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Annwyl Aelod Cynulliad,

Bil Deddfwriaeth (Cymru) – Gwelliannau y Llywodraeth

Rwy'n amgáu manylion gwelliannau a gyflwynwyd gan y Llywodraeth i'r Bil Deddfwriaeth (Cymru) ac eglurhad eu diben a'u heffaith.

Yn gywir,

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

LEGISLATION (WALES) BILL – STAGE 3 GOVERNMENT AMENDMENTS

This table provides information about the amendments tabled in the name of Jeremy Miles AM on 13 June 2019

No.	GOVERNMENT AMENDMENT	GWELLIANT Y LLYWODRAETH	PURPOSE AND EFFECT
3	<p>Section 4, page 3, line 1, leave out –</p> <p>‘in relation to –</p> <p>(a) section 5 (equal status of texts of bilingual legislation);’,</p> <p>and insert –</p> <p>‘to section 5 (equal status of texts of bilingual legislation).</p> <p>(3) Paragraph (b) of that exception does not apply to –’.</p>	<p>Adran 4, tudalen 3, llinell 1, hepgorer –</p> <p>‘mewn perthynas ag –</p> <p>(a) adran 5 (statws cyfartal testunau deddfwriaeth ddwyieithog);’,</p> <p>a mewnosoder –</p> <p>‘i adran 5 (statws cyfartal testunau deddfwriaeth ddwyieithog).</p> <p>(3) Nid yw paragraff (b) o’r eithriad hwnnw yn gymwys i –’.</p>	<p>Amendment 3 amends section 4 of the Bill, so that subsection (1)(a) of that section applies to sections 10, 27 and 32.</p> <p>Section 4(1) provides that the provisions of Part 2 have effect in relation to an Assembly Act or Welsh subordinate instrument “<i>except so far as (a) express provision is made to the contrary, or (b) the context requires otherwise</i>”.</p> <p>Section 4(2) provides that this exception does not apply to section 5, or to sections 10, 27 and 32 which each provide separately that they are subject to express provision to the contrary.</p> <p>This amendment, together with amendments 4, 8 and 9, replaces the separate provisions in sections 10, 27 and 32 with a general provision in section 4. This is intended to simplify the structure of the provisions and to improve their consistency and accuracy.</p>
4	<p>Section 10, page 4, line 2, leave out ‘, unless express provision is made to the contrary,’.</p>	<p>Adran 10, tudalen 4, llinell 2, hepgorer ‘, oni wneir darpariaeth ddatganedig i’r gwrthwyneb,’.</p>	<p>This amendment removes wording from section 10 of the Bill which will be unnecessary as a result of amendment 3.</p> <p>Section 10 provides that references to a time of day are to GMT “unless express provision is made to the contrary”. Amendment 3 amends</p>

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			section 4 to provide that sections 10, 27 and 32 are all subject to “express provision to the contrary”. The general provision removes the need for the specific wording in section 10.
5	<p>Page 8, after line 5, insert a new section –</p> <p>[] References to direct EU legislation retained in domestic law after EU exit</p> <p>(1) This section applies where –</p> <p>(a) an Assembly Act receives Royal Assent, or a Welsh subordinate instrument is made, on or after exit day, and</p> <p>(b) the Act or instrument refers to any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement that forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 (c. 16) (incorporation of direct EU legislation).</p> <p>(2) The reference is a reference to the EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement as it forms part of domestic law (and not as it forms part of EU law).</p> <p>(3) In this section, the following expressions have the meanings given by section 20(1) of the European Union (Withdrawal) Act</p>	<p>Tudalen 8, ar ôl llinell 6, mewnosoder adran newydd –</p> <p>[] Cyfeiriadau at ddeddfwriaeth uniongyrchol UE a ddargedwir mewn cyfraith ddomestig ar ôl ymadael â'r UE</p> <p>(1) Mae'r adran hon yn gymwys pan fo –</p> <p>(a) Deddf Cynulliad yn cael y Cydsyniad Brenhinol, neu is-offeryn Cymreig yn cael ei wneud, ar neu ar ôl y diwrnod ymadael, a</p> <p>(b) y Ddeddf neu'r offeryn yn cyfeirio at unrhyw reoliad gan yr UE, penderfyniad gan yr UE, deddfwriaeth drydyddol gan yr UE neu ddarpariaeth yng nghytundeb yr AEE sy'n ffurfio rhan o gyfraith ddomestig yn rhinwedd adran 3 o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16) (cynnwys deddfwriaeth uniongyrchol UE).</p> <p>(2) Mae'r cyfeiriad yn gyfeiriad at reoliad gan yr UE, penderfyniad gan yr UE, deddfwriaeth drydyddol gan yr UE neu ddarpariaeth yng nghytundeb yr AEE fel y mae'n ffurfio rhan o gyfraith ddomestig (ac nid fel y mae'n ffurfio rhan o gyfraith yr UE).</p>	<p>The European Union (Withdrawal) Act 2018 (“the 2018 Act”) provides for certain types of direct EU legislation (such as EU regulations and decisions) to be retained in domestic law from ‘exit day’ (currently 31 October 2019). This means that from exit day there will be two versions of those types of EU legislation: the version which forms part of domestic law in the UK, and the version which continues to be part of the law of the EU (excluding the UK).</p> <p>Amendment 5 would insert a new section into the Bill, after current section 23, to provide that post-exit cross-references to direct EU legislation are references to that legislation in the form in which it has been retained in domestic law (rather than in the form in which it continues to apply to the EU).</p> <p>The new section is intended to avoid any doubt about which version of the EU legislation is being referred to. Similar amendments have been made to the Interpretation Act 1978 and the equivalent Scottish and Northern Ireland legislation under the 2018 Act.</p> <p>The new section would be subject to the</p>

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	<p>2018 –</p> <p>“domestic law”;</p> <p>“EU decision”;</p> <p>“EU regulation”;</p> <p>“EU tertiary legislation”.’.</p>	<p>(3) Yn yr adran hon, mae i’r ymadroddion Cymraeg a ganlyn yr un ystyron ag a roddir i’r ymadroddion Saesneg cyfatebol yn adran 20(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 –</p> <p>“cyfraith ddomestig” (“domestic law”);</p> <p>“deddfwriaeth drydyddol gan yr UE” (“EU tertiary legislation”);</p> <p>“penderfyniad gan yr UE” (“EU decision”);</p> <p>“rheoliad gan yr UE” (“EU regulation”).’.</p>	<p>“contrary intention” rule in section 4 of the Bill.</p>
6	<p>Section 24, page 8, after line 13, insert –</p> <p>‘() Nothing in sections 22 to <i>[new section – References to direct EU legislation retained in domestic law after EU exit]</i> limits the operation of this section.’.</p>	<p>Adran 24, tudalen 8, ar ôl llinell 14, mewnosoder –</p> <p>‘() Nid oes dim yn adrannau 22 i <i>[adran newydd – Cyfeiriadau at ddeddfwriaeth uniongyrchol UE a ddargedwir mewn cyfraith ddomestig ar ôl ymadael â’r UE]</i> yn cyfyngu ar weithrediad yr adran hon.’.</p>	<p>Section 24 applies where an Assembly Act or Welsh subordinate instrument refers to other legislation, and that other legislation is amended, whether before or after the Act or instrument that refers to it is enacted. Section 24 provides that the reference is to the amended legislation.</p> <p>Section 24 applies to references to any legislation forming part of UK law, which will include retained direct EU legislation from exit day.</p> <p>Amendment 6 amends section 24 to provide expressly that the effect of section 24 is not limited in any way by the new section introduced by amendment 5 (which provides that references to direct EU legislation are to</p>

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			<p>the versions retained in domestic law). In other words, the amendment clarifies that section 24 applies in addition to that new section, so that post-exit references to direct EU legislation will be references to that legislation as retained in domestic law <u>and</u> as amended by any other domestic legislation.</p> <p>Similar amendments have been made to the Interpretation Act 1978 and the equivalent Scottish and Northern Ireland legislation under the 2018 Act.</p> <p>It is already the case that section 24 applies in addition to sections 22 and 23 of the Bill (about editions of Acts and Measures), but amendment 6 will mean that section 24 states explicitly that those sections do not limit the operation of section 24. This is to avoid any doubt and to be consistent with the approach to the relationship between section 24 and the new section introduced by amendment 5.</p>
7	<p>Section 25, page 8, after line 27, insert –</p> <p>‘(3) See also regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/628) for provision about the effect on or after exit day of certain references which exist before exit day.’</p>	<p>Adran 25, tudalen 8, ar ôl llinell 28, mewnosoder –</p> <p>‘(3) Gweler hefyd reoliad 2 o Reoliadau Deddf yr Undeb Ewropeaidd (Ymadael) 2018 (Addasiadau Canlyniadol a Diddymiadau a Dirymiadau) (Ymadael â’r UE) 2019 (O.S. 2019/628) ar gyfer darpariaeth am effaith cyfeiriadau penodol sy’n bodoli cyn y diwrnod ymadael ar y diwrnod ymadael neu ar</p>	<p>The Bill was drafted on the assumption that exit day would fall on 29 March 2019 (and as such before the Bill could be passed by the Assembly). The 2018 Act has been amended since the Bill was introduced, and now provides that exit day will fall on 31 October 2019. It is therefore possible the Bill could be passed and come into force before the UK’s exit from the EU. This amendment (and amendments 10, 11</p>

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		<p>ôl y diwrnod ymadael’.</p>	<p>and 12) will ensure that the Bill reflects this possibility.</p> <p>Section 25 of the Bill provides that cross-references to EU instruments are references to those instruments as they have already been amended before the reference is enacted.</p> <p>If section 25 comes into force before exit day, it will apply to references to EU instruments (such as regulations and directives) in Assembly Acts and Welsh subordinate instruments enacted during the period before exit day. On exit day, some of those EU instruments will be retained in domestic law and the effect of references to them will change. References to instruments retained in domestic law will become references to the version that forms part of domestic law; references to other instruments (such as directives) will continue to be references to them as they had effect in EU law at the time when the reference was enacted.</p> <p>The effect of section 25 will therefore be modified on exit day if section 25 is in force. The purpose of amendment 7 is to draw attention to the legislation which makes that change on exit day, which is regulation 2 of the <i>European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019</i>.</p>

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8	Section 27, page 9, line 16, leave out subsection (4).	Adran 27, tudalen 9, llinell 17, hepgorer is-adran (4).	<p>This amendment removes section 27(4), which will be unnecessary due to amendment 3.</p> <p>Section 27 provides that Acts and instruments bind the Crown, but section 27(4) provides that this is subject to “express provision to the contrary” in the particular Act or instrument.</p> <p>Amendment 3 amends section 4 to provide that sections 10, 27 and 32 are all subject to any “express provision to the contrary”. This makes section 27(4) unnecessary.</p> <p>The exception in section 4 appears wider than that in section 27(4), because it does not specify that the “express provision to the contrary” must be in the particular Act or instrument that is being interpreted. But if there were provision to the contrary in any other Act of the Assembly or of the UK Parliament, that would also override the general rule on Crown application in section 27. By applying the more broadly-worded exception in section 4, amendment 8 therefore ensures that the provisions reflect the true legal position more accurately.</p>
9	<p>Section 32, page 10, line 13, leave out –</p> <p>‘(1) This section applies where –</p> <p>(a) an Assembly Act or a Welsh subordinate instrument repeals or revokes an enactment (“A”),</p>	<p>Adran 32, tudalen 10, llinell 15, hepgorer adran 32 a mewnosoder –</p> <p>‘Pan fo –</p> <p>(a) Deddf Cynulliad neu is-offeryn Cymreig yn diddymu neu’n</p>	<p>This amendment removes wording from section 32 of the Bill which will be unnecessary due to amendment 3.</p> <p>Section 32 says that where an Act or instrument repeals an earlier repeal, it does not revive the law that was previously repealed, unless it</p>

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	<p>and</p> <p>(b) A previously repealed or revoked any other enactment (“B”) or abolished any other rule of law (“C”).</p> <p>(2) The repeal or revocation of A does not revive B or C, unless the Assembly Act or Welsh subordinate instrument expressly provides for the revival of’,</p> <p>and insert –</p> <p>‘Where –</p> <p>(a) an Assembly Act or a Welsh subordinate instrument repeals or revokes an enactment (“A”), and</p> <p>(b) A previously repealed or revoked any other enactment (“B”) or abolished any other rule of law (“C”),</p> <p>the repeal or revocation of A does not revive’.</p>	<p>dirymu deddfiad (“A”), a</p> <p>(b) A eisoes wedi diddymu neu ddirymu unrhyw ddeddfiad arall (“B”) neu wedi dileu unrhyw rheol gyfreithiol arall (“C”),</p> <p>nid yw diddymiad neu ddirymiad A yn adfer B neu C.’.</p>	<p>“expressly provides” for the revival of that law.</p> <p>Amendment 3 amends section 4 to provide that sections 10, 27 and 32 are all subject to any “express provision to the contrary”. This makes the exception in section 32 unnecessary.</p> <p>The exception in section 4 appears wider than that in section 32, because it does not specify that the express provision must be in the particular Act or instrument being interpreted. But if there were provision for previously repealed law to be revived in another Act of the Assembly or of the UK Parliament, that would also override the general rule in section 32. By applying the more broadly-worded exception in section 4, amendment 9 therefore ensures that the provisions reflect the true legal position more accurately.</p> <p>If section 32 is shortened by removing this exception, it is also possible to simplify the structure of the section. The amendment therefore replaces the existing text with a version which is not divided into subsections.</p>
10	Schedule 1, page 16, Table, line 35, column 2, after ‘but’, insert ‘in relation to a time on or after exit day’.	Atodlen 1, tudalen 17, Tabl, llinell 29, colofn 2, ar ôl ‘ond’, mewnosoder ‘mewn perthynas ag amser ar neu ar ôl y diwrnod ymadael’.	It is prudent to ensure that definitions in Schedule 1 to the Bill relating to EU legislation cover the situations before and after the UK’s exit (given that exit day is due to occur after the Bill is passed, and if postponed could occur after Part 2 of the Bill is brought into force).

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			<p>Parts of the EEA Agreement have effect as part of EU law, and will be retained in domestic law from exit day. From then on, references to the EEA Agreement should exclude the parts of it retained in domestic law.</p> <p>The definition of “EEA agreement” in Schedule 1 to the Bill as introduced assumes that exit day has already happened. Amendment 10 amends the definition to make clear that the exclusion of retained direct EU legislation from the definition will apply only from exit day.</p>
11	Schedule 1, page 17, Table, line 22, column 2, after ‘but’, insert ‘in relation to a time on or after exit day’.	Atodlen 1, tudalen 20, Tabl, llinell 21, colofn 2, ar ôl ‘ond’, mewnosoder ‘mewn perthynas ag amser ar neu ar ôl y diwrnod ymadael’.	<p>The 2018 Act provides that certain EU instruments (regulations, decisions and tertiary legislation) are retained in domestic law from exit day. From then on, references to an “EU instrument” should exclude those instruments so far as they are retained in domestic law.</p> <p>The definition of “EU instrument” in Schedule 1 to the Bill as introduced assumes that exit day has already happened. Amendment 11 amends the definition to make clear that the exclusion of retained direct EU legislation applies only from exit day onwards.</p>
12	Schedule 1, page 21, Table, line 15, column 2, leave out – ‘means the Treaties or the EU Treaties, within the meaning given by section 1(2) of the European	Atodlen 1, tudalen 17, Tabl, llinell 31, colofn 2, hepgorer – ‘ystyr “y Cytuniadau” neu “Cytuniadau’r UE” yw’r Cytuniadau neu Gytuniadau’r UE, o fewn yr ystyr a	<p>The 2018 Act repeals the European Communities Act 1972, which gives effect to the EU Treaties in UK law, with effect from exit day.</p> <p>Schedule 1 to the Bill as introduced defined the EU Treaties on the assumption that the repeal</p>

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	<p>Communities Act 1972 (c. 68) as that Act had effect immediately before its repeal by section 1 of the European Union (Withdrawal) Act 2018 (c. 16),’</p> <p>and insert –</p> <p>‘ –</p> <p>(a) in relation to a time before exit day, has the meaning given by the European Communities Act 1972 (c. 68) (see section 1(2) to (4) of, and Part 1 of Schedule 1 to, that Act);</p> <p>(b) in relation to a time on or after exit day, has the meaning given by that Act as it had effect immediately before its repeal by section 1 of the European Union (Withdrawal) Act 2018 (c. 16), and refers to the Treaties or the EU Treaties’.</p>	<p>roddir i “the Treaties” a “the EU Treaties” gan adran 1(2) o Ddeddf y Cymunedau Ewropeaidd 1972 (p. 68) fel yr oedd gan y Ddeddf honno effaith yn union cyn ei diddymu gan adran 1 o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16),’</p> <p>a mewnosoder –</p> <p>‘mae i “y Cytuniadau” neu “Cytuniadau’r UE” –</p> <p>(a) mewn perthynas ag amser cyn y diwrnod ymadael, yr ystyr a roddir i “the Treaties” neu “the EU Treaties” gan Ddeddf y Cymunedau Ewropeaidd 1972 (p. 68) (gweler adran 1(2) i (4) o’r Ddeddf honno a Rhan 1 o Atodlen 1 iddi);</p> <p>(b) mewn perthynas ag amser ar neu ar ôl y diwrnod ymadael, yr ystyr a roddir i “the Treaties” neu “the EU Treaties” gan y Ddeddf honno fel yr oedd ganddi effaith yn union cyn ei diddymu gan adran 1 o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16), ac mae’n cyfeirio at y Cytuniadau neu Gytuniadau’r UE’.</p>	<p>of the 1972 Act had already taken place. They were therefore defined as the Treaties falling within the definition in the 1972 Act as it had effect immediately before its repeal, and as meaning those Treaties as they stood immediately before exit day.</p> <p>Amendment 12 amends the definition of “the Treaties” or “the EU Treaties” so that it also covers the situation before exit day. Before exit day, the definition is simply the definition currently given by the 1972 Act. (That is the existing position under the Interpretation Act 1978, which simply applies the definition in the 1972 Act.)</p>