities

4.1 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd 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 Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

'In relation to the draft instrument, I, the Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd 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.

6. Criminal offences

6.1 Not applicable. The instrument does not create a new criminal offence or penalty.

7. Legislative sub-delegation

7.1 Not applicable. The instrument does not create a sub-delegated power.

8. Urgency

8.1 Not applicable. The instrument is not being made under the urgent procedure, provided for in paragraphs 4 or 14, Schedule 7 of the European Union (Withdrawal) Act 2018.

Julie James AC/AM
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Llywodraeth Cymru
Welsh Government

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

2 Mai 2019

Annwyl Mick

Ysgrifennaf atoch ynghylch OS Ymadael â'r UE a osodwyd yn Senedd y DU, sef Rheoliadau Gorfodi'r Gyfraith a Diogelwch (Diwygio) (Ymadael â'r UE) 2019, er mwyn rhoi gwybod i chi pam fod Gweinidogion Cymru wedi rhoi cydsyniad ôl-weithredol i'r OS hwn.

Daeth i'm sylw ar ôl i'r OS gael ei osod bod rheoliad 124 yn diwygio Deddf Llywodraeth Leol (Darpariaethau Amrywiol) 1982, sef darpariaeth yr ydym yn ystyried ei bod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru. Gan hynny, o dan y Cytundeb Rhynglywodraethol dylid bod wedi gofyn am gydsyniad Gweinidogion Cymru ar gyfer yr OS hwn. Mae fy swyddogion wedi trafod yr OS hwn gyda swyddogion cyfatebol yn y Swyddfa Gartref, ac maent wedi cadarnhau nad oedd Llywodraeth y DU wedi gofyn am gydsyniad Gweinidogion Cymru gan fod Llywodraeth y DU yn ystyried bod yr OS hwn yn ymwneud â mater a gedwir yn ôl.

Roedd y ddarpariaeth dan sylw yn gwneud diwygiadau mân iawn i baragraff 12(1)(c) a (d) o Atodlen 3 i Ddeddf Llywodraeth Leol (Darpariaethau Amrywiol) 1982. Ar hyn o bryd mae'r Ddeddf yn darparu y gellir ond rhoi trwydded ar gyfer sefydliad rhyw (sef lleoliadau adloniant rhywiol, sinemâu rhyw a siopau rhyw) i berson sy'n preswylio mewn gwladwriaeth AEE, neu i gorff corfforaethol a gorfforwyd mewn gwladwriaeth AEE. Bydd y fersiwn ddiwygiedig yn darparu y gellir ond rhoi trwydded i berson sy'n preswylio yn y DU neu mewn gwladwriaeth AEE, neu i gorff corfforaethol a gorfforwyd yn y DU neu mewn gwladwriaeth AEE. Mae hyn yn barhad o'r polisi presennol, sydd hefyd yn bolisi Llywodraeth Cymru. Mae'r diwygiad yn ffordd synhwyrol o barhau â'r trefniadau trwyddedu presennol ar ôl y diwrnod ymadael.

Er mwyn osgoi unrhyw amheuaeth, ysgrifennais at Nick Hurd MP, Minister of State for Police and the Fire Service, i roi cydsyniad ôl-weithredol Gweinidogion Cymru i'r OS hwn.

Mae trwyddedu darparu adloniant yn fater a gedwir yn ôl i Senedd y DU o dan Ddeddf Llywodraeth Cymru 2006. Fodd bynnag, oherwydd nad yw trwyddedu sefydliadau rhyw wedi ei lywodraethu gan Ddeddf Trwyddedu 2003, nid wyf o'r farn y byddai'r ddarpariaeth yn

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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rheoliad 124 o fewn y mater hwn a gedwir yn ôl. O ganlyniad, rwy'n ystyried y dylid bod wedi gofyn am gydsyniad Gweinidogion Cymru mewn cysylltiad â'r ddarpariaeth hon.

Rydym yn cydnabod y gwnaed yr OSau Ymadael â'r UE o dan bwysau nas gwelwyd eu math o'r blaen, nad oedd yn caniatáu'r amser arferol i ystyried yr agweddau mwy goddrychol ar y setliad datganoli. Ar sail hynny, rwy'n fodlon bod Llywodraeth y DU wedi bod yn gweithredu'n ddidwyll o dan y Cytundeb Rhynglywodraethol ac wedi cadw at ei dehongliad ei hun o'r setliad datganoli yn yr achos hwn. Rhoddwyd cydsyniad heb ragfarnu ein safbwynt o ran cymhwysedd deddfwriaethol, ac nid wyf yn bwriadu cymryd camau pellach ar hyn o bryd.

Gan fod yr OS hwn yn diwygio deddfwriaeth sylfaenol mewn maes datganoledig, rwyf wedi gosod Memorandwm Cydsyniad Offeryn Statudol gerbron Cynulliad Cenedlaethol Cymru yn unol â'r gofyniad o dan Reol Sefydlog 30A (RhS30A). Fodd bynnag, gan fod y cywiriad yn un mân iawn, ni fyddaf yn gosod cynnig i drafod y Memorandwm Cydsyniad Offeryn Statudol. Mae croeso i unrhyw aelod osod cynnig i'w drafod o dan Reol Sefydlog 30A, pe bai unrhyw aelod yn teimlo bod y cywiriad hwn yn deilwng o fod yn destun trafodaeth.

Yn gywir

Julie James AC/AM
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Llywodraeth Cymru
Welsh Government

DATGANIAD YSGRIFENEDIG
GAN
LYWODRAETH CYMRU

TEITL **Rheoliadau Gorfodi'r Gyfraith a Diogelwch (Diwygio) (Ymadael â'r UE) 2019**

DYDDIAD **3 Mai 2019**

GAN **Rebecca Evans AC, y Gweinidog Cyllid a'r Trefnydd**

Rheoliadau Gorfodi'r Gyfraith a Diogelwch (Diwygio) (Ymadael â'r UE) 2019

Y Gyfraith sy'n cael ei diwygio:

Deddfwriaeth Sylfaenol

- Deddf Terfysgaeth 2000
- Deddf Rheoleiddio Pwerau Ymchwilio 2000
- Deddf Sylweddau Seicoweithredol 2016
- Deddf Gwrthderfysgaeth, Trosedd a Diogelwch 2001
- Deddf Ymddygiad Gwrthgymdeithasol, Trosedd a Phlismona 2014
- Deddf Arfau Tanio 1968
- Deddf Arfau Tanio (Diwygio) 1988
- Deddf yr Heddlu 1996
- Deddf yr Heddlu (Gogledd Iwerddon) 1998
- Deddf Diwygio'r Heddlu a Thân (yr Alban) 2012
- Deddf Troseddu a'r Llysoedd 2013
- Deddf Cyfiawnder Troseddol 1987
- Deddf Cyfiawnder Troseddol 1988
- Deddf Gweithdrefn Droseddol (yr Alban) 1995
- Deddf Cyfraith Droseddol (Cydgrynhoi) (yr Alban) 1995
- Deddf Cyfiawnder Troseddol a'r Heddlu 2001
- Deddf Cyfiawnder Troseddol 2003
- Deddf Pwerau Ymchwilio 2016
- Deddf Enillion Troseddau 2002
- Deddf Troseddu Cyfundrefnol Difrifol a'r Heddlu 2005

- Deddf Cyllid Troseddol 2017
- Deddf Troseddau Difrifol 2007
- Deddf Llywodraeth Leol (Darpariaethau Amrywiol) 1982
- Deddf Trwyddedu 2003
- Deddf Ymddygiad Gwrthgymdeithasol, Trosedd a Phlismona 2014
- Deddf Masnachu Pobl a Chamfanteisio (Cyfiawnder Troseddol a Chymorth i Ddioddefwyr) (Gogledd Iwerddon) 2015
- Y Ddeddf Plismona a Throsedd 2017

Is-ddeddfwriaeth

- Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007
- Controlled Drugs (Drug Precursors) (Intra-Community Trade) Regulations 2008
- Controlled Drugs (Drug Precursors) (Community External Trade) Regulations 2008
- The European Police College (Immunities and Privileges) Order 2004
- Criminal Justice and Data Protection (Protocol No 36) Regulations 2014
- Working with Children (Exchange of Criminal Conviction Information) (England and Wales and Northern Ireland) Regulations 2013
- Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014
- Control of Poisons and Explosives Precursors Regulations 2015
- Extradition Act 2003 (Designation of Part 1 Territories) Order 2003
- Extradition Act 2003 (Designation of Part 2 Territories) Order 2003
- Firearms Acts (Amendment) Regulations 1992
- Firearms (Amendment) Act 1988 (Amendment) Regulations 2011
- Firearms (Northern Ireland) Order 2004
- International Joint Investigation Teams (International Agreement) Order 2004
- Criminal Justice (Evidence) (Northern Ireland) Order 2004
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 2) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2010
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2011
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2011
- Investigatory Powers (Consequential Amendments etc.) Regulations 2018
- Immigration and Police (Passenger, Crew and Service Information) Order 2008
- Passenger Name Record Data and Miscellaneous Amendments Regulations 2018
- Police Pensions (Additional Voluntary Contributions) Regulations 1991

- Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013
- Police Pensions Regulations 2015
- Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018

Penderfyniadau'r UE

- Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA
- Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA
- Council Decision 2010/779/EU of 14 December 2010 concerning the request of the
- United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis relating to the establishment of a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice;
- Council Decision (EU) 2018/1600 of 28 September 2018 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis relating to the establishment of a European Union
- Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA).
  Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network
- Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol);
- Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information;
- Council Decision 2009/935/JHA of 30 November 2009 determining the list of third States and organisations with which Europol shall conclude agreements;
- Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files;
- Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information.
- Commission Decision (EU) 2017/388 of 6 March 2017 confirming the participation of the United Kingdom of Great Britain and Northern Ireland in Regulation (EU) 2016/794 of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation (Europol)
- Council Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the internet
- Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension;
- Council Decision 2007/412/JHA of 12 June 2007 amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension.

- Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United
- Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis;
- Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland;
- Council Decision 2014/857/EU of 1 December 2014 concerning the notification of the
- United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen acquis which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters and amending Decisions 2000/365/EC and 2004/926/EC.
- Council Decision 2012/381/EU of 13 December 2011 on the conclusion of the
- Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service;
- Council Decision 2012/472/EU of 26 April 2012 on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security.
- Commission Implementing Decision (EU) 2017/759 of 28 April 2017 on the common protocols and data formats to be used by air carriers when transferring PNR data to Passenger Information Units is revoked.
- Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information;
- Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.
- Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.
- Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision
- 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime;
- Council Decision 2014/836/EU of 27 November 2014 determining certain consequential and transitional arrangements concerning the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon;
- Council Decision 2014/837/EU of 27 November 2014 determining certain direct financial consequences incurred as a result of the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon.

- Commission Decision (EU) 2016/809 of 20 May 2016 on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in certain acts of the Union in the field of police cooperation
- Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United
- Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis;
- Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland;
- Council Decision 2014/857/EU of 1 December 2014 concerning the notification of the United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen acquis which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters and amending Decisions 2000/365/EC and 2004/926/EC.
- Commission Decision 2007/171/EC of 16 March 2007 laying down the network requirements for the Schengen Information System II (3rd pillar);
- Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II);
- Commission Implementing Decision 2013/115/EU of 26 February 2013 on the Sirene
- Manual and other implementing measures for the second generation Schengen
- Information System (SIS II);
- Council Decision 2013/157/EU of 7 March 2013 fixing the date of application of
- Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II);
- Council Implementing Decision (EU) 2015/215 of 10 February 2015 on the putting into effect of the provisions of the Schengen acquis on data protection and on the provisional putting into effect of parts of the provisions of the Schengen acquis on the Schengen Information System for the United Kingdom of Great Britain and Northern Ireland;
- Commission Implementing Decision (EU) 2015/450 of 16 March 2015 laying down test requirements for Member States integrating into the second generation Schengen Information System (SIS II) or changing substantially their directly related national systems;
- Commission Implementing Decision (EU) 2016/1345 of 4 August 2016 on minimum data quality standards for fingerprint records within the second generation Schengen
- Information System (SIS II).
- Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations

Rheoliadau'r UE

- Council Regulation (EC) 273/2004 on drug precursors
- Council Regulation (EC) 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Union and third countries in drug precursors
- Commission Delegated Regulation (EU) 2015/1011 of 24 April 2015 supplementing Regulation (EC) No 273/2004 of the European Parliament and of

the Council on drug precursors and Council Regulation (EC) 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors, and repealing Commission Regulation (EC) 1277/2005

- Commission Implementing Regulation (EU) 2015/1013 of 25 June 2015 laying down rules in respect of Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and of Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors
- Regulation (EC) No 1920/2006 of the European Parliament and of the Council of 12
- December 2006 on the European Monitoring Centre for Drugs and Drug Addiction (recast)
- Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances
- Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011
- Regulation (EU) 2016/794 of the European Parliament and of the
- Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA
- Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15
- January 2013 on the marketing and use of explosives precursors
- Commission Implementing Regulation (EU) No 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable
- Council Regulation (EU) No 331/2014 of the European Parliament and of the Council of 11 March 2014 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the ‘Pericles 2020’ programme) and repealing Council Decisions 2001/923/EC, 2001/924/EC, 2006/75/EC, 2006/76/EC, 2006/849/EC and 2006/850/EC

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

Nid yw'r OS hwn yn cael unrhyw effaith ar gymhwysedd deddfwriaethol y Cynulliad nac ar gymhwysedd gweithredol Gweinidogion Cymru

Diben y diwygiadau

Mae'r ddeddfwriaeth sylfaenol a chyfraith uniongyrchol berthnasol yr UE a gaiff eu diwygio gan yr OS hwn yn cynnwys darpariaethau a fyddai'n ddiffygiol ar ôl i'r Deyrnas Unedig ymadael â'r Undeb Ewropeaidd. Mae'r ddeddfwriaeth yn ymwneud â phlismona, ymchwiliadau troseddol, gorfodi'r gyfraith a diogelwch.

Pwrpas y diwygiadau hyn yw cywiro'r diffygion hyn. Mae'r offeryn yn cynnwys hefyd ddarpariaethau trosiannol a darpariaethau arbed i sicrhau bod y ddeddfwriaeth yn gweithio'n effeithiol ar ôl y diwrnod ymadael.

Mae'r OS a'r Memorandwm Esboniadol sy'n mynd gydag ef, sy'n nodi effaith yr OS, i'w gweld yma:
https://www.legislation.gov.uk/cy/ukdsi/2019/9780111178102/contents

Materion o ddiddordeb arbennig i'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Mae Llywodraeth y DU o'r farn bod yr OS cyfan wedi'i gadw'n ôl, ac felly ni ofynnwyd am gydsyniad Gweinidogion Cymru wrth gyflwyno'r OS hwn. Fodd bynnag, mae Gweinidogion Cymru o'r farn bod diwygiadau i Ddeddf Llywodraeth Leol (Darpariaethau Amrywiol) 1982 yn dod o fewn maes lle y mae cymhwysedd wedi ei ddatganoli, ac felly dylid fod wedi ceisio cydsyniad Gweinidogion Cymru ar gyfer yr OS hwn. Mae'r Gweinidog Tai a Llywodraeth Leol wedi ysgrifennu at Lywodraeth y DU ynghylch hyn, ac wedi ysgrifennu llythyr at y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn nodi safbwyntiau Llywodraeth Cymru. Er na ofynnwyd am gydsyniad ar y pryd, mae Gweinidogion Cymru yn fodlon â'r OS, a byddent wedi cydsynio.

Pam y rhoddwyd cydsyniad
Nid oes gwahaniaeth rhwng Llywodraeth Cymru a Llywodraeth y DU o ran y polisi sy'n gysylltiedig â'r diwygio, ac nid yw sylwedd y diwygiadau'n sensitif yn wleidyddol. Byddai gwneud OS 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 un fframwaith deddfwriaethol ar draws y DU sy'n hybu eglurder a hygyrchedd yn ystod y cyfnod hwn o newid. O dan yr amgylchiadau eithriadol hyn, mae Llywodraeth Cymru yn ystyried ei bod yn briodol i Lywodraeth y DU ddeddfu ar ein rhan yn yr achos hwn.

Mae Memorandwm Cydsyniad Offeryn Statudol hefyd wedi'i osod yn y Cynulliad Cenedlaethol mewn perthynas â'r diwygiadau i Ddeddf Llywodraeth Leol (Darpariaethau Amrywiol) 1982.

UK MINISTERS ACTING IN DEVOLVED AREAS

131 - The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 15 January 2019

Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	18/02/2019
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 11
SICM under SO 30A (because amends primary legislation)	Paper 7
Scrutiny procedure	
Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	30/01/2019
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	18/02/2019

Commentary

These Regulations are proposed to be made by the UK Government pursuant to sections 1(1), 69(1), 71(4), 73(5), 84(7), 86(7) and 223(3) and (8) of the Extradition Act 2003, and sections 8(1) and 23(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The UK currently participates in around 40 EU measures that are designed to support and enhance security, law enforcement and judicial cooperation in criminal matters. The UK also participates in a number of security-related EU regulatory systems.

