

## Agenda – Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

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Lleoliad: I gael rhagor o wybodaeth cysylltwch a:  
Ystafell Bwyllgora 1 – Y Senedd **Gareth Williams**  
Dyddiad: Dydd Llun, 25 Medi 2017 Clerc y Pwyllgor  
Amser: 10.00 0300 200 6362  
[SeneddMCD@cynulliad.cymru](mailto:SeneddMCD@cynulliad.cymru)

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- 1 **Cyflwyniad, ymddiheuriadau, dirprwyon a datganiadau o fuddiant**  
10.00
- 2 **Llais Cryfach i Gymru: Sesiwn dystiolaeth 12**  
10.00 (Tudalennau 1 – 9)  
Y Gwir Anrhydeddus Alun Cairns AS, Ysgrifennydd Gwladol Cymru;  
Michael Dynan–Oakley, Prif Ysgrifennydd Preifat;  
Geth Williams, Pennaeth Cyfansoddiad;  
Sophie Traherne, Cynghorydd Arbennig  
  
CLA(5)–21–17 – Papur briffio gan y Gwasanaeth Ymchwil
- 3 **Offerynnau nad ydynt yn cynnwys materion i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 na 21.3**  
11.00 (Tudalennau 10 – 12)  
CLA(5)–21–17 – Papur 1 – Offerynnau statudol sydd ag adroddiadau clir
- 4 **Offerynnau sy'n cynnwys materion i gyflwyno adroddiad arnynt i'r Cynulliad o dan Reol Sefydlog 21.2 neu 21.3**  
11.05  
Offerynnau Cyfansawdd y Weithdrefn Penderfyniad Negyddol
- 4.1 **SL(5)119 – Rheoliadau Ad-dalu Benthyciadau i Fyfyrrwyr a Benthyciadau at Radd Feistr Ôl-raddedig (Diwygio) 2017**  
  
(Tudalennau 13 – 31)



**CLA(5)-21-17 – Papur 2 – Rheoliadau**

**CLA(5)-21-17 – Papur 3 – Memorandwm Esboniadol**

**CLA(5)-21-17 – Papur 4 – Adroddiad**

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

11.10

Offerynnau'r Weithdrefn Penderfyniad Negyddol

### **5.1 SL(5)120 – Rheoliadau Deunyddiau ac Eitemau mewn Cysylltiad â Bwyd (Cymru) (Diwygio) 2017**

(Tudalennau 32 – 33)

**CLA(5)-21-17 – Papur 5 – Adroddiad**

## **6 Papurau i'w nodi**

11.15

### **6.1 Papurau i'w nodi – Gadael yr UE**

(Tudalennau 34 – 61)

**CLA(5)-21-17 – Papur 6 – Llythyr gan yr Arglwydd Jay o Ewelme – Brexit: datganoli – adroddiad newydd Pwyllgor UE Tŷ'r Arglwyddi**

**CLA(5)-21-17 – Papur 7 – Memorandwm Cydsyniad Deddfwriaethol: Bil yr Undeb Ewropeaidd (Ymadael)**

**CLA(5)-21-17 – Papur 8 – Llythyr ar y cyd i'r Prif Weinidog: Diwygiadau arfaethedig i Fil yr Undeb Ewropeaidd (Ymadael) gan Brif Weinidog Cymru a Phrif Weinidog yr Alban**

**CLA(5)-21-17 – Papur 9 – Llythyr gan y Prif Weinidog i'r Cadeirydd: Set o ddiwygiadau arfaethedig ar y cyd gan Lywodraeth Cymru a Llywodraeth yr Alban i Fil yr Undeb Ewropeaidd (Ymadael)**

**CLA(5)-21-17 – Papur 10**– Llythyr gan Michael Russell AMSP, y Gweinidog dros Drafodaethau'r DU o ran Lle yr Alban yn Ewrop, i Bruce Crawford MSP, Cynullydd Pwyllgor Cyllid a Chyfansoddiad Senedd yr Alban

## **6.2 Papurau i'w nodi – Deddfwriaeth Llywodraeth Cymru**

(Tudalennau 62 – 90)

**CLA(5)-21-17 – Papur 11** – Llythyr gan Weinidog y Gymraeg a Dysgu Gydol Oes – Y Bil Anghenion Dysgu Ychwanegol

**CLA(5)-21-17 – Papur 12** – Llythyr gan Weinidog y Gymraeg a Dysgu Gydol Oes – Y Bil Anghenion Dysgu Ychwanegol

**CLA(5)-21-17 – Papur 13** – Llythyr gan Ysgrifennydd y Cabinet dros Gymunedau a Phlant – Bil Diddymu'r Hawl i Brynu

**CLA(5)-21-17 – Papur 14** – Llythyr gan y Prif Weinidog – Llawlyfr Deddfwriaeth ar Filiau'r Cynulliad

**CLA(5)-21-17 – Papur 15** – Llythyr gan y Cwnsler Cyffredinol – Adroddiad Comisiwn y Gyraith ar Ffurf a Hygyrchedd y Gyfraith yng Nghymru

## **6.3 Papurau i'w nodi – Deddf Cymru 2017**

(Tudalennau 91 – 94)

**CLA(5)-21-17 – Papur 16** – Llythyr gan y Llywydd – Gweithredu Deddf Cymru 2017 ac ymateb y Llywydd i Ysgrifennydd Gwladol Cymru

**CLA(5)-21-17 – Papur 17** – Llythyr gan yr Ysgrifennydd Gwladol, Gweithredu Deddf Cymru 2017

## **6.4 Papurau i'w nodi – Ymchwiliad Llais Cryfach i Gymru**

(Tudalennau 95 – 98)

**CLA(5)-21-17 – Papur 18** – Llythyr gan yr Academi Brydeinig – Llais Cryfach i Gymru

**CLA(5)-21-17 – Papur 19** – Cymdeithas Ddysgedig Cymru – Llais Cryfach i Gymru

## 6.5 Papurau i'w nodi – eraill

(Tudalennau 99 – 101)

CLA(5)–21–17 – Papur 20– Llythyr gan y Llywydd – Diwygio'r Cynulliad:  
anghymhwys, difenwi, dirmyg llys a braint y Cynulliad

CLA(5)–21–17 – Papur 21 – datganiad ysgrifenedig gan Lywodraeth Cymru: Y  
Comisiwn ar Gyfiawnder yng Nghymru

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

11.20

### 7.1 Papur i'w nodi – Llythyr gan y Llywydd

(Tudalennau 102 – 113)

CLA(5)–21–17 – Papur 22 – Llythyr gan y Llywydd – Bil Ymadael â'r UE: Panel  
Gweithredu Arbenigol i Gymru

### 7.2 Llais Cryfach i Gymru: Trafod y dystiolaeth

### 7.3 Dull ar gyfer Craffu ar Fil yr Undeb Ewropeaidd (Ymadael)

## Egwyl tan 14.30

Sesiwn Gyhoeddus

## 8 Llais Cryfach i Gymru: Sesiwn dystiolaeth 13

14.30

(Tudalennau 114 – 121)

Philip Rycroft CB, Ysgrifennydd Parhaol: Yr Adran ar gyfer Gadael yr Undeb  
Ewropeaidd

CLA(5)–21–17 – Papur briffio gan y Gwasanaeth Ymchwil

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

15.30

## **9.1 Llais Cryfach i Gymru – trafod y dystiolaeth**

## **9.2 Deddf Dehongli i Gymru**

(Tudalennau 122 – 124)

**CLA(5)–21–17 – Papur 23 – Papur gan y Gwasanaethau Cyfreithiol**

## **9.3 Y Flaenraglen Waith**

(Tudalennau 125 – 127)

**CLA(5)–21–17 –Papur 24 – Y Flaenraglen waith**

**Dyddiad y cyfarfod nesaf**

2 Hydref 2017

Mae cyfyngiadau ar y ddogfen hon

## Erthyrol Statudol gydag Adroddiadau Clir

25 Medi 2017

### SL(5)118 – Rheoliadau Pwyllgor Llifogydd ac Erydu Arfordirol Cymru 2017

#### Gweithdrefn: Negyddol

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Mae'r Rheoliadau'n ymwneud â'r Pwyllgor Llifogydd ac Erydu Arfordirol sydd newydd ei sefydlu, sef corff annibynnol i gynghori Gweinidogion Cymru ac awdurdodau rheoli risg Cymru ar faterion yn ymwneud â rheoli perygl llifogydd ac erydu arfordirol.

**Deddf Wreiddiol:** Deddf Rheoli Llifogydd a Dŵr 2010

**Fe'u gwnaed ar:** 7 Awst 2017

**Fe'u gosodwyd ar:** 10 Awst 2017

**Yn dod i rym ar:** 11 Medi 2017

### SL(5)121 – Rheoliadau Addysg (Gwybodaeth am Fyfyrrwyr) (Cymru) 2017

#### Gweithdrefn: Negyddol

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Mae'r Rheoliadau hyn yn rhagnodi'r personau a'r categorïau o bersonau y caiff person yng Nghymru ddarparu gwybodaeth am fyfyrwyr iddynt. Mae'r Rheoliadau hefyd yn rhagnodi'r math o wybodaeth am fyfyrwyr y caniateir ei rhannu, a'r amgylchiadau y caniateir rhannu'r wybodaeth honno ynddynt.

**Deddf Wreiddiol:** Deddf Prentisiaethau, Sgiliau, Plant a Dysgu 2009

**Fe'u gwnaed ar:** 7 Medi 2017

**Fe'u gosodwyd ar:** 11 Medi 2017

**Yn dod i rym ar:** 6 Hydref 2017



## SL(5)122 – Rheoliadau Addysg (Gwybodaeth am Gyrcfannau) (Gweithgareddau Rhagnodedig) (Cymru) 2017

### Gweithdrefn: Negyddol

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Bydd y Rheoliadau hyn yn caniatáu i Lywodraeth Cymru rannu â sefydliadau addysg bellach yng Nghymru ddata y mae eisoes yn eu casglu am gyrchfannau dysgwyr unigol o amrywiol ffynonellau â sefydliadau ar lefel dysgwyr, cyn eu cyhoeddi ar ffurf cydgasgledig. Yn ogystal â galluogi sefydliadau i wirio eu data cyn eu cyhoeddi, bydd yn gwella hyder o ran gwybodaeth am berfformiad a gaiff ei chyhoeddi, ac yn cynorthwyo sefydliadau i wella canlyniadau ar gyfer dysgwyr, i wneud penderfyniadau doeth am ba ddarpariaeth i'w chynnig, ac i roi cyngor priodol am yrfaeodd drwy wella eu dealltwriaeth o'r canlyniadau a gyflawnir gan eu dysgwyr.

**Deddf Wreiddiol:** Deddf Addysg Bellach ac Uwch 1992

**Fe'u gwnaed ar:** 7 Medi 2017

**Fe'u gosodwyd ar:** 11 Medi 2017

**Yn dod i rym ar:** 6 Hydref 2017

## SL(5)123 – Rheoliadau Addysg a Gwella Iechyd Cymru 2017

### Gweithdrefn: Negyddol

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Mae'r Rheoliadau hyn yn gwneud darpariaeth ynghylch aelodaeth a gweithdrefnau Addysg a Gwella Iechyd Cymru. Awdurdod Iechyd Arbennig yw Addysg a Gwella Iechyd Cymru a sefydlwyd o dan adran 22 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006 gan Orchymyn Addysg a Gwella Iechyd Cymru (Sefydlu a Chyfansoddiad) 2017.

**Deddf Wreiddiol:** Deddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006

**Fe'u gwnaed ar:** 11 Medi 2017

**Fe'u gosodwyd ar:** 13 Medi 2017

**Yn dod i rym ar:** 5 Hydref 2017





# SL(5)124 – Gorchymyn Addysg a Gwella Iechyd Cymru (Sefydlu a Chyfansoddiad) 2017

## **Gweithdrefn: Negyddol**

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Gwneir y Gorchymyn hwn o dan adran 22 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006. Mae'n sefydlu Awdurdod Iechyd Arbennig newydd, sef Addysg a Gwella Iechyd Cymru, ac mae'n gwneud darpariaeth ynghylch ei swyddogaethau a'i gyfansoddiad.

**Deddf Wreiddiol:** Deddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006

**Fe'u gwnaed ar:** 11 Medi 2017

**Fe'u gosodwyd ar:** 13 Medi 2017

**Yn dod i rym ar:** 5 Hydref 2017



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 STATUTORY INSTRUMENTS
 

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2017 No.

## EDUCATION

 The Repayment of Student Loans and Postgraduate Master's  
 Degree Loans (Amendment) Regulations 2017

<i>Made</i> - - - -	<i>XX August 2017</i>
<i>Laid before Parliament</i>	<i>XX August 2017</i>
<i>Laid before the National Assembly for Wales</i>	<i>XX August 2017</i>
<i>Coming into force</i> - -	<i>5th September 2017</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 22 and 42 of the Teaching and Higher Education Act 1998(a) and sections 5 and 6 of the Sale of Student Loans Act 2008(b).

The Welsh Ministers make these Regulations in exercise of the powers conferred on the Secretary of State by sections 22 and 42 of the Teaching and Higher Education Act 1998, now exercisable by them(c), and by sections 5 and 6 of the Sale of Student Loans Act 2008.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Repayment of Student Loans and Postgraduate Master's Degree Loans (Amendment) Regulations 2017 and come into force on 5th September 2017.

(2) Subject to paragraphs (3) to (5), these Regulations extend to England and Wales only.

(3) These Regulations extend to all of the United Kingdom in so far as they impose or amend any obligation or confer or amend any power conferred on—

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(a) 1998 c. 30. Section 22 was amended by: section 146(2) of, and Schedule 11 to, the Learning Skills Act 2000 (c. 21); paragraph 236 of Part 2 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1); section 147(3) of the Finance Act 2003 (c. 14); sections 42(1) and 43(2) and (3) of, and Schedule 7 to, the Higher Education Act 2004 (c. 8); section 257(2) of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22); section 76(1) and (2)(a) of the Education Act 2011 (c. 21); and S.I. 2013/1881. Section 43(1) of the Teaching and Higher Education Act 1998 defines “prescribed” and “regulations”.

(b) 2008 c. 10.

(c) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for those functions under section 22(2)(a), (c), (j) and (k), (3)(e) and (f) and (5). Functions under subsections (2)(a), (c) and (k) are exercisable by the Secretary of State concurrently with the National Assembly for Wales. The section 22 functions which were transferred to, or became exercisable by, the National Assembly for Wales were subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). The functions of the Secretary of State under section 42 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions under section 42 which were transferred to the National Assembly for Wales were subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

- (a) Her Majesty's Revenue and Customs, an employer or a borrower in relation to repayments under—
    - (i) Part 3 or 4 of the Education (Student Loans) (Repayment) Regulations 2009(a); or
    - (ii) Chapter 3 or 4 of Part 2 of the 2016 Postgraduate Regulations; or
  - (b) any other person in relation to the retention or production of information or records.
- (4) Regulation 41(2)(b) extends to England and Wales and Northern Ireland.
- (5) Regulation 41(2)(c) extends to all of the United Kingdom.

### **Amendment of the Education (Student Loans) (Repayment) Regulations 2009**

2. The Education (Student Loans) (Repayment) Regulations 2009 are amended in accordance with regulations 3 to 40.

### **Amendment of regulation 3**

3.—(1) Regulation 3 (interpretation) is amended as follows.

(2) In paragraph (1)—

- (a) after the definition of “the 2011 Welsh Regulations”, insert—
  - “the 2016 Postgraduate Regulations” means the Education (Postgraduate Master's Degree Loans) Regulations 2016(b);
  - “the 2017 Postgraduate Wales Regulations” means the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017(c);”;
- (b) in the definition of “the Authority”, in paragraphs (a) and (b)—
  - (i) after “student loan”, insert “or a postgraduate master's degree loan”;
  - (ii) omit from “pursuant” to “Act”;
- (c) for the definition of “borrower”, substitute—
  - ““borrower” means—
  - (a) a student loan borrower; or
  - (b) a postgraduate master's degree loan borrower;”;
- (d) in the definition of “loan purchaser”, after “student loans”, insert “or postgraduate master's degree loans”;
- (e) after the definition of “post-2012 student loan”, insert—
  - ““postgraduate master's degree loan” means the total outstanding—
  - (a) principal owed by a person to the Authority pursuant to—
    - (i) Part 1 of the 2016 Postgraduate Regulations, or
    - (ii) Part 4 of the 2017 Postgraduate Wales Regulations, and
  - (b) interest, penalties and charges owed by a person to the Authority pursuant to these Regulations in connection with the 2016 Postgraduate Regulations or the 2017 Postgraduate Wales Regulations,

excluding any interest, penalties or charges payable under Part 3 or 4, and also has the meaning given to it in regulation 7;

“postgraduate master's degree loan borrower” means a person—

  - (a) to whom the Authority has lent money in respect of a postgraduate master's degree loan; and

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(a) S.I. 2009/470, amended by S.I. 2010/661, 2011/784, 2012/836, 2012/1309, 2013/388, 2013/591, 2013/607 and 2013/1881.

(b) S.I. 2016/606, amended by S.I. 2016/668.

(c) S.I. 2017/523 (W. 109), amended by S.I. 2017/712 (W. 169).

- (b) who has not received a notice from the Authority or the loan purchaser (as the case may be) that the loan has been repaid in full or cancelled;”;
  - (f) in the definition of “repayment”, at the end, insert “or a postgraduate master’s degree loan”;
  - (g) in the definition of “repayment threshold”(a), after paragraph (b), insert—
    - “(c) in relation to a postgraduate master’s degree loan, has the meaning given to it in regulation 29(8);”;
  - (h) for the definition of “student loan”, substitute—
    - ““student loan” means the total outstanding principal, interest, penalties and charges owed by a person—
      - (a) to the Secretary of State, pursuant to—
        - (i) these Regulations, other than any interest, penalties and charges owed in connection with the 2016 Postgraduate Regulations, and
        - (ii) any other Regulations made under section 22 of the 1998 Act, other than the 2016 Postgraduate Regulations,
      - (b) to the Welsh Ministers, pursuant to—
        - (i) these Regulations, other than any interest, penalties and charges owed in connection with the 2017 Postgraduate Wales Regulations, and
        - (ii) any other Regulations made under section 22 of the 1998 Act, other than the 2017 Postgraduate Wales Regulations,
- excluding any interest, penalties or charges payable under Part 3 or 4, and also has the meanings given to it in regulations 6 and 7;”;
- (i) after the definition of “student loan”, insert—
    - ““student loan borrower” means a person—
      - (a) to whom the Authority has lent money in respect of a student loan, and
      - (b) who has not received a notice from the Authority or the loan purchaser (as the case may be) that the loan has been repaid in full or cancelled,
- and also has the meaning given to it in regulation 6;”.
- (3) In paragraph (2)(b), after “the 1998 Act” the first time it appears, insert “, other than the 2016 Postgraduate Regulations or the 2017 Postgraduate Wales Regulations”.

#### **Amendment of regulation 4**

**4.** In regulation 4 (application: general), after “student loans”, insert “and postgraduate master’s degree loans”.

#### **Amendment of regulation 5**

**5.**—(1) Regulation 5 (Wales) is amended as follows.

(2) In paragraph (1), after “student loans”, insert “and postgraduate master’s degree loans”.

(3) In paragraph (2)—

- (a) for “description of student”, substitute “postgraduate master’s degree”;
- (b) for “Parts 3 and 4 and any provision” to the end, substitute “no provision of these Regulations made by virtue of section 22(5) of the 1998 Act will apply”.

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(a) The definition of “repayment threshold” was inserted by S.I. 2011/784 and was subsequently substituted by S.I. 2012/1309.  
 (b) Paragraph (2) was inserted by S.I. 2012/1309 and was subsequently amended by S.I. 2013/607.

### **Amendment of regulation 6**

6. In regulation 6(3) (Scotland), for “borrower”, substitute “student loan borrower”.

### **Amendment of regulation 7**

7. In regulation 7(1) (application to transferred loans in England and Wales)—

- (a) in the definition of “the Authority”, at the end, omit “and”;
- (b) after the definition of “the Authority”, insert—
  - ““postgraduate master’s degree loan” means, subject to any provisions of transfer arrangements, the total outstanding—
  - (a) principal owed by a person to a loan purchaser pursuant to—
    - (i) the 2016 Postgraduate Regulations; or
    - (ii) the 2017 Postgraduate Wales Regulations; and
  - (b) interest, penalties and charges owed by a person to a loan purchaser pursuant to these Regulations in connection with the 2016 Postgraduate Regulations or the 2017 Postgraduate Wales Regulations; and”;
- (c) for the definition of “student loan”, substitute—
  - ““student loan” means, subject to any provisions of transfer arrangements, the total outstanding principal, interest, penalties and charges owed by a person to a loan purchaser pursuant to—
  - (a) these Regulations, other than any interest, penalties and charges owed in connection with the 2016 Postgraduate Regulations or the 2017 Postgraduate Wales Regulations; and
  - (b) any other Regulations made under section 22 of the 1998 Act, other than the 2016 Postgraduate Regulations or the 2017 Postgraduate Wales Regulations.”.

### **Amendment of regulation 9**

8. In regulation 9 (interpretation), in the definition of “Student Support Regulations”—
- (a) renumber paragraphs (c) and (d) as paragraphs (a) and (b) respectively;
  - (b) in paragraphs (a) and (b), after “any Regulations made”, insert “in respect of student loans”.

### **Amendment of regulation 15**

- 9.—(1) Regulation 15 (timing of repayments: general) is amended as follows.
- (2) In paragraph (1), after “a student loan”, insert “or a postgraduate master’s degree loan”.
  - (3) In paragraph (2)(a)—
    - (a) for “(2A), (2B) and (2C)”, substitute “(2A) and (2B)”;
    - (b) for “borrower”, both times it appears, substitute “student loan borrower”;
    - (c) after “the 1998 Act”, insert “in respect of a student loan”.
  - (4) After paragraph (2), insert—
    - “(2ZA) Subject to paragraph (2C) a postgraduate master’s degree loan borrower is not required to repay any part of the postgraduate master’s degree loan before the start of the following tax year commencing on 6 April after a postgraduate master’s degree loan borrower ceases to be eligible for a loan under Part 1 of the 2016 Postgraduate Regulations

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(a) Paragraph (2) was amended by S.I. 2012/1309.

or Part 4 of the 2017 Postgraduate Wales Regulations, whether by reason of having completed that course or otherwise.”.

(5) In paragraphs (2A) and (2B)(a), omit “Subject to paragraph (2C)”.

(6) For paragraph (2C)(b), substitute—

“(2C) A postgraduate master’s degree loan borrower is not required to repay any part of the postgraduate master’s degree loan under paragraph (2ZA) before—

- (a) 6 April 2019, in the case of a loan made under Part 1 of the 2016 Postgraduate Regulations; or
- (b) 6 April 2019, in the case of a loan made under Part 4 of the 2017 Postgraduate Wales Regulations.”.

(7) In paragraph (7), after “student loan”, insert “or postgraduate master’s degree loan”.

### **Amendment of regulation 18**

**10.**—(1) Regulation 18 (direct debit repayment) is amended as follows.

(2) In paragraph (1)—

- (a) in the words before paragraph (a), for “will apply”, substitute “applies”;
- (b) in paragraph (a), after “outstanding balance”, insert “of a student loan or a postgraduate master’s degree loan (“the relevant loan”)”;
- (c) in paragraph (b), for “the student loan”, substitute “the relevant loan”;
- (d) in paragraph (c), for “the loan”, substitute “the relevant loan”.

(3) In paragraphs (2) and (5), after “deductions”, insert “in respect of the relevant loan”.

(4) In paragraph (3), after “outstanding balance”, insert “of the relevant loan”.

### **Amendment of regulation 19**

**11.**—(1) Regulation 19 (cancellation) is amended as follows.

(2) For paragraph (1), substitute—

“(1) This regulation applies where a borrower is not in breach of any obligation to repay any of the following—

- (a) a loan mentioned in paragraph (4);
- (b) where the borrower is a student loan borrower—
  - (i) a student loan under the overseas provisions;
  - (ii) a student loan under regulation 18;
  - (iii) a postgraduate master’s degree loan;
- (c) where the borrower is a postgraduate master’s degree loan borrower—
  - (i) a postgraduate master’s degree loan under the overseas provisions;
  - (ii) a postgraduate master’s degree loan under regulation 18;
  - (iii) a student loan.”.

(3) In paragraph (2)(c), after “a post-2012 student loan”, insert “or a postgraduate master’s degree loan”.

(4) In paragraph (3)(d)—

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(a) Paragraphs (2A) and (2B) were inserted by S.I. 2012/1309.

(b) Paragraph (2C) was inserted by S.I. 2012/1309.

(c) Paragraph (2) was amended by S.I. 2012/1309.

(d) Paragraph (3) was amended by S.I. 2012/1309 and 2013/607.

- (a) after “the borrower’s liability to repay the student loan”, insert “or the postgraduate master’s degree loan”;
- (b) at the end of sub-paragraph (e), omit “or”;
- (c) at the end of sub-paragraph (f), insert “or”;
- (d) after sub-paragraph (f), insert—

“(g) in the case of a postgraduate master’s degree loan, the 30th anniversary of the date on which the borrower became liable to repay the postgraduate master’s degree loan.”.

(5) In paragraphs (5) and (6), after “student loan”, each time it appears, insert “or the postgraduate master’s degree loan”.

### **Amendment of regulation 20**

**12.**—(1) Regulation 20 (refunds) is amended as follows.

(2) In paragraph (1)(a) and (b)(a), after “the student loan”, insert “or the postgraduate master’s degree loan”.

(3) After paragraph (1A)(c), insert—

“(d) for a postgraduate master’s degree loan, as if it were the principal of a postgraduate master’s degree loan, outstanding from the date of receipt of the repayment to the earlier of—

- (i) the end of a period of 60 days after the Authority issues a notice, or
  - (ii) the date on which the Authority makes the refund to the borrower,
- after which period no interest will accrue.”.

(4) In paragraph (1B), for “and (c)(i)”, substitute “, (c)(i) and (d)(i)”.

(5) In paragraph (2)(a) and (b), after “the student loan”, insert “or the postgraduate master’s degree loan”.

(6) In paragraph (4), for “(6), (6A) and (9)”, substitute “regulation 20A”.

(7) Omit paragraphs (6) to (9).

### **New regulation 20A**

**13.** After regulation 20, insert—

#### **“Excess payments: more than one loan**

**20A.**—(1) This regulation applies where—

- (a) a borrower has—
  - (i) a postgraduate master’s degree loan and a post-2012 student loan;
  - (ii) a postgraduate master’s degree loan and a student loan which is not a post-2012 student loan; or
  - (iii) a post-2012 student loan and a student loan which is not a post-2012 student loan; and
- (b) the Authority receives a repayment either directly from the borrower under regulation 15(1) or from HMRC under Part 3 or 4—
  - (i) which results in one of the loans being repaid in full; or
  - (ii) when one of the loans has already been repaid in full.

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(a) Paragraph (1) was amended by S.I. 2012/1309.

(2) Where the amount of the excess payment exceeds £10, the Authority must give notice to the borrower that—

- (a) the Authority intends to treat the excess payment as a direct payment under regulation 15(1) for the second loan, unless the borrower notifies the Authority, within 60 days of the date of the Authority’s notice, that the excess payment should be refunded to the borrower; and
- (b) interest will accrue on a refund from the date of receipt of the repayment until the earlier of—
  - (i) a period of 60 days after the Authority issues the notice; or
  - (ii) the date on which the Authority makes the refund to the borrower.

(3) The Authority must treat any excess payment as a direct payment to the Authority under regulation 15(1) for the second loan, unless the borrower gives notice to the Authority in accordance with paragraph (2)(a).

(4) Where the borrower gives notice to the Authority in accordance with paragraph (2)(a) that the excess payment should be refunded, the Authority must refund the excess payment and any accrued interest to the borrower.

(5) A refund under paragraph (4) carries interest calculated as if it were the principal of the fully repaid loan, outstanding from the date of receipt of the repayment to the earlier of—

- (a) the end of a period of 60 days after the Authority issues a notice, or
- (b) the date on which the Authority makes the refund to the borrower,

after which period no interest will accrue.

(6) In this regulation—

- (i) “fully repaid loan” means a loan that has been repaid in full in the circumstances described in paragraph (1);
- (ii) “second loan” means the loan that remains unpaid in those circumstances;
- (iii) “excess payment” means the amount of the repayment described in paragraph (1)(b) which is not required to repay the fully repaid loan.”.

#### **Amendment of regulation 21A**

14. After regulation 21A(2)(a) (interest rate on post-2012 student loans) insert—

“(2ZA) The interest rate in relation to a student loan during the period described in regulation 16(3) is the standard rate of interest.”.

#### **New regulation 21B**

15. After regulation 21A, insert—

##### **“Interest rate on postgraduate master’s degree loans**

**21B.**—(1) The interest rate in relation to a postgraduate master’s degree loan is RPI plus 3%.

(2) Interest accrues as of the date that the first payment of the loan is paid out under—

- (a) regulation 13 of the 2016 Postgraduate Regulations; or
- (b) regulation 13 of the 2017 Postgraduate Wales Regulations.

(3) Interest is calculated on the principal outstanding daily and is added to the principal monthly.

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(a) Regulation 21A was inserted by S.I. 2012/1309 and subsequently amended by S.I. 2013/607 and 2013/1881.



(4) The Authority must publish, at least once a year, by whatever means and in whatever media the Authority thinks fit, the interest rate for the forthcoming academic year or part of that year.

(5) In this regulation, “RPI” means the percentage increase between the retail prices all items index published by the National Office for Statistics for the two Marches immediately before the commencement of the academic year.”.

### **Amendment of regulation 23**

**16.** In regulation 23(2)(b) (information notices)—

- (a) omit “and”;
- (b) at the end, insert “or both”.

### **Amendment of regulation 25**

**17.** In regulation 25(3) (costs and expenses), after “the student loan”, insert “or the postgraduate master’s degree loan”.

### **Amendment of regulation 27**

**18.** In regulation 27 (foreclosure), after “the student loan”, insert “or the postgraduate master’s degree loan”.

### **Amendment of regulation 28**

**19.** In the heading of regulation 28 (repayments of student loans by persons required to submit a tax return), after “student loans”, insert “and postgraduate master’s degree loans”.

### **Amendment of regulation 29**

**20.—**(1) Regulation 29 (time for and amount of repayments) is amended as follows.

(2) In paragraph (1), after “student loan”, insert “or a postgraduate master’s degree loan”.

(3) For paragraph (3), substitute—

“(3) The repayment must be an amount equal to—

- (a) in the case of a student loan, 9% of the borrower’s total income for that year,
- (b) in the case of a postgraduate master’s degree loan, 6% of the borrower’s total income for that year,

calculated in accordance with paragraph (4).”.

(4) After paragraph (3), insert—

“(3A) The repayment under paragraph (3) is additional to, and concurrent with, any repayment due by—

- (a) the student loan borrower in respect of a postgraduate master’s degree loan; or
- (b) the postgraduate master’s degree loan borrower in respect of a student loan.”.

(5) In paragraph (7)(a), for “the repayment threshold is”, substitute “the repayment threshold in relation to a student loan is”.

(6) In paragraph (8)(b)—

- (i) for “for a borrower with”, substitute “in relation to”;
- (ii) after “student loan”, insert “or postgraduate master’s degree loan”.

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(a) Paragraph (7) was inserted by S.I. 2011/784 and subsequently amended by S.I. 2012/1309, 2013/607 and 2014/651.

(b) Paragraph (8) was inserted by S.I. 2012/1309.

### **Amendment of regulation 33**

**21.** In regulation 33(3)(b) and (d)(ii) (other returns and information), after “student loan” each time it appears, insert “or postgraduate master’s degree loan”.

### **Amendment of regulation 41**

**22.** In regulation 41 (interpretation)—

(a) before the definition of “combined amount”, insert—

““approved method” means—

(a) in relation to the delivery of a return in accordance with this Part, the internet services or Electronic Data Interchange services provided through PAYE Online(a) or PAYE Online for Agents(b);

(b) in relation to the making of a payment in accordance with this Part, the services known as Direct Debit, BACS Direct Credit (including telephone and internet banking), CHAPS, debit and credit card over the internet (known as “BillPay”), Government Banking Service (formerly known as “Paymaster”), Bank Giro and payments made through the Post Office;”;

(b) in the definition of “combined amount”, after “student loan”, insert “or postgraduate master’s degree loan;”.

### **Amendment of regulation 42**

**23.** In the heading of regulation 42 (repayment of student loans by employees), after “student loans”, insert “or postgraduate master’s degree loans”.

### **Amendment of regulation 43**

**24.** In regulation 43(2)(c) (commencement of employment with a non-Real Time Information employer), after “any student loan”, insert “or postgraduate master’s degree loan”.

### **Amendment of regulation 43A**

**25.** In regulation 43A(d) (commencement of employment with a Real Time information employer), after “any student loan”, insert “or any postgraduate master’s degree loan”.

### **Amendment of regulation 44**

**26.—**(1) Regulation 44 (amount of repayments) is amended as follows.

(2) For paragraph (1), substitute—

“(1) The repayment deducted must be—

(a) in relation to a student loan, 9%, and

(b) in relation to a postgraduate master’s degree loan, 6%,

of any earnings paid to, or provided to or for the benefit of, the borrower in respect of the employment, which exceed the threshold specified in paragraph (2).”.

(3) After paragraph (2), insert—

“(2A) The repayment calculated under paragraph (1) is additional to, and concurrent with, any repayment due—

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(a) PAYE Online can be accessed at <https://www.gov.uk/payee-online>.

(b) PAYE Online for Agents can be accessed at <https://www.gov.uk/guidance/payeeis-for-agents-online-service>.

(c) Paragraph (2) was amended by S.I. 2013/607.

(d) Regulation 43A was inserted by S.I. 2012/836 and subsequently amended by S.I. 2013/607.

- (a) by the student loan borrower in respect of a postgraduate master's degree loan; or
- (b) by the postgraduate master's degree loan borrower in respect of a student loan.”.

#### **Amendment of regulation 50**

**27.**—(1) Regulation 50 (deductions of repayments) is amended as follows.

(2) In paragraphs (1)(c) and (d), (2)(c) and (d)(a) and (8), after “student loan”, insert “or postgraduate master's degree loan”.

#### **Amendment of regulation 55**

**28.**—(1) Regulation 55 (notice and certificate when repayments deducted not paid) is amended as follows.

(2) In paragraphs (1)(b), (2), (4), (5) and (6), after “student loan”, insert “or postgraduate master's degree loan”.

#### **Amendment of regulation 56**

**29.**—(1) Regulation 56 (notice of specified amount and certificate when repayments not deducted) is amended as follows.

(2) In paragraph (1), after “student loan”, insert “or postgraduate master's degree loan”.

(3) In paragraph (2)—

- (a) after “whether of student loan repayments”, insert “, postgraduate master's degree loan repayments”;
- (b) for “in respect of student loan”, substitute “in respect of any such”.

(4) In paragraphs (4) and (5), after “student loan”, insert “or postgraduate master's degree loan”.

(5) In paragraph (6)(a)—

- (a) after “student loan repayments”, the first time it appears, insert “or postgraduate master's degree loan repayments”;
- (b) for “student loan repayments”, the second time it appears, substitute “any such repayment”.

(6) In paragraph (11), after “student loan repayments”, insert “or postgraduate master's degree loan repayments”.

#### **Amendment of regulation 57**

**30.** In regulation 57(2) (recovery of payments deducted through the income tax system), after “student loan repayments”, insert “, postgraduate master's degree loan repayments”.

#### **Amendment of regulation 59**

**31.** In regulation 59(9) (returns by employers), after “student loan”, insert “or postgraduate master's degree loan”.

#### **Amendment of regulation 60**

**32.** In regulation 60(4) (inspection of employers' records)—

- (a) in sub-paragraph (a), after “student loan”, insert “or postgraduate master's degree loan”;
- (b) in sub-paragraph (b), omit “student loan”.

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(a) Paragraphs (1)(d) and (2)(d) were amended by S.I. 2012/836.

(b) Paragraph (1) was amended by S.I. 2012/836.

### **Amendment of regulation 61**

33. In regulation 61(2)(b) (powers to obtain information), after “student loan”, insert “or postgraduate master’s degree loan”.

### **Amendment of regulation 67**

34. In regulation 67 (cessation of employment), in paragraphs (b) and (ba)(a), after “student loan”, insert “or any postgraduate master’s degree loan”.

### **Amendment of regulation 68**

35. In regulation 68(3) (penalties), after “student loan”, insert “or postgraduate master’s degree loan”.

### **Amendment of regulation 73**

- 36.—(1) Regulation 73 (notice of liability to make repayments) is amended as follows.
- (2) In paragraph (1), after “student loan”, insert “or any postgraduate master’s degree loan”.
  - (3) In paragraph (2), after “student loan”, insert “or a postgraduate master’s degree loan”.

### **Amendment of regulation 75**

- 37.—(1) Regulation 75 (repayment by income-related instalments) is amended as follows.
- (2) For paragraph (4), substitute—
    - “(4) The relevant amount is—
    - (a) in relation to a student loan, 9%, and
    - (b) in relation to a postgraduate master’s degree loan, 6%,of the gross income which the Authority considers the borrower is likely to receive in the next 12 month period following the date of the determination referred to in paragraph (2).”.
  - (3) After paragraph (4), insert—
    - “(4A) In calculating the relevant amount, the Authority must disregard—
    - (a) income up to the applicable threshold, calculated in accordance with regulation 76; and
    - (b) income in respect of which it is satisfied that repayments are likely to be made under Part 3 or 4.(4B) The relevant amount in paragraph (4) is additional to and concurrent with any repayment due by—
    - (a) the student loan borrower in respect of a postgraduate master’s degree loan; or
    - (b) the postgraduate master’s degree loan borrower in respect of a student loan.”.

### **Amendment of regulation 76**

- 38.—(1) Regulation 76 (calculation of fixed instalment and applicable threshold) is amended as follows.
- (2) In paragraph (1), in the table(b), in the right-hand column—
    - (a) in the heading “Fixed instalment for post-2012 student loans”, insert at the end “and postgraduate master’s degree loans”;

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(a) Paragraph (ba) was inserted by S.I. 2012/836 and paragraph (c) was amended by S.I. 2012/836.  
(b) The table in paragraph (1) was substituted by S.I. 2012/1309.

- (b) in the heading “Applicable threshold for post-2012 student loans”, insert at the end “and postgraduate master’s degree loans”.
- (3) Omit paragraph (5)(a).
- (4) In paragraph (6), at the beginning, insert “Where a price level index cannot be calculated under paragraph (3)”.

#### **Amendment of regulation 77**

**39.** In regulation 77(1)(b) (application to cease repayment by instalments), after “student loan”, insert “or a postgraduate master’s degree loan”.

#### **Amendment of regulation 80**

- 40.**—(1) Regulation 80 (effect of borrower insolvency on student loans) is amended as follows.
- (2) In the heading, at the end, insert “and postgraduate master’s degree loans”.
- (3) In paragraphs (2)(b) and (3), after “student loan” each time it occurs, insert “or postgraduate master’s degree loan”.

#### **Amendment of the 2016 Postgraduate Regulations**

- 41.**—(1) The 2016 Postgraduate Regulations are amended as follows.
- (2) In regulation 1 (citation, commencement, extent and application)—
  - (a) in paragraph (2), for “paragraphs (3) and”, substitute “paragraph”;
  - (b) omit paragraph (3);
  - (c) in paragraph (4)—
    - (i) omit from “on HMRC” to “Part 2 or”;
    - (ii) omit “other”.
- (3) Omit Part 2 and Schedule 3.

Date

Minister of State  
Department for Education

8 August 2017

*Kirsty Williams*  
Cabinet Secretary for Education  
One of the Welsh Ministers

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(a) Paragraph (5) was amended by S.I. 2012/1309.  
(b) Paragraph (2) was amended by S.I. 2010/661.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Education (Student Loans) (Repayment) Regulations 2009 (“the 2009 Regulations”) make provision for the repayment of student loans in England and Wales. Part 2 of the Education (Postgraduate Master’s Degree Loans) Regulations 2016 (“the 2016 Regulations”) makes provision for the repayment of postgraduate master’s degree loans in England.

These Regulations amend the 2009 Regulations and revoke Part 2 of the 2016 Regulations so that all repayment provisions, in respect of both student loans and postgraduate master’s degree loans in England and Wales, are consolidated in the 2009 Regulations.

These Regulations also make the following amendments to the 2009 Regulations.

Regulation 13 inserts new regulation 20A into the 2009 Regulations to provide that an excess payment of £10 or less will not require the Authority to contact the borrower and the excess payment is to be treated as a direct payment.

The applicable repayment threshold for a borrower who resides overseas varies according to where in the world the borrower is and the level of the price level index for that country, as determined by the World Bank’s Development Indicators. Regulation 38 amends regulation 76 of the 2009 Regulations so that the Authority has a measure of discretion in determining the applicable threshold for borrowers who reside overseas but only in cases where the Authority is unable to calculate the price level index for the borrower’s country of residence.

An impact assessment has not been prepared in respect of this instrument as it has minimal impact on business, charities or voluntary bodies. The impact on the public sector is minimal.

## **Explanatory Memorandum to the Repayment of Student Loans and Postgraduate Master's Degree Loans (Amendment) Regulations 2017**

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

### **Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Repayment of Student Loans and Postgraduate Master's Degree Loans (Amendment) Regulations 2017.

Kirsty Williams AM  
Cabinet Secretary for Education  
11 August 2017

## **1. Description**

The Regulations further amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470). The amendments cover a range of issues but are principally concerned with ensuring the repayment of the postgraduate Master's loan by Welsh borrowers.

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

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470) ("the 2009 Regulations"). The 2009 Regulations were made as composite regulations by the Welsh Ministers (in relation to Wales) and the Secretary of State and they govern repayments of student loans by borrowers who have taken out income-contingent loans for courses which began on or after September 1998. The 2009 Regulations contain provisions (not devolved to the Welsh Ministers) which are made by the Secretary of State in relation to England and Wales which concern the tax system operated by Her Majesty's Revenue and Customs ("HMRC"). Some other provisions are made by the Welsh Ministers in relation to Wales and the Secretary of State in relation to England.

This composite statutory instrument is subject to the negative resolution procedure in the National Assembly for Wales and in the UK Parliament. Given the composite nature of the 2009 Regulations and that no routine Parliamentary processes exist by which to lay bilingual regulations before Parliament, these Regulations will be made in English only.

## **3. Legislative background**

The relevant legal powers to make these Regulations are set out in sections 22 and 42 of the Teaching and Higher Education Act 1998.

The functions of the Secretary of State under Section 22 of the Teaching and Higher Education Act 1998 as regards to Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for those functions under section 22(2)(a), (c), (j) and (k), 3(e) and (f) and (5). Functions under sub-sections 22(2)(a), (c) and (k) are exercisable concurrently with the Secretary of State. The functions in sections 22(2)(j), 22(3)(e) and (f) and section 22(5) remain Secretary of State functions. The functions so transferred subsequently became functions of the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

This instrument will follow the negative resolution procedure.



#### **4. Purpose & intended effect of the legislation**

The amendments to the 2009 Regulations relate to functions exercisable in respect of Wales in part by the Welsh Ministers and in part by the Secretary of State. A summary of the changes is as follows:

Postgraduate Master's Loan repayments - the amendments in these Regulations will provide a mechanism for the repayment of postgraduate loans made under the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017, as amended. The provisions in relation to Welsh borrowers taking out a postgraduate Master's loan are as follows:

- Repayments will begin at £21,000 and are income contingent;
- Interest charged at RPI +3%;
- Repayment at 6% of salary above threshold from April 2019;
- Repayments to be made concurrently with any undergraduate debt repayments;
- Any outstanding postgraduate debt to be written off thirty years from the date at which interest begins accruing.

Removal of April 2016 as a trigger for repayment – a borrower with a post-2012 loan is not required to repay any part of that loan before 6 April 2016. The Regulations will remove this date as it is now passed. The amendments will also introduce a date of 6 April 2019 as the first date on which a borrower is required to repay a postgraduate master's degree loan.

Minimum refund amount – where the Student Loans Company ("SLC"), acting on behalf of the Welsh Ministers, receive either a voluntary payment or a repayment from HMRC which results in the borrower's pre-2012 loan being repaid in full whilst there remains an outstanding balance on the post-2012 loan, then the SLC must notify the borrower that any overpayment will be treated as a voluntary payment subject to a minimal exception. If the overpayment is £5 or less then the SLC can simply apply that sum against the balance of the post-2012 loan automatically without contacting the borrower. The Regulations will amend this minimal figure from £5 to £10. The amendments will also extend these provisions to allow overpayments on one loan to be treated as a voluntary payment on another loan where a student has any two of a pre-2012 loan, a post-2012 loan and a postgraduate master's degree loan.

Treatment of certain over-repayments –the 2009 Regulations require employee borrowers to declare whether or not any student loan liability that they have relates solely to a post-2012 student loan. If they fail to do so, the income threshold for making repayments will be set at the level for pre-2012 loans rather than that for post-2012 loans. The 2009 Regulations treat repayments made by a borrower on income between the thresholds as direct payments that are not refundable. The amendment will allow these borrowers to request a refund of such repayments.

Overseas borrowers' income threshold – where the SLC decide that an overseas borrower can repay by income-related instalments, the amount payable equates to 6% or 9% (depending on the type of loan) of the borrower's income above the applicable income threshold. The threshold is calculated and based on the most recent World Bank price level data for the borrower's country of residence. The amendment will allow the SLC to determine the applicable threshold in cases where the SLC is unable to calculate the price level index for the borrower's country of residence.

Interest rate on deferred loans – the 2009 Regulations allow teachers to defer repayments on certain loans. The amendment will set the interest rate that will apply to a loan during the deferral period.

## **5. Consultation**

All relevant stakeholders were consulted on the postgraduate Master's loan scheme, including the key repayment terms, during the consultation exercise completed in May 2016.

## **6. Regulatory Impact Assessment**

A RIA was not undertaken in relation to these Regulations as there is no impact on business, charities, or voluntary bodies. There is no impact on statutory duties (sections 77-79 Government of Wales Act 2006 or statutory partners (sections 72-75 GOWA 2006).

# SL(5)119 – Rheoliadau Ad-dalu Benthyciadau i Fyfywrwr a Benthyciadau at Radd Feistr Ôl-raddedig (Diwygio) 2017

## Cefndir a Phwrpas

Mae'r **Rheoliadau** cyfansawdd hyn yn diwygio ymhellach **Reoliadau Addysg (Benthyciadau i Fyfywrwr) (Ad-dalu) 2009** (SI 2009/470) ('Rheoliadau 2009') ac maent yn ymwneud â swyddogaethau y gellir eu harfer yng Nghymru yn rhannol gan Weinidogion Cymru ac yn rhannol gan yr Ysgrifennydd Gwladol. Mae Rheoliadau 2009 yn darparu ar gyfer ad-dalu benthyciadau i fyfywrwr yng Nghymru a Lloegr.

Mae'r diwygiadau i Reoliadau 2009 yn ymdrin ag ystod o faterion penodol (y mae rhai ohonynt yn dechnegol), fel y nodir ym mharagraff 4 o'r Memorandwm Esboniadol, ond maent yn ymwneud yn bennaf ag ad-dalu benthyciadau at raddau Meistr ôl-raddedig gan fenthycwrwr yng Nghymru. Y prif ddarpariaethau ar gyfer benthycwrwr yng Nghymru sy'n defnyddio benthyciad at radd Feistr ôl-raddedig yw:

- y bydd ad-daliadau'n dechrau ar £21,000 a byddant yn dibynnu ar incwm;
- codir llog o +3 y cant RPI (mynegai prisiau manwerthu);
- telir ad-daliadau ar gyfradd o 6 y cant o gyflog y benthyciwr sy'n uwch na'r trothwy o fis Ebrill 2019;
- telir ad-daliadau ar y cyd ag unrhyw ad-daliadau ar gyfer dyledion israddedig;
- caiff unrhyw ddyledion sy'n weddill eu dileu ddeng mlynedd ar hugain i'r dyddiad y bydd llog yn dechrau cael ei gronni.

## Gweithdrefn

Negyddol

## Craffu Technegol

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

- nid yw wedi'i wneud neu i'w wneud yn Gymraeg ac yn Saesneg (21.2(ix)).

Mae'r Memorandwm Esboniadol yn nodi ym mharagraff 2: "This composite statutory instrument is subject to the negative resolution procedure in the National Assembly for Wales and in the UK Parliament. Given the composite nature of the 2009 Regulations and that no routine Parliamentary processes exist by which to lay bilingual regulations before Parliament, these Regulations will be made in English only."

## Craffu ar rinweddau

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



## Y Goblygiadau yn sgil gadael yr Undeb Ewropeaidd

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Cyfeirir isod at y sefyllfa benodol o ran ad-dalu benthyciadau at raddau Meistr ôl-raddedig gan fenthycwyr/myfyrwyr cymwys yng Nghymru. Mae'r Rheoliadau hyn yn gysylltiedig â **Rheoliadau Addysg (Benthyciadau at Radd Feistr Ôl-raddedig) (Cymru) 2017** (SI 2017/523) ("Rheoliadau 2017") sy'n darparu ar gyfer rhoi benthyciadau i fyfyrwyr sy'n preswyllo fel arfer yng Nghymru ar gyfer cyrsiau gradd Feistr ôl-raddedig sy'n dechrau ar neu ar ôl 1 Awst 2017.

Er mwyn gwneud cais am fenthyciad at radd Feistr ôl-raddedig, mae'n rhaid i fyfyrwyr fod yn fyfyrwyr cymwys. Mae Rheoliadau 2017 yn rhestru'r holl gategoriâu o fyfyrwyr cymwys. Mae un o'r categorïau hyn yn cynnwys "gwladolion yr UE". Nid yw'n glir pa gymorth ariannol fydd ar gael i fyfyrwyr sy'n wladolion yr UE ar ôl i'r DU adael yr UE.

## Ymateb y Llywodraeth

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Nid yw'n ofynnol i'r Llywodraeth ymateb i'r pwynt technegol a godir yn yr adroddiad hwn.

### **Cynghorwyr Cyfreithiol**

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

**16 Awst 2017**



# Item 5.1 Rheoliadau Deunyddiau ac Eitemau mewn Cysylltiad â Bwyd (Cymru) Diwygio 2017

## Cefndir a Phwrpas

Mae'r **Rheoliadau** hyn yn diwygio **Rheoliadau Deunyddiau ac Eitemau mewn Cysylltiad â Bwyd (Cymru) 2012** ("y prif Reoliadau").

Mae'r diwygiadau yn-

- (a) darparu ar gyfer parhau i orfodi Rheoliad 10/2011 yr UE ar ddeunyddiau ac eitemau plastig y bwriedir iddynt ddod i gysylltiad â bwyd;
- (b) cymhwyso darpariaethau penodol o Ddeddf Diogelwch Bwyd 1990, gydag addasiadau, i'r prif Reoliadau;
- (c) gwneud mân ddiwygiadau ynghylch awdurdodau cymwys ac awdurdodau gorfodi.

## Y weithdrefn

Negyddol

## Craffu Technegol

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

## Craffu ar rinweddau

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

## Goblygiadau sy'n deillio o adael yr Undeb Ewropeaidd

Mae'r Rheoliadau hyn yn rhan o "ddeddfwriaeth ddomestig sy'n deillio o'r UE" o dan gymal 2 o Fil yr Undeb Ewropeaidd (Ymadael) ("y Bil") fel y'i cyflwynwyd, felly bydd y Rheoliadau hyn yn cael eu cadw fel cyfraith ddomestig a byddant yn parhau i fod mewn grym yng Nghymru ar ôl y diwrnod gadael.

Mae'r Bil yn rhoi pŵer i Weinidogion Cymru addasu'r Rheoliadau hyn er mwyn ymdrin â diffygion sy'n deillio o ymadael, yn amodol ar rai cyfyngiadau (er enghraifft, ni fydd Gweinidogion Cymru yn gallu defnyddio'r pŵer hwn i wneud rhywbeth sy'n anghyson ag addasiadau i "ddeddfwriaeth uniongyrchol yr UE a gedwir" a wnaed gan Weinidogion y DU o dan y Bil).

Mae'r Rheoliadau'n darparu ar gyfer gorfodi Rheoliad 10/2011 yr UE; Ar hyn o bryd, mae Rheoliad 10/2011 yr UE yn cael effaith uniongyrchol ar aelod-wladwriaethau'r UE, gan gynnwys Cymru. Ar ôl ymadael, bydd Rheoliad 10/2011 yr UE yn cael ei rewi a bydd yn cael ei gadw fel / ei drawsnewid yn gyfraith ddomestig o'r enw "deddfwriaeth uniongyrchol yr UE a gedwir".

Ni fydd y Bil yn rhoi pŵer i Weinidogion Cymru (neu Gynulliad Cenedlaethol Cymru) addasu unrhyw ddeddfwriaeth uniongyrchol yr UE a gedwir, gan gynnwys Rheoliad 10/2011 yr UE sy'n ymwneud â'r maes bwyd datganoledig. Rhoddir pŵer i addasu holl ddeddfwriaeth uniongyrchol yr UE a gedwir i Weinidogion y DU; mae hyn yn cynnwys y pŵer i addasu deddfwriaeth uniongyrchol yr UE a gedwir



mewn meysydd datganoledig heb yr angen am ganiatâd Cynulliad Cenedlaethol Cymru neu Weinidogion Cymru.

Felly, os bydd Gweinidogion y Deyrnas Unedig yn defnyddio eu pwerau i addasu Rheoliad 10/2011 yr UE fel deddfwriaeth uniongyrchol yr UE a gedwir, bydd pŵer Gweinidogion Cymru i addasu'r Rheoliadau hyn yn gyfyngedig fel na all Gweinidogion Cymru wneud unrhyw beth sy'n anghyson â'r addasiad a wneir gan Weinidogion y DU.

## Ymateb y Llywodraeth

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Nid oes angen ymateb y Llywodraeth.

### **Cynghorwyr Cyfreithiol**

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

**17 Awst 2017**



Huw Irranca-Davies AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay, CF99 1NA

19 July 2017

Dear Huw

**Brexit: devolution - new House of Lords EU Committee report**

On behalf of the Committee Chairman, Lord Boswell of Aynho, who is currently unwell, I am pleased to enclose a copy of the new report by the House of Lords EU Committee, published today, on *Brexit: devolution*.

The report concludes that the UK Government needs to work with the devolved governments to achieve an outcome that protects the interests of all parts of the UK. No durable solution will be possible without the consent of all the nations of the UK. Our report sets out in detail the particular circumstances in Scotland, Wales and Northern Ireland, the impact upon devolved competences, legislating for Brexit and legislative consent, and engagement with the devolved institutions.

We have been particularly grateful in the course of our work to meet colleagues from our equivalent Committees in the devolved legislatures, both before and after the referendum, and I am pleased to note that our officials are in regular contacts. In order to build on these mechanisms for collaboration, we propose in our report "more regular joint meetings with members of cognate Committees with responsibility for Brexit-related issues in the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly, and in the House of Commons, for the duration of the Brexit negotiations. These joint meetings could provide an opportunity to hear informally from UK and devolved Government Ministers, and to discuss issues of mutual interest and concern."

In order to facilitate this, and having consulted with the Senior Deputy Speaker of the House of Lords, Lord McFall of Alcluith, who chairs the House's Informal Brexit Liaison Group, we would like to propose quarterly informal meetings of representatives of Committees involved in scrutinising Brexit in the devolved legislatures, the House of Commons and the House of Lords for the duration of the Brexit negotiations. These meetings would provide a means to share information on issues of common interest, hear from experts and stakeholders on the Implications of Brexit, and, most important, provide an opportunity to hear from the UK and devolved Governments on the progress of negotiations and their discussions through the JMC (EN) and other fora.

We would like to keep the arrangements for such meetings as flexible as possible. However, we envisage inviting attendees from Committees in our legislatures scrutinising EU matters,

constitutional issues and delegated/ secondary legislation, with four or five participants in total from each legislature. We would also envisage a rotating venue for these meetings, although we are happy to host the meeting in the House of Lords whenever this is helpful.

We would like to begin our dialogue at an early point in the autumn, in order to maximise our ability to influence and scrutinise the Brexit negotiations. Accordingly, we would like to invite you to the first meeting in the House of Lords, in the week of **Monday 9 October**. I have invited our officials to liaise to finalise the date of the meeting.

I do hope you are willing to participate in this dialogue, which I am sure will be mutually beneficial in our respective efforts to scrutinise the Brexit process and hold our Governments to account. If you have any questions or comments about the proposal, please do not hesitate to contact me or my officials.

I have written in similar terms to the Committees with responsibility for EU Affairs, constitutional issues, and delegated/ secondary legislation in each of the devolved legislatures, and to relevant Committees in the House of Commons.

Yours Sincerely



Lord Jay of Ewelme

On behalf of Lord Boswell of Aynho



## MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL

### BIL YR UNDEB EWROPEAIDD (YMADAEL)

1. Gosodir y Memorandwm Cydsyniad Deddfwriaethol hwn o dan Reol Sefydlog (“RhS”) 29.2. Mae RhS29 yn rhagnodi bod rhaid gosod Memorandwm Cydsyniad Deddfwriaethol, ac y ceir cyflwyno Cynnig Cydsyniad Deddfwriaethol, gerbron Cynulliad Cenedlaethol Cymru os yw Bil Seneddol y DU yn gwneud darpariaeth mewn perthynas â Chymru at ddiben sydd o fewn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol, neu sy'n addasu'r cymhwysedd hwnnw.
2. Cyflwynwyd Bil yr Undeb Ewropeaidd (Ymadael) (y “Bil”) yn Nhŷ'r Cyffredin ar 13 Gorffennaf 2017. Gellir cael copi o'r Bil yn: [Bill documents — European Union \(Withdrawal\) Bill 2017-19 — UK Parliament](#)
3. Mae'r Memorandwm yn ymwneud â'r Bil fel y'i cyflwynwyd ar 13 Gorffennaf 2017.

#### Amcan(ion) Polisi

4. Yr amcan polisi sydd wedi'i ddatgan gan Lywodraeth y DU ar gyfer y Bil yw sicrhau bod y DU yn ymadael â'r UE gyda chymaint o sicrwydd, dilyniant a rheolaeth â phosibl. Mae'n anelu at roi terfyn ar oruchafiaeth cyfraith yr Undeb Ewropeaidd (“yr UE”) yng nghyfraith y DU ac at drosi cyfraith yr UE fel y saif adeg ymadael yn gyfraith ddomestig. Mae'r Bil hefyd yn creu pwerau dros dro i'r Gweinidogion wneud is-ddeddfwriaeth i alluogi i gywiriadau gael eu gwneud i'r cyfreithiau na fyddent bellach yn gweithredu'n briodol fel arall ar ôl i'r DU ymadael, er mwyn i'r system gyfreithiol ddomestig barhau i weithredu'n gywir y tu allan i'r UE. Mae'r Bil hefyd yn galluogi cyfraith ddomestig i adlewyrchu cynnwys cytundeb ymadael o dan Erthygl 50 o Gytuniad yr Undeb Ewropeaidd ar ôl i'r DU ymadael â'r UE.

#### Crynodeb o'r Bil

5. Noddir y Bil gan yr Adran dros Ymadael â'r Undeb Ewropeaidd.
6. Mae'r Nodiadau Esboniadol yn nodi barn Llywodraeth y DU fod y Bil yn cyflawni pedair prif swyddogaeth. Mae:
  - yn diddymu Deddf y Cymunedau Ewropeaidd 1972
  - yn trosi cyfraith yr UE fel y saif adeg ymadael yn gyfraith ddomestig cyn i'r DU ymadael â'r UE;
  - yn creu pwerau i wneud is-ddeddfwriaeth, gan gynnwys pwerau dros dro i alluogi i gywiriadau gael eu gwneud i'r cyfreithiau na fyddent bellach yn gweithredu'n briodol fel arall ar ôl i'r DU ymadael â'r UE ac i roi cytundeb ymadael ar waith; ac

- yn cadw cwmpas presennol pwerau datganoledig ar gyfer gwneud penderfyniadau mewn meysydd a lywodraethir gan gyfraith yr UE ar hyn o bryd.

7. Y cymalau sydd o berthnasedd penodol i faterion datganoledig yw:

- Cymalau 2 – 6 (sy'n diogelu ac yn cadw cyfraith yr UE mewn cyfraith ddomestig, gan gynnwys mewn meysydd sydd o fewn cymhwysedd deddfwriaethol)
- Cymalau 7 – 9 (sy'n darparu pwerau i Weinidogion y DU gywiro cyfraith gadwedig yr UE a gweithredu rhwymedigaethau rhyngwladol a'r cytundeb ymadael â'r UE, gan gynnwys mewn meysydd datganoledig)
- Cymal 10 ac Atodlen 2 (sy'n darparu pwerau i Weinidogion Cymru gywiro cyfraith gadwedig yr UE a gweithredu rhwymedigaethau rhyngwladol a'r cytundeb ymadael â'r UE);
- Cymal 11 ac Atodlen 3 (sy'n cyfyngu ar gymhwysedd Cynulliad Cenedlaethol Cymru a Gweinidogion Cymru); ac
- Atodlen 7 (sy'n nodi'r gweithdrefnau deddfwriaethol i'w dilyn ar gyfer amryw o ddarpariaethau is-ddeddfwriaeth yn y Bil, gan gynnwys pwerau Gweinidogion Cymru a Gweinidogion y DU sy'n gweithredu mewn meysydd datganoledig).

### **Darpariaethau yn y Bil y mae angen cydsyniad ar eu cyfer**

8. Nodir y rhestr lawn o gymalau sydd o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru ("y Cynulliad") neu sy'n addasu'r cymhwysedd hwnnw yn y tabl yn Atodiad A. Mae'r Llywodraeth yn nodi bod gan Lywodraeth yr Alban farn debyg am y darpariaethau sy'n gorfod cael cydsyniad deddfwriaethol oddi wrth Senedd y DU.

### Darpariaethau sy'n addasu cymhwysedd deddfwriaethol y Cynulliad

9. Sef:

- Cymal 1 (diddymu Deddf y Cymunedau Ewropeaidd 1972). Mae'r ddarpariaeth yn addasu cymhwysedd y Cynulliad trwy ddileu'r gofyniad i'r Cynulliad ddeddfu yn gydnaws â chyfraith yr UE.
- Mae Cymal 11 yn diwygio adran 108A o Ddeddf Llywodraeth Cymru 2006 i ddiffinio cymhwysedd y Cynulliad trwy gyfeirio at gyfraith yr UE a gedwir mewn cyfraith ddomestig gan ddarpariaethau'r Bil. Mae'r ddarpariaeth yn addasu cymhwysedd y Cynulliad am y byddai'n atal y Cynulliad rhag addasu cyfraith gadwedig yr UE mewn ffordd na fyddai wedi bod o fewn cymhwysedd yn union cyn y diwrnod ymadael.

- Mae cymal 17 ac Atodlen 8 a 9 yn rhoi pwerau eang i Weinidog y Goron wneud darpariaeth ganlyniadol. Gallai'r pwerau hynny gael eu harfer yn y fath ffordd ag i addasu cymhwysedd deddfwriaethol y Cynulliad.

### Darpariaethau sy'n deddfu at ddiben sydd o fewn cymhwysedd deddfwriaethol y Cynulliad

#### *Cymalau 2 – 6*

10. Mae'r darpariaethau hyn (yn ddarostyngedig i rai eithriadau) yn trosi'r corff o gyfraith bresennol yr UE yn gyfraith ddomestig ac yn diogelu'r cyfreithiau a wneir yn y DU i roi rhwymedigaethau'r UE ar waith. Mae'r darpariaethau allweddol wedi'u crynhoi isod:

- Mae Cymal 2 ac Atodlen 1 yn darparu bod deddfwriaeth ddomestig sy'n deillio o'r UE yn parhau i fod yn effeithiol mewn cyfraith ddomestig ar ôl i'r DU ymadael â'r UE. Er enghraifft, is-ddeddfwriaeth a wneir o dan adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972.
- Mae Cymal 3 yn gwneud darpariaeth ar wahân ar gyfer deddfwriaeth uniongyrchol yr UE (h.y. Rheoliadau'r UE).
- Mae Cymal 4 yn sicrhau bod unrhyw rai o hawliau a rhwymedigaethau uniongyrchol yr UE sy'n weddill yn parhau i gael eu cydnabod ac i fod ar gael mewn cyfraith ddomestig ar ôl ymadael, megis hawliau Cytuniad sy'n effeithiol yn uniongyrchol.
- Mae Cymal 5 ac Atodlen 1 yn nodi eithriadau i arbed ac ymgorffori cyfraith yr UE. Mae'r rhain yn cynnwys rhoi terfyn ar yr egwyddor o oruchafiaeth cyfraith yr UE a darpariaeth sy'n cadarnhau na fydd y Siarter Hawliau Sylfaenol yn effeithiol bellach mewn cyfraith ddomestig o'r dyddiad ymadael â'r UE.
- Mae Cymal 6 yn esbonio sut y bwriedir dehongli cyfraith gadwedig yr UE o'r dyddiad ymadael â'r UE. Mae'n cadarnhau y daw awdurdodaeth Llys Cyfiawnder yr Undeb Ewropeaidd ("CJEU") i ben ac mae'n gwneud darpariaeth ar gyfer trin penderfyniadau CJEU gan y llysoedd domestig wrth ddehongli cyfraith gadwedig yr UE ar ôl ymadael â'r UE.

11. Mae Llywodraeth Cymru o'r farn bod angen cydsyniad ar gyfer y darpariaethau hyn. Mae gan y Cynulliad gymhwysedd i deddfu rheolau sy'n deillio o'r UE yn gyfraith ddomestig adeg ymadael â'r UE ac i ddiffinio sut y bwriedir dehongli'r gyfraith honno, i'r graddau y mae'r rheolau hynny'n ymwneud ag un neu ragor o bynciau yn Atodlen 7 i Ddeddf Llywodraeth Cymru 2006. Er enghraifft, y pwnc "environmental protection" o dan baragraff 6 o'r Atodlen honno o dan amgylchiadau lle mae'r rheolau sy'n deillio o'r UE sydd i'w deddfu'n darparu ar gyfer diogelu'r amgylchedd.

## *Cymalau 7- 10 ac 16*

12. Mae'r darpariaethau hyn yn rhoi pwerau i Weinidogion y Goron a Gweinidogion Cymru ddiwygio cyfraith gadwedig yr UE, ac yn cynnwys fel a ganlyn:

- Mae Cymal 7 yn caniatáu i Weinidog y Goron wneud darpariaeth trwy gyfrwng rheoliadau i atal, unioni neu liniaru unrhyw fethiant yng nghyfraith yr UE i weithredu'n effeithiol neu unrhyw ddiffyg arall yng nghyfraith gadwedig yr UE sy'n deillio o ymadael â'r UE.
- Mae Cymal 8 yn rhoi pŵer i Weinidog y Goron wneud rheoliadau i hwyluso cydymffurfio parhaus â rhwymedigaethau rhyngwladol y DU.
- Mae Cymal 9 yn rhoi pŵer i Weinidog y Goron weithredu cytundeb ymadael rhwng y DU a'r UE.
- Mae Cymal 10 ac Atodlen 2 yn rhoi pwerau cyfatebol i Weinidogion Cymru, ond maent wedi'u cyfyngu mewn nifer o ffyrdd. Er enghraifft, nid ydynt yn ymestyn ond i gywiro cyfraith yr UE sydd wedi cael effaith trwy deddfwriaeth ddomestig ac ni ellir eu defnyddio i addasu deddfwriaeth uniongyrchol yr UE megis Rheoliadau'r UE.
- Mae Cymal 16 ac Atodlen 7 yn gwneud darpariaeth ar gyfer craffu ar reoliadau a wneir o dan y Bil.

13. Mae Llywodraeth Cymru o'r farn bod angen cydsyniad ar gyfer pob un o'r darpariaethau hyn. Er bod rhai pwerau'n cael eu rhoi i Weinidogion Cymru i wneud rheoliadau sy'n gallu diwygio deddfwriaeth o fewn cymhwysedd y Cynulliad (Cymal 10 ac Atodlen 2), gall Gweinidog y Goron ddal i arfer y pwerau yng nghymalau 7-9 i addasu deddfwriaeth sydd o fewn cymhwysedd y Cynulliad.

14. Mae o fewn cymhwysedd y Cynulliad i roi pwerau i Weinidogion Cymru wneud rheoliadau i fynd i'r afael â diffygion sy'n deillio o ymadael â'r UE o dan amgylchiadau lle mae'r gyfraith sy'n cael eu haddasu'n ymwneud ag un neu ragor o bynciau yn Rhan 1 o Atodlen 7 i Ddeddf Llywodraeth Cymru 2006.

## *Cymal 12 ac Atodlen 4 – Darpariaeth ariannol*

15. Mae'r darpariaethau hyn yn rhoi pwerau i Weinidog y Goron ac awdurdodau datganoledig wneud is-ddeddfwriaeth i alluogi awdurdodau cyhoeddus i godi ffioedd neu daliadau eraill.

16. Mae Llywodraeth Cymru o'r farn bod angen cydsyniad ar gyfer y ddarpariaeth hon. Mae o fewn cymhwysedd y Cynulliad i wneud darpariaeth ar gyfer codi ffioedd gan awdurdodau cyhoeddus, i'r graddau y mae'r awdurdodau hyn/eu swyddogaethau'n ymwneud ag un neu ragor o bynciau yn Rhan 1 o Atodlen 7 i Ddeddf Llywodraeth Cymru 2006.

*Cymal 13 ac Atodlen 5 – Cyhoeddi a rheolau tystiolaeth.*

17. Mae'r cymal hwn yn gwneud darpariaeth ar gyfer cyhoeddi deddfwriaeth uniongyrchol gadwedig yr UE gan Argraffydd y Frenhines yn yr Archifau Gwladol. Yn Atodlen 5 ceir darpariaeth bellach ynghylch y rheolau tystiolaeth sydd i fod yn gymwys i offerynnau'r UE.
18. Mae Llywodraeth Cymru o'r farn bod angen cydsyniad ar gyfer y ddarpariaeth hon. Mae o fewn cymhwysedd y Cynulliad i wneud darpariaeth ar gyfer cyhoeddi cyfraith gadwedig yr UE a sut y bwriedir dehongli'r gyfraith honno i'r graddau y mae'r gyfraith honno'n ymwneud ag un neu ragor o bynciau yn Rhan 1 o Atodlen 7 i Ddeddf Llywodraeth Cymru 2006.

Craffu ar bwerau is-ddeddfwriaeth Gweinidogion Cymru

19. Trwy roi effaith i Atodlen 2, mae cymal 10 yn rhoi pwerau i Weinidogion Cymru sy'n cyfateb i'r pwerau a roddir i Weinidogion y Goron yng nghymalau 7-9 fel y nodir uchod. Nodir y gweithdrefnau ar gyfer craffu seneddol ar y pwerau cywiro hyn yn Rhannau 1 a 2 o Atodlen 7.
20. Ar gyfer pob pŵer, mae'r Atodlen yn rhestru cyfres o ddarpariaethau, y bydd eu cynnwys mewn offeryn statudol ("OS") yn peri bod yr OS yn ddarostyngedig i'r weithdrefn penderfyniad cadarnhaol yn Senedd y DU. Mae'r Atodlen wedyn yn darparu bod OS Gweinidogion Cymru sy'n cynnwys unrhyw rai o'r darpariaethau hyn yn ddarostyngedig i'r weithdrefn penderfyniad cadarnhaol yn y Cynulliad. Pan fydd OS sy'n cynnwys y darpariaethau hyn yn cael ei wneud gan Weinidog y Goron a Gweinidogion Cymru ar y cyd, mae'r gweithdrefnau penderfyniad cadarnhaol yn gymwys mewn perthynas â Senedd y DU a'r Cynulliad. Mae unrhyw OS sy'n cynnwys unrhyw rai o'r darpariaethau a restrir yn ddarostyngedig i'r weithdrefn penderfyniad negyddol.
21. Mae'r darpariaethau a fydd yn sbarduno'r gofyniad ar gyfer penderfyniad cadarnhaol ar gyfer pob pŵer wedi'u rhestru yn Atodiad B.

**Rhesymau dros wneud y darpariaethau hyn i Gymru ym Mil yr Undeb Ewropeaidd (Ymadael)**

22. Mae Llywodraeth Cymru'n cytuno bod angen deddfwriaeth i gynnig eglurder a sicrwydd i ddinasyddion a busnesau wrth inni ymadael â'r UE. Rydym yn derbyn o ran egwyddor yr angen am ddarpariaethau sy'n trosi cyfraith yr UE yn gyfraith ddomestig, a darpariaethau sy'n creu pwerau i wneud is-ddeddfwriaeth, gan gynnwys pwerau dros dro i alluogi i gywiriadau gael eu gwneud i'r cyfreithiau na fyddent bellach yn gweithredu'n briodol pan fydd y DU wedi ymadael â'r UE. Mae Llywodraeth Cymru yn cytuno hefyd mai Senedd y DU, yn ddelfrydol, a ddylai wneud y ddeddfwriaeth honno, a hynny ar ran y DU gyfan, gan mai

hyn fyddai'n cynnig y mesur gorau o gysondeb a sicrwydd i ddinasyddion a busnesau.

### **Safbwynt Llywodraeth Cymru ar y Bil fel y'i cyflwynwyd.**

23. Ni fydd modd i Lywodraeth Cymru argymhell i'r Cynulliad ei fod yn rhoi cydsyniad i'r Bil fel y mae wedi'i ddrafftio ar hyn o bryd.
24. Nodir safbwynt Llywodraeth Cymru yn y [Datganiad Ysgrifenedig](#) a gyhoeddais pan gafodd y Bil ei gyflwyno yn Nhŷ'r Cyffredin ar 13 Gorffennaf, ac yn y [datganiad ar y cyd](#) a wneuthum â Phrif Weinidog yr Alban yr un diwrnod.
25. Mae prif wrthwynebiadau Llywodraeth Cymru'n ymwneud â chymalau 7-9 (sy'n rhoi i Weinidogion y Goron bwerau annerbyniol o eang i wneud rheoliadau, gan gynnwys y gallu i ddiwygio cyfraith ddatganoledig a'r setliad datganoli heb gydsyniad), cymal 10 (sy'n rhoi effaith i Atodlen 2 ac sy'n cyfyngu'n afresymol ar bwerau cywiro Gweinidogion Cymru i gyfraith ddomestig yr UE) a chymal 11 sy'n cyflwyno cyfyngiad newydd ar gymhwysedd deddfwriaethol.

