Pecyn dogfennau cyhoeddus

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Lleoliad:
Ystafell Bwyllgora 2 - y Senedd

Dyddiad:
Dydd Llun, 21 Mai 2012

Amser:
14:30

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

I gael rhagor o wybodaeth, cysylltwch a:

Steve George
Clerc y Pwyllgor
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Agenda

1. Cyflwyniad, ymddiheuriadau, dirprwyon a datganiadau o fuddiant

1. Offerynnau nad ydynt yn cynnwys unrhyw faterion i'w codi o dan Reol Sefydlog 21.2 neu 21.3
2.

Offerynnau'r weithdrefn penderfyniad negyddol

Dim

Offerynnau'r weithdrefn penderfyniad cadarnhaol

Dim

3. Offerynnau sy'n cynnwys materion i'w codi gyda'r Cynulliad o dan Reol Sefydlog 21.2 neu 21.3

Offerynnau'r weithdrefn penderfyniad negyddol

CLA144 - Rheoliadau Atal Llygredd Nitradau (Cymru) (Diwygio) 2012
(Tudalennau 1 - 16)

Y weithdrefn negyddol. Fe'u gwnaed ar 5 Mai 2012. Fe'u gosodwyd ar 9 Mai 2012. Yn dod i rym ar 1 Mehefin 2012

Offerynnau'r weithdrefn penderfyniad cadarnhaol

CLA142 – Gorchymyn Iechyd Meddwl (Gwasanaethau Iechyd Meddwl Eilaidd) (Cymru) 2012 (Tudalennau 17 – 34)
Y weithdrefn gadarnhaol. Fe'i gwnaed yn 2012. Ni nodwyd y dyddiad y'i gosodwyd. Yn dod i rym ar 6 Mehefin 2012

CLA143 – Gorchymyn Cadw Mincod (Gwahardd) (Cymru) 2012 (Tudalennau 35 – 42)
Y weithdrefn gadarnhaol. Fe'i gwnaed ar 8 Mai 2012. Fe'i gosodwyd ar 8 Mai 2012. Yn dod i rym ar 1 Mehefin 2012

4. Ymchwiliadau'r Pwyllgor: Ymchwiliad i sefydlu awdurdodaeth ar wahân i Gymru

Emyr Lewis, Partner, Cyfreithwyr Morgan Cole; Uwch Gymrawd Cyfraith Cymru, Canolfan Llywodraethiant Cymru, a'r Athro Dan Wincott, Athro Cyfraith a Chymdeithas Blackwell yn Ysgol y Gyfraith Caerdydd; Cyd-gadeirydd Canolfan Llywodraethiant Cymru, Prifysgol Caerdydd (Tudalennau 43 – 50)
Papurau:
CLA(4)-11-12(p1) – WJ 28 – Ymateb gan Mr Emyr Lewis a'r Athro Dan Wincott (Prifysgol Caerdydd)

Yn bresennol:
- Emyr Lewis, Uwch Gymrawd Cyfraith Cymru, Ysgol y Gyfraith Caerdydd
- Yr Athro Dan Wincott, Athro Cyfraith a Chymdeithas Blackwell; Prifysgol Caerdydd

5. Gohebiaeth y Pwyllgor

CLA124 – Rheoliadau Gwastraff a Reolir (Cymru a Lloegr) 2012 (Tudalennau 51 – 54)
Papurau:
CLA(4)-11-12(p2) –Llythyr i'r Cadeirydd gan Weinidog yr Amgylchedd a Datblygu Cynaliadwy dyddiedig 26 Ebrill 2012
CLA(4)-11-12(p3) – ymateb y Gweinidog dyddiedig 4 Mai 2012

6. Papur i'w nodi (Tudalennau 55 – 56)

CLA(4)-10-12 – Adroddiad ar y cyfarfod ar 14 Mai 2012

Dyddiad y cyfarfod nesaf
28 Mai 2012

7. Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer y busnes a ganlyn
Caiff Pwyllgor benderfynu gwahardd y cyhoedd o gyfarfod neu unrhyw ran o gyfarfod:
(vi) lle mae'r Pwyllgor yn ystyried casgliadau neu argymhellion adroddiad y mae'n bwriadu ei gyhoeddi; neu
(ix) lle mae unrhyw fater sy'n ymwneud â busnes mewnol y Pwyllgor, neu fusnes mewnol y Cynulliad, i gael ei drafod

8. Trafod y dystiolaeth a gyflwynwyd i'r ymchwiliad hyd yma

9. Ymateb Llywodraeth Cymru i Ymchwiliad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol i Bwerau a roddir i Weinidiogion Cymru yng Nghyfreithiau'r DU (Tudalennau 57 - 64)
Papurau:

CLA(4)-11-12(t4) – Ymateb y Prif Weinidog dyddiedig 14 Mai 2012
CLA(4)-11-12(t4) - Atodiad

Trawsgrifiad

Gweler trawsgrifiad o'r cyfarfod.

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

CLA144

Teitl: Rheoliadau Atal Llygredd Nitradau (Cymru) (Diwygio) 2012

Mae'r Rheoliadau hyn yn dirymu a disodli rhai darpariaethau yn Rheoliadau Atal Llygredd Nitradau (Cymru) 2008 ("y prif Reoliadau") sy'n ymwneud â dynodi parthau perygl nitradau. Mae'r prif Reoliadau yn gweithredu, yng Nghymru, Gyfarwyddeb Cyngor 91/676/EEC ynghylch diogelu dyfroedd rhag llygredd gan nitradau o ffynonellau amaethyddol. Mae'r ddarpariaeth a wneir gan y Rheoliadau hyn yn ymwneud â'r adolygiad gan Weinidogion Cymru o ddynodi parthau perygl nitradau yn 2009 gan y prif Reoliadau. Gwneir darpariaeth gan y Rheoliadau hyn i Asiantaeth yr Amgylchedd wneud argymhellion i Weinidogion Cymru i gyhoeddi a hysbysu eu penderfyniadau yn dilyn yr argymhellion hynny, ac i apeliadau gael eu gwneud i Weinidogion Cymru a'u penderfynu gan unigolyn a benodir ganddynt.

Gweithdrefn: **Negyddol**

Materion technegol: craffu

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

Rhinweddau: craffu

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

Mae'r Rheoliadau hyn (yn rheoliad 9(4)) yn dangos newid sylweddol yn arddull drafftio Offerynnau Statudol a wneir gan Weinidogion Cymru. Pan sefydlwyd y Cynulliad Cenedlaethol ym 1999, nodwyd is-baragraffau yn wreiddiol ag (a), (b), (c), (d), (e), ac ati, yn nhestunau Offerynnau Statudol yn y ddwy iaith. Erbyn 2000, cawsant eu nodi ag (a), (b), (c), (ch), (d), ac ati yn y testun Cymraeg gan yr ystyriwyd bod defnyddio'r wyddor Gymraeg yn adlewyrchu statws cyfartal y ddwy iaith yn fwy ffyddlon. Mae'r arfer hwnnw wedi parhau tan nawr. Mae'n golygu, er enghraifft, bod is-baragraff (ch) yn y Gymraeg yn cyfateb i is-baragraff (d) yn y testun Saesneg, tra bod paragraff (d) yn y testun Cymraeg yn cyfateb i (e) yn y Saesneg.

Pan gafodd y Cynulliad y gallu i wneud deddfwriaeth sylfaenol drwy fesurau o dan Ddeddf Llywodraeth Cymru 2006, penderfynwyