Agenda – Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Lleoliad:
Ystafell Bwyllgora 1 – y Senedd
Dyddiad: Dydd Llun, 8 Ionawr 2018
Amser: 14.30

I gael rhagor o wybodaeth cysylltwch a:
Gareth Williams
Clerc y Pwyllgor
0300 200 6362
SeneddMCD@cynulliad.cymru

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datganiadau o fuddiant

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

(Tudalen 1)

CLA(5)-01-18 – Papur 1 – Offerynnau statudol sydd ag adroddiadau clir
Offerynnau'r Penderfyniad Negyddol

2.1 **SL(5)156 – Rheoliadau Cyfraniadau Ardrethu Annomestig (Cymru) (Diwygio) 2017**

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

Offerynnau'r Weithdrefn Penderfyniad Cadarnhaol

3.1 **SL(5)166 – Gorchymyn Ardrethu Annomestig (Lluosydd) (Cymru) 2018**

(Tudalennau 2 – 17)

CLA(5)-01-18 – Papur 2 – Gorchymyn

CLA(5)-01-18 – Papur 3 – Memorandwm Esboniadol

CLA(5)-01-18 – Papur 4 – Adroddiad

CLA(5)-01-18 – Papur 5 – Llythyr gan Ysgrifennydd y Cabinet dros Gyllid

4 SICM(5)2 - Memorandwm Cydsyniad Offeryn Statudol

(Tudalennau 18 - 58)

CLA(5) - Papur 6 - Memorandwm Cydsyniad Offeryn Statudol

CLA(5) - Papur 7 - SICM(5)2 - Rheoliadau Rheoli Mercwri (Gorfodi) 2017

CLA(5) - Papur 8 - SICM(5)2 - Llythyr gan Weinidog yr Amgylchedd

5 Papurau i'w nodi

5.1 Llythyr gan Gadeirydd y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau: Ymchwiliad i hawliau dynol yng Nghymru

(Tudalennau 59 - 61)

CLA(5)-01-18 - Papur 9 - Llythyr gan Gadeirydd y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol

5.2 Llythyr gan Ysgrifennydd y Cabinet dros Addysg: y wybodaeth ddiweddaraf am Anghenion Dysgu Ychwanegol

(Tudalennau 62 - 65)

CLA (5)-01-18 - Papur 10 - Llythyr gan Ysgrifennydd y Cabinet dros Addysg

6 Fil yr Undeb Ewropeaidd (Ymadael)

(Tudalennau 66 - 69)

CLA(5)-01-18 - Papur 11 - Llythyr i Arweinydd y Tŷ ynglŷn â defnyddio pwerau gwneud is-ddeddfwriaeth sy'n rhan o Fil yr Undeb Ewropeaidd (Ymadael) Llywodraeth y DU.

CLA(5)-01-18 - Papur 12 - Llythyr gan Arweinydd y Tŷ ynglŷn â defnyddio pwerau gwneud is-ddeddfwriaeth sy'n rhan o Fil yr Undeb Ewropeaidd (Ymadael) Llywodraeth y DU.

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

8 Bil yr UE (Ymadael): Cynnydd Bil yr Undeb Ewropeaidd (Ymadael)

(Tudalennau 70 - 74)

CLA(5)-01-18 - Papur 13 - Cynnydd Bil yr Undeb Ewropeaidd (Ymadael)

9 Y Bil Rheoleiddio Landlordiaid Cymdeithasol Cofrestredig (Cymru): Adroddiad drafft

(Tudalennau 75 - 90)

CLA(5)-01-18 – Papur 14 – Adroddiad drafft

10 Ymchwiliad Llais Cryfach i Gymru: Panel arbenigol yn trafod yr Adroddiad Drafft

(Tudalennau 91 - 225)

CLA(5)-01-18 – Papur 15 – Fersiwn ddrafft o'r adroddiad i'r Panel Arbenigol

CLA(5)-01-18 – Papur 16 – Casgliadau ac argymhellion y Pwyllgor, 4 Rhagfyr 2017

CLA(5)-01-18 – Papur 17 – Sylwadau gan yr Athro Rick Rawlings

CLA(5)-01-18 – Papur 18 – Sylwadau gan yr Athro Laura McAllister

11 Blaenraglen Waith

(Tudalennau 226 - 228)

CLA(5)-01-18 – Papur 19 – Blaenraglen Waith

Dyddiad y cyfarfod nesaf

15 Ionawr 2018

SL(5)156 – Rheoliadau Cyfraniadau Ardrethu Annomestig (Cymru) (Diwygio) 2017

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn, sy'n gymwys mewn perthynas â Chymru, yn diwygio Rheoliadau Cyfraniadau Ardrethu Annomestig (Cymru) (Diwygio) 1992 ("Rheoliadau 1992").

O dan Ran II o Atodlen 8 i Ddeddf Cyllid Llywodraeth Leol 1988, mae'n ofynnol i awdurdodau bilio (yng Nghymru, cynghorau sir a chynghorau bwrdeistref sirol) dalu symiau (a elwir yn gyfraniadau ardrethu annomestig) i Weinidogion Cymru. Mae Rheoliadau 1992 yn cynnwys rheolau ar gyfer cyfrifo'r cyfraniadau hynny ar gyfer awdurdodau bilio Cymru.

Mae'r Rheoliadau hyn yn diwygio Rheoliadau 1992 drwy ddefnyddio Atodlen 4 newydd (Ffigurau'r Boblogaeth Oedolion).

Deddf Wreiddiol: Deddf Cyllid Llywodraeth Leol 1988

Fe'u gwnaed ar: 28 Tachwedd 2017

Fe'u gosodwyd ar: 30 Tachwedd 2017

Yn dod i rym ar: 31 Rhagfyr 2017

Gorchymyn a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan baragraff 5(15) o Atodlen 7 i Ddeddf Cyllid Llywodraeth Leol 1988, i'w gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru cyn i'r Cynulliad gymeradwyo'r adroddiad cyllid llywodraeth leol ar gyfer y flwyddyn ariannol sy'n dechrau ar 1 Ebrill 2018.

OFFERYNNAU STATUDOL CYMRU

2018 Rhif (Cy.)

ARDRETHU A PHRISIO, CYMRU

Gorchymyn Ardrethu Annomestig (Lluosydd) (Cymru) 2018

NODYN ESBONIADOL

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

Gwneir y Gorchymyn hwn o dan baragraff 5(3) o Atodlen 7 i Ddeddf Cyllid Llywodraeth Leol 1988 ("y Ddeddf").

O ran Cymru, cyfrifir y lluosydd ardrethu annomestig ym mhob blwyddyn ariannol pan nad oes rhestrau newydd yn cael eu llunio yn unol â pharagraff 3B o Atodlen 7 i'r Ddeddf. Mae 2018 yn flwyddyn pan nad oes rhestrau newydd yn cael eu llunio.

Mae'r fformiwla ym mharagraff 3B o Atodlen 7 i'r Ddeddf yn cynnwys eitem B, sef y mynegai prisiau manwerthu ar gyfer mis Medi yn y flwyddyn ariannol cyn y flwyddyn o dan sylw, oni bai bod Gweinidogion Cymru yn arfer eu pŵer o dan baragraff 5(3) o Atodlen 7 i'r Ddeddf i bennu, drwy Orchymyn, swm gwahanol ar gyfer eitem B. Os yw Gweinidogion Cymru yn arfer y pŵer hwnnw mewn perthynas â blwyddyn ariannol, rhaid i'r swm gwahanol a bennir felly fod yn is na'r mynegai prisiau manwerthu ar gyfer mis Medi yn y flwyddyn ariannol flaenorol. Y mynegai prisiau manwerthu ar gyfer mis Medi yn y flwyddyn ariannol flaenorol yw 275.1.

Mae'r Gorchymyn hwn yn pennu mai swm eitem B ar gyfer y flwyddyn ariannol sy'n dechrau ar 1 Ebrill 2018 yw 272.8.

Yn unol â pharagraff 5(15) o Atodlen 7 i'r Ddeddf, ni fydd y Gorchymyn yn dod i rym ond os yw'n cael ei gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru ("y Cynulliad") cyn i'r Cynulliad gymeradwyo'r adroddiad cyllid llywodraeth leol ar gyfer y flwyddyn ariannol sy'n dechrau ar 1 Ebrill 2018.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Gorchymyn hwn. O ganlyniad, lluniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Gorchymyn hwn. Gellir cael copi oddi wrth y Gangen Polisi Trethi Lleol, yr Is-adran Cyllid Llywodraeth Leol a Pherfformiad Gwasanaethau Cyhoeddus, Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

Gorchymyn a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan baragraff 5(15) o Atodlen 7 i Ddeddf Cyllid Llywodraeth Leol 1988, i'w gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru cyn i'r Cynulliad gymeradwyo'r adroddiad cyllid llywodraeth leol ar gyfer y flwyddyn ariannol sy'n dechrau ar 1 Ebrill 2018.

OFFERYNNAU STATUDOL CYMRU

2018 Rhif (Cy.)

ARDRETHU A PHRISIO, CYMRU

Gorchymyn Ardrethu Annomestig (Lluosydd) (Cymru) 2018

Gwnaed ***

Gosodwyd gerbron Cynulliad Cenedlaethol Cymru ***

Cymeradwywyd gan Gynulliad Cenedlaethol Cymru ***

Yn dod i rym yn unol ag erthygl 1

Mae Gweinidogion Cymru yn gwneud y Gorchymyn a ganlyn drwy arfer y pŵer a roddir i'r Trysorlys gan baragraff 5(3) o Atodlen 7 i Ddeddf Cyllid Llywodraeth Leol 1988(**1**) ac a freiniwyd bellach ynddynt hwy i'r graddau y mae'r pŵer hwnnw yn arferadwy o ran Cymru(**2**).

Enwi, cymhwyso a chychwyn

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Ardrethu Annomestig (Lluosydd) (Cymru) 2018.

(**1**) 1988 p. 41.

(**2**) Yn rhinwedd erthygl 2 o Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672), ac Atodlen 1 iddo, trosglwyddwyd y pwerau o dan baragraff 5(3) o Atodlen 7 i Ddeddf Cyllid Llywodraeth Leol 1988, i'r graddau yr oeddent yn arferadwy o ran Cymru, i Gynulliad Cenedlaethol Cymru. Yn rhinwedd paragraffau 30 a 32 o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006 (p. 32), mae'r pwerau bellach wedi eu breinio yng Ngweinidogion Cymru.

(2) Daw'r Gorchymyn hwn i rym drannoeth y diwrnod y'i cymeradwyir drwy benderfyniad gan Gynulliad Cenedlaethol Cymru, ar yr amod y cymeradwyir y Gorchymyn cyn i'r Cynulliad gymeradwyo'r adroddiad cyllid llywodraeth leol ar gyfer y flwyddyn ariannol sy'n dechrau ar 1 Ebrill 2018.

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

Y lluosydd ardrethu annomestig

2. At ddiben paragraff 3B o Atodlen 7 i Ddeddf Cyllid Llywodraeth Leol 1988, ar gyfer y flwyddyn ariannol sy'n dechrau ar 1 Ebrill 2018, pennir mai 272.8 yw B.

Ysgrifennydd y Cabinet dros Gyllid, un o Weinidogion Cymru
Dyddiad

Explanatory Memorandum to the Non-Domestic Rating (Multiplier) (Wales) Order 2018

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Non-Domestic Rating (Multiplier) (Wales) Order 2018.

Mark Drakeford AM
Cabinet Secretary for Finance
4 January 2018

Contents

PART 1: EXPLANATORY MEMORANDUM

1. Description

This Order sets the increase in the non-domestic rating (NDR) multiplier for the financial year 2018-19. It reflects the use of the Consumer Price Index (CPI) rather than the Retail Price index (RPI) to calculate the multiplier.

The annual increase in the multiplier is usually set according to the RPI figure as at the September preceding the financial year to which the multiplier applies. For 2018-19 this would have been 3.9%.

The multiplier is applied to the rateable value (RV) of each non-domestic property to calculate its non-domestic rates bill. The effect of the Order is to reduce the increase in the 2018-19 rates bills to be paid by businesses and other non-domestic property owners across Wales.

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

In this instance, the requirement of Standing Order 27.7, that the motion to approve the Order must not be considered until 20 sitting days have elapsed since the Order was laid, is not being complied with.

In the Autumn Budget on 22 November, the Chancellor announced that the UK Government would bring forward its planned use of CPI to uprate the multiplier in England, from 2020-21 to 2018-19.

Under the Local Government Finance Act 1988 (the 1988 Act), an order which enables the multiplier to be increased at below the level of RPI must be agreed by the Assembly through an affirmative resolution procedure (paragraph 5(15) of Schedule 7 to the 1988 Act).

The relevant provision specifically provides that the Order must be approved by the Assembly prior to the vote on the Local Government Finance Report (the local government settlement) taking place. The debate on the settlement is scheduled to take place on 16 January 2018. Given the timing of the Autumn Budget and the Assembly's Christmas Recess, the requirement in Standing Orders for the Order to be laid for at least 20 sitting days before being debated cannot be met.

Delaying the debate on the settlement has been considered but this could have an adverse effect on local authorities, giving them less time to set budgets for 2018-19 and increasing the risk of not meeting the statutory deadlines for issuing non-domestic rating bills.

3. Legislative background

Under the 1988 Act, the default position for determining the non-domestic rating multiplier for Wales is, for financial years in which new rating lists do not apply, to apply the formula set out in paragraph 3B to Schedule 7 to the 1988 Act. An element in that formula is the RPI for September of the financial year preceding the year concerned. The financial year beginning 1 April 2018 is not a financial year for which a new rating list needs to be compiled.

However, under paragraph 5(3) of Schedule 7 to the 1988 Act, the Welsh Ministers have the power to increase a multiplier at below the level of inflation as measured by RPI. It is this power which the Welsh Ministers propose to exercise in making this Order.

As the Welsh Government is diverging from the normal practice of increasing the multiplier by RPI, Ministers are required, under paragraph 5(15) of Schedule 7 to the 1988 Act, to lay the Order to limit the increase at below RPI before the Assembly for approval.

The Order is subject to an affirmative resolution procedure and must be approved by the Assembly for it to be effective. It is also a requirement of the 1988 Act that any such Order is approved before the Local Government Finance Reports (unitary authority and police and crime commissioners) are approved by the Assembly. This requirement for prior agreement of the multiplier arises because it plays a vital part in calculating the total funding available in the settlements.

The debate on the Local Government Finance Report for unitary authorities for 2018-19 (which sets out the settlement) is scheduled for 16 January 2018. The debate to approve the Order is also scheduled to take place on 16 January.

Assembly Standing Orders (27.7) require that an order subject to the affirmative resolution procedure must be laid for at least 20 (non-recess) days before it is debated, or it must be the subject of a report by the relevant Committee. The timing of the Autumn Budget, combined with the timing of the publication of the Final Budget and the requirement for the Assembly to approve the Order before approving the Local Government Finance Report, means it is not possible to comply with the requirement in Standing Orders for the Order to be laid for 20 days before it is debated.

4. Purpose and intended effect of the legislation

The Order will have the effect of increasing the NDR multiplier by CPI rather than RPI for the financial year 2018-19. For 2017-18, the NDR multiplier is 0.499. If RPI were used to calculate the multiplier for 2018-19, the multiplier would be 0.518. By applying CPI for 2018-19 to CPI, the multiplier will be set at 0.514. This will mean that non-domestic property owners in Wales will receive lower rates bills for 2018-19 than they would have expected.

Primary legislation does not currently provide the Welsh Ministers with powers to permanently change the rate of inflation used to calculate the multiplier from RPI to CPI. Therefore, the Order to increase the multiplier by CPI rather than RPI will apply for 2018-19 only.

All owners of non-domestic properties who pay rates will benefit from the change. Even properties which receive significant amounts of rates relief will benefit as the residual amounts due will be calculated using a lower multiplier.

All the non-domestic rates collected in Wales are pooled centrally and redistributed to unitary authorities and to police and crime commissioners as part of the annual local government settlements. The total amount to be distributed in this way is known as the Distributable Amount. It is calculated by applying the multiplier to the estimated national total of rateable value, taking account of any surplus or deficit carried forward from previous years. The Distributable Amount is a key component of the annual local government revenue settlements and the 1988 Act requires that it is approved by the Assembly as part of the annual Local Government Finance Reports. The multiplier therefore needs to be determined before the annual settlements can be finalised.

There is a clear purpose to the policy behind the legislation. It is aimed at supporting economic growth and reducing the tax liability for businesses and other non-domestic ratepayers in Wales, ensuring they are not at a disadvantage compared to other parts of the United Kingdom.

It is estimated the effect of using CPI rather than RPI to increase the multiplier in Wales is to reduce income into the non-domestic rates pool by £9m in 2018-19. This loss of income is being fully funded by the Welsh Government and will be reflected in the calculations for the local government settlement so that there is no financial impact on local authorities.

5. Consultation

Given the timing of the Chancellor's announcement, no consultation has been undertaken on the policy behind this Order. The proposals benefit all ratepayers in Wales and there is no impact on the resources available to local authorities.

Part 2: Regulatory Impact Assessment

Options

Option 1 – Use RPI to increase the multiplier

This option would see the multiplier increase to 0.518 in 2018-19. This is an increase of 3.9% which was the RPI at September 2017.

Option 2 – Increase the multiplier by the equivalent of CPI

This option would increase the multiplier for 2018-19 by CPI at September 2017 (2.8%), resulting in a multiplier of 0.514.

Option 3 – Utilisation of existing relief provisions

The existing legislation allows local authorities to provide relief to ratepayers within their areas where it can be demonstrated to be in the interests of other local taxpayers. This option would require all authorities to offer a complex system of relief.

Costs and benefits

Option 1 – Use RPI to increase the multiplier

Using RPI to increase the multiplier has the following effect on the non-domestic rates bill of a premises.

For example, if a property has a rateable value (RV), as assessed by the Valuation Office Agency, of £15,000, the rates bill for 2017-18 (before any reliefs) is:

RV £15,000 x 0.499 = £7,485

Applying RPI would see the annual rates bill for 2018-19 increase to:

RV £15,000 x 0.518 = £7,770

The increase in the annual charge would therefore be £285.

There would be no direct cost to the Welsh Government of applying RPI as this is the usual basis on which the multiplier is increased. However, it would increase the overall cost of reliefs by approximately £8m.

Option 2 – Increase the multiplier by the equivalent of CPI

This option would result in a lower than anticipated increase in the rates bills for all non-domestic properties. Using the example from Option 1.

The rates bill for 2017-18 is:

RV £15,000 x 0.499 = £7,485

An increase using CPI for 2018-19 gives a bill of:

RV £15,000 x 0.514 = £7,710.

The increase in rates for the property is therefore £225, a reduction of £60 compared to using RPI.

The total saving to non-domestic ratepayers across Wales is estimated at £9m. This would be a recurrent saving as the multiplier cannot be increased at a level above RPI in future years. The approach means that ratepayers in Wales are not placed at a disadvantage compared to other parts of the UK.

The cost of limiting the increase in the multiplier to CPI would be borne by the Welsh Government. There would be no financial impact on local authorities.

Option 3 – Utilisation of existing relief provisions

Using the discretionary powers available to local authorities would be a much more complex and time-consuming way to achieve the same objective as limiting the increase to the multiplier.

There would be a need to:

- Secure the agreement of all authorities to provide a discretionary relief scheme which has the same effect on rates bills as applying CPI;
- Devise a suitable scheme to reimburse each authority;
- Implement changes to local authority billing and software systems; and
- Set aside a budget allocation to be managed outside the NDR pool.

Option selection

Option 2 is the preferred option.

Analysis of other effects and impacts

Promoting Economic Opportunity for All (Tackling Poverty)
Limiting the increase in the multiplier provides support for all ratepayers which could help to prevent hardship.

UNCRC
No particular impact on the rights of children has been identified. Limiting the increase in the multiplier will not result in any reduction in funds available for local authorities as the change will be fully funded by the Welsh Government.

Welsh language
No effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified.

Equalities
Section 149(1) of the Equality Act 2010 requires the Welsh Ministers to have regard, in the exercise of their functions, to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; foster good relations between people who share a relevant protected characteristic and people who do not share it.

For the purposes of section 149, the protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. No specific impacts, positive or negative, on persons who share a protected characteristic have been identified.

Well-being of Future Generations (Wales) Act 2015
Consideration has also been given to the wellbeing duty contained in section 3 of the Well-being of Future Generations (Wales) Act 2015. Limiting the increase in the multiplier will assist all ratepayers and, as such, will help to contribute to the achievement of the wellbeing goals of a prosperous and a more equal Wales.

Impact on voluntary sector
Limiting the increase in the multiplier will benefit all ratepayers including those operating in the voluntary, charitable and not-for-profit sectors.

Competition Assessment
A competition filter test has been applied to the Order. As the change benefits all ratepayers, no effect on competition within Wales is indicated. Limiting the multiplier means that Wales is not placed at a disadvantage compared to other parts of the UK.

Post implementation review
The Welsh Government will monitor the impact of the change on the non-domestic rates pool.

SL(5)166 – The Non-Domestic Rating (Multiplier) (Wales) Order 2018

Background and Purpose

This Order is made under paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988 ("the Act").

In relation to Wales, the non-domestic rating multiplier is calculated in each financial year when new lists are not being compiled in accordance with paragraph 3B of Schedule 7 to the Act. 2018 is a year when new lists are not being compiled.

The formula in paragraph 3B of Schedule 7 to the Act includes an item B which is the retail prices index for September of the financial year preceding the year concerned, unless the Welsh Ministers exercise their power under paragraph 5(3) of Schedule 7 to the Act to specify, by Order, a different amount for item B. If the Welsh Ministers exercise that power in relation to a financial year, the different amount so specified must be lower than the retail prices index for September of the preceding financial year. The retail prices index for September of the preceding financial year is 275.1.

This Order specifies that for the financial year beginning on 1 April 2018 the amount for item B is 272.8.

Procedure

The Order is made by the Welsh Ministers before being laid before the Assembly, but it will only come into force if it is approved by a resolution of the Assembly (and that approval must be given before the Assembly approves the local government finance report for the financial year beginning on 1 April 2018).

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3(ii) in respect of this instrument, in that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

1. The Order was laid before the Assembly on 4 January 2018; the Committee usually has 20 days from the date of laying to report on statutory instruments.

The Committee was asked by the Welsh Government to report on the Order before 16 January 2018, see the letter from the Cabinet Secretary for Finance to the Chair of this Committee, dated 15 December 2017. In effect, this meant the Committee had to consider the Order at its meeting of 8 January 2018, only 4 days after the Order was laid.

The Committee was content to report within that timescale, given that the Order was relatively short and straightforward.

2. The Order specifies 272.8 as B in the manner explained in the Explanatory Note. However, that number is not referred to at all in the Explanatory Memorandum, which is therefore unhelpful in explaining the effect of the Order.

Implications arising from exiting the European Union

None.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
4 January 2018

Mark Drakeford AC/AM
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance

Llywodraeth Cymru
Welsh Government

Mick Antoniw AC
Cadeirydd, Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Cynulliad Cenedlaethol Cymru
Bae Caerdydd
CF99 1NA

15 Rhagfyr 2017

Annwyl Mick

Rwyf yn ysgrifennu am y Lluosydd Graddio annomestig ar gyfer 2018-19. Yn ei Gyllideb yr Hydref ar 22 Tachwedd, cyhoeddodd y Canghellor y byddai'r Lluosydd ar gyfer 2018-19 yn Lloegr yn cael ei gynyddu gan y Mynegai Prisiau Defnyddwyr yn hytrach na'r Mynegai Prisiau Manwerthu.

Mae Llywodraeth Cymru yn bwriadu cymhwyso Mynegai Prisiau Defnyddiwyr i gynyddu'r Lluosydd i Gymru fel nad yw busnesau yng Nghymru o dan anfantais o'i gymharu â Lloegr.

Nodir y darpariaethau sy'n llywodraethu cyfrifiad y Lluosydd yn Atodlen 7 i Ddeddf Cyllid Llywodraeth Leol 1988. Mae'r Lluosydd (mewn gwirionedd, y gyfradd yn y bunt) yn cael ei gymhwyso i werth ardrethol pob eiddo annomestig i bennu ei bil cyfraddau am y flwyddyn. Mae'r Lluosydd am flwyddyn benodol fel arfer yn cael ei gyfrifo trwy gymryd yr Lluosydd am y flwyddyn flaenorol a chymhwyso'r gyfradd chwyddiant Mynegai Prisiau Manwerthu. fel y mis Medi blaenorol. Byddai cymhwyso Mynegai Prisiau Defnyddwyr yn lle Mynegai Prisiau Manwerthu.yn golygu ymadawiad o'r arfer arferol ar gyfer cynyddu'r Lluosydd. Fel y cyfryw, mae'n ofynnol i ni, o dan Atodlen 7 i Ddeddf Cyllid Llywodraeth Leol 1988, osod Gorchymyn sy'n amodol i weithdrefn penderfyniad cadarnhaol.

Rhaid i'r Cynulliad gymeradwyo'r Gorchymyn hwn cyn iddo gymeradwyo'r Adroddiad Cyllid Llywodraeth Leol oherwydd ei fod yn hysbysu cyfrifiad y ffigurau yn yr Adroddiad o dan Ran III o Atodlen 8 i Ddeddf Cyllid Llywodraeth Leol 1988. Mae hwn hefyd yn ofyniad trefniadol o Ddeddf 1988. Mae'r ddadl ar yr Adroddiad Cyllid Llywodraeth Leol hwn eisoes wedi'i drefnu ar gyfer 16 Ionawr 2018.

Mae amseriad Cyllideb yr Hydref yn golygu nad yw wedi bod yn bosib gosod y Gorchymyn a chaniatáu i'r cyfnod craffu 20 diwrnod sydd ei angen o dan Reol Sefydlog 27.7 cyn y ddadl ar Adroddiad Cyllid Llywodraeth Leol ar 16 Ionawr 2018.

Bae Caerdydd • Cardiff Bay
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CF99 1NA

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Byddai gohirio'r ddadl ar yr Adroddiad Cyllid Llywodraeth Leol yn arwain at anawsterau sylweddol i awdurdodau lleol y mae'n rhaid iddynt gytuno ar eu cyllidebau a gosod eu lefelau treth gyngor ar gyfer 2018-19 o fewn amserlenni statudol tynn. Mae angen cymeradwyo'r Gorchymyn yn gynnar er mwyn galluogi awdurdodau i fabwysiadu y Lluosydd ar gyfer pwrpasau bilio graddio annomestig, a bydd hefyd yn darparu'r eglurder y mae angen iddynt eu cynllunio ar gyfer y flwyddyn ariannol nesaf ar gyfer busnesau a threthdalwyr eraill ledled Cymru.

Er mwyn galluogi'r ddadl ar yr Adroddiad Cyllid Llywodraeth Leol i fwrw ymlaen fel y'i trefnwyd ar 16 Ionawr 2018, byddwn yn ddiolchgar iawn pe byddai'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn barod i ystyried ac adrodd ar y Gorchymyn cyn y dyddiad hwnnw. Mae'r Gorchymyn yn fyr iawn a bydd yn cynnwys dim ond un o elfennau'r fformiwla a ddefnyddir i gyfrifo'r Lluosydd. Mae fy swyddogion eisoes wedi darparu copi o'r Gorchymyn drafft atoch chi a byddwn yn hapus i'm swyddogion ddarparu briffio technegol pe byddai hynny'n helpu.

Gwerthfawrogaf anawsterau wrth wneud trefniadau o'r fath ar yr adeg hon o'r flwyddyn ond byddwn. Ond byddai o gymorth mawr pe gallech gadarnhau y bydd y Pwyllgor yn gallu ystyried ac adrodd ar y Gorchymyn

Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance

Eitem 4

MEMORANDWM CYDSYNIAD OFFERYN STATUDOL

Rheoliadau Rheoli Mercwri (Gorfodi) 2017

1. Gosodir y Memorandwm Cydsyniad Offeryn Statudol ("Memorandwm") hwn o dan Orchymyn Sefydlog 30A.2. Mae Gorchymyn Sefydlog 30A yn rhagnodi bod rhaid gosod Memorandwm a chyflwyno Memorandwm Cydsyniad Offeryn Statudol gerbron Cynulliad Cenedlaethol Cymru ("y Cynulliad" os yw offeryn statudol y DU yn gwneud darpariaeth, mwn perthynas â Chymru, i ddiwygio deddfwriaeth sylfaenol sydd o fewn cymhwysedd deddfwriaethol y Cynulliad.

2. Gosodwyd Rheoliadau Rheoli Mercwri (Gorfodi) 2017 gerbron y Senedd ar 5 Rhagfyr 2017 ac maent yn dod i rym yn rhannol ar 1 Ionawr 2018 a'r dibenion sy'n weddill ar 1 Ebrill 2018. Mae'r Rheoliadau ar gael yn:

   http://www.legislation.gov.uk/uksi/2017/1200/contents/made

Crynodeb o'r Rheoliadau a'u hamcan

3. Amcan Rheoliadau Rheoli Mercwri (Gorfodi) 2017 ("y Rheoliadau Gweithredu") yw gweithredu yng nghyfraith y DU, Reoliad UE 2017/852 Senedd Ewrop a'r Cyngor ar fercwri ("Rheoliad yr UE"). Mae Rheoliad yr UE hwn yn gweithredu ar lefel Cymuned y Confensiwn Minamata ar Fercwri 2013, a lofnodwyd gan yr UE ac Aelod Wladwriaethau. Mae'r Rheoliadau Gweithredu wedi'u gwneud gan yr Ysgrifennydd Gwladol ac maent yn berthnasol i'r DU gyfan.

4. Mae mercwri'n sylwedd gwenwynig, ac mae Rheoliad yr UE yn pennu mesurau ac amodau ynghylch defnyddio, storio a masnachu mercwri, cyfansoddion mercwri a chymysgeddau mercwri, gweithgynhyrchu, defnyddio a masnachu cynhyrchion sydd â mercwri wedi'i ychwanegu atynt, a rheoli gwastraff mercwri, er mwyn diogelu, i lefel uchel, iechyd pobl a'r amgylchedd rhag allyriadau a gollyngiadau gwneud o fercwri a chyfansoddion mercwri.

5. Yn arbennig, mae Rheoliad yr UE yn gwahardd ac yn cyfyngu ar fewnforio, allforio, defnyddio a storio mercwri, cyfansoddion mercwri a chymysgeddau mercwri. Mae hefyd yn gwahardd ac yn cyfyngu ar y defnydd o fercwri mewn gweithgareddau cloddio aur bychan ac ar ddefnyddio a gwaredu amalgam mercwri ym maes deintyddiaeth.

6. Er mwyn gallu gweithredu Rheoliad yr UE yn effeithiol, mae'r Rheoliadau Gweithredu yn creu nifer o droseddau troseddol a chosbau sifil cyfatebol, mewn perthynas â gweithredu'n groes i'r gwaharddiadau a'r cyfyngiadau yn Rheoliad yr UE. Mae'r Rheoliadau Gweithredu yn dynodi awdurdodau gorfodi ("*enforcing authorities*") ac awdurdodau cymwys ("*competent authorities"*) a'u gwaith nhw yw gorfodi yn erbyn achosion o dorri Rheoliad yr UE, a chyflawni dyletswyddau eraill o dan Reoliad yr UE.

7. Y polisi yw i'r Rheoliadau Gweithredu ddynodi rheoleiddwyr amgylcheddol sy'n bodoli eisoes fel awdurdodau gorfodi a chymwys at ddibenion y rheoliadau. Mewn perthynas â Chymru, y prif awdurdod gorfodi (a'r awdurdod cymwys hefyd) yw Cyfoeth Naturiol Cymru (CNC). Fel y cyfryw, bydd CNC yn gyfrifol yng Nghymru am erlyn troseddau troseddol neu roi cosbau sifil mewn achosion o dorri Rheoliad yr UE, ynghyd â dyletswyddau gweinyddol sy'n codi o Reoliad yr UE, er enghraifft, mewn perthynas â mewnforio ac allforio mercwri a chynhyrchion mercwri.

8. Bydd cyflawni'r dyletswyddau newydd hyn yn arwain at gostau i CNC, ynghyd â'r awdurdodau gorfodi (cymwys) yng ngweinyddiaethau eraill y DU.

Darpariaeth i'w gwneud gan y Rheoliadau y gofynnir am gydsyniad ar ei chyfer

9. Caiff Adran 41 (Pŵer i wneud cynlluniau sy'n codi tâl) o Ddeddf yr Amgylchedd 1995 ei diwygio gan reoliad 48 y Rheoliadau Gweithredu. Mae Adran 41 yn rhoi pŵer i reoleiddwyr amgylcheddol wneud cynlluniau codi tâl at amryw o ddibenion amgylcheddol a nodir yn yr adran. Effaith y diwygiad yw gosod darpariaeth ychwanegol yn adran 41, a fydd yn galluogi CNC (ynghyd â rheoleiddwyr yn Lloegr a'r Alban) i wneud cynllun codi tâl i adennill y costau a ysgwyddwyd wrth gyflawni swyddogaethau a bennir gan Reoliad yr UE. Mae Adran 41 yn darparu bod rhaid i gynllun o'r fath gael ei gymeradwyo gan Weinidogion Cymru.