#### *Pwerau i Weinidogion y DU a Gweinidogion Cymru ddiwygio cyfraith ddatganoledig*

26. Mae'r Bil yn rhoi pwerau i Weinidogion y Goron yng nghymal 7 (i ymdrin â diffygion sy'n deillio o ymadael), yng nghymal 8 (i alluogi cydymffurfio parhaus â rhwymedigaethau rhyngwladol y DU, a chymal 9 (i roi'r cytundeb ymadael ar waith). Byddai'r pwerau hyn yn caniatáu i Weinidog y Goron ddiwygio'n unochrog deddfwriaeth sydd o fewn cymhwysedd deddfwriaethol y Cynulliad, gan gynnwys deddfwriaeth lle bo Gweinidogion Cymru'n arfer swyddogaethau. Senedd y DU yn hytrach na'r Cynulliad fyddai'n cyflawni'r rhwymedigaeth graffu wedyn. Gallai'r pwerau hyn gael eu defnyddio hefyd i ddiwygio Deddf Llywodraeth Cymru 2006, heb unrhyw ofyniad i gael sêl bendith y Cynulliad.
27. Trwy roi effaith i Atodlen 2, mae cymal 10 yn rhoi pwerau i Weinidogion Cymru sy'n cyfateb i'r pwerau a roddir i Weinidogion y Goron yng nghymalau 7-9. Ond mae'r pwerau cyfatebol ar gyfer Gweinidogion gweinyddiaethau datganoledig yn ymestyn yn unig i orchmynion cywiro mewn perthynas â deddfwriaeth sydd wedi'i gwneud gan sefydliadau domestig. Gweinidog y Goron yn unig sy'n cael diwygio deddfwriaeth uniongyrchol yr UE (megis Rheoliadau'r UE) a byddai Senedd y DU yn gorfod craffu arni hyd yn oed pe bai'n ymwneud â phwnc sydd wedi'i ddatganoli i'r Cynulliad.

#### *Cyfyngiadau newydd ar gymhwysedd deddfwriaethol y Cynulliad*

28. Mae Cymal 11 yn cyflwyno darpariaeth newydd a fydd yn golygu y bydd y tu allan i gymhwysedd y Cynulliad i addasu cyfraith gadwedig yr UE mewn

ffordd na fyddai wedi bod yn gydnaws â chyfraith yr UE yn union cyn ymadael. Mae hyn yn disodli'r ddarpariaeth newydd yn adran 108A o Ddeddf Llywodraeth Cymru 2006 sy'n ei gwneud yn ofynnol i'r Cynulliad ddeddfu'n gydnaws â chyfraith yr UE.

29. Oni bai fod darpariaeth ddeddfwriaethol yn cael ei gwneud yn Senedd y DU, mae'n dir cyffredin y byddai cymhwysedd deddfwriaethol ar gyfer materion datganoledig sy'n destun cyfyngiadau'r UE ar hyn o bryd yn aros gyda'r deddfwrfeydd datganoledig ar ôl ymadael, gyda'r deddfwrfeydd hynny'n gallu arfer eu cymhwysedd heb y cyfyngiadau sy'n cael eu gorfodi ar hyn o bryd o ganlyniad i aelodaeth y DU o'r UE.
30. Yn natganiad polisi Llywodraeth Cymru [Brexit a Datganoli](#), a gyhoeddwyd ym mis Mehefin, fe'i gwnaed yn glir ein bod yn barod i negodi fframweithiau'r DU mewn rhai meysydd a oedd gynt yn cael eu cwmpasu gan gyfraith yr UE. Gallai hyn fod, er enghraifft, i helpu marchnad y DU i weithredu'n effeithiol ac atal rhwystrau rhag dod i'r amlwg a allai gyfyngu'n afresymol ar fusnesau, neu i hwyluso rheoli adnoddau amgylcheddol cyffredin.
31. Rhaid i'r broses o gytuno lle mae angen fframweithiau, a beth ddylai fod ynddynt, fod yn broses sy'n seiliedig ar gytundeb, ac nid gorfodaeth. Ond mae'r Bil yn cynnig, yn hytrach, set newydd o gyfyngiadau cyfreithiol ar gymhwysedd y sefydliadau datganoledig mewn perthynas â'r materion hyn, ac mae hyn yn gyfan gwbl annerbiniol inni o ran egwyddor. Ymhellach, wrth gyflwyno cyfyngiad newydd ar gymhwysedd a ddiffinnir mewn perthynas â 'chyfraith gadwedig yr UE', byddai'r Bil yn ychwanegu cymhlethdod ac ansicrwydd at y setliad datganoli ar ôl ymadael â'r UE.
32. Mae Llywodraeth y DU wedi awgrymu bod y cyfyngiad a orfodir gan gymal 11 yn drosiannol ei natur, ac mai ei fwriad yw caniatáu amser a lle ar gyfer trafod ac ymgynghori ag awdurdodau datganoledig ynghylch lle mae angen fframweithiau. Er hynny, yn groes i'r gwahanol ddarpariaethau machlud a gynhwysir yn y pwerau Gweinidogol, nid oes unrhyw derfynau amser ar weithrediad cymal 11.
33. Ym marn Llywodraeth Cymru, dylid dileu'r cymal o'r Bil. Rydym yn cynnig y dull gweithredu amgen sy'n parchu datganoli, fel y nodir uchod, ac rydym yn barod i gydweithio'n agos â Llywodraeth y DU a'r gweinyddiaethau datganoledig eraill i gyflawni hyn, er budd y DU gyfan.
34. Mae gorfodi'r cyfyngiad newydd hwn ar gymhwysedd y Cynulliad yn golygu canoli diangen ac annerbiniol ar bwerau ar lefel y DU, ac ni all Llywodraeth Cymru gytuno i hyn.
35. Mae Llywodraeth Cymru'n gweithio gyda Llywodraeth yr Alban i gynnig gwelliannau i'r Bil a fydd yn mynd i'r afael â'n pryderon. Caiff y rhain eu cyhoeddi er mwyn llywio'r ddadl ar y Bil yn y Cynulliad, yn San Steffan ac yn ehangach. Rwyf yn gobeithio gosod memorandwm atodol maes o law, i adlewyrchu'r gwelliannau y bydd Senedd y DU'n cytuno â hwy, sy'n

hanfodol os yw Llywodraeth Cymru am allu bod mewn sefyllfa i argymhell bod cydsyniad deddfwriaethol yn cael ei roi.

### **Y goblygiadau ariannol**

36. Er nad oes unrhyw oblygiadau ariannol uniongyrchol i Lywodraeth Cymru na'r Cynulliad yn deillio o'r pwerau o dan y Bil, bydd goblygiadau ariannol sylweddol i Gymru yn sgil ymadael â'r UE, a hynny yn ei effaith economaidd gyffredinol ac mewn meysydd ariannu sy'n deillio o'r UE, fel y nodir yn *Diogelu Dyfodol Cymru*.

### **Casgliad**

37. Mae'r memorandwm hwn yn nodi barn Llywodraeth Cymru am y gofyniad ar gyfer cydsyniad deddfwriaethol y Cynulliad mewn perthynas â Bil yr UE (Ymadael), ac yn cadarnhau na fyddwn mewn sefyllfa i argymhell cydsynio oni bai bod y Bil yn cael ei ddiwygio i fynd i'r afael â'n pryderon.

**Y Gwir Anrhydeddus Carwyn Jones AC**  
**Prif Weinidog Cymru**  
**Medi 2017**



## Atodiad A Cymalau sy'n gofyn am gydsyniad deddfwriaethol y Cynulliad

Cymal/ Amserlen	Effaith
1	yn diddymu Deddf y Cymunedau Ewropeaidd 1972 ar y diwrnod ymadael
2	yn darparu bod deddfwriaeth ddomestig bresennol sy'n gweithredu rhwymedigaethau cyfraith yr UE yn aros ar y llyfr statud domestig ar ôl i'r DU ymadael â'r UE
3	yn trosi 'deddfwriaeth uniongyrchol yr UE' yn ddeddfwriaeth ddomestig adeg ymadael â'r UE er mwyn i ddeddfwriaeth yr UE, lle bo'n briodol, barhau i gael effaith yn sgil ymadael
4	yn sicrhau bod unrhyw rai o hawliau a rhwymedigaethau'r UE sy'n weddill nad ydynt yn dod o fewn cymalau 2 a 3 yn parhau i gael eu cydnabod ac i fod ar gael mewn cyfraith ddomestig ar ôl ymadael
5	yn nodi rhai eithriadau i arbed ac ymgorffori cyfraith yr UE y darperir ar eu cyfer gan gymalau 2-4, gan gynnwys na fydd y Siarter Hawliau Sylfaenol yn rhan o gyfraith ddomestig ar y diwrnod ymadael neu ar ôl hynny.
6	yn nodi sut y caiff cyfraith gadwedig yr UE ei darllen a'i dehongli ar y diwrnod ymadael ac ar ôl hynny
7	yn rhoi'r pŵer i Weinidogion y Goron wneud rheoliadau sy'n diwygio diffygion yng nghyfraith gadwedig yr UE er mwyn iddi barhau i weithredu'n effeithiol ar ôl ymadael
8	yn rhoi'r pŵer i Weinidogion y Goron wneud darpariaeth mewn rheoliadau ar gyfer cydymffurfio parhaus â rhwymedigaethau rhyngwladol y DU.
9	yn rhoi pwerau i Weinidogion y Goron wneud rheoliadau i roi cytundeb ymadael ar waith
10 ac Atodlen 2	yn darparu pwerau i'r gweinyddiaethau datganoledig (gan gynnwys Gweinidogion Cymru) sy'n cyfateb i'r rhai a roddir i Weinidogion y Goron, fel y'u nodir yn Atodlen 2
11 ac Atodlen 3	yn disodli'r gofyniad presennol na chaiff y Cynulliad ddeddfu ond mewn ffordd sy'n gydnaws â chyfraith yr UE, â darpariaeth newydd a fydd yn golygu y bydd y tu allan i gymhwysedd y Cynulliad i addasu cyfraith gadwedig yr UE mewn ffordd na fyddai wedi bod yn gydnaws â chyfraith yr UE yn union cyn ymadael. Gall eithriadau i'r prawf hwn gael eu rhagnodi gan Orchymyn yn y Cyfrin Gyngor, sy'n gorfod cael eu cymeradwyo gan ddau Dŷ'r Senedd a chan y Cynulliad
12 ac Atodlen 4	yn rhoi effaith i Atodlen 4 sy'n darparu pwerau mewn cysylltiad â ffioedd a thaliadau, ac sy'n darparu y caiff awdurdodau datganoledig dynnu gwariant i baratoi ar gyfer gwneud offerynnau statudol o dan y Bil
13 ac Atodlen 5	yn gwneud darpariaeth ar gyfer cyhoeddi deddfwriaeth gadwedig yr UE gan Argraffydd y Frenhines

16 ac Atodlen 7	yn rhoi effaith i Atodlen 7 ar sut y mae'r pwerau i wneud rheoliadau yn y Bil yn ymarferadwy
17	Pŵer i wneud darpariaeth ganlyniadol

## **Atodiad B Pwerau dirprwyedig: darpariaethau sy'n gofyn am weithdrefnau penderfyniad cadarnhaol**

Mae Atodlen 7 yn rhestru cyfres o ddarpariaethau, y bydd eu cynnwys mewn offeryn statudol yn peri bod yr OS hwnnw yn ddarostyngedig i'r weithdrefn penderfyniad cadarnhaol yn y ddeddfwrfa berthnasol/deddfwrfeydd perthnasol.

Yn achos rheoliadau sy'n ymdrin â diffygion sy'n deillio o ymadael, y darpariaethau yw'r rhai:

- (a) sy'n sefydlu awdurdod cyhoeddus yn y Deyrnas Unedig,
- (b) sy'n darparu bod unrhyw un o swyddogaethau endid neu awdurdod cyhoeddus yr UE mewn aelod-wladwriaeth yn ymarferadwy yn lle hynny gan awdurdod cyhoeddus yn y Deyrnas Unedig a sefydlir gan reoliadau o dan adran 7, 8 neu 9 neu Atodlen 2,
- (c) yn darparu bod unrhyw un o swyddogaethau endid neu awdurdod cyhoeddus mewn aelod-wladwriaeth ar gyfer gwneud offeryn o natur ddeddfwriaethol yn ymarferadwy yn lle hynny gan awdurdod cyhoeddus yn y Deyrnas Unedig,
- (d) yn gorfodi, neu'n ymwneud fel arall, â ffi mewn perthynas â swyddogaeth sy'n ymarferadwy gan awdurdod cyhoeddus yn y Deyrnas Unedig,
- (e) yn creu, neu'n ehangu cwmpas, trosedd, neu
- (f) yn creu neu'n diwygio pŵer i ddeddfu.

Yn achos rheoliadau sy'n galluogi cydymffurfio parhaus â rhwymedigaethau rhyngwladol y DU, y darpariaethau yw'r rhai:

- (a) sy'n sefydlu awdurdod cyhoeddus yn y Deyrnas Unedig,
- (b) sy'n darparu bod unrhyw un o swyddogaethau endid neu awdurdod cyhoeddus yr UE mewn aelod-wladwriaeth yn ymarferadwy yn lle hynny gan awdurdod cyhoeddus yn y Deyrnas Unedig a sefydlir gan reoliadau o dan adran 7, 8 neu 9 neu Atodlen 2,
- (c) yn darparu bod unrhyw un o swyddogaethau endid neu awdurdod cyhoeddus mewn aelod-wladwriaeth ar gyfer gwneud offeryn o natur ddeddfwriaethol yn ymarferadwy yn lle hynny gan awdurdod cyhoeddus yn y Deyrnas Unedig,
- (d) yn gorfodi, neu'n ymwneud fel arall, â ffi neu dâl mewn perthynas â swyddogaeth sy'n ymarferadwy gan awdurdod cyhoeddus yn y Deyrnas Unedig,
- (e) yn creu, neu'n ehangu cwmpas, trosedd, neu
- (f) yn creu neu'n diwygio pŵer i ddeddfu.

Yn achos rheoliadau i roi'r cytundeb ymadael ar waith, y darpariaethau yw'r rhai:

- (a) sy'n sefydlu awdurdod cyhoeddus yn y Deyrnas Unedig,
- (b) sy'n darparu bod unrhyw un o swyddogaethau endid neu awdurdod cyhoeddus yr UE mewn aelod-wladwriaeth yn ymarferadwy yn lle hynny gan awdurdod cyhoeddus yn y Deyrnas Unedig a sefydlir gan reoliadau o dan adran 7, 8 neu 9 neu Atodlen 2,

- (c) yn darparu bod unrhyw un o swyddogaethau endid neu awdurdod cyhoeddus mewn aelod-wladwriaeth ar gyfer gwneud offeryn o natur ddeddfwriaethol yn ymarferadwy yn lle hynny gan awdurdod cyhoeddus yn y Deyrnas Unedig,
- (d) yn gorfodi, neu'n ymwneud fel arall, â ffi mewn perthynas â swyddogaeth sy'n ymarferadwy gan awdurdod cyhoeddus yn y Deyrnas Unedig,
- (e) yn creu, neu'n ehangu cwmpas, trosedd,
- (f) yn creu neu'n diwygio pŵer i ddeddfu, neu
- (g) sy'n diwygio'r Ddeddf hon.

Mae unrhyw OS sy'n cynnwys unrhyw rai o'r darpariaethau a restrir yn ddarostyngedig i'r weithdrefn penderfyniad negyddol.



Rt Hon Theresa May MP  
Prime Minister  
10 Downing Street  
London

19<sup>th</sup> September 2017

Dear Theresa,

The Scottish and Welsh Governments recognise our responsibility to prepare our laws for the upheaval of EU withdrawal. The governments of these islands have much work to do to ensure that stability and continuity can be achieved on exit day, and all governments will have to work together if that is to be done most effectively. So we stand ready to work in a cooperative and coordinated way with others to prepare for Brexit. But the approach of the UK Government to devolution in the EU (Withdrawal) Bill is preventing this essential cooperation and coordination.

We have been clear since the Bill was first introduced that our governments could not recommend it as currently drafted to our legislatures for their consent. We have now set out our reasons for that, in detail, in legislative consent memorandums laid before each of the Scottish Parliament and the National Assembly for Wales. And, as we have indicated, we have begun to consider the scope for preparing alternative devolved legislation to provide for continuity of law on withdrawal from the EU. That is not, however, our preferred option. We want a European Union (Withdrawal) Bill that can be made to work with, not against, devolution. The current Bill will need to be substantially amended for us to be able to recommend to our respective legislatures that they give their consent to it.

Our Governments have therefore prepared a set of amendments which, if made, would make the Bill one which we could consider recommending to the Scottish Parliament and the National Assembly for Wales. We have made these amendments widely available, and in particular to chairs/conveners of the relevant committees in the National Assembly for Wales and the Scottish Parliament. We hope that they will be received in the way they are intended: as a constructive contribution by the devolved administrations, which would enable progress to be made among the governments in a way which respects the hard-won devolution settlements of the UK.

**NICOLA STURGEON**

**CARWYN JONES**

## **European Union (Withdrawal) Bill**

### **UK GOVERNMENT FIXING ETC. POWERS: MODIFICATION THE SCOTLAND ACT 1998 OR THE GOVERNMENT OF WALES ACT 2006**

#### **Clause 7**

- 1** In clause 7, page 6, line 13, after <it,> insert—
- <() modify the Scotland Act 1998 or the Government of Wales Act 2006,>

#### **Clause 8**

- 2** In clause 8, page 6, line 38, at end insert <, or
- ( ) modify the Scotland Act 1998 or the Government of Wales Act 2006.>

#### **Clause 9**

- 3** In clause 9, page 7, line 8, at end insert—
- <() The consent of the Scottish Ministers is required before any provision is made in regulations under this section that modifies the Scotland Act 1998.
- ( ) The consent of the Welsh Ministers is required before any provision is made in regulations under this section that modifies the Government of Wales Act 2006.>

### **UK GOVERNMENT FIXING ETC. POWERS: REQUIREMENT FOR CONSENT OF SCOTTISH MINISTERS OR WELSH MINISTERS IF MAKING PROVISION WITHIN DEVOLVED COMPETENCE**

#### **Clause 7**

- 4** In clause 7, page 6, line 25, at end insert—
- <() The consent of the Scottish Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Scottish Ministers within the meaning given in paragraph 9 of Schedule 2.
- ( ) The consent of the Welsh Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Welsh Ministers within the meaning given in paragraph 10 of Schedule 2.>

#### **Clause 8**

- 5** In clause 8, page 6, line 40, at end insert—

- <( ) The consent of the Scottish Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Scottish Ministers within the meaning given in paragraph 18 of Schedule 2.
- ( ) The consent of the Welsh Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Welsh Ministers within the meaning given in paragraph 19 of Schedule 2.>

### **Clause 9**

**6** In clause 9, page 7, line 9, at end insert—

- <( ) The consent of the Scottish Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Scottish Ministers within the meaning given in paragraph 18 of Schedule 2.
- ( ) The consent of the Welsh Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Welsh Ministers within the meaning given in paragraph 19 of Schedule 2.>

## LEGISLATIVE AND EXECUTIVE COMPETENCE: REMOVAL OF “RETAINED EU LAW” RESTRICTION / UK FRAMEWORKS PROVISION

### **Clause 11**

**7** In clause 11, page 7, line 16, leave out subsections (1) and (2) and insert—

- <(1) In section 29(2)(d) of the Scotland Act 1998 (no competence for Scottish Parliament to legislate incompatibly with EU law), omit “or with EU law”.
- (2) In section 108A(2)(e) of the Government of Wales Act 2006 (no competence for National Assembly for Wales to legislate incompatibly with EU law), omit “or with EU law”.>

### **Schedule 3**

**8** In schedule 3, page 25, line 37, leave out paragraphs 1 and 2 and insert—

*<Scotland Act 1998*

- 1 In section 57(2) of the Scotland Act 1998 (no power for members of the Scottish Government to make subordinate legislation, or otherwise act, incompatibly with EU law or Convention rights), omit “or with EU law”.

*Government of Wales Act 2006*

- 2 In the Government of Wales Act 2006, omit section 80 (EU law).>

SCOTTISH MINISTERS AND WELSH MINISTERS FIXING ETC. POWERS: REMOVAL  
OF RESTRICTIONS AND CONSENT REQUIREMENT

**Schedule 2**

- 9** In schedule 2, page 16, line 30, at end insert—
- <() Sub-paragraph (4)(b) does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>
- 10** In schedule 2, page 17, line 9, at end insert—
- <() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>
- 11** In schedule 2, page 17, line 13, at end insert—
- <() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>
- 12** In schedule 2, page 17, line 20, at end insert—
- <() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.

*Requirement for consultation in certain circumstances*

- 5A** No regulations may be made under this Part by the Scottish Ministers or the Welsh Ministers acting alone so far as the regulations—
- (a) are to come into effect before exit day, or
- (b) remove (whether wholly or partly) reciprocal arrangements of the kind mentioned in section 7(2)(c) or (e),
- unless the regulations are, to that extent, made after consulting with a Minister of the Crown.>
- 13** In schedule 2, page 22, line 10, at end insert—
- <() Sub-paragraph (4)(d) does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>
- 14** In schedule 2, page 22, line 32, at end insert—
- <() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>
- 15** In schedule 2, page 23, line 11, at end insert—
- <() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.

*Requirement for consultation in certain circumstances*

- 16A (1)** No regulations may be made under this Part by the Scottish Ministers or the Welsh Ministers acting alone so far as the regulations—



- (a) are to come into force before exit day,
- (b) are for the purpose of preventing or remedying any breach of the WTO Agreement, or
- (c) make provision about any quota arrangements or are incompatible with any such arrangements,

unless the regulations are, to that extent, made after consulting with a Minister of the Crown.

(2) In sub-paragraph (1)—

“the WTO Agreement” has the meaning given in paragraph 16(2),

“quota arrangements” has the meaning given in paragraph 16(3).>

**16** In schedule 2, page 24, line 33, at end insert—

<() Sub-paragraph (4)(d) does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>

**17** In schedule 2, page 25, line 11, at end insert—

<() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>

**18** In schedule 2, page 25, line 15, at end insert—

<() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>

**19** In schedule 2, page 25, line 28, at end insert—

<() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.

*Requirement for consultation in certain circumstances*

25A (1) No regulations may be made under this Part by the Scottish Ministers or the Welsh Ministers acting alone so far as the regulations make provision about any quota arrangements or are incompatible with any such arrangements unless the regulations are, to that extent, made after consulting with a Minister of the Crown.

(2) In sub-paragraph (1), “quota arrangements” has the meaning given in paragraph 25(2).>

## CONSEQUENTIAL AMENDMENTS

### Schedule 2

**20** In schedule 2, page 19, line 47, leave out <and retained EU law>

**21** In schedule 2, page 20, line 23, leave out <and retained EU law>

**22** In schedule 2, page 23, line 21, leave out <and retained EU law>

**23** In schedule 2, page 23, line 25, leave out <and section 57(4) and (5) of that Act>

- 24 In schedule 2, page 23, line 31, leave out <and retained EU law>
- 25 In schedule 2, page 23, line 35, leave out <80(8)> and insert <80>

### **Schedule 3**

- 26 In schedule 3, page 28, line 2, leave out from <, and> to end of line 3
- 27 In schedule 3, page 28, line 38, leave out from <for> to end of line 39 and insert <omit “or with EU law”>
- 28 In schedule 3, page 29, line 5, leave out paragraph 21
- 29 In schedule 3, page 29, line 28, leave out from <(4)(d)> to end of line 29 and insert <(4), omit paragraph (d).>
- 30 In schedule 3, page 30, line 4, leave out <before “EU” insert “Retained”> and insert <for “EU law, human” substitute “Human”>
- 31 In schedule 3, page 30, line 5, leave out paragraph 31

### **Schedule 8**

- 32 In schedule 8, page 50, line 19, leave out <section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or>
- 33 In schedule 8, page 51, line 1, leave out <section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or>
- 34 In schedule 8, page 55, leave out lines 8 to 13 and insert—  
    <(a) in paragraph (a), omit sub-paragraph (ii), and  
    (b) in paragraph (b), omit “or with EU law”.>
- 35 In schedule 8, page 59, leave out lines 10 to 16
- 36 In schedule 8, page 59, leave out lines 23 to 29
- 37 In schedule 8, page 59, line 47, leave out from beginning to end of line 8 on page 60
- 38 In schedule 8, page 60, leave out lines 13 to 23

## **ANNEX: THE PROPOSED AMENDMENTS**

### **A. UK GOVERNMENT FIXING ETC. POWERS: MODIFICATION OF THE SCOTLAND ACT 1998 OR THE GOVERNMENT OF WALES ACT 2006**

The established methods for modifying the 1998 and 2006 Acts which provide for the devolution settlements for Scotland and Wales are by new Parliamentary legislation, for which the devolved legislatures' consent is required in accordance with the Sewel Convention, or by orders under those Acts, which again require the consent of the relevant legislature. But as currently drafted, UK Ministers' powers to make statutory instruments in clauses 7 to 9 of the Bill can be used to make amendments to the statutes containing the principles of the devolution settlements for Scotland and Wales, without any requirement for consent.

**Proposed amendments 1 and 2** would prevent the power to correct deficiencies in retained EU law and the power to ensure compliance with international obligations being used to amend the Scotland Act 1998 and the Government of Wales Act 2006. Where however amendments to these Acts becomes necessary (perhaps urgently) in order to implement the withdrawal agreement, **proposed amendment 3** would continue to allow such amendments to the 1998 and 2006 Acts to be made, but with consent from the relevant devolved administration.

### **B. UK GOVERNMENT FIXING ETC. POWERS: REQUIREMENT FOR CONSENT OF SCOTTISH MINISTERS OR WELSH MINISTERS IF MAKING PROVISION WITHIN DEVOLVED COMPETENCE**

As currently drafted, UK Ministers' powers to make statutory instruments under clauses 7 to 9 of the Bill could be used to make provision in policy areas which are the responsibility of Scottish or Welsh Ministers. The Scottish Government and Welsh Government acknowledge that there may be circumstances justifying amendments to laws in devolved areas being made on a UK-wide basis, but they consider that this should only be possible with the consent of the devolved administrations

**Proposed amendments 4 to 6** would mean that UK Ministers would be required to secure the consent of the Welsh Ministers or the Scottish Ministers, before making provision which would be within those Ministers' devolved competence. Devolved Ministers would then be accountable to their legislatures for any decision to consent to the UK Ministers legislating on such a basis.

### **C. LEGISLATIVE AND EXECUTIVE COMPETENCE: REMOVAL OF "RETAINED EU LAW" RESTRICTION / UK FRAMEWORKS PROVISION**

As currently drafted, clause 11 of the Bill amends both devolution acts by inserting a new restriction on the competence of the devolved legislatures which would prevent the Scottish Parliament and the National Assembly for Wales from passing

legislation which modifies retained EU law, even in areas of devolved responsibility. And provision in Part 1 of Schedule 3 to the Bill has the effect that Scottish or Welsh Ministers would have no powers to make, confirm or approve any subordinate legislation so far as it modifies retained EU law.

The Welsh Government and Scottish Government consider that these provisions fundamentally cut across the principles of the devolution settlements, and they are strongly opposed to them.

**Proposed amendments 7 and 8** would remove these new restrictions in clause 11 and Schedule 3.

#### **D. SCOTTISH MINISTERS AND WELSH MINISTERS FIXING ETC. POWERS: REMOVAL OF RESTRICTIONS AND CONSENT REQUIREMENT**

As currently drafted, there are a number of restrictions placed on devolved Ministers' use of the powers in the Bill which are not placed on UK Ministers. We are aware that there are significant concerns in Parliament about the very broad scope of the Henry VIII powers proposed in the Bill, and would be supportive of amendments which sought to define these more narrowly. However, we also believe, as a matter of principle, that devolved Ministers should have the same powers in respect of matters falling within devolved competence as UK Ministers are being given.

**Proposed amendments 9, 13 and 16** remove the restrictions preventing the powers being used to confer a power to legislate, bringing the powers into line with those being given to UK Ministers.

**Proposed amendments 10, 11, 14, 17 and 18** remove the restrictions placed on the Scottish and Welsh Ministers' ability to amend directly applicable EU law incorporated into UK law, again bringing the powers into line with those being given to UK Ministers.

**Proposed amendments 12, 15 and 19** replace requirements imposed on Scottish and Welsh Ministers to seek UK Ministers' consent in certain circumstances with a requirement to consult UK Ministers before making certain types of provision.

#### **CONSEQUENTIAL AMENDMENTS**

**Proposed amendments 20 to 38** are consequential on the principal amendments described above.



Huw Irranca-Davies AC  
Cadeirydd  
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Cynulliad Cenedlaethol Cymru

19 Medi 2017

Annwyl Huw

Rwy'n ysgrifennu atoch i'ch hysbysu bod Llywodraeth Cymru a Llywodraeth yr Alban wedi cyhoeddi ar y cyd heddiw gwelliannau arfaethedig i'r Bil Undeb Ewropeaidd (Ymadael).

Yr wyf i a Phrif Weinidog yr Alban wedi ysgrifennu at y Prif Weinidog, yn amlinellu ein bwriad wrth gyhoeddi'r gwelliannau hyn. Bydd y gwelliannau yn ein galluogi i ystyried argymhell i'r Cynulliad rhoi cydsyniad deddfwriaethol i'r Bil, a byddem yn croesawu eich cefnogaeth wrth i ni bwysu am fynd i'r afael a'r diffygion yn y Bil.

Yn gywir

**CARWYN JONES**

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

Tudalen y pecyn 56  
We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

T: 0300 244 4000  
E: scottish.ministers@gov.scot

Bruce Crawford MSP  
Convener  
Finance and Constitution Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

19 September 2017

Dear Bruce,

In my letter to you of 1 September and my statement to Parliament of 12 September, I set out why the Scottish Government would not be able to recommend that Parliament give its consent to the European Union (Withdrawal) Bill, as it is currently drafted. A particular problem with the Bill is its failure to reflect the principles of devolution. The Scottish Government has been working with the Welsh Government to prepare a set of amendments to the Bill which would, if made, turn the Bill into one that properly respects devolution and ensures that the Scottish Parliament and the National Assembly for Wales do not have their competence restricted by EU withdrawal.

These amendments are attached, along with a note that summarises their purpose and effect. The same amendments have been sent by Professor Mark Drakeford AM, the Cabinet Secretary for Finance and Local Government in the Welsh Government, to Huw Irranca-Davies AM, Chair of the Constitutional and Legislative Affairs Committee.

The restrictions in clause 11 of the Bill apply to many areas of Scottish devolved responsibility vital to the success of our country, such as agriculture, the environment, fisheries, forestry, research, or justice co-operation. The restrictions have the effect that the Scottish Parliament would have no say over what is done with these important policy areas after EU withdrawal.

There is considerable interest in the over 100 areas that I indicated were affected by these restrictions. I have therefore annexed to this letter a working summary of these areas, in order to inform your consideration of these matters. I should be clear that the list represents an initial assessment by the UK Government of where EU competences intersect with devolution and which therefore would be affected by the restrictions in the Bill.

The UK Government prepared the list in order to inform discussion between the Scottish and UK Governments about where it may be necessary to agree common frameworks.

The Scottish Government is clear that any policy areas within devolved competence, carried out at EU level, should return to the Scottish Parliament in the event the UK leaves the EU. Given the way the European Union (Withdrawal) Bill is drafted, the extent of the list presented to the Scottish Government illustrates the scale of potential UK Government control over devolved policy areas.

As I made clear in my statement, the Scottish Government recognises that there may be the need for frameworks in the future and we are in discussion with the UK Government and the other devolved administrations to agree how such consideration might be taken forward. We will, however, only be able to agree frameworks based on respect for devolution, including the existing well established arrangements for co-operation, and not on the basis of the Bill as it stands.



**MICHAEL RUSSELL**

## **Powers returning from the EU that intersect with the devolution settlement in Scotland**

1. Agricultural Support
2. Agriculture - Fertiliser Regulations
3. Agriculture - GMO Marketing & Cultivation
4. Agriculture - Organic Farming
5. Agriculture - Zootech
6. Animal Health and Traceability
7. Animal Welfare
8. Aviation Noise Management at Airports
9. Blood Safety and Quality
10. Carbon Capture & Storage
11. Chemicals regulation (including pesticides)
12. Civil judicial co-operation - jurisdiction and recognition & enforcement of judgments in civil & commercial matters (including B1 rules and related EU conventions)
13. Civil judicial co-operation - jurisdiction and recognition & enforcement of judgments instruments in family law (including BIIa, Maintenance and civil protection orders)
14. Civil judicial cooperation on service of documents and taking of evidence
15. Criminal offences minimum standards measures - Combating Child Sexual Exploitation Directive
16. Control of major accident hazards
17. Cross border mediation
18. Data sharing - (EU fingerprint database (EuroDac))
19. Data sharing - European Criminal Records Information System (ECRIS)
20. Data sharing - False and Authentic Documents Online (FADO)
21. Data sharing - passenger name records
22. Data sharing - Prüm framework
23. Data sharing - Schengen Information System (SIS II)
24. Efficiency in energy use
25. Elements of Reciprocal Healthcare
26. Elements of the Network and Information Security (NIS) Directive
27. Elements of Tobacco Regulation
28. Energy Performance of Buildings Directive
29. Environmental Impact Assessment (EIA) Directive
30. Environmental law concerning energy planning consents
31. Environmental law concerning offshore oil & gas installations within territorial waters
32. Environmental quality - Air Quality
33. Environmental quality - Chemicals
34. Environmental quality - Flood Risk Management
35. Environmental quality - International timber trade (EUTR and FLEGT)
36. Environmental quality - Marine environment
37. Environmental quality - Natural Environment and Biodiversity
38. Environmental quality - Ozone depleting substances and F-gases
39. Environmental quality - Pesticides
40. Environmental quality - Spatial Data Infrastructure Standards



41. Environmental quality - Waste Packaging & Product Regulations
42. Environmental quality - Waste Producer Responsibility Regulations
43. Environmental quality - Water Quality
44. Environmental quality - Water Resources
45. Environmental quality - Biodiversity - access and benefit sharing of genetic resources
46. Equal Treatment Legislation
47. EU agencies - EU-LISA
48. EU agencies - Eurojust
49. EU agencies - Europol
50. EU Social Security Coordination
51. Fisheries Management & Support
52. Food and Feed Law
53. Food Compositional Standards
54. Food Geographical Indications (Protected Food Names)
55. Food Labelling
56. Forestry (domestic)
57. Free movement of healthcare (the right for EEA citizens to have their elective procedure in another member state)
58. Genetically modified micro-organisms contained use
59. Good laboratory practice
60. Harbours
61. Hazardous Substances Planning
62. Heat metering and billing information
63. High Efficiency Cogeneration
64. Implementation of EU Emissions Trading System
65. Ionising radiation
66. Land use
67. Late payment (commercial transactions)
68. Legal aid in cross-border cases
69. Migrant Access to benefits
70. Minimum standards -housing & care: regulation of the use of animals
71. Minimum standards legislation - child sexual exploitation
72. Minimum standards legislation - cybercrime
73. Minimum standards legislation - football disorder
74. Minimum standards legislation - human trafficking
75. Mutual recognition of professional qualifications
76. Mutual recognition of criminal court judgments measures & cross border cooperation - European Protection Order, Prisoner Transfer Framework Directive, European Supervision Directive, Compensation to Crime Victims Directive
77. Nutrition health claims, composition and labelling
78. Onshore hydrocarbons licensing
79. Organs
80. Plant Health, Seeds and Propagating Material
81. Practical cooperation in law enforcement - Asset Recovery Offices
82. Practical cooperation in law enforcement - European Investigation Order
83. Practical cooperation in law enforcement - Joint Action on Organised Crime

84. Practical cooperation in law enforcement - Joint investigation teams
85. Practical cooperation in law enforcement - mutual legal assistance
86. Practical cooperation in law enforcement - mutual recognition of asset freezing orders
87. Practical cooperation in law enforcement - mutual recognition of confiscation orders
88. Practical cooperation in law enforcement - Schengen Article 40
89. Practical cooperation in law enforcement - Swedish initiative
90. Practical cooperation in law enforcement - European judicial network
91. Practical cooperation in law enforcement - implementation of European Arrest Warrant
92. Procedural rights (criminal cases) - minimum standards measures
93. Provision of legal services
94. Provision in the 1995 Data Protection Directive (soon to be replaced by the General Data Protection Regulation) that allows for more than one supervisory authority in each member state
95. Public sector procurement
96. Public health (serious cross-border threats to health)
97. Radioactive Source Notifications – Trans-frontier shipments
98. Radioactive waste treatment and disposal
99. Rail franchising rules
100. Rail markets and operator licensing
101. Recognition of insolvency proceedings in EU Member States
102. Renewable Energy Directive
103. Rules on applicable law in civil & commercial cross border claims
104. Sentencing - taking convictions into account
105. State Aid
106. Statistics
107. Strategic Environmental Assessment (SEA) Directive
108. Tissues and cells
109. Uniform fast-track procedures for certain civil and commercial claims (uncontested debts, small claims)
110. Victims rights measures (criminal cases)
111. Voting rights and candidacy rules for EU citizens in local government elections



Ein cyf/Our ref: MA-L/ARD/0420/17

Huw Irranca-Davies AC  
Cadeirydd  
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
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17 Gorffennaf 2017

## **Y BIL ANGHENION DYSGU YCHWANEGOL A'R TRIBIWNLYS ADDYSG (CYMRU)**

Ysgrifennais atoch ar 7 Mehefin i ddiolch i'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol am ei adroddiad Cyfnod 1 ar y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnllys Addysg (Cymru) ('y Bil'). Yn y llythyr hwnnw, ac yn ystod y ddadl ar Egwyddorion Cyffredinol y Bil ar 6 Mehefin, fe wnes i ddatgan fy mwriad i ysgrifennu atoch gydag ymateb manwl i bob un o 12 argymhelliad y Pwyllgor. Mae'r ymateb hwn wedi'i ddarparu isod; mae'n seiliedig ar ystyriaeth ofalus a manwl ac mae'n adlewyrchu fy marn bresennol ar y materion allweddol i'w datrys yn y Bil. Wrth gwrs, bydd yn ddarostyngedig i drafodaethau pellach a gynhelir yn ystod gweddill y tymor hwn, i waith a gyflawnir dros doriad yr haf ac i waith craffu pellach ar y Bil yng Nghyfnod 2.

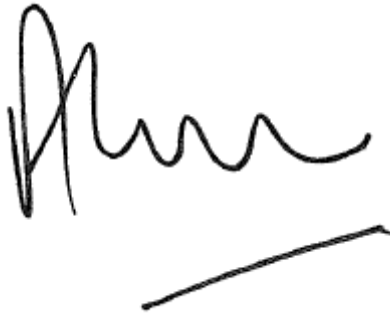
Mae'r ymateb i bob argymhelliad yn nodi a wyf yn derbyn yr argymhelliad neu'n ei dderbyn mewn egwyddor (yn amodol ar ystyriaeth a thrafodaeth bellach). Lle nad wyf yn derbyn argymhelliad, rwyf wedi amlinellu fy sail resymegol dros y penderfyniad hwnnw. Rwyf wedi nodi hefyd, lle bo hynny'n berthnasol, y bydd derbyn argymhelliad yn gofyn am wneud gwelliant pellach i'r Bil.

Fel y gwelwch, rwy'n derbyn (yn llawn neu'n rhannol) neu'n derbyn mewn egwyddor 8 o 12 argymhelliad y Pwyllgor. Yn wir, mae amryw o'r materion allweddol a gododd yn eich adroddiad yn cyd-fynd â gwelliannau mae'r Llywodraeth eisoes wedi'u cyflwyno. Rwy'n bwriadu mynd i'r afael ag argymhellion eraill trwy welliannau a gyflwynir mewn cyfrannau dilynol cyn i'r ffenestr gyflwyno ar gyfer gwelliannau Cyfnod 2 gau ar 25 Medi.

Rwy'n gobeithio y bydd y wybodaeth hon yn eich helpu i lywio eich gwaith craffu pellach ar y Bil ac yn dangos fy ymrwymiad i wrando a chydweithredu i ddarparu'r darn o ddeddfwriaeth mwyaf effeithiol a fydd yn gwella bywydau plant a phobl ifanc. Rwy'n edrych ymlaen at barhau i weithio gydag Aelodau wrth i'r Bil fynd trwy ei gyfnodau pellach.

Byddaf yn ysgrifennu hefyd at Gadeiryddion y Pwyllgor Cyllid a'r Pwyllgor Plant, Pobl Ifanc ac Addysg mewn perthynas â'u hadroddiadau Cyfnod 1. Rwy'n anfon copi o bob un o'r llythyrau at Gadeiryddion y tri Phwyllgor.

Yn gywir,

A handwritten signature in black ink, appearing to read 'Alun', with a horizontal line underneath it.

**Alun Davies AC/AM**  
Gweinidog y Gymraeg a Dysgu Gydol Oes  
Minister for Lifelong Learning and Welsh Language

## Ymateb Llywodraeth Cymru i adroddiad Cyfnod 1 y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ar y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru)

### Argymhelliad 1

*Rydym yn argymhell bod y Gweinidog yn cyfiawnhau pam mae angen y pwerau i wneud rheoliadau o dan adrannau 12(7)(c), 50(3), 60(1) a 68(4) o'r Bil.*

Rwy'n **derbyn** yr argymhelliad hwn. Rwy'n croesawu'r cyfle i esbonio pam rwy'n credu bod y pwerau hyn i wneud rheoliadau yn ofynnol neu pam rwy'n credu nad ydynt yn ofynnol.

Mae **adran 12(7)(c)** yn galluogi rheoliadau i amlinellu mathau eraill o ddarpariaeth efallai y bydd angen i awdurdod lleol eu gwneud i ddiwallu anghenion rhesymol dysgwyr o ran darpariaeth dysgu ychwanegol, os bydd tystiolaeth o'r fath yn dod i'r amlwg pan fydd y system newydd ar waith. Gall dileu'r pŵer hwn i wneud rheoliadau wneud y system yn llai ymatebol i dystiolaeth o'r fath yn dod i'r fei. Fodd bynnag, o bwysu a mesur pob dim a chnoi cil ar y mater, rwyf wedi penderfynu bod y ddadl o blaid cadw'r pŵer hwn yn llai grymus. Nid yw'r system bresennol ar gyfer cefnogi dysgwyr wedi darparu unrhyw dystiolaeth y byddai angen darpariaeth heblaw'r ddarpariaeth honno sydd eisoes wedi'i nodi yn adran 12(7) er mwyn diwallu anghenion rhesymol plentyn neu berson ifanc o ran darpariaeth dysgu ychwanegol. Felly, rwy'n bwriadu cyflwyno gwelliant sy'n dileu'r pŵer yn adran 12(7)(c).

Mae **adran 50(3)** yn darparu pŵer i ychwanegu neu ddileu eithriadau i'r gwaharddiad cyffredinol ar osod person ifanc mewn sefydliad ôl-16 arbennig annibynnol nad yw ar y rhestr a gynhelir gan Weinidogion Cymru. Mae'r pŵer hwn wedi'i gynnwys yn y Bil er mwyn cwmpasu amgylchiadau eithriadol na ellir eu rhagweld a all godi ar ôl i'r system newydd gael ei rhoi ar waith. Er bod y sail resymegol dros gadw'r ddarpariaeth hon yn debyg i'r sail resymegol mewn perthynas ag adran 12(7)(c), credaf fod y risgiau sy'n gysylltiedig â dileu'r ddarpariaeth yn fwy tebygol o gael eu gwireddu a chael effaith fwy andwyol ar bobl ifanc. Mewn rhai achosion, er enghraifft, efallai y daw'n glir mai'r ffordd orau o gyflawni buddiannau addysgol pobl ifanc ag anghenion arbenigol iawn yw trwy eu lleoli mewn lleoliadau tymor byr iawn neu leoliadau achlysurol iawn ond lle nad yw'r sefydliadau arbenigol dan sylw yn ystyried ei bod hi'n werth iddynt wneud cais i gael eu hychwanegu at y rhestr a gynhelir gan Weinidogion Cymru oherwydd natur tymor byr neu achlysurol lleoliadau o'r fath.

Os gwelwn fod hyn yn wir, efallai y bydd modd, trwy reoliadau ac ar sail yr achosion sy'n codi, galluogi bod eithriad neu eithriadau'n cael eu creu i'r ddyletswydd gyffredinol. Os na fydd gennym y pŵer hwnnw, efallai y bydd pobl ifanc agored i niwed o dan anfantais. Mae adran 50 o'r Bil yn cynnwys darpariaethau sy'n newydd ac nad oes ganddynt unrhyw ddarpariaethau cyfwerth o dan y gyfraith bresennol. O ganlyniad, ni allwn wybod ar yr adeg hon pa sefyllfaoedd afreolaidd a all godi. Yn fy marn i, mae rhywfaint o hyblygrwydd i wneud mân addasiadau i'r system ddeddfwriaethol fel y gall ymateb yn briodol i'r senarios posibl hyn yn gwbl gymesur. Felly, credaf y dylid cadw'r pŵer yn adran 50(3).

Mae **adran 60(1)** yn galluogi gwneud rheoliadau i ganiatáu i awdurdodau lleol gyflenwi nwyddau a gwasanaethau i eraill mewn perthynas â materion anghenion dysgu ychwanegol ar delerau ac amodau y gellid darparu ar eu cyfer yn y rheoliadau. Mae yna ddarpariaeth debyg mewn cyfraith bresennol sy'n caniatáu cyflenwi nwyddau a gwasanaethau i gyrff llywodraethu ysgolion i'w helpu i wneud darpariaeth addysgol arbennig (adran 318 o Ddeddf Addysg 1996), ac mae yna reoliadau sy'n ymdrin â thelerau talu (*Education (Payment for Special Educational Needs Supplies) Regulations 1999 OS 1999/710*). Mae'r rheoliadau hyn yn caniatáu i'r awdurdod lleol sy'n cyflenwi adennill y gost lawn, ond dim mwy, lle mae'n cyflenwi nwyddau neu wasanaethau i ysgol nad yw'n ei chynnal mewn ardal awdurdod lleol arall.

Yn fy marn i, mae'r pŵer yn adran 60 yn angenrheidiol. Er mwyn i'r system newydd weithio, mae'n debygol y bydd angen i awdurdodau lleol gyflenwi nwyddau a gwasanaethau i eraill o bryd i'w gilydd, er enghraifft, fel y gall darpariaeth dysgu ychwanegol gael ei darparu i berson o ardal yr awdurdod lleol sy'n cael ei gadw mewn llety ieuencid perthnasol. Efallai y bydd swyddogaethau cyffredinol awdurdod lleol yn caniatáu iddo gyflenwi nwyddau a gwasanaethau mewn cysylltiad â materion anghenion dysgu ychwanegol o dan rai amgylchiadau, ond ni fyddai'r pwerau eraill hynny o reidrwydd yn cwmpasu'r holl amgylchiadau a allai gael eu cwmpasu gan y pŵer hwn. Byddai adran 60 yn caniatáu i Weinidogion Cymru roi pwerau clir i awdurdodau lleol, ynghyd â rhoi cwmpas i gyfyngu ar y sail ar gyfer cyflenwi'r nwyddau a'r gwasanaethau.

Rwy'n rhagweld y byddaf yn gwneud rheoliadau i roi pŵer penodol i awdurdodau lleol ac yn cynnwys darpariaeth i atal elw rhag cael ei wneud.

Mae **adran 68(4)** yn nodi nad yw Rhan 1 o Ddeddf Cyflafareddu 1996 yn berthnasol i achosion yn y Tribiwnlys Addysg, ond bod rheoliadau'n gallu gwneud darpariaeth gyfatebol. Mae'r pŵer yn ailddatganiad o ddarpariaeth bresennol a amlinellwyd yn Neddf Addysg 1996 mewn perthynas â gweithdrefnau Tribiwnlys Anghenion Addysgol Arbennig Cymru. Rydym yn dal i ystyried y mater a gododd y Pwyllgor yn ei adroddiad.

## **Argymhelliad 2**

*Rydym yn argymhell bod y Gweinidog yn ailystyried a ddylai'r gofynion a gaiff eu cynnwys yn y Cod yn unol ag adran 4(4) o'r Bil gael eu rhoi yn lle hynny naill ai ar wyneb y Bil neu mewn rheoliadau.*

**Nid wyf yn derbyn** yr argymhelliad hwn. Rwyf wedi ystyried y cynnig yn yr argymhelliad hwn yn ofalus, ond rwy'n dal i gredu bod y cydbwysedd presennol rhwng yr hyn sydd wedi'i gynnwys ar wyneb y Bil, yr hyn a amlinellir mewn rheoliadau a'r hyn a fydd yn cael ei gynnwys yn y Cod yn briodol. Felly, byddem yn gwrthwynebu gwelliant o'r fath.

Bwriad y Cod yw darparu canllawiau a gofynion clir ar gyfer y rhai sy'n gyfrifol am ddarparu'r system newydd. Bydd yn 'llawlyfr' ymarferol a hygyrch ar gyfer ymarferwyr a gweithwyr proffesiynol, a dyma'r brif ffordd y byddant yn gweithio'u ffordd trwy'r system newydd. Mae rhanddeiliaid wedi dweud wrthym bod angen

'dannedd' ar y Cod er mwyn iddo fod yn gwbl effeithiol. Rydym yn gwneud hyn trwy roi pŵer iddo osod gofynion gorfodol. Heb y pŵer hwn, bydd y Cod yn cael ei gyfyngu i ddarparu canllawiau a chyfeirio at y gofynion gorfodol a amlinellir mewn manau eraill. Felly, bydd ei statws a'i safiad yn llai o faint, a fyddai'n gwbl groes i'w canllawiau clir rydym wedi'u cael gan ymarferwyr.

Yn fy marn i, ni fyddai'n briodol i amlinellu ar wyneb y Bil Iefel y manylder technegol am faterion gweithredol a fydd yn destun llawer o'r gofynion gorfodol bwriedig. O ystyried natur weithredol y gofynion, a'r gwaith mireinio a fydd yn ofynnol dros amser, byddai eu gosod yn unrhyw le heblaw mewn is-ddeddfwriaeth yn anymarferol ac annymunol. Credaf hefyd y byddai'n annymunol gosod y gofynion hyn mewn rheoliadau yn hytrach nag yn y Cod. Mae eu cael nhw yn y Cod yn fwy ymarferol a hygyrch i ymarferwyr – gallant weld union eiriad y gofyniad ochr yn ochr â chanllawiau cysylltiedig ac enghreifftiau sy'n gallu helpu i esbonio'r gofyniad. Bydd y Cod yn nodi'n glir pa rai o'i ddarpariaethau sy'n orfodol o dan adran 4(4) o'r Bil. Byddwn yn ychwanegu, yng ngoleuni'r sylwadau isod mewn perthynas ag argymhelliad 3, y bydd y weithdrefn ar gyfer gwneud y Cod yr un mor gadarn ag unrhyw reoliadau y byddwn yn eu gwneud.

### **Argymhelliad 3**

*Rydym yn argymell y dylai'r Gweinidog gyflwyno gwelliant i'r Bil i ddefnyddio'r weithdrefn uwch-gadarnhaol ar gyfer gwneud cod o dan adran 5.*

Rwy'n **derbyn** yr argymhelliad hwn gan fy mod eisoes wedi cyflwyno gwelliant i'w gwneud hi'n ofynnol bod y Cod (ac unrhyw Godau diwygiedig) yn ddarostyngedig i'r weithdrefn uwchgadarnhaol.

Ar wahân, rwy'n ysgrifennu at y Pwyllgor Plant, Pobl Ifanc ac Addysg yn amlinellu cynnig i sicrhau bod y Pwyllgor yn cyfrannu'n llawn at y cyfnod ymgynghori ar ddatblygiad y Cod a'r ystyriaeth ohono.

### **Argymhelliad 4**

*Rydym yn argymell y dylai'r Gweinidog gyflwyno gwelliant i'r Bil i ddefnyddio'r weithdrefn gadarnhaol yn y lle cyntaf yn achos rheoliadau a wneir o dan adrannau 13(2) ac 14(2), ac yna'r weithdrefn negyddol wedi hynny.*

Rwy'n **derbyn** yr argymhelliad hwn. Fy mwriad yw cyflwyno gwelliannau i ddefnyddio'r weithdrefn gadarnhaol pan fydd y pwerau hyn yn cael eu defnyddio am y tro cyntaf.

### **Argymhelliad 5**

*Rydym yn argymell y dylai'r Gweinidog gyflwyno gwelliant i adran 30 i roi amserlen ar gyfer gwneud apêl ar wyneb y Bil. Os bydd yn rhaid newid yr amserlen maes o law, dylid gwneud hynny drwy reoliadau sy'n ddarostyngedig i'r weithdrefn gadarnhaol.*

**Nid wyf yn derbyn** yr argymhelliad hwn. Er fy mod yn cydnabod y rhesymau dros roi ar wyneb y Bil yr amserlen ar gyfer gwneud cais i awdurdod lleol ailystyried penderfyniad corff llywodraethu nad oes gan ddisgybl anghenion dysgu ychwanegol mwyach, mae risgiau'n gysylltiedig â sicrhau ei bod yn cyd-fynd yn briodol ag amserlenni eraill sydd i'w hamlinellu yn y Cod. Credaf mai'r ffordd orau o fynd i'r afael â'r gwahanol amserlenni hyn yw trwy eu datblygu a'u cwblhau ochr yn ochr â'i gilydd fel bod integriti'r broses gyfan yn cael ei gynnal.

### **Argymhelliad 6**

*Rydym yn argymell y dylai'r Gweinidog gyflwyno gwelliant i'r Bil i ddefnyddio'r weithdrefn gadarnhaol ar gyfer rheoliadau a wneir o dan adran 36(2).*

Rwy'n **derbyn** yr argymhelliad hwn **mewn egwyddor**, yn amodol ar ystyriaeth bellach o'r cysylltiad â rheoliadau a wneir o dan adran 562J(4) o Ddeddf Addysg 1996 ac arfer y pwerau hyn yn gyson gyda'r nod bod y gyfraith yn hygyrch.

### **Argymhelliad 7**

*Rydym yn argymell y dylai'r Gweinidog gyflwyno gwelliant i'r Bil yn dileu'r pŵer i wneud rheoliadau o dan adran 45(2)(d). Fan lleiaf, dylai'r pŵer presennol yn y Bil fod yn ddarostyngedig i'r weithdrefn gadarnhaol.*

Rwy'n **derbyn** yr argymhelliad hwn. Rwyf eisoes wedi cyflwyno gwelliannau i ddileu'r pŵer i wneud rheoliadau o dan adran 45(2)(d).

### **Argymhelliad 8**

*Rydym yn argymell y dylai'r Gweinidog gyflwyno gwelliant i adran 58(5) i roi'r cyfnod a ragnodir (ac unrhyw eithriadau sy'n gymwys) ar gyfer cydymffurfio â chais am wybodaeth ar wyneb y Bil. Os bydd yn rhaid newid y cyfnod a ragnodir maes o law, dylid gwneud hynny drwy reoliadau sy'n ddarostyngedig i'r weithdrefn gadarnhaol.*

**Nid wyf yn derbyn** yr argymhelliad hwn. Mae'n debygol y bydd rheoliadau a wneir o dan y pŵer a nodir yn adran 58(5) o'r Bil yn amlinellu ystod o gyfnodau pan fydd rhaid i wahanol gyrff gydymffurfio â gwahanol fathau o geisiadau am help a gwybodaeth; o ganlyniad, byddai cael un dyddiad ar wyneb y Bil yn amhriodol. Yn ogystal, wrth osod y cyfnod(au), mae angen i ni ystyried amserlenni ehangach ar gyfer cydymffurfio â dyletswyddau yn y Bil neu'r Cod, a ddarperir ar eu cyfer yn y Cod.

Bydd y Cod yn destun ymgynghoriad eang cyn y gellir ei gyflwyno. Felly, efallai na fydd unrhyw gyfnod a amlinellir yn y Bil ar hyn o bryd yn briodol o reidrwydd, ac efallai y bydd rhaid ei newid o'r cychwyn.

Rwy'n nodi hefyd fod yna bŵer o dan y system Anghenion Addysgol Arbennig bresennol i osod cyfnodau o'r fath mewn rheoliadau (yn benodol yn adran 322(4) o Ddeddf Addysg 1996, a'r rheoliadau yw Rheoliadau Addysg (Anghenion Addysgol Arbennig) (Cymru) 2002 OS 2002/152).



## Argymhelliad 9

*Rydym yn argymell y dylai'r Gweinidog gyflwyno gwelliant i adran 69 i roi amserlen ar gyfer cydymffurfio â gorchymyn Tribiwnlys Addysg Cymru ar wyneb y Bil. Os bydd yn rhaid newid yr amserlen maes o law, dylid gwneud hynny drwy reoliadau sy'n ddarostyngedig i'r weithdrefn gadarnhaol.*

**Nid wyf yn derbyn** yr argymhelliad hwn. Ni fyddai'n briodol rhoi amserlen ar gyfer cydymffurfio â Gorchymyn Tribiwnlys Addysg Cymru ar wyneb y Bil. Bydd Gorchymynion yn ei gwneud hi'n ofynnol i awdurdodau lleol neu gyrff llywodraethu sefydliadau addysg bellach wneud pob math o wahanol bethau, yn dibynnu ar natur yr apêl sydd wedi'i hystyried. Bydd gwahanol gategorïau o Orchymyn yn gofyn am wahanol amserlenni ar gyfer cydymffurfio, a gallent fod yn gysylltiedig ag amserlenni ar gyfer materion eraill a amlinellir yn y Cod, felly byddant yn ddarostyngedig i ymgynghoriad ar wahân. Ni fyddai cael un cyfnod ar wyneb y Bil yn darparu unrhyw hyblygrwydd i fynd i'r afael â hyn.

Mae amserlenni ar gyfer cydymffurfio â Gorchymynion a gyhoeddir gan Dribiwnlys AAA Cymru o dan y system bresennol wedi'u hamlinellu mewn rheoliadau. Felly, nid oes unrhyw beth newydd na dadleuol am y dull yma.

## Argymhelliad 10

*Rydym yn argymell y dylai'r Gweinidog gyflwyno gwelliant i'r Bil yn dileu'r pŵer i wneud rheoliadau o dan adran 82. Fan lleiaf, dylai'r pŵer presennol yn y Bil fod yn ddarostyngedig i'r weithdrefn gadarnhaol.*

Rwy'n **derbyn** ail ran yr argymhelliad hwn, ond nid y rhan gyntaf. Mae'r pŵer i wneud rheoliadau yn darparu hyblygrwydd i wneud darpariaeth bellach mewn perthynas â pherson sydd "yn ardal" awdurdod lleol yng Nghymru, a all fod yn ddymunol os bydd unrhyw anawsterau neu ansicrwydd yn codi ynghylch beth mae'n ei olygu mewn sefyllfaoedd penodol. Er efallai na fydd y pŵer yn cael ei ddefnyddio yn y dyfodol agos, nid wyf wedi fy narbwyllo y byddai'n briodol ei ddileu. Fodd bynnag, rwy'n derbyn yr argymhelliad y dylid symud i'r weithdrefn gadarnhaol, ac rwy'n bwriadu cyflwyno gwelliant i'r perwyl hwn.

## Argymhelliad 11

*Rydym yn argymell y dylid diwygio'r Nodiadau Esboniadol i'r Bil er mwyn rhoi esboniad digonol o Atodlen 1.*

Rwy'n **derbyn** yr argymhelliad hwn. Bydd y Nodiadau Esboniadol yn cael eu diwygio cyn Cyfnod 3 yn ôl yr arfer, a byddant yn cynnwys esboniad digonol o'r Bil a'i Atodlenni.

## Argymhelliad 12

*Rydym yn argymell y dylai'r Gweinidog gyflwyno gwelliant i'r Bil i ddefnyddio'r weithdrefn gadarnhaol ar gyfer rheoliadau a wneir o dan adran 86(8).*

Rwy'n **derbyn** yr argymhelliad hwn. Rwy'n bwriadu cyflwyno gwelliant o'r fath.



Ein cyf/Our ref MA(L)ARD/0549/17

Lynne Neagle AC  
Cadeirydd  
Pwyllgor Plant, Pobl Ifanc ac Addysg  
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cc Simon Thomas AC  
Cadeirydd, Pwyllgor Cyllid

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Y Cynulliad Cenedlaethol  
Tŷ Hywel  
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CF99 1NA

7 Medi 2017

Annwyl Lynne,

Parthed fy llythyr dyddiedig 17 Gorffennaf 2017, mewn ymateb i argymhelliad y Pwyllgor Plant, Pobl Ifanc ac Addysg yn ei adroddiad cam 1 am Fil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) ('y Bil'), fe wnes i ymrwymo i roi'r wybodaeth ddiweddaraf i chi ar weithredu'r rhaglen trawsnewid anghenion dysgu ychwanegol (ADY). Byddaf yn gwneud hyn drwy anfon diweddariadau bob chwarter, a'r llythyr hwn yw'r cyntaf ohonynt.

Mae'r rhaglen yn cynnwys pum elfen:

### Canllawiau statudol a deddfwriaethol

Elfen gynta'r rhaglen yw'r canllawiau statudol a deddfwriaethol, sy'n cynnwys y Bil, memorandwm esboniadol, rheoliadau a'r Cod ADY a fydd yn cynnwys gofynion gorfodol. Byddaf yn anfon llythyr pellach gyda'r asesiad effaith rheoleiddiol diwygiedig atoch ar 11 Medi.

Bae Caerdydd • Cardiff Bay  
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CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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

Gallaf hefyd diweddarau'r pwyllgor ar fy ystyriaeth o argymhelliad 17 o adroddiad cam 1 y pwyllgor, sy'n dweud: "Dylai'r Gweinidog roi esboniad pellach ynglŷn â pham mae ysgolion arbennig wedi'u tynnu oddi ar y rhestr o ysgolion y byddai'r ddyletswydd i ddynodi Cydlynnydd ADY ar eu cyfer yn berthnasol iddynt."

Gofynnais i'm swyddogion ysgrifennu at ysgolion arbennig er mwyn cael eu barn ynglŷn ag a ddylid rhoi gofyniad arnynt i fod â Chydlynnydd ADY. O'r 39 o ysgolion a holwyd am ymateb cyn gwyliau'r haf, atebodd 15; 10 yn nodi na fyddent o blaid dyletswydd statudol i benodi Cydlynnydd ADY.

Roedd wyth o'r 10 a wrthwynebodd ddyletswydd yn glir o'r farn bod pob athro mewn ysgol arbennig yn ysgwyddo rôl Cydlynnydd ADY, a bod penaethiaid a chydweithwyr eraill yr uwch dîm arwain yn cyflawni dyletswyddau penodol eraill. Mae hyn yn cyd-fynd â barn Llywodraeth Cymru fel yr adleisiwyd yn narpariaethau'r Bil ac a esboniwyd yn fy ymateb i argymhelliad y pwyllgor. Codwyd materion penodol gan ddau o'r pum pennaeth a oedd o blaid dyletswydd statudol ynghylch hyfforddiant, cyllido, cydweithio, datblygiad staff cyffredinol a chyfleoedd datblygu i athrawon â gwybodaeth arbenigol o ADY. Cafwyd sylw tebyg gan bedwar o'r 10 pennaeth a oedd yn gwrthwynebu Cydlynwyr ADY statudol.

Mae pryder ymhlith rhai ysgolion arbennig, sef os nad oes ganddynt Gydlynwyr ADY dynodedig y gallent felly gollu allan ar rywfaint o'r cyllid, hyfforddiant a'r mentrau cydweithio a ddaw law yn llaw â chyflwyno'r rôl hon mewn ysgolion prif ffrwd. Er bod y rhain yn faterion pwysig, credwn fod modd mynd i'r afael â nhw fel rhan o'r rhaglen trawsnewid ehangach, ac rydym o'r farn na ddylai gofyniad y Bil ar leoliadau addysg i ddynodi Cydlynwyr ADY ymestyn i gynnwys ysgolion arbennig. Byddwn yn parhau â'n trafodaethau ag ysgolion arbennig wrth fwrw ymlaen â'r rhaglen.

## **Cymorth gweithredu / trawsnewid**

Ym mis Mawrth 2016, sefydlwyd Grŵp Gweithredu Strategol ADY gan Lywodraeth Cymru fel rhan o'r trefniadau ar ddatblygu cynlluniau gweithredu parhaus er mwyn cefnogi awdurdodau lleol, ysgolion, lleoliadau blynyddoedd cynnar, sefydliadau addysg bellach, byrddau iechyd lleol ac eraill i baratoi ar gyfer rhaglen trawsnewid ADY gan gynnwys y newidiadau statudol sydd yn y Bil. Mae'r grŵp yn cyfarfod bob deufis i drin a thrafod atebion ymarferol ac yn darparu cyngor ac argymhellion i Lywodraeth Cymru er mwyn helpu i roi popeth ar waith.

Mae'r Grŵp Gweithredu hwn wedi sefydlu grwpiau arbenigol er mwyn rhoi ystyriaeth fanwl i nifer o faterion technegol wrth roi'r system ADY newydd ar waith, gan gynnwys:

- Cynlluniau datblygu unigol
- Cydlynwyr Anghenion Dysgu Ychwanegol (Cydlynwyr ADY)
- Darpariaeth ADY y blynyddoedd cynnar
- Darpariaeth ADY ôl-16
- Pontio rhwng lleoliadau, darparwyr ac i fyd oedolion
- Iechyd
- Hyfforddiant
- Plant sy'n derbyn gofal

Daeth yr holl grwpiau arbenigol at ei gilydd mewn gweithdy deuddydd fis Mawrth 2017, ac maen nhw wedi gweithio tuag at gyfres o gamau gweithredu cytûn ers hynny.

Ym mis Tachwedd 2016, cyhoeddais gronfa arloesi ADY gwerth £2.1 miliwn hyd at 31 Mawrth 2018. Nod y grant hwn yw cefnogi prosiectau partneriaeth rhanbarthol sy'n cefnogi dysgwyr ag ADY. Nod y grant yw helpu i ddatblygu dulliau ac arferion cyflawni creadigol a chydweithredol er mwyn gwella systemau, trefniadau a pherthnasau. Hefyd, mae'r arian yn cael ei ddefnyddio i gefnogi sefydliadau addysg bellach a byrddau iechyd lleol. Mae prosiectau a sefydlwyd yn y flwyddyn gyntaf wrthi'n cael eu datblygu, a bydd grŵp arbenigol perthnasol yn adolygu'r canlyniadau.

Ym mis Chwefror 2017, lansiais ymgynghoriad am sut y dylid rhoi'r Bil ar waith pe bai'n derbyn Cydsyniad Brenhinol. Daeth i ben ar 9 Mehefin ac mae fy swyddogion wrthi'n ystyried yr ymatebion ar hyn o bryd. Bydd crynodeb o'r ymatebion yn cael ei gyhoeddi'r tymor hwn, ac rwy'n bwriadu gwneud datganiad am ein dull gweithredu arfaethedig. Yn y cyfamser, bydd Llywodraeth Cymru yn cyhoeddi arweiniad ar y pontio gyda chanllawiau manwl i bartneriaid cyflawni i gefnogi'r broses weithredu.

Ysgrifennais atoch ym mis Gorffennaf am greu pum arweinydd trawsnewid ADY a fydd yn helpu partneriaid cyflawni i baratoi at weithredu'r drefn newydd. Mae'r broses recriwtio ar waith nawr, a dylai'r ymgeiswyr llwyddiannus fod yn eu lle cyn diwedd y flwyddyn. Bydd y swyddi hyn yn gwneud cyfraniad allweddol tuag at weithredu cynlluniau a chyflwyno hyfforddiant a chodi ymwybyddiaeth o'r Bil fesul tipyn fel rhan o'n datblygiad sgiliau craidd (gweler isod).

Mae'r gwaith o fonitro a gwerthuso proses weithredu'r Bil wedi dechrau, ar gamau allweddol o'r broses weithredu yn barod ar gyfer y system newydd; cydymffurfio â darpariaethau'r Bil unwaith y daw'r system i rym; a monitro effaith y Bil dros y tymor hir. Mae Arad Research a Phrifysgol De Cymru wedi cael contract i gynnal asesiad llinell sylfaen o'r system anghenion addysgol arbennig (AAA) gyfredol, a fydd yn llywio gwerthusiad o effaith y newidiadau deddfwriaethol yn y dyfodol. Ar ben hynny, mae fy swyddogion wedi bod yn cysylltu ag Estyn er mwyn cydlynu ffordd o fonitro parodrwydd i weithredu; bydd Estyn yn canolbwyntio peth o'i waith arolygu thematig eleni ar barodrwydd sefydliadau addysg i'r system ADY newydd. Bydd arweinwyr trawsnewid ADY yn helpu partneriaid cyflawni i gynnal hunanasesiadau o barodrwydd er mwyn nodi pa feysydd i ganolbwyntio arnynt wrth baratoi i drawsnewid i'r system ADY newydd.

## **Datblygu'r gweithlu**

Rhaglen datblygu sgiliau ar gyfer ymarferwyr sy'n helpu dysgwyr ag ADY yw'r elfen hon, ac mae'n canolbwyntio ar dair lefel: datblygu sgiliau craidd; datblygu sgiliau uwch; a datblygu sgiliau arbenigol. Mae'r dull hwn o weithredu'r agwedd hon ar y rhaglen yn cael ei ddatblygu ar y cyd â'r grŵp hyfforddiant arbenigol a'r grŵp arbenigol Cydlynwyr ADY.

Bydd datblygiad sgiliau craidd yn darparu adnoddau hyfforddi a datblygu a chyfleoedd i bob ymarferydd wella ei sgiliau, ei wybodaeth a'i hyder er mwyn cefnogi dysgwyr ag amrywiaeth eang o anghenion dysgu ychwanegol cyffredin iawn ond llai cymhleth o fewn lleoliadau a chael mynediad i ddatblygiad proffesiynol parhaus.

Mae'r dasg o ddatblygu sgiliau craidd eisoes wedi cychwyn gyda'r rhaglen Dysgu gydag Awtistiaeth, a ddatblygwyd gan y tîm Anhwylder Sbectrwm Awtistig Cenedlaethol a'i hariannu gan Lywodraeth Cymru. Mae'n cynnig adnoddau am ddim i ysgolion er mwyn codi ymwybyddiaeth o awtistiaeth a hyfforddiant i athrawon a staff cymorth. Mae'r rhaglen, sydd ar gael ar wefan ASD Info Wales, ar gael i ysgolion cynradd ac wedi'i chwblhau gan dros 4,000 o staff a 10,000 o ddisgyblion. Mae'r rhaglen yn cael ei hymestyn i ysgolion uwchradd, y blynyddoedd cynnar, addysg bellach a darparwyr dysgu seiliedig ar waith.

Bydd datblygu sgiliau uwch yn cefnogi rôl Cydlynwyr ADY, a fydd yn cymryd lle'r Cydlynwyr Anghenion Addysgol Arbennig cyfredol.

Mewn perthynas ag argymhelliad 14 o adroddiad cam 1 y pwyllgor - "Dylai'r Gweinidog ailystyried ei ymagwedd tuag at gymwysterau ar gyfer Cydlynwyr ADY, a'i gwneud hi'n glir wrth symud ymlaen, y dylai cymhwyster Meistr fod yn ddymunol yn hytrach nag yn ofynnol" ac argymhelliad 15 - "Dylai'r Gweinidog ystyried a fyddai'n ddymunol ystyried bod cymwysterau a setiau sgiliau eraill, ar lefel debyg i gymhwyster Meistr, yn briodol ar gyfer Cydlynwyr ADY" - mae fy swyddogion yn gweithio gyda'r arbenigwyr er mwyn nodi gofynion sgiliau a hyfforddiant y proffesiwn.

Mae datblygu sgiliau arbenigol yn cynnwys staff sy'n gweithio mewn gwasanaethau cymorth arbenigol a ddarperir gan awdurdodau lleol, er enghraifft, seicolegwyr addysg ac athrawon plant â nam ar eu golwg neu'r clyw. Mae fy swyddogion wedi bod yn gweithio gyda Chymdeithas Llywodraeth Leol Cymru a'r Uned Ddata er mwyn casglu data gan awdurdodau lleol am eu gweithlu cyfredol (gan gynnwys cymwysterau, demograffeg, sgiliau ieithyddol ac ati) ynghyd â swyddi gwag cyfredol a rhai a ragwelir. Unwaith mae'r canlyniadau ar gael, byddaf yn eu defnyddio i ystyried ein cymorth tuag at hyfforddiant arbenigol i ôl-raddedigion.

## **Codi ymwybyddiaeth**

Ym mis Chwefror a mis Mawrth eleni, cynhaliwyd cyfres o ddigwyddiadau rhanbarthol a fynychwyd gan dros 800 o ymarferwyr a rhieni. Mynychais un o'r digwyddiadau hyn yng Nghasnewydd, ac roeddwn i'n hapus iawn gyda'r niferoedd oedd yn bresennol a'r adborth cadarnhaol i'r sesiwn.

Mae ein gwaith helaeth â rhanddeiliaid yn parhau, ac rydym yn cynllunio rhaglen o weithgareddau i esbonio a hyrwyddo'r system newydd a'r hawliau i blant, eu rhieni a phobl ifanc.

## **Polisi ategol**

Pwyslais yr elfen hon o'r rhaglen yw cynhyrchu polisi a chanllawiau er mwyn sicrhau bod arferion da yn cael eu cefnogi a'u gwreiddio yn y system AAA gyfredol a system ADY y dyfodol.

Eleni, er mwyn cefnogi ymarferwyr, rydym wedi cyhoeddi: canllawiau ar gyllid ôl-16 i ddysgwyr ag anawsterau dysgu mewn colegau arbenigol; cyngor i awdurdodau lleol a gweithwyr addysg proffesiynol ynghylch rôl Cydlynwyr AAA; arweiniad i ymarferwyr addysgu i helpu dysgwyr ag anawsterau dysgu penodol a chanllawiau i gyrff llywodraethu ysgolion ac awdurdodau lleol ar gefnogi dysgwyr ag anghenion gofal iechyd.

Er mwyn helpu i gynllunio a chyflwyno ymyriadau cynnar, amserol ac effeithiol i helpu plant a phobl ifanc gyda ADHD, ASD, nam ar y clyw, nam gweledol a namau amlsynhwyrdd, rydym wedi dyfarnu contractau i Bazian, SQW a Phrifysgol Birmingham er mwyn cynnal asesiadau tystiolaeth cyflym a fydd yn llywio canllawiau hygyrch ar ymyriadau y gwyddys eu bod yn effeithiol i gefnogi pobl ifanc â mathau penodol o AAA.

Byddaf yn rhoi diweddariad pellach ar waith y rhaglen trawsnewid ddiwedd Tachwedd.

Rwy'n anfon copïau o'r llythyr hwn at gadeiryddion y pwyllgorau Cyllid a Materion  
Cyfansoddiadol a Chyfreithiol.

Yn gywir

A handwritten signature in black ink, appearing to read 'Alun', with a horizontal line underneath.

**Alun Davies AC/AM**

Gweinidog y Gymraeg a Dysgu Gydol Oes  
Minister for Lifelong Learning and Welsh Language

Carl Sargeant AC/AM  
Ysgrifennydd y Cabinet dros Gymunedau a Phlant  
Cabinet Secretary for Communities and Children



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA - L/CS/0496/17

Huw Irranca-Davies AC  
Cadeirydd, Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Cynulliad Cenedlaethol Cymru

12<sup>th</sup> Medi 2017

Annwyl Huw

## **BIL DIDDYMU'R HAWL I BRYNU A HAWLIAU CYSYLLTIEDIG (CYMRU)**

Hoffwn ddiolch i chi a'ch cydweithwyr ar y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol, am eich ystyriaeth o Fil Diddymu'r Hawl i Brynu a Hawliau Cysylltiedig (Cymru) yn ystod proses graffu Cyfnod 1.

Rwyf wedi ystyried yn ofalus yr argymhellion sydd yn adroddiad y Pwyllgor ac mae fy ymateb i bob un wedi'i nodi isod:

**Argymhelliad 1. Rydym yn argymhell y dylai Ysgrifennydd y Cabinet egluro ei resymeg yn llawn yn ystod y ddadl Cyfnod 1 dros gyflwyno Bil sy'n diwygio deddfwriaeth bresennol y DU yn hytrach nag un sy'n cydgrynhoi ac sy'n annibynnol.**

Fel yr esboniais yn ystod y ddadl ar 18 Gorffennaf, mae'r Bil yn diddymu'r hawl i brynu, a sefydlwyd yng Nghymru a Lloegr gan ddeddfwriaeth sy'n dyddio'n ôl i 1985. Er mwyn gwneud hyn, mae'n rhaid iddo ddiwygio deddfwriaeth bresennol Cymru a Lloegr i'r graddau y mae'n berthnasol i Gymru.

Er mwyn cyfuno'r diwygiadau angenrheidiol hyn gyda darpariaeth annibynnol yn y Bil, byddai angen ailddatganiad helaeth o'r gyfraith sy'n ymwneud â'r hawl i brynu am gyfnod dros dro yn unig - a hynny mewn Bil sydd â'r unig ddiben o ddiddymu'r hawl yn hytrach na gwneud darpariaeth amdani. Fodd bynnag, mae Llywodraeth Cymru yn parhau i fod yn ymrwymedig i hyrwyddo hygyrchedd a chydlyniaid cyfraith ddwyieithog Cymru.

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

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

**Tudalen y pecyn 74**

**Argymhelliad 2.** Rydym yn argymell y dylai Ysgrifennydd y Cabinet gyflwyno gwelliant i'r Bil, sef gosod dyletswydd absoliwt ar Weinidogion Cymru i ddarparu copi i bob landlord cymwys yng Nghymru o'r wybodaeth sydd wedi'i gosod yn adran 8.

Rwyf wedi ailystyried yr argymhelliad hwn yn dilyn y ddadl ar yr Egwyddorion Cyffredinol. Fodd bynnag, rwy'n dal i gredu nad oes angen dyletswydd absoliwt gan fod Llywodraeth Cymru yn gwbl ymwybodol o'r holl landlordiaid cymwys yng Nghymru a bydd yn cysylltu â hwy yn unol â hynny.

**Argymhelliad 3.** Rydym yn argymell y dylai'r ddyletswydd gymwys bresennol ar Weinidogion Cymru i ddarparu copi o'r ddogfen wybodaeth i bob landlord cymwys (adran 8(1)(c)) fod ar gyfer landlordiaid y tu allan i Gymru yn unig, ac y dylai Ysgrifennydd y Cabinet gyflwyno gwelliant i'r Bil at y diben hwnnw

Nid wyf o'r farn y dylid diwygio'r Bil fel bod y ddyletswydd gymwys bresennol i hysbysu landlordiaid ond yn berthnasol i landlordiaid y tu allan i Gymru. Mae'r drafft presennol yn cydnabod bod Llywodraeth Cymru yn ddibynnol ar drydydd parti (yr Asiantaeth Cartrefi a Chymunedau) i roi manylion inni am landlordiaid cymdeithasol, sydd wedi'u lleoli y tu allan i Gymru, sy'n berchen ar gartrefi sy'n cael eu rhentu yng Nghymru.

Fel y soniais yn y ddadl ar yr Egwyddorion Cyffredinol, cafodd y materion a drafodwyd yn argymhellion 2 a 3 eich Pwyllgor eu hystyried gan y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau sy'n fodlon ar y darpariaethau cyfredol yn y Bil. Nid wyf, felly, yn bwriadu cyflwyno unrhyw welliannau mewn perthynas â'r materion hyn.

**Argymhelliad 4.** Rydym yn argymell y dylai Ysgrifennydd y Cabinet gyflwyno gwelliant i'r Mesur i ddileu'r geiriau "neu'n hwylus" yn adran 9.

Mae Adran 9 o'r Bil yn rhoi pŵer i Weinidogion Cymru wneud darpariaeth ganlyniadol ac ati os ydynt o'r farn ei fod yn "angenrheidiol neu'n hwylus" i wneud hynny o ganlyniad i'r ddarpariaeth a wneir gan y Bil, neu a wneir o dan y Bil. Mae gan y gair "hwylus" ei ystyr ei hun ac mae'n caniatáu ar gyfer gwelliannau a allai fod yn ddymunol, yn ddefnyddiol neu sydd â budd ymarferol, ond a allai fethu prawf "anghenraid" llym. Er enghraifft, pe bai pŵer i wneud gwelliannau canlyniadol yn cael ei ddefnyddio i symleiddio trefn weinyddol a oedd yn anodd ei rhoi ar waith, neu'n anymarferol i denantiaid ddelio â hi, gellir dadlau nad oedd hyn yn bodloni'r prawf "anghenraid", gan y gallai tenantiaid fyw gyda'r anhawster, er bod hynny'n annymunol. Byddai'r dull hwn yn rhy anhyblyg a chyfyngedig a gallai atal newidiadau buddiol rhag cael eu gwneud.

Nid wyf, felly, yn bwriadu cyflwyno unrhyw welliant mewn perthynas â'r mater hwn.

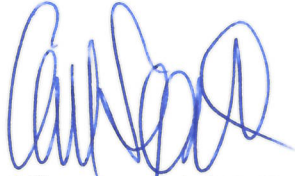
**Argymhelliad 5.** Rydym yn argymell y dylai Ysgrifennydd y Cabinet gyflwyno gwelliant i'r Bil i sicrhau eglurder nad yw adran 10(1) ond yn gymwys i'r pŵer creu rheoliadau yn adran 9.

Credaf y byddai'r gwelliant, a argymhellir gan y Pwyllgor, yn egluro cwmpas y pŵer gwneud rheoliadau yn adran 10(1) ac yn gwella'r Bil o ganlyniad. Rwy'n ddiolchgar am argymhelliad y Pwyllgor ar y mater hwn a byddaf yn cyflwyno gwelliant yng Nghyfnod 2 i ddileu unrhyw amwysedd ynghylch geiriad adran 10(1).



I gloi, rwy'n gobeithio bod y llythyr hwn yn ddefnyddiol o ran amlinellu ymateb Llywodraeth Cymru i adroddiad y Pwyllgor a hoffwn ailadrodd fy niolch i'r Aelodau am eu hystyriaeth fanwl o'r Bil.

Yn gywir



**Carl Sargeant AC/AM**

Ysgrifennydd y Cabinet dros Gymunedau a Phlant  
Cabinet Secretary for Communities and Children





Ein cyf/Our ref: MA-L/FM/0244/17

Huw Irranca-Davies AC  
Cadeirydd  
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Cynulliad Cenedlaethol Cymru  
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30 Awst 2017

Annwyl Huw

Ym mis Rhagfyr 2015, ymatebais i argymhellion adroddiad pwyllgor eich rhagflaenydd, *Deddfu yng Nghymru*. Addewais y byddai Llywodraeth Cymru yn cyhoeddi ei *Llawlyfr Deddfwriaeth ar Filiau'r Cynulliad* wedi iddo gael ei ddiweddarau ar gyfer y Pumed Cynulliad.

Rwyf heddiw yn cyhoeddi'r *Llawlyfr Deddfwriaeth ar Filiau'r Cynulliad* ar wefan Llywodraeth Cymru. Canllaw mewnol i Wasanaeth Sifil Llywodraeth Cymru yw'r llawlyfr. Mae'n ymdrin â'r prosesau a'r gweithdrefnau ar gyfer paratoi deddfwriaeth sylfaenol a chefnogi Gweinidogion i fynd â'r ddeddfwriaeth drwy Gynulliad Cenedlaethol Cymru. Mae'r canllaw hwn wedi cael ei ddiweddarau i adlewyrchu'r newidiadau diweddar i'r Rheolau Sefydlog a bydd yn cael ei ddiweddarau eto o bryd i'w gilydd i ystyried newidiadau i'r setliad datganoli a datblygiadau eraill.

Yn fy ymateb i'r adroddiad *Deddfu yng Nghymru*, mynegais fod tipyn o orgyffwrdd rhwng argymhellion y pwyllgor a'r gwaith sydd ar y gweill yn Llywodraeth Cymru i baratoi ar gyfer cynllunio a rheoli'r rhaglen ddeddfwriaethol yn y Pumed Cynulliad.

Nodais amryw o agweddau allweddol lle yr ydym yn rhannu gweledigaeth, gan gynnwys:

- Datblygu polisi cynhwysfawr ar ddechrau'r broses ar gyfer pob cynnig deddfwriaethol
- Nodi goblygiadau ariannol a'u hystyried ar ddechrau'r broses
- Meithrin cysylltiadau'n effeithiol â rhanddeiliaid gydol y broses ddeddfwriaethol.

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

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

Mae'r *Llawlyfr Deddfwriaeth ar Ffiliau'r Cynulliad* yn amlinellu'r hyn sy'n ofynnol gan dimau Bil ym mhob cyfnod o'r broses, o geisio cael cynnwys Bil yn rhaglen ddeddfwriaethol y llywodraeth i gychwyn Deddf Cynulliad. Gan hynny, mae'n egluro sut y gall Gwasanaeth Sifil Llywodraeth Cymru gefnogi'r weledigaeth a rennir gennym ar gyfer deddfwriaeth.

Mae'r cyhoeddiad hwn yn gam ymlaen yn ein dull tryloyw ac agored o gyflawni rhaglen ddeddfwriaethol y llywodraeth hon.

Rwy'n anfon copi o'r llythyr hwn at y Llywydd a bydd copi o'r llawlyfr yn cael ei roi yn y llyfrgell.

Yn gywir

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

**CARWYN JONES**



The Right Honourable Lord  
Justice Bean  
Chairman  
Law Commission of England  
and Wales  
1<sup>st</sup> Floor, Tower  
52 Queen Anne's Gate  
London SW1H 9AG

19<sup>th</sup> July 2017

*Dear Sir David,*

## FINAL RESPONSE TO THE COMMISSION'S REPORT ON THE FORM AND ACCESSIBILITY OF THE LAW APPLICABLE IN WALES

This letter is the Welsh Government's final response to the Form and Accessibility Report, issued in accordance with the Protocol between the Law Commission and the Welsh Ministers (July 2015). To reiterate comments I have made to you before – the Report is very welcome and provides a helpful blueprint as to how the Welsh Government and others can take action to ensure the laws of Wales are more accessible.

I attach a table setting out the Welsh Government's position in respect of each recommendation of the Report. I also summarise our views below.

- **A programme of consolidation and codification (Recommendations 1, 2, 3, 14 and 15)**

The Welsh Government agrees that a sustained, long term programme of consolidation and codification of Welsh law would deliver societal and economic benefits, and is necessary in order to ensure that the laws of Wales are easily accessible. This would also make the work of the Government in developing new laws – and the work of the National Assembly in scrutinising them – considerably more straightforward and therefore more efficient.

The Welsh Government has already begun to implement these recommendations by starting a pilot programme of consolidation, codification and better publication which will run through 2017 and into early 2018. I recently gave evidence to the National Assembly's Constitutional and Legislative Affairs Committee on progress and next steps. This makes clear this Government's commitment to developing more orderly systems of law making and publishing. We recognise, however, that this will be a lengthy and difficult journey, particularly over the next few years given the constitutional changes that face us.

The issues that are likely to face in consequence of the United Kingdom's withdrawal from the European Union may mean postponing activity to implement your recommendations, but I am determined that notwithstanding whatever challenges emerge we make a long term commitment to the task of improving access to the law.

- **National Assembly procedures and processes for the scrutiny of consolidation Bills and Legislative Codes (Recommendations 4, 5, 6, 7, 10 and 11)**

The National Assembly's procedures and consideration of legislation are matters for the National Assembly. However the Welsh Government strongly welcomes the Business Committee's decision to proceed with developing a standing order for consolidation Bills. A procedure that facilitates consolidation by not exposing existing policy to the full political process is fundamentally important.

- **Nature of Legislative Codes (Recommendations 8 and 9)**

As I have set out in written evidence to the National Assembly's Constitutional and Legislative Affairs Committee, we have determined that our vision of a Code is different to that of the Law Commission's. In our view the word "code" implies something comprehensive, not one part of the legislative framework. As such we do not see why a Code should not be wider than a single Act, nor why it should exclude the subordinate legislation and quasi-legislation on a topic.

We consider, therefore, that our Legislative Codes should be comprehensive, in that they should contain (to the extent practicable) all of the legislation and guidance or other similar documents made under the legislation that falls within the subject matter of the Code. Further, the existing hierarchy within, and delineation between, the legislative instruments (primary, secondary, etc.) should remain. All of the content of a Code will be made in both English and in Welsh (both, of course, having equal standing).

- **Amending statutory instruments (Recommendations 12 and 13)**

The Welsh Government welcomes these recommendations and will be undertaking further work to understand the technical implications of (in particular) Recommendation 12. If the technology can adapt, and a suitable procedure be adopted, then this should save time for all involved and make for clearer legislation for the end user.

- **Establishing a Legislative Code Office (Recommendations 16, 17 and 18)**

The Welsh Government agrees that the functions of consolidation and codification (if adopted) should be carried out within government rather than establishing a new, separate or independent, body for this work. Firstly, because creation and management of legislation is primarily a matter for Government, and secondly in practical terms this is where the necessary expertise already exists.

- **Legislative standards (Recommendations 19, 20, 21, 22 and 23)**

As the Report made clear there are a number of approaches that could be taken in developing legislative standards. The Welsh Government intends to consider these further, but acknowledges the value that standards could bring.

- **Standardisation of Welsh language legal terminology (Recommendation 24)**

As I explained in the Interim Response the Welsh Government is preparing a new strategy for the Welsh language. I am also conscious that while there is no doubt a need for more consistency in Welsh language terminology to assist users, I do not wish to develop an inflexible and prescriptive system. We do not, after all, generally speaking have standardised terms in the English language and the same word can often mean different things depending on the context and how it is used. We will, therefore, be considering – along side other matters that will arise from our new strategy – what can be done to facilitate use of the Welsh language, but this will most likely fall short of the standardisation I believe the Commission envisages.

- **An Interpretation Act for Wales (Recommendation 25)**

Last month I launched a consultation document on this issue, Interpreting Welsh Law – Considering an interpretation Act for Wales. We are seeking views on whether the Welsh Government should develop a modern and bilingual interpretation act for Wales, which would set out general rules and definitions that would apply to Welsh law. The consultation closes in mid-September and our next steps will be determined in light of the consultation responses.

- **Improving publication (Recommendations 26, 27 and 28 relating to legislation.gov.uk and recommendations 29 to 32 relating to Law Wales/ Cyfraith Cymru)**

We continue to work closely with The National Archives who operate and maintain the legislation.gov.uk website. We will also continue to support and develop the Law Wales/Cyfraith Cymru website, and the recommendations of the report are consistent with our long term ambitions for the site.

I am sure we will continue to discuss progress with the recommendations of the Report in our regular meetings, however we will also ensure relevant information is included in the annual report to the National Assembly for Wales.

I am very grateful to you and to Nicholas Paines QC – and of course your officials - for your commitment to this project. I am also grateful to your predecessor as Chairman, Lord Justice Lloyd Jones, for his personal interest in the development of Welsh law.

I'm very conscious that your report, and the actions the Welsh Government and National Assembly for Wales take to pursue its recommendations, are of historic significance. I hope history will judge us well.

I am copying this letter to the Llywydd and Chair of the Constitutional and Legislative Affairs Committee of the National Assembly, and to the Queen's Printer.

Yours sincerely,



Mick Antoniw AC/AM  
Cwnsler Cyffredinol  
Counsel General

**Recommendations of the *Form and Accessibility of the Law Applicable in Wales* report of the Law Commission, and Welsh Government response**

Tudalen y pecyn 83

Recommendation	Welsh Government's response	
<p><b>Recommendation 1:</b> We recommend that the Welsh Government pursues a policy of codification, executed in accordance with the recommendations that follow.</p>	<p><b>Accept</b></p>	<p>The Welsh Government agrees that a sustained, long term programme of consolidation and codification of Welsh law would deliver societal and economic benefits, and is desirable in order to ensure that the laws of Wales are accessible. This would also make the work of the Government and the</p>
<p><b>Recommendation 2:</b> We recommend that codification should involve:</p> <p>(1) bringing together legislation whose subject matter is within the legislative competence of the National Assembly for Wales and which is currently scattered across various pieces of legislation of the United Kingdom Parliament and/or the Assembly in a piece of Assembly legislation;</p> <p>(2) reform of the legislation as appropriate.</p>	<p><b>Accept</b></p>	<p>Assembly in developing new laws – and in scrutinising them – considerably more straightforward and therefore more efficient.</p> <p>The Welsh Government has already begun to implement this recommendation by a starting pilot programme of consolidation, codification and better publication which will run through 2017 and into early 2018.</p> <p>In accepting these recommendations, however, the Welsh Government is very conscious of the size of the task and the limited resource available to pursue it. It is very clear – not least in view of the likely implications of the UK's withdrawal from the European Union – that this will need to be a long term project for which significant resources may not always be available.</p>
<p><b>Recommendation 3:</b> We recommend that those areas in which the law is in most need of being brought together in Assembly legislation should be identified and the process of bringing the legislation together should be undertaken.</p>	<p><b>Accept</b></p>	<p>Pursuing consolidation and codification on a long term basis will require arrangements for identifying suitable areas for work will need to be put in place. The Welsh Government's position has always been that a practical and flexible solution to identifying the matters to be codified will be required, but that a programme of some sort would be sensible. The pilot programme will provide valuable learning for how such a programme could be developed, and how the suitable areas of</p>



Recommendation	Welsh Government's response	
		work can be identified and planned.
<p><b>Recommendation 4:</b> A flexible streamlined legislative procedure should be introduced into the Standing Orders of the National Assembly for</p> <p>(1) codification or consolidation Bills that include alteration or reform of the law; and</p> <p>(2) other law reform Bills prepared by the Law Commission,</p> <p>where the alterations or reforms are judged by the Assembly not to be controversial.</p>	<p><b>Accept (in principle)</b></p>	<p>The Assembly's procedures and consideration are matters for the National Assembly (rather than the Welsh Government).</p> <p>The Welsh Government agrees with the Law Commission's view that if "...<i>the law is merely being restated without substantive reform, the legislature's time should not be taken up by scrutinising it in detail</i>" and that there should be an efficient means carrying such Bills into law "<i>without competing for Assembly time with other Bills</i>". The Government also agrees with the Commission that the "<i>legislature must not be prevented from scrutinising proposed reforms.</i>"</p>
<p><b>Recommendation 5:</b> Such a Bill should be accompanied by an Explanatory Memorandum endorsed by the Counsel General which should explain the effect of each of the Bill's sections and include or be accompanied by recommendations as to the suitability of sections for committee or Assembly scrutiny.</p>	<p><b>Accept (in principle)</b></p>	<p>The documentary requirements of any Standing Order for consolidation Bills are a matter for the National Assembly (rather than the Welsh Government). However the Welsh Government supports appropriate documentation being prepared for consolidation Bills, and notes the approaches taken in the UK Parliament and the Scottish Parliament.</p>
<p><b>Recommendation 6:</b> A committee of the Assembly should consider the Bill and Explanatory Memorandum and recommendations as to the suitability of sections for committee or Assembly scrutiny. The committee should determine whether particular sections of a Bill are controversial, or make significant changes to the existing law such as to require scrutiny by the full Assembly, while others are suitable for scrutiny by an appropriate committee.</p>	<p><b>Accept (in principle)</b></p>	<p>The approach to scrutiny within any Standing Order for consolidation Bills is a matter for the National Assembly (rather than the Welsh Government).</p>

Recommendation	Welsh Government's response	
<b>Recommendation 7:</b> Assembly Members should be able to call for a debate on the committee's report.	<b>Accept (in principle)</b>	The approach to scrutiny within any Standing Order for consolidation Bills is a matter for the National Assembly (rather than the Welsh Government).
<b>Recommendation 8:</b> Codes should not be formally distinct from Acts of the Assembly. An Act of the Assembly should be identified as a code by a section of that Act and its short title.	<b>Accept in principle</b>	<p>Whilst agreeing that a Code should not be formally distinct from an Act of the Assembly, the Counsel General for Wales has set out in evidence to the Constitutional and Legislative Affairs Committee that the Law Commission's recommendation is unduly limited.</p> <p>The Government's view is that a Code should not just be a single Act, but should also include the subordinate legislation and quasi-legislation on a topic. Each element would be identified as being part of a Code. For example, the Act could be described as "a principal Act of the ____ Code", and the regulations as "forming part of the ____ Code", etc.</p> <p>The Welsh Government is still considering whether there is merit in a Code having legal status or whether a Code should only be an informal mechanism used to better organise and promulgate Welsh law.</p>
<b>Recommendation 9:</b> Codes should be preserved by a rule that, where there is a code in place, further legislation within the subject area of the code should only take effect by way of amending the code.	<b>Accept</b>	Maintaining the integrity of a Code (or at least the consolidated Acts that for the Code) is important, so as to retain its cohesion and completeness. The pilot programme will allow the Government to consider how this could work in practice, and there will also need to be consideration, by the National Assembly, of any matters which may need to be addressed in Standing Orders.
<b>Recommendation 10:</b> A procedure should be	<b>Accept</b>	The approach to scrutiny of legislation (and the operation of

Recommendation	Welsh Government's response	
established by the Assembly for considering whether to allow any piece of legislation to pass through the Assembly which does not comply with the requirement to legislate within the code.	<b>(in principle)</b>	Standing Orders) is a matter for the National Assembly (rather than the Welsh Government). However the Government has indicated (see recommendation 9) that it considers maintaining the integrity of a Code, once developed, to be important.
<b>Recommendation 11:</b> The standing orders of the National Assembly should enable the Presiding Officer to put forward a motion that a Bill (in whole or part) falls within the subject area of a code and should be treated as such.	<b>Accept (in principle)</b>	
<b>Recommendation 12:</b> When secondary legislation is amended, the updated text of the statutory instrument should then be laid before the National Assembly, rather than an amending statutory instrument.	<b>Accept</b>	Recommendations 12 and 13 are suitable for accepting in the context of consolidation and codification projects, as well as amending regulations not already consolidated or forming part of a Code.
<b>Recommendation 13:</b> The resolution of the National Assembly should be limited by standing order to the changed text only.	<b>Accept (in principle)</b>	There are technical and resource implications of recommendation 12 will be considered as part of the work of the pilot programme Whilst Standing Orders are a matter for the Assembly, the Government supports recommendation 13.
<b>Recommendation 14:</b> The Welsh Government should institute regular programmes of codification.	<b>Accept</b>	Pursuing consolidation and codification of legislation over the longer term will need careful planning, and it is appropriate for a programme of activity to be developed so it can be costed, resourced and delivered. This is the approach taken in respect of law reform Bills. The pilot programme will provide useful lessons to guide the development of a programme of consolidation, which may form part of the Government's wider legislation programme.
<b>Recommendation 15:</b> The Counsel General should be obliged to present a codification programme, and report to the National Assembly on the progress of the programme at regular intervals	<b>Accept</b>	