Should the UK leave the EU without an agreement, the UK's access to EU security, law enforcement and criminal justice tools and measures would cease, and the UK would no longer be bound by EU regulatory regimes.

The overarching purpose of this instrument is to make amendments to the UK's domestic statute book, including retained EU legislation, to

address deficiencies which arise from the UK ceasing to be an EU Member State. The instrument will do three main things:

- Revoke or amend retained directly applicable EU legislation and domestic legislation in the area of security, law enforcement, criminal justice and some security-related regulatory systems to ensure that the statute book continues to function effectively in a no deal scenario;

- Make transitional or saving provisions to address 'live' cases, i.e. how cases 'live' on exit day should be dealt with; or how data received before exit day should be treated;

- In the case of extradition, ensure that the UK has the correct legal underpinning to operate the 'no deal' contingency arrangement (the 1957 Council of Europe Convention on Extradition) that would be used in lieu of the European Arrest Warrant.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 3 May 2019 regarding the effect of these Regulations:

The Welsh Government, in its written statement, indicates that the UK Government is of the view that the entire SI is reserved, and therefore did not seek the consent of the Welsh Ministers in bringing forward this instrument. However, Welsh Ministers are of the opinion that amendments to the Local Government (Miscellaneous Provisions) Act 1982 do fall within devolved competence, and therefore the consent of the Welsh Ministers should have been sought for this instrument. The Minister for Housing and Local Government has written to the UK Government on this point and has written a letter to CLAC setting out the Welsh Government's view. Although consent was not sought at the time, Welsh Ministers are content with the SI and would not withhold consent.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

In relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks, Legal Advisers draw the Committee's attention to the commentary above on the statement by the Welsh Government.

However, Legal Advisers note the comments from the Minister for Housing and Local Government in her letter to the Committee of 2 May 2019, in which she highlights the unprecedented pressures under which the EU Exit SIs have been made, which did not allow for the usual time in considering more subjective elements of the devolution settlement. On

that basis, the Minister has indicated that she is content that the UK Government has acted in good faith under the Intergovernmental Agreement and has abided by its own interpretation of the devolution settlement in this case. Consent has been given by the Welsh Ministers without prejudice to the Welsh Government's position on legislative competence and they do not intend to take further action at this stage.

The Statutory Instrument Consent Memorandum states that amendments made by this instrument to the Local Government (Miscellaneous Provisions) Act 1982 are extremely minor, and there is no divergence between Welsh Government and UK Government policy for the correction.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

National Assembly for Wales
External Affairs and Additional Legislation Committee

Mick Antoniw AC
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Cynulliad Cenedlaethol Cymru

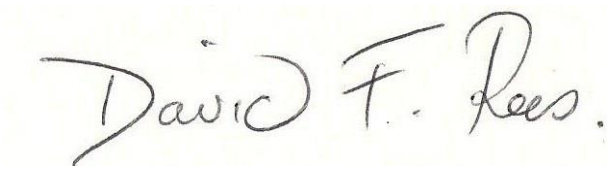
30 Ebrill 2019

Annwyl Mick,

Gohebiaeth gan y Prif Weinidog ynghylch presenoldeb Gweinidogion yn y Pwyllgor ar ddydd Llun

Rwyf wedi cael gohebiaeth gan y Prif Weinidog ynghylch presenoldeb Gweinidogion yn y Pwyllgor ar ddydd Llun. Gan fod y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol hefyd yn cyfarfod ar ddydd Llun efallai y bydd cynnwys y llythyr yn ddefnyddiol ichi, felly rwy'n amgáu copi er gwybodaeth.

Yn gywir,



David Rees AC

Cadeirydd y Pwyllgor Materion Allanol a Deddfwriaethol Ychwanegol

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

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Y Gwir Anrh/Rt Hon Mark Drakeford AC/AM
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

David Rees AC
Cadeirydd
Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol
Cynulliad Cenedlaethol Cymru
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SeneddEAAL@assembly.wales

12 Ebrill 2019

Annwyl David

Roeddwn eisiau ysgrifennu atoch i esbonio fy safbwynt o ran presenoldeb Gweinidogion mewn cyfarfodydd Pwyllgor ar ddydd Llun.

Fel y gwyddoch, rwy'n cynnal cyfarfodydd Cabinet bob prynhawn Llun am 3pm. Rwy'n disgwyl i Weinidogion roi blaenoriaeth i gyfarfodydd Cabinet pa bryd bynnag y bydd hynny'n bosibl ac mae Cod y Gweinidogion yn nodi'n glir bod cyfarfodydd y Cabinet yn cael blaenoriaeth dros unrhyw fater arall. Er hynny, mae'n bosibl ar adegau y bydd amgylchiadau *eithriadol* yn codi sy'n golygu efallai na fydd Gweinidog yn bresennol.

Rydym bellach yn gweld bod mwy a mwy o geisiadau yn cyrraedd sy'n gofyn i Weinidogion fod yn bresennol mewn cyfarfodydd pwyllgor ar ddydd Llun a hynny ar adegau sy'n golygu eu bod naill ai'n colli cyfarfod y Cabinet neu yn hwyr yn cyrraedd cyfarfod y Cabinet. Byddwn yn gwneud ein gorau i sicrhau bod Gweinidogion yn gallu bod yn bresennol mewn Pwyllgorau, ond nid yw'n ymarferol i Weinidogion drefnu busnes y Llywodraeth ar sail amserlenni'r pwyllgorau, yn enwedig ar fyr rybudd.

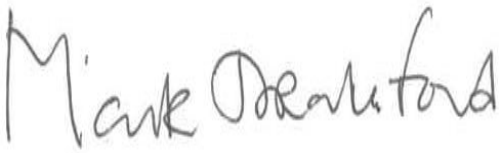
Rydych eisoes yn gwybod fy mod ar adegau wedi ad-drefnu fy nyddiadur ac wedi newid amser a lleoliad cyfarfodydd y Cabinet er mwyn fy ngalluogi i fod yn bresennol yn y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol, ond nid yw bob amser yn bosibl i mi wneud hynny.

Gallaf eich sicrhau y byddwn yn parhau i fod mor hyblyg â phosibl ond pan fo'n ofynnol i Weinidogion fod yn bresennol ar ddydd Llun, byddai o gymorth mawr pe bai'r Pwyllgor yn ystyried dechrau'r cyfarfod am 1.30pm er mwyn sicrhau bod Gweinidogion yn gallu gadael ar ôl awr.

Rydych wedi fy ngwahodd i gyfarfod o'r Pwyllgor ddydd Llun 29 Ebrill. Rwy'n gwneud trefniadau i gynnal cyfarfod y Cabinet yn y Bae ar y diwrnod hwnnw er mwyn sicrhau fy mod yn gallu bod yn bresennol, ond bydd yn rhaid i fi adael y Pwyllgor erbyn 3pm.

Gyda chyfaddawdu yn digwydd ar y ddwy ochr, rwy'n sicr y gallwn ddod o hyd i ffordd o gydbwyso'r holl ofynion sy'n ein hwynebu.

Yn gywir



MARK DRAKEFORD

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Jeremy Miles AC/AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L/CG/0379/19

Mick Antoniw AC
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Cynulliad Cenedlaethol Cymru

3 Mai 2019

Annwyl Mick

BIL DEDDFWRIAETH (CYMRU)

Yn ystod dadl Cyfnod 1 ar 2 Ebrill, dywedais y byddwn yn ysgrifennu at y Pwyllgor yn ymateb yn fanwl i'ch adroddiad ar y Bil. Mae'r llythyr hwn yn nodi ymateb y Llywodraeth i'r argymhellion hynny yn adroddiad y Pwyllgor a oedd ar gyfer y Llywodraeth.

Argymhelliad 1

Argymhellodd y Pwyllgor y dylwn roi'r newyddion diweddaraf i'r Cynulliad Cenedlaethol am gynnydd o ran trafodaethau â Llywodraeth y DU ynghylch gallu'r Cynulliad Cenedlaethol i wneud y Bil. Rhoddais ddiweddariad yn fy sylwadau agoriadol i gefnogi'r cynnig i gymeradwyo egwyddorion cyffredinol y Bil (gweler paragraffau 364 a 365 o Gofnod y Trafodion). Ers hynny, bydd y Pwyllgor wedi cael copi o lythyr a anfonwyd ataf gan y Cyfreithiwr Cyffredinol ar y Bil. Rydym bellach yn ystyried hyn.

Argymhellion 3 a 4

Rwyf yn derbyn y ddau argymhelliad hyn.

Bydd y “mesurau anneddfwriaethol” y bydd y Llywodraeth yn eu cyflwyno o dan raglen hygyrchedd yn amrywio yn dibynnu ar yr anghenion ar yr adeg berthnasol, a mater i Lywodraeth y dydd fyddant. Fel yr wyf wedi nodi gynt, rydym yn bwriadu ymgynghori â defnyddwyr yr union brosiectau a ddylai fod yn rhan o'r rhaglenni hygyrchedd. Rwyf yn cadarnhau y byddwn yn disgwyl i'r rhaglenni gynnwys mesurau yn y tri maes a grybwyllir gan y Pwyllgor yn ei adroddiad.

Byddent yn cynnwys prosiectau hygyrchedd digidol, megis cynnal a datblygu gwefan Cyfraith Cymru/Law Wales, datblygu'r gronfa ddata ar gyfer deddfwriaeth Cymru a drefnir yn ôl pwnc, a gweithio gyda'r Archifau Gwladol i sicrhau bod deddfwriaeth Cymru ar wefan legislation.gov.uk ar gael mewn ffurf gyfredol yn y ddwy iaith. Byddwn yn canolbwyntio i ddechrau ar y prosiectau digidol hyn a fydd yn arwain at y rhaglen gyntaf.

Bae Caerdydd • Cardiff Bay
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CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
PSCGBM@gov.wales/YPCCGB@llyw.cymru

Bydd rôl sylweddol i wefan Cyfraith Cymru/Law Wales wrth helpu'r cyhoedd i ddeall y gyfraith ac wrth godi ymwybyddiaeth o newidiadau sylweddol yn y gyfraith. Mae'n uchelgais gennym gyhoeddi deunydd esboniadol ar feysydd allweddol o gyfraith Cymru ochr yn ochr â fersiynau hawdd eu deall o'r gyfraith, a thaflenni sy'n canolbwyntio ar agweddau penodol ar ddeddfwriaeth sy'n berthnasol i fywyd bob dydd pobl (er enghraifft, cyfrifoldebau'r awdurdod lleol neu glybiau brecwast).

Hoffem hyrwyddo gwefan Cyfraith Cymru/Law Wales fel cartref ar gyfer sylwebaeth gan academyddion ac ymarferwyr ar gyfraith Cymru. Mae fy swyddogion wedi cael trafodaethau â rhai ymarferwyr cyfreithiol ac academyddion i'w hannog i ysgrifennu ar gyfer y wefan, ond mae angen gwaith pellach i annog pobl i roi cynnwys arni. Bydd hyn yn rhan o'n gwaith yn ystod cam “ymchwil y defnyddiwr” ar y gwaith o ail-ddylunio’r wefan sy'n digwydd eleni, yn ogystal â'n strategaeth tymor hwy ar gyfer sicrhau bod y wefan yn dal yn gyfoes ac yn berthnasol.

Byddai rhaglenni hefyd yn cynnwys gweithgareddau i hwyluso defnydd o'r Gymraeg, y tu hwnt i'r buddion i'r iaith sy'n deillio o gydgrynhoi'r gyfraith yn ddwyieithog a gwella hygyrchedd digidol. Gallai'r rhain gynnwys trefnu bod mwy o eirfaon cyfreithiol a mentrau pellach i ddatblygu terminoleg wedi’i safoni, lle bo hynny’n ddefnyddiol.

Rwyf yn nodi sylwadau Comisiynydd y Gymraeg yn ei thystiolaeth i'r Pwyllgor ac rwyf yn glir bod angen i ddatblygu arbenigedd yn y Gymraeg fod yn rhan o waith ehangach i gynllunio'r gweithlu y tu mewn i'r Llywodraeth a'r tu allan iddi. Mae strategaeth *Cymraeg 2050* yn ymrwymo Llywodraeth Cymru i “arwain trwy esiampl” trwy hyrwyddo'r defnydd o'r Gymraeg yn ei gweithlu ei hun. Mae Safonau'r Gymraeg hefyd yn gosod dyletswydd arnom i gyhoeddi polisi ar hyrwyddo'r iaith yn y gweithle. Mae gwaith ar hyn yn parhau ac mae'r Ysgrifennydd Parhaol wedi comisiynu papur pellach ar arferion gorau yn sefydliadau eraill y sector cyhoeddus.

Argymhelliad 5

Rwyf yn derbyn yr argymhelliad hwn.

Mae trafodaethau ag academyddion yng Nghymru eisoes wedi dechrau ynghylch sut y gallent gyfrannu at y deunydd esboniadol a gyhoeddir ar wefan Cyfraith Cymru/Law Wales. Rydym yn gobeithio cryfhau'r cysylltiadau hyn yn y misoedd a'r blynyddoedd nesaf, a gobeithio y bydd academyddion yn chwarae rhan hanfodol wrth wella dealltwriaeth o gyfraith Cymru.

Mae CCAUC yn ariannu addysg uwch ac ymchwil yng Nghymru ar hyn o bryd. Mae Llywodraeth Cymru wedi cyhoeddi ei bwriad ar gyfer Comisiwn Addysg Drydyddol ac Ymchwil newydd, y bwriedir iddo gynnwys pwyllgor statudol a fydd yn gyfrifol am ymchwil ac arloesi. Er hynny, yn ein hymdrechion i gynyddu ymchwil academaidd ar y gyfraith rhaid inni barhau i barchu a chefnogi annibyniaeth academaidd.

Argymhellion 6 a 10

Argymhelliad 6 o adroddiad y Pwyllgor oedd y dylai'r Llywodraeth ymrwymo i adolygiad o'r ddeddfwriaeth yng nghanol y tymor Cynulliad cyntaf y daw'r ddeddfwriaeth i rym, hy erbyn diwedd 2023. Fel y crybwyllais yn ystod dadl Cyfnod 1, rwyf yn derbyn yr argymhelliad hwn.

Rydym hefyd yn derbyn argymhelliad 10 o'r Pwyllgor ac rwyf wedi cyflwyno gwelliant i'r Bil, a fyddai, pe bai'n cael ei dderbyn, yn darparu ar gyfer adroddiadau blynyddol o dan raglen.

Ar gyfer yr adolygiad canol ffordd y bwriad fyddai i adroddiad blynyddol y Cwnsler Cyffredinol yn 2023 gael ei ymestyn i gynnwys adolygiad o effeithiolrwydd Rhan 1 o'r Bil ei hun. Byddai'r adroddiad hwn hefyd yn ymateb i argymhelliad 2 o adroddiad y Pwyllgor Cyllid (ac fe fyddai felly'n ymdrin â goblygiadau ariannol ac adnoddau).

Byddai'r Llywodraeth hefyd yn cefnogi'r Cynulliad Cenedlaethol wrth iddo adolygu'r ddeddfwriaeth ar unrhyw adeg y byddai'n credu ei bod yn briodol gwneud hynny.

Argymhelliad 7

Argymhellodd y Pwyllgor y dylwn ddarparu esboniad, yn ystod dadl Cyfnod 1, o'r hyn a olygir wrth "hygyrchedd cyfraith Cymru". Roeddwn yn falch o dderbyn yr argymhelliad hwnnw, a cheisiais roi esboniadol yn fy sylwadau agoriadol yn ystod dadl Cyfnod 1: gweler paragraffau 365 i 368 o Gofnod y Trafodion. Ar yr amod y caiff y Bil ei basio, rwyf wedi nodi hefyd fy mod yn bwriadu cyhoeddi datganiad sefyllfa ynghylch cydgrynhoi a chodeiddio yr haf hwn, a fydd yn amlinellu fy syniadau am y cwestiynau hyn yn fanylach.

Argymhelliad 8

Argymhellodd y Pwyllgor y dylai'r Bil gael ei ddiwygio fel ei bod yn ofynnol i Weinidogion Cymru a'r Cwnsler Cyffredinol roi rhaglen hygyrchedd ar waith a baratoir o dan adran 2(1).

Fel y crybwyllais yn Nadl Cyfnod 1, mae'n anochel mai mater o farn oddrychol fydd y cwestiwn a yw hygyrchedd cyfraith Cymru wedi gwella a gallai fod gwahaniaeth barn yn hyn o beth. Byddai dyletswydd statudol i sicrhau gwelliannau o ran hygyrchedd felly'n peri problem. Yn hytrach , dylai cwestiynau ynghylch a oes cynnydd digonol wedi'i wneud fod yn ddarostyngedig i broses wleidyddol (er enghraifft, trwy adrodd i'r Cynulliad Cenedlaethol) ac nid i broses gyfreithiol.

Diben Rhan 1 yw sicrhau bod y llywodraeth yn ystyried hygyrchedd ac yn nodi'r camau y dylid eu cymryd i'w wella. Nid ydym o'r farn y byddai rhwymedigaeth statudol i gymryd yr holl gamau hynny yn briodol, am nifer o resymau.

Fel y mae pethau ar hyn o bryd, mae'r |Llywodraeth yn cymryd cam anghyffredin iawn wrth osod dyletswydd glir a thryloyw arni hi ei hun a'i gwneud ei hun yn destun beirniadaeth os na fydd yn ei chyflawni. Byddai ei gwneud ei hun yn agored i broses gyfreithiol yn mynd y tu hwnt i hyn am reswm sy'n ansicr.

Yn fy marn i fe ddylid osgoi sefyllfa lle y gellid gofyn i lys benderfynu pa gamau neu faint o gamau sydd wedi'u cymryd - neu pa mor gyflym y cawsant eu cymryd - i fynd i'r afael â phroblem aml-ddimensiwn a goddrychol yn aml fel hygyrchedd y gyfraith. Yn ôl pob tebyg mae'n amhriodol gofyn i lys ddelio â'r hyn sydd i bob golwg yn broses wleidyddol ac rwyf yn cwestiynu pa rwymedi addas allai gael ei geisio neu ei orfodi. A fwriedir y dylai hyn fod yn rhwymedigaeth lem fel y gallai Llys ei gwneud yn ofynnol i bob cam gael ei gyflawni i'r llythyren? Beth os yw'r rhaglen yn nodi uchelgais i ymdrin â phroblem neu ganlyniad penodol ond ddim yn pennu yn union sut y caiff ei wneud - beth y byddai gofyn i'r llys ei benderfynu?

Dylid cofio y bydd y mesurau a nodir mewn rhaglen yn cynnwys gwelliannau, ar y cyfan, nad ydynt o fewn pwerau'r Llywodraeth yn unig, gan eu bod yn gofyn am gymorth neu gytundeb gan eraill. Yn fwyaf amlwg bydd y Llywodraeth yn gallu cynnig Biliau cydgrynhoi ond mater i'r Cynulliad Cenedlaethol fydd penderfynu a yw am eu pasio. Yn fy nhystiolaeth i'r Pwyllgor soniais am y dull gweithredu sydd wedi'i ddefnyddio yn Seland Newydd. Mae adran 30 o'u Deddf Deddfwriaeth 2012 yn gofyn am raglen ddrafft sy'n benodol i "revision Bills" sy'n cydgrynhoi'r gyfraith. Rhaid i'r rhaglen ddiwygio ddrafft a osodir gerbron Senedd

Seland Newydd nodi pa ddiwygiadau (are) “proposed to be started” a “expected to be enacted”. Mae'r cyfeiriadau at ddiwygiadau “proposed” ac “expected” yn adlewyrchu'r safbwynt cyfansoddiadol mai'r Senedd sy'n penderfynu a ddylid pasio Biliau diwygio neu beidio.

Yn ychwanegol, i ddefnyddio enghraifft anneddfwriaethol, bydd unrhyw welliannau wrth gyhoeddi deddfwriaeth yn golygu bod y Llywodraeth yn gweithio gyda'r Yr Archifau Gwladol. Nid yw penderfynu ar sut y gellid gwella cyhoeddi yn rhywbeth y gall Llywodraeth Cymru ei wneud ar ei phen ei hun.

Yn ymarferol effaith debycaf gorfodi dyletswydd o'r fath ar y Llywodraeth fyddai'r gwrthwyneb i'r hyn a oedd yn cael ei fwriadu. Gan y byddai cynnwys cychwynnol y rhaglen yn dal yn rhywbeth sydd o fewn disgresiwn y Llywodraeth, mae'n anochel y byddai dyletswydd o'r math hwn yn golygu y byddai llywodraethau'r dyfodol yn ymddwyn yn betrus ac yn cyfyngu eu huchelgais. Byddai rhywbeth a ddylai fod yn ddyheadol ac yn heriol yn oddefol ac yn hawdd, ac ni fyddai'n cynnwys ond y pethau hynny y gallai'r Llywodraeth fod yn hyderus y gallai eu cyflawni.

Mae'n briodol i'r Llywodraeth orfod ymrwymo i raglen o weithgarwch a chael ei dal i gyfrif yn hynny o beth, gan gynnwys gan y llysoedd os bydd yn methu â gwneud hyn. Ond fe ddylai'r cwestiwn eilaidd a mwyaf goddrychol o *ba mor* dda y mae'r rhaglen honno wedi'i chyflawni fod yn gwestiwn gwleidyddol ac nid yn gwestiwn cyfreithiol.

Argymhelliad 9

Argymhellodd y Pwyllgor y dylid diwygio adran 2 o'r Bil fel bod rhaid i raglen gynnwys gweithgareddau arfaethedig y bwriedir iddynt hyrwyddo ymwybyddiaeth a dealltwriaeth o gyfraith Cymru. Cadarnheais yn ystod dadl Cyfnod 1 fod y Llywodraeth yn derbyn yr argymhelliad hwn ac rwyf bellach wedi cyflwyno gwelliannau i'r Bil er mwyn rhoi effaith i hyn (gweler diwygiadau 1 a 2).

Argymhelliad 11

Argymhellodd y Pwyllgor y dylwn gyhoeddi datganiad yn egluro fy nghynigion a'm bwriad ar gyfer codeiddio cyfraith Cymru. Rwyf yn derbyn yr argymhelliad hwn. Os bydd y Cynulliad yn pasio'r Bil, rwyf wedi ymrwymo i gyhoeddi datganiad sefyllfa ar gydgrynhoi a chodeiddio, a manylion pellach ar Godau Cyfraith Cymru, yn yr haf.

Argymhelliad 14

Ni welodd y Pwyllgor unrhyw reswm dros anghytuno â'm cynnig y dylai'r Bil ailddatgan adran 156(1) o Ddeddf Llywodraeth Cymru 2006 ynghylch statws cyfartal testunau Cymraeg a Saesneg o ddeddfwriaeth. Er hynny, argymhellodd y dylwn roi rhagor o wybodaeth am y cynnig. Rwyf yn derbyn yr argymhelliad.

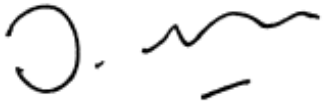
Rwyf bellach wedi cyflwyno diwygiadau sy'n dangos sut y mae'r llywodraeth yn cynnig y dylai'r Bil ymdrin â'r mater hwn. Gweler diwygiadau 4, 5, 7 ac 11 a gyflwynais ar 4 Ebrill. Ysgrifennodd y Gweinidog Cyllid a’r Trefnydd at bob un o Aelodau'r Cynulliad ar 5 Ebrill yn amgáu esboniad manwl o ddiben ac effaith pob un o ddiwygiadau'r Llywodraeth.

Argymhellodd y Pwyllgor y dylai'r wybodaeth a ddarperais ymdrin â'm bwriadau ar gyfer canllawiau ar y ddarpariaeth a ailddatganwyd. Roeddwn wedi sôn mewn gohebiaeth â'r Pwyllgor y gallai canllawiau gael eu rhoi yn y Nodyn Esboniadol i'r adran 156(1) wedi'i hailddatgan, ac yn ystod dadl Cyfnod 1 ymrwymais i ddarparu Nodyn Esboniadol drafft i gyd-fynd â'r darpariaethau newydd. Mae atodiad A i'r llythyr hwn yn nodi'r testun yr wyf yn

bwriadu ei ychwanegu at y Nodiadau Esboniadol i'r Bil, ar ôl Cyfnod 2, os cytunir ar ddiwygiadau'r Llywodraeth.

Hoffwn achub y cyfle hwn i ailadrodd fy sylwadau yn Nadl Cyfnod 1, a diolch i'r Pwyllgor am eu gwaith yn craffu ar y Bil a'u hadroddiad defnyddiol, a diolch hefyd i staff cymorth y Pwyllgor.

Yn gywir,



Jeremy Miles AC
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Atodiad A – Nodiadau Esboniadol drafft ar gyfer ailddatgan a diwygio adran 156

Ar ôl y paragraff 45 presennol o Nodiadau Esboniadol y Bil:

Adran [5] – Statws cyfartal testunau Cymraeg a Saesneg

46. Pan fo Deddf Cynulliad neu is-offeryn Cymreig wedi ei deddfu neu wedi ei ddeddfu yn Gymraeg ac yn Saesneg, mae adran [5] yn darparu bod i destunau'r ddwy iaith statws cyfartal at bob diben. Ystyr hyn yw mai cynnwys y ddau destun sy'n mynegi'r gyfraith yn llawn ac nid un testun yn unig.

47. Mae'r arfer o ddeddfu'n ddwyieithog i Gymru wedi ei hen sefydlu. Yn benodol, rhaid i Ddeddfau'r Cynulliad gael eu deddfu yn Gymraeg ac yn Saesneg, ac mae is-ddeddfwriaeth a wneir gan Weinidogion Cymru yn cael ei deddfu, bron yn ddieithriad, yn y ddwy iaith[1].

48. Ar hyn o bryd, mae adran 156(1) o Ddeddf Llywodraeth Cymru 2006 yn darparu ar gyfer statws cyfartal testunau Cymraeg a Saesneg deddfwriaeth ddwyieithog. Mae adran [5] o'r Bil yn ailddatgan y ddarpariaeth honno, i'r graddau y mae'n gymwys i Ddeddfau'r Cynulliad ac is-offerynnau Cymreig y mae Rhan 2 o'r Bil yn gymwys iddynt.

49. Yn debyg i adran 156(1) o Ddeddf 2006, mae adran [5] o'r Bil yn gymwys at bob diben ac nid at ddiben dehongli yn unig. Fodd bynnag, mae i statws cyfartal y testunau nifer o oblygiadau ar gyfer dehongli deddfwriaeth ddwyieithog. Ystyriwyd y rhain gan Gomisiwn y Gyfraith yn ei bapur ymgynghori a'i adroddiad terfynol ar *Ffurf a Hygyrchedd y Gyfraith sy'n Gymwys yng Nghymru*[2]. Os oes unrhyw amheuaeth ynghylch ystyr mewn darn o ddeddfwriaeth Cymru, mae'n arbennig o bwysig sylweddoli y bydd angen ystyried fersiynau'r ddwy iaith er mwyn penderfynu ar ystyr y ddeddfwriaeth. Mae hyn yn rhywbeth sy'n effeithio ar bawb sy'n ymwneud â gwneud, gweithredu, gweinyddu a dehongli deddfwriaeth Cymru.

50. Nid yw effaith adran [5] yn ddarostyngedig i'r eithriad yn adran 4(1) o'r Bil. Mewn geiriau eraill, nid yw'r Bil yn darparu bod y rheol yn adran [5] i'w heithrio mewn achosion pan fo darpariaeth wedi ei gwneud i'r gwrthwyneb neu pan fo'r cyd-destun yn mynnu fel arall.

51. Nid yw adran [5] yn ailddatgan adran 156(1) o Ddeddf 2006 ond ar gyfer deddfwriaeth y mae Rhan 2 o'r Bil yn gymwys iddi. Bydd adran 156(1) yn parhau i fod yn gymwys i Fesurau'r Cynulliad, ac i Ddeddfau'r Cynulliad ac is-offerynnau Cymreig nad yw Rhan 2 o'r Bil yn gymwys iddynt (yn bennaf y rheini sydd wedi eu deddfu cyn i Ran 2 ddod i rym yn llawn). Mae Rhan 4 o'r Bil yn diwygio adran 156(1) o Ddeddf 2006 i osgoi unrhyw orgyffwrdd ag adran [5] o'r Bil.

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[1] Rhaid i Fil Cynulliad fod yn y ddwy iaith ar adeg ei gyflwyno ac ar adeg ei basio: gweler Rheolau Sefydlog 26.5 a 26.50 Cynulliad Cenedlaethol Cymru, ac adran 111(5) o Ddeddf Llywodraeth Cymru 2006. Ar gyfer offerynnau statudol a osodir gerbron y Cynulliad, mae methu â chyflwyno offeryn yn y ddwy iaith yn sail dros ei ddwyn i sylw'r Cynulliad: gweler Rheol Sefydlog 21.2(ix).

[2] Gweler pennod 12 o Bapur Ymgynghori Comisiwn y Gyfraith Rhif 223 (Gorffennaf 2015), a phennod 12 o Adroddiad Comisiwn y Gyfraith Rhif 336 (Hydref 2016).

Adran 39 ac Atodlen 2 – Diwygiadau canlyniadol a diddymiadau

Yn lle'r paragraff 190 presennol:

190. Mae paragraff 2 o Atodlen 2 yn gwneud sawl diwygiad i Ddeddf Llywodraeth Cymru 2006.

191. Mae'r diwygiad cyntaf yn ganlyniadol i adran [5] o'r Bil, sy'n darparu ar gyfer statws cyfartal testunau deddfwriaeth ddwyieithog Cymru. Mae adran [5] yn ailddatgan adran 156(1) o Ddeddf 2006 mewn perthynas â deddfwriaeth y mae Rhan 2 o'r Bil yn gymwys iddi. Felly, mae paragraff 2(2)(a) o Atodlen 2 yn diwygio adran 156 o Ddeddf 2006 fel nad yw is-adran (1) yn gymwys i ddeddfwriaeth y mae Rhan 2 o'r Bil yn gymwys iddi. Bydd adran 156(1) yn parhau i fod yn gymwys i ddeddfwriaeth ddwyieithog arall Cymru (yn bennaf deddfwriaeth sydd wedi ei deddfu cyn i Ran 2 ddod i rym yn llawn).

192. Mae paragraff 2(2)(b) o Atodlen 2 yn diddymu adran 156(2) i (5) o Ddeddf 2006. Mae'r darpariaethau hynny yn galluogi Gweinidogion Cymru i wneud gorchmynion sy'n darparu, pan ddefnyddir geiriau ac ymadroddion Cymraeg penodol mewn darn o ddeddfwriaeth Cymru, fod iddynt yr un ystyr â'r geiriau a'r ymadroddion Saesneg a bennir yn y gorchymyn. Ni ddefnyddiwyd y pŵer hwn erioed, ac nid oes cynlluniau i'w ddefnyddio[3]. Gellid dweud hefyd fod y darpariaethau hyn yn anghyson â'r gosodiad cyffredinol sy'n eu rhagflaenu – sef bod i'r ddwy iaith statws cyfartal. Mae Atodlen 1 i'r Bil bellach yn gwneud darpariaeth gyffredinol ynghylch ystyr amryw o eiriau ac ymadroddion Cymraeg yn neddfwriaeth Cymru, y gellir ei diwygio os oes angen diffinio geiriau ac ymadroddion ychwanegol; a gall Deddf Cynulliad neu is-offeryn Cymreig unigol wneud ei darpariaeth neu ei ddarpariaeth ei hun ynghylch ystyr geiriau ac ymadroddion yn y Ddeddf benodol neu'r offeryn penodol.

193. Mae paragraff 2(3) o Atodlen 2 yn diddymu cyfeiriad at adran 156(2) i (5) o Ddeddf 2006 sydd wedi ei ddisbyddu o ganlyniad i ddiddymu adran 156(2) i (5).

194. Mae paragraff 2(4) o Atodlen 2 yn diddymu'r ddarpariaeth yn Neddf 2006 a fewnosododd yn wreiddiol adran 23B yn Neddf 1978, oherwydd bod paragraff 1 o Atodlen 2 yn disodli'r cyfan o adran 23B.

[3] Roedd y pŵer yn adran 156 yn seiliedig ar bŵer blaenorol yn adran 122 o Ddeddf Llywodraeth Cymru 1998, ac ni ddefnyddiwyd y pŵer hwnnw erioed ychwaith.

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Our Ref: CDL/2962

Mick Antoniw AM
National Assembly for Wales
Chair, Constitutional and Legislative Affairs
Cardiff Bay
CF99 1NA

3 May 2019

Dear Mick,

I believe that the regular and ongoing engagement between the four UK administrations is vital for effective intergovernmental working. I am pleased to provide an overview of the recent Ministerial engagement with the devolved administrations and an update on the review of intergovernmental relations.

Review of intergovernmental relations

At the Joint Ministerial Committee (Plenary) on 14 March 2018, Ministers from the UK Government and devolved administrations agreed to review the existing intergovernmental structures. The review of intergovernmental relations is a joint review between all four administrations, with leads from each administration charged with taking forward each of the five thematic workstreams.

On 19 December 2018, the Joint Ministerial Committee (Plenary) reviewed the progress made so far on the review. They remitted work back to officials from the four administrations to make progress against the five workstreams. It was agreed that the governments will continue to work together to:

1. Develop a set of **principles** to provide the context for future relations, which in turn will continue to shape the work of the review;

2. Ensure that the **governance of common frameworks** is being developed to ensure they can function effectively. Governance structures are being designed to facilitate agreement and provide clarity on the roles and responsibilities of each party, and to strengthen intergovernmental working on a substantial number of policy areas;

3. Ensure that the existing **dispute resolution** mechanism in the overarching MoU on Devolution is adapted to manage the range of policy differences that may arise as the UK leaves the EU, including those involving third parties. The majority of our differences are resolved through dialogue rather than detailed procedures, which we believe is the best way to conduct effective intergovernmental relations. We expect the principle of dispute avoidance to remain central to managing disputes in the future and we are supporting common frameworks teams to bolster their dispute avoidance processes.

4. Maintain and build upon existing **machinery**, including the Joint Ministerial Committees, reflecting the range of views on the effectiveness of the current arrangements. We are considering the machinery required in relation to:
    a. The coordination of relevant domestic issues, particularly the governance of future common frameworks;
    b. Ongoing EU business and the UK's future partnership with the EU; and
    c. The UK's wider international interests.

5. Ensure that there are effective arrangements for **engagement on international matters**. This work continues to be informed by further thinking on the machinery and principles for effective intergovernmental working.

This is a live body of work that has many interdependencies. In many areas, the four administrations are already taking significant steps to outline new processes for the devolved administrations, such as the enhanced role of the devolved administrations in the next phase of EU negotiations and the work on establishing common frameworks. The revised version of the frameworks analysis published on 4 April 2019 demonstrates the significant progress made jointly by the four administrations on common frameworks. As mentioned above, this joint work includes the arrangements needed to govern common frameworks in the future to facilitate agreement and promote effective intergovernmental working.

Joint Ministerial Committee (EU Negotiations)

The Joint Ministerial Committee (EU Negotiations) (JMC(EN)) has met once since our last correspondence for the sixteenth time, on 7 February 2019. At the meeting, the Secretary of State for Exiting the European Union provided an update on the progress of the EU exit negotiations as well as developments in Parliament. The Committee also discussed domestic issues, including updates on operational readiness, the EU (Withdrawal Agreement) Bill and common frameworks. They also noted the publication of the second EU Withdrawal Act and Common Frameworks report.

The next meeting of JMC(EN) is currently being organised. As well as the formal JMC(EN) meeting, the Chancellor of the Duchy of Lancaster has also kept in close contact with his counterparts in the devolved administrations to keep them updated on the latest EU exit developments.

Joint Ministerial Committee (Europe)

The Joint Ministerial Committee (Europe) (JMC(E)) has continued to meet quarterly, mainly ahead of European Council meetings. The meetings are chaired by the DExEU Minister of State, Lord

Callanan, and provide an opportunity for ministers from the devolved administrations to provide input on UK positions on ongoing EU business. There have been two meetings since our last letter.

A meeting was held on 28 January 2019 where the Chair gave an update on the December European Council, and the Committee was joined by Her Majesty's Ambassador to Romania for a discussion on priorities for the Romanian Presidency. Ministers also discussed a paper on Blue Growth as well as the role of the forum during the Implementation Period. In line with this and in preparation for the March meeting, the Committee commissioned officials to jointly develop a Common Priorities Framework that could be used to identify shared priority areas with the intention of developing joint campaigns to informally influence the EU once the UK is no longer a Member State.

The most recent meeting of JMC(E) took place on 18 March 2019. As well as the standing agenda item of the UK's priorities for the European Council, the forum also received an update on the Multiannual Financial Framework from a representative from Her Majesty's Treasury. The Committee also discussed preparations for the UK being a third country, in addition to the work commissioned at the January JMC(E) on developing a Common Priorities Framework. The next JMC(E) is due to take place in early June and will consider the progress on this work as well as the priorities for the Finnish Presidency.

Ministerial Forum (EU Negotiations)

The Ministerial Forum (EU Negotiations) (MF(EN)), co-chaired by the Parliamentary Under Secretary of State at the Department for Exiting the European Union, Robin Walker MP, and the Minister for the Constitution, Chloe Smith MP, has now met eight times since it was established in May 2018. Since our last correspondence, there have been two further meetings of MF(EN), on 31 January and 25 February 2019.

On 31 January, MF(EN) met in Edinburgh to discuss the UK Government's proposal for a future security partnership, led by Kwasi Kwarteng MP from the Department for Exiting the European Union; internal security, led by Nick Hurd MP from the Home Office; and civil judicial cooperation, led by Lucy Frazer MP from the Ministry of Justice. This followed Minister Walker's regular update on negotiations in Brussels. In addition to the regular ministerial attendees from the devolved administrations, Graeme Dey MSP, Minister for Parliamentary Business and Veterans for the Scottish Government and Jeremy Miles AM, Counsel General and Brexit Minister for the Welsh Government, Ash Denham MSP, Minister for Community Safety for the Scottish Government, was also in attendance. Senior officials from the Northern Ireland Civil Service attended in the continued absence of a Northern Ireland Executive.

MF(EN) also met on 25 February in Cardiff to discuss data protection in the context of our future relationship with the EU, led by Margot James MP from the Department for Digital, Culture, Media and Sport. Ministers also discussed a review of the work of the Forum to date and the role of the devolved administrations in the next phase of negotiations, following the commitment the Prime Minister made in the House of Commons on 21 January 2019 to an enhanced role for the devolved administrations in the next phase.

Underpinning this ministerial engagement, there is ongoing official-level engagement to discuss the policy detail behind topics relating to the future relationship with the EU; there have been over 30 such meetings to date. These discussions continue to highlight policy areas and issues for discussion at future meetings of MF(EN).

We hope that this provides a useful summary of recent engagement with the devolved administrations.

Rt Hon David Lidington CBE MP

Eluned Morgan AC
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol

7 Mai 2019

Annwyl Eluned

Y Bil Masnach - cydsyniad deddfwriaethol

Diolch am eich llythyr dyddiedig 25 Ebrill 2019, a ystyriwyd gan y Pwyllgor yn ei gyfarfod ar 29 Ebrill 2019.

Rydym yn ddiolchgar am eich dadansoddiad o'r gwelliannau a wnaed yn y Cyfnod Adrodd yn Nhŷ'r Arglwyddi. Yn arbennig, mae eich asesiad o'r ffordd y mae'r gwelliannau yn rhyngweithio â'r cydsyniad deddfwriaethol a roddir gan y Cynulliad yn arbennig o ddefnyddiol.

Mewn perthynas â gwelliant 14, rydych chi'n nodi:

"Un o effeithiau gwelliant 14 yw ehangu pwerau datganoledig dan y Bil ac felly nid wyf yn meddwl bod y Cynulliad wedi cydsynio i'r newid hwn wrth iddo roi ei gydsyniad gwreiddiol. Fel arfer, byddwn yn gosod Memorandwm Cydsyniad Deddfwriaethol ar gyfer gwelliant o'r math hwn ond yn realistig nid wyf yn rhagweld y byddai amser i gydymffurfio â gweithdrefnau'r Memorandwm. Nid wyf, felly, yn bwriadu gwneud hynny."

Rydym yn cytuno â'ch asesiad o'r angen i geisio cydsyniad deddfwriaethol y Cynulliad yn yr amgylchiadau hyn.

Mae ein barn ni yn wahanol i'ch un chi gan ein bod yn credu y dylid gosod Memorandwm Cydsyniad Deddfwriaethol Atodol fel mater o frys.

Gan nad oes dyddiad wedi'i bennu ar gyfer trafod gwelliannau'r Arglwyddi yn Nhŷ'r Cyffredin, efallai y bydd modd i'r Cynulliad drafod cynnig cydsyniad deddfwriaethol cysylltiedig cyn i'r broses graffu Seneddol ddod i ben.

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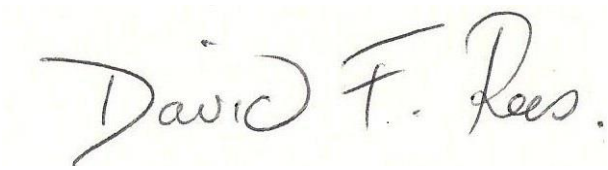
Hyd yn oed mewn amgylchiadau lle nad yw amserlenni Senedd y DU yn caniatáu i gydymffurfio'n llawn â gweithdrefnau cydsyniad deddfwriaethol y Cynulliad, credwn y dylai Memorandwm Cydsyniad Deddfwriaethol gael ei osod ac, os yn bosibl, ei drafod.

Nodwn mai dyma'r ail achlysur y mae deddfwriaeth San Steffan yn ymwneud â Brexit yn mynd rhagddi gyda'r angen am gydsyniad deddfwriaethol yn codi yn ystod camau olaf y broses ddeddfwriaethol.

Rydym wedi anfon copi o'r llythyr hwnnw at Gadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol.

Yn gywir,



David Rees AC

Cadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

Croesewir gohebiaeth yn Gymraeg neu yn Saesneg.

We welcome correspondence in Welsh or English.

Elin Jones AC, Llywydd
Cynulliad Cenedlaethol Cymru
Elin Jones AM, Presiding Officer
National Assembly for Wales

Mick Antoniw AC
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
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Eich cyf:
Ein cyf: EJ/AJ

07 Mai 2019

Annwyl Mick,

Diolch i chi am eich llythyr ynghylch cymhwyso Rheol Sefydlog 30A.

Fel y gwyddoch, mae'n gonfensiwn sydd wedi'i hen sefydlu na fydd Senedd y DU fel arfer yn deddfu mewn perthynas â materion datganoledig heb gydsyniad y Cynulliad. Yn y cyd-destun hwnnw, mae Rheolau Sefydlog 29 a 30A yn nodi gweithdrefnau'r Cynulliad ar gyfer rhoi cydsyniad mewn perthynas â darpariaethau mewn Biliau ac Offerynnau Statudol sydd gerbron Senedd y DU, sy'n gwneud darpariaeth sydd naill ai o fewn cymhwysedd deddfwriaethol y Cynulliad neu'n addasu cymhwysedd deddfwriaethol y Cynulliad.

Er bod yna gryn ddibyniaeth ar waith rhynglywodraethol wrth weithredu'r confensiwn yn ymarferol, confensiwn rhyng-Seneddol ydyw yn ei hanfod, gan mai'r Cynulliad sy'n rhoi cydsyniad i Senedd y DU ddeddfu o fewn cymhwysedd y Cynulliad. Adlewyrchir y dimensiwn rhyng-Seneddol hwnnw yn y ffaith bod Clerc y Cynulliad, ers 2013, wedi hysbysu ei swyddogion cyfatebol yn Nhŷ'r Cyffredin a Thŷ'r Arglwyddi pan fydd y Cynulliad wedi pasio neu wrthod cynnig cydsyniad, fel bod modd hysbysu Aelodau Seneddol o benderfyniad y Cynulliad drwy'r papur trefn.

Er nad yw Rheol Sefydlog 29 na 30A yn ei gwneud yn ofynnol i aelod o'r Llywodraeth, nac unrhyw un arall, gyflwyno cynnig cydsyniad mewn perthynas â darpariaethau perthnasol mewn unrhyw Fil neu Offeryn Statudol y DU, yr unig ffordd y gellir ceisio, a rhoi, cydsyniad y Cynulliad i'r fath ddarpariaethau yw drwy gyflwyno a phasio cynnig o'r fath. Os na fydd cynnig o'r fath wedi'i ystyried – heb

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Elin Jones AC, Llywydd
Cynulliad Cenedlaethol Cymru
Elin Jones AM, Presiding Officer
National Assembly for Wales

sôn am ei basio – gan y Cynulliad mewn perthynas â darpariaeth berthnasol mewn unrhyw Fil neu Offeryn Statudol y DU, ni ellir dweud bod y Cynulliad wedi rhoi ei gydsyniad i'r ddarpariaeth honno. Byddai'n peri pryder i mi pe bai Senedd y DU yn bwrw ymlaen i ddeddfu o dan yr amgylchiadau hynny, gan y byddai'n ymddangos i mi yn groes i'r confensiwn o beidio â deddfu heb gydsyniad datganedig y Cynulliad.

O ran eich pwynt olaf, cyflwynwyd y ddarpariaeth i Aelod ac eithrio aelod o'r Llywodraeth gyflwyno cynnig cydsyniad yn 2013, ochr yn ochr â dileu'r gofyniad i'r Llywodraeth gyflwyno cynnig mewn perthynas â phob memorandwm a osodir. Cynlluniwyd y weithdrefn i'w defnyddio mewn amgylchiadau pan fydd memorandwm y Llywodraeth yn nodi nad yw'n briodol rhoi cydsyniad ym marn y Llywodraeth, ac mae'n galluogi Aelodau eraill i ddadlau'r safbwynt croes ac i gyflwyno cynnig cydsyniad i'r perwyl hwnnw. Ni ragwelwyd y byddai ei angen mewn sefyllfaoedd pan fo'r Llywodraeth yn cefnogi deddfwriaeth arfaethedig y DU, gan mai'r disgwyliad o dan yr amgylchiadau hynny yw y byddai'r Llywodraeth yn cyflwyno ei chynnig ei hun yn gofyn am gydsyniad y Cynulliad i'r ddeddfwriaeth fynd rhagddi.

Gobeithio bod hynny'n rhoi eglurder i'r Pwyllgor o ran fy nehongliad o'r Rheolau Sefydlog perthnasol.

Yn gywir,

Elin Jones AC
Llywydd

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

National Assembly for Wales
Constitutional and Legislative Affairs Committee

Elin Jones AC
Llywydd

25 Mawrth 2019

Annwyl Lywydd

Rheol Sefydlog 30A – Cydsyniad mewn Perthynas ag Offerynnau Statudol a Wneir gan Weinidogion y DU

Rwy'n ysgrifennu mewn perthynas â Rheol Sefydlog 30A. Mae'r Rheol Sefydlog hon yn ei gwneud yn ofynnol i aelod o Lywodraeth Cymru osod memorandwm cydsyniad offeryn statudol (memorandwm) gerbron y Cynulliad Cenedlaethol mewn perthynas ag unrhyw offeryn statudol perthnasol a osodir gerbron Senedd y DU gan Weinidogion y DU sy'n diwygio deddfwriaeth sylfaenol o fewn cymhwysedd deddfwriaethol y Cynulliad.

Fel y nodwyd yn ein hadroddiad diweddar, sef *Craffu ar reoliadau a wnaed o dan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018: Adroddiad cynnydd* (adroddiad cynnydd), nid yw Llywodraeth Cymru wedi cyflwyno cynigion yn ceisio cydsyniad y Cynulliad Cenedlaethol i'r rheoliadau sy'n ddarostyngedig i femoranda cydsyniad offeryn statudol.

Mae Llywodraeth Cymru wedi cynnig esboniadau amrywiol dros hyn mewn gohebiaeth â ni, sef:

- nid yw'n credu y byddai cynnal dadl ar y memoranda perthnasol yn ffordd gynhyrchiol o ddefnyddio "amser gwerthfawr y Cyfarfod Llawn";
- mae'r rheoliadau perthnasol wedi'u cyfyngu i gywiro diffygion yn y gyfraith a fydd yn deillio o ymadawiad y DU â'r Undeb Ewropeaidd;
- mae darpariaethau'r rheoliadau perthnasol yn dechnegol eu natur, ac nid oes dim gwahaniaeth rhwng polisi Llywodraeth Cymru a pholisi Llywodraeth y DU.

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Yn ein hadroddiad cynnydd, nodwyd ein pryderon nad yw Llywodraeth Cymru yn defnyddio proses Rheol Sefydlog 30A fel rydym yn credu y dylai fod. Rydym hefyd wedi dweud nad ydym, hyd yn hyn, wedi gwneud sylwadau ynghylch a ddylai memoranda fod yn ddarostyngedig i gynnig cydsyniad oherwydd nad ydym yn credu y dylai ddod yn fater i ni benderfynu arno'n rheolaidd. Dywedasom y canlynol:

> Credwn y dylai pob Memoranda Cydsyniad Offeryn Statudol cysylltiedig â Brexit fod yn ddarostyngedig i gynnig cydsyniad a gyflwynir gan Lywodraeth Cymru. Fel y mae pethau ar hyn o bryd, mae proses y Memorandwm Cydsyniad Offeryn Statudol yn cael ei defnyddio fel modd i Weinidogion Cymru roi cydsyniad yn ddiofyn. I ddefnyddio cymhareb gymharol gyfarwydd, mae'r broses gydsynio'n awr yn ymdebygu i broses y weithdrefn negyddol ar gyfer ystyried offerynnau statudol; ystyrir bod cydsyniad wedi'i roi oni bai bod Aelod Cynulliad yn ymyrryd. Nid yw hynny'n briodol ac nid yw'n gydnaws ag ysbryd Rheol Sefydlog 30A.

Hefyd, daethom i'r casgliad, os yw Llywodraeth Cymru wedi sefydlu'r egwyddor, ar y cyd â Llywodraeth y DU, nad oes angen cydsyniad y Cynulliad Cenedlaethol yn gyffredinol, nid yw'n glir pa effaith fyddai unrhyw benderfyniad gan y Cynulliad Cenedlaethol i bleidleisio yn erbyn cynnig cydsyniad yn ei chael.

Yn ei lythyr dyddiedig 11 Mawrth 2019 atom, gan ymateb i'n hadroddiad cynnydd, dywedodd y Prif Weinidog y canlynol:

> Sylwaf y byddai'n well gan y Pwyllgor pe bai Gweinidogion Cymru yn gosod cynigion ar gyfer holl Femoranda Cydsyniad Offerynnau Statudol.
>
> Mae Gorchmynion Sefydlog yn nodi'n glir mai dewis i'r Gweinidogion neu Aelodau yw gosod cynnig. Mae'r ffaith bod Suzy Davies AC wedi gallu gosod cynnig i drafod Memorandwm Cydsyniad Offeryn Statudol yr Amgylchedd Morol yn dangos bod y Rheolau Sefydlog yn gweithredu yn unol â'r bwriad. Fel y nodais uchod, gan fod eich adroddiad yn datgan y gallai'r Cynulliad, pe bai angen, fod wedi gallu ymdopi ag unrhyw gynnydd o ran llwyth gwaith yn deillio o Brexit, mae'n galonogol imi y byddai'r adnoddau ar gael i Aelodau Cynulliad ddrafftio memorandwm a gosod cynnig yn y Cynulliad os oeddent o'r farn bod hynny'n hanfodol.

Fel Pwyllgor, rydym bellach yn teimlo ei bod yn briodol gofyn am eich barn am Reol Sefydlog 30A a'ch dehongliad ohoni.

Hefyd, hoffwn achub ar y cyfle i awgrymu, gyda pharch, nad yw ymateb y Prif Weinidog (fel y nodwyd uchod) i'n pryderon ynghylch dull gweithredu Llywodraeth Cymru o ran proses Rheol Sefydlog 30A yn adlewyrchu'n gywir ein sylwadau ar y ffordd y mae busnes y Cynulliad yn cael ei gynnal.

O ganlyniad i ddull gweithredu Llywodraeth Cymru o ran proses Rheol Sefydlog 30A, cyflwynodd Suzy Davies AC gynnig mewn perthynas ag un memorandwm cydsyniad offeryn statudol. Ar yr achlysur hwn, nid oedd yr Aelod yn anghytuno â memorandwm Llywodraeth Cymru ei hun, dim ond penderfyniad y Llywodraeth i beidio â chyflwyno'r cynnig cysylltiedig o dan Reol Sefydlog 30A.10. Fodd bynnag, roedd y Rheolau Sefydlog, fel y maent wedi'u drafftio ar hyn o bryd, yn dal i'w gwneud yn ofynnol iddi gyflwyno ei memorandwm ei hun (Rheol Sefydlog 30A.3). Yn ein barn ni, mae'n ymddangos yn ddiangen ei gwneud yn ofynnol i Aelod Cynulliad gyflwyno ei femorandwm ei hun yn yr amgylchiadau hyn, lle mae'n cytuno â Llywodraeth Cymru.

Yn sgil yr uchod, byddwn yn croesawu eich barn am sut y mae Rheol Sefydlog 30A yn cael ei defnyddio a'i dehongli.

Yn gywir

Mick Antoniw AC
Y Cadeirydd

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

Jeremy Miles AC/AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Cynulliad Cenedlaethol Cymru
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08 Mai 2019

Annwyl Mick,

Rwy'n ysgrifennu i roi gwybod ichi y bydd y Cyd-bwyllgor Gweinidogion (Negodiadau Ewropeaidd) yn cyfarfod yn Llundain ar 9 Mai.

Bydd yr agenda yn ymdrin â'r negodiadau gyda'r UE ar ymadawiad y DU, rôl y gweinyddiaethau datganoledig a'r cynnydd o ran Fframweithiau Cyffredin.

Byddaf yn adrodd i'r Pwyllgor ar ganlyniad y cyfarfod.

Yn gywir,

Jeremy Miles AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

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Llywodraeth Cymru
Welsh Government

DATGANIAD YSGRIFENEDIG
GAN
LYWODRAETH CYMRU

TEITL	**Ymateb Interim Llywodraeth Cymru i Adroddiad Comisiwn y Gyfraith ar Gyfraith Cynllunio yng Nghymru**
DYDDIAD	**09 Mai 2019**
GAN	**Julie James AC, Y Gweinidog Tai a Llywodraeth Leol**

Comisiynwyd Comisiwn y Gyfraith Cymru a Lloegr gan Lywodraeth Cymru i gynnal adolygiad manwl o gyfraith cynllunio yng Nghymru er mwyn symleiddio a chydgrynhoi'r ddeddfwriaeth. Daeth yr adolygiad i ben ar 30 Tachwedd 2018 pan gyflwynwyd ei adroddiad, 'Cyfraith Cynllunio yng Nghymru: Adroddiad Terfynol' i'w ystyried gan Lywodraeth Cymru. Gosodwyd yr adroddiad terfynol gerbron Cynulliad Cenedlaethol Cymru hefyd ac fe'i cyhoeddwyd ar wefan Comisiwn y Gyfraith.

Yn unol â'r protocol y cytunwyd arno rhwng Gweinidogion Cymru a Chomisiwn y Gyfraith ar 2 Gorffennaf 2015, rhaid i'r Llywodraeth roi ymateb interim i'r Adroddiad i Gomisiwn y Gyfraith o fewn chwe mis i'r dyddiad y'i cyflwynwyd ac y'i cyhoeddwyd. Rhaid rhoi ymateb manylach o fewn 12 mis.

Heddiw, rwy'n falch o fod wedi cyflwyno a chyhoeddi ymateb interim Llywodraeth Cymru i'r Adroddiad, sy'n canolbwyntio ar y casgliadau craidd a nodir yn Rhan 1 o'r Papur Ymgynghori (a gyhoeddwyd ym mis Tachwedd 2017) a'r Adroddiad Terfynol. Yn benodol, mae'n nodi ymateb y Llywodraeth i farn Comisiwn y Gyfraith ar y canlynol:

- yr angen i symleiddio a chydgrynhoi cyfraith cynllunio;
- yr achos dros god cynllunio;
- cwmpas yr ymarfer cydgrynhoi cychwynnol.

Gallwch weld yr ymateb interim yn:

https://llyw.cymru/ymateb-dros-dro-i-adroddiad-comisiwn-y-gyfraith-ar-y-gyfraith-gynllunio-yng-nghymru

Rydym yn parhau i ystyried y 192 o argymhellion a nodir yn Rhan 2 o'r Adroddiad, y bydd ein hymateb manwl, a gyhoeddir yn ddiweddarach eleni, yn canolbwyntio arnynt.

Julie James AC
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Regeneration

Llywodraeth Cymru
Welsh Government

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9 Mai 2019

Annwyl Nicholas

YMATEB INTERIM I'R ADRODDIAD AR GYFRAITH CYNLLUNIO YNG NGHYMRU

Ar ran Llywodraeth Cymru, rwy'n ddiolchgar i chi, Nicholas Paines CF a'r Tîm Cyfraith Gyhoeddus am y gwaith a wnaed i lunio eich adroddiad manwl ar gyfraith cynllunio yng Nghymru. Mae'n amlwg bod gwaith sylweddol wedi'i wneud a bod dadansoddiad trylwyr wedi'i gynnal er mwyn nodi sail dystiolaeth gynhwysfawr i lywio'r adroddiad ac ymgysylltu ag amrywiaeth eang o randdeiliaid.

Yn y llythyr hwn ceir Ymateb Interim Llywodraeth Cymru i'r Adroddiad, a gyflwynir yn unol â'r Protocol rhwng Comisiwn y Gyfraith a Gweinidogion Cymru (Gorffennaf 2015).

Nid yw'n fwriad gennyf ymateb i'r 192 o argymhellion a nodir yn Rhan 2 o'ch adroddiad, am ein bod yn parhau i'w dadansoddi a'u hystyried yn fanwl. Dyma fydd testun ein hymateb ffurfiol yn ddiweddarach eleni.

Yn lle hynny, mae'r ymateb hwn yn canolbwyntio ar y casgliadau craidd a nodir yn Rhan 1 o'r Papur Ymgynghori (Tachwedd 2017) a'r Adroddiad Terfynol (Tachwedd 2018), yn enwedig barn Comisiwn y Gyfraith ar y canlynol:

- yr angen i symleiddio a chydgrynhoi cyfraith cynllunio;
- yr achos dros god cynllunio;
- cwmpas yr ymarfer cydgrynhoi cychwynnol.

Ymdrinnir â'r pwyntiau hyn yn eu tro isod.

Yr angen i symleiddio a chydgrynhoi cyfraith cynllunio

Mae'r adroddiad yn dangos yn glir fod deddfwriaeth gynllunio yn faes cyfreithiol y mae angen rhoi sylw iddo ar fyrder o ran symleiddio a chydgrynhoi. Mae'n atgyfnerthu barn

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Llywodraeth Cymru, y mae wedi'i harddel ers tro, ynghylch cymhlethdod y fframwaith deddfwriaethol sy'n sail i'r system gynllunio.

Tynnodd ein gwaith ar Ddeddf Cynllunio (Cymru) 2015, a'r sail dystiolaeth ategol a ddarparwyd gan Grŵp Cynghori Annibynnol, sylw at y mater hwn, a arweiniodd at brosiect cydweithredol â Chomisiwn y Gyfraith i gynnal yr adolygiad manwl hwn. Nodaf hefyd i faterion sy'n ymwneud â chymhlethdod a hygyrchedd y gyfraith yn fwy cyffredinol gael eu hystyried gan Gomisiwn y Gyfraith yn ei adroddiad, *Ffurf a Hygyrchedd y Gyfraith sy'n Gymwys yng Nghymru* (Mehefin 2016), a gyfeiriodd at agweddau ar gyfraith cynllunio.

Mae'r adolygiad diweddar o'r system gynllunio yn Lloegr a gynhaliwyd gan y Gymdeithas Cynllunio Gwlad a Thref[1] hefyd yn atgyfnerthu casgliadau eich adroddiad drwy argymell y dylid symleiddio a chydgrynhoi deddfwriaeth gynllunio yn Lloegr. Dengys hyn nad yw'r broblem yn unigryw i Gymru. Fodd bynnag, mae adolygiad cynhwysfawr a manwl Comisiwn y Gyfraith i Lywodraeth Cymru yn ein rhoi ar y blaen i'r syniadaeth gyffredinol ynglŷn â'r mater pwysig hwn.

Ar ôl ymarfer ym maes cyfraith cynllunio, rwy'n adnabod anawsterau'r fframwaith deddfwriaethol presennol a nodwyd yn eich adolygiad ac yn eu derbyn. Mae deddfwriaeth gynllunio bresennol yn swmpus ac yn dameidiog, gyda'r adroddiad yn nodi tua 30 o ddarnau o ddeddfwriaeth sylfaenol gydgysylltiedig (yn gyfan gwbl neu'n rhannol) sy'n ymwneud â'r maes cyfreithiol hwn. Mae'n amlwg bod hyn yn effeithio ar hygyrchedd y gyfraith, yn ogystal â'i hansawdd o ran cymhlethdod ac eglurder.

Mae'r problemau a achosir gan hyn yn sylweddol. Gall anawsterau neu wallau o ran gweithredu a dehongli'r ddeddfwriaeth sy'n creu'r posibilrwydd o her gyfreithiol arwain at oedi cyn sicrhau datblygu cynaliadwy a chreu lleoedd cynaliadwy i'n cymunedau. Mae'r angen cynyddol am gyngor cyfreithiol er mwyn gweithredu neu ddefnyddio'r system gynllunio neu gymryd rhan ynddi a'r costau cysylltiedig yn destun pryder hefyd. Ni ddylai pa mor effeithiol y mae'r system gynllunio yn gweithredu na pha mor effeithiol y mae cymunedau yn ymgysylltu â'r system ddibynnu ar b'un a ellir cael neu fforddio cyngor cyfreithiol.

Mae'r dystiolaeth yn dangos yn glir y gall yr anawsterau a nodwyd gyda'r fframwaith deddfwriaethol rwystro'r system gynllunio. Credwn ei bod yn hanfodol symleiddio a chydgrynhoi'r gyfraith er mwyn mynd i'r afael â'r problemau hyn. Mae'n bwysig bod pob rhanddeiliad sy'n gweithredu neu'n defnyddio'r system neu'n cymryd rhan ynddi yn cael mynediad at y gyfraith sy'n effeithio'n arno'n uniongyrchol ac yn ei deall yn glir. Mae hefyd yn hanfodol er mwyn sicrhau system gynllunio effeithlon, effeithiol a syml sy'n diwallu anghenion penodol Cymru.

Bydd deddfwriaeth gynllunio sydd wedi cael ei symleiddio a'i chydgrynhoi yn sicrhau manteision ymarferol gwirioneddol i bob rhanddeiliad yn y system gynllunio – o'r rhai sy'n ei gweithredu a'i defnyddio i'r rhai sydd am gael mynediad at y gyfraith er mwyn cymryd rhan yn y system. Yn bwysig ddigon, wrth i gyfraith cynllunio ddod yn fwy hygyrch ac yn gliriach, bydd yn helpu i gynyddu cyfranogiad y cyhoedd yn y system.

Mae'r prosiect hwn y mae'r Cwnsler Cyffredinol a'r Gweinidog Brexit a minnau yn ymrwymedig i'w ddatblygu yn un pwysig. Fel y gwyddoch, mae Cynulliad Cenedlaethol Cymru wrthi'n craffu ar y Bil Deddfwriaeth (Cymru) ar hyn o bryd. Mae'r Bil yn gosod dyletswydd ar y Cwnsler Cyffredinol a Gweinidogion Cymru i gyflwyno rhaglen sydd â'r nod o wneud cyfraith Cymru yn fwy hygyrch. Bydd y rhaglen gyntaf yn dechrau yn ystod y Cynulliad nesaf yn amodol ar y Bil yn cael Cydsyniad Brenhinol, ond mae'n dda gennyf

[1] Planning 2020: Adolygiad Raynsford o Gynllunio yn Lloegr, Adroddiad Terfynol, Tachwedd 2018

ddweud, cyn i unrhyw raglen ffurfiol gael ei phennu, fod gwaith eisoes wedi dechrau ar Fil Cydgrynhoi Cynllunio.

Yr achos dros god cynllunio

Fel y gwyddoch, mae mater codeiddio cyfraith Cymru wrthi'n cael ei ystyried ar hyn o bryd gan y Cwnsler Cyffredinol a'r Gweinidog Brexit. Mae eisoes wedi nodi ein gweledigaeth o'r hyn y bydd Cod Deddfwriaethol yn ei gynnwys ac mae wrthi'n ystyried sut y dylid trefnu cyfraith Cymru yn y Codau hynny.

Rwy'n cefnogi barn Comisiwn y Gyfraith bod angen penodol am God sy'n dwyn ynghyd y ddeddfwriaeth sy'n ymwneud â chynllunio defnydd tir. Bydd y ffaith bod y ddeddfwriaeth mewn un lle yn helpu i fynd i'r afael â natur wasgaredig y fframwaith deddfwriaethol presennol. Bydd hyn ynddo'i hun yn gwneud y gyfraith yn fwy hygyrch i randdeiliaid.

Mae'r Cwnsler Cyffredinol a'r Gweinidog Brexit yn cytuno. Ar hyn o bryd mae'r *Tacsonomeg Drafft ar gyfer Codau Cyfraith Cymru* a gyhoeddwyd i gyd-fynd â chyflwyno'r Bil Deddfwriaeth (Cymru) i'r Cynulliad Cenedlaethol yn nodi “Cod Cynllunio, Tir ac Adeiladu”. Mae hyn yn adlewyrchu''r angen i ddwyn deddfwriaeth ynglŷn â chynllunio defnydd tir ynghyd mewn un lle er budd y rhai sy'n gweithredu neu'n defnyddio'r system gynllunio neu'n cymryd rhan ynddi. Yn bwysig ddigon, mae hefyd yn adlewyrchu'r ffaith bod cynllunio defnydd tir yn faes allweddol ac arwyddocaol o gyfraith ddatganoledig.

Nodaf farn Comisiwn y Gyfraith a rhanddeiliaid ar y meysydd cyfreithiol eraill sy'n gysylltiedig â chynllunio defnydd tir a allai elwa o gael eu cynnwys mewn Cod sy'n ymwneud â chynllunio, neu o ymarferion codeiddio a chydgrynhoi yn y dyfodol i lunio Codau ar wahân. Nodaf hefyd y safbwyntiau a'r amheuon a fynegwyd gan randdeiliaid ynglŷn â gweithrediad cyffredinol Codau Deddfwriaethol a'r egwyddorion sy'n sail iddynt.

Bydd y safbwyntiau pwysig hyn yn llywio trafodaethau parhaus y Cwnsler Cyffredinol a'r Gweinidog Brexit a'r broses o fireinio'r strwythur a'r dacsonomeg yn y dyfodol. Yn amodol ar y Cynulliad Cenedlaethol yn pasio'r Bil Deddfwriaeth (Cymru), mae'r Cwnsler Cyffredinol yn bwriadu cyhoeddi rhagor o wybodaeth am gydgrynhoi a chodeiddio cyfraith Cymru yn ystod yr haf.

Cwmpas yr ymarfer cydgrynhoi cychwynnol

Fel y noda'r Adroddiad, bydd angen i'r broses o gydgrynhoi cyfraith cynllunio a deddfwriaeth gysylltiedig i greu Cod Cyfraith i Gymru gael ei chyflawni fesul cam. Mae hyn yn synhwyrol o gofio maint y dasg a'r adnoddau cyfyngedig sydd ar gael i ymgymryd å'r ymarfer hwn.

Croesawaf yr ystyriaeth y mae Comisiwn y Gyfraith wedi'i rhoi i'r mater hwn a'i farn y dylai cwmpas yr ymarfer cydgrynhoi cychwynnol a'r Bil a fydd yn deillio o hynny gynnwys, hyd y gellir, yr holl ddeddfwriaeth gynllunio sylfaenol sy'n ymwneud â'r canlynol:

- cynllunio a rheoli gwaith datblygu;
- darparu seilwaith a gwelliannau eraill;
- hysbysebion awyr agored a gwaith ar goed;
- gwelliannau a gweithgarwch adfywio a arweinir gan y sector cyhoeddus (i'r graddau y bônt yn Neddf Cynllunio Gwlad a Thref 1990 ar hyn o bryd);
- darpariaethau atodol ac amrywiol.

Mae'r cynnwys yr awgrymir y dylid ei gynnwys o dan y pum maes pwnc hyn, fel y'u nodir yn Nhabl 3.1 o'r papur ymgynghori, yn nodi y dylai cwmpas yr ymarfer cychwynnol hwn arwain at ddileu'r prif ddarnau o ddeddfwriaeth sylfaenol sy'n sail i'r system yng Nghymru a chyflwyno deddfwriaeth newydd yn eu lle. Yn benodol, Deddf Cymru Gwlad a Thref 1990 a Deddf Cynllunio a Phrynu Gorfodol fel y maent yn gymwys i Gymru; yn ogystal â'r rhai sy'n diwygio'r prif Ddeddfau hyn, megis Deddf Cynllunio a Digolledu 1991, Deddf Cynllunio 2008 a Deddf Cynllunio (Cymru) 2015.

Cytunwn fod hwn yn ddull gweithredu synhwyrol a bydd hyn yn sail i'n hymarfer cydgrynhoi cychwynnol a'r Bil a fydd yn deillio ohono. Mae'n ategu ein barn bod angen i'r ymarfer cychwynnol ymdrin â swyddogaethau craidd y system gynllunio, yn enwedig y rhai a ddefnyddir yn aml gan weithredwyr a defnyddwyr y system. Fodd bynnag, bydd p'un a allwn ddileu Cymru yn gyfan gwbl o gwmpas Deddf Cynllunio Gwlad a Thref 1990 a rhannau perthnasol o Ddeddf Cynllunio a Phrynu Gorfodol 2004 yn dibynnu ar nifer o ffactorau, yn enwedig cwmpas cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol. Dim ond yn ystod y broses o lunio a drafftio'r Bil cydgrynhoi cynllunio y daw hyn yn gwbl amlwg.

Mae cwmpas a strwythur posibl Bil cydgrynhoi cynllunio cychwynnol a awgrymwyd gan Gomisiwn y Gyfraith hefyd yn adlewyrchu eich argymhellion i uno caniatâd adeiladu rhestredig a chaniatâd ardal gadwraeth â chaniatâd cynllunio. Nid ydym wedi penderfynu eto a fydd cwmpas yr ymarfer cychwynnol yn darparu ar gyfer cynigion o'r fath am ein bod yn parhau i ystyried eich argymhellion ynglŷn â'r mater penodol hwn yn ofalus.

Yn ogystal â'r uchod, nodaf fod yr adroddiad hefyd yn gwneud argymhellion ar gyfer meysydd eraill o gyfraith cynllunio i'w cynnwys o fewn cwmpas yr ymarfer cychwynnol hwn. Rwy'n cefnogi'r farn a nodir yn Argymhelliad 10.1 y dylid cynnwys y darpariaethau sy'n ymwneud â'r Ardoll Seilwaith Cymunedol yn yr ymarfer cydgrynhoi cychwynnol a'r Bil a fydd yn deillio ohono. Fel y nodwyd yn yr adroddiad, dim ond yn ddiweddar y datganolwyd cymhwysedd deddfwriaethol mewn perthynas â'r Ardoll Seilwaith Cymunedol drwy Ddeddf Cymru 2017. Bydd angen ystyried sut y byddwn yn ymdrin â'r Ardoll Seilwaith Cymunedol a rhwymedigaethau cynllunio yn y dyfodol fel rhan o drafodaethau ehangach a hirdymor Llywodraeth Cymru ynghylch trethu tir datblygu, megis ein hymchwiliadau i'r posibilrwydd o gyflwyno treth ar dir gwag.

Mae'n synhwyrol trosglwyddo'r darpariaethau hyn heb eu newid i'r darn cychwynnol o ddeddfwriaeth gynllunio wedi'i chydgrynhoi tra bod y maes polisi hwn yn cael ei adolygu. O ystyried y gydberthynas agos rhwng yr Ardoll Seilwaith Cymunedol a rhwymedigaethau cynllunio, byddai'n fuddiol i ddefnyddwyr a gweithredwyr y system pe bai'r darpariaethau hyn yn cael eu dwyn ynghyd o dan un darn o ddeddfwriaeth yn hytrach na'u bod wedi'u cynnwys mewn Deddfau ar wahân, sef y sefyllfa ar hyn o bryd.

Mae'r adroddiad hefyd yn ystyried a ddylid cynnwys y darpariaethau statudol sy'n ymwneud â phrynu gorfodol fel rhan o'r ymarfer cychwynnol hwn. Mae'n awgrymu na ddylid cynnwys darpariaethau statudol cyffredinol ar gyfer prynu gorfodol a digolledu yn yr ymarfer cychwynnol a'r Bil a fydd yn deillio ohono, ond mae'n argymell y dylid cynnwys y pŵer i gaffael tir at ddibenion cynllunio yn Rhan 9 o Ddeddf Cynllunio Gwlad a Thref 1990 (Argymhelliad 16.14). Credaf y byddai'n synhwyrol cynnwys y darpariaethau hynny o Ddeddf Cynllunio Gwlad a Thref 1990 gyda'r nod o ddisodli Deddf Cynllunio Gwlad a Thref 1990 yn ei chyfanrwydd a chyflwyno deddfwriaeth i Gymru yn ei lle. Fodd bynnag, byddai angen i'r rhaglen ehangach i gydgrynhoi deddfwriaeth ynglŷn â phrynu gorfodol fod yn destun ymarfer yn y dyfodol o ystyried maint a chymhlethdod y maes cyfreithiol hwn.

Mae adroddiad Comisiwn y Gyfraith wedi rhoi cyfeiriad a chwmpas clir i'r ymarfer cydgrynhoi cynllunio cychwynnol. Bydd cyflwyno Bil cydgrynhoi cynllunio sydd â ffocws tebyg i'r hyn a nodwyd uchod yn sicrhau manteision sylweddol i'n rhanddeiliaid.

Wrth ddatblygu Bil cydgrynhoi cynllunio, nodaf hefyd gasgliadau Comisiwn y Gyfraith bod y cydbwysedd rhwng deddfwriaeth sylfaenol ac is-ddeddfwriaeth yn y fframwaith deddfwriaethol presennol yn gywir, ar y cyfan, a chroesawaf y casgliadau hynny. Byddwn yn ymateb maes o law i'r nifer fach o argymhellion lle mae Comisiwn y Gyfraith wedi amau'r cydbwysedd hwn.

Argymhellion manwl

Er nad wyf mewn sefyllfa i roi ymateb manwl i'r argymhellion a nodir yn Rhan 2 o'r adroddiad, mae'n amlwg o'n hystyriaeth gychwynnol eu bod yn perthyn, yn fras, i dri chategori:

- mae'r rhan fwyaf yn fân ddiwygiadau technegol heb fawr ddim newidiadau mewn polisi, os oes unrhyw rai o gwbl, i hwyluso'r broses gydgrynhoi;
- mae rhai yn cynnig diwygiadau polisi gyda'r nod o symleiddio'r gyfraith a gweithrediad y system gynllunio ymhellach, sy'n amrywio o fân newidiadau i newidiadau sylweddol yn effaith polisi;
- mae rhai yn cynnig newidiadau i is-ddeddfwriaeth a chanllawiau.

Fel y gwyddoch, mae Pwyllgor Busnes y Cynulliad Cenedlaethol wedi cytuno i ddatblygu Rheol Sefydlog ar gyfer craffu ar Filiau cydgrynhoi. Mae'n amlwg y bydd ffurf derfynol y weithdrefn honno yn dylanwadu ar yr hyn y gellir ei weithredu drwy gydgrynhoi. Rhagwelaf mai'r Bil cydgrynhoi cynllunio fydd y prif ddull cyflawni ar gyfer yr argymhellion hynny rydym yn eu derbyn i weithredu arnynt ac sy'n cynnwys mân ddiwygiadau technegol.

Fodd bynnag, lle y gallwn gytuno â'r argymhellion hynny sy'n golygu diwygiadau polisi mwy sylweddol, maent yn annhebygol o gael eu gweithredu o fewn cwmpas Bil cydgrynhoi. Efallai y bydd angen cynnwys y newidiadau hyn mewn Bil diwygio'r gyfraith er mwyn i'r Cynulliad Cenedlaethol graffu'n fanylach arnynt.

Daw'r dulliau cyflawni ar gyfer yr argymhellion yn gliriach yn dilyn ein hystyriaeth fanwl ohonynt ac ar ôl i'r Cynulliad Cenedlaethol gytuno ar unrhyw Reol Sefydlog.

Mae cyflawni unrhyw brosiect cydgrynhoi yn ymarfer sylweddol a thechnegol a all gymryd cryn amser ac ymdrech i'w wneud yn dda. Rydym yn ymrwymedig i ddatblygu deddfwriaeth hygyrch sydd wedi cael ei hystyried yn drylwyr. Wrth inni ddechrau llunio'r Bil cydgrynhoi cynllunio i Gymru, rwy'n ddiolchgar i Gomisiwn y Gyfraith am ei gefnogaeth a'i gymorth parhaus i'w gyflwyno.

Yn gywir

Julie James AC
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Regeneration

Copi: Cwnsler Cyffredinol a'r Gweinidog Brexit

MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL ATODOL (MEMORANDWM RHIF 2)

Y Bil Amaethyddiaeth

1. Gosodir y Memorandwm Cydsyniad Deddfwriaethol hwn o dan Reol Sefydlog ("RhS") 29.2. Mae RhS 29 yn rhagnodi bod yn rhaid gosod Memorandwm Cydsyniad Deddfwriaethol, ac y ceir cyflwyno Cynnig Cydsyniad Deddfwriaethol, gerbron y Cynulliad Cenedlaethol os yw Bil gan Senedd y DU yn gwneud darpariaeth mewn perthynas â Chymru at ddiben sydd o fewn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol, neu at ddiben sy'n addasu'r cymhwysedd hwnnw.

2. Cafodd y Bil Amaethyddiaeth (y "Bil") ei gyflwyno yn Nhŷ'r Cyffredin ar 12 Hydref 2018 ac mae wedi cwblhau'r Cyfnod Pwyllgor ar gyfer Bil Cyhoeddus. Mae'r Memorandwm hwn yn nodi'r diwygiadau perthnasol i'r Bil a wnaed yn ystod y Cyfnod Pwyllgor ac mae'n diweddaru'r sefyllfa mewn perthynas â'r cymal ar Gytundeb Sefydliad Masnach y Byd ar Amaethyddiaeth (Rhan 7). Mae fersiwn ddiweddaraf y BIl, fel y'i diwygiwyd yn ystod y Cyfnod Pwyllgor, i'w gweld yma:

Dogfennau'r Bil ─ Y Bil Amaethyddiaeth 2017-19 ─ Senedd y DU

3. Bydd y Bil yn symud ymlaen bellach i'r Cyfnod Adrodd a'r Trydydd Darlleniad yn Nhŷ'r Cyffredin cyn mynd i Dŷ'r Arglwyddi.

Amcan(ion) Polisi

4. Mae Llywodraeth y DU wedi datgan mai ei hamcanion polisi yw darparu, ar gyfer Lloegr, system newydd o dalu "arian cyhoeddus am nwyddau cyhoeddus" i ffermwyr − yn bennaf, y gwaith y maent yn ei wneud i wella ac i ddiogelu'r amgylchedd – a chael gwared yn raddol ar Daliadau Uningyrchol o dan reolau'r Polisi Amaethyddol Cyffredin (PAC).

Crynodeb o'r Bil

5. Noddir y Bil gan Adran yr Amgylchedd, Bwyd a Materion Gwledig.

6. Mae prif ddarpariaethau'r Bil yn darparu'r fframwaith cyfreithiol i'r Deyrnas Unedig (DU) adael y Polisi Amaethyddol Cyffredin (PAC) ac i sefydlu, yn Lloegr, system newydd a fydd yn seiliedig ar arian cyhoeddus am nwyddau cyhoeddus ar gyfer y genhedlaeth nesaf o ffermwyr a rheolwyr tir.

7. Mae'r Bil hefyd, ar gais Gweinidogion Cymru, yn darparu pwerau ar gyfer Gweinidogion Cymru.

Darpariaethau atodol yn y Bil y ceisir cydsyniad ar eu cyfer

8. Gosododd Llywodraeth Cymru Femorandwm Cydsyniad Deddfwriaethol mewn perthynas â'r Bil Amaethyddiaeth (fel y'i cyflwynwyd ar 12 Medi 2018) ar 4 Hydref. Nodwyd yn y Memorandwm hwnnw bod dau fater yn peri pryder inni, sef Cytundeb Sefydliad Masnach y Byd ar Amaethyddiaeth a'r Ardoll Cig Coch, ac nad oeddent wedi cael eu datrys mewn ffordd a oedd yn ein bodloni. Nodwyd hefyd y byddai gwaith yn parhau i ddatrys y pryderon hynny wrth i'r Bil fynd ar ei daith drwy Senedd y DU. Ers i'r Memorandwm cyntaf gael ei gyhoeddi, mae'r Bil wedi cael ei ddiwygio wrth i Dŷ'r Cyffredin graffu arno, ac rydym wedi sicrhau cytundeb gyda Llywodraeth y DU ar y ddau fater yr oedd anghytundeb yn eu cylch.

9. Mae'r Memorandwm Atodol hwn yn ymdrin â'r newidiadau hynny a wnaed i'r Bil yn ystod cyfnod Pwyllgor Tŷ'r Cyffredin y mae angen cydsyniad y Cynulliad ar eu cyfer. Mae hefyd yn esbonio'r cytundeb a sicrhawyd gyda Llywodraeth y DU ar sut y bydd yr Ysgrifennydd Gwladol yn arfer y pwerau sy'n gysylltiedig â Rhan 7 (Cytundeb Sefydliad Masnach y Byd ar Amaethyddiaeth) fel y bo buddiannau pob rhan o'r DU yn cael eu hystyried yn llawn. Mae'r diwygiadau a wnaed a'r cytundeb a sicrhawyd yn mynd i'r afael â'r ddau fater y mynegwyd pryder yn eu cylch ym mharagraff 23 o'n Memorandwm Cydsyniad Deddfwriaethol cyntaf. Fodd bynnag, rydym yn rhagweld y gallai rhagor o newidiadau gael eu gwneud i'r Bil yn ystod y Cyfnod Adrodd yn Nhŷ'r Cyffredin ac wrth iddo fynd ar ei daith drwy Dŷ'r Arglwyddi. Rhaid ystyried y Memorandwm cyntaf a'r Memorandwm Atodol gyda'i gilydd (ynghyd ag unrhyw Femoranda Atodol pellach a allai gael eu gosod gerbron y Cynulliad mewn perthynas ag unrhyw ddiwygiadau a gaiff eu gwneud yn y dyfodol) wrth benderfynu a ddylid rhoi cydsyniad ai peidio.

10. Mae'r darpariaethau y ceisir cydsyniad ar eu cyfer i'w gweld yn Rhan 7 (Cytundeb Sefydliad Masnach y Byd ar Amaethyddiaeth); Rhan 8 (Yr Ardoll Cig Coch); Atodlen 3 (Darpariaethau o ran Cymru), a Rhan 10 o'r Bil (Y Darpariaethau Terfynol). Mae rhifau'r cymalau a ddefnyddir isod yn cyfeirio at y fersiwn o'r Bil y gorchmynnwyd ei argraffu ar 20 Tachwedd ac a gyhoeddwyd ar 21 Tachwedd (y fersiwn fel y'i diwygiwyd yn ystod y Cyfnod Pwyllgor).

Rhan 7: Cytundeb Sefydliad Masnach y Byd ar Amaethyddiaeth

11. Nododd Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig yn ei datganiad ar 12 Medi fod Llywodraeth Cymru o'r farn bod angen cydsyniad ar gyfer y darpariaethau hyn oherwydd y berthynas gryf ac amlwg rhwn pwerau Sefydliad Masnach y Byd a chyfrifoldebau datganoledig dros gymorth ym maes amaethyddiaeth. Roedd y Memorandwm Cydsyniad Deddfwriaethol a osodwyd ar 4 Hydref hefyd yn esbonio safbwynt Llywodraeth Cymru “bod angen cydsyniad ar gyfer darpariaethau cymal 26 [y cymal ar Sefydliad Masnach y Byd, sef cymal 28 erbyn hyn] oherwydd eu bod yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru gan eu bod yn ymwneud ag amaethyddiaeth ac ufuddhau i rwymedigaethau rhyngwladol a gweithredu’r rhwymedigaethau hynny, sef y Cytundeb ar Amaethyddiaeth”.

Mae Llywodraeth y DU, fodd bynnag, o'r farn bod y pwerau hyn yn rhai a gadwyd yn ôl, ar y sail eu bod yn ymwneud â masnach ryngwladol.

12. Mae Llywodraeth Cymru a Llywodraeth y DU wedi cytuno ar ffordd o lywodraethu defnydd o'r pwerau hyn fel y bo buddiannau pob rhan o'r DU yn cael eu hystyried yn llawn. Rydym wedi cytuno fel a ganlyn:

- bydd Llywodraeth y DU yn ymgynghori â'r gweinyddiaethau datganoledig, gan ddilyn yr egwyddorion a nodir yn y Cytundeb Rhynglywodraethol, cyn cyflwyno rheoliadau o dan y cymal ar Sefydliad Masnach y Byd;

- bydd Gweinidogion yn ceisio symud yn eu blaen drwy gytundeb ond os ceir anghytundeb, bydd deunydd perthnasol ar gael i ddau Dŷ'r Senedd ei weld cyn i Senedd u DU bleidleisio ar y rheoliadau;

- Gweinidogion Cymru fydd yn gyfrifol yn y lle cyntaf am gynnig categoreiddio cynlluniau cymorth amaethyddol Cymru, gan wneud hynny mewn ffordd a fydd yn gyson ag unrhyw reoliadau a wneir o dan y cymal ar Sefydliad Masnach y Byd; a

- bydd rôl i gynghorydd annibynnol fel arfer os bydd y llywodraethau'n anghytuno ar gategorïau'r cynlluniau neu ar faterion perthnasol eraill. Dylai'r Ysgrifennydd Gwladol roi ystyriaeth i'r cyngor hwn cyn gwneud unrhyw benderfyniad a rhaid iddo rannu'r cyngor, y penderfyniad a'r rheswm dros y penderfyniad â'r gweinyddiaethau datganoledig.

13. Yn gryno, felly, mae cyfrifoldeb clir i geisio cytundeb. Fodd bynnag, os na fydd hynny'n bosibl, mae trefniadau cryf sy'n caniatáu i Weinidogion Cymru fynegi barn. Caiff y trefniadau hynny eu rhoi ar bapur mewn Memorandwm Cyd-ddealltwriaeth a bydd yr Ysgrifennydd Gwladol yn dweud hynny ar goedd mewn datganiad ar lawr Tŷ'r Cyffredin. Mae hwn yn ganlyniad da sy'n rhoi rôl gref a hyblygrwydd i Weinidogion Cymru ac fe'i sicrhawyd ar ôl llawer o gydweithio effeithiol rhwng y llywodraethau. Mae'n fodel gwerthfawr y gellid ei ddefnyddio mewn meysydd eraill lle mae angen i lywodraethau gydweithredu ac mae'n arwydd o ymrwymiad y ddwy lywodraeth i gydweithio.

Rhan 8: Yr Ardoll Cig Coch

14. Mae byrddau ardollau cig coch Prydain Fawr (Y Bwrdd Datblygu Amaethyddiaeth a Garddwriaeth, Quality Meat Scotland, a Hybu Cig Cymru) i byd yn gosod ardollau cig coch ar wahân ar gynhyrchwyr a phroseswyr cig coch yn Lloegr, yr Alban a Chymru, yn y drefn honno. Yr unig reswm y ceir gosod yr ardollau hynny yw er mwyn i bob un o'r cyrff hyn fedru cwrdd â'u costau wrth iddynt gefnogi'r diwydiant cig coch yn y wlad lle y codir yr ardoll. Mae ardollau, felly, yn seiliedig ar leoliad daearyddol lladd-dai, yn hytrach nag ar y man o le y daw'r da byw, ac nid ydynt yn rhoi ystyriaeth i'r patrymau masnachu ar draws ffiniau Prydain Fawr. O'r herwydd, mae'n bosibl y bydd yr ardoll a delir gan gynhyrchwyr sy'n gweithredu mewn un ran o Brydain yn cael

ei ddefnyddio i ariannu gweithgareddau hyrwyddo a datblygu mewn rhan arall ohoni.

15. Mae cymal 29 newydd (Yr Ardoll Cig Coch: taliadau rhwng cyrff ardollau ym Mhrydain Fawr), yn galluogi Gweinidogion i sefydlu cynllun sy'n ei gwneud yn ofynnol i fyrddau amaethyddol ym Mhrydain Fawr ailddosbarthu'r ardoll rhwng ei gilydd. Bwriedir i hynny alluogi'r rheini sy'n buddsoddi mewn bridio a magu da byw i elwa ar yr ardoll a gesglir mewn perthynas â'u da byw nhw, hyd yn oed os bydd yr ardoll yn cael ei gasglu gan lladd-dy sydd mewn awdurdodaeth arall. Mae Llywodraeth Cymru yn fodlon bod y cymal newydd yn ffordd briodol o ddatrys y mater.

Atodlen 3, Rhan 2: Cymorth Ariannol ar ôl ymadael â'r UE

16. Mae Rhan 2 o Atodlen 3 i'r Bil yn gwneud darpariaeth ynglŷn â phwerau Gweinidogion Cymru i addasu, ar ôl i'r DU ymadael â'r UE, gyfraith yr UE a ddargedwir mewn perthynas ag ariannu, rheoli a monitro taliadau i ffermwyr. Mae hefyd yn gwneud darpariaeth ynglŷn â chyfnod pontio amaethyddol i Gymru y gellir ei estyn drwy gyfrwng rheoliadau a wneir gan Weinidogion Cymru.

17. Mae paragraff 7 newydd (Pŵer i leihau'r terfynau uchaf ar gyfer taliadau uniongyrchol hyd at 15% yng Nghymru yn 2020) yn rhoi pŵer i Weinidogion Cymru wneud rheoliadau i leihau'r terfyn uchaf ar gyfer taliadau uniongyrchol hyd at 15% yng Nghymru yn 2020). Bydd y pŵer hwnnw'n golygu y bydd Gweinidogion Cymru yn gallu cadw taliadau uniongyrchol yn 2020 ar yr un lefel ag yn 2019. Ni ellir arfer y pŵer ar ôl diwedd 2020. Mae'r pŵer hwn i wneud rheoliadau yn dod o dan y weithdrefn penderfyniad cadarnhaol (fel y'i diffinnir gan gymal 32(7)(b)).

18. Mae paragraff 8 newydd (Pŵer i barhau â chynllun y taliad sylfaenol ar ôl 2020) yn rhoi pŵer i Weinidogion Cymru wneud rheoliadau i barhau â chynllun y taliad sylfaenol ar ôl 2020, yn ystod y cyfnod pontio amaethyddol ar gyfer Cymru. Mae hwn yn cynnwys pŵer i ragnodi drwy reoliadau y dull a fydd yn cael ei ddefnyddio ar ôl 2020 i benderfynu ar derfynau uchaf taliadau uniongyrchol. Mae'r Rheoliad Taliadau Uniongyrchol (1307/2013) yn cynnwys terfynau uchaf (y dulliau ar gyfer cyfrifo taliadau i ffermwyr) hyd at ddiwedd blwyddyn gynllun 2020 yn unig. Heb derfynau uchaf na ffordd arall o benderfynu ar swm, ni allai cynllun y taliad sylfaenol barhau. Mae'r pŵer hwn i wneud rheoliadau yn dod o dan y weithdrefn penderfyniad cadarnhaol (fel y'i diffinnir gan gymal 32(7)(b)).

19. Mae paragraff 9 (Pŵer i ddarparu ar gyfer dileu'n raddol daliadau uniongyrchol a thaliadau datgysylltiedig), yn cael ei ddiwygio fel a ganlyn:

    a) Diwygir is-baragraff (1)(b) fel nad oes gofyniad bellach i ddod â thaliadau uniongyrchol i ben. Diwygiad technegol yw hwn mewn perthynas â pwerau Gweinidogion Cymru i wneud darpariaeth drwy gyfrwng rheoliadau ar gyfer taliadau datgysylltiedig yn lle taliadau o dan gynllun y taliad sylfaenol. Mae'r diwygiad yn ei gwneud yn glir hefyd na ellir gwneud taliadau

datgysylltiedig ar yr un pryd â thaliadau uniongyrchol o dan gynllun y taliad sylfaenol.

b) Diwygir is-baragraff (8) er mwyn cywiro camgymeriad drafftio. Cynhwysir testun i egluro bod paragraff 9(8) yn gymwys os gwneir darpariaeth o dan baragraff 6(2) ar gyfer dod â thaliadau gwyrddu i ben naill ai cyn neu ar ôl dechrau'r cyfnod pontio amaethyddol i Gymru. Mae'r diwygiad yn golygu bod y darpariaeth ar gyfer Cymru yr un peth â'r un ar gyfer Lloegr.

Atodlen 3, Rhan 4: Ymyrryd mewn Marchnadoedd Amaethyddol

20. Mae Rhan 4 o Atodlen 3 yn caniatáu i Weinidogion Cymru ddatgan cyfnod o amodau eithriadol yn y farchnad, ac, yn ystod y cyfnod y mae'r datganiad yn cael effaith, i roi cymorth ariannol, neu i gytuno i roi cymorth ariannol, i gefnogi cynhyrchwyr amaethyddol yng Nghymru y mae'r amodau eithriadol yn y farchnad a ddisgrifir yn y datganiad yn cael effaith andwyol ar eu hincymau, neu'n debygol o gael effaith o'r fath. Mae Rhan 4 hefyd yn caniatáu i Weinidogion Cymru ddefnyddio mewn unrhyw ffordd yr ystyriant yn briodol unrhyw bwerau sydd ar gael o dan ddeddfwriaeth uniongyrchol yr UE a ddargedwir sy'n darparu ar gyfer gweithredu ymyrraeth gyhoeddus a chymorth ar gyfer systemau storio preifat mewn ymateb i'r datganiad.

21. Diwygir paragraff 18 (Datganiad ynglŷn ag amodau eithriadol yn y farchnad), fel a ganlyn:

a) Diwygir is-baragraff (2) er mwyn egluro mai bwriad y ddarpariaeth yw nodi'r unig amgylchiadau pryd y caiff Gweinidogion Cymru wneud datganiad yn dweud bod amodau eithriadol yn y farchnad. Mae'r diwygiad yn golygu bod y darpariaeth ar gyfer Cymru yr un peth â'r un ar gyfer Lloegr.

b) Diwygir is-baragraff (3)(c) i adlewyrchu camgymeriad drafftio. Dylai'r testun yn y Bil fod wedi cyfeirio at "conditions" (yn hytrach na "decisions").

Rhan 10: Darpariaethau Terfynol

22. Mae Rhan 10 o'r Bil yn darparu ar gyfer mathau gwahanol o ddarpariaethau ategol y gellid eu gwneud mewn rheoliadau a wneir o dan y Bil.

23. Diwygir cymal 32 (Rheoliadau) fel y bo is-gymal (5) newydd yn darparu y bydd rheoliadau o dan adran 32(3)(c) sy'n gwneud darpariaeth atodol, cysylltiedig, ganlyniadol, drosiannol neu arbed yn addasu deddfwriaeth sylfaenol, yn dod o dan y weithdrefn penderfyniad cadarnhaol. Mae hyn yn gwella'r gwaith craffu a wneir ar ddeddfwriaeth pan fo rheoliadau a wneir o dan adran 32(3)(c) yn addasu deddfwriaeth sylfaenol. Mewnosodir cyfeiriadau at gymal 32(5) i'r darpariaethau ar gyfer gwneud rheoliadau gan ddefnyddio'r weithdrefn penderfyniad negyddol ym mharagraffau 6(3), 11(5), 12(4), 20(3) a 22(3) o Atodlen 3, i'r perwyl y dylid defnyddio'r weithdrefn penderfyniad cadarnhaol yn lle'r un negyddol os defnyddir y pŵer perthnasol, yn rhinwedd adran 32(3)(c), i

wneud darpariaeth atodol, cysylltiedig, canlyniadol, trosiannol neu arbed sy'n addasu deddfwriaeth sylfaenol.

24. Diwygir cymal 33 (Dehongli) i egluro bod y diffiniad o “subordinate legislation” yn cynnwys deddfwriaeth a wneir o dan deddfwriaeth sylfaenol gan y deddfwrfeydd datganoledig.

Cydsyniad

25. Mae Llywodraeth Cymru o’r farn bod angen cydsyniad ar gyfer y darpariaethau sy'n ymwneud â Chytundeb Sefydliad Masnach y Byd ar Amaethyddiaeth (Rhan 7) oherwydd eu bod yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru fel y mae’n ymwneud ag amaethyddiaeth a gweithredu rhwymedigaethau rhyngwladol.

26. Mae Llywodraeth Cymru o'r farn bod angen cydsyniad ar gyfer y darpariaethau sy'n ymwneud â'r Ardoll Cig Coch (Rhan 8), y diwygiadau i Atodlen 3 (Darpariaeth o ran Cymru) a'r diwygiadau i Ran 10 (Darpariaethau Terfynol) oherwydd eu bod yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru oherwydd fel y mae’n ymwneud ag amaethyddiaeth ac nad ydynt yn ymwneud â materion a gadwyd yn ôl.

27. Nodir bod mân gamgymeriad drafftio yn y Memorandwm a osodwyd ar 4 Hydref. Roedd yn dweud bod darpariaethau penodol yn ymwneud â Chymru ac yn gymwys o ran Cymru (cyfeirir at baragraff 18 o'r Memorandwm gwreiddiol hwnnw). Mae'r darpariaethau perthnasol yn ymwneud â Chymru a Lloegr (ac maent yn gymwys i Gymru, fel y nodwyd yn gywir).

Pwerau i wneud is-ddeddfwriaeth

28. Nodir yn yr Atodiad restr wedi ei chydgrynhoi o bwerau i wneud is-ddeddfwriaeth a roddir i Weinidogion Cymru, ac sydd wedi ei diweddaru ers y Memorandwm a osodwyd ar 4 Hydref er mwyn ystyried y diwygiadau a wnaed yn ystod y Cyfnod Pwyllgor yn Nhŷ'r Cyffredin ac a ddisgrifir yn y Memorandwm hwn. Mae ‘gweithdrefn penderfyniad cadarnhaol’ a ‘gweithdrefn penderfyniad negyddol’ yn cael eu diffinio yng Nghymal 32(7)(b) ac (8)(b) o'r Bil, yn y drefn honno, oherwydd bod y termau hynny'n gymwys i is-ddeddfwriaeth a wneir gan Weinidogion Cymru o dan y Bil.

Y rhesymau dros wneud y darpariaethau hyn ar gyfer Cymru yn y Bil Amaethyddiaeth

29. Fel y nodwyd yn y Memorandwm cyntaf, mae Llywodraeth Cymru o'r farn bod angen deddfwriaeth ar mwyn darparu sylfaen gyfreithiol ar gyfer cymorth i ffermwyr yn y dyfodol, ar ôl Brexit, wrth inni ymadael yn raddol â’r Polisi Amaethyddol Cyffredin. Drwy gynnwys darpariaethau yn awr ym Mil Amaethyddiaeth y DU, bydd Gweinidogion Cymru yn gallu cefnogi ffermwyr yng Nghymru, a byddant yn gallu gwneud yr hyn a fydd orau i Gymru.

30. Mae pŵer newydd wedi'i gynnwys yn y Bil hefyd i ailddosbarthu'r ardoll cig coch er mwyn datrys yr anghysonderau sy'n bodoli ar hyn o bryd. Mae'r Bil Amaethyddiaeth yn gyfle delfrydol i gael y pwerau angenrheidiol i gyflwyno cynllun priodol a fydd yn cywiro'r anghydbwysedd hwn.

Safbwynt Llywodraeth Cymru ar y Bil fel y'i diwygiwyd

31. Mae Llywodraeth Cymru yn fodlon â'r gwelliannau a gyflwynwyd gan Weinidogion Llywodraeth y DU yn ystod Cyfnod Pwyllgor Tŷ'r Cyffredin mewn perthynas â'r Ardoll Cig Coch (Rhan 8), y gwelliannau i Atodlen 3 (Darpariaeth o ran Cymru) a'r gwelliant i Ran 10 (Darpariaethau Terfynol). Mae hefyd yn fodlon â'r darpariaethau sy'n ymwneud â Chytundeb Sefydliad Masnach y Byd ar Amaethyddiaeth o gofio'r cytundeb a sicrhawyd gyda'r Ysgrifennydd Gwladol ar arfer y pŵer hwnnw i wneud rheoliadau. Mae'n debygol y bydd rhagor o newidiadau'n cael eu gwneud i'r Bil yn ystod y Cyfnod Adrodd yn Nhŷ'r Cyffredin, ac wrth iddo fynd ar ei daith drwy Dŷ'r Arglwyddi, ac yn eu plith bydd newidiadau er mwyn ymateb i bwyntiau a godir wrth i Bwyllgor y Cynulliad Cenedlaethol graffu ar y Bil. Mewn achos o'r fath, bydd Memoranda pellach yn cael eu gosod gerbron y Cynulliad fel y bo'n briodol. Gwneir argymhelliad terfynol ynglŷn â chydsyniad y Cynulliad Cenedlaethol unwaith y bydd yr holl welliannau wedi cael eu gwneud i'r Bil.

Goblygiadau ariannol

32. Nid oes unrhyw oblygiadau ariannol uniongyrchol i Lywodraeth Cymru nac i Gynulliad Cenedlaethol Cymru o ganlyniad i'r ffaith bod y pwerau hyn yn cael eu cyflwyno yn y Bil hwn.

Casgliad

33. Mae'r memorandwm atodol hwn yn disgrifio'r newidiadau perthnasol a wnaed i'r Bil ers iddo gael ei gyflwyno ac y mae angen cydsyniad y Cynulliad ar eu cyfer. Mae Llywodraeth Cymru yn cefnogi'r Bil fel y'i drafftiwyd. Dylid nodi, er hynny, nad oes modd argymell yn bendant y dylai'r Cynulliad roi cydsyniad i'r Bil nes y bydd yn nes at ddiwedd ei daith drwy Dŷ'r Arglwyddi, oherwydd ei bod yn bosibl y bydd rhagor o welliannau. Os bydd rhagor o welliannau a fydd o fewn cymhwysedd deddfwriaethol y Cynulliad, bydd rhagor o Femoranda Cydsyniad Atodol yn cael eu gosod gerbron y Cynulliad fel y bo'n briodol, a bydd Llywodraeth Cymru yn gwneud argymhelliad ynglŷn â chydsyniad y Cynulliad ar yr adeg briodol.

Lesley Griffiths AC
Y Gweinidog dros yr Amgylchedd, Ynni a Materion Gwledig
Mawrth 2019

Atodiad

MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL ATODOL: Y BIL AMAETHYDDIAETH – RHESTR WEDI'I CHYDGRYNHOI O DDARPARIAETHAU AC YNDDYNT BWERAU I WEINIDOGION CYMRU WNEUD IS-DDEDDFWRIAETH FEL Y'U DIWYGIWYD YN YSTOD Y CYFNOD PWYLLGOR YN NHŶ'R CYFFREDIN

Paragraff yn Atodlen 3	Disgrifiad o'r Pŵer	Y weithdrefn ddeddfwriaethol
2(7)	Pŵer i Weinidogion Cymru wneud darpariaeth drwy reoliadau ar gyfer ei gwneud yn ofynnol i Weinidogion Cymru neu berson arall gyhoeddi gwybodaeth benodedig ynghylch cymorth ariannol a roddwyd o dan Baragraff 1 o Atodlen 3, neu i wneud darpariaeth mewn cysylltiad â hynny.	Y weithdrefn penderfyniad cadarnhaol
3(1)	Pwerau i Weinidogion Cymru wneud darpariaeth drwy reoliadau ar gyfer gwirio, gorfodi a monitro cydymffurfiaeth pan fo cymorth ariannol i'w roi, neu wedi ei roi, o dan Baragraff 1 o Atodlen 3, neu i wneud darpariaeth mewn cysylltiad â hynny.	Y weithdrefn penderfyniad cadarnhaol
5(2)	Pwerau i Weinidogion Cymru estyn drwy reoliadau y cyfnod pontio amaethyddol i Gymru a nodir ym Mharagraff 5(1) o Atodlen 3.	Y weithdrefn penderfyniad cadarnhaol
6(1)	Pwerau i Weinidogion Cymru ddiwygio deddfwriaeth sy'n rheoli cynllun y taliad sylfaenol.	Y weithdrefn penderfyniad negyddol (oni bai bod adran 32(5) yn gymwys. Defnyddir y weithdrefn penderfyniad cadarnhaol mewn achosion o'r fath).
7(1)	Pwerau i Weinidogion Cymru wneud darpariaeth drwy reoliadau ar gyfer, neu mewn cysylltiad â lleihau hyd at 15% y terfynau uchaf ar gyfer taliadau uniongyrchol cenedlaethol a net yng Nghymru a fyddai, fel arall, yn gymwys yn 2020.	Y weithdrefn penderfyniad cadarnhaol
8(1)	Pwerau i Weinidogion Cymru addasu drwy reoliadau ddeddfwriaeth sy'n rheoli cynllun y taliad sylfaenol er mwyn gwneud darpariaeth ar gyfer, neu mewn cysylltiad â sicrhau bod	Y weithdrefn penderfyniad cadarnhaol

	cynllun y taliad sylfaenol yn parhau i weithredu mewn perthynas â Chymru am un neu fwy o flynyddoedd ar ôl 2020 (yn ddarostyngedig i unrhyw ddarpariaeth a wneir o dan baragraff 9).	
9(1)	Pwerau i Weinidogion Cymru wneud darpariaeth drwy reoliadau ar gyfer, neu mewn cysylltiad â, y naill neu'r llall, neu'r ddau, o'r canlynol: dirwyn i ben yn raddol daliadau uniongyrchol o dan gynllun y taliad sylfaenol o ran Cymru dros y cyfnod pontio amaethyddol cyfan i Gymru, neu ran o'r cyfnod hwnnw, neu derfynu taliadau uniongyrchol o dan y cynllun hwnnw o ran Chymru, ac yn hytrach gwneud taliadau datgysylltiedig o ran Cymru mewn cysylltiad â'r cyfnod pontio amaethyddol cyfan ar gyfer Cymru, neu ran o'r cyfnod hwnnw.	Y weithdrefn penderfyniad cadarnhaol
11(1)	Pwerau i Weinidogion Cymru addasu drwy reoliadau ddeddfwriaeth uniongyrchol yr UE a ddargedwir sy'n ymwneud ag ariannu, rheoli a monitro'r polisi amaethyddol cyffredin a'r is-ddeddfwriaeth sy'n ymwneud â'r ddeddfwriaeth honno.	Y weithdrefn penderfyniad negyddol (oni bai bod adran 32(5) yn gymwys. Defnyddir y weithdrefn penderfyniad cadarnhaol mewn achosion o'r fath)
12(1)	Pwerau i Weinidogion Cymru addasu drwy reoliadau ddeddfwriaeth uniongyrchol y UE a ddargedwir sy'n ymwneud â chymorth ar gyfer datblygu gwledig ac is-ddeddfwriaeth sy'n ymwneud â'r ddeddfwriaeth honno.	Y weithdrefn penderfyniad negyddol (oni bai bod adran 32(5) yn gymwys. Defnyddir y weithdrefn penderfyniad cadarnhaol mewn achosion o'r fath)
13(2)	Pwerau i Weinidogion Cymru drwy reoliadau ei gwneud yn ofynnol i bersonau sy'n rhan o gadwyn gyflenwi bwyd amaeth, neu sydd â chysylltiad agos â chadwyn gyflenwi o'r fath, ddarparu gwybodaeth am faterion sy'n gysylltiedig ag unrhyw un neu ragor o weithgareddau'r person sy'n gysylltiedig â'r	Y weithdrefn penderfyniad cadarnhaol

	gadwyn gyflenwi, i'r graddau y cyflawnir y gweithgareddau hynny yng Nghymru.	
17(1)	Pwerau i Weinidogion Cymru wneud darpariaeth drwy reoliadau ar gyfer gorfodi gofyniad a osodir o dan baragraff 13(1) neu (2) o Atodlen 3 (cadwyni cyflenwi bwyd amaeth: gofyniad i ddarparu gwybodaeth).	Y weithdrefn penderfyniad cadarnhaol
20 (1)	Pwerau i Weinidogion Cymru addasu drwy reoliadau ddeddfwriaeth uniongyrchol yr UE a ddargedwir sy'n ymwneud ag ymyrryd yn y farchnad gyhoeddus neu gymorth ar gyfer storio preifat at ddibenion newid y ffordd y mae darpariaethau'r ddeddfwriaeth honno yn gweithredu, i'r graddau y maent yn cael effaith o ran Cymru mewn cysylltiad ag amodau eithriadol yn y farchnad sy'n destun datganiad o dan baragraff 18 o Atodlen 3 (datganiad sy'n ymwneud ag amodau eithriadol yn y farchnad).	Y weithdrefn penderfyniad negyddol (oni bai bod adran 32(5) yn gymwys. Defnyddir y weithdrefn penderfyniad cadarnhaol mewn achosion o'r fath)
20(2)	Pwerau i Weinidogion Cymru addasu drwy reoliadau ddeddfwriaeth uniongyrchol yr UE a ddargedwir sy'n ymwneud ag ymyrryd yn y farchnad gyhoeddus neu gymorth ar gyfer storio preifat at ddibenion penodedig.	Y weithdrefn penderfyniad negyddol (oni bai bod adran 32(5) yn gymwys. Defnyddir y weithdrefn penderfyniad cadarnhaol mewn achosion o'r fath)
21(1)	Pwerau i Weinidogion Cymru, mewn perthynas â chynhyrchion sy'n dod o fewn sector penodedig ac a farchnetir yng Nghymru, wneud darpariaethau drwy reoliadau ynglŷn â'r safonau y mae'n rhaid i'r cynhyrchion hynny gydymffurfio â hwy.	Y weithdrefn penderfyniad cadarnhaol
21(3)	Pwerau i Weinidogion Cymru wneud darpariaeth ynglŷn â chategoreiddio, adnabod a chyflwyno carcasau buchol, carcasau moch a charcasau defaid gan ladd-dai yng Nghymru.	Y weithdrefn penderfyniad cadarnhaol
22(2)	Pwerau i Weinidogion Cymru ddiwygio drwy reoliadau y rhestr o sectorau amaethyddol ym mharagraff 22(1) o Atodlen 3 i ychwanegu neu ddileu sector, ac i nodi cynhyrchion sy'n dod o fewn pob sector, neu fel arall i roi manylion pellach am y sectorau.	Y weithdrefn penderfyniad negyddol (oni bai bod adran 32(5) yn gymwys. Defnyddir y weithdrefn

		penderfyniad cadarnhaol mewn achosion o'r fath)
29	Pwerau i Weinidogion Cymru (gan weithredu ar y cyd â'r Ysgrifennydd Gwladol a/neu Weinidogion yr Alban) wneud cynllun i ddarparu bod symiau'r ardoll cig coch a gesglir gan y corff ardollau ar gyfer un wlad ym Mhrydain Fawr yn cael eu talu i'r corff ardollau ar gyfer gwlad arall o'r fath.	Dim gweithdrefn

Mae cyfyngiadau ar y ddogfen hon

Lesley Griffiths AC / AM
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy 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

Mawrth 2019

Annwyl Mick

Bil Amaethyddiaeth y DU – Memorandwm Cydsyniad Deddfwriaethol Atodol

Diolch ichi am y craffu gwerthfawr gan y Pwyllgor o'r Memorandwm Cydsyniad Deddfwriaethol sy'n gysylltiedig â Bil Amaethyddiaeth y DU a'u hadroddiad fis Ionawr 2019. Mae swyddogion yn ystyried yr argymhellion a wnaethpwyd yn ofalus a byddaf yn rhoi'r newyddion diweddaraf i'r Pwyllgor ar sut yr ydym yn mynd i'r afael â'r materion a godwyd maes o law.

Yn y cyfamser, rwyf am sicrhau bod y Pwyllgor yn ymwybodol o Femorandwm Cydsyniad Deddfwriaethol Atodol i Fil Amaethyddiaeth y DU sydd wedi ei gyflwyno gennyf heddiw. Rwy'n atodi copi er gwybodaeth ichi.

Mae fersiwn ddiweddaraf y Bil, fel y'i diwygiwyd yn ystod Pwyllgor y Bil Cyhoeddus, i'w gweld yma:
https://publications.parliament.uk/pa/bills/cbill/2017-2019/0292/18292.pdf

Yn y Memorandwm Cydsyniad Deddfwriaethol a gyflwynwyd ar 4 Hydref 2018, rhoddais amlinelliad o ddau o bryderon oedd gennyf yn weddill yn gysylltiedig â'r Lefi Cig Coch a Chytundeb Sefydliad Masnach y Byd ar Amaethyddiaeth. Rwyf yn falch o gadarnhau ein bod bellach wedi datrys y ddwy broblem hon.

Fel y gŵyr y Pwyllgor, rydym wedi llwyddo i ddiwygio'r Bil i gynnig ffyrdd addas o ddatrys y broblem hirdymor o gael y lefi cig coch yn ôl. Mae hwn bellach yn rhan o'r Bil (fel y'i diwygiwyd ym Mhwyllgor y Bil Cyhoeddus) yng Nghymal 29. Mae'r Cymal newydd yn galluogi Gweinidogion, drwy weithredu ar y cyd, i sefydlu cynllun sy'n ei gwneud yn ofynnol i fyrddau amaethyddol ym Mhrydain Fawr ailddosbarthu'r lefi rhwng ei gilydd. Bydd swyddogion bellach yn parhau i ddatblygu cynllun ar yr un pryd â'r ddeddfwriaeth sy'n mynd drwy'r Senedd i sicrhau bod system deg wedi'i sefydlu cyn gynted â phosib.

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Rwyf hefyd yn falch o hysbysu'r Pwyllgor ein bod wedi sicrhau cytundeb sylweddol gyda Llywodraeth y DU i reoli'r defnydd o bwerau'r Ysgrifennydd Gwladol ym Mil Amaethyddiaeth y DU o ran sicrhau bod y DU yn cydymffurfio â Chytundeb Sefydliad Masnach y Byd ar Amaethyddiaeth. Mae hyn yn sicrhau bod buddiannau Cymru yn cael eu hystyried yn llawn. Amgaeaf gopi o'r cytundeb er gwybodaeth ichi. Mae'r cytundeb yn pennu dull cadarn a thryloyw i gynnwys Gweinidogion Cymru wrth wneud penderfyniadau yn ogystal â dull o ddatrys anghydfodau. Mae hwn yn ganlyniad da sy'n rhoi rôl gref a hyblygrwydd i Weinidogion Cymru ac fe'i sicrhawyd ar ôl llawer o gydweithio effeithiol rhwng y Llywodraethau. Mae hefyd yn fodel gwerthfawr y gellid ei ddefnyddio mewn meysydd eraill lle mae angen i lywodraethau gydweithredu, ac mae'n arwydd o ymrwymiad y ddwy lywodraeth i gydweithio.

Mae'r Memorandwm Atodol yn diweddaru'r sefyllfa o ran y pryderon a amlinellwyd uchod yn ogystal â nodi diwygiadau pellach a wnaethpwyd i Fil Amaethyddiaeth y DU yn ystod Pwyllgor y Bil Cyhoeddus sy'n gwneud darpariaeth berthnasol o fewn cymhwysedd deddfwriaethol y Cynulliad. Hoffwn ddarparu rhagor o wybodaeth i'r Pwyllgor os oes angen.

Mae'n debygol y bydd rhagor o newidiadau'n cael eu gwneud i'r Bil yn ystod y Cyfnod Adrodd yn Nhŷ'r Cyffredin, ac wrth iddo fynd ar ei daith drwy Dŷ'r Arglwyddi, er mwyn ymateb i bwyntiau a godir wrth i'r Pwyllgor graffu ar y Bil. Felly, rwyf yn disgwyl gosod Memorandwm Atodol arall yn nes ymlaen yn ystod proses y Bil, fel y bo'n briodol, cyn cyflwyno trafodaeth i'r Cynulliad i ystyried cydsynio i'r Cynnig Cydsyniad Deddfwriaethol.

Yn gywir
Lesley

Lesley Griffiths AC / AM
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

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