10. Mae Llywodraeth Cymru o'r farn bod y darpariaethau a ddisgrifir ym mharagraff 9 uchod yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru i'r graddau mae'n ymwneud â diogelu'r amgylchedd, yn cynnwys llygredd, niwsans a sylweddau peryglus, ac atal, lleihau, casglu, rheoli, trin a gwaredu gwastraff o dan baragraff 6 (Amgylchedd) Rhan 1, Atodlen 7, Deddf Llywodraeth Cymru 2006.

Pam mae'n briodol i'r Rheoliadau wneud y ddarpariaeth hon?

11. Mae'r diwygiad i ddeddfwriaeth sylfaenol yn angenrheidiol er mwyn caniatáu i CNC adennill costau a ysgwyddwyd wrth gyflawni dyletswyddau newydd a bennir gan Reoliad yr UE a Rheoliadau Gweithredu. Heb yr awdurdod statudol hwn, ni fyddai CNC yn gallu adennill costau'n gyfreithlon, ac o ganlyniad, byddai CNC o dan anfantais ariannol. Mae'r diwygiad yn berthnasol hefyd i'r Scottish Environment Protection Agency ac Asiantaeth yr Amgylchedd. Mae diwygiad tebyg wedi'i wneud i ddeddfwriaeth gyfatebol mewn perthynas â Gogledd Iwerddon.

12. Mae Llywodraeth Cymru o'r farn ei bod hi'n briodol ymdrin â rhoi pŵer i CNC wneud cynllun codi tâl, ochr yn ochr â diwygiadau tebyg ar gyfer y gweinyddiaethau eraill yn y DU, yn y Rheoliadau Gweithredu, oherwydd mae'n fater sy'n deillio o'r pwnc dan sylw yn y Rheoliadau hynny ac mae'n cynnig y dull mwyaf ymarferol a chymesur o wneud y diwygiad

angenrheidiol yng Nghymru. Mae hyn yn sicrhau dull cyffredin mewn perthynas â chynlluniau codi tâl ledled y DU.

13. Mae'r Memorandwm Cydsyniad Offeryn Statudol hwn yn ymwneud â rheoliadau a osodwyd yn Senedd y DU o dan y weithdrefn negyddol sy'n dod yn gyfraith yn awtomatig oni bai bod gwrthwynebiad gan aelod o naill Dŷ'r Senedd. Os na cheir gwrthwynebiad o'r fath, byddai'r rhan o'r rheoliadau sy'n diwygio deddfwriaeth sylfaenol yn dod i rym ar 1 Ionawr 2018.

Goblygiadau ariannol

14. Ni ragwelir unrhyw oblygiadau ariannol ar gyfer Llywodraeth Cymru.

Hannah Blythyn AC
Gweinidog yr Amgylchedd
Rhagfyr 2017

STATUTORY INSTRUMENTS

2017 No. 1200

ENVIRONMENTAL PROTECTION

The Control of Mercury (Enforcement) Regulations 2017

Made - - - - *4th December 2017*

Laid before Parliament *5th December 2017*

Coming into force in accordance with regulation 2

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The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(**a**) in relation to the environment(**b**).

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of that Act(**c**).

PART 1

Introductory

Citation and application

1.—(1) These Regulations may be cited as the Control of Mercury (Enforcement) Regulations 2017.

(2) These Regulations apply to the regulation of activities relating to mercury in the United Kingdom including—

(a) in the territorial sea (see regulation 3), and

(b) in respect of offshore installations in the offshore area (see paragraphs 1 and 2 of Schedule 2).

Commencement

2.—(1) These Regulations (except Parts 2 and 3) come into force on 1st January 2018.

(2) Parts 2 and 3 (which are about civil enforcement except in Scotland and the Scottish offshore area) come into force on 1st April 2018.

(**a**) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The Secretary of State continues to be able to implement European Union law, so far as it is devolved, under section 57 of the Scotland Act 1998 (c.46) (in respect of Scotland) and paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c.32) (in respect of Wales).

(**b**) S.I. 2008/301.

(**c**) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The Secretary of State continues to be able to implement European Union law, so far as it is devolved, under section 57 of the Scotland Act 1998 (c.46) (in respect of Scotland) and paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c.32) (in respect of Wales).

Interpretation

3. In these Regulations—

"the Mercury Regulation" means Regulation EU 2017/852 of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008(**a**);

"the EA 1995" means the Environment Act 1995(**b**);

"the EO 2002" means the Environment (Northern Ireland) Order 2002(**c**);

"the TSWR 2007" means the Transfrontier Shipment of Waste Regulations 2007(**d**);

"the WCLO 1997" means the Waste and Contaminated Land (Northern Ireland) Order 1997(**e**);

"the Agency" means the Environment Agency;

"civil penalty" is to be read in accordance with regulation 10(2) and (5);

"civil penalty notice" is to be read in accordance with regulation 10(2);

"DAERA" means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

"enforcement notice" is to be read in accordance with the following—

(a) regulation 8(2), in the case of an enforcement notice given by the Agency or NRW;

(b) regulation 20(2), in the case of an enforcement notice given by DAERA;

(c) regulation 26(2), in the case of an enforcement notice given by SEPA;

"England" includes the territorial sea which does not form part of Northern Ireland, Scotland or Wales;

"information notice" is to be read in accordance with regulation 35(2);

"Northern Ireland" includes the Northern Irish area within the meaning given by regulation 4(1) of the TSWR 2007 (which describes an area of territorial sea adjacent to Northern Ireland);

"NRW" means the Natural Resources Body for Wales;

"relevant provision" means a provision listed in Schedule 1;

"Scotland" includes the area of territorial sea falling within the Scottish area within the meaning given by regulation 4(1) of the TSWR 2007 (which describes an area of sea adjacent to Scotland);

"SEPA" means the Scottish Environment Protection Agency;

"territorial sea" means the territorial sea adjacent to the United Kingdom(**f**);

"Wales" includes the Welsh area within the meaning given by regulation 4(1) of the TSWR 2007 (which describes an area of territorial sea adjacent to Wales).

(**a**) OJ No L 137, 24.5.2017, p1.

(**b**) 1995 c.25. Relevant amending enactments are as follows. For section 41, S.I. 2017/1200. For section 108, section 55 of the Anti-social Behaviour Act 2003 (c.38), section 53 of the Clean Neighbourhoods and Environment Act 2005 (c.16), paragraph 3 of Schedule 2 to the Protection of Freedoms Act 2012 (c.9) and section 46 of the Regulatory Reform (Scotland) Act 2014 (asp 3) ("the RRSA 2014") and S.I. 2013/755 and 2016/475. For section 110, paragraph 29 of Schedule 3 to the RRSA 2014. For Schedule 18, section 46 of the RRSA 2014.

(**c**) S.I. 2002/3153 (N.I. 7), amended by S.I. 2011/2911 and 2017/1200. There are other amending instruments but none is relevant.

(**d**) S.I. 2007/1711, amended by S.I. 2014/861. There are other amending instruments but none is relevant.

(**e**) S.I. 1997/2778 (N.I. 19). Relevant amending enactments are as follows. For Article 72, section 5 of, and paragraph 2 of Schedule 1 and paragraph 1 of Schedule 2 to, the Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011 (c. 5) ("the WCLA 2011") and S.I. 2007/611 (N.I. 3). For Article 74, S.I. 2007/611. For Schedule 4, paragraph 1 of Schedule 2 to the WCLA 2011.

(**f**) Section 1(5) of the Territorial Sea Act 1987 (c.49) has the effect that the reference to the territorial sea adjacent to the United Kingdom must be construed in accordance with that section and with any provision made, or having effect as if made, under that section. S.I. 1989/482 and 2014/1353 are relevant instruments made under that section.

Definitions relating to offshore installations

4. In these Regulations, "offshore installation", "offshore area", "English offshore area" and "Scottish offshore area" have the meanings given by Schedule 2.

"Enforcing authority"

5. In these Regulations, "enforcing authority" means—

(a) the Agency, for England and offshore installations in the English offshore area;

(b) DAERA, for Northern Ireland;

(c) SEPA, for Scotland and offshore installations in the Scottish offshore area;

(d) NRW, for Wales.

Designation of competent authority

6. The enforcing authority is designated as the competent authority in accordance with Article 17 of the Mercury Regulation (which requires the designation of authorities responsible for performing certain functions under that Regulation).

PART 2

Civil enforcement in England and Wales

Application of this Part

7.—(1) This Part applies to civil enforcement—

(a) in England and in respect of offshore installations in the English offshore area (see paragraphs 1 and 3 of Schedule 2), and

(b) in Wales.

Enforcement notices

8.—(1) An enforcing authority may give a person an enforcement notice if condition A or B is met.

(2) An enforcement notice is a notice requiring the person to take action (including to stop doing any thing).

(3) Condition A is that the enforcing authority is of the opinion that the person has failed or is failing to comply with a relevant provision or provisions.

(4) Condition B is that the enforcing authority is of the opinion that the person is likely to fail to comply with a relevant provision or provisions.

(5) The action which the enforcing authority may require the person to take is any one or more of the following—

(a) action to ensure compliance with the relevant provision or provisions in question;

(b) action to remediate any environmental damage attributable to the non-compliance in question;

(c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(6) An enforcement notice must state—

(a) the matters constituting the failure or likelihood of failure,

(b) the action which must be taken under paragraph (5),

(c) the period (the "compliance period") within which the action must be taken,

(d) that there is a right to appeal against the enforcement notice and how that right may be exercised, and

(e) the consequences of failing to comply with the enforcement notice (see regulations 9, 10, 18 and 41 which relate to action to ensure compliance, civil penalties, civil proceedings and offences respectively).

(7) An enforcing authority may withdraw an enforcement notice given by it by informing the person to whom it was given in writing.

(8) A person to whom an enforcement notice is given may appeal to the First-tier Tribunal against it on one or more of the following grounds—

(a) that the decision to give the enforcement notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the nature of what is required by the enforcement notice is unreasonable;

(d) that the decision was unreasonable for any other reason;

(e) any other ground.

Action by authority to ensure compliance with enforcement notices

9.—(1) This regulation applies where—

(a) an enforcing authority has given an enforcement notice to a person, and

(b) the enforcing authority is of the opinion that the person has not carried out one or more of the actions referred to in the enforcement notice within the compliance period (see regulation 8(6)(c)).

(2) The enforcing authority may take any of the following action (whether the same as or different to any action referred to in the enforcement notice)—

(a) action to ensure compliance with the relevant provision or provisions in question;

(b) action to remediate any environmental damage attributable to the non-compliance in question;

(c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(3) If the enforcing authority proposes that any of the action under paragraph (2) be taken on any premises, the provisions referred to in paragraphs (4) and (5) (which relate to powers of enforcing authorities and persons authorised by them and related matters) apply but as if modified in the way shown.

(4) Where the Agency proposes to take the action, sections 108, 109 and 110 of, and Schedule 18 to, the EA 1995 (as they apply in England) apply but as if—

(a) in section 108 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in subsection (1);

(b) in section 108 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in subsection (4);

(c) in paragraph 6(1) of Schedule 18 the reference in the words before paragraph (a) to any power conferred by section 108(4)(a) or (b) or (5) of this Act included a reference to the power conferred by virtue of sub-paragraph (b) above.

(5) Where NRW proposes to take the action, sections 108, 109 and 110 of, and Schedule 18 to, the EA 1995 (as they apply in Wales) apply but as if—

(a) in section 108 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in subsection (1);

(b) in section 108 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in subsection (4);

(c) in paragraph 6(1) of Schedule 18 the reference in the words before paragraph (a) to any power conferred by section 108(4)(a) or (b) or (5) of this Act included a reference to the power conferred by virtue of sub-paragraph (b) above.

Civil penalties

10.—(1) An enforcing authority may give a person a civil penalty notice if condition A or B is met.

(2) A civil penalty notice is a notice requiring the person to pay a civil penalty.

(3) Condition A is that the enforcing authority is satisfied, on the balance of probabilities, that the person has failed or is failing to comply with a relevant provision.

(4) Condition B is that the enforcing authority is satisfied, on the balance of probabilities, that the person has failed or is failing to fully comply with an enforcement notice or information notice.

(5) An enforcing authority may determine the amount of civil penalty in respect of a failure but the amount must not exceed £200,000.

(6) A civil penalty notice must not be given to a person in respect of a failure—

(a) where the enforcing authority has started criminal proceedings against the person under regulation 41 for the failure and those proceedings have not concluded, or

(b) where the person has been convicted of an offence under regulation 41 for the failure.

(7) A civil penalty notice must state—

(a) the matters constituting the failure,

(b) the amount of the civil penalty,

(c) how payment must be made,

(d) the period (the "payment period") within which payment must be made, which must not be less than the period of 28 days beginning with the day on which the civil penalty notice is given,

(e) that there is a right to appeal against the civil penalty notice and how that right may be exercised,

(f) the consequences of failing to make payment within the payment period (see regulation 41 which relates to offences and paragraph (9)).

(8) Regulation 11 sets out action which must be taken by an enforcing authority before a civil penalty notice can be given by the enforcing authority.

(9) Following the payment period, the enforcing authority may recover the civil penalty (and any interest payable under regulation 12)—

(a) as a civil debt, or

(b) on the order of the court, as if payable under a court order.

(10) An enforcing authority may withdraw a civil penalty notice given by it by informing the person to whom it was given in writing.

(11) A person to whom a civil penalty notice is given may appeal to the First-tier Tribunal against it on one or more of the following grounds—

(a) that the decision to give the civil penalty notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the amount of the civil penalty is unreasonable;

(d) that the decision was unreasonable for any other reason;

(e) any other ground.

Further provision about civil penalties

11.—(1) An enforcing authority must not give a civil penalty notice to a person unless—

(a) the enforcing authority has given a notice (a "notice of intent") to the person stating that it proposes to give a civil penalty notice to the person, and

(b) the period for representations referred to in paragraph (6) has expired.

(2) A notice of intent must state—

(a) the matters constituting the failure to comply with the relevant provision in question or the enforcement notice or information notice,

(b) the maximum amount of the civil penalty,

(c) that the civil penalty will be payable within a period specified in the civil penalty notice, which must not be less than 28 days beginning with the day on which the civil penalty notice is given,

(d) that there is a right to make representations against the notice of intent and how that right may be exercised (see paragraphs (3) to (6)), and

(e) that the enforcing authority has power to vary the amount of civil penalty referred to in the notice.

(3) A person to whom a notice of intent is given may make representations to the enforcing authority about the proposal to give a civil penalty notice to the person.

(4) The right to make representations includes (but is not limited to) the right to make representations about the amount of civil penalty which the enforcing authority has power to determine under regulation 10(5).

(5) The representations must be in writing.

(6) The representations must be given to the enforcing authority within a period of 28 days beginning with the day on which the notice of intent was given.

(7) An enforcing authority may withdraw a notice of intent by informing the person to whom it was given in writing.

(8) An enforcing authority must pay any civil penalty and interest under regulation 12 into the Consolidated Fund.

Civil penalties: late payment interest

12.—(1) If a person fails to pay a civil penalty in full within the payment period (see regulation 10(7)(d)), interest is payable on the outstanding amount.

(2) Interest falls to be paid at a rate of 8% per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.

(3) The total amount of interest payable is not to exceed the civil penalty in question.

Recovery of enforcement costs

13.—(1) An enforcing authority may give a costs recovery notice to a person if any of conditions A to C are met.

(2) A costs recovery notice is a notice requiring the person to pay the enforcing authority's costs.

(3) Condition A is that the enforcing authority has given the person an enforcement notice.

(4) Condition B is that the enforcing authority has taken action to ensure compliance with an enforcement notice under regulation 9.

(5) Condition C is that the enforcing authority has given the person a civil penalty notice.

(6) In paragraph (2), the reference to costs is a reference—

(a) if condition A is met, to any costs relating to preparing and giving the enforcement notice,

(b) if condition B is met, to any costs relating to the action taken, and

(c) if condition C is met, to any costs relating to preparing and giving the civil penalty notice,

and includes a reference to the costs of any related investigation or expert advice (including legal advice).

(7) The costs must be paid by the person within the period (the "payment period") of 28 days beginning with the day on which the costs recovery notice is given.

(8) The costs recovery notice must state—

(a) the amount of the costs which must be paid,

(b) in general terms, how those costs have arisen,

(c) the payment period,

(d) how payment must be made,

(e) the consequences of failing to make payment within the payment period (see paragraph (9)), and

(f) that there is a right to appeal against the costs recovery notice and how that right may be exercised.

(9) Following the payment period, the enforcing authority may recover the costs referred to in the costs recovery notice and any related interest under regulation 14—

(a) as a civil debt, or

(b) on the order of the court, as if payable under a court order.

(10) An enforcing authority may withdraw a costs recovery notice given by it by informing the person to whom it was given in writing.

(11) A person to whom a costs recovery notice is given may appeal to the First-tier Tribunal against it on one or more of the following grounds—

(a) that the decision to give the costs recovery notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the amount of the costs is unreasonable;

(d) that the decision was unreasonable for any other reason;

(e) any other ground.

Enforcement costs: late payment interest

14.—(1) If a person fails to pay the costs referred to in a costs recovery notice in full within the payment period (see regulation 13(7)), interest is payable on the outstanding amount.

(2) Interest falls to be paid at a rate of 8% per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.

(3) The total amount of interest payable is not to exceed the amount of costs in question.

Further provision about appeals

15.—(1) Following an appeal under regulation 8(8), 10(11) or 13(11), the First-tier Tribunal (the "Tribunal") may—

(a) cancel the notice;

(b) vary the notice;

(c) confirm the notice;

(d) take any action which the enforcing authority is empowered to take in relation to the failure referred to in the notice;

(e) remit any decision relating to the notice to the enforcing authority.

(2) A civil penalty notice or costs recovery notice which is the subject of an appeal is suspended pending the decision of the Tribunal.

(3) An enforcement notice which is the subject of an appeal is not suspended pending the Tribunal's decision on the appeal.

Multiple enforcement

16.—(1) An enforcing authority may give (whether or not at the same time)—

(a) an enforcement notice, and

(b) a civil penalty notice,

to the same person in respect of the same failure to comply with a relevant provision.

(2) An enforcing authority must not (except in the circumstances described in paragraph (3)) give a civil penalty notice under regulation 10(3) to the same person more than once for the same failure.

(3) If a civil penalty notice is given to a person under regulation 10(3) but subsequently withdrawn, the enforcing authority may give a further civil penalty notice to the person for the failure described in the original notice.

(4) An enforcing authority must not (except in the circumstances described in paragraph (5)) give a civil penalty notice under regulation 10(4) to the same person more than once for the same failure.

(5) If a civil penalty notice is given to a person under regulation 10(4) but subsequently withdrawn, the enforcing authority may give a further civil penalty notice to the person for the failure described in the original notice.

Publication of civil enforcement

17.—(1) Each enforcing authority must from time to time publish reports about cases in which civil penalty notices have been given.

(2) A report must, for each civil penalty notice which has been given, state—

(a) the person to whom the notice was given,

(b) the nature of the breach, and

(c) the amount of the penalty.

(3) An enforcing authority must not publish information under this regulation about a civil penalty notice unless the appeal period referred to in the civil penalty notice has ended.

(4) An enforcing authority must not publish information under this regulation about a civil penalty notice which is the subject of an appeal under regulation 8(8), 10(11) or 13(11) before the appeal is decided.

(5) An enforcing authority must not publish information under this regulation about a civil penalty notice which has been withdrawn or cancelled.

Civil proceedings

18.—(1) An enforcing authority may (subject to paragraph (5)) start proceedings in the County Court or the High Court to secure a remedy against a person if any of conditions A to C are met.

(2) Condition A is that the enforcing authority is of the opinion that the person has failed or is failing to comply with a relevant provision or provisions.

(3) Condition B is that the enforcing authority is of the opinion that the person is likely to fail to comply with a relevant provision or provisions.

(4) Condition C is that the enforcing authority is of the opinion that the person has failed to comply with all or part of an enforcement notice.

(5) Before starting proceedings under this regulation the enforcing authority must be of the opinion that any other remedy under these Regulations would be ineffectual.

PART 3

Enforcement specific to Northern Ireland

Application of this Part and interpretation

19.—(1) This Part applies to enforcement by DAERA in Northern Ireland.

(2) In this Part, "appeals commission" means the planning appeals commission which continues to be established in accordance with section 203 of the Planning Act (Northern Ireland) 2011(**a**).

Enforcement notices

20.—(1) DAERA may give a person an enforcement notice if condition A or B is met.

(2) An enforcement notice is a notice requiring the person to take action (including to stop doing any thing).

(3) Condition A is that DAERA is of the opinion that the person has failed or is failing to comply with a relevant provision or provisions.

(4) Condition B is that DAERA is of the opinion that the person is likely to fail to comply with a relevant provision or provisions.

(5) The action which DAERA may require the person to take is any one or more of the following—

(a) action to ensure compliance with the relevant provision or provisions in question;

(b) action to remediate any environmental damage attributable to the non-compliance in question;

(c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(6) An enforcement notice must state—

(a) the matters constituting the failure or likelihood of failure,

(b) the action which must be taken under paragraph (5),

(c) the period (the "compliance period") within which the action must be taken,

(d) that there is a right to appeal against the enforcement notice and how that right may be exercised, and

(e) the consequences of failing to comply with the enforcement notice (see regulation 21 which relates to action to ensure compliance).

(7) DAERA may withdraw an enforcement notice by informing the person to whom it was given in writing.

(8) A person to whom an enforcement notice is given may appeal to the appeals commission against it on one or more of the following grounds—

(a) that the decision to give the enforcement notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the nature of what is required by the enforcement notice is unreasonable;

(d) that the decision was unreasonable for any other reason;

(e) any other ground.

(**a**) 2011 c.25.

Action by DAERA to ensure compliance with enforcement notices

21.—(1) This regulation applies where—

(a) DAERA has given an enforcement notice to a person, and

(b) DAERA is of the opinion that the person has not carried out one or more of the actions referred to in the enforcement notice within the compliance period (see regulation 20(6)(c)).

(2) DAERA may take any of the following action (whether the same as or different to any action referred to in the enforcement notice)—

(a) action to ensure compliance with the relevant provision or provisions in question;

(b) action to remediate any environmental damage attributable to the non-compliance in question;

(c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(3) If DAERA proposes that any of the action under paragraph (2) be taken on any premises, Articles 72, 73, 73A and 74 of, and Schedule 4 to, the WCLO 1997 (which relate to powers of DAERA and persons authorised by it and related matters) apply but as if—

(a) in Article 72 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in sub-paragraph (1);

(b) in Article 72 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in sub-paragraph (2);

(c) in paragraph 5 of Schedule 4 the reference in the words before sub-paragraph (1)(a) to any power conferred by Article 72(2)(a) or (b) or (3) included a reference to the power conferred under sub-paragraph (b) above.

Recovery of enforcement costs

22.—(1) DAERA may give a person a costs recovery notice if condition A or B is met.

(2) A costs recovery notice is a notice requiring the person to pay DAERA's costs.

(3) Condition A is that DAERA has given the person an enforcement notice.

(4) Condition B is that DAERA has taken action to ensure compliance with an enforcement notice under regulation 21.

(5) In paragraph (2), the reference to costs is a reference—

(a) if condition A is met, to any costs relating to preparing and giving the enforcement notice, and

(b) if condition B is met, to any costs relating to the action taken,

and includes a reference to the costs of any related investigation or expert advice (including legal advice).

(6) The costs must be paid by the person within the period (the "payment period")—

(a) of 56 days beginning with the day on which the costs recovery notice is given, where the costs recovery notice has not been appealed under paragraph (9);

(b) of 28 days beginning with the day on which the appeal has been determined or withdrawn, where the costs recovery notice has been appealed under paragraph (9).

(7) The costs recovery notice must state—

(a) the amount of the costs which must be paid,

(b) in general terms, how those costs have arisen,

(c) the payment period,

(d) how payment must be made,

(e) the consequences of failing to make payment within the payment period (see paragraph (8)), and

(f) that there is a right to appeal against the costs recovery notice and how that right may be exercised.

(8) Following the payment period, DAERA may recover the costs referred to in the costs recovery notice and any related interest under regulation 23 as a civil debt.

(9) DAERA may withdraw a costs recovery notice given by it by informing the person to whom it was given in writing.

(10) A person to whom a costs recovery notice is given may appeal to the appeals commission against it on one or more of the following grounds—

(a) that the decision to give the costs recovery notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the amount of the costs is unreasonable;

(d) that the decision was unreasonable for any other reason;

(e) any other ground.

Late payment interest

23.—(1) If a person fails to pay the costs referred to in a costs recovery notice in full within the payment period, interest is payable on the outstanding amount.

(2) Interest falls to be paid at a rate of 8% per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.

(3) The total amount of interest payable is not to exceed the amount of costs in question.

Further provision about appeals

24.—(1) A person (the "appellant") who wishes to appeal to the appeals commission under regulation 20(8) or 22(10) must—

(a) give the appeals commission written notice of the appeal (the "notice of appeal"),

(b) pay the relevant fee (see paragraph (4)), and

(c) as soon as is reasonably practicable, give DAERA a copy of the notice of appeal.

(2) A notice of appeal must include a statement of the grounds of the appeal.

(3) A notice of appeal must be given before the expiry of the period of 28 days beginning with the day on which the enforcement notice was given.

(4) The relevant fee is the amount specified in regulation 9(1) of the Planning Fees (Deemed Planning Applications and Appeals) Regulations (Northern Ireland) 2015(**a**).

(5) The appeals commission may determine that an appeal is to be determined solely by reference to written representations.

(6) The appellant and DAERA may make written representations to the appeals commission about its determination under paragraph (5).

(7) The appeals Commission must take any such representations into account in its determination under paragraph (5).

(8) A costs recovery notice which is the subject of an appeal is suspended pending the appeals commission's decision on the appeal.

(**a**) S.R. (N.I) 2015/136.

(9) An enforcement notice which is the subject of an appeal is not suspended pending the appeals commission's decision on the appeal.

(10) The appellant may withdraw a notice of appeal by—

(a) giving written notice to the appeals commission stating that the appeal is withdrawn, and

(b) as soon as is reasonably practicable, notifying DAERA.

(11) The appeals commission may (in addition to its power to confirm, reverse or vary a determination under section 204 of the Planning Act (Northern Ireland) 2011))—

(a) take any action DAERA is empowered to take in relation to the failure referred to in the notice;

(b) remit any decision relating to the notice to DAERA.

(12) A determination of the appeals commission is final.

PART 4

Enforcement specific to Scotland

Application of this Part

25. This Part applies to enforcement—

(a) in Scotland, and

(b) in respect of offshore installations in the Scottish offshore area (see paragraphs 1 and 4 of Schedule 2).

Enforcement notices

26.—(1) SEPA may give a person an enforcement notice if condition A or B is met.

(2) An enforcement notice is a notice requiring the person to take action (including to stop doing any thing).

(3) Condition A is that SEPA is of the opinion that the person has failed or is failing to comply with the relevant provision or provisions.

(4) Condition B is that SEPA is of the opinion that the person is likely to fail to comply with the relevant provision or provisions.

(5) The action which SEPA may require the person to take is any one or more of the following—

(a) action to ensure compliance with the relevant provision or provisions in question;

(b) action to remediate any environmental damage attributable to the non-compliance in question;

(c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(6) An enforcement notice must state—

(a) the matters constituting the failure or likelihood of failure,

(b) the action which must be taken under paragraph (5),

(c) the period (the "compliance period") within which the action must be taken,

(d) that there is a right to appeal against the enforcement notice and how that right may be exercised, and

(e) the consequences of failing to comply with the enforcement notice (see regulations 27, 31, 32 and 41 which relate to action to ensure compliance, court proceedings, monetary penalties and offences respectively).

(7) SEPA may withdraw an enforcement notice by informing the person to whom it was given in writing.

(8) A person to whom an enforcement notice is given may appeal to the Scottish Ministers against it on one or more of the following grounds—

(a) that the decision to give the enforcement notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the nature of what is required by the enforcement notice is unreasonable;

(d) that the decision was unreasonable for any other reason;

(e) any other ground.

Action by SEPA to ensure compliance with enforcement notices

27.—(1) This regulation applies where—

(a) SEPA has given an enforcement notice to a person, and

(b) SEPA is of the opinion that the person has not carried out one or more of the actions referred to in the enforcement notice within the compliance period (see regulation 26(6)(c)).

(2) SEPA may take any of the following action (whether the same as or different to any action referred to in the enforcement notice)—

(a) action to ensure compliance with the relevant provision or provisions in question;

(b) action to remediate any environmental damage attributable to the non-compliance in question;

(c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(3) If SEPA proposes that any of the action under paragraph (2) be taken on any premises, sections 108, 108A, 109 and 110 of, and Schedule 18 to, the EA 1995 (as they apply in Scotland) apply but as if—

(a) in section 108 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in subsection (1);

(b) in section 108 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in subsection (4);

(c) in paragraph 6(1) of Schedule 18 the reference in the words before paragraph (a) to any power conferred by section 108(4)(a) or (b) or (5) of this Act included a reference to the power conferred by virtue of sub-paragraph (b) above.

Recovery of enforcement costs

28.—(1) SEPA may give a person a costs recovery notice if condition A or B is met.

(2) A costs recovery notice is a notice requiring the person to pay SEPA's costs.

(3) Condition A is that the SEPA has given the person an enforcement notice.

(4) Condition B is that SEPA has taken action to ensure compliance with an enforcement notice under regulation 27.

(5) In paragraph (2), the reference to costs is a reference—

(a) if condition A is met, to any costs relating to preparing and giving the enforcement notice, and

(b) if condition B is met, to any costs relating to the action taken,

and includes a reference to the costs of any related investigation or expert advice (including legal advice).

(6) The costs must be paid by the person within the period (the "payment period")—

(a) of 56 days beginning with the day on which the costs recovery notice is given, where the costs recovery notice has not been appealed under paragraph (10);

(b) of 28 days beginning with the day on which the appeal has been determined or withdrawn, where the costs recovery notice has been appealed under paragraph (10);

(c) of so many days as the Scottish Ministers may specify, where the costs recovery notice has been appealed under paragraph (10) and the Scottish Ministers have so specified.

(7) The costs recovery notice must state—

(a) the amount of the costs which must be paid,

(b) in general terms, how those costs have arisen,

(c) the payment period,

(d) how payment must be made,

(e) the consequences of failing to make payment within the payment period (see paragraph (9)), and

(f) that there is a right to appeal against the costs recovery notice and how that right may be exercised.

(8) Following the payment period, SEPA may recover the costs referred to in the costs recovery notice and any related interest under regulation 29 as a civil debt.

(9) The costs are recoverable as if they were payable under an extract registered decree arbitral bearing a warrant for execution issued by a sheriff of any sheriffdom.

(10) SEPA may withdraw a costs recovery notice given by it by informing the person to whom it was given in writing.

(11) A person to whom a costs recovery notice is given may appeal to the Scottish Ministers against it on one or more of the following grounds—

(a) that the decision to give the costs recovery notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that some or all of the costs were not incurred or were unnecessarily incurred;

(d) any other ground.

Late payment interest

29.—(1) If a person fails to pay the costs referred to in a costs recovery notice in full within the payment period, interest is payable on the outstanding amount.

(2) Interest falls to be paid at a rate of 8% per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.

(3) The total amount of interest payable is not to exceed the amount of costs in question.

Further provision about appeals

30.—(1) Following an appeal under regulation 26(8) or 28(11), the Scottish Ministers may—

(a) cancel the notice;

(b) vary the notice;

(c) confirm the notice;

(d) take any action which SEPA is empowered to take in relation to the failure referred to in the notice;

(e) remit any decision relating to the notice to SEPA.

(2) A determination of an appeal by the Scottish Ministers is final.

(3) The Scottish Ministers may—

(a) appoint a person to exercise any function under this regulation on the Scottish Ministers' behalf, or

(b) refer a matter relating to the exercise of any function under this regulation to a person the Scottish Ministers may appoint for that purpose.

(4) An enforcement notice which is the subject of an appeal is not suspended pending the Scottish Minister's decision on the appeal.

(5) A costs recovery notice which is the subject of an appeal is suspended pending the decision of the Scottish Ministers.

(6) Schedule 3 sets out further provision about appeals to the Scottish Ministers.

Enforcement by the courts

31.—(1) SEPA may start proceedings in a court of competent jurisdiction to secure a remedy against a person of any of conditions A to C are met.

(2) Condition A is that SEPA is of the opinion that the person has failed or is failing to comply with a relevant provision or provisions.

(3) Condition B is that SEPA is of the opinion that the person is likely to fail to comply with a relevant provision or provisions.

(4) Condition C is that SEPA is of the opinion that the person has failed or is failing to comply with all or part of an enforcement notice.

Monetary penalties, costs recovery and enforcement undertakings

32.—(1) The Environmental Regulation (Enforcement Measures) (Scotland) Order 2015(**a**) is amended as follows.