Recommendation	Welsh Government's response	
<p><b>Recommendation 16:</b> We recommend that a Code Office should be set up to manage the process of codification and consolidation and maintain codes. The Code Office should be distinct from the existing Office of the Legislative Counsel.</p>	<b>Accept</b>	<p>We agree that a distinct office with the Welsh Government should have responsibility for developing and maintaining the Codes. For obvious reasons the Code Office should, however, be closely linked to the Office of the Legislative Counsel.</p>
<p><b>Recommendation 17:</b> We recommend that the Code Office functions should include the following:</p> <p>(1) approval or oversight of the exercise of technical maintenance of the codes;</p> <p>(2) periodic technical reviews; and</p> <p>(3) managing the process of identifying more substantive defects in codes and drafting amendments to correct them.</p>	<b>Accept</b>	<p>The Welsh Government considers there is scope to widen the functions of a 'Legislative Code Office' identified in Recommendation 17 to lead on all aspects of the accessibility programme, including developing and maintaining the Cyfraith Cymru/Law Wales website.</p>
<p><b>Recommendation 18:</b> We recommend that the Code Office should be accountable to the Counsel General and led by First Legislative Counsel.</p>	<b>Accept</b>	
<p><b>Recommendation 19:</b> We recommend that the Counsel General be responsible for publishing a set of legislative standards.</p>	<b>Accept</b>	<p>Whilst there is merit for a new legislature (and executive) in adopting legislative standards, any standards must be flexible and overseen with pragmatism. They should be a guide to good practice and principle, so as to assist debate, and to perhaps augment the existing Standing Orders for legislation.</p>
<p><b>Recommendation 20:</b> We recommend that, insofar as the standards relate to the design and content of legislation, they be reviewed by the National Assembly and, if accepted, adopted by resolution.</p>	<b>Accept in principle</b>	<p>As part of the pilot programme, further consideration will be given to recommendations 19 and 20 (and also recommendation 23 below).</p>
<p><b>Recommendation 21:</b> We recommend that the</p>	<b>This recommendation is for the National Assembly and therefore</b>	

Recommendation	Welsh Government's response	
<p>National Assembly establish a regular structure for:</p> <p>(1) pre-legislative scrutiny of Bills, including their impact on the accessibility of the statute book; and</p> <p>(2) post-legislative scrutiny of Bills, including their impact on the accessibility of the statute book.</p>	<p><b>outside the Welsh Government's response</b></p>	
<p><b>Recommendation 22:</b> We recommend that standing orders should require that the Explanatory Memorandum to a Bill disclose and justify any departure from legislative standards.</p>	<p><b>Accept in principle</b></p>	<p>The Assembly's procedures and consideration are matters for the National Assembly, rather than the Welsh Government or the Welsh Ministers.</p>
<p><b>Recommendation 23:</b> We recommend that standards for the content of explanatory notes be included in legislative standards.</p>	<p><b>Accept in principle</b></p>	<p>The development, and content, of legislative standards will need fuller consideration, but in principle they could include provision around Explanatory Notes</p>
<p><b>Recommendation 24:</b> The Welsh Government should be formally recognised as being responsible for standardisation of Welsh language legal terminology. An independent multidisciplinary panel should be established to advise the Welsh Government on Welsh language legal terminology.</p>	<p><b>Reject</b></p>	<p>Although much has already been done (for example through the development of the 'Term Cymru' database) the Welsh Government recognises that more could be done to facilitate Welsh as a language of the law. This will be considered as part of the Government's new overarching strategy on a million Welsh speakers by 2050. We do not believe, however that terms should be rigidly standardised – and wish to retain the same flexibility as exists in relation the English language.</p>
<p><b>Recommendation 25:</b> We recommend that the Welsh Government and the National Assembly consider, and keep under review, the practical benefits of introducing an Interpretation Act of the Assembly.</p>	<p><b>Accept</b></p>	<p>The Welsh Government has launched a policy consultation on the benefits and implications of an interpretation Act for Wales.</p>

Recommendation	Welsh Government's response	
<b>Recommendation 26:</b> The Welsh and English language versions of legislation should be capable of being viewed side by side on legislation.gov.uk.	<b>Accept in principle</b>	The Welsh Government sees merit in recommendations 26, 27, 28 and 30 but The National Archives (TNA) is responsible for the operation of legislation.gov.uk and improvements and developments with the site. Therefore the Welsh Government will work with TNA during the pilot programme to consider these matters further.
<b>Recommendation 27:</b> Online versions of legislation should identify the territorial applicability of the legislation.	<b>Accept in principle</b>	
<b>Recommendation 28:</b> We recommend that explanatory notes should be linked on legislation.gov.uk to the sections to which they relate.	<b>Accept in principle</b>	
<b>Recommendation 29:</b> The Welsh Government should work with the National Archives to continue to develop Cyfraith Cymru/Law Wales into a portal through which citizens can access legislation applying in Wales.	<b>Accept</b>	Recommendations 29, 31 and 32 are consistent with the Welsh Government's wider and longer term ambitions for the further development of Cyfraith Cymru/Law Wales. Our website currently acts as a portal to legislation.gov.uk and we would wish to expand this further, in both developing the website and in our discussions with TNA.
<b>Recommendation 30:</b> The Welsh Government should work with the National Archives to make legislation available online by subject matter.	<b>Accept in principle</b>	As noted above, the management and operation of legislation.gov.uk is a matter for TNA, but during the pilot programme the practical benefits of recommendation 30 will be considered against potential developments in relation to the Cyfraith Cymru/Law Wales website (which is organised by subject matter already).
<b>Recommendation 31:</b> The Welsh Government and the National Assembly should develop access through Cyfraith Cymru/Law Wales so that citizens can find all of the law relating to a particular code in	<b>Accept</b>	See recommendation 29 above.

Recommendation	Welsh Government's response	
one place, including primary and secondary legislation, statutory and non-statutory guidance and other sources as appropriate.		
<b>Recommendation 32:</b> Official guidance, including statutory guidance, should be available from the Cyfraith Cymru/Law Wales website	<b>Accept</b>	See recommendation 29 above.



**Elin Jones AC, Llywydd**

Cynulliad Cenedlaethol Cymru

**Elin Jones AM, Presiding Officer**

National Assembly for Wales

**Eitem 6.3**

Y Gwir Anrhydeddus Alun Cairns AS  
Ysgrifennydd Gwladol Cymru  
1 Caspian Point  
Ffordd Caspian  
Bae Caerdydd  
CF10 4DQ

Eich cyf: 250SUB 17  
Ein cyf: PO210/EJ/HG

18 Awst 2017

Annwyl Alun

Diolch am eich llythyr dyddiedig 10 Gorffennaf yn cynnig 6 Ebrill 2018 fel y Prif Ddiwrnod Penodedig lle bydd y model cadw pwerau i Gymru yn dod i rym.

Rwyf wedi ystyried y cynigion rydych yn eu cyflwyno ac wedi ymgynghori â phwyllgorau'r Cynulliad. Ar y sail honno, rwy'n cytuno â chi y dylai'r trefniadau newydd ddod i rym ym mis Ebrill 2018 ar yr un diwrnod y bydd y trethi datganoledig newydd yn dod i rym - y Dreth Trafodiadau Tir a'r Dreth Gwarediadau Tirlenwi. Rwyf ar ddeall y bydd hyn yn digwydd ar 1 Ebrill 2018. Felly, byddwn i'n awgrymu y dylai'r Prif Ddiwrnod Penodedig fod ar 1 Ebrill 2018. Byddai hyn yn golygu bod y model cadw pwerau yn dod i rym ar Sul y Pasg.

Gwnaethoch hefyd nodi yn eich llythyr bod eich swyddogion yn ystyried a fyddai'r sesiwn seneddol dwy flynedd yn arwain at unrhyw oblygiadau i'r Cynigion Cydsyniad Deddfwriaethol a allai fod angen. Edrychaf ymlaen at gael y wybodaeth hon maes o law.

Yn gywir

Elin Jones AC  
Llywydd

cc Cadeiryddion Pwyllgorau'r Cynulliad

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

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**Tudalen y pecyn 91**





**Elin Jones AC, Llywydd**

Cynulliad Cenedlaethol Cymru

**Elin Jones AM, Presiding Officer**

National Assembly for Wales

Cadeiryddion y Pwyllgorau  
Cynulliad Cenedlaethol Cymru  
Bae Caerdydd  
CF99 1NA

18 Awst 2017

Annwyl Gadeirydd

### **Deddf Cymru 2017: Prif Ddiwrnod Penodedig**

Diolch i chi am drafod ymgynghoriad Ysgrifennydd Gwladol Cymru ar yr uchod yn eich Pwyllgor.

Gweler yn atodedig fy ymateb i Ysgrifennydd Gwladol Cymru. Yn sgil y sylwadau a ddaeth gan y Pwyllgor Cyllid a thrafodaethau gyda swyddogion Llywodraeth Cymru, rwyf wedi awgrymu newid y dyddiad y bydd y model cadw pwerau yn dod i rym o 6 Ebrill 2018 i 1 Ebrill 2018, i gyd-fynd â'r dyddiad y bydd y trethi datganoledig newydd yn dod yn weithredol. Bydd Ysgrifennydd Gwladol Cymru yn nodi'r Prif Ddiwrnod Penodedig mewn Rheoliadau.

Byddaf yn eich rhoi gwybod i chi am unrhyw ohebiaeth bellach gan Ysgrifennydd Gwladol Cymru ar y mater hwn.

Yn gywir

Elin Jones AC  
Llywydd

Amg

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

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UK Government  
Llywodraeth y DU

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

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[www.gov.uk/wales](http://www.gov.uk/wales)  
[www.gov.uk/cymru](http://www.gov.uk/cymru)

Y Swyddfa Breifat

18 SEP 2017

PO 262

Private Office

Elin Jones AM  
Presiding Officer  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

Ref: 414SUB 17

17<sup>fed</sup> September 2017

**Wales Act 2017: Principal Appointed Day (PAD)**

Further to your letter of 18 August, I am writing to confirm that I am content for the Principal Appointed Day (PAD) to be the 1 April 2018. I have instructed my officials to proceed on that basis. They will of course work closely with your officials to ensure a smooth transition to the new devolution settlement.

I am copying this letter to the First Minister and have written to him in similar terms.

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



UK Government  
Llywodraeth y DU

Rt Hon Alun Cairns MP  
Secretary of State for Wales  
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CF10 4DQ

[www.gov.uk/wales](http://www.gov.uk/wales)  
[www.gov.uk/cymru](http://www.gov.uk/cymru)

The Rt Hon Carwyn Jones AM  
First Minister of Wales  
Welsh Government  
Tŷ Hywel  
Cardiff Bay  
CF99 1NA

Ref: 414SUB 17

17 September 2017

*Alun Cairns*

**Wales Act 2017: Principal Appointed Day (PAD)**

Further to your letter of 25 August, I am writing to confirm that I am content for the Principal Appointed Day (PAD) to be the 1 April 2018. I have instructed my officials to proceed on that basis. They will of course work closely with yours to ensure a smooth transition to the new devolution settlement.

I am copying this letter to the Presiding Officer and have written to her in similar terms.

*Xams,*  
*Alun*

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



Mr Huw Irranca-Davies AM  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

Mr Alun Evans  
British Academy  
10-11 Carlton House Terrace  
London  
SW1Y 5AH

25 July 2017

Dear Mr Irranca-Davies,

**Re: Constitutional and Legislative Affairs Committee: A stronger voice for Wales inquiry**

Following your letter of 25 May 2017, please find below points addressing the questions, and others, raised in your letter to us. Please accept our apologies for this late response.

The British Academy is the UK's national academy for the humanities and social sciences. Founded by Royal Charter in 1902, we are a Fellowship of the country's leading academic scholars. We exist to champion the health of our disciplines, and distribute funding to researchers at all career levels, while drawing upon the expertise of our Fellows to address some of the leading public policy challenges of the day.

While some of the points we make below are wider in scope than the three questions you posed to us, we hope they are useful in setting the wider context in which we work in Wales, and the rest of the UK.

As you may know, the British Academy works very closely with the Learned Society for Wales, and the other national academies, as well as the Royal Irish Academy and the Royal Society of Edinburgh. In our work we often draw upon the expertise and support of Fellows to respond to consultations and develop policy programmes. We have a small number of Fellows in Wales; the majority of these Fellows are also Fellows of the Learned Society for Wales, and we generally work in collaboration with them in Wales or they may take the lead in responding to consultations etc where more appropriate. We enjoy a close working relationship with the LSW, and our Chief Executive and Secretary recently travelled to Cardiff to meet with senior colleagues there, alongside our Head of Public Policy.

**Are there any barriers to engagement with the National Assembly?**

We have found no particular barriers to engaging with the National Assembly, but resource constraints mean we may only respond to relevant consultations if proactively contacted, but otherwise we usually only undertake reactive work with the Assembly owing to only having a small engagement team at the British Academy. We do have a desire to work with the Assembly, but hope you recognise as a publicly funded institution we have limited resources, so it is easier for us to coordinate on a cross-Academy basis, and through the Learned Society for Wales, as usual practice.

We do, however, hold events in Wales as part of our policy projects as and when necessary. For example, as part of our public policy project 'Where We Live Now', we held a roundtable meeting in Cardiff on 29 July 2016, with support from the LSW. This meeting focussed on health inequalities and public policy in south Wales, and was well attended by civil servants, health professionals, statisticians, academics and others, including the Wales Policy Institute.

**What is your perception of the process for engaging with committees in Cardiff compared to London, Edinburgh or Belfast?**

We do not perceive there to be material differences between the consultation processes across the four assemblies and parliaments. We have not found the process of engagement challenging; for the British Academy, we must prioritise what we choose to engage on, based on the expertise and capacity of our Fellows, and our constraints as staff working across a broad remit.

**What is your perception and expectation of inter-institutional working and relationships, and your thoughts on learning from other institutions?**

Our projects are UK wide and draw on evidence from all corners of the country. For example, our project 'Local Actions on Social Integration' received a lot of responses in its call for evidence from Wales, and one of the essays in our planned publication focuses on ESOL teacher training and working with migrants in South Wales. Last year we published a range of booklets on human rights, and these included 'Human Rights from the Perspective of Devolution in Wales' by Thomas Glyn Watkin. The British academy has previously held two joint conferences on Welsh devolution with the Learned Society of Wales, publishing reports as a result. We are always keen to learn from other institutions, and have not generally experienced anything negative from doing so. We expect our relationships to be mutually beneficial where possible, with the Academy lending expertise and resource to similar organisations where possible, and vice versa.

We also work with the other 3 UK-wide national academies - The Royal Society, the Royal Academy of Engineering, and the Academy of Medical Sciences - on events in the National Assembly on a regular basis; our materials are taken to events there where the national academies have a stall at exhibitions and science fairs, and we work collectively as a four to promote our joint calls and messages, and joint documents such as the Technopolis report and Open for Business.

Professor Sir Ian Diamond FBA FRSE FAcSS, a leading Fellow and chair of the British Academy Skills project, recently led a review of Higher Education in Wales, so at all levels our Fellows are engaging in Wales and assisting with the development of public policy. We would be delighted to talk with you in more depth at a future date if convenient.

Yours sincerely,



Alun Evans  
Chief Executive and Secretary



## THE LEARNED SOCIETY OF WALES CYMDEITHAS DDYSGEDIG CYMRU

THE NATIONAL ACADEMY — CELEBRATING SCHOLARSHIP AND SERVING THE NATION  
YR ACADEMI GENEOLAETHOL — YN DATHLU YSGOLHEICTOD A GWASANAETHU'R GENEDL

### Learned Society of Wales Response Constitutional and Legislative Affairs Committee Consultation – A Stronger Voice for Wales

September 2017

1. The [Learned Society of Wales](#) (LSW) is an independent, all-Wales, self-governing, pan-discipline educational charity that was established in 2010. As Wales's first National Academy of science and letters, the Learned Society of Wales, like similar societies in Ireland and Scotland, brings together the most successful and talented Fellows connected with Wales, for the shared purpose and common good of advancing and promoting excellence in all scholarly discipline across Wales.
2. The Learned Society of Wales welcomes this opportunity to submit comment to the Stronger Voice for Wales consultation.
3. Relations between Westminster/Whitehall and Cardiff of necessity assumed greater importance following devolution. The need for a better system of consultation and coordination grew with successive Government of Wales Acts. This development of devolution has increased the requirement for better functioning inter-governmental mechanisms.
4. In practice the process of consultation and coordination has been patchy. The lack of a coherent strategic approach to devolution hampered progress from the beginning. Additionally there was a tendency, still sometimes discernible, for parts of Whitehall to be reluctant to cede competence to devolved administrations, and even to seek to claw back powers which had been devolved. That risk is now in sharp focus in the draft EU Withdrawal Bill which by legislating for a retained EU law element would reduce and limit the exercise of powers already devolved to Wales. Additionally the public statements of some Ministers in London show scant regard or knowledge of the UK's constitutional arrangements. On the other hand devolved administrations have not always been prepared to consult more widely. Additionally Westminster serves variously as the UK and English legislature, sometimes confusing the roles.
5. A functioning system of intergovernmental relations is urgently needed. The present constitutional arrangements within the United Kingdom are complex and difficult to navigate. Moreover they are becoming increasingly sensitive as provision is made for the UK's exit from the EU. That departure raises very substantial issues as to how laws applying within the UK are to be made in areas currently within EU competence. There will be a need to preserve an internal market within the UK when we have left the EU internal market. But this will have to be ensured with due regard for the distribution of powers between the four governments and legislatures. Real economic and political interests are involved and will need to be factors considered in the formulation of policy and legal solutions.

6. Best practice will be relevant but more important is the recognition that putting in place policies to substitute for current EU policies and obligations will impose a substantial burden on the technical capacities in the four capitals. As an example, the Common Agricultural Policy will be replaced by new support arrangements in the four nations. This will be a huge task and immediately raises questions of commonalities and differences and how the arrangements in Wales will reflect Welsh interests, be part of a UK internal market, be financially sustainable, and meet the UK's evolving international obligations in new trade agreements. This example, one of many, underlines why consultation will be essential, and should extend into areas reserved for the British Government such as international trade.
7. Any mechanism for inter-governmental cooperation must be based on mutual respect and understanding and involve a real commitment by the parties to discuss challenges and seek outcomes as acceptable as possible to the parties involved. As a minimum interest should be set out, representations heard, and every effort made to find solutions. This requires a mix of the formal and informal, and at different levels. The JMC arrangements have a particular role, either to endorse policy or set strategic goals. Meetings should be more frequent and focussed to make a reality of the British Government's avowed intention, amplified in the last Queen's Speech, to have real consultations with the devolved administrations.
8. There is also a need for appropriate involvement of the devolved administrations in cross Whitehall deliberations when their interests are directly involved. Previous arrangements for determining UK positions on individual policy issues in the EU could be a model. Of course any negotiation is facilitated for a participant if the text on the table already reflects their interests. At official level and in day to day contacts there should be a flow of exchanges between officials where the voices of the devolved administrations are presented clearly and persuasively. Thus these contacts serve to lubricate and make more effective the more formal arrangements. In all cases a carefully considered and authoritative Welsh voice should set out and defend Welsh interests.

Thank you for your consideration of our response.

For further information, please contact:

Dr Sarah Morse, Senior Executive Officer, The Learned Society of Wales

[smorse@lsw.wales.ac.uk](mailto:smorse@lsw.wales.ac.uk)

[www.learnedsociety.wales](http://www.learnedsociety.wales)



Huw Irranca-Davies AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

Your ref:  
Our ref: EJ/HG

18 August 2017

Dear Huw

**Assembly reform: disqualification, defamation, contempt of court and  
Assembly privilege**

As you will be aware, the Wales Act 2017 provides the Assembly with powers to determine its own internal, operational and electoral arrangements. The Commission is leading work to explore how these powers might be used to ensure that this institution is a stronger, more accessible, inclusive and forward-looking legislature that delivers effectively for the people of Wales.

Earlier this year I announced that the Commission intends to introduce legislation in 2018 to change the Assembly's name. I have also established an Expert Panel to consider matters relating to the size and electoral arrangements of the Assembly. Once the Panel has reported, the Commission will consider the full scope of the reform programme and the legislative proposals we intend to bring forward.

As part of this scoping work, the Commission is also considering whether any reform is required to the sections of the Government of Wales Act 2006 relating to the Assembly's internal arrangements which the Wales Act 2017 will bring within the Assembly's legislative competence. This includes provisions which fall within the remit of your Committee, and on which I would welcome your views.

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





**Elin Jones AC, Llywydd**

Cynulliad Cenedlaethol Cymru

**Elin Jones AM, Presiding Officer**

National Assembly for Wales

## Disqualification

Sections 16 to 19 of GOWA make provision in relation to disqualification from membership of the Assembly. As part of the scoping work, my officials are giving careful consideration to the recommendations made in the Fourth Assembly's Constitutional and Legislative Affairs Committee's 2014 report on disqualification. I will write further in the autumn to seek your Committee's views on these issues.

## Defamation, contempt of court and Assembly privilege

Sections 42 and 43 of GOWA provide protections for Assembly Members from proceedings against them on the basis of defamation and, in some circumstances, contempt of court. The protection offered to Members is narrower than that offered by the principle of parliamentary privilege which operates in Westminster, although wider than the statutory protection in Scotland and Northern Ireland.

You will be aware that Assembly privilege is not a reserved matter under the Wales Act 2017. In principle, therefore, the Assembly could confer new privileges on itself, subject to the other reservations and competence tests which might apply.

I would welcome the views of your Committee on:

- the provisions in sections 42 and 43, in particular whether any legislative changes would be desirable as part of the Commission's reform work;
- whether any other reforms to the privileges of the Assembly would be desirable, and if so whether the Assembly reform legislation could be an appropriate legislative vehicle.

To ensure that your Committee's views can inform the development of the legislation, it would be helpful to receive your views on any issues which might require legislative change as part of the reform programme by the end of 2017.

Yours sincerely

Elin Jones AM  
Llywydd



Llywodraeth Cymru  
Welsh Government

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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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**TEITL** Comisiwn ar Gyfiawnder yng Nghymru  
**DYDDIAD** 18 Medi 2017  
**GAN** Carwyn Jones AC, y Prif Weinidog

Yn ystod dadl y Cynulliad ym mis Ionawr ar Gynnig Cydsyniad Deddfwriaethol Bil Cymru, cyfeiriais aelodau at gwestiynau sylfaenol cyfiawnder a'r awdurdodaeth a oedd heb eu hateb yn y Bil, er gwaethaf cynigion adeiladol Llywodraeth Cymru i fynd i'r afael â nhw. Gwnaethom ddadlau drwy hynt y Bil i gomisiwn ystyried y trefniadau y mae angen eu rhoi ar waith i sicrhau bod gennym system gyfiawnder yng Nghymru sy'n addas at y diben ac yn addas ar gyfer y setliad datganoli newydd. Dywedais y byddwn yn dod yn ôl ato yn y misoedd i ddod.

Cyflwynodd Comisiwn Silk nifer o argymhellion gofalus eu rhesymeg ar sail tystiolaeth ynghylch cyfiawnder, gan gwmpasu cyfiawnder ieuenctid, y llysoedd, y gwasanaeth prawf a charchardai. Mae'r materion hyn heb eu datrys o hyd ac mae, yn ogystal, faterion hanfodol y mae angen mynd i'r afael â nhw ynghylch awdurdodaeth gyfreithiol a'r heriau mawr sy'n wynebu'r sector gwasanaethau cyfreithiol yng Nghymru.

Rwyf wedi penderfynu sefydlu Comisiwn ar Gyfiawnder yng Nghymru ac mae'n bleser gennyf gyhoeddi bod yr Arglwydd Thomas o Gwmgiedd wedi cytuno cadeirio'r Comisiwn pan fydd yn rhoi'r gorau i'w gyfrifoldebau fel Arglwydd Brif Ustus Cymru a Lloegr ym mis Hydref. Byddaf yn rhoi rhagor o fanylion am aelodaeth y Comisiwn a'i gylch gorchwyl yn hwyrach yn yr hydref.

# Eitem 7.1

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

# Eitem 8

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

## Eitem 9.2

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon