

## Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

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Lleoliad:  
Ystafell Bwyllgora 2 – Y Senedd

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Dyddiad:  
Dydd Llun, 5 Tachwedd 2012

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Amser:  
14:30

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



I gael rhagor o wybodaeth, cysylltwch â:

**Steve George**  
Clerc y Pwyllgor  
029 2089 8242  
[PwyllgorMCD@cymru.gov.uk](mailto:PwyllgorMCD@cymru.gov.uk)

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### Agenda

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#### 1. Cyflwyniad, ymddiheuriadau, dirprwyon a datganiadau o fuddiant

1. Offerynnau nad ydynt yn cynnwys materion i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 neu 21.3

2.

Offerynnau'r weithdrefn penderfyniad negyddol

#### CLA185 – Rheoliadau Cydlafurio Rhwng Cyrff Addysg (Cymru) 2012

Y weithdrefn negyddol. Fe'u gwnaed ar 22 Hydref 2012. Fe'u gosodwyd ar 23 Hydref 2012. Yn dod i rym ar 16 Tachwedd 2012

Offerynnau'r weithdrefn penderfyniad cadarnhaol

Dim

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

Offerynnau'r weithdrefn penderfyniad negyddol

Dim

Offerynnau'r weithdrefn penderfyniad cadarnhaol

Dim

**Offerynnau'r weithdrefn penderfyniad uwchgadarnhaol**

**CLA184 – Gorchymyn Cyrff Cyhoeddus (Cyflenwad Dŵr ac Ansawdd Dŵr)  
(Ffioedd Arolygu) 2012** (Tudalennau 1 – 42)

Y weithdrefn uwchgadarnhaol. Ni nodwyd y dyddiad y'i gwnaed. Ni nodwyd y dyddiad gosod. Yn dod i rym yn unol ag erthygl 1

**4. Y Bil Menter a Diwygio Rheoleiddio: Cynnig Cydsyniad  
Deddfwriaethol Atodol** (Tudalennau 43 – 49)

**Papurau:**

**CLA(4)-22-12(t1)** – Memorandwm Cydsyniad Deddfwriaethol

Y Bil Menter a Diwygio Rheoleiddio – Pwerau i Gynnwys Darpariaethau Machlud ac Adolygu Mewn Is-ddeddfwriaeth

**CLA(4)-22-12(t2)** – Adroddiad y Cynghorwyr Cyfreithiol

**5. Eitem 5: Bil Pensiynau'r Gwasanaeth Cyhoeddus: Memorandwm  
Cydsyniad Deddfwriaethol** (Tudalennau 50 – 64)

**Papurau:**

**CLA(4)-21-12(t1)** – Memorandwm Cydsyniad Deddfwriaethol: Bil Pensiynau'r Gwasanaeth Cyhoeddus – Cymalau yn Ymwneud â'r Cyfyngiadau sydd i'w Cymhwyso i Gynlluniau Newydd

**CLA(4)-21-12(t2)** – Adroddiad y Cynghorwyr Cyfreithiol

**CLA(4)-22-12(t3)** – Llythyr gan y Cadeirydd at y Gweinidog dyddiedig 24 Hydref 2012

**CLA(4)-22-12(t4)** – Ymateb y Gweinidog

**6. Eitem 6: Gohebiaeth y Pwyllgor**

**Eitem 6.1: CLA178 – Rheoliadau'r Tafod Glas (Cymru) (Diwygio) 2012**  
(Tudalennau 65 – 68)

**Papurau:**

**CLA(4)-22-12(t5)** – Llythyr gan y Cadeirydd at y Gweinidog dyddiedig 11 Hydref 2012

**CLA(4)-22-11(t6)** – Ymateb y Gweinidog dyddiedig 24 Hydref 2012

**CLA(4)-22-11(t7)** – CLA178 – Adroddiad

## **7. Eitem 7: Dyddiad y cyfarfod nesaf**

**12 Tachwedd 2012**

### **Papur i'w nodi**

CLA(4)-21-12 - Adroddiad o'r Cyfarfod ar 22 Hydref 2012

### **Trawsgrifiad**

[Trawsgrifiad o'r cyfarfod.](#)

# Eitem 3.1

*Gorchymyn drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 19 o Ddeddf Cyrff Cyhoeddus 2011, i'w gymeradwyo drwy benderfyniad Cynulliad Cenedlaethol Cymru.*

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OFFERYNNAU STATUDOL  
CYMRU DRAFFT

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**2012 Rhif (Cy. )**

## **CYRFF CYHOEDDUS**

**Y DIWYDIANT DŴR, CYMRU A  
LLOEGR**

**FFIOEDD A THALIADAU, CYMRU A  
LLOEGR**

**Gorchymyn Cyrff Cyhoeddus  
(Cyflenwad Dŵr ac Ansawdd Dŵr)  
(Ffioedd Arolygu) 2012**

### **NODYN ESBONIADOL**

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

Mae'r Gorchymyn hwn yn darparu i ffioedd fod yn daladwy gan gyflenwr dŵr perthnasol am gyflawni swyddogaethau penodol o dan Ddeddf y Diwydiant Dŵr 1991 gan arolygydd a benodir gan Weinidogion Cymru o dan y Ddeddf honno. Mae'r swyddogaethau yn ymwneud â'r ymchwiliadau a'r gofynion adrodd a ganlyn—

- (a) gwirio trefniadau samplu a dadansoddi dŵr;
- (b) gwirio trefniadau rheoli cyflenwad dŵr;
- (c) ymchwilio i ddigwyddiad, achlysur, argyfwng neu fater arall sy'n deillio o ansawdd neu ddigonolrwydd dŵr;
- (d) gwirio'r dull o ymdrin â chwynion gan ddefnyddwyr am ansawdd dŵr a'r dull o adrodd ar y cwynion hynny; ac
- (e) gwirio cydymffurfedd â gofynion i roi gwybodaeth i Weinidogion Cymru ynghylch y trefniadau a'r materion hyn neu i'w hysbysu am y trefniadau a'r materion hyn.

Mae'r Gorchymyn hwn yn nodi'r amgylchiadau pan fo ffioedd yn daladwy ac yn cael eu cymeradwyo, eu

cyhoeddi a'u hadolygu a'r modd o wneud hynny (erthygl 4 a'r Atodlen).

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar wneud Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Gorchymyn hwn. O ganlyniad, lluniwyd asesiad effaith rheoleiddiol o'r costau a'r buddiannau sy'n debygol o ddeillio o gydymffurfio â'r Gorchymyn hwn. Gellir cael copi oddi wrth: Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

*Gorchymyn drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 19 o Ddeddf Cyrff Cyhoeddus 2011, i'w gymeradwyo drwy benderfyniad Cynulliad Cenedlaethol Cymru.*

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**2012 Rhif (Cy. )**

**CYRFF CYHOEDDUS**

**Y DIWYDIANT DŴR, CYMRU A  
LLOEGR**

**FFIOEDD A THALIADAU, CYMRU A  
LLOEGR**

**Gorchymyn Cyrff Cyhoeddus  
(Cyflenwad Dŵr ac Ansawdd Dŵr)  
(Ffioedd Arolygu) 2012**

*Gwnaed*

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*Yn dod i rym yn unol ag erthygl 1*

Mae Gweinidogion Cymru yn gwneud y Gorchymyn a ganlyn drwy arfer y pwerau a roddwyd gan adrannau 14(3) a 15(1) o Ddeddf Cyrff Cyhoeddus 2011(1) (“y Ddeddf”).

At ddibenion adran 16 o'r Ddeddf, mae Gweinidogion Cymru o'r farn—

- (a) bod y Gorchymyn hwn yn ateb y diben y cyfeirir ato yn adran 16(1) o'r Ddeddf; a
- (b) bod yr amodau yn adran 16(2)(a) a (b) o'r Ddeddf wedi eu bodloni.

Mae Gweinidogion Cymru wedi ymgynghori yn unol ag adran 18 o'r Ddeddf.

Mae drafft o'r Gorchymyn hwn a dogfen esboniadol sy'n cynnwys yr wybodaeth sy'n ofynnol o dan adran

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(1) 2011 p.24.

19(2) o'r Ddeddf wedi eu gosod gerbron Cynulliad Cenedlaethol Cymru yn unol ag adran 19(1) ar ôl diwedd y cyfnod o ddeuddeng wythnos fel a bennir yn adran 19(3). Yn unol ag adran 19(4) o'r Ddeddf, mae drafft o'r Gorchymyn hwn wedi ei gymeradwyo drwy benderfyniad Cynulliad Cenedlaethol Cymru ar ôl diwedd y cyfnod o 40 niwrnod y cyfeirir ato yn y ddarpariaeth honno.

### **Enwi, cychwyn a rychwantu**

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Cyrff Cyhoeddus (Cyflenwad Dŵr ac Ansawdd Dŵr) (Ffioedd Arolygu) 2012.

(2) Daw i rym drannoeth y diwrnod y'i gwneir.

(3) Mae'n rychwantu Cymru a Lloegr.

### **Dehongli**

2.—(1) Yn y Gorchymyn hwn—

ystyr “Deddf 1991” (“*the 1991 Act*”) yw Deddf y Diwydiant Dŵr 1991(1);

ystyr “arolygydd” (“*inspector*”) yw person a benodir gan Weinidogion Cymru o dan adran 86(1) o Ddeddf 1991 (aseswyr gorfodi ansawdd dŵr)(2);

ystyr “cyflenwr dŵr perthnasol” (“*relevant water supplier*”) yw—

(a) ymgwymerwr dŵr(3) y mae ei ardal yn gyfan gwbl neu'n bennaf yng Nghymru; neu

(b) cwmni sy'n ddeiliad trwydded cyflenwi dŵr o fewn ystyr adran 17A o Ddeddf 1991 (trwyddedu cyflenwyr dŵr) sy'n defnyddio system gyflenwi unrhyw ymgwymerwr dŵr y mae ei ardal yn gyfan gwbl neu'n bennaf yng Nghymru;

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(1) 1991 p.56.

(2) Diwygiwyd adran 86 gan adran 57 ac adran 101(1) o Ddeddf Dŵr 2003 p.37 a pharagraff 27 o Atodlen 8 iddi. Y mae offerynnau diwygio eraill i'w cael, ond nid yw'r un ohonynt yn berthnasol. Gwnaed y swyddogaethau o dan adran 86 (ac eithrio is-adran (1A)) yn arferadwy gan Gynulliad Cenedlaethol Cymru (“y Cynulliad”) i'r un graddau ag y mae'r pŵerau, y dyletswyddau a'r darpariaethau eraill y mae adran 86 yn gymwys iddynt yn arferadwy gan y Cynulliad drwy erthygl 2 o Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672) (“y Gorchymyn”); gweler y cofnod yn Atodlen 1 i'r Gorchymyn ar gyfer Deddf y Diwydiant Dŵr 1991 fel y'i hamnewidiwyd gan baragraff (e) o Atodlen 3 i Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 2000 (O.S. 2000/253) ac fel y'i diwygiwyd gan adran 100(2) o Ddeddf Dŵr 2003. Yn rhinwedd adran 162 o Ddeddf Llywodraeth Cymru 2006 p.32 a pharagraff 30 o Atodlen 11 iddi, mae'r swyddogaethau a roddwyd i'r Cynulliad yn arferadwy gan Weinidogion Cymru.

(3) Gweler Atodlen 1 i Ddeddf Ddehongli 1978 p.30.

ystyr “Prif Arolygydd” (“*Chief Inspector*”) yw'r person a ddynodir felly o dan adran 86(1B) o Ddeddf 1991; a

rhaid dehongli “system gyflenwi” (“*supply system*”) yn unol ag adran 17B(5) o Ddeddf 1991.

(2) Yn y Gorchymyn hwn bydd unrhyw gyfeiriadau at “y tabl” (“*the table*”) yn gyfeiriadau at y tabl yn yr Atodlen.

### **Y cyfnod y caniateir codi tâl amdano**

3.—(1) Yn y Gorchymyn hwn rhaid cyfrifo nifer y cyfnodau y caniateir codi tâl amdanynt yn seiliedig ar y fformiwla canlynol—

$$C = \frac{A}{7}$$

pan—

“C” yw nifer y cyfnodau y caniateir codi tâl amdanynt; a

“A” yw cyfanswm yr amser (a fynegir mewn oriau) pan fo arolygydd yn cyflawni swyddogaeth a bennir ym mharagraff (b), (c) neu (d) o golofn 1 y tabl ar ddiwrnod calendr.

(2) At ddibenion cyfrifo “A” os bydd mwy nag un arolygydd yn cyflawni'r swyddogaeth, rhaid agregu cyfanswm yr amser a dreuliyd gan bob arolygydd.

### **Ffioedd**

4.—(1) Caiff y Prif Arolygydd godi ffi ar gyflenwr dŵr perthnasol, a honno'n daladwy pan geir anfoneb ar ei chyfer, am arfer swyddogaethau arolygydd o dan adran 86(2) o Ddeddf 1991 fel y'u pennir yng ngholofn 1 o'r tabl.

(2) Rhaid i'r Prif Arolygydd benderfynu ar y ffi yn unol â'r cofnod cyfatebol yng ngholofn 2 o'r tabl.

(3) Rhaid i'r cyfraddau sydd i'w cymhwyso wrth wneud penderfyniad o ran y ffi y cyfeirir ati yng ngholofn 2 o'r tabl gael eu pennu gan y Prif Arolygydd ac—

- (a) cael eu cymeradwyo gan Weinidogion Cymru;
- (b) cael eu cyhoeddi gan Weinidogion Cymru (rhaid i hynny gynnwys eu cyhoeddi ar wefan); ac
- (c) cael eu hadolygu gan Weinidogion Cymru ar neu cyn 30 Mehefin ym mhob blwyddyn galendr ar ôl y flwyddyn galendr pan gymeradwywyd y ffi ddiwethaf gan Weinidogion Cymru o dan is-baragraff (a).

(4) Rhaid i unrhyw ffioedd a geir o dan y Gorchymyn hwn gael eu talu i'r Gronfa Gyfunol.



*Enw*

Gweinidog yr Amgylchedd a Datblygu Cynaliadwy,  
un o Weinidogion Cymru

Dyddiad

# YR ATODLEN

Erthygl 4

## Y FFIOEDD AM GYFLAWNI'R SWYDDOGAETHAU O DAN ADRAN 86 O DDEDDF Y DIWYDIANT DŴR 1991

### Tabl

<i>1</i>	<i>2</i>
<i>Y Swyddogaeth</i>	<i>Y Ffi</i>
(a) Gwirio bod y trefniadau samplu a dadansoddi ar gyfer samplau dŵr a gesglir gan y cyflenwr dŵr perthnasol yn cydymffurfio â'r canlynol—	Ffi i'w chyfrifo gan ddefnyddio'r gyfradd—
(i) Rheoliadau Cyflenwi Dŵr (Ansawdd Dŵr) 2010(1);	(i) a bennwyd ar gyfer pob grŵp o 100 o ganlyniadau samplau dŵr a geir ac a wirir; a
(ii) adran 68 o Ddeddf 1991; a	(ii) wedi ei lluosio â chyfanswm pob grŵp o'r fath.
(iii) unrhyw ofynion am ddata sampl y mae'n ofynnol eu darparu o dan adran 202 o Ddeddf 1991.	
(b) Gwirio—	Ffi i'w chyfrifo gan ddefnyddio'r gyfradd—
(i) bod trefniadau rheoli cyflenwad dŵr y cyflenwr dŵr perthnasol yn cydymffurfio â'r canlynol—	(i) wedi ei phennu fesul cyfnod y caniateir codi tâl amdano; a
(aa) Rheoliadau Cyflenwi Dŵr (Ansawdd Dŵr) 2010;	(ii) wedi ei lluosio â chyfanswm y cyfnodau y caniateir codi tâl amdanynt a dreuliwyd yn cyflawni'r swyddogaeth.
(bb) adran 37 o Ddeddf 1991;	
(cc) adran 68 o	

(1) O.S. 2010/994 (Cy.99) fel y'i diwygiwyd gan O.S. 2011/14 (Cy.7).

Ddeddf  
1991; a

- (ii) bod y cyflenwr dŵr perthnasol wedi cydymffurfio ag unrhyw ofyniad gan Weinidogion Cymru i roi gwybodaeth am y trefniadau hyn o dan adran 202 o Ddeddf 1991.

- (c) Mewn perthynas â chyflenwr dŵr perthnasol—
    - (i) Ymchwilio i ddigwyddiad, achlysur, argyfwng neu fater arall pan fo unrhyw un neu rai o'r materion hynny yn dangos ei bod yn bosibl nad yw'r cyflenwr dŵr perthnasol wedi cydymffurfio â'r canlynol—
      - (aa) Rheoliadau Cyflenwi Dŵr (Ansawdd Dŵr) 2010;
      - (bb) adran 37 o Ddeddf 1991;
      - (cc) adran 68 o Ddeddf 1991; a
    - (ii) gwirio bod hysbysiad wedi ei roi am ddigwyddiad, achlysur, argyfwng neu fater arall o'r fath gan y cyflenwr dŵr perthnasol yn unol â unrhyw ofyniad gan Weinidogion
- Ffi i'w chyfrifo gan ddefnyddio'r gyfradd—
- (i) wedi ei phennu fesul cyfnod y caniateir codi tâl amdano; a
  - (ii) wedi ei lluosio â chyfanswm y cyfnodau y caniateir codi tâl amdanynt a dreuliwyd yn cyflawni'r swyddogaeth.

Cymru i roi  
gwybodaeth o'r  
fath o dan adran  
202 o Ddeddf  
1991.

- (d) Mewn perthynas â chyflenwr dŵr perthnasol—
- (i) ymchwilio i gwynion gan ddefnyddwyr am ansawdd neu ddigonolrwydd dŵr lle bod y gwyn yn dangos ei bod yn bosibl nad yw'r cyflenwr dŵr perthnasol wedi cydymffurfio â'r canlynol—
- (aa) Rheoliadau Cyflenwi Dŵr (Ansawdd Dŵr) 2010;
- (bb) adran 37 o Ddeddf 1991;
- (cc) adran 68 o Ddeddf 1991; a
- (ii) gwirio bod y cyflenwr dŵr perthnasol wedi cydymffurfio ag unrhyw ofyniad gan Weinidogion Cymru i roi gwybodaeth am gwynion o'r fath o dan adran 202 o Ddeddf 1991.
- Ffi i'w chyfrifo gan ddefnyddio'r gyfradd—
- (i) wedi ei phennu fesul cyfnod y caniateir codi tâl amdano; a
- (ii) wedi ei lluosio â chyfanswm y cyfnodau y caniateir codi tâl amdanynt a dreuliwyd yn cyflawni'r swyddogaeth.
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**EXPLANATORY MEMORANDUM TO**  
**THE PUBLIC BODIES (WATER SUPPLY AND WATER QUALITY)**  
**(INSPECTION FEES) ORDER 2012**

**2012 No. [XXXX]**

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Public Bodies (Water Supply and Water Quality) (Inspection Fees) Order 2012.

I am satisfied that the benefits outweigh any costs.

Name of Minister: J Griffiths

Date: 15 October 2012

Tudalen 10

UNCLASSIFIED

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

**2. Purpose of the instrument**

2.1 The purpose of this instrument is to enable inspectors appointed under the Water Industry Act 1991 (WIA 1991) “the Drinking Water Inspectorate” (DWI) to recover from relevant water suppliers the cost of regulatory work undertaken in relation to the quality of drinking water supplies wholly or mainly in Wales by way of a fee charging regime.

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

3.1 This Order is being made by the Welsh Ministers in relation to relevant water suppliers wholly or mainly in Wales. A similar Order is being made by Defra in relation to relevant water suppliers wholly or mainly in England. The Orders are being made under the Public Bodies Act 2011. Each Order has different enabling powers under that Act so two separate Orders are required.

3.2 The Public Bodies Act 2011 confers powers on the Welsh Ministers and Secretary of State to modify the funding arrangements of the DWI. However, the respective enabling powers are distinct and separate. The enabling powers of the Welsh Ministers are conferred by Section 14(3) of the Act and the Secretary of State by Section 3(1). Further, the Secretary of State is required to obtain Treasury consent (Section 4(2) of the Act) whereas there is no such requirement on the Welsh Ministers.

3.3 In addition there are separate regulations in relation to water supply and water quality made under the Water Industry Act 1991 in relation to Wales and England. The Water Supply (Water Quality) Regulations 2010 (S.I 2010/994) apply to relevant water suppliers where the relevant water supplier’s area is wholly or mainly in Wales. The Water Supply (Water Quality) Regulations 2000 (S.I 2000/3184) apply to all other relevant water suppliers, i.e. where the relevant water supplier’s area is wholly or mainly in England.

3.4 The Orders are therefore being made separately in relation to Wales and England.

3.5 The Chief Inspector of Drinking Water is currently jointly appointed by the Welsh Ministers and the Secretary of State. The combined effect of the Orders will be to extend the charging regime to all relevant water suppliers in Wales and England.

3.6 Payment is to the Consolidated Fund as the Inspectors work on an England and Wales basis and are centrally funded.

**4. Legislative Context**

4.1 The Public Bodies Act 2011 confers powers on the Welsh Ministers in relation to certain public bodies and offices. Section 14(3) of the Act enables the Welsh Ministers to make an order modifying the funding arrangements of inspectors appointed by the Welsh Ministers under section 86 of the Water Industry Act 1991 (“WIA 1991”) (assessors for the enforcement of water quality).

4.2 This Order introduces a fee charging regime, which will, subject to the will of the Assembly and the length of time required for scrutiny, come into effect on 1 January 2013, or 31 January 2013.

4.3 The Order provides for a fee to be payable by water undertakers appointed, or licensed water suppliers licensed, under the WIA 1991 (“relevant water suppliers<sup>1</sup>”), for the exercise of certain functions of the DWI, where the relevant water supplier’s area is wholly or mainly in Wales. These relevant water suppliers have a duty to comply with the Water Supply (Water Quality) Regulations 2010 (S.I. 2010/994) (“the 2010 Regulations”). The 2010 Regulations set out EU and national standards for public drinking water supplies and include requirements for relevant water suppliers to ensure that water is wholesome and clean, to take and analyse samples to check for compliance, to investigate failures and to carry out remedial action where water is unwholesome, along with certain reporting requirements. The fee charging regime in the Order will allow the DWI to recover the costs of its regulatory activity under the 2010 Regulations and the WIA in relation to relevant water suppliers who are wholly or mainly in Wales.

4.4 The Water Supply (Water Quality) Regulations 2010 apply to relevant water suppliers where the relevant water supplier’s area is wholly or mainly in Wales. The Water Supply (Water Quality) Regulations 2000 (S.I 2000/3184) apply to all other relevant water suppliers, i.e. where the relevant water supplier’s area is wholly or mainly in England

## **5. Territorial Extent and Application**

5.1 This instrument extends to Wales and England.

5.2 This instrument applies primarily in Wales but also applies to relevant water suppliers where the relevant water supplier’s area is mainly in Wales but partly in England (see paragraph 4.4).

5.3 A corresponding Order will also be laid in England. That Order will be identical in terms of effect but will apply to relevant water suppliers where the relevant water supplier’s area is mainly in England but partly in Wales.

## **6. European Convention on Human Rights**

6.1 John Griffiths, Minister for Environment and Sustainable Development has made the following statement regarding Human Rights:

“In my view the provisions of the Public Bodies (Water Supply and Water Quality Fees) (Inspection Fees) Order 2012 are compatible with the Convention rights.”

## **7. Background**

- What is being done and why?

7.1 The DWI is not an organisation or body; it is a lay term used to describe the Chief Inspector of Drinking Water (and inspectors) appointed under the Water Industry Act 1991 (WIA) by the Welsh Ministers and the Secretary of State.

7.2 The DWI is the regulator for drinking water quality and safety. It was formed in 1990 to provide independent assurance that water supplies in Wales and England are safe and drinking water quality is acceptable to consumers. The DWI provides independent scrutiny of relevant water suppliers’ activities in relation to supplying water to consumers in Wales and England; works with other stakeholders such as local authorities and the Health Protection Agency for the improvement of both public and private drinking water supplies; commissions research to build a sound evidence base on drinking water quality; and publishes data on drinking water quality in Wales and England.

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<sup>1</sup> Updated details of the relevant water suppliers are provided in the annual report of the Chief Inspector for Drinking Water.

7.3 The DWI is entirely funded by Defra, and sits within Defra but differs from other parts of the department in that the role of the Chief Inspector and inspectors are recognised in statute, and they exercise powers delegated directly to them by the Secretary of State through their appointment under the WIA (save where the function has been transferred to the Welsh Ministers). The Chief Inspector and inspectors act for and on behalf of the Welsh Ministers and Secretary of State in relation to the functions set out in the WIA to ensure the safety and quality of drinking water. The DWI does this by professional expert assessment of technical data and audits of relevant water supplier assets and operational procedures, taking enforcement action where appropriate including prosecution for offences as set out in the WIA and Water Supply (Water Quality) Regulations 2010.

7.4 The work of the DWI can be divided into two areas: regulatory and policy functions. The regulatory functions relate to the DWI's statutory role in ensuring relevant water suppliers meet their statutory requirements, and in the discharge of the statutory duties of the Welsh Ministers and Secretary of State, as set out in the WIA. The policy functions relate to the general powers and duties set out in Section 86 of the WIA.

Regulatory functions:

- Technical audits involving the inspection and assessment of relevant water suppliers' water supply arrangements.
- Investigation of water quality events, incidents and other matters.
- Checking compliance with statutory requirements, and legal instruments.
- Technical evaluation of relevant water suppliers' water quality data.
- Investigations of consumer complaints relating to drinking water quality as notified by members of the public, local authorities or businesses.
- Statutory reporting on drinking water quality by relevant water suppliers.

Policy functions:

- Commissioning and management of research programme on drinking water quality and health as evidence base for technical advice roles listed below.
- Providing scientific and technical advice to the Welsh Ministers, officials in the Welsh Government and Defra and local authorities on drinking water issues, policies and standards.
- Assisting with Parliamentary and Welsh Ministers questions on drinking water quality issues.
- Involvement with national, European and international issues and organisations in the development of guidelines and standards for drinking water quality, and measures to improve drinking water safety.

7.5 The Welsh Ministers and Defra propose to enable the DWI to recover the cost of their regulatory activities directly from relevant water suppliers. This will provide a fair system that ensures that regulatory costs are recovered in proportion to their individual relative regulatory burden.

7.6 The overall rationale for charging is that if an industry undertakes an activity that causes (or could potentially cause) an adverse effect on others (such as pollution or risk to public health) which requires regulation, it should face the regulatory cost. This is underpinned by the 'polluter pays' principle set out in the EU Water Framework Directive (2000/60/EC). The role of the water supply industry in supplying safe water supplies is regarded as a fundamental part of public health management.

7.7 The Order will enable the Chief Inspector and inspectors appointed by him or her to recover the costs of the DWI's regulatory activities from relevant water suppliers who are wholly or mainly in Wales by way of a charging scheme. A corresponding Order will also be made in England in relation to relevant water suppliers who are wholly or mainly in England.



7.8 By introducing a charging scheme, DWI will come into line with other related water regulators such as Ofwat and the Environment Agency. The DWI will identify the costs of its regulatory services in relation to each of the individual relevant water suppliers for each calendar year. Ofwat, who are aware of the proposed charging scheme, have confirmed to the Chief Inspector that the cost recovery arrangements for the DWI would have little consequence for their price setting processes.

7.9 In practice, the costs borne by the relevant water suppliers may be passed on to consumers as ultimate beneficiaries, subject to any application by water suppliers and approval by the economic regulator Ofwat. However consumers will continue to derive benefit from the independent validation and verification by the DWI of the drinking water quality they receive from relevant water suppliers.

7.10 Once approval for the charging scheme is received, the DWI will write to each water supplier with details of the scheme for example, when the charges commence, the services that will be chargeable and an indication of charges per service.

## **8. Compliance with Section 16 of the Public Bodies Act 2011**

8.1 Section 16(1) of the Public Bodies Act 2011 provides that the Welsh Ministers may make an order under sections 13 and 14 only if the Welsh Ministers consider that the order serves the purpose of improving the exercise of public functions, having regard to –

- (a) efficiency,
- (b) effectiveness,
- (c) economy, and
- (d) securing appropriate accountability to Ministers.

### *Efficiency and Effectiveness*

8.2 The activities of the DWI and the regulations are risk based therefore the charging scheme will relate directly to DWI's assessment of risk as well as the efficiency and effectiveness of each relevant water supplier, with high performing water suppliers attracting lower charges due to fewer audits, complaints and failed results. In addition the charging regime will make transparent the DWI's risk assessment and associated deployment of resources.

### *Economy*

8.3 It is vital in the current economic climate that financial savings are made across Government. The DWI is currently funded entirely by Defra, and its costs of operation therefore fall to the taxpayer. Allowing the DWI to charge the industry for its regulatory work will result in a saving to the taxpayer of around £1.9m per year (see Impact Assessment for costings) and will contribute towards Defra's planned saving in the current spending review. On the introduction of the charging scheme the relevant water suppliers may be able to pass the costs onto customers, subject to individual water supplier's decisions as to whether to charge and approval by the economic regulator Ofwat. This would increase the average annual water bill by around 15 pence. The charging scheme will be introduced in January 2013 and water suppliers will be invoiced bi-annually thereafter.

### *Securing appropriate accountability to Ministers*

8.4 Stakeholder audits of the scheme would facilitate transparency and accountability to water suppliers for both the charging process and the overall costs. This scheme will increase DWI's accountability to Welsh Ministers by taking the element of funding from Defra.

8.5 Section 16(2) of the Public Bodies Act 2011 provides that the Welsh Ministers may make an order under those sections only if the Welsh Ministers consider that –

- (a) the Order does not remove any necessary protection, and
- (b) the Order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

8.6 The Welsh Ministers consider that the conditions in section 16(2) are met. The power to modify funding arrangements which will enable DWI to charge for their regulatory activities will not remove any necessary protection nor prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

## 9. Discussions in Parliament during passage of the Public Bodies Bill

9.1 The inclusion of the DWI in the Public Bodies Bill was debated in the House of Lords Committee on 7<sup>th</sup> March 2011 (the relevant text from Hansard can be found at <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110307-0004.htm> columns 1503 - 1508). An amendment had been tabled to remove a group of bodies from the Bill, including the DWI. The House wanted to know why these bodies, who had very significant responsibilities in terms of sustaining and protecting the environment, had been included in the Bill.

9.2 In relation to the DWI, the House was informed that the changes were very minor and removed financial burden from the taxpayer. In light of this the amendment was withdrawn. However, in order to comply with the wishes of the Welsh Government, a Government amendment was tabled which restricted the order-making power of Ministers to the Drinking Water Inspectorate in England. This amendment was agreed.

## 10. Consultation outcome

10.1 The joint consultation was completed by Defra on a Wales and England basis.

10.2 The proposal to enable the DWI to recover the cost of its regulatory functions from relevant water suppliers was originally raised in the formal consultation on the Flood and Water Management Bill in 2009. The questions asked were:

- Do you agree that DWI should introduce charging to recover the cost of their regulatory activities from water companies and licensed water suppliers in line with other water regulators?
- Do you agree with the principle that charges to individual water companies and licensed water suppliers should be proportional to the relative regulatory burden they represent?

The consultation received 638 responses, of which the main respondents were stakeholders such as water suppliers, local authorities, NGOs, consultants, trade associations, private individuals and community groups. Of the 638 responses received, only 39 were in relation to the proposed charging scheme and of those a majority agreed with the proposal. A copy of the summary of responses can be found at:

<http://webarchive.nationalarchives.gov.uk/20100111085541/http://www.defra.gov.uk/corporate/consult/flood-water-bill/responses-summary.pdf>

A copy of the page relating to the DWI proposal from the summary document is attached at Annex A.

10.3 The main themes and issues raised from the consultation were:

Tudalen 15

- Customers would still end up footing the bill and be unlikely to see any reduction in tax burden.
- The charging scheme should be based on the five principles of better regulation; proportionate, transparent, consistent, targeted and accountable.
- The DWI should ensure it operates in the most efficient and cost effective manner to limit the regulatory burden on companies and customers.
- Ensure these proposed ‘pay as you use’ changes could not perversely encourage water suppliers to hide their potential problems and failures in any effort to reduce costs.

10.4 The provisions however were removed from the draft Bill to reduce its size and were not discussed in Parliament, but the DWI continued to consult and work with the water industry to address the issues raised in the consultation. The provisions were subsequently included in the Public Bodies Bill.

10.5 The further informal consultation approach was agreed by the Welsh Government’s consultation advisors as it is aimed at a niche market (water companies, the Environment Agency, Ofwat and the Consumer Council for Water). The Drinking Water Inspectorate gave a presentation to members of the Water Industry Forum on 4 April 2012. This provided the relevant stakeholders with an opportunity to comment on the implementation of the proposed charging scheme.

10.6 All Forum members were in support of the proposal for charging and the approach proposed.

## **11. Guidance**

11.1 The DWI will provide guidance to the water industry in the form of an Information Letter to Board Level Contacts in each business in line with established ways of working with the water industry.

## **12. Impact**

12.1 The impact on business.

The charging system will be designed to be broadly cost reflective at the level of the individual, site or firm. A business that requires only light regulation (and therefore gives rise to few costs for the regulator) should generally pay lower charges than a business that needs frequent or more detailed interventions by the regulator.

12.2 The impact on the public sector.

In practice, the costs borne by water companies may be passed on to consumers as ultimate beneficiaries, subject to water companies’ decisions and approval by the economic regulator Ofwat. Consumers will continue to derive benefit from the independent validation and verification by the DWI of the drinking water quality they receive from water companies. Ultimately therefore there will be a transfer of funding from taxpayers to water bill payers. Whilst this involves a switch from a progressive fundraising system (i.e. one which is scaled by ability to pay) to one which is more regressive, because the aggregate costs to be recovered are relatively small compared with other chargeable costs, the impact on individual consumers’ bills will be less than a 0.1% increase (around 15 pence per annum). Given this, and the fact that water companies will soon be able to consider social tariff schemes to assist those with the most significant affordability issues, we judge the equity impacts arising from the proposal to be negligible.

<b>Title:</b> The Public Bodies (Water Supply and Water Quality) (Inspection Fees) Order 2012  <b>IA No:</b> Defra 1382  <b>Lead department or agency:</b> Defra  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>	
	<b>Date:</b> 23/02/2012	
	<b>Stage:</b> Final	
	<b>Source of intervention:</b> Domestic	
	<b>Type of measure:</b> Secondary legislation	
<b>Contact for enquiries:</b> Tracy Westell/Milo Purcell		
<b>Summary: Intervention and Options</b>		<b>RPC Opinion: GREEN</b>

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£1.021m	£12.834m	£1.407m	No   NA

**What is the problem under consideration? Why is government intervention necessary?**

Defra currently funds the Drinking Water Inspectorate (DWI) for both its regulatory and policy functions; it now proposes to enable DWI to recover the costs of its existing regulatory functions from the water industry. This proposal brings the funding arrangements for the DWI in line with general government policy on charging, which states that businesses which benefit from regulation should bear the cost of regulation, not the taxpayer. Also, the Hampton Review 2005 included a specific recommendation that regulators should be more accountable to those who benefit from their delivery functions.

**What are the policy objectives and the intended effects?**

The proposal will:

- make DWI more accountable to those who benefit from its regulatory functions;
- make DWI funding more transparent;
- contribute around £2.0m per annum saving in the current spending review and reduce future pressures.

The proposal will also bring DWI in line with the cost recovery mechanisms for other water regulators (Ofwat, Consumer Council for Water and the Environment Agency).

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0: Do nothing

Option 1: Enable cost recovery for existing services using basic methodology.

Option 2: Provide the regulatory service through the private sector.

Defra's preferred option is Option 1 which will enable DWI to recover the cost of its existing regulatory functions from water companies. It is also consistent with the views of water companies that the scheme should be as simple as possible. Although the option involves a modest net cost of around £1m, this is judged to be more than outweighed by the non-monetised benefits of aligning the charging of DWI services to those who benefit.

**Will the policy be reviewed? It will be reviewed. If applicable, set review date: 06 2015**

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible SELECT SIGNATORY: ..... Date: .....

## Summary: Analysis & Evidence

Policy Option 1

Description: Option 1: Introduce a charging scheme using basic methodology

### FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	High: n/a	Best Estimate: -1.02

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best Estimate	0	1.7	13.86

#### Description and scale of key monetised costs by 'main affected groups'

Average annual costs are £1.7m. This is made up of additional administrative costs of £200K in the first two years, then £100K thereafter, as well as £2.0m in charges raised from the water industry (from year 3 onwards). Over 10 years, the total cost has a net present value of £13.9m. The majority of this is the cost of the charges raised on industry (a cost to business with a net present value of £12.8m or £1.5m as an annualised cost (£1.4m as an EANCB at 2009 prices).

#### Other key non-monetised costs by 'main affected groups'

The cost to water companies and licensed water suppliers of reviewing and processing a bi-annual invoice from the DWI are negligible and not monetised. No additional data/administrative costs are incurred.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best Estimate	0	1.5	12.83

#### Description and scale of key monetised benefits by 'main affected groups'

Benefits are the reduced cost to government arising from transferring the annual funding of DWI operations to the industry. This exactly offsets the increased cost to the industry (£12.8m in total PV terms, or £1.5m as an annualised cost).

#### Other key non-monetised benefits by 'main affected groups'

The DWI will be able to inform the public on how well water companies have progressed with their drinking water safety management. Improved independence of DWI in relation to its regulatory budget & improved accountability of DWI in relation to the water industry and consumers – through approval mechanism on proposed charges. The proposed system will encourage water companies to help deliver lighter touch regulation as charges will reflect their respective regulatory burden.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
<ul style="list-style-type: none"> <li>- changes to DWI governance and support arrangements might affect the charging regime but none are planned presently</li> <li>- uncertainties regarding future market reform – plans unknown, but the proposal is sufficiently flexible to adapt to expansion of competition in the sector</li> <li>- DWI future efficiency [see evidence base for safeguards]</li> </ul>		

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 1.41	No	NA
Benefits: 0		
Net: 1.41		

## Summary: Analysis & Evidence

Policy Option 2

Description: Option 2: Provision of the regulatory service through the private sector

### FULL ECONOMIC ASSESSMENT

Price Base Year n/a	PV Base Year n/a	Time Period Years n/a	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	High: n/a	Best Estimate: n/a

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a		n/a	n/a
High	n/a		n/a	n/a
Best Estimate	n/a		n/a	n/a

#### Description and scale of key monetised costs by 'main affected groups'

The costs of this option have not been monetised (see below).

#### Other key non-monetised costs by 'main affected groups'

Much water monitoring activity is already delivered in conjunction with water and other private sector companies and the elements of the regulatory process which remain with DWI are judged to be too specialised to be economically viable for the private sector. Even if viable, the delivery of these functions privately would compromise the residual DWI's ability to deliver policy advice and may impact on public confidence (see risks). Monopoly providers may still need some regulation.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a		n/a	n/a
High	n/a		n/a	n/a
Best Estimate	n/a		n/a	n/a

#### Description and scale of key monetised benefits by 'main affected groups'

This benefits of this option have not been monetised.

#### Other key non-monetised benefits by 'main affected groups'

This option might, if viable, deliver small further efficiency benefits and savings compared with Option 1 - but overall is not felt to viable for the reasons given above.

Key assumptions/sensitivities/risks

Discount rate (%)

n/a

See Option 1. In addition, a key risk of this option is that the transfer of remaining public responsibilities within the drinking water regulatory regime to the private sector would compromise the independence of operations and impact on public confidence and health.

### BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: n/a	Benefits: n/a	Net: n/a	No	NA



## Evidence Base (for summary sheets)

### Background

The DWI was established in 1990 as the drinking water quality regulator for the privatised water industry. All inspectors, including the Chief Inspector of Drinking Water, are appointed under section 86 of the Water Industry Act 1991 (“the WIA”).

The DWI differs from ordinary divisions in Defra in that the role of inspectors and the Chief Inspector is recognised in statute, and they exercise powers delegated directly to them by the Secretary of State.

The Chief Inspector exercises the powers of the Secretary of State and Welsh ministers as set out in the WIA (as amended by the Water Act 2003) in relation to the safety and quality of drinking water. The DWI does this by means of technical audit of water company assets and operational procedures, taking enforcement action where appropriate including prosecution for offences as set out in the WIA and Water Supply (Water Quality) Regulations 2000 (as amended).

The Chief Inspector also acts for the Secretary of State in relation to enforcing that local authorities take action as set out in the Private Water Supply Regulations 2009 in relation to private water supplies. The Chief Inspector is responsible for publishing drinking water reports and providing the European Commission with data demonstrating compliance by the UK with the EC Drinking Water Directive 98/83/EC. Similar arrangements exist in Scotland and Northern Ireland and the Chief Inspector discharges Secretary of State duties as member state through a Memorandum of Understanding with her equivalents in Scotland and Northern Ireland. The Chief Inspector (and Inspectors) exercises these powers independently of Ministers.

DWI undertakes a range of statutory and non-statutory roles. The work of DWI can be divided into activities that stem from its statutory role in ensuring water companies meet their statutory requirements, and in the discharge of the statutory duties of the Secretary of State and Welsh Government, as set out in the WIA, and those that support policy functions.

#### Regulatory functions:

- Technical audits involving the inspection and assessment of water companies’ water supply arrangements.
- Investigation of water quality events and incidents.
- Checking compliance with statutory requirements, and legal instruments.
- Technical evaluation of water companies’ water quality data.
- Investigations of consumer complaints relating to drinking water quality as notified by members of the public, local authorities or businesses.
- Statutory public reporting on drinking water quality.

#### Policy functions:

- Commissioning and management of research programme on drinking water quality and health as evidence base for technical advice roles listed below
- Providing scientific and technical advice to Ministers and officials in Defra and Welsh Government on drinking water issues, policies and standards
- Assisting with Parliamentary questions on drinking water quality issues



- Involvement with national, European and international issues and organisations in the development of guidelines and standards for drinking water quality, and measures to improve drinking water safety

Although DWI's budget falls within the Water, Floods, Environmental Risk and Regulation Directorate's total programme allocation, the Secretary of State is ultimately responsible for allocating resources to DWI, and is accountable to Parliament for that expenditure. Therefore, currently, tax payers fund both DWI's regulatory functions and policy functions.

### **Problem under consideration**

When DWI was set up it was funded by the taxpayer. Although administratively simple, it is not the solution that most appropriately reflects the principles of a market for drinking water quality. It does not reflect the polluter or risk owner or beneficiary pays principle, and creates moral hazard in the industry to the extent that water companies do not have as full a stake as they might in the costs of regulating drinking water quality.

Also, the Hampton Review of 2005 included a specific recommendation that regulators should be more accountable to those who benefit from their delivery functions. Defra considers that providing a mechanism for the DWI to recover the costs of its existing regulatory functions from the water industry will assist in achieving this recommendation by linking directly the costs incurred by the regulator to the activities associated with individual water companies. This will improve transparency on funding arrangements. DWI has a good record in respect of other Hampton recommendations and demonstrates very good compliance with the expectations of the Regulators' Compliance Code, as recorded by the BIS/BRE report of its review of DWI dated March 2010. This review focussed on an assessment of regulatory performance against Hampton principles and Macrory characteristics of effective inspection and enforcement.

Furthermore, the Cave Review into competition in the water industry is expected to lead, over time, to an increase in the number of water suppliers, and therefore an increase in the work faced by DWI. It is anticipated that this, along with increased numbers of inset appointees throughout England and Wales, will increase the extent of DWI regulation in these sectors. Enabling DWI to recover the cost of their regulatory activities directly from water undertakers (including inset appointees) and licensed water suppliers will provide a fair system that ensures that regulatory costs are recovered in proportion to their individual relative regulatory burden.

### **Rationale for intervention**

Water customers suffer from the problem of asymmetric information. They cannot obtain information themselves on the quality of drinking water supplied to them as many aspects of drinking water quality are unobservable at the point of use. Health effects may take hours, weeks or even decades to have an impact and may be difficult to attribute to water consumption. This is compounded by the fact that (with the exception of some business customers) they receive supplies from monopoly providers and they are therefore unable to signal their preferences regarding drinking water quality by switching suppliers. Government intervention is required to police drinking water quality and this is effectively the rationale for DWI itself and the rationale for extensive statutory monitoring.

However, a significant proportion of the DWI's activities relates to monitoring the way water companies meet their regulatory requirements through technical audit and associated activities. As it is the water industry and their customers that benefit from these regulatory services, they should bear the cost of the service they receive.

Enabling DWI to change the way its regulatory functions are funded [from water companies rather than the Exchequer] will add to the increased independence of DWI within government which is important for industry and consumer confidence. DWI already has its own budget; it has separate accommodation from the Defra policy division; produces an independent annual report; and the Chief Inspector of Drinking Water, appointed by the Secretary of State and Welsh Ministers, has specific independent powers on enforcement and prosecution.

By introducing a charging system, DWI's position will be consistent with that of other water industry regulators, Ofwat and the Environment Agency, and with the Consumer Council for Water.

### **Policy objective**

The Defra Charging Handbook 2005 provides guidance to facilitate consistent, coherent, transparent and predictable charging for regulatory services across Defra. The overall rationale for charging is that if an industry undertakes an activity that causes (or could potentially cause) an adverse effect on others (such as pollution or risk to public health) which requires regulation, it should face the regulatory cost. The role of the water supply industry in supplying safe water supplies is regarded as a fundamental part of public health management.

In addition, the proposed scheme to recover actual costs incurred will assist in meeting three of the Handbooks strategic principles:

**The polluter, risk owner or beneficiary pays** - The polluter or risk owner or beneficiary should bear the costs of any measures to prevent harm that they might otherwise cause by their actions or non-actions, including the cost of monitoring regimes. For drinking water supplies, the actions necessary to mitigate pollution and protect consumers are undertaken by water companies, and regulated by DWI. The risks are owned and managed by water companies, who are required by legislation to act proactively to mitigate risks to public health and levels of service relating to the quality of water supplies. It is also in the interests of water companies to engage in the process to minimise the impact of significant failures on their reputations and on consumer confidence. The effectiveness of active management of residual risks that impact on water quality as introduced by DWI are well established within the water industry and are known to be cost effective. Furthermore, water companies benefit from the regulatory activities of DWI [examples set out below]. Transparent allocation to individual water companies, rather than to the taxpayer, of DWI's costs for regulating these functions better aligns funding arrangements with this principle.

**Aim for full cost recovery** - This is the Government's broad policy for services. If policymakers do not plan to recover the full cost of the service they provide, and hence the service is being intentionally subsidised, they will need to justify this decision. This proposal enables DWI to fully recover the costs for its existing regulatory functions, as listed above.

**Charges paid by the individual or firm should broadly reflect the cost incurred by the regulator in regulating that firm or individual** - The charging system should be designed to be broadly cost reflective at the level of the individual, site or firm. A business that requires only light regulation (and therefore gives rise to few costs for the regulator) should generally pay lower charges than a business that needs frequent or more detailed interventions by the regulator.

This proposal brings the arrangements for the DWI in line with Defra general policy on charging, which is that businesses that benefit from regulation, not the taxpayer, should bear the cost of regulation.

In practice, the costs borne by water companies may be passed on to consumers as ultimate beneficiaries, subject to water companies decisions and approval by the economic regulator Ofwat. Consumers will continue to derive benefit from the independent validation and verification by DWI of the drinking water quality they receive from water companies. Ultimately therefore there will be a transfer of funding from taxpayers to water bill payers. Whilst this involves a switch from a progressive fundraising system (i.e. one which is scaled by ability to pay) to one which is more regressive, because the aggregate costs to be recovered are relatively small compared with other chargeable costs, the impact on individual consumers' bills will be less than a 0.1% increase. Given this, and the fact that water companies will soon be able to consider social tariff schemes to assist those with the most significant affordability issues, we judge the equity impacts arising from the proposal to be negligible.

As the proposal comprises charges for existing regulatory activities, and does not entail a change in regulatory functions, it does not come within the scope of policy on one-in, one-out. This has been confirmed by BRE.

### **Description of options considered**

Option 0 - Do nothing and continue to subsidise the full costs of DWI. This is not compliant with the Hampton Review recommendations, or with the Defra Charging Handbook strategic aims, nor is it consistent with other charging mechanisms of related water regulators. (Note however that under any option, Defra will continue to fund the "policy service" part of DWI which provides advice to Ministers and officials).

Option 1 - Introduce a charging scheme using basic methodology – this is Defra's preferred option. This option will enable DWI to recover the cost of its regulatory functions from water companies. It is also consistent with the views of water companies that the scheme should be as simple as possible, whilst still retaining some basic incentives to reduce the regulatory burden by maintaining performance with statutory obligations.

Consideration was also given to introduce a charging scheme using more detailed methodology. However, when consulted, the clear view of water companies was that the sums to be raised through this charging process were very small (at around £2m over the whole industry per annum) in relation to wider industry costs, and that the charging regime burden should reflect this. Thus, minimising data submissions and administrative costs would be of greater benefit for both them and customers than the potential financial incentives to be gained from a more complex incentivisation mechanism. Some companies noted that the reputational impact of regulatory underperformance would be of far greater significance than the direct financial costs involved.

In summary, whilst a very complex charging method could be designed, the preference is for a simpler one, with some incentives but which gives water companies and DWI necessary certainty. It is also noted that other water industry regulatory charging options (e.g. for Ofwat and CC Water) are simply defined.

Cost recovery will recover costs incurred based on a two part charge: a charge using the number of tests for compliance purposes reported by each water company, which directly relates to DWI workload for each company on routine checking and monitoring; and a charge based on water company performance – reflecting directly the allocation of DWI's resources to deal with underperformance using a risk based approach, principally in investigating and reporting on compliance failure, incident management and technical audit.

Option 2 - Provision of the regulatory service through the private sector. This option was considered, but was not assessed quantitatively for the following reasons. The current regulatory model for drinking water quality has in place substantial private sector involvement. For example, delivery of the statutory monitoring (water sampling and analysis) that is required by the Water Supply (Water Quality) Regulations 2000 (as amended) has already been vested in water companies as a recoverable cost that is passed on to consumers through their water bills. It is integrated with process control and operational management requirements, and the estimated cost of these combined functions across all water companies in England and Wales is £500m pa.

Also, the quality assurance arrangements necessary to ensure the integrity of this substantial monitoring and control programme are conducted by co-regulation, involving bodies such as the United Kingdom Accreditation Service [the sole national accreditation service recognised by Government]; the analytical service industry; and water companies, using an agreed specification put in place by DWI. The remaining elements of regulation retained by DWI provide the minimal oversight necessary to deal with non-compliance by independent enforcement [or prosecution, where necessary], and with public reporting to maintain public confidence. These elements of the regulatory process are so specialised and of low margin that it is not likely to be economically viable for the private sector to deliver.

Finally, the service is critically important for public accountability in the provision of safe clean drinking water, and is fundamental to the protection of public health and maintenance of public confidence in public water supplies. This means that delivery of remaining regulatory functions through the private sector is still likely to need to include at least some oversight, especially if the provider has a high degree of monopoly power. This would impose costs and therefore reduce the already modest financial savings possible from this option. The provision of the regulatory service through the private sector would also inhibit DWI policy support functions as it would not benefit from the wider knowledge and information obtained in the course of regulatory activities undertaken by a separate private organisation. Industry satisfaction with these arrangements appears high, as reported by a recent BRE Hampton Implementation audit of DWI.

### **Monetised and non-monetised costs and benefits of each option (including administrative burden)**

Option 1 - The monetised cost of the regulatory functions undertaken by the DWI on behalf of the water industry is estimated to be £2.0m per annum [Source: DWI; see list of function above]. This would represent a cost transfer to the industry [net economic impact=0] and in practice would be implemented from the third year onwards.

However, net costs arise from provision for transitional set-up costs, estimated by DWI at £200k in FY 11/12 and FY12/13 [to provide administrative and IT arrangements to support charging], and for ongoing management costs of £100k per annum [for data collation; administrative support; and financial management].

The cost to water companies and licensed water suppliers of reviewing and processing a bi-annual invoice from the DWI are negligible and are therefore not monetised. There are no additional costs relating to data gathering or submissions. The profile of the monetised costs is summarised in the following table.

**Summary of monetised costs (undiscounted £,000s)**

<b>Year</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>Total</b>
Admin costs	200	200	100	100	100	100	100	100	100	100	1200
Industry charges*			2000	2000	2000	2000	2000	2000	2000	2000	16000
<b>Total</b>	<b>200</b>	<b>200</b>	<b>2100</b>	<b>2100</b>	<b>2100</b>	<b>2100</b>	<b>2100</b>	<b>2100</b>	<b>2100</b>	<b>2100</b>	<b>17200</b>

\* = A transfer and fully offset by savings to government (which comprise the monetised benefits of Option 1)

In line with best practice the monetised impacts have been discounted at an annual rate of 3.5%. This calculation is intended to convert all impacts into a consistent basis on which they can be compared according to social time preference. More information on discounting is available from [www.hm-treasury.gov.uk/d/green\\_book\\_complete.pdf](http://www.hm-treasury.gov.uk/d/green_book_complete.pdf).

The charging scheme will place proportionate costs on water companies and licensed water suppliers based on the level of regulatory activity involved. Water companies may pass the charges onto water customers, which could result in an increase to the average annual water bill of up to 15 pence.

Offset against the net costs above are the unmonetised benefits arising from the proposed arrangements, which:

- will assist the DWI in achieving one of the Hampton Review's recommendation that regulators should be more accountable to those who benefit from their delivery functions.
- will encourage water companies to improve their drinking water safety management and therefore help to deliver lighter touch regulation as they will be charged in proportion to their own regulatory burden on DWI.
- brings the arrangements for the DWI in line with general policy on charging, and consistent with similar regulatory arrangements within the water industry.
- Contributes to the improved operational efficiency of DWI itself, arising from the greater transparency and public accountability inherent in the scheme.

The DWI operates a risk based approach to technical audits of water companies and their drinking water supply arrangements. The regulatory activity applicable to each water company and each licensed water supplier is governed by the potential risk of its activities to public health. Regulatory monitoring for compliance with EU law is already risk based with the number of tests required varying according to the volume of water supplied/population served. The activity levels applicable to each company/licensed supplier will therefore vary, and will also change over time relative to the risks, and by the outcome of regulatory monitoring. The number and type of licensed water suppliers may also change according to competitive market forces and Government policy.



**Risks and assumptions**

Risks include:

- changes to DWI governance and support arrangements may impact on the charging regime – but none are planned presently
- uncertainties regarding future market reform – plans are currently unknown, but the proposal is sufficiently flexible to adapt to expansion of competition in the sector
- potential inefficiency in DWI operations leading to increased costs. Safeguards to ensure DWI's on-going efficiency include
  - o Public reporting of water company and DWI performance in the annual Chief Inspector's report
  - o Defra governance oversight, as per existing arrangements
  - o Defra internal audit, as per existing arrangements
  - o BRE audit and the Regulators Compliance Code, regular assessment and public reporting arrangements
  - o Stakeholder audit by invitation, continuing current practice of inviting water companies to carry out their own audit of DWI activities and performance

Assumptions include:

- That DWI remains within Defra for accommodation and administration/services support.
- Although a sunset clause does not apply to this scheme, it is proposed that the effectiveness of the arrangements will be reviewed in June 2015.

**Wider impacts****Economic/Financial**

The proposed charging scheme will apply to all water companies and licensed suppliers (none of these are classified as micro businesses). Each company/supplier will pay the costs incurred for the checking and monitoring, and technical audit services and inspections they receive, therefore not imposing a discriminatory burden on small firms/businesses.

Water companies and licensed water suppliers may pass the charges onto their water customers, who are the main beneficiaries of the regulatory work (wholesome drinking water). It is estimated that if water companies did pass this cost on to customers, the average annual water bill could increase by around 15 pence.

**Social**

There are no social impacts or additional impacts on rural areas.

**Environmental**

The overall rationale for charging is that if an industry undertakes an activity that causes an adverse effect on others (such as pollution or risk to public health) which requires regulation, it should face the regulatory cost. The role of the water supply industry in supplying safe water supplies is regarded as a fundamental part of public health management.

The water industry meets the cost of the statutory direct monitoring (water sampling and analysis) that is required by the Water Supply (Water Quality) Regulations 2000 (as amended).

A significant proportion of the DWI's activities relates to monitoring the way water companies meet their regulatory requirements through technical audits and associated activities. As it is the water industry and its customers that benefit from these regulatory services, they should bear the cost of the regulatory services provided.

The regulatory service is fundamental to the protection of public health in the provision of safe clean drinking water and to the maintenance of public confidence in public water supplies.

Water companies benefit from:

- Consistent, authoritative interpretation of regulatory requirements that facilitates a level playing field for all participants;
- Provision of guidance on matters of good practice; and
- Public confidence in an industry vital to social and economic wellbeing that accrues from independent scrutiny of functions that are substantially self-regulated and co-regulated by private sector organisations.

Consumers benefit from:

- The contribution of regulation to the consistent delivery of statutory obligations that brings focus on outcomes;
- Timely and proportionate independent investigation and public accountability when failure occurs;
- Regular, transparent and efficient provision of information verified by an independent source; and
- Assurance that there is an independent advocate for their interests in drinking water quality matters.

This proposal is consistent with the principle of a sustainable economy.

### **Consultation**

The DWI charging scheme proposal was originally included in the formal consultation on the Floods and Water Management Bill in 2009. Stakeholders such as water companies, local authorities, NGOs, the agriculture sector, trade associations, private individuals and community groups were the main respondents. A majority of responses agreed with the proposal (only 9% disagreed with the proposal) and there were no significant issues requiring revision in the proposed policy. The main issues identified by the consultation were:

- 1) The charging scheme should be based on the five principles of better regulation; proportionate, transparent, consistent, targeted and accountable
- 2) DWI should ensure it operates in the most efficient and cost effective manner to limit the regulatory burden on companies and customers.
- 3) Look for formal confirmation that these proposed incentives for lighter touch regulations would not result in perverse outcomes by encouraging water companies to hide their potential problems and failures in any effort to reduce costs.

These issues have been taken into account in the final proposal. In particular, regarding issue 3 above, DWI will continue to be vigilant through its audit and inspection processes to ensure water suppliers meet their statutory responsibilities, and it has the powers to take enforcement action to deal with underperformance, if needed.

An informal consultation, in the form of meetings and stakeholder workshops for water companies and licensed suppliers, Ofwat, CCWater and Water UK, who represents the water industry, began on 24<sup>th</sup> October and ran for 6 weeks, closing on 5<sup>th</sup> December 2011. As industry were already aware and supportive of this proposal, no specific issues were raised.

### **Summary and preferred option with description of implementation plan**

Currently Defra funds both the regulatory functions and the policy and technical advice functions undertaken by the DWI. However, a significant proportion of the DWI's activities relate to scrutinising the way water companies (including licensed water suppliers and inset appointees) meet their regulatory requirements through technical audits and inspections. As it is the water industry that benefits from these regulatory services, option 1, introducing a charging scheme, is the preferred option as it would bring the arrangements for the DWI in line with general policy on charging, which is that businesses that benefit from regulation, not the taxpayer, should bear the cost of regulation. Ofwat, who are aware of the proposed charging scheme, have confirmed to the Chief Inspector that the cost recovery arrangements for the DWI would have little consequence for their price setting processes.

By introducing a charging scheme, DWI will come into line with other related water regulators such as Ofwat and the Environment Agency and also the Consumer Council for Water which is a consumer body, who all charge for their regulatory activities. All three regulators recover their costs through the licensing regime (which is statutory). DWI will identify the costs of its regulatory services in relation to the costs incurred by each of the individual water companies.

The Public Bodies Bill includes the required primary legislation to provide powers for DWI to introduce a charging scheme. The scheme itself would be introduced by way of an Order made under this general charging power (schedule 4, amendment 79A - 'Inspectors appointed by the Secretary of State under section 86 of the Water Industry Act 1991'). Although the bodies listed within the schedules of the Bill are subject to sunseting, Orders made, for example in respect of charging powers, will survive the removal of the body from the Act and will remain in force.

The operation of the charging scheme will be assessed in June 2015, to ensure that it is achieving its desired outcomes that it was designed to achieve and if necessary make any required adjustments.

The proposed scheme will provide the Secretary of State and Welsh Ministers (and therefore the Chief Inspector appointed to act on their behalf) with the power to recover costs of the DWI's existing regulatory activities by way of a charging scheme. It is proposed that the Welsh Order will enable Welsh Ministers to make Regulations to allow charging in relation to water companies whose supply area is wholly or mainly in Wales and the English Order will provide the same power for the Secretary of State in respect of water companies whose supply area is wholly or mainly in England. Following the informal consultation, it is proposed that the Order will come into force 1<sup>st</sup> January 2013.

Charges will be introduced from January 1<sup>st</sup> 2013. Costs will be invoiced directly bi-annually.

### **13. Monitoring & review**

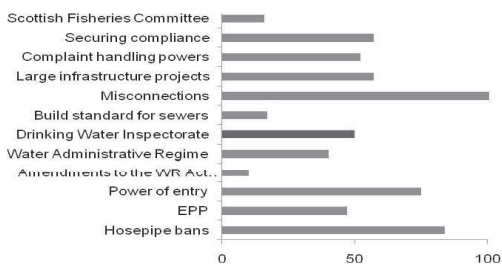
13.1 The operation of the charging scheme will be assessed in June 2015 by the Welsh Government and Defra. Although it has not yet been decided how the scheme will be assessed, its aim will be to ensure that it is achieving its desired outcomes that it was designed to achieve and if necessary make any required adjustments.



### 3.23 Drinking Water Inspectorate recovery of charges

Fifty responses commented on this section. The majority agreed with the proposals.

**Question 151: Do you agree that DWI should introduce charging to recover the cost of their regulatory activities from water companies and licensed water suppliers in line with other water regulators?; and**



**Question 152: Do you agree with the principle that charges to individual water companies and licensed water suppliers should be proportional to the relative regulatory burden they represent?**

Key issues raised by stakeholders included concerns that customers would still end up footing the bill and are unlikely to see any reduction in their tax burden.

Others suggested that the charging scheme should be based on the five principles of better regulation; i.e. it should be proportionate, transparent, consistent, targeted and accountable; and that the DWI should ensure it operates in the most efficient and cost effective manner to limit the regulatory burden on companies and customers.

Respondents looked for formal confirmation that these proposed 'pay as you use' charges could not perversely encourage water companies to hide their potential problems and failures in an effort to reduce costs.

**Department for Environment, Food and Rural Affairs  
October 2011**

**Proposal for the recovery of costs by the Drinking Water  
Inspectorate**

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## The proposal

**To update details on the implementation of a cost recovery scheme by DWI that will enable it to recover the cost of its regulatory functions from water companies.**

The scheme will provide the Secretary of State and Welsh Ministers (and therefore the Chief Inspector appointed to act on their behalf) with the power to recover costs of DWI regulatory activities by way of a charging scheme. It is proposed that the Welsh Order will enable Welsh Ministers to make Regulations to allow charging in relation to water companies whose supply area is wholly or mainly in Wales and the English Order provides the same power for the Secretary of State in respect of water companies whose supply area is wholly or mainly in England. Following an informal consultation in the autumn.

It is proposed that the Orders will come into force on 1<sup>st</sup> January 2013.

Publication of this consultation paper initiates a 6 week period during which the DWI will be seeking the views of the water industry and any organisation or individual who may have a personal or professional interest in the charging scheme. The consultation will run from 24<sup>th</sup> October 2011 to 5<sup>th</sup> December 2011.

Please send your responses to this consultation to [dwi.consultation@defra.gsi.gov.uk](mailto:dwi.consultation@defra.gsi.gov.uk) by **5th December 2011**.

## Background

The Drinking Water Inspectorate (DWI) was established in 1990 as the drinking water quality regulator for the privatised water industry. All inspectors, including the Chief Inspector, are appointed under section 86 of the Water Industry Act 1991.

The Chief Inspector of Drinking Water exercises the powers of the Secretary of State and Welsh ministers as set out in the Water Industry Act 1991 (as amended by the Water Act 2003) in relation to the safety and quality of drinking water. DWI does this by means of technical audit of water company assets and operational procedures, taking enforcement action where appropriate including prosecution for offences as set out in the Act and Water Supply (Water Quality) Regulations.

The Chief Inspector also acts for Ministers in relation to enforcing that local authorities take action as set out in the Private Water Supply Regulations in relation to private water supplies. The Chief Inspector is responsible for publishing drinking water reports and providing the European Commission with data demonstrating compliance by the UK with the EC Drinking Water Directive. Similar arrangements exist in Scotland and Northern Ireland and the Chief Inspector discharges these duties for the member state through a Memorandum of Understanding with her equivalents in Scotland and Northern Ireland. The Chief Inspector (and inspectors) exercises these powers independently of Ministers.

DWI operates a risk based approach to technical audits of water companies and their drinking water supply arrangements. The regulatory activity applicable to each water company and each licensed water supplier is governed by the potential risk of its activities to public health. Regulatory monitoring for compliance with EU law is already risk based with the number of tests required varying according to the volume of water supplied/population served. The activity levels applicable to each company/licensed supplier will therefore vary, and will also change over time relative to the risks, and by the outcome of regulatory monitoring. The number and type of licensed water suppliers may also change according to competitive market forces and Government policy.

## Reasons for the proposal

The Hampton Review of 2005 on good regulatory practice included a specific recommendation that regulators should be more accountable for the way in which they undertake their delivery functions. Defra and the Welsh Government consider that providing a mechanism for DWI to recover the costs of its delivery functions from the water industry will assist in achieving this recommendation.

A significant proportion of DWI activity relates to monitoring the way water companies meet their regulatory requirements through technical audit and associated activities. As it is the water industry who benefits from these regulatory services, they should bear the cost of providing that service.

The proposed charging scheme would also apply the following strategic principals:

**The polluter, risk owner or beneficiary pays** - The polluter or risk owner should bear the costs of any measures to prevent harm that they might otherwise cause by their actions or non-actions, including the cost of monitoring regimes. This provides incentives for the development and adoption of less damaging methods and practices.

- **Charges paid by the individual or firm should broadly reflect the cost incurred by the regulator in regulating that firm or individual** - The charging system will be broadly cost reflective at the level of the individual, site or firm. A business that requires only light regulation hence gives rise to few costs for the regulator should generally pay lower charges than a business that needs frequent or more detailed interventions by the regulator.

By introducing a charging scheme, DWI will come into line with other related water regulators such as Ofwat and the Environment Agency and also the Consumer Council for Water (a consumer body), all of which charge for their regulatory activities. This proposal also brings the arrangements for DWI in line with general policy on charging, which is that businesses which benefit from regulation, not the taxpayer, should bear the cost of regulation.

The charging scheme will result in proportionate charges on water companies based on the level of technical audits and inspections involved. This will create a financial incentive for water companies to improve their water safety management.

## The Costs involved (including administrative burden)

The estimated annual cost of the regulatory functions undertaken by DWI on behalf of the water industry is estimated at around £1.9m per annum.

Water companies may pass the charges onto their water customers, who are the main beneficiaries of the regulatory work (wholesome drinking water). It is estimated that if water companies did pass this cost on to customers, the average annual water bill could increase by around 15 pence.

The administrative burden on industry arising from this proposal are negligible.

## The benefits of the proposal

The benefits of this option are that it:

- will assist DWI in achieving one of the Hampton Review's recommendation that regulators should be more accountable for the way in which they undertake their delivery functions.
- will create a financial incentive for water companies to improve their water safety management.
- brings the arrangements for DWI in line with general policy on charging.

## Implementation matters

A significant proportion of DWI activity relates to scrutinising the way water companies (including licensed water suppliers and inset appointees) meet their regulatory requirements through technical audits and inspections. As it is the water industry which benefits from these regulatory services, the proposal to introduce a charging scheme would bring the arrangements for DWI in line with general policy on charging, which is that businesses which benefit from regulation, not the taxpayer, should bear the cost of regulation.

The charging scheme would provide a financial incentive for water companies to improve their procedures for water safety management. As companies will be paying for the technical audit services and inspections they receive, they will balance these costs against management measures which would lead to fewer technical audits and inspections and so potentially reduce the overall cost.

By introducing a charging scheme, DWI will come into line with other related water regulators such as Ofwat and the Environment Agency (EA) and also the Consumer Council for Water (CCWater) which is a consumer body, who all charge for their regulatory activities. All three regulators recover their costs through the licensing regime (which is statutory). It is proposed that DWI will develop a system to identify the costs of their regulatory services in relation to each of the individual water companies and licensed suppliers which will allow cost recovery to be apportioned fairly to individual water companies and licensed suppliers.

Proposals to enable DWI to recover the cost of its regulatory functions from water companies were raised previously in the consultation on the Flood and Water Management Bill in 2009. However, the provisions were removed from the final session of the Bill to reduce its size. This consultation advises that the proposals have now been included in the Public Bodies Bill, and addresses the implementation of those proposals.

The implementation of the proposal is dependent on the outcome of parliamentary scrutiny of the Public Bodies Bill, and it receiving Royal Assent. If enacted, the Public Bodies Bill will provide the required primary legislation that provide powers for DWI to introduce a charging scheme. The scheme itself would be introduced by way of an Order made under this general charging power.

The proposed charging scheme will apply to all water companies and licensed suppliers. Each company/supplier will pay for the technical audit services and inspections they receive, therefore it is not considered to impose a discriminatory burden on small firms.

As explained in the previous consultation, those regulatory functions for which it is proposed to recover costs include:

- Technical audits involving the inspection and assessment of water companies' water supply arrangements.
- Investigation of water quality events and incidents.
- Checking compliance with statutory requirements, and legal instruments.
- Technical evaluation of water companies' water quality data.
- Investigations of consumer complaints relating to drinking water quality as notified by members of the public, local authorities or businesses.
- Statutory public reporting on drinking water quality.

## Questions

- 1. Do you have any comments on the proposals for implementation of a cost recovery scheme by DWI that will enable it to recover the cost of its regulatory functions from water companies?**
- 

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**Annex C**

[www.defra.gov.uk](http://www.defra.gov.uk)

[www.dwi.gov.uk](http://www.dwi.gov.uk)

# **Summary of responses to the consultation on proposals for the recovery of costs by the Drinking Water Inspectorate**

**February 2012**

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## Background

The Drinking Water Inspectorate (DWI) was established in 1990 as the drinking water quality regulator for the privatised water industry.

Proposals to enable DWI to recover the cost of its regulatory functions from water companies were raised in the consultation on the Flood and Water Management Bill in 2009. However, the provisions were removed from the final session of the Bill to reduce its size. The proposals were subsequently included in the Public Bodies Bill, and addressed the implementation of those proposals.

Consequently, a further non-formal consultation was undertaken from 24<sup>th</sup> October 2011 to 5<sup>th</sup> December 2011 to seek views on the proposal for DWI to develop a system to identify the costs of their regulatory services in relation to each of the individual water companies and licensed suppliers that would allow cost recovery to be apportioned fairly to individual water companies and licensed suppliers.

The question posed in this consultation was:

- 1. Do you have any comments on the proposals for implementation of a cost recovery scheme by DWI that will enable it to recover the cost of its regulatory functions from water companies?**

## Analysis of responses

### Number and detail of those that responded

The consultation was available on both the Defra and DWI websites. In addition, 33 key stakeholders in the water industry were emailed directly notifying them of the consultation. A total of 21 responses were received. A list of the organisations who responded can be found below in Appendix 1.

## Summary of responses

### Overall views

- Nearly all respondents supported the proposal for charging in principle, and the approach proposed.
- There was recognition by many respondents of some common themes: the importance of a simple, fair to all, transparent and stable system, which minimises the administrative burden on all parties concerned, but which did not encourage inappropriate behaviours on the part of the water companies, and which provided incentives for water companies for efficiency improvements .
- It was pointed out by one respondent that DWI accountability did not require an extension to cost recovery, although they were supportive of the principles for better regulation outlined in the Hampton review

### Points made by respondents

#### 1) Principle of cost recovery

- The point was made that the link between accountability and cost recovery was not clear, and that it was not immediately apparent how this particular recommendation from the Hampton review would be achieved.
- One respondent did not agree that Regulator accountability extended to cost recovery or that the 'polluter pays' principle applies to water companies in this particular context

#### 2) Cost recovery process

- The point was made that impact /effectiveness studies involving stakeholders would be welcomed, and the proposal to facilitate further stakeholder audits was welcomed to facilitate transparency and accountability for both the charging process and for the overall costs.
- It was suggested that a list of included and excluded activities for charging should be available
- A respondent pointed out that DWI activity relating to private supplies should not be included.
- It was suggested that statutory public reporting should not be included in any charging mechanism as this is a duty undertaken on behalf of the Secretary of State.
- A number of respondents made the point that costs for dealing with events and audits should reflect the severity of the issue under investigation. A respondent stated that costs relating to Inspector training should not be included.
- A number of companies commented on the timing of the proposals, noting that this would be an unfunded cost for water companies, as it sat outside the funding provisions for the current price review cycle. In addition, there may be internal funding issues associated with the timing of charging in the last quarter of 2012/2013 where budgets have already been set.
- It was suggested there should be an appeals process in place as part of any charging mechanism.
- Some inset appointees and smaller water companies noted the potential for them to incur what they considered might be disproportionately high charges.
- Some respondents noted to need to clarify with Ofwat how funding provision might be included in business plans.

### 3) Mechanism for charging

- Several respondents were of the view that consideration should be given to operating on a fixed cost basis only to minimise administrative burden, and that if a variable cost element is to be included it should relate only to those activities arising from water quality events and/or compliance failures. There were a number of refinements suggested on this theme. One respondent suggested that all costs be treated as variable.
- It was noted that using the number of compliance samples as a basis for the fixed element of the charge would better reflect the level of DWI activity, and also that the data is readily available.
- A respondent suggested the use of financial turnover as a basis for the fixed element of the charge as it reflects company efficiency.
- Several respondents noted the need to ensure stability in DWI revenues.

## The way ahead

Defra proposes to make enabling regulations based on the technical content in the consultation draft. The points made by respondents will be considered further to refine the processes and mechanisms for charging.

## List of respondents to the consultation

Water UK  
OFWAT  
CCWater  
Dee Valley Water  
South West Water  
Northumbrian Water  
Albion Water  
Sembcorp Bournemouth Water  
Severn Trent Water  
SSE  
Albion Water  
United Utilities  
Anglian Water  
Portsmouth Water  
Veolia Water East  
Veolia Water South East  
Veolia Water projects  
South Staffordshire Water  
Thames Water  
Yorkshire Water  
Dwr Cymru Welsh Water

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This document/publication is also available on our website at:  
<http://www.defra.gov.uk/consult/2011/10/24/dwi/>

Any enquiries regarding this document/publication should be sent to us at:  
[dwi.consultation@defra.gsi.gov.uk](mailto:dwi.consultation@defra.gsi.gov.uk)

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

**(CLA(4)-22-12)**

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

**CLA184**

**Teitl: Gorchymyn Cyrff Cyhoeddus (Cyflenwad Dŵr ac Ansawdd Dŵr) (Ffioedd Arolygu) 2012**

#### **Gweithdrefn: Uwchgadarnhaol**

Mae'r Gorchymyn hwn yn darparu i ffioedd fod yn daladwy gan gyflenwr dŵr perthnasol am gyflawni swyddogaethau penodol o dan Ddeddf y Diwydiant Dŵr 1991 gan arolygydd a benodir gan Weinidogion Cymru o dan y Ddeddf honno.

#### **Craffu technegol**

Ni nodwyd unrhyw bwyntiau i fod yn destun adroddiad o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

#### **Craffu ar rinweddau**

Nodwyd y pwyntiau canlynol i fod yn destun adroddiad o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.-

Er bod y pwnc (cyfrifo ffioedd archwilio a rhai cysylltiedig) yn un sy'n fwy tebygol o fod mewn offerynnau statudol sy'n ddarostyngedig i'r weithdrefn negyddol, mae'r offeryn hwn yn ddarostyngedig i'r weithdrefn uwchgadarnhaol yn rhinwedd adran 19 o Ddeddf Cyrff Cyhoeddus 2011.

Gwneir gorchymynion i'r un diben ar gyfer Cymru a Lloegr, ond oherwydd bod y pwerau galluogi yn wahanol, defnyddir dau offeryn yn hytrach nag un ar y cyd. Mantais hyn yw bod y ddeddfwriaeth sy'n gymwys i Gymru yn cael ei gwneud yn ddwyieithog.

[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 - Rheol Sefydlog 21,3(ii)

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

**Hydref 2012**

# Eitem 4

## MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL

### Y BIL MENTER A DIWYGIO RHEOLEIDDIO – PWERAU I GYNNWYS DARPARIAETHAU MACHLUD AC ADOLYGU MEWN IS-DDEDDFWRIAETH

#### Cynnig Cydsyniad Deddfwriaethol atodol

1. “Cynnig bod Cynulliad Cenedlaethol Cymru, yn unol â Rheol Sefydlog 29.6, yn cytuno y dylai Senedd y DU ystyried darpariaethau'r Bil Menter a Diwygio Rheoleiddio sy'n ymwneud â phŵer i Weinidogion Cymru gynnwys cymalau machlud ac adolygu mewn is-ddeddfwriaeth, i'r graddau y maent yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru.”

#### Cefndir

2. Mae'r Cynnig Cydsyniad Deddfwriaethol atodol uchod wedi'i gyflwyno gan Jane Hutt AC, Y Gweinidog Cyllid ac Arweinydd y Tŷ, o dan Reol Sefydlog 29.6 o Reolau Sefydlog (“RhS”) Cynulliad Cenedlaethol Cymru (y “Cynulliad Cenedlaethol”). Gosodir y Memorandwm Cydsyniad Deddfwriaethol hwn ger bron o dan RhS29.2. Mae RhS29 yn rhagnodi bod rhaid cyflwyno Cynnig Cydsyniad Deddfwriaethol a gosod Memorandwm Cydsyniad Deddfwriaethol gerbron y Cynulliad Cenedlaethol os ceir darpariaethau ar gyfer Cymru ym Mil Seneddol y DU at bwrpas sy'n dod o fewn cymhwysedd deddfwriaethol y Cynulliad neu sy'n cael effaith negyddol ar y cymhwysedd hwnnw.

3. Cyflwynwyd y Bil Menter a Diwygio Rheoleiddio (y “Bil”) yn Nhŷ'r Cyffredin ar 23 Mai 2012. Gellir gweld y Bil yn:

<http://services.parliament.uk/bills/2012-13/enterpriseandregulatoryreform.html>

#### Crynodeb o'r Bil a'i amcanion Polisi

4. Noddir y Bil gan yr Adran Fusnes, Arloesi a Sgiliau (“BIS”). Prif bwrpas y Bil yw annog twf tymor hir a symleiddio'r rheoliadau. Amcanion y Bil yw:

- ad-drefnu system y tribiwnlysoedd cyflogaeth, a gweddnwid y drefn unioni anghydfodau;
- gwneud y rheolau gorfodi cystadleuaeth yn fwy effeithiol ac effeithlon a gwneud y marchnadoedd yn fwy cystadleuol trwy gryfhau'r drefn a'i gwneud yn gyflymach ac yn fwy rhagweladwy er lles busnesau;
- pennu pwrpas Banc Buddsoddi Gwyrdd y DU a gofalu ei fod yn annibynnol;
- cryfhau'r fframwaith ar gyfer pennu cyflogau cyfarwyddwyr trwy gyflwyno pleidleisiau gorfodi;
- ymestyn y cynllun Awdurdod Sylfaenol, lleihau'r baich archwiliadau ar fusnesau a chryfhau'r fframwaith cyfreithiol ar gyfer cymalau machlud rheoliadau;

- diddymu deddfwriaeth ddiangen, gan leihau'r baich ar fusnesau a dinasyddion.

5. Mae'r Bil yn ymestyn i Gymru.

### **Darpariaethau yn y Bil y ceisir caniatâd ar eu cyfer**

6. Y darpariaethau perthnasol yw'r darpariaethau machlud ac adolygu yng nghymal 49 o'r Bil fel y'i cyflwynwyd gerbron y Senedd (cymal 50 o'r Bil fel y'i diwygiwyd mewn Pwyllgor Biliau Cyhoeddus yn Nhŷ'r Cyffredin, HC Bill 61).

7. Mae'r cymal hwn yn diwygio Deddf Ddehongli 1978.

8. Effaith y diwygiad hwn yw, pan fo Deddf Seneddol neu Ddeddf neu Fesur y Cynulliad yn rhoi pŵer i wneud is-ddeddfwriaeth i unrhyw berson ac eithrio Gweinidogion yr Alban, y *caiff* is-ddeddfwriaeth a wneir o dan y pŵer hwnnw gynnwys darpariaeth fachlud neu adolygu (ond nid oes rhaid iddi gynnwys darpariaeth o'r fath).

9. Darpariaeth fachlud yw darpariaeth sy'n peri bod yr is-ddeddfwriaeth yn dod i ben ar ddiwedd cyfnod a bennir yn yr is-ddeddfwriaeth honno. Darpariaeth adolygu yw darpariaeth sy'n gwneud yn ofynnol bod gwneuthurwr yr is-ddeddfwriaeth yn adolygu ei heffeithiolrwydd o fewn terfynau amser a bennir yn yr is-ddeddfwriaeth honno.

10. Os yw'r is-ddeddfwriaeth yn diwygio is-ddeddfwriaeth arall, caiff yr is-ddeddfwriaeth sy'n diwygio gynnwys darpariaeth fachlud neu adolygu mewn perthynas â'r is-ddeddfwriaeth a ddiwygir.

11. Pe bai'r Bil yn cael ei basio, byddai'r holl bwerau a dyletswyddau i wneud is-ddeddfwriaeth sydd gan Weinidogion Cymru o dan Ddeddf Senedd y DU neu Fesur neu Ddeddf y Cynulliad yn cwmpasu'r *pŵer* i gynnwys darpariaeth fachlud neu adolygu o fewn yr is-ddeddfwriaeth honno.

12. Bydd hyn yn gymwys mewn perthynas â phwerau presennol i wneud is-ddeddfwriaeth o dan Ddeddfau y DU neu Ddeddfau neu Fesurau y Cynulliad yn ogystal â'r pwerau hynny a gaffaelir gan Weinidogion Cymru ar ôl pasio'r Bil. Y rheswm am hynny yw fod cyfeiriad at yr adran 14A newydd (y bydd cymal 50 o'r Bil yn ei mewnysod yn y Ddeddf Ddehongli) yn cael ei ychwanegu at baragraff 1 o Atodlen 2 i Ddeddf Ddehongli 1978. Mae'r paragraff hwnnw yn cynnwys y rhestr o'r darpariaethau yn y Ddeddf Ddehongli sy'n gymwys i Ddeddfau'r DU a Deddfau a Mesurau y Cynulliad *pa bryd bynnag y cânt eu pasio*.

### **Manteision defnyddio'r Bil hwn yn hytrach na deddfwriaeth y Cynulliad**

13. Byddai modd i Ddeddf y Cynulliad gyflawni cyfran sylweddol o'r hyn y mae'r ddarpariaeth yn y Bil yn ei wneud, drwy ddiwygio holl bwerau a dyletswyddau Gweinidogion Cymru i wneud is-ddeddfwriaeth, sy'n dod o fewn

cymhwysedd y Cynulliad, fel bod y pwerau hynny'n cynnwys y gallu i gynnwys darpariaethau machlud ac adolygu yn yr is-ddeddfwriaeth a wneir drwy ddefnyddio'r pwerau a'r dyletswyddau hynny.

14. Fodd bynnag, er mwyn gwneud yn gwbl eglur i ddefnyddwyr deddfwriaeth pa bryd y mae'r pŵer i gynnwys cymal machlud neu adolygu yn gymwys, byddai angen darpariaeth ddeddfwriaethol lawer mwy beichus na'r ddyfais syml o ddiwygio'r Ddeddf Ddehongli.

15. Pe bai "Deddf Ddehongli" y Cynulliad yn cynnwys darpariaeth gyffredinol gyffelyb i hon, ni allai gael effaith ac eithrio mewn perthynas ag is-ddeddfwriaeth a ddeuai o fewn cymhwysedd deddfwriaethol y Cynulliad. Byddai angen, felly, i ddefnyddwyr deddfwriaeth ddarganfod a yw darn penodol o ddeddfwriaeth o fewn cymhwysedd y Cynulliad ai peidio, cyn y gallent wybod a ellid cynnwys cymal machlud neu adolygu ynddo ai peidio.

16. Yr unig ffordd o sicrhau eglurder ynglŷn â pha bryd y gellid cynnwys cymal machlud neu adolygu fyddai rhestru, mewn "Deddf Ddehongli" y Cynulliad, yr holl bwerau i wneud is-ddeddfwriaeth y gellid cynnwys cymal o'r fath ynddynt. Byddai hynny'n creu darn maith iawn o ddeddfwriaeth, y byddai angen adnoddau helaeth i'w ddrafftio a'i basio.

17. Yn ychwanegol, mae'r darpariaethau machlud ac adolygu sydd yn y Bil yn gymwys mewn perthynas ag unrhyw bwerau i wneud is-ddeddfwriaeth sydd gan Weinidogion Cymru ond nad ydynt yn dod o fewn cymhwysedd y Cynulliad. Mae eu heffaith, felly, yn fwy cynhwysfawr nag effaith y darpariaethau y gellid eu gwneud mewn Deddf y Cynulliad.

18. Gan hynny, mae rhesymau da dros ddefnyddio'r Bil i wneud y darpariaethau hyn ac i'w cymhwyso i bwerau Gweinidogion Cymru i wneud is-ddeddfwriaeth.

19. Mae'n werth nodi hefyd mai darpariaethau galluogi yw'r darpariaethau sydd dan sylw: maent yn rhoi i Weinidogion Cymru y pŵer i gynnwys darpariaethau machlud ac adolygu mewn is-ddeddfwriaeth, ond caiff Gweinidogion Cymru benderfynu peidio ag arfer y pwerau hynny. Yn ychwanegol, fel rheol, byddai arfer y pwerau hyn gan Weinidogion Cymru yn destun craffu gan y Cynulliad, naill ai'n unol â gweithdrefn gadarnhaol y Cynulliad neu'r weithdrefn negyddol.

### **Goblygiadau ariannol**

20. Ni ragwelir unrhyw oblygiadau ariannol i Lywodraeth Cymru o ganlyniad i gymhwyso'r darpariaethau machlud ac adolygu mewn perthynas â phwerau Gweinidogion Cymru i wneud is-ddeddfwriaeth. Byddai goblygiadau ariannol gweithredu darpariaethau machlud neu adolygu mewn perthynas â chynigion penodol yn cael eu hystyried ym mhob achos unigol.

Jane Hutt AC



Y Gweinidog Cyllid ac Arweinydd y Tŷ  
Hydref 2012

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru i roi gwybodaeth a chyngor i Aelodau'r Cynulliad a'u staff am faterion y mae'r Cynulliad a'i bwyllgorau'n eu hystyried ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod yr wybodaeth a'r cyngor a geir yn y ddogfen hon yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd parti.

This document has been prepared by National Assembly for Wales lawyers in order to provide information and advice to Assembly Members and their staff in relation to matters under consideration by the Assembly and its committees and for no other purpose. Every effort has been made to ensure that the information and advice contained in it are accurate, but no responsibility is accepted for any reliance placed on them by third parties.

## **Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol**

### **Nodyn Cyngor Cyfreithiol**

#### **TRYDYDD MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL - Y BIL MENTER A DIWYGIO RHEOLEIDDIO -**

##### Cefndir

1. Ar 5 Hydref 2012, rhoddodd y Gweinidog Cyllid ac Arweinydd y Tŷ hysbysiad ynghylch cynnig fel a ganlyn -  
"Cynnig bod Cynulliad Cenedlaethol Cymru, yn unol â Rheol Sefydlog 29.6, yn cytuno y dylai Senedd y DU ystyried darpariaethau'r Bil Menter a Diwygio Rheoleiddio sy'n ymwneud â phŵer i Weinidogion Cymru gynnwys cymalau machlud ac adolygu mewn is-ddeddfwriaeth, i'r graddau y maent yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru."

2. Trafododd y Pwyllgor Busnes y Memorandwm Cydsyniad Deddfwriaethol (y "Memorandwm") ar 9 Hydref 2012 a chytunodd i'w gyfeirio at y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol er mwyn iddo graffu arno. Cytunodd y Pwyllgor Busnes y dylai'r Pwyllgor gyflwyno adroddiad ar y Memorandwm erbyn 15 Tachwedd 2012, er mwyn i'r Cynnig Cydsyniad Deddfwriaethol gael ei drafod yn y Cyfarfod Llawn ar 20 Tachwedd 2012. Diben y nodyn hwn yw hwyluso'r drafodaeth honno.

3. Dyma'r trydydd Memorandwm sy'n ymwneud â'r Bil Menter a Diwygio Rheoleiddio. Cafodd Memorandwm blaenorol ei osod ar 12 Mehefin mewn perthynas â'r diwydiant dŵr ac un arall ar 10 Gorffennaf mewn perthynas â'r Banc Buddsoddi Gwyrdd. Nid yw'r materion a gafodd eu trin yn y Memoranda hynny wedi'u cynnwys yn y dadansoddiad a ganlyn.

##### Y Bil

4. Cafodd y Bil Menter a Diwygio Rheoleiddio ei gyflwyno yn Nhŷ'r Cyffredin ar 20 Mai 2012 gan yr Ysgrifennydd Gwladol dros Fusnes, Arloesi a Sgiliau. Roedd y Bil yn destun Ail Ddarlleniad ar 11 Mehefin 2012 cyn symud i'r Cyfnod Pwyllgor. Daeth ei daith drwy Dŷ'r Cyffredin i ben ar 17 Hydref, a bydd yn awr yn parhau drwy Dŷ'r Arglwyddi. Mae chwe Rhan i'r Bil, ond

mae'r Memorandwm presennol yn ymwneud â chymal 49 y Bil yn unig fel y cafodd ei gyflwyno i'r Senedd (cymal 50 y Bil fel y cafodd ei ddiwygio adeg y Cyfnod Pwyllgor yn Nhŷ'r Cyffredin). Mae'r cymal hwn wedi'i gynnwys yn Rhan 5 o'r Bil.

5. Byddai gwahanol Rannau'r Bil yn newid y gyfraith mewn gwahanol ffyrdd mewn gwahanol rannau o'r DU. O ran y ddarpariaeth dan sylw, mae'r Nodiadau Esboniadol yn nodi ei bod yn berthnasol i'r Deyrnas Unedig gyfan. Mewn perthynas â Chymru, mae'r Nodiadau'n nodi:

*“Westminster will not normally legislate with regard to devolved matters falling within the legislative competence of the National Assembly for Wales. Certain of the provisions of the Bill extending to Wales fall within the legislative competence of National Assembly for Wales. The consent of the National Assembly for Wales is therefore being sought for them through a legislative consent motion.”*

Yn anffodus, nid yw'r Nodiadau'n esbonio pa ddarpariaethau yn y Bil fydd yn destun cynigion o'r fath. Caiff y diffyg eglurder hwn ei adlewyrchu gan y ffaith mai hwn yw'r trydydd Memorandwm i gael ei osod gerbron y Cynulliad Cenedlaethol sy'n ymwneud â darpariaethau a oedd wedi'u cynnwys yn y Bil pan gafodd ei gyflwyno.

6. Yn ôl y Nodiadau Esboniadol: “The main purpose of the Bill is to encourage long term growth and simplify regulation generally.”

7. Ceir esboniad manwl o'r cymal hwn ym mharagraffau 367 a 368 o'r Nodiadau Esboniadol i'r Bil:

*“367. This clause amends the Interpretation Act 1978 to help give effect to the Government’s policy on the use of sunset and review provisions which was first published in March 2011. A sunset provision provides for legislation to cease to have effect at a particular point in time. A review provision requires a person to review the effectiveness of the legislation within or at the end of a specified period.*

*368. Clause 49 inserts a new section 14A into the Interpretation Act 1978. This ensures Ministers and other people making subordinate legislation may include sunset and review provisions in that legislation and in other subordinate legislation where that is being amended. A review provision may include an obligation to consider whether the objectives of the legislation remain appropriate, and whether they could be achieved in another way. Review or sunset provisions may apply to all or part of the legislation or to its application in particular circumstances. Subordinate legislation including sunset or review provisions may also include certain supplementary provisions, for example transitional or consequential provisions or savings in connection with the sunset or review provision. New section 14A does not apply to Scottish Ministers.”*

8. Effaith awtomatig y cymal yw y byddai unrhyw bwerau i wneud gorchmynion neu reoliadau yn cynnwys y pŵer i gyfyngu ar eu heffaith i gyfnod o amser penodol neu i'w gwneud yn ofynnol i'r darpariaethau gael eu hadolygu. Gellir cynnwys hynny eisoes os yw'r pŵer galluogi'n ddigon eang. Felly, roedd rheoliadau a wnaed adeg argyfwng clwy'r traed a'r genau yn 2001 o dan adran 2(2) o Ddeddf y Cymunedau Ewropeaidd yn aml yn datgan y byddent yn peidio â chael effaith ar ddyddiad penodol. Byddai'r cymal sy'n destun y Memorandwm yn rhoi'r pŵer hwnnw i bob deddfwriaeth galluogi.

### Cymhwysedd Deddfwriaethol

9. Nid yw'r darpariaethau y mae'r Memorandwm yn cyfeirio atynt yn dod yn daclus o fewn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol. Maent yn berthnasol i'r holl bwerau ar gyfer gwneud deddfwriaeth ddirprwyedig sydd gan Weinidogion Cymru (yn ogystal â Gweinidogion y DU), a gellir eu cynnwys yn benodol mewn Biliau Cynulliad unigol sy'n dod o fewn y cymhwysedd hwnnw. Golyga'r dull presennol o weithio na fyddai angen gwneud hynny. Mae'r dull presennol yn debyg i'r dull yn adran 14 o'r Ddeddf Dehongli (y Ddeddf y byddai'r cymal o dan sylw yn ei diwygio) sy'n darparu bod unrhyw bŵer i wneud is-ddeddfwriaeth o'r mathau sydd wedi'u disgrifio yn y Ddeddf yn cynnwys y pŵer i ddiwygio neu ddirymu'r is-ddeddfwriaeth honno yn awtomatig.

### Y Memorandwm Cydsyniad

10. Mae'r Memorandwm yn nodi mai cymal 49 (wrth ei gyflwyno) yw'r cymal sy'n ymwneud â chymhwysedd deddfwriaethol y Cynulliad ac sydd angen cydsyniad deddfwriaethol. Nid yw'r cymal yn dibynnu ar y darpariaethau eraill yn y Bil.

11. Byddai unrhyw offerynnau statudol a wnaed gan ddibynnu ar y pŵer newydd hwn yn parhau i fod yn ddarostyngedig i weithdrefn gadarnhaol neu negyddol y Cynulliad os ydynt yn gymwys i'r brif ddarpariaeth a fydd yn cael ei hadolygu neu ei gosod am gyfnod penodol. Gellir diwygio cyfnod penodol o'r fath (ei leihau neu ei ymestyn) drwy ddiwygio'r gorchmynion neu'r rheoliadau fel y bo'n briodol.

12. Mae enghreifftiau diweddar o reoliadau a ddaeth gerbron y Cynulliad a oedd yn cynnwys darpariaethau adolygu yn cynnwys Rheoliadau Gwastraff (Cymru a Lloegr) (Diwygio) 2012 a Rheoliadau Cadwraeth Cynefinoedd a Rhywogaethau (Diwygio) 2012. Cafodd y ddau eu hystyried gan y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ar 24 Medi 2012. Dyma adroddiad y Pwyllgor o dan Reol Sefydlog 21.3(ii) mewn perthynas â'r cyntaf:

*"Mae Rheoliad 2 (5) yn darparu ar gyfer mewnosod rheoliad 49 newydd yn Rheoliadau 2011. Byddai'r rheoliad hwn yn ei gwneud yn ofynnol i'r*

*Ysgrifennydd Gwladol adolygu gweithrediad ac effaith y Rheoliadau hynny mewn perthynas â Lloegr o fewn 5 mlynedd ar ôl 1 Hydref 2012, ac o fewn pob cyfnod o 5 mlynedd ar ôl hynny. Nid yw'r Memorandwm Esboniadol yn nodi pam nad ystyriwyd hi'n briodol i Weinidogion Cymru gynnal adolygiad."*

Dyma ymateb y Llywodraeth:

*"Polisi cyfredol Llywodraeth y DU yw cynnwys cymal ym mhob rheoliad sy'n gofyn am adolygiad o fewn amserlen benodol. Nid oes gan Lywodraeth Cymru bolisi tebyg yng Nghymru. Gall Gweinidogion Cymru adolygu'r rheoliadau unrhyw bryd. O ganlyniad, roedd cynnwys y ddarpariaeth am adolygiad yn yr offeryn yn berthnasol i Loegr yn unig."*

13. Roedd ymateb y Llywodraeth yn ddealladwy o ystyried y gall llywodraethau adolygu unrhyw ddeddfwriaeth sydd o fewn eu pŵer ar unrhyw adeg. Mae'r Memorandwm yn esbonio'n glir rinweddau'r dull o weithio sy'n cael ei gynnig yn y cymal o dan sylw, ond nid yw'n esbonio pam mae'r Llywodraeth yn derbyn y rhinweddau hynny os mai ei dull o weithio yw adolygu deddfwriaeth pan mae'n ystyried ei bod yn briodol yn hytrach nag ar adeg sydd wedi'i benderfynu o flaen llaw a'i nodi yn y ddeddfwriaeth.

## Casgliad

14. Yn syml, bydd y cymal yn rhoi i'r holl bwerau galluogi y pŵer i bennu dyddiad darford neu adolygu. Gellir cynnwys hynny'n benodol ym Miliâu'r Cynulliad ar hyn o bryd. Bydd unrhyw ddeddfwriaeth sy'n cael ei gwneud gan ddibynnu ar y pŵer yn parhau i fod yn ddarostyngedig i weithdrefnau craffu'r Cynulliad yn y modd arferol. Ymddengys nad yw Llywodraeth Cymru'n bwriadu gwneud defnydd arwyddocaol o'r pŵer.

Y Gwasanaethau Cyfreithiol

Hydref 2012

# Eitem 5

## MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL

### BIL PENSIYNAU'R GWASANAETH CYHOEDDUS – CYMALAU YN YMWNEUD Â'R CYFYNGIADAU SYDD I'W CYMHWYSO I GYNLLUNIAU NEWYDD

#### Cynnig Cydsyniad Deddfwriaethol

1. “Cynnig bod Cynulliad Cenedlaethol Cymru, yn unol â Rheol Sefydlog 29.6, yn cytuno y dylai Senedd y DU ystyried darpariaethau'r Bil Pensiynau'r Gwasanaeth Cyhoeddus fel y'i cyflwynwyd yn Nhŷ'r Cyffredin ar 13 Medi 2012 sy'n ymwneud â'r cyfyngiadau sydd i'w cymhwysu i'r cynlluniau pensiwn newydd ar gyfer cyrff cyhoeddus, i'r graddau y maent yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru.”

#### Cefndir

2. Cyflwynwyd y Cynnig Cydsyniad Deddfwriaethol ym mharagraff 1 uchod gan Jane Hutt AC, y Gweinidog Cyllid ac Arweinydd y Tŷ, o dan Reol Sefydlog 29.6 o Reolau Sefydlog Cynulliad Cenedlaethol Cymru (y Cynulliad Cenedlaethol). Gosodir y Memorandwm Cydsyniad Deddfwriaethol hwn o dan Reol Sefydlog 29.2. Mae Rheol Sefydlog 29 yn rhagnodi bod yn rhaid cyflwyno Cynnig Cydsyniad Deddfwriaethol, a gosod Memorandwm 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.

3. Cyflwynwyd Bil Pensiynau'r Gwasanaeth Cyhoeddus (y Bil) yn Senedd y DU ar 13 Medi 2012. Gellir gweld y Bil yn <http://services.parliament.uk/bills/2012-13/publicservicepensions/documents.html>

#### Crynodeb o'r Bil a'i Amcanion Polisi

4. Mae'r Bil yn pennu'r trefniadau newydd ar gyfer creu cynlluniau i dalu pensiynau a buddion eraill. Mae'n rhoi pwerau i Weinidogion i greu cynlluniau o'r fath yn unol â fframwaith cyffredin o ofynion. Mae'r Bil hefyd yn rhoi pwerau i Drysorlys Ei Mawrhydi i bennu manylion technegol rhai gofynion penodol ac yn rhoi pwerau i'r Rheoleiddiwr Pensiynau i gynnal system oruchwylio annibynnol ar y modd y gweithredir y cynlluniau hyn.

5. Y bwriad yw y bydd y pwerau yn y Bil yn disodli pwerau sy'n bodoli eisoes, gan gynnwys y rhai sydd yn y ddeddfwriaeth a ganlyn, ar gyfer creu cynlluniau i dalu pensiynau a buddion eraill:

- Deddf Blwydd-daliadau 1972, ar gyfer gweision sifil, pobl a gyflogir gan lywodraeth leol, athrawon a phobl sy'n ymwneud â gwasanaethau iechyd;

- Deddf Tân ac Achub 2004;
- Deddf y Lluoedd Arfog (Pensiynau ac lawndal) 2004;
- Deddf Pensiynau'r Heddlu 1976;
- Deddf Pensiynau ac Ymddeoliadau Barnwrol 1993; a
- Gorchymyn Blwydd-daliadau (Gogledd Iwerddon) 1972.

6. Mae'r Bil yn diogelu'r buddion a enillir eisoes gan aelodau cynlluniau pensiwn cyfredol y gwasanaeth cyhoeddus, ac mae'n galluogi categorïau penodol o bobl sydd agosaf at ymddeol i barhau'n aelodau o'r cynlluniau hynny.

7. Nodau datganedig y Bil yw:

- Sicrhau lefel dda o incwm ymddeol i weithwyr y gwasanaeth cyhoeddus, a hynny â graddau cymharol dda o sicrwydd;
- Bod yn fforddiadwy ac yn gynaliadwy – a'r risg o ran cost yn cael ei rheoli a'i rhannu'n effeithiol;
- Rhoi cydbwysedd teg o o ran cost a budd i weithwyr y gwasanaeth cyhoeddus a threthdalwyr eraill;
- Diogelu'r rhai hynny sydd agosaf at ymddeol;
- Bod â fframwaith cyfreithiol a strwythur llywodraethu eglur – a chael ei ddeall yn gyffredinol gan weithwyr;
- Gwrthsefyll prawf amser – na fydd rhagor o ddiwygio am 25 mlynedd o leiaf.

8. Yn fwy penodol, bydd y Bil:

- Yn caniatáu ar gyfer creu cynlluniau pensiwn Cyfartaledd Gyrfa newydd;
- Yn sicrhau, yn achos cynlluniau newydd, fod yr Oed Pensiwn Arferol wedi'i gysylltu ag Oed Pensiwn y Wladwriaeth, a hynny i bawb ac eithrio'r lluoedd arfog, yr heddlu a'r gwasanaeth tân;
- Yn darparu ar gyfer rhoi cap ar rwymedigaeth y trethdalwr;
- Yn cynnwys diogelwch trosiannol i bobl sydd lai na deng mlynedd o gyrraedd eu Hoed Pensiwn Arferol ar 1 Ebrill 2012;
- Yn cyflwyno rhwystr uchel iawn ar gyfer newidiadau i elfennau penodol o'r dyluniadau pensiwn hyn;

- Yn sicrhau bod gan bob cynllun pensiwn newydd Fwrdd a rheoleiddiwr, fel bod modd i'w haelodau fod yn hyderus eu bod yn cael eu rhedeg yn effeithiol.

### **Y darpariaethau yn y Bil y ceisir cydsyniad ar eu cyfer**

9. Mae gan Gynulliad Cenedlaethol Cymru gymhwysedd mewn perthynas â'r cynlluniau pensiwn ar gyfer Aelodau'r Cynulliad, Gweinidogion Cymru ac aelodau awdurdodau lleol. Mae Cymal 27 o'r Bil yn gwneud dau beth –

(a) mae'n gosod cyfyngiadau ar ddyluniad cynlluniau pensiwn newydd a allai gael eu creu o dan y pŵer yng nghymal 28(4) ar gyfer y cyrff a'r swyddi hynny y mae eu cynlluniau pensiwn wedi'u cau gan gymal 28(2) ac na all eu haelodau ymuno ag un o'r cynlluniau a sefydlwyd o dan gymal 1; a

(b) mae hefyd yn llywodraethu dyluniad cynlluniau pensiwn a lunnir yn y dyfodol neu a sefydlir o dan ddeddfwriaeth yn y dyfodol ar gyfer cyrff cyhoeddus (oni bai fod deddfwriaeth y dyfodol yn gwneud darpariaeth benodol a gwahanol).

10. Y ddarpariaeth olaf uchod sy'n effeithio ar feysydd sydd o fewn cymhwysedd deddfwriaethol y Cynulliad, am y rheswm hwn. Pe dymunai'r Cynulliad greu cynlluniau pensiwn newydd ar gyfer Aelodau'r Cynulliad neu gynghorwyr llywodraeth leol, ar ôl i'r Bil gael ei ddeddfu ac i'r cymal hwn ddod i rym, byddai'r cynlluniau newydd hynny yn cael eu dal gan y darpariaethau yng nghymal 27 sy'n ymwneud â chreu pensiynau newydd i gyrff cyhoeddus.

11. Mae'r Bil yn ymdrin â Lloegr, Cymru, yr Alban a Gogledd Iwerddon. Gofynnir i Gymru, yr Alban a Gogledd Iwerddon roi eu cydsyniad mewn perthynas â darpariaethau o fewn y Bil i wneud cynlluniau newydd ar gyfer pensiynau a buddion eraill lle y bo cymhwysedd datganoledig.

12. Er bod y Bil yn effeithio ar gymhwysedd y Cynulliad i greu cynlluniau pensiwn newydd ar gyfer Aelodau'r Cynulliad neu gynghorwyr llywodraeth leol, nid yw'n effeithio ar y defnydd a wneir o Gynllun Pensiwn Aelodau Cynulliad Cenedlaethol Cymru yn awr nac yn y dyfodol nac ar y trefniadau cyfredol ar gyfer cynghorwyr lleol Cymru y darperir ar eu cyfer gan y Cynlluniau Pensiwn Llywodraeth Leol yr ymdrinnir â hwy eisoes yn y Bil.

### **Manteision defnyddio'r Bil hwn**

13. Mae Llywodraeth Cymru o'r farn ei bod yn deg ac yn briodol i'r deddfwriaeth ar ddiwygio pensiynau fod yn gymwys i holl gyrff cyhoeddus Cymru. Bydd yn sicrhau dull cyson o ymdrin â threfniadau pensiynau ar draws Cymru, a hwnnw'n gyson â'r newidiadau ehangach ar draws y sector cyhoeddus yn y DU.

14. Ymdrin â'r deddfwriaeth hon yn un o Filiau'r DU yw'r cyfrwng cyfreithiol mwyaf priodol o sicrhau dull cyson ar gyfer (a) adolygu cynlluniau penodol sy'n bodoli a (b) creu cynlluniau pensiwn newydd yn unol â fframwaith gofynion cyffredin.



## **Goblygiadau Ariannol**

Nid oes unrhyw oblygiadau ariannol yn gysylltiedig â'r Bil hwn. O dan y Bil, bydd Cymru yn cyfrannu at gynlluniau pensiwn newydd a fydd yn sicrhau 10% o arbedion rhagamcanol yn y tymor hir; gan greu arbedion o tua £65bn i'r DU gyfan erbyn 2061/62. Yn ogystal, bydd cyfanswm y pecyn diwygio pensiynau ar gyfer y DU gyfan (sy'n cynnwys newid o'r mynegai RPI i'r mynegai CPI a mwy o gyfraniadau gan gyflogeion) yn sicrhau mwy na 430bn o arbedion, yn nhermau'r GDP cyfredol, dros y 50 mlynedd nesaf.

**Jane Hutt AC**  
**Y Gweinidog Cyllid ac Arweinydd y Tŷ**  
**Medi 2012**

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chynghor i Aelodau'r Cynulliad a'u cynorthwywyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cynghor a gynhwysir ynnddi yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partion.

This document has been prepared by National Assembly for Wales lawyers in order to provide information and advice to Assembly Members and their staff in relation to matters under consideration by the Assembly and its committees and for no other purpose. Every effort has been made to ensure that the information and advice contained in it are accurate, but no responsibility is accepted for any reliance placed on them by third parties

## **Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol**

### **Nodyn Cyngor Cyfreithiol**

#### **MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL - BIL PENSIYNAU'R GWASANAETH CYHOEDDUS**

##### Cefndir

1. Ar 2 Hydref 2012, rhoddodd y Gweinidog Cyllid ac Arweinydd y Tŷ hysbysiad ynghylch cynnig fel a ganlyn -  
“Cynnig bod Cynulliad Cenedlaethol Cymru, yn unol â Rheol Sefydlog 29.6, yn cytuno y dylai Senedd y DU ystyried darpariaethau'r Bil Pensiynau'r Gwasanaeth Cyhoeddus fel y'i cyflwynwyd yn Nhy'r Cyffredin ar 13 Medi 2012, sy'n ymwneud â'r cyfyngiadau sydd i'w cymhwyso i'r cynlluniau pensiwn newydd ar gyfer cyrff cyhoeddus, i'r graddau y maent yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru.”

2. Trafododd y Pwyllgor Busnes y Memorandwm ar 9 Hydref 2012 ac, yn unol â Rheol Sefydlog 29.4, cytunodd y Pwyllgor i'w gyfeirio i'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol er mwyn iddo graffu arno. Cytunodd y Pwyllgor Busnes y dylai'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol gyflwyno adroddiad ar y Memorandwm i'r Cynulliad erbyn 15 Tachwedd 2012, er mwyn i'r Cynnig Cydsyniad Deddfwriaethol gael ei drafod yn y Cyfarfod Llawn ar 20 Tachwedd 2012. Diben y nodyn hwn yw hwyluso'r drafodaeth honno.

##### Y Bil

3. Cyflwynwyd Bil Pensiynau'r Gwasanaeth Cyhoeddus yn Nhy'r Cyffredin ar 13 Medi 2012 gan Ganghellor y Trysorlys. Bwriedir cynnal dadl Ail Ddarlleniad y Bil ar 22 Hydref. Ceir gwybodaeth gefndirol fanwl am y Bil ym mharagraffau 3 i 11 y Nodiadau Esboniadol i'r Bil:  
<http://www.publications.parliament.uk/pa/bills/cbill/2012-2013/0070/en/2013070en.htm>

4. Bydd y Bil yn newid y gyfraith ym mhob rhan o'r Deyrnas Unedig, a bydd gofyn cael cydsyniad deddfwriaethol gan bob un o'r deddfwrfeydd

datganoledig. Caiff hyn ei esbonio yn y Nodiadau Esboniadol a gafodd eu cyflwyno gyda'r Bil yn Nhŷ'r Cyffredin. Mae'n nodi:

### ***TERRITORIAL EXTENT***

*12. This Bill extends to England and Wales, Scotland and Northern Ireland.*

*13. The Northern Ireland Assembly's consent will be sought in relation to the provisions of this Bill to make schemes for pensions and other benefits that are within the competence of that Assembly.*

*14. This Bill contains provisions that trigger the Sewel Convention in Scotland. The provisions relate to the pensions of certain members of the Scottish judiciary and a power to require the closure and reform of pension schemes in public bodies for which the Scottish Parliament has competence. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. We have sought "in principle" agreement from Scottish Ministers to seek a Legislative Consent Motion for these provisions. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will also be sought for them.*

*15. The consent of the National Assembly for Wales will be sought in relation to provisions in this Bill which apply to new pension schemes for public bodies and" statutory office holders; the National Assembly for Wales has competence in relation to pension schemes for Assembly Members, Welsh Ministers and members of local authorities."*

Paratowyd y Nodiadau Esboniadol hyn gan y Trysorlys i gynorthwyo â'r gwaith o drafod y Bil.

5. Diben y Bil yn gyffredinol yw pennu'r trefniadau newydd ar gyfer creu cynlluniau i dalu pensiynau a buddion eraill. Mae'n rhoi pŵer i Weinidogion greu cynlluniau o'r fath yn unol â fframwaith cyffredin o ofynion. Mae'r Bil hefyd yn rhoi pwerau i'r Trysorlys bennu manylion technegol rhai gofynion penodol ac yn rhoi pwerau i'r Rheoleiddiwr Pensiynau gynnal system oruchwylio annibynnol ar y modd y gweithredir y cynlluniau hyn.

6. Aiff y Nodiadau Esboniadol ymlaen i esbonio:

*"Y bwriad yw y bydd y pwerau yn y Bil yn disodli pwerau sy'n bodoli eisoes, gan gynnwys y rhai sydd yn y ddeddfwriaeth a ganlyn, ar gyfer creu cynlluniau i dalu pensiynau a buddion eraill:*

- Deddf Blwydd-daliadau 1972, ar gyfer gweision sifil, pobl a gyflogir gan lywodraeth leol, athrawon a phobl sy'n ymwneud â gwasanaethau iechyd;*
- Deddf y Gwasanaethau Tân ac Achub 2004;*

- *Deddf y Lluoedd Arfog (Pensiynau ac lawndal) 2004;*
- *Deddf Pensiynau'r Heddlu 1976;*
- *Deddf Pensiynau ac Ymddeoliadau Barnwrol 1993; a*
- *Gorchymyn Blwydd-daliadau (Gogledd Iwerddon) 1972.*

*Mae'r Bil yn diogelu'r buddion a enillir eisoes gan aelodau cynlluniau pensiwn cyfredol y gwasanaeth cyhoeddus, ac mae'n galluogi categorïau penodol o bobl sydd agosaf at ymddeol i barhau'n aelodau o'r cynlluniau hynny."*

### Cymhwysedd Deddfwriaethol

7. Mae'r darpariaethau y mae'r Memorandwm Cydsyniad Deddfwriaethol yn cyfeirio atynt yn dod o fewn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol o dan Bwnc 4 (Datblygu economaidd) a Phwnc 13 (Cynulliad Cenedlaethol Cymru) o Atodlen 7 i Ddeddf Llywodraeth Cymru 2006.

8. Cafodd y geiriad o dan bennawd 4 (Datblygu economaidd) ei ddiwygio gan Orchymyn Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Diwygio Atodlen 7 i Ddeddf Llywodraeth Cymru 2006) 2007 (OS 2007/2143) i gynnwys eithriad penodol mewn perthynas â chynlluniau pensiwn personol a galwedigaethol. Cafodd hyn, yn ei dro, ei ddiwygio gan Orchymyn Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Diwygio Atodlen 7 i Ddeddf Llywodraeth Cymru 2006) 2010. O ganlyniad, mae'r eithriad i gymhwysedd deddfwriaethol y Cynulliad mewn perthynas â phensiynau yn cynnwys 'eithriad i eithriad' ar gyfer materion y cyfeiriwyd atynt yn y Memorandwm Cydsyniad Deddfwriaethol ac mae'n darllen fel a ganlyn:

*"Occupational and personal pension schemes (including schemes which make provision for compensation for loss of office or employment, compensation for loss or diminution of emoluments, or benefits in respect of death or incapacity resulting from injury or disease), apart from schemes for or in respect of Assembly members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General or Deputy Welsh Ministers and schemes for or in respect of members of local authorities."*

9. Mae pennawd 13 (Cynulliad Cenedlaethol Cymru) yn cynnwys y cyfeiriad a ganlyn mewn perthynas â phensiynau: *Salaries, allowances, pensions and gratuities for and in respect of Assembly members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General and Deputy Welsh Ministers.* Pan gafodd yr eithriad ar gyfer pensiynau ei gynnwys yng ngorchymyn 2007, roedd yn angenrheidiol cynnwys eithriad i'r eithriad fel nad oedd yn gwrth-ddweud y cymhwysedd a roddwyd o dan bennawd 13. Cafodd yr eithriad i eithriad pellach ar gyfer aelodau o awdurdodau lleol ei wneud gan orchymyn 2010.

## Y Memorandwm Cydsynio

10. Mae'r Memorandwm Cydsyniad Deddfwriaethol yn nodi mai cymal 27 yw'r cymal sy'n ymwneud â chymhwysedd deddfwriaethol y Cynulliad. Mae cymal 27 yn nodi'r gofynion yn y Bil a fydd yn berthnasol i gynlluniau pensiwn cyrff cyhoeddus newydd, a fyddai'n cynnwys y cynlluniau ar gyfer Aelodau'r Cynulliad, y Prif Weinidog, Gweinidogion Cymru, y Cwnsler Cyffredinol a Dirprwy Weinidogion Cymru ac ar gyfer aelodau o awdurdodau lleol, neu mewn perthynas â hwy.

11. Mae mater arall mewn perthynas â chymhwysedd. Mae cymal 16 yn ei gwneud yn ofynnol nad oes unrhyw fuddion i gael eu darparu o dan gynllun sy'n bodoli eisioes a restrir yn Atodlen 5. Mae hyn yn cynnwys: "A scheme constituted by paragraph 6(3) of Schedule 11 to the Welsh Language (Wales) Measure 2011 (nawm 1)". Mae paragraff 6(3) yn darllen fel a ganlyn:

*"(3) The Welsh Ministers may pay—*  
*(a) pensions to, or in respect of, persons who have been members of the Tribunal, and*  
*(b) amounts for or towards provision of pensions to, or in respect of, persons who have been members of the Tribunal."*

12. Mae cymhwysedd deddfwriaethol y Cynulliad mewn perthynas â'r Gymraeg yn llawer ehangach o dan Atodlen 7 i Ddeddf Llywodraeth Cymru 2006 nag yr oedd o dan Atodlen 5. Os oedd y ddarpariaeth hon o fewn cymhwysedd deddfwriaethol y Cynulliad yn 2011, mae'n parhau i fod yn awr. Nid yw'n glir, felly, pam nad yw Llywodraeth Cymru wedi cyfeirio at hyn yn y Memorandwm Cydsyniad Deddfwriaethol.

13. Mae cyfeiriadau penodol eraill at Gymru yn y Bil. Mae cymal 1 yn eithrio rheoliadau cynlluniau a wnaed gan Weinidogion Cymru ar gyfer gweithwyr tân ac achub o'r rhai y mae'n ofynnol iddynt gael cysyniad y Trysorlys. Mae gan Weinidogion Cymru y pŵer i wneud cynlluniau mewn perthynas â'r gwasanaethau tân ac achub, ond nid oes gan y Cynulliad Cenedlaethol unrhyw bŵer i wneud deddfwriaeth sylfaenol ar y pwnc gan fod cynlluniau pensiwn personol a galwedigaethol wedi cael eu heithrio o gymhwysedd deddfwriaethol y Cynulliad. Mae cymal 20(5) yn cynnwys gofyniad i ymgynghori â'r Cynulliad Cenedlaethol os cynigir newidiadau penodol i gynlluniau o'r fath.

14. Ni fydd y Bil hwn yn gwneud unrhyw newidiadau i gymhwysedd deddfwriaethol y Cynulliad Cenedlaethol. Gan hynny, bydd y cymhwysedd i wneud darpariaethau mewn Deddfau Cynulliad, nad ydynt yn cyd-fynd â gofynion y Bil presennol, yn parhau gyda'r Cynulliad.

## **Casgliad**

15. Bydd y Bil yn gwneud newidiadau sylweddol i ddeddfwriaeth ar gyfer cynlluniau pensiwn y sector cyhoeddus. Mae'n cynnwys darpariaethau penodol sy'n ymwneud ag oed pensiwn ar gyfer Aelodau Seneddol ac Aelodau o Senedd Ewrop yn ogystal â nifer o weithwyr yn y sector cyhoeddus. Y mater i Aelodau'r Cynulliad ei ystyried yw a ydynt yn fodlon cael eu cynnwys (ynghyd â'r Cwnsler Cyffredinol ac aelodau o awdurdodau lleol Cymru) yn y ddeddfwriaeth, tra bôn't yn cadw'r cymhwysedd i ddeddfu'n wahanol yn y dyfodol yn yr achosion prin hynny, os ydynt yn dewis gwneud hynny.

Y Gwasanaethau Cyfreithiol

Hydref 2012

**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Constitutional and Legislative Affairs Committee**

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

Jane Hutt AM  
Minister for Finance and Leader of the  
5th Floor  
Tŷ Hywel  
Cardiff Bay  
CF99 1NA



24 October 2012

Dear Jane

**Public Service Pensions Bill: Legislative Consent Memorandum –  
Invitation to give evidence to the Constitutional and Legislative Affairs  
Committee**

The Constitutional and Legislative Affairs Committee considered the Legislative Consent Memorandum for the Public Service Pensions Bill at its meeting on 22 October 2012.

The Committee noted that the Memorandum made no mention of the provisions in the Bill that refer to the powers of Welsh Ministers in relation to the fire and rescue services, nor to those that affect the pension arrangements of members of the Welsh Language Tribunal.

The latter was of particular concern as the Committee's attention was drawn to the contrast between Schedules 5 and 7 to the Government of Wales Act 2006. Schedule 7 contains a specific exception under 'Economic development' for 'Occupational and personal pension schemes', to which the only carve-outs are for Assembly members, the First Minister, Welsh Ministers, the Counsel General or deputy Welsh Ministers and schemes for or in respect of members of local authorities. These are the schemes referred to in your LCM.

Schedule 5, on the other hand, contained no such exception, so that the Assembly was able to legislate for pensions for members of the Welsh Language Tribunal as a matter incidental to its competence to promote and facilitate the use of the Welsh language.

Section 16 of the Bill, and Schedule 5 to it, appear to have the effect of preventing the Welsh Ministers from making the arrangements approved by the Assembly in paragraph 6 of Schedule 11 to the Welsh Language Measure.

Bae Caerdydd  
Caerdydd  
CF99 1NA

Cardiff Bay  
Cardiff  
CF99 1NA

Ffôn / Tel: 029 2089 8154  
E-bost / Email: [olga.lewis@wales.gov.uk](mailto:olga.lewis@wales.gov.uk)

The exception that appears in Schedule 7 to the Government of Wales Act 2006 will prevent the Assembly legislating to make alternative arrangements, whether consistently with the Pensions Bill or otherwise.

Furthermore, Matter 12.16 in Schedule 5 to the 2006 Act gave the Assembly legislative competence not merely in relation to members of local authorities, but also of National park authorities and fire and rescue authorities. This competence too appears to have been lost in the transition from Part 3 to Part 4 of the 2006 Act.

Members of the Committee are therefore likely to wish to explore with you

- why these matters were not referred to in the LCM;
- what arrangements are now proposed for the pensions of members of the Welsh Language Tribunal;
- whether it was intended that the Assembly should have a more limited competence under Schedule 7 than under Schedule 5, and if so, why;
- if not, what is being done to seek to restore that competence, and whether the present Bill provides an opportunity to do so.

In addition, the Bill also includes provisions that may affect the Remuneration Board's ability to revise or remake the Assembly Members' pension scheme in future, or at least affect the Board's thinking. As you are aware, the Board is currently consulting on issues and options prior to a full review of Assembly Members' pension arrangements. The Committee may, therefore, also wish to take your mind on the potential impact on the work of the Board and whether the Assembly Commission should have the opportunity to take a view formally on the Memorandum before it is considered in Plenary.

It may be that these are all matters that could be cleared up in correspondence. However, given the relative lack of time for these points to be clarified before the Committee is required to report to the Assembly, it would be helpful if you could attend the Committee's meeting on Monday 5 November 2012 at 2:30pm to discuss the matters set out above. I do not envisage the Committee requiring more than 30 minutes of your time on this occasion.

I would be grateful if your officials could liaise with the Deputy Clerk of the Committee Olga Lewis (tel: 02920 898154) with regards to the practical arrangements.

I look forward to hearing from you.

Yours sincerely



**David Melding AM**  
Chair



Jane Hutt AC / AM  
Y Gweinidog Cyllid ac Arweinydd y Ty  
Minister for Finance and Leader of the House



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref LF/JH/0391/12

David Melding AM  
Chair  
Constitutional and Legislative Affairs  
Committee  
Cardiff Bay  
Cardiff  
CF99 1NA

31 October 2012

*Dear David,*

**Public Service Pensions Bill: Legislative Consent Motion – Invitation to give evidence to the Constitutional and Legislative Affairs Committee**

Thank you for your letter of 25 October inviting me to attend the Constitutional and Legislative Affairs Committee meeting on 5 November. Unfortunately, I will be unable to attend on this occasion. I have therefore set out my response to the committee's comments regarding the Public Service Pensions Bill Legislative Consent Memorandum (LCM) below.

***Why Welsh Ministers' powers in relation to fire and rescue services and Welsh Language Tribunal pension arrangements were not referred to in the Memorandum.***

The legislative consent memorandum did not refer to the powers of Welsh Ministers because these matters did not bear directly on the issue of the motion, that being the legislative competence of the National Assembly for Wales to create new pension schemes for Assembly Members, Welsh Ministers and members of local authorities.

The Bill does address areas where Welsh Ministers have executive functions. Welsh Ministers have powers, and have exercised their powers, under the Fire and Rescue services Act 2004 to make orders relating to the pension schemes for firefighters. The statutory power extends to all employees of fire and rescue authorities but non-firefighter employees are covered within the Local Government Pension Scheme.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

English Enquiry Line 0845 010 3300  
Llinell Ymholiadau Cymraeg 0845 010 4400  
Correspondence: Jane.Hutt@wales.gsi.gov.uk

*Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)  
recycled paper*

*Printed on 100%*

The other pension arrangement you mention is within the Welsh Language (Wales) Measure 2011 which enables the Welsh Ministers to make pension payments to the members of the Welsh Language Tribunal. To date no such arrangements have been put in place.

The Bill's provisions will mean that the firefighters pension schemes and the Welsh Language Tribunal members' scheme (if there were one) would close and be replaced by schemes which comply with the requirements of the Bill.

I will therefore make a written statement to the Assembly on the Bill's effects on the powers of Welsh Ministers, as opposed to those matters within legislative competence in due course.

***What arrangements are now proposed for the pensions of members of the Welsh Language Tribunal?***

Preparatory work in relation to the establishment of the Welsh Language Tribunal and appointment of Tribunal members is underway. The Welsh Language Measure gives the Welsh Ministers a power to pay pensions to, or in respect of, persons who have been members of the Tribunal. It also gives the Welsh Ministers a power to pay amounts for or towards provision of pensions to, or in respect of, persons who have been members of the Tribunal. This is being considered as part of the preparatory work for the establishment of the Tribunal.

***Whether it was intended that the Assembly should have a more limited competence under Schedule 7 than under Schedule 5; and if so, why; If not, what is being done to seek to restore the competence, and whether the present Bill provides an opportunity to do so***

The Welsh Government's view is that in Schedule 7 to the Government of Wales Act 2006 the term "local authorities" includes both National Park authorities (NPAs) and fire and rescue authorities (FRAs). I understand that this view is shared by the Wales Office. Accordingly the carve out for pensions for the members of local authorities means that there is also a carve out for pensions for members of NPAs and FRAs.

You suggest that the pension provision made in the Welsh Language Measure was possible under Schedule 5 because the pension provision was inserted as being incidental to the purposes of the Measure but that is not permissible under Schedule 7. The Welsh Government's view is that if the Assembly was to consider making a Welsh Language Act now, the "incidental" power would still be available even though pensions are in general excepted. We believe this is clear from section 108(3) to (5) of the Government of Wales Act 2006.

Accordingly I do not consider that there is a need to restore any competence in this area.



***Whether the Assembly Commission should have the opportunity to take a view formally on the memorandum / motion before it is considered in Plenary***

I will write to the Assembly Commission seeking their view on this matter. The debate on agreeing the LCM is scheduled for 20 November. I would be content to postpone the debate to provide the Commission sufficient time to consider the issue if requested.

In that event, we would have to balance the need to allow as much time as we would wish with the parliamentary timetable, and I would wish any new date to be agreed with Business Committee.

*Yours sincerely,  
Jane*

**Jane Hutt AC / AM**

Y Gweinidog Cyllid ac Arweinydd y Ty  
Minister for Finance and Leader of the House



# Eitem 6.1

## Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol Constitutional and Legislative Affairs Committee

John Griffiths AC  
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy  
Llawr 5  
Tŷ Hywel  
Bae Caerdydd  
CF99 1NA

Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



11 Hydref 2012

Annwyl Weinidog,

### CLA178 - Rheoliadau'r Tafod Glas (Cymru) (Diwygio) 2012

Ystyriodd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yr Offeryn Statudol uchod yn ystod ei gyfarfod ar 8 Hydref 2012 a chytunodd y dylwn ddwyn i'ch sylw adroddiad y Pwyllgor a wnaed o dan Reol Sefydlog 21.3 ar rinweddau'r Offeryn.

Cytunodd y Pwyllgor i wahodd y Cynulliad i roi sylw arbennig i'r Offeryn hwn ar y sail ei fod yn gweithredu deddfwriaeth yr Undeb Ewropeaidd mewn modd amhriodol. [Rheol Sefydlog 21.3(iv).] Gosodwyd adroddiad y Pwyllgor yn y Swyddfa Gyflwyno ar 10 Hydref 2012 ac mae'n amgaeedig er gwybodaeth. Roedd y Pwyllgor o'r farn y dylai'r Rheoliadau wneud cyfeiriad penodol at y gofynion sydd ynghlwm â pharthau gwyliadwraeth fel y nodir yn y Gyfarwyddeb. Byddwn yn ddiolchgar pe baech yn ystyried yr adroddiad ac yn ymateb i'r Pwyllgor.

Rwy'n anfon copi o'r adroddiad at y Prif Weinidog er gwybodaeth ac rwyf hefyd wedi trefnu i'r llythyr hwn gael ei ddwyn i sylw Aelodau'r Cynulliad.

Yn gywir

**David Melding AC**  
Cadeirydd

Bae Caerdydd  
Caerdydd  
CF99 1NA

Cardiff Bay  
Cardiff  
CF99 1NA

Ffôn / Tel: 029 2089 8154  
E-bost / Email: [olga.lewis@wales.gov.uk](mailto:olga.lewis@wales.gov.uk)

John Griffiths AC /AM  
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy  
Minister for Environment and Sustainable Development



Llywodraeth Cymru  
Welsh Government

David Melding AC  
Cadeirydd  
Y Pwyllgor Materion  
Cyfansoddiadol a Deddfwriaethol  
Cynulliad Cenedlaethol Cymru  
Bae Caerdydd  
Caerdydd  
CF99 1NA

24 Hydref 2012

*Annwyl David,*

Diolch am eich llythyr dyddiedig 11 Hydref ynghylch Rheoliadau'r Tafod Glas (Cymru) (Diwygio) 2012 ('y Rheoliadau').

Rwy'n nodi pryderon y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ynghylch y ffaith nad yw'r Rheoliadau yn amlinellu'r gofynion am barthau gwylidwriaeth fel sydd yng Nghyfarwyddeb yr UE. Fodd bynnag, nid ydym o'r farn bod y mater yn effeithio ar y ffordd y mae'r ddeddfwriaeth yn gweithredu am y rhesymau sydd i'w gweld yn ein hymateb blaenorol.

Mae gofynion y Gyfarwyddeb yn glir a diamwys, felly er nad ydynt wedi'u cynnwys yn y Rheoliadau, nid yw hyn yn tansilio cyfraith yr UE. Fodd bynnag, rydym yn nodi pryderon y Pwyllgor ynghylch gweithredu o ran parthau gwylidwriaeth. O ganlyniad, rydym yn bwriadu diwygio'r ddeddfwriaeth i gyfeirio at bellteroedd parthau gwylidwriaeth yn adolygiad nesaf y rheoliadau.

Yn gywir

**John Griffiths AC / AM**  
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy  
Minister for Environment and Sustainable Development

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

English Enquiry Line 0845 010 3300  
Llinell Ymholiadau Cymraeg 0845 010 4400  
Correspondence: John.Griffiths@wales.gsi.gov.uk  
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## **Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol**

CLA(4)-20-12

**CLA178**

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

**Teitl: Rheoliadau'r Tafod Glas (Cymru) (Diwygio) 2012**

#### **Gweithdrefn: Negyddol**

Mae'r rheoliadau hyn yn diwygio Rheoliadau'r Tafod Glas (Cymru) 2008, gan drosi Cyfarwyddeb 2012/5/EU (y Gyfarwyddeb), o ran brechu yn erbyn y tafod glas. Byddant yn galluogi'r rhai sy'n cadw anifeiliaid i ddefnyddio brechlynnau anweithredol i frechu eu hanifeiliaid yn erbyn y tafod glas.

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

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

#### **Rhinweddau: craffu**

Nodwyd y pwynt a ganlyn i gyflwyno adroddiad arno o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn ar hyn o bryd:

Mae Erthygl 1 o'r Gyfarwyddeb yn diwygio Cyfarwyddeb 2000/75/EC (Cyfarwyddeb 2000). Mae Erthygl 1(2) o'r Gyfarwyddeb, sy'n diwygio Erthygl 5 o Gyfarwyddeb 2000, yn cynnwys y testun a ganlyn -

"2. Whenever live attenuated vaccines are used, Member States shall ensure that the competent authority demarcates:

- (a) a protection zone, consisting of at least the vaccination area;
- (b) a surveillance zone, consisting of a part of the Union territory with a depth of at least 50 kilometres extending beyond the limits of the protection zone."

Mae Erthygl 1(4) o'r Gyfarwyddeb yn disodli Erthygl 8(2)(b) o Gyfarwyddeb 2000, gan ddefnyddio'r testun a ganlyn -

"(b) The surveillance zone shall consist of a part of the Union territory with a depth of at least 50 kilometres extending beyond the limits of the protection zone and in which no vaccination against bluetongue with live attenuated vaccines has been carried out during the previous 12 months.";

Mae'r Rheoliadau yn diwygio Rheoliadau'r Tafod Glas (Cymru) 2008 mewn perthynas â pharthau gwyliadwraeth, ond nid oes unrhyw gyfeiriad at y terfyn gofynnol, sef 50 cilomedr.

Felly, gwahoddir y Cynulliad Cenedlaethol i roi sylw arbennig i'r Rheoliadau hyn, gan eu bod yn gweithredu deddfwriaeth yr Undeb Ewropeaidd mewn modd amhriodol. [Rheol Sefydlog 21.3(iv)]

### **David Melding AC**

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

**8 Hydref 2012**

**Ymatebodd y Llywodraeth fel a ganlyn:**

### **Rheoliadau'r Tafod Glas (Cymru) (Diwygio) 2012**

#### **Ymateb i'r Pwynt Adrodd Craffu ar Ragoriaethau**

Gall Gweinidogion Cymru, sef yr “awdurdod cymwys” o fewn ystyr Erthygl 1 o Gyfarwyddeb 2012/5/EU (“y Gyfarwyddeb”), osod y pellteroedd lleiaf a bennir yn Erthygl 1(4) o'r Gyfarwyddeb a byddent yn gwneud hynny pe bai brigiad o'r tafod glas. Nid oes angen cyfeirio at y pellteroedd lleiaf hynny yn Rheoliadau'r Tafod Glas (Cymru) (Diwygio) 2012 (“y Rheoliadau”).

Mae Rheoliadau'r Tafod Glas (Cymru) 2008, fel y'u diwygir gan y Rheoliadau, yn rhoi pwerau gweithredol i Weinidogion Cymru i ddatgan y parthau angenrheidiol, tra bo'r Gyfarwyddeb yn glir ac yn ddiamwys o ran y pellteroedd gofynnol. Mae Gweinidogion Cymru, wrth gwrs, yn ddarostyngedig i'r gofynion darnodi hynny. Felly, nid oes unrhyw amheuaeth ynghylch gallu Gweinidogion Cymru i ymdrin ag unrhyw frigiad o'r tafod glas, yn gyfreithlon ac yn unol â gofynion y Gyfarwyddeb. Mae'r Rheoliadau yn rhoi effaith briodol i'r Gyfarwyddeb ac nid oes angen i'r Rheoliadau gyfeirio at y pellteroedd lleiaf a bennir yn y Gyfarwyddeb.



Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



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

**Adroddiad: CLA(4)-20-12 : 22 Hydref 2012**

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

**Offerynnau nad ydynt yn cynnwys materion i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 neu 21.3**

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

**CLA180 – Gorchymyn Llywodraeth Leol (Dangosyddion Perfformiad) (Cymru) 2012**

**Gweithdrefn: Negyddol.**

**Fe'i gwnaed ar: 2 Hydref 2012**

**Fe'i gosodwyd ar: 8 Hydref 2012**

**Yn dod i rym ar: yn unol ag erthygl 1(3).**

**CLA182 – Rheoliadau'r Gwasanaeth Iechyd Gwladol (Gwasanaethau Deintyddol Sylfaenol) (Diwygiadau sy'n Ymwneud ag Unedau o Weithgaredd Deintyddol) (Cymru) 2012**

**Gweithdrefn: Negyddol.**

**Fe'u gwnaed ar: 9 Hydref 2012**

**Fe'i gosodwyd ar: 11 Hydref 2012**

**Yn dod i rym ar: 1 Tachwedd 2012**

**CLA183 – Gorchymyn Pysgod Môr (Ardaloedd Môr Penodedig) (Gwahardd Dull Pysgota) (Cymru) 2012**

**Gweithdrefn: Negyddol.**

**Fe'i gwnaed ar: 10 Hydref 2012**

**Fe'i gosodwyd ar: 11 Hydref 2012**

**Yn dod i rym ar: 1 Tachwedd 2012**

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

**Dim**

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

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

## **CLA181 – Rheoliadau Asesu Digonolrwydd Cyfleoedd Chwarae (Cymru) 2012**

**Gweithdrefn:** Negyddol.

**Fe'u gwnaed ar:** 6 Hydref 2012

**Fe'u gosodwyd ar:** 8 Hydref 2012

**Yn dod i rym ar:** 2 Tachwedd 2012

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

Dim

### **Unrhyw fater arall**

### **Bil Pensiynau'r Gwasanaeth Cyhoeddus: Memorandwm Cydsyniad Deddfwriaethol**

Trafododd y Pwyllgor y Memorandwm Cydsyniad Deddfwriaethol ar gyfer Bil Pensiynau'r Gwasanaeth Cyhoeddus – Cymalau yn ymwneud â'r cyfyngiadau sydd i'w cymhwyso i gynlluniau newydd. Roedd cyngor gan gynghorydd cyfreithiol y Pwyllgor yn awgrymu y gallai'r Memorandwm godi materion ehangach ynghylch Cymhwysedd Deddfwriaethol y Cynulliad. Cytunodd y Pwyllgor i ysgrifennu at y Gweinidog Cyllid ac Arweinydd y Tŷ, Jane Hutt AC, gan mai hi yw'r Gweinidog sy'n gyfrifol am nodi'r pryderon hyn, gyda'r bwriad o'i gwahodd i ddod i gyfarfod nesaf y Pwyllgor i ateb unrhyw gwestiynau y mae angen eu hateb ar y mater.

### **Adroddiad monitro sybsidiaredd (Mai 2012 – Awst 2012)**

Nododd y Pwyllgor yr ail adroddiad monitro sybsidiaredd, sy'n cynnwys y cynigion a gafwyd rhwng mis Mai a mis Awst 2012.

### **Is-ddeddfwriaeth a wnaed gan Weinidogion Cymru o dan Fesurau'r Cynulliad**

Nododd y Pwyllgor y papur ar yr is-ddeddfwriaeth a wnaed gan Weinidogion Cymru o dan Fesurau'r Cynulliad a gyhoeddwyd gan y Gwasanaeth Ymchwil ym mis Hydref 2012. Nododd y Pwyllgor hefyd fod y drafodaeth ar y mater hwn wedi cael ei chynnwys ar gam yn yr adroddiad ar gyfarfod y Pwyllgor ar 8 Hydref 2012.

### **Gohebiaeth y Pwyllgor**

### **CLA169 – Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Deintyddol) (Cymru) (Diwygio) 2012**

Nododd y Pwyllgor ymateb y Gweinidog Iechyd a Gwasanaethau Cymdeithasol, Lesley Griffiths AC, i lythyr y Cadeirydd dyddiedig 26 Medi ynghylch cywirdeb y Memorandwm Esboniadol ar gyfer

Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Deintyddol) (Cymru) (Diwygio) 2012 [CLA169].

### **CLA171 – Rheoliadau Gwastraff (Cymru a Lloegr) (Diwygio) 2012**

Nododd y Pwyllgor ymateb Gweinidog yr Amgylchedd a Datblygu Cynaliadwy, John Griffiths AC, i lythyr y Cadeirydd dyddiedig 27 Medi ynghylch y rhinweddau a nodwyd ar gyfer Rheoliadau Gwastraff (Cymru a Lloegr) (Diwygio) 2012 [CLA171].

#### **Simon Thomas AC**

Cadeirydd Dros Dro y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

**22 Hydref 2012**

## Atodiad 1

### Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

(CLA(4)-20-12)

CLA181

### Adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

**Teitl: Rheoliadau Asesu Digonolrwydd Cyfleoedd Chwarae (Cymru) 2012**

**Gweithdrefn: Negyddol**

Mae'r Rheoliadau hyn, a wneir o dan adran 11(1) o Fesur Plant a Theuluoedd (Cymru) 2010:

- yn nodi'r hyn y mae'n ofynnol ei gynnwys mewn asesiad awdurdod lleol o ddigonolrwydd cyfleoedd chwarae yn ei ardal;
- yn nodi'r unigolion a'r grwpiau y mae'n rhaid i awdurdod lleol ymgynghori â hwy;
- yn nodi bod gofyniad bod pob awdurdod lleol yn llunio cynllun gweithredu fel rhan o'r asesiad;
- yn darparu ynghylch amllder yr asesiadau, a'r dull y mae'n rhaid ei ddefnyddio i gyhoeddi canlyniadau'r asesiadau.

### **Materion technegol: craffu**

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

### **Rhinweddau: craffu**

**Nodwyd y pwyntiau a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3(ii) mewn perthynas â'r offeryn hwn: mae'n codi materion polisi cyhoeddus sy'n debygol o fod o ddiddordeb i'r Cynulliad.**

- Ym mis Tachwedd 2010, cyhoeddodd Pwyllgor Plant a Phobl Ifanc y Trydydd Cynulliad yr adroddiad ar ei ymchwiliad i '*fannau diogel i chwarae a chymdeithasu*'. Yn argymhelliad cyntaf yr adroddiad, anogodd y Pwyllgor Lywodraeth Cymru:

*"...i gwblhau ei hadolygiad o'r safonau a'r canllawiau ar gyfer chwarae cyn gynted â phosibl... Dylai'r canllawiau gynnwys diffiniad clir o 'chwarae' sy'n cynnwys **chwarae wedi'i strwythuro a chwarae dirwysr**... [Ein pwyslais ni].*

- Derbyniodd Llywodraeth Cymru argymhelliad y Pwyllgor, ac eglurodd:

*“Greater clarification will be provided on the meaning of ‘play’ and the term will be sufficiently broad to include both ‘structured’ and ‘free play’.”*

- Mae paragraff 8.2 yn y Memorandwm Esboniadol yn cyfeirio at ymgynghoriad Llywodraeth Cymru ar y rheoliadau drafft, ac mae'n nodi y byddai cyfran sylweddol (cynifer â 56%) o'r rhai a ymatebodd o bosibl yn dymuno i'r rheoliadau fod yn fwy eglur. Nododd hefyd: *“The respondents who wanted greater clarity were primarily concerned about the relation between freely chosen play and adult led recreational activities.”*
- Mae'r Memorandwm Esboniadol yn datgan: *“The summary report responds to this concern in more detail”; “the Regulations and the Statutory Guidance have been amended accordingly ”; ac “A summary of the amendments...has been made available on the Welsh Government’s web site.”*
- Pan gyfarfu'r Pwyllgor, nid oedd yr adroddiad cryno ar gael ar wefan Llywodraeth Cymru. Er y darparwyd copïau o'r adroddiad yn y cyfarfod, ni roddodd hyn ddigon o amser i'r Pwyllgor allu asesu a yw Llywodraeth Cymru wedi mynd i'r afael yn llwyr â'r argymhelliad yn adroddiad y Pwyllgor Plant a Phobl Ifanc a'r pryderon a fynegwyd gan y rhai a ymatebodd i'r ymgynghoriad ar y rheoliadau drafft.
- Roedd y Pwyllgor hefyd yn ymwybodol o'i rôl o ran tynnu sylw at is-ddeddfwriaeth sy'n mynd i'r afael â phryderon ac argymhellion Pwyllgorau'r Cynulliad.

**Simon Thomas AC**

Cadeirydd Dros Dro y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

**22 Hydref 2012**