(2) At the end of the table in Schedule 4 (which relates to relevant offences and fixed penalty amounts) insert—

"The Control of Mercury (Enforcement) Regulations 2017				
Regulation 41(1) (non-compliance with a relevant provision)	YES	YES	YES	MEDIUM
Regulation 41(2) (non-compliance with an enforcement notice)	YES	YES	YES	MEDIUM
Regulation 41(3) (non-compliance with an information notice)	YES	YES	YES	LOW
Regulation 41(4) (giving information which is false or misleading)	YES	NO	NO	HIGH
Regulation 41(5) (failing to produce a document or record)	YES	NO	NO	LOW"

(**a**) S.S.I. 2015/383, amended by S.S.I. 2016/161; there are other amending instruments but none is relevant.

PART 5

Further provision about enforcement

Imports and exports: assistance by customs officials

33.—(1) A customs official may assist an enforcing authority by seizing and detaining any material if the condition in paragraph (2) is met.

(2) The condition is that the customs official has reasonable grounds to suspect the material is being exported or imported in breach of any one or more of the following provisions of the Mercury Regulation—

(a) Article 3(1) (which prohibits the export of mercury);

(b) Article 3(2) (which prohibits the export of listed mercury compounds);

(c) Article 3(4) (which prohibits the export of mercury compounds not listed under Article 3(2) for the purposes of reclaiming mercury);

(d) Article 4(1) (which prohibits the import of mercury and listed mixtures of mercury, including mercury waste, other than for disposal as waste where the exporting country has no conversion capacity);

(e) Article 4(2) (which prohibits the import of other mixtures of mercury and mercury compounds for purposes of reclaiming mercury);

(f) Article 4(3) (which prohibits the import of mercury for use in artisanal and small-scale gold mining and processing);

(g) Article 5(1) (which prohibits the export, import and manufacturing of listed mercury-added products);

(h) Article 8(1) (which prohibits placing on the market new mercury-added products).

(3) A customs official is for the purposes of this regulation a person who is—

(a) a general customs official designated under section 3 of the Borders, Citizenship and Immigration Act 2009(**a**), or

(b) a customs revenue official designated under section 11 of that Act.

(4) Anything seized and detained must—

(a) not be detained for longer than 5 working days, and

(b) be dealt with in such manner as the Secretary of State may direct.

(5) A working day is for the purposes of paragraph (4) any day except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**b**) in any part of the United Kingdom.

Information sharing

34.—(1) A relevant authority may disclose information obtained by it in the course of performing a relevant function to any other person if condition A or B is met.

(2) Condition A is that the disclosure is made in circumstances where it is necessary for the other person to have the information for the purpose of performing a function of that person under any enactment.

(3) Condition B is that the disclosure is made for the purpose of facilitating the performance by the relevant authority of any relevant function.

(4) A relevant function is a function conferred on the relevant authority—

(a) under or by virtue of these Regulations,

(**a**) 2009 c.11.
(**b**) 1971 c.80, amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2).

(b) under section 108 of the EA 1995, or

(c) under Article 72 of the WCLO 1997.

(5) The Welsh Ministers may disclose relevant information to any other person if the condition in paragraph (7) is met.

(6) Relevant information is information obtained by the Welsh Ministers in the course of investigating compliance with Article 10(4) of the Mercury Regulation (which relates to amalgam separators) in accordance with powers conferred under any enactment.

(7) The condition is that the disclosure is made in circumstances where it is necessary for the other person to have the information for the purpose of performing a function of that person under any enactment.

(8) Disclosure which is authorised by this regulation does not breach—

(a) an obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of information (however imposed).

(9) But nothing in this regulation authorises the disclosure of information—

(a) where doing so contravenes the Data Protection Act 1998(**a**), or

(b) where that disclosure would, in the opinion of the Secretary of State, be contrary to the interests of national security.

(10) This regulation does not limit the circumstances in which information may be disclosed apart from this regulation.

(11) A person to whom information is disclosed under this regulation may disclose that information onwardly to any other person, subject to paragraph (12).

(12) Paragraphs (1) to (4) and (8) to (10) apply in respect of the onward disclosure but as if—

(a) references to a relevant authority were to the person proposing the onward disclosure;

(b) the requirement under paragraph (1) that the information be obtained in the course of performing a relevant function were met.

(13) In paragraph (4), the reference to a function conferred under section 108 of the EA 1995 or Article 72 of the WCLO 1997 is a reference to the function only in so far as the function is performed in connection with these Regulations.

(14) In this regulation—

"enactment" includes—

(a) an enactment comprised in, or in an instrument made under, an Act of the Parliament of Northern Ireland,

(b) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and

(c) an enactment comprised in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;

"relevant authority" means—

(a) a customs official (within the meaning of regulation 33(3)),

(b) an enforcing authority, or

(c) the Secretary of State.

Information notices

35.—(1) An enforcing authority may give a person an information notice if the condition in paragraph (3) is met.

(**a**) 1998 c.29.

(2) An information notice is a notice requiring the person to give information specified in the notice to the enforcing authority.

(3) The condition is that the enforcing authority is of the opinion that it requires the information to perform any one or more of the functions conferred on it under or by virtue of these Regulations.

(4) An information notice must state—

(a) the information which is required by the enforcing authority,

(b) the period within which the information must be given to the enforcing authority, and

(c) the consequences of failing to comply with the information notice.

(5) An enforcing authority may require information to be given in a particular form (for example in an electronic form) by stating this and describing the form in the information notice.

(6) An enforcing authority may withdraw an information notice given by it by informing the person to whom it was given in writing.

Further provision about giving notices

36.—(1) This regulation applies to the giving of notices under regulations 8 to 13, 20, 22, 26, 28 and 35.

(2) A notice takes effect when given.

(3) A notice may be given to a person by—

(a) handing it to the person,

(b) leaving it at the person's proper address,

(c) sending it by post to the person at that address, or

(d) sending it to the person by electronic means (see paragraph (9) which sets out the circumstances in which a notice may be sent by electronic means).

(4) A notice to a body corporate may be given to the secretary or clerk of that body.

(5) A notice to a partnership may be given to a partner or a person who has the control or management of the partnership business.

(6) For the purposes of this regulation and of section 7 of the Interpretation Act 1978(**a**) (which relates to service of documents by post) in its application to the section, the proper address of a person is—

(a) in the case of a body corporate or its secretary or clerk, the address of the body's registered or principal office;

(b) in the case of a partnership, a partner or person having the control or management of the partnership business, the address of the principal office of the partnership;

(c) in any other case, the person's last known address.

(7) For the purposes of paragraph (6) the principal office of a company registered outside the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom.

(8) If a person has specified an address in the United Kingdom, other than the person's proper address within the meaning of paragraph (6), as the one at which the person or someone on the person's behalf will accept notices of the same description as a notice under regulation 8, 10, 11, 13, 20, 22, 26, 28 or 35 (as the case may be), that address is also treated for the purposes of this regulation and section 7 of the Interpretation Act 1978 as the person's proper address.

(9) A notice may be sent to a person by electronic means only if—

(a) the person has indicated that notices of the same description as a notice under regulation 8, 10, 11, 13, 20, 22, 26, 28 or 35 (as the case may be) may be given to the person by

(**a**) 1978 c.30.

being sent to an electronic address and in an electronic form specified for that purpose, and

(b) the notice is sent to that address in that form.

(10) A notice sent to a person by electronic means is, unless the contrary is proved, to be treated as having been given at 9 am on the working day (within the meaning given by regulation 33(5)) immediately following the day on which it was sent.

(11) In this regulation, "electronic address" means any number or address used for the purposes of sending or receiving documents or information by electronic means.

Authorising imports

37.—(1) A person (the "applicant") may make an application to an enforcing authority for authorisation to import mercury or a mixture of mercury listed in Annex I of the Mercury Regulation in accordance with the second subparagraph of Article 4(1) of that Regulation.

(2) An application must—

(a) be in writing in such form as the enforcing authority may determine (for example in an electronic form);

(b) contain such information as the enforcing authority may require;

(c) in respect of an application to the Agency, NRW or SEPA, be accompanied by any charge which it may require pursuant to section 41(1)(k) of the EA 1995;

(d) in respect of an application to DAERA, be accompanied by any charge which DAERA may require pursuant to paragraph 9C of Schedule 1 to the EO 2002.

(3) After receiving an application the enforcing authority must either—

(a) grant the authorisation (subject to conditions if appropriate), or

(b) refuse to grant the authorisation.

(4) If an enforcing authority requires the applicant to give further information before reaching its decision, the enforcing authority may write to the applicant stating that it requires that information before any decision is reached.

(5) If an enforcing authority requests further information under paragraph (4), the duty to determine the application under paragraph (3) does not apply until the authority has received the information.

(6) The enforcing authority must inform the applicant in writing of—

(a) its decision under paragraph (3), and

(b) where the decision is to refuse to grant the authorisation, the reasons for the refusal.

Notification of new mercury-added products and manufacturing processes

38.—(1) The enforcing authority must perform the functions of the United Kingdom under Article 8(4) of the Mercury Regulation (which refers to assessing and forwarding notifications under Article 8(3) of that Regulation if certain criteria are fulfilled).

(2) A notification to the Agency, NRW or SEPA pursuant to paragraph (1) must be accompanied by any charge which it may require pursuant to section 41(1)(k) of the EA 1995.

(3) A notification to DAERA pursuant to paragraph (1) must be accompanied by any charge which DAERA may require pursuant to paragraph 9C of Schedule 1 to the EO 2002.

PART 6

Offshore installations: assistance by Secretary of State

Offshore installations: assistance by Secretary of State

39.—(1) The Secretary of State may assist an enforcing authority performing functions conferred on the authority under these Regulations in respect of an offshore installation situated in any one or more of the following areas—

(a) the territorial sea (see regulation 3);

(b) the English offshore area (see paragraphs 1 and 3 of Schedule 2);

(c) the Scottish offshore area (see paragraphs 1 and 4 of Schedule 2).

(2) The power to assist includes (but is not limited to) power to do either or both of the following—

(a) inspect the offshore installation;

(b) provide the enforcing authority with information about the offshore installation.

(3) For those purposes the Secretary of State may appoint in writing a person (an "appointed person") to exercise the powers set out in paragraph (4).

(4) The powers are—

(a) to board the offshore installation at any reasonable time;

(b) to be accompanied by any other person authorised by the Secretary of State;

(c) to take any equipment or materials which might be required;

(d) to investigate any matter and examine any thing;

(e) to direct that any part of the offshore installation be left undisturbed (whether generally or in particular respects);

(f) to take measurements or photographs or make recordings;

(g) to take samples of any thing found on the offshore installation or in the atmosphere or any land, seabed (including its subsoil) or water in the vicinity of the offshore installation;

(h) to require a person who the appointed person believes is able to give information which is relevant—

(i) to attend at a place and time specified by the appointed person,

(ii) to answer questions, and

(iii) to sign a declaration of truth of that person's answers;

(i) to require the production of any document or record or extract of one and, if required—

(i) make a copy of it;

(ii) take possession of it for so long as is necessary in the opinion of the appointed person (paragraph (6) contains further provision about this);

(j) to require a person to provide facilities and assistance in relation to—

(i) any matters or things within that person's control, or

(ii) which that person has responsibilities.

(5) An appointed person must show the person's written appointment to another person if—

(a) the appointed person is proposing to exercise or is exercising a power under paragraph (4), and

(b) the other person asks to see it.

(6) An appointed person must not under paragraph (4)(i)(ii)—

(a) take possession of a document or record (other than to make a copy) if making a copy would be enough;

(b) remove a document or record from any place which is required by law to be kept at the place.

(7) An appointment (or authorisation) under any of the following is treated as an appointment for the purposes of paragraph (3), unless the Secretary of State specifies to the contrary—

(a) regulation 16 of the Offshore Chemicals Regulations 2002(**a**);

(b) regulation 12 of the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005(**b**);

(c) regulation 50B of the Transfrontier Shipment of Waste Regulations 2007(**c**).

Admissibility etc.

40.—(1) An answer given by a person in response to a requirement under regulation 39(4)(h) may be used in evidence against the person, subject to paragraphs (2) to (4).

(2) In criminal proceedings against the person—

(a) no evidence relating to the answer may be adduced by or on behalf of the prosecution, and

(b) no question relating to it may be asked by or on behalf of the prosecution.

(3) Paragraph (2) does not apply if the proceedings are for an offence under—

(a) regulation 44(3),

(b) section 5 of the Perjury Act 1911 (false statutory declarations and other false statements without oath)(**d**),

(c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations not on oath)(**e**), or

(d) Article 10 of the Perjury (Northern Ireland) Order 1979 (false statutory declarations and other false unsworn statements)(**f**).

(4) Paragraph (2) does not apply if, in the proceedings—

(a) evidence relating to the answer is adduced by or on behalf of the person who gave it, or

(b) a question relating to it is asked by or on behalf of that person.

(5) Nothing in this Part is to be taken in England and Wales or Northern Ireland to confer power to compel the production by any person of a document or information in respect of a claim to legal professional privilege.

(6) Nothing in this Part is to be taken in Scotland to confer power to compel the production by any person of a document or information in respect of a claim to confidentiality of communications.

PART 7

Criminal enforcement

Offences in respect of laws relating to mercury, enforcement notices and information

41.—(1) A person commits an offence if the person fails to comply with a relevant provision.

(2) A person commits an offence if the person fails to comply with an enforcement notice.

(**a**) S.I. 2002/1355, to which there are amendments not relevant to these Regulations.
(**b**) S.I. 2005/2055, to which there are amendments not relevant to these Regulations.
(**c**) S.I. 2007/1711, amended by S.I. 2014/861; there are other amending instruments but none is relevant.
(**d**) 1911 c.6.
(**e**) 1995 c.39.
(**f**) S.I. 1979/1714 (N.I. 19).

(3) A person commits an offence if the person fails to comply with an information notice.

(4) A person commits an offence if the person gives an enforcing authority information which—

(a) the person knows is false or misleading, and

(b) is given in connection with the performance of any function conferred on the enforcing authority under or by virtue of these Regulations.

(5) A person commits an offence if the person fails to produce a document or record for an enforcing authority performing a function pursuant to regulation 6.

Limitation of regulation 41 offences in England and Wales only

42.—(1) Proceedings against a person for an offence under regulation 41(1) must not be started if—

(a) a civil penalty notice has been given to the person under regulation 10(3) for the failure, and

(b) the civil penalty notice has not been withdrawn.

(2) Proceedings against a person for an offence under regulation 41(2) or (3) must not be started if—

(a) a civil penalty notice has been given to the person under regulation 10(4) for the failure, and

(b) the civil penalty notice has not been withdrawn.

(3) Proceedings against a person for an offence under regulation 41(1) or (2) must not be started if civil proceedings have been started against the person under regulation 18 in respect of the failure.

Offences relating to customs officials

43.—(1) A person commits an offence if the person intentionally obstructs a customs official performing a function under regulation 33(1).

(2) A person commits an offence if the person fails, without reasonable excuse, to give a customs official performing a function under regulation 33(1) information which the customs official requires.

(3) A person commits an offence if the person gives a customs official performing a function under regulation 33(1) information knowing it to be false or misleading.

(4) A person commits an offence if the person fails to produce a document or record for a customs official performing a function under regulation 33(1) when required to do so.

Offences relating to inspections of offshore installations

44.—(1) A person commits an offence if the person intentionally obstructs an appointed person performing a function under regulation 39.

(2) A person commits an offence if the person fails, without reasonable excuse, to give an appointed person performing a function under regulation 39 information which the appointed person requires.

(3) A person commits an offence if the person gives an appointed person performing a function under regulation 39 information knowing it to be false or misleading.

(4) A person commits an offence if the person fails to produce a document or record for an appointed person performing a function under regulation 39 when required to do so.

Proceedings: partnerships etc.

45.—(1) Proceedings for an offence under this Part alleged to have been committed by a partnership must be started in the name of the partnership (and not in that of any of its members).

(2) Proceedings for an offence under this Part alleged to have been committed by an unincorporated association must be started in the name of the association (and not in that of any of its members).

(3) A fine imposed on a partnership (other than a Scottish partnership) on its conviction of an offence is to be paid out of the funds of the partnership.

(4) A fine imposed on an unincorporated association on its conviction of an offence is to be paid out of the funds of the association.

(5) Rules of court relating to the service of documents have effect as if a partnership or unincorporated association were a body corporate.

(6) In proceedings for an offence under this Part started against a partnership or an unincorporated association in England and Wales, section 33 of the Criminal Justice Act 1925(**a**) and Schedule 3 to the Magistrates' Courts Act 1980(**b**) apply as they do in relation to a body corporate.

(7) In proceedings for an offence under this Part started against a partnership or an unincorporated association in Northern Ireland, section 18 of the Criminal Justice (Northern Ireland) Act 1945(**c**) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(**d**) apply as they do in relation to a body corporate.

Offences by bodies corporate etc.

46.—(1) If an offence under this Part committed by a body corporate is shown to be one or both of the following—

(a) to have been committed with the consent or the connivance of an officer of the body corporate;

(b) to be attributable to any neglect on the part of an officer,

the officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with their functions of management as if the member was a director of the body.

(3) If an offence under this Part committed by a partnership is shown to be one or both of the following—

(a) committed with the consent or the connivance of an officer;

(b) attributable to any neglect on the part of an officer,

that officer (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) If an offence under this Part committed by an unincorporated association (other than a partnership) is shown to be one or both of the following—

(a) committed with the consent or the connivance of an officer of the association;

(b) attributable to any neglect on the part of an officer,

that officer (as well as the association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(5) "Officer" means—

(a) in relation to a body corporate—

(**a**) 1925 c.86. Relevant amending enactments are Schedule 6 to the Magistrates' Court Act 1952 (c.55) and paragraph 19 of Schedule 8 to the Courts Act 1971 (c.23).

(**b**) 1980 c.43. Relevant amending enactments are sections 25 and 101 of, and Schedule 13 to, the Criminal Justice Act 1991 and paragraph 51 of Schedule 3 to, and Schedule 37 to, the Criminal Justice Act 2003 (c.44).

(**c**) 1945 c.15 (N.I. 1). Relevant amending enactments are paragraph 1 of Schedule 12 to the Justice (Northern Ireland) Act 2002 (c.26) and S.I 1972/538 (N.I. 1).

(**d**) S.I. 1981/1675 (N.I. 26).

(i) a director, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity, or

(ii) an individual who is a controller of the body, or a person purporting to act as a controller;

(b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such a capacity;

(c) in relation to a partnership, means a partner, and any manager, secretary or similar officer of the partnership, or a person purporting to act in such a capacity.

Offences: penalties

47. A person who commits an offence under this Part is liable—

(a) on summary conviction in England and Wales, to a fine or to imprisonment for a term not exceeding three months or to both;

(b) on summary conviction in Northern Ireland, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both;

(c) on summary conviction in Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both;

(d) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

PART 8

Amendments and revocation

Amendment to section 41 of the Environment Act 1995

48. In section 41(1) of the EA 1995(**a**) (which confers power to make schemes imposing charges), after paragraph (h) insert—

"(k) as a means of recovering costs incurred by it in performing functions conferred by Regulation EU 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008(**b**), the Agency, the Natural Resources Body for Wales or SEPA may require the payment to it of such charges as may from time to time be prescribed;".

Amendment to the Control of Major Accident Hazards Regulations 2015

49. In regulation 3 of the Control of Major Accident Hazards Regulations 2015(**c**) (which relates to the application of those regulations), omit paragraph (2)(g)(ii).

Amendment to the Environment (Northern Ireland) Order 2002

50. In Schedule 1 to the EO 2002 (which lists purposes for which regulations may be made under Article 4 to that Order), after paragraph 9B insert—

"**9C.** Without prejudice to paragraph 9, authorising the Department to make schemes for the charging by enforcing authorities of fees or other charges as a means of recovering costs incurred by them in performing functions conferred by Regulation EU 2017/852 of the

(**a**) 1995 c.25. Relevant amending enactments are paragraph 39 of Schedule 4 to the Flood and Water Management Act 2010 (c.29) and S.I. 2007/1711, 2007/3106, 2008/3087, 2009/890, 2011/2911, 2012/2788, 2013/755 and 2013/1821.
(**b**) OJ No L 137, 24.5.2017, p1.
(**c**) S.I. 2015/483, to which there are amendments not relevant to these Regulations.

European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008.".

Revocation of the Mercury Export and Data (Enforcement) Regulations 2010

51. The Mercury Export and Data (Enforcement) Regulations 2010(**a**) are revoked.

Thérèse Coffey
Parliamentary Under Secretary of State
4th December 2017 Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 3

Laws relating to mercury

1. The provisions of the Mercury Regulation are—

Provision	*Subject matter*
Article 3(1)	Prohibits the export of mercury
Article 3(2)	Prohibits the export of listed mercury compounds
Article 3(4)	Prohibits the export of mercury compounds not listed under Article 3(2) for the purposes of reclaiming mercury)
Article 4(1)	Prohibits the import of mercury and listed mixtures of mercury including mercury waste for purposes other than disposal as waste
Article 4(2)	Prohibits the import of other mixtures of mercury and mercury compounds for purposes of reclaiming mercury
Article 4(3)	Prohibits the import of mercury for use in artisanal and small-scale gold mining and processing
Article 5(1)	Prohibits the export, import and manufacturing of listed mercury-added products
Article 7(1)	Prohibits the use of mercury compounds in

(**a**) S.I. 2010/265.

	listed manufacturing processes
Article 7(2)	Makes the use of mercury compounds in other listed manufacturing processes subject to certain requirements
Article 8(1)	Prohibits manufacturing new mercury-added products or placing them on the market
Article 8(2)	Prohibits new manufacturing processes involving the use of mercury or mercury compounds
Article 9(1)	Prohibits the use of mercury in artisanal and small-scale gold mining
Article 10(4)	Requires the operators of certain dental facilities to have amalgam separators
Article 10(6) first subparagraph (but see paragraph 2 of this Schedule which contains the definition of "authorised waste management establishment")	Requires dental practitioners to ensure that amalgam waste is handled and collected by authorised waste management establishment
Article 10(6) second subparagraph	Requires dental practitioners not to release amalgam waste into the environment under any circumstances
Article 12(1)	Requires operators in listed industries to report on large sources of mercury
Article 13(3) first subparagraph	Requires operators to convert mercury before its permanent disposal
Article 13(3) second subparagraph	Requires operators to use one of a list of facilities to permanently dispose of mercury
Article 13(3) third subparagraph	Requires operators of permanent storage facilities to store converted mercury separately
Article 14(1) first subparagraph	Requires operators of facilities for the temporary storage of mercury to establish a register
Article 14(1) second subparagraph	Requires operators of facilities for the temporary storage of mercury to issue a certificate for mercury waste leaving temporary storage
Article 14(1) third subparagraph	Requires operators of facilities for the temporary storage of mercury to transmit the certificate about mercury waste leaving temporary storage
Article 14(2) first subparagraph	Requires operators of facilities for the conversion of mercury to establish a register

Article 14(2) second subparagraph	Requires operators of facilities for the conversion of mercury to issue a certificate for mercury waste after the conversion
Article 14(2) third subparagraph	Requires operators of facilities for the conversion of mercury to transmit the certificate about conversion
Article 14(3) first subparagraph	Requires operators of facilities for the permanent storage of converted mercury to issue a certificate relating to its permanent disposal
Article 14(3) second subparagraph	Requires operators of facilities for the permanent storage of converted mercury to transmit the certificate about the mercury's permanent disposal

2. The reference to an authorised waste management establishment in the first subparagraph of Article 10(6) of the Mercury Regulation is—

(a) in England and Wales, a reference to a person (or authority) listed in section 34(3) of the Environmental Protection Act 1990 (as it applies to England and Wales);

(b) in Scotland, a reference to a person (or authority) listed in section 34(3) of the Environmental Protection Act 1990 (as it applies to Scotland).

SCHEDULE 2

Regulation 4

Definitions relating to offshore installations

"Offshore installation"

1.—(1) "Offshore installation" means an installation or structure, other than a ship, situated in waters or on or under the seabed and used for carrying on any of the following activities—

(a) the exploitation, or the exploration with a view to exploitation, of mineral resources in or under the shore or bed of waters in the offshore area;

(b) the exploration of a place in, under or over such waters with a view to the storage of gas;

(c) the conversion of a place under the shore or bed of such waters for the purpose of storing gas;

(d) the storage of gas in, under or over such waters or the recovery of gas so stored;

(e) the unloading of gas at a place in, under or over such waters;

(f) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of such waters;

(g) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity in this paragraph.

(2) In paragraph (1)—

(a) "gas" means—

(i) gas as defined in section 2(4) of the Energy Act 2008(**a**), or

(ii) carbon dioxide;

(b) "installation" includes an installation as defined in section 16 of the Energy Act 2008;

(c) "ship" includes a hovercraft, submersible craft and any other floating craft but not a vessel which—

(i) permanently rests on or is permanently attached to the seabed, or

(ii) is an installation as defined in section 16 of the Energy Act 2008;

(d) references to storing gas include storing gas with a view to its permanent disposal.

"Offshore area"

2. "Offshore area" means—

(a) the seabed and the subsoil within any area designated under section 1(7) of the Continental Shelf Act 1964 (exploration and exploitation of continental shelf)(**b**), and

(b) waters superjacent to the seabed and the seabed and its subsoil within any area designated under subsection (4) of section 84 of the Energy Act 2004 (exploitation of areas outside the territorial sea for energy production)(**c**).

"English offshore area"

3. "English offshore area" means that part of the offshore area which is not the Scottish offshore area.

"Scottish offshore area"

4.—(1) "Scottish offshore area" means such of the offshore area adjacent to Scotland which lies to the north of the Scottish border.

(2) The Scottish border is—

(a) in the North Sea, a line beginning with the co-ordinate 55º 50' 00" N; 1º 27' 31" W and then following, in an easterly direction, the parallel of latitude 55º 50' 00" N until its intersection with the line dividing the United Kingdom and Germany;

(b) in the Irish Sea, a line between the following co-ordinates—

(i) 54° 30' 22" N; 4° 04' 50" W;

(ii) 54° 30' 00" N; 4° 05' 29" W;

(iii) 54° 30' 00" N; 5° 00' 00" W.

(3) In this paragraph—

"co-ordinate" means a co-ordinate of latitude and longitude on the World Geodetic System 1984;

"line dividing the United Kingdom and Germany" means the dividing line as defined in Article 1 of the Agreement between the United Kingdom and the Federal Republic of Germany relating to the Delimitation of the Continental Shelf under the North Sea between the two countries, signed in London on 25th November 1971(**d**);

"line" means a loxodromic line.

(**a**) 2008 c.32.

(**b**) 1964 c.29. Relevant amending enactments are paragraph 1 of Schedule 3 to the Oil and Gas (Enterprise) Act 1982 (c.23) and section 103 of the Energy Act 2011 (c. 16), paragraph 1 of Schedule 3. Areas have been designated under section 1(7) by S.I. [1974/1489, 1976/1153, 1977/1871, 1978/178, 1978/1029, 1979/1447, 1982/1072, 1987/1265, 1993/1782, 1993/599, 1997/268, 1999/2031, 2000/3062, 2001/3670 and 2013/3162].

(**c**) 2004 c.20.

(**d**) Treaty Series No. 7 (1973) Cmnd. 5192.

SCHEDULE 3

Regulation 30(6)

Provisions relating to appeals in Scotland

PART 1

Appeals procedure

1. A person (the "appellant") who wishes to appeal under regulation 26(8) or 28(11) must—

(a) give the Scottish Ministers written notice of the appeal together with the relevant documents (together these are referred to as the "notice of appeal"), and

(a) at the same time, give SEPA a copy of the notice of appeal.

2. The relevant documents are—

(a) a written statement of the grounds of appeal;

(b) a copy of any relevant correspondence between the appellant and SEPA; and

(c) a copy of any enforcement notice which is the subject of the appeal.

3. The notice of appeal must be given in accordance with paragraph 31 before the expiry of the period of 28 days beginning with the day on which the enforcement notice was given.

4. The appellant may withdraw a notice of appeal by—

(a) giving the Scottish Ministers written notice stating that the appeal is withdrawn, and

(b) giving a copy of the written notice to SEPA.

5. The Scottish Ministers may, in a particular case, allow a notice of appeal to be given after the expiry of the period mentioned in paragraph 3.

6. SEPA must, within 14 days of receipt of the notice of appeal given in accordance with paragraph 1, give notice of it to any person SEPA considers it appropriate to notify.

7. Notice given under paragraph 6 must—

(a) describe the subject of the appeal;

(b) include a statement that representations about the appeal may be made to the Scottish Ministers in writing within a period of 21 days beginning with the date of the notice;

(c) explain that if a hearing is to be held wholly or partly in public (see Part 2), a person who makes representations about the appeal will be notified of the date of the hearing.

8. SEPA must, within 14 days of giving notice under paragraph 6, notify the Scottish Ministers of the persons to whom and the date on which the notice was given.

9. If an appeal is withdrawn, SEPA must give notice of the withdrawal to every person to whom notice was given under paragraph 6.

10. SEPA may make written representations about the appeal to the Scottish Ministers.

11. Any representations by SEPA must be given to the Scottish Ministers within the period of 28 days beginning with the day on which SEPA receives the copy of the notice of appeal.

12. The Scottish Ministers may, in a particular case, allow SEPA's representations to be given after the expiry of the period mentioned in paragraph 10.

13. SEPA must, at the same time as giving the representations to the Scottish Ministers, give a copy of the representations to the appellant.

14. The appellant may make further written representations relating to SEPA's representations within the period of 28 days beginning with the day on which the appellant receives a copy of SEPA's representations.

15. The Scottish Ministers may, in a particular case, allow the appellant's further representations to be given after the expiry of the period mentioned in paragraph 14.

16. The appellant must, at the same time as giving the further representations to the Scottish Ministers, give a copy of the representations to SEPA.

17. The Scottish Ministers must—

(a) give to the appellant and SEPA a copy of any representations made to them by persons to whom notice was given under paragraph 6, and

(b) allow the appellant and SEPA a period of 14 days beginning with the date on which the copy of the representations are given under paragraph (a) in which to make written representations on them.

18. The Scottish Ministers may require exchanges of written representations between the parties in addition to those mentioned in paragraphs 10 and 14.

PART 2

Public hearings

19. Before determining an appeal under regulation 26(8) or 28(11), the Scottish Ministers may give the appellant and SEPA an opportunity to appear before and be heard by a person appointed by the Scottish Ministers (the "appointed person").

20. A hearing must be held wholly or partly in private if the appointed person so decides.

21. Where the Scottish Ministers cause a hearing to be held, they must give the appellant and SEPA at least 28 days' written notice of the date, time and place fixed for the holding of the hearing.

22. If the Scottish Ministers, the appellant and SEPA agree, the period for notice under paragraph 21 may be less than 28 days.

23. Where any part of a hearing is to be held in public, the Scottish Ministers must, at least 21 days before the date fixed for the holding of the hearing—

(a) publish notice of the date, time and place fixed for the holding of the hearing in a newspaper circulating in the locality in which the regulated activity which is the subject of the appeal is carried on or is to be carried on;

(b) give written notice of the date, time and place fixed for the holding of the hearing to every person who was given notice under paragraph 6 and who has made representations to the Scottish Ministers.

24. The Scottish Ministers may vary the date fixed for the holding of any hearing.

25. If the Scottish Ministers vary the date under 24, they must give such notice of the variation as appears to them to be reasonable.

26. The persons entitled to be heard at a hearing are—

(a) the appellant;

(b) SEPA.

27. Nothing in paragraph 26 prevents the appointed person from allowing any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

28. The appointed person must cause notice of the time and place of the hearing to be given to persons appearing to him or her to be interested.

29. The appointed person may do one or any combination of the following—

(a) give a person written notice requiring that person to attend a hearing, at a time and place stated in the notice, to give evidence;

(b) give a person written notice requiring that person to produce any books or other documents in the custody or under the control of the person which relate to any matter in question at the hearing;

(c) take evidence on oath, and for that purpose administer oaths.

30. But the appointed person must not require any person to produce any book or document or to answer any question which that person would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.

31. A person who is required to give evidence at a hearing or to produce any books or other documents is entitled to have the necessary expenses of attendance and production of books or other documents reimbursed.

32. The expenses are to be treated as part of the expenses of the hearing.

33. The Scottish Ministers or the appointed person may make an order as to the expenses incurred in relation to a hearing (including a hearing for which arrangements have been made and does not take place)—

(a) by the Scottish Ministers or the appointed person, and

(b) by the parties to the appeal.

34. The order may specify the person or persons by whom any of the expenses must be paid.

35. The Scottish Ministers or the appointed person may treat as expenses incurred—

(a) the standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the hearing sits or the appointed person is otherwise engaged on work connected with the hearing;

(b) expenses actually incurred in connection with the hearing on travelling or subsistence allowances or the provision of accommodation or other facilities for the hearing;

(c) any expenses attributable to the appointment of an assessor to assist the appointed person;

(d) any legal expenses or disbursements incurred or made by or on behalf of the Scottish Ministers in connection with the hearing;

(e) the entire administrative expense of the hearing, including an amount as appears to the Scottish Ministers or the appointed person to be reasonable in respect of general staff expenses and overheads.

36. In paragraph 35(a), "the standard amount" means an amount, if any, as the Scottish Ministers may from time to time determine and make details of publicly available.

37. Where the Scottish Ministers or the appointed person make an order under paragraph 33 requiring a person to pay expenses, the Scottish Ministers or the appointed person must certify the amount of the expenses.

38. The amount certified is a debt due by that person to the Scottish Ministers or the appointed person and is recoverable accordingly.

39. After the conclusion of a hearing of an appointed person, the appointed person must give a written report to the Scottish Ministers.

40. The report must include the conclusions and recommendations of the appointed person or the reasons for not making any recommendation.

PART 3

Determination of appeals

41. The Scottish Ministers must—

(a) give written notice to the appellant setting out their determination of the appeal,

(b) set out in the notice the reasons for their determination, and

(c) provide the appellant with a copy of any report under paragraph 39.

42. At the same time as giving notice under paragraph 41, the Scottish Ministers must give a copy of the documents listed in paragraph 41(a) to (c) to—

(a) SEPA,

(b) any person notified under paragraph 6, if that person subsequently made representations to the Scottish Ministers, and

(c) if a hearing was held, to any other person who made representations in relation to the appeal at the hearing.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supplement Regulation EU 2017/852 of the European Parliament and of the Council on mercury ("the Mercury Regulation") by establishing offences, penalties and enforcement powers relating to that Regulation.

These Regulations also implement Article 17 of the Mercury Regulation which requires the designation of authorities responsible for performing functions under that Regulation.

Regulation 5 defines "enforcing authority" as—

(a) for England and offshore installations in the English offshore area, the Environment Agency;

(b) for Northern Ireland, the Department of Agriculture, Environment and Rural Affairs ("DAERA");

(c) for Scotland and offshore installations in the Scottish offshore area, the Scottish Environment Protection Agency ("SEPA");

(d) for Wales, the Natural Resources Body for Wales ("NRW").

The definitions of England, Wales, Northern Ireland and Scotland include in each case an area of territorial sea adjacent to the United Kingdom (see regulation 3). Each area of territorial sea is defined by reference to co-ordinates set out in the Transfrontier Shipment of Waste Regulations 2007 (S.I. 2007/1711) ("the TSWR 2007").

The English offshore area and the Scottish offshore area are areas of sea which lie beyond the territorial sea adjacent to the United Kingdom (see Schedule 2). The co-ordinates of the Scottish border (which is used to differentiate the English offshore area and the Scottish offshore area) coincide with the relevant co-ordinates of the Scottish border within the meaning given by regulation 4A(2) of the TSWR 2007.

Part 2 provides for civil enforcement by the Environment Agency and NRW who may—

(a) give enforcement notices requiring a person to take action (including to stop doing any thing);

(b) take action where an action in an enforcement notice has not been complied with;

(c) give a penalty notice to a person requiring payment of a civil penalty not exceeding £200,000;

(d) give a costs recovery notice requiring payment of costs relating to enforcement;

(e) start proceedings in the County Court or High Court where other remedies would be ineffectual.

A person may appeal to the First-tier Tribunal against an enforcement notice, civil penalty decision or a costs recovery notice (see regulations 8(8), 10(11), 13(11) and 15).

Parts 3 and 4 respectively provide for enforcement by DAERA and SEPA who may—

(a) give enforcement notices requiring a person to take action (including to stop doing any thing);

(b) take action where an action in an enforcement notice has not been complied with;

(c) give a costs recovery notice requiring payment of costs relating to enforcement.

A person may appeal to the planning appeals commission in Northern Ireland against an enforcement notice or costs recovery notice given by DAERA. A person may appeal to the Scottish Ministers against an enforcement notice or costs recovery notice given by SEPA. Further provisions relating to appeals to the Scottish Ministers are set out in Schedule 3.

Regulation 32 amends the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (the "ERO 2015") to add the offences in regulation 41 to the list of offences for which SEPA may take enforcement action under the ERO 2015.

Regulation 33 confers power on customs officials to assist with enforcement by seizing and detaining material.

Regulation 34 confers power on the enforcing authority and Welsh Ministers to share information obtained during the performance of certain functions related to the Mercury Regulation with other persons.

Regulation 35 confers power on the enforcing authority to give information notices requiring a person to give information.

Regulation 39 confers power on the Secretary of State to assist with enforcement in respect of offshore installations.

Part 7 creates offences relating to the provisions of the Mercury Regulation which are listed in Schedule 1, enforcement notices, information notices and activities performed under the Regulations by customs officials and the Secretary of State.

Part 8 contains amendments to other legislation.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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Welsh Government

Ein cyf: MA-(L)/HB/0783/17

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7 Rhagfyr 2017

Annwyl Mick,

Ysgrifennaf i'ch hysbysu fy mod wedi gosod memorandwm cydsyniad offeryn statudol ("y memorandwm") yn ymwneud â Rheoliadau Rheoli Mercwri (Gorfodi) 2017 ("y Rheoliadau") a gyflwynwyd gan yr Ysgrifennydd Gwladol dros yr Amgylchedd, Bwyd a Materion Gwledig ar 5 Rhagfyr. Mae'r Rheoliadau yn cynnwys diwygiad i Ddeddf yr Amgylchedd 1995 ("Deddf 1995") sy'n cynnwys darpariaeth i Gymru. Er fy mod wedi gosod y memorandwm, rwyf am eich hysbysu nad wyf yn bwriadu cyflwyno cynnig cydsyniad offeryn statudol.

Diben y Rheoliadau yw cyflwyno Rheoliad (UE) 2017/852 yn ymwneud â mercwri ("Rheoliad yr UE"). Mae Rheoliad yr UE yn sicrhau bod y gyfraith Ewropeaidd yn cydymffurfio â'r Confensiwn Minamata rhyngwladol ar Fercwri, a lofnodwyd gan y DU ym mis Hydref 2013.

Gyda chytundeb y gweinyddiaethau datganoledig, cynhaliodd Defra ymgynghoriad cyhoeddus ar ddarpariaethau arfaethedig y Rheoliadau (https://consult.defra.gov.uk/environmental-quality/control-of-mercury-enforcement-regulations-2017/). Cynigiodd y byddai'r rhan fwyaf o'r darpariaethau yn Rheoliad yr UE yn cael eu cyflwyno yng Nghymru gan Cyfoeth Naturiol Cymru. Yr unig eithriad fyddai'r cyfyngiadau newydd ar y defnydd o amalgam deintyddol (sy'n cynnwys mercwri) gan mai Gweinidogion Cymru yn gweithredu fel Arolygiaeth Gofal Iechyd Cymru a fyddai'n gyfrifol am gyflwyno'r cyfyngiadau hyn yng Nghymru. Yn dilyn yr ymgynghoriad, gosodwyd y Rheoliadau gerbron Senedd y DU ar 5 Rhagfyr er mwyn sicrhau bod rhannau ohonynt yn gallu dod i rym erbyn 1 Ionawr 2018 yn unol â gofynion Rheoliad yr UE.

Wrth ddrafftio'r Rheoliadau, cytunodd cyfreithwyr Defra a'r gweinyddiaethau datganoledig, mewn ymgynghoriad â rheoleiddwyr amgylcheddol, mai'r ffordd fwyaf cyfleus a phriodol o alluogi rheoleiddwyr ym Mhrydain i adennill costau sy'n gysylltiedig â'r dyletswyddau gorfodi newydd oedd ychwanegu Rheoliad yr UE ar fercwri at y rhestr o ddibenion y gall rheoleiddwyr wneud cynlluniau codi tâl ar eu cyfer o dan adran 41 o Ddeddf 1995.

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Mae'r Rheoliadau yn cael eu gweithredu ar lefel y DU ac mae eu hangen er mwyn cyflwyno Rheoliad yr UE. O ganlyniad, ychydig iawn o gyfle sydd, os o gwbl, i gyflwyno polisi Cymreig unigryw yn y maes hwn. Mae'r diwygiad i adran 41 o Ddeddf 1995 yn caniatáu adennill costau a ysgwyddir wrth gyflwyno Rheoliad yr UE gan Asiantaeth yr Amgylchedd, CNC ac Asiantaeth Diogelu Amgylchedd yr Alban (SEPA). Felly, mae'r diwygiad yn berthnasol i Brydain ac nid i Gymru yn unig. Pe na bai'r diwygiad yn cael ei wneud, neu pe na bai'n berthnasol i Gymru, byddai CNC o dan anfantais ariannol wrth gyflawni ei ddyletswyddau o dan y Rheoliadau. Mae'r diwygiad yn sicrhau bod CNC yn gallu adennill costau yn yr un modd ag Asiantaeth yr Amgylchedd a SEPA. Nid yw Deddf 1995 yn berthnasol i Ogledd Iwerddon, ond mae'r Rheoliadau yn gwneud diwygiad tebyg i Orchymyn yr Amgylchedd (Gogledd Iwerddon) 2002 i sicrhau canlyniad tebyg yno.

Rwyf wedi gosod y memorandwm yn unol â'r gofyniad o dan Reol Sefydlog 30A. Rwy'n ystyried bod y Rheoliadau yn offeryn statudol perthnasol oherwydd eu bod yn gwneud darpariaeth yn ymwneud â Chymru yn diwygio deddfwriaeth sylfaenol yn unol â chymhwysedd deddfwriaethol y Cynulliad, nad yw'n ddarpariaeth gysylltiedig, ganlyniadol, drosiannol, ddarfodol, atodol neu arbedion yn ymwneud â materion sydd y tu hwnt i gymhwysedd deddfwriaethol y Cynulliad.

Mae'r Rheoliadau yn destun gweithdrefn negyddol yn Senedd y DU, ac felly fe gawsant eu llunio cyn cael eu gosod, a chyn belled nad oes unrhyw Aelod Seneddol yn eu hatolygu, bydd rhannau ohonynt, gan gynnwys y rhan sy'n diwygio Deddf 1995, yn dod i rym ar 1 Ionawr. Wrth reswm, mae'n rhaid i chi fel y pwyllgor cyfrifol y cyfeirir ato o dan Reol Sefydlog 30A benderfynu a ydych chi eisiau ystyried ac adrodd ar y memorandwm.

Rwyf wedi ystyried yn ofalus a ddylwn gyflwyno cynnig cydsyniad offeryn statudol o dan Reol Sefydlog 30A, i'w drafod ar ôl i'r 35 diwrnod sy'n cael eu caniatáu ar gyfer craffu gan y pwyllgor cyfrifol ddod i ben. Wrth reswm, nid yw'n ofynnol i Lywodraeth Cymru wneud hyn. Fodd bynnag, fel arfer byddem yn cyflwyno cynnig fel bod y Cynulliad yn gallu rhoi ei gydsyniad, neu beidio, cyn gwneud yr offeryn statudol perthnasol.

Yn yr achos hwn, gan fod y Rheoliadau eisoes wedi'u gwneud, rwyf wedi penderfynu peidio gosod cynnig o'r fath. Byddai angen ystyried pob achos yn unigol, ond yn y Rheoliadau hyn rwy'n ystyried nad yw'r diwygiad perthnasol yn ddadleuol a'i fod yn cydymffurfio â pholisi presennol. Y cwbl y mae'n ei wneud yw ychwanegu cyfrifoldebau newydd y rheoleiddwyr yn ymwneud â mercwri at y rhestr hir o weithgareddau rheoleiddio eraill y gallant lunio cynlluniau codi tâl ar eu cyfer eisoes. Nid wyf yn credu y byddai'n fanteisiol cynnal dadl yn y Cynulliad ar a ddylid rhoi cydsyniad i ddarpariaeth mewn Rheoliadau sydd eisoes wedi'u gwneud, lle nad yw'r ddarpariaeth dan sylw yn newid sylweddol i bolisi presennol. Hefyd, bydd y rhan o'r Rheoliadau sy'n diwygio deddfwriaeth sylfaenol eisoes wedi dod i rym cyn y 35 diwrnod a ganiateir ar gyfer craffu o dan Reol Sefydlog 30A. Serch hynny, gall unrhyw Aelod Cynulliad sy'n teimlo'n gryf bod angen trafod y memorandwm gyflwyno cynnig i drafod y mater mewn Cyfarfod Llawn.

Yn gywir,

Hannah Blythyn AC
Gweinidog yr Amgylchedd

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau

National Assembly for Wales
Equality, Local Government and Communities Committee

Mick Antoniw AC
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

12 Rhagfyr 2017

Annwyl Mick

Ymchwiliad i hawliau dynol yng Nghymru

Gwyddoch fod y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau yn cynnal ymchwiliad i hawliau dynol yng Nghymru. Mae hyn wedi cynnwys ymgynghoriad ysgrifenedig a chlywed tystiolaeth lafar. Ar ddiwedd tymor yr haf, cytunwyd i gulhau cwmpas yr ymchwiliad i ganolbwyntio ar effaith Brexit ar hawliau dynol.

Yn ein cyfarfod ar 19 Hydref cawsom bapurau briffio ar y trafodaethau ymadael â'r Undeb Ewropeaidd gan swyddogion Comisiwn y Cynulliad, a chlywsom safbwynt allanol gan Rebecca Hilsenrath, Prif Weithredwr y Comisiwn Cydraddoldeb a Hawliau Dynol. Cytunwyd ar gyfres o egwyddorion craidd y credwn y dylid cydymffurfio â nhw yn ystod y broses Brexit mewn perthynas â hawliau dynol. Byddwn yn monitro cynnydd yn ôl yr egwyddorion hyn a byddwn yn chwilio am gyfleoedd i weithio gyda'n pwyllgorau seneddol cyfatebol ar draws y DU ar y materion hyn.

Yr egwyddorion craidd yw:

- ni fydd unrhyw atchweliad i'r amddiffynfeydd cydraddoldeb a hawliau dynol sydd gennym yma ym Mhrydain ar ôl i ni adael yr UE;

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- dylai Cymru sefydlu mecanwaith ffurfiol i olrhain datblygiadau yn y dyfodol o ran hawliau dynol a chydraddoldeb yn yr UE, i sicrhau bod dinasyddion Cymru yn elwa o'r un lefel o ddiogelwch â dinasyddion yr UE; a

- dylai Cymru barhau i fod yn arweinydd byd-eang ym maes hawliau dynol, ac ymrwymo i gyflwyno deddfwriaeth i gau unrhyw fylchau o ran hawliau ac amddiffyniad os nad yw Llywodraeth y DU yn gwneud hynny (lle bo modd).

Rydym o'r farn bod yn rhaid cadw'r Siarter Hawliau Sylfaenol mewn rhyw ffurf ar ôl ymadael â'r UE. Croesawn y datganiad a wnaed gan y Prif Weinidog ar 24 Hydref[1] a oedd yn cefnogi'r ymdrechion i sicrhau y bydd Bil yr Undeb Ewropeaidd (Ymadael) yn parhau i barchu'r Siarter ar ôl Brexit. Rydym hefyd yn croesawu ymrwymiad Llywodraeth y DU i gyhoeddi'r dadansoddiad o sut y bydd hawliau'r Siarter yn cael eu diogelu ar ôl i'r DU ymadael â'r UE.

Rydym hefyd wedi ysgrifennu at y canlynol, i nodi'r egwyddorion craidd, ac ynghylch materion eraill sy'n ymwneud â'r gwaith hwn:

- Julie James AC, Arweinydd y Tŷ a'r Prif Chwip (cc i Carwyn Jones AC, Prif Weinidog; a Mark Drakeford AC, Ysgrifennydd y Cabinet dros Gyllid);

- Mrs Maria Miller, Cadeirydd, Pwyllgor Menywod a Chydraddoldebau, Senedd y DU;

- David Rees AC, Cadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

- Christina McKelvie MSP, Cynullydd, Pwyllgor Cydraddoldeb a Hawliau Dynol, Senedd yr Alban;

- Y Gwir Anrhydeddus Harriet Harman QC AS, Cadeirydd, y Cydbwyllgor ar Hawliau Dynol.

Yn gywir

[1] Cynulliad Cenedlaethol Cymru, y Cyfarfod Llawn, Eitem 3, 11 Hydref 2016

John Griffiths AC
Cadeirydd

Croesewir gohebiaeth yn Gymraeg neu yn Saesneg.

We welcome correspondence in Welsh or English.

Kirsty Williams AC/AM
Ysgrifennydd y Cabinet dros Addysg
Cabinet Secretary for Education

Llywodraeth Cymru
Welsh Government

Ein cyf MA - L/KW/0871/17

Lynne Neagle AC
Cadeirydd
Y Pwyllgor Plant, Pobl Ifanc ac Addysg
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15 Rhagfyr 2017

Annwyl Lynne,

Ym mis Medi, ysgrifennodd cyn Weinidog y Gymraeg a Dysgu Gydol Oes atoch i roi diweddariad ar weithrediad y rhaglen trawsnewid anghenion dysgu ychwanegol (ADY) ac ymrwymodd i wneud hynny bob chwarter; roedd hyn mewn ymateb i ail argymhelliad y Pwyllgor Plant, Pobl Ifanc ac Addysg yn ei adroddiad cam 1 ar Fil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru).

Y llythyr hwn yw'r ail o'r diweddariadau hyn. Darperais gopi hefyd o'm llythyr at y Pwyllgor Cyllid ar 11 Rhagfyr ar y dadansoddiad o'r pecyn buddsoddi £20 miliwn i gyflawni'r rhaglen.

Deddfwriaeth a Chanllawiau Statudol

Roedd hi'n fraint cael helpu i lywio'r Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) drwy ei gamau olaf, ac roeddwn yn falch iawn ei fod wedi'i basio'n unfrydol gan y Cynulliad ddydd Mawrth 12 Rhagfyr, flwyddyn union ar ôl ei gyflwyno yn 2016.

Hoffwn ddiolch eto i'ch Pwyllgor am roi ystyriaeth drylwyr iddo gydol y broses ddeddfu a gryfhaodd wydnwch y Bil. Rwy'n hyderus y bydd y ddeddfwriaeth hon yn helpu i greu gwell system ar gyfer cefnogi rhai o'n dysgwyr mwyaf agored i niwed.

Wrth symud ymlaen, gan ragweld y bydd y Bil yn cael Cydsyniad Brenhinol, bydd ein ffocws yn 2018 yn symud i'r is-ddeddfwriaeth, gan gynnwys ymgynghoriad yn yr hydref ar rai o'r rheoliadau drafft ac iteriad nesaf y Cod ADY drafft, Yna, bydd y rhain

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yn destun craffu gan y Cynulliad. Rhagwelaf y bydd y Cod terfynol yn cael ei gyhoeddi ddiwedd 2019.

Gweithredu/cymorth pontio

Ar 11 Rhagfyr cyhoeddais grynodeb o ymatebion i'r ymgynghoriad ar weithrediad y Bil law yn llaw â'r dull arfaethedig. Bydd dysgwyr sydd â Datganiadau cyfredol yn trosglwyddo i'r system newydd o fewn dwy flynedd, a phob dysgwr arall sydd â chynlluniau anstatudol yn cael eu trosglwyddo o fewn tair blynedd. Mae hyn yn adlewyrchu adborth rhanddeiliaid o'n hymgynghoriad ar opsiynau i'w rhoi ar waith.

Bydd hyn yn cael ei ddefnyddio nawr i ddatblygu a choethi'r canllawiau ar bontio ar gyfer partneriaid cyflenwi, a fydd yn nodi canllawiau manwl i gefnogi gweithrediad. Bydd hyn yn cynnwys amserlenni manwl ar gyfer cyflwyno cynlluniau datblygu unigol i bob cohort o ddysgwyr yn raddol. Datblygir y canllawiau mewn partneriaeth â rhanddeiliaid allweddol a bydd yn cael ei gyhoeddi ar gyfer ymgynghoriad y flwyddyn nesaf. Yn 2018 byddwn yn cynnal mwy a mwy o weithgareddau wrth i ni symud i'r cyfnod gweithredu, gan gynnwys cymorth a her ar gyfer partneriaid i baratoi ar gyfer rhoi'r system newydd ar waith.

Bydd y pum arweinydd trawsnewid ADY yn dechrau ar eu gwaith yn y Flwyddyn Newydd ac yn gyfrifol am gefnogi partneriaid cyflenwi i gynnal asesiadau parodrwydd a datblygu cynlluniau gweithredu. Bydd y gwaith ymbaratoi yn cael ei ategu gan adolygiad thematig y bydd Estyn yn ei gynnal, a fydd yn pwyso a mesur i ba raddau y mae ysgolion cynradd ac uwchradd, unedau cyfeirio disgyblion a darparwyr addysg ar wahân i'r ysgol yn ymwybodol o'r diwygiadau sy'n cael eu cyflwyno drwy'r Bil ac yn paratoi ar gyfer eu rhoi ar waith.

Ym mis Medi 2017, cynhaliodd Grŵp Gweithredu Strategol ADY ei gyfarfod olaf ar ei ffurf bresennol. Mae'r grŵp wedi bod yn hollbwysig hyd yma yn ad-drefnu'r dull gweithredu a'r rhaglen trawsnewid yn gyffredinol. Maent wedi cytuno wrth i ni symud ymlaen i gyfnod gweithredu'r diwygiadau, y bydd grŵp lefel uwch llai o faint yn goruchwylio gwaith Arweinwyr Trawsnewid ADY ac yn cynorthwyo gyda'r agweddau cysondeb o ran gweithredu, cydweithio a rhannu arferion da.

Bydd yr wyth grŵp arbenigol a sefydlwyd gan Grŵp Gweithredu Strategol ADY yn parhau i weithio tuag at y gyfres o gamau y cytunwyd arnynt. Mae hyn yn cynnwys datblygu'r templed Cynllun Datblygu Unigol, deunyddiau codi ymwybyddiaeth a threfniadau newydd ar gyfer ymarferwyr iechyd.

Datblygu'r gweithlu

Mae gan arbenigwyr gyfraniad allweddol o ran helpu dysgwyr ag ADY. Mewn partneriaeth â Chymdeithas Llywodraeth Leol Cymru ac Uned Ddata Cymru, mae penaethiaid awdurdodau lleol wedi'n helpu ni i gael darlun cliriach o weithlu gwasanaethau cymorth arbenigol awdurdodau lleol ar hyn o bryd.

Rwyf wedi cytuno i ddyrannu £352,000 o gyllideb datblygu'r gweithlu ADY i'w ddosbarthu fel arian grant i awdurdodau lleol dros y 2 flwyddyn ariannol nesaf (2018-19 and 2019-20) er mwyn helpu gyda hyfforddiant ôl-raddedig athrawon arbenigol a

chynghorol awdurdodau lleol dysgwyr â nam ar y golwg, nam ar y clyw a nam amlsynnwyr. Gellir defnyddio'r arian hwn hefyd er mwyn hwyluso hyfforddaint Braille ac Iaith Arwyddion Prydain ar gyfer staff arbenigol awdurdodau lleol.

Er mwyn sicrhau cyflenwad parhaus o Seicolegwyr Addysg, rydym yn ariannu rhaglen hyfforddiant proffesiynol Doethuriaeth Prifysgol Caerdydd mewn Seicoleg Addysg (DEdPsy). Rwyf wedi cytuno i barhau â threfniadau cyfredol DEdPsy am gohort pellach o fis Medi 2018 ymlaen, tra bod trafodaethau am drefniadau 2019-20 ymlaen yn mynd rhagddynt.

Yn dilyn argymhellion gan y Pwyllgor, rydym wedi cynnal gwaith pellach ar gwmpasu rôl y Cydlynydd ADY. Mae fy swyddogion wedi cydweithio'n agos gydag amrywiaeth o randdeiliaid i nodi gofynion sgiliau a hyfforddiant y rôl bwysig hon. Rydym yn rhagweld y bydd Cydlynwyr ADY yn darparu arweiniad strategol ac yn bwynt cyswllt cyntaf o fewn y lleoliad addysg, ar gyfer cyngor ac arweiniad ychwanegol a phroffesiynol.

Codi ymwybyddiaeth

O ganlyniad i'r adborth i'r ymgynghoriad ar weithredu'r Bil, rydym wedi comisiynu Eliesha Cymru i ddatblygu cyfres o ddeunyddiau dysgu a hyfforddiant er mwyn helpu i roi rhaglen trawsnewid ADY ar waith, gan gynnwys y Bil. Byddant yn sail i hyfforddiant gweithredu amlasiantaeth unwaith y bydd y Cod a'r is-ddeddfwriaeth mewn grym. Bydd yn helpu ymarferwyr i ddeall a pharatoi ar gyfer y newidiadau a gaiff eu cyflwyno dan y drefn newydd ac yn helpu i sicrhau cysondeb o Fôn i Fynwy.

Cafodd asesiadau tystiolaeth cyflym a chanllawiau hygyrch ar ymyriadau effeithiol i gefnogi plant a phobl ifanc ag amrywiaeth o ADY eu comisiynu yn gynharach eleni. Mae'r asesiadau tystiolaeth cyflym o'r ymyriadau i helpu plant a phobl ifanc ag ADHD ac ASD hefyd bron yn barod. Defnyddiwyd tystiolaeth o'r asesiadau i ddatblygu canllawiau hygyrch a chynhaliwyd gweithdai gydag ymarferwyr a rhieni er mwyn deall eu hoffterau o ran strwythur a chynnwys y canllawiau.

Polisi ategol / parhad busnes

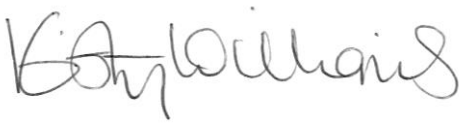
Mae'r elfen hon o'r rhaglen yn canolbwyntio ar sicrhau bod y system AAA ac LDD gyfredol yn gweithio'n esmwyth tan y daw'r system ADY newydd i rym. Wrth i ni nesáu at y broses weithredu, mae'r agwedd hon ar y rhaglen yn canolbwyntio fwyfwy ar gynnal parhad busnes.

Er mwyn cefnogi'r broses lleoliad arbenigol ôl-16, rwyf wedi cytuno i gyhoeddi canllawiau technegol ar gyfer sefydliadau addysg bellach arbenigol. Mae'r canllawiau hyn yn rhoi cyngor clir ar ddisgwyliadau Llywodraeth Cymru ar rôl sefydliadau Addysg Bellach wrth gyflwyno'r ddarpariaeth ôl-16 i bobl ifanc. Hefyd, rwyf wedi cytuno i gyhoeddi canllawiau technegol diwygiedig i Gyrfa Cymru. Byddwn yn defnyddio gweithdai i ategu'r canllawiau ac archwilio sut mae'n gweithio'n ymarferol.

Gobeithio y gallwn barhau i weithio'n effeithiol yn ystod y cam gweithredu ar yr hyn sy'n becyn trawsnewid o bwys a fydd o fudd i'r bobl mwyaf agored i niwed yng Nghymru.

Rwy'n anfon copi o'r llythyr hwn at Simon Thomas AC, Cadeirydd, Y Pwyllgor Cyllid a Mick Antoniw AC, Cadeirydd, Y Pwyllgor Materion Cyfansoddiadol a Rheoli Deddfwriaethol.

Yn gywir,



Kirsty Williams AC
Ysgrifennydd y Cabinet dros Addysg

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

National Assembly for Wales
Constitutional and Legislative Affairs Committee

Julie James AM
Arweinydd y Tŷ a'r Prif Chwip

14 Rhagfyr 2017

Annwyl Julie

Is-ddeddfwriaeth o ganlyniad i'r DU yn ymadael â'r UE

Gwyddoch fod y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ar hyn o bryd yn cynnal ei ymchwiliad i Bwerau ym Mil yr Undeb Ewropeaidd (Ymadael) i wneud is-ddeddfwriaeth.

Fel rhan o'n hymchwiliad, byddai'n ddefnyddiol cael dealltwriaeth o nifer yr offerynnau statudol y credwch chi y bydd yn rhaid i Weinidogion Cymru eu gwneud o ganlyniad i'r DU yn ymadael â'r UE. Rwy'n sylweddoli na fyddwch mewn sefyllfa i ddarparu rhif pendant ar hyn o bryd. Fodd bynnag, byddwn yn ddiolchgar o gael amcangyfrif, ynghyd ag unrhyw amserlennu cyfatebol y gallwch ei roi i ni.

Edrychaf ymlaen at glywed gennych.

Yn gywir,

Mick Antoniw
Cadeirydd

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

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MA-L/JJ/0880/17

Mr M Antoniw AC
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Cynulliad Cenedlaethol Cymru

4 Ionawr 2018

Annwyl Mick,

Diolch am eich llythyr dyddiedig 14 Rhagfyr ynghylch defnyddio pwerau gwneud is-ddeddfwriaeth sy'n rhan o Fil yr Undeb Ewropeaidd (Ymadael) Llywodraeth y DU (*"y Bil"*).

Gan adeiladu ar waith a wnaed yn gynharach yn 2017, ers cyflwyno'r Bil ym mis Gorffennaf mae swyddogion wedi bod yn rhoi ystyriaeth fanwl i'r angen i gyflwyno is-ddeddfwriaeth dan y pwerau a roddwyd i Weinidogion Cymru drwy Atodlen 2 i'r Bil. Fel y gwyddoch, cynigiwyd rhoi'r pwerau hyn er mwyn caniatáu i Weinidogion Cymru gywiro diffygion mewn deddfwriaeth ddomestig sy'n deillio o'r UE – pan fo cymhwysedd wedi'i ddatganoli - wrth i'r DU ymadael â'r UE. Mae'r pwerau wedi'u cyfyngu mewn nifer o ffyrdd allweddol ac rydym wedi datgan ein gwrthwynebiad i hynny yn glir. Pe bai newidiadau'n cael eu gwneud i'r Bil, gallai hynny effeithio ar y ffyrdd y gellid defnyddio'r pwerau.

Fel y dywedwch yn eich llythyr, mae'n anodd dweud yn bendant ar hyn o bryd faint o offerynnau statudol y bydd angen i Weinidogion Cymru eu gwneud gan ddefnyddio'r pwerau sydd i'w gweld yn Atodlen 2. Mae'r gwaith sy'n mynd rhagddo ar hyn o bryd yn ceisio nodi'r ddeddfwriaeth bresennol a phenderfynu a yw'n ddiffygiol ac ym mha ffordd, ond hefyd yn ceisio penderfynu sut y dylid mynd i'r afael ag unrhyw ddiffygion a sut y dylid cynhyrchu, trefnu a phrosesu unrhyw 'offerynnau cywiro'. Bydd yr holl ffactorau hyn (nifer na ellir rhoi sylw manwl iddynt ar hyn o bryd) yn effeithio ar gwmpas a graddfa'r is-ddeddfwriaeth angenrheidiol. Bydd gwybodaeth yr ydym yn ei disgwyl gan Lywodraeth y DU hefyd yn effeithio ar y gwaith.

Hyd yma, nodwyd dros 600 o offerynnau deddfwriaethol domestig sy'n deillio o'r UE o fewn cymhwysedd datganoledig Cymru. Mae'r gwaith yn mynd rhagddo ar fyrder i benderfynu beth y dylid ei wneud â phob un o'r rhain, ond maent yn debygol o syrthio dan dri chategori cyffredinol:

- y rhai sydd heb ddiffygion

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Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

- y rhai sy'n cynnwys diffygion y mae'n briodol ymdrin â nhw drwy offeryn cywiro unigol
- y rhai sy'n cynnwys diffygion y mae'n briodol ymdrin â nhw drwy offerynnau cywiro mwy cyffredinol.

Fel ran o'r gwaith hwn, rydym hefyd yn ystyried effaith bosib cyflwyno unrhyw fframweithiau a gytunir ar draws y DU.

Fel y gwyddoch, bydd rhai misoedd nes i'r Bil gael Cydsyniad Brenhinol, ac rydym ni ac eraill yn pwyso am wneud newidiadau sylweddol iddo a fyddai'n newid ystod y gyfraith UE a ddargedwir y gall Gweinidogion Cymru ei chywiro. Hefyd, mae Llywodraeth y DU naill ai'n bwriadu cyflwyno, neu eisoes wedi cyflwyno, cyfres o Filiau eraill a fydd yn diddymu neu ddirymu a disodli'r gyfraith UE a ddargedwir, gan arwain o bosib at ddileu'r hyn a fyddai fel arall yn ddarostyngedig i'r pwerau sydd yn Atodlen 2 i'r Bil. Mae'r rhain, a ffactorau newidiol eraill, yn ei gwneud yn anos fyth rhagweld union nifer yr offerynnau statudol y bydd angen eu diwygio.

Rwy'n disgwyl, fodd bynnag, y bydd rhagor o fanylion ynghylch cwmpas a graddfa'r is-ddeddfwriaeth ar gael erbyn canol mis Chwefror 2018. Byddaf felly yn rhoi'r wybodaeth ddiweddaraf i chi ar ôl hynny.

Yn gywir

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

Mae cyfyngiadau ar y ddogfen hon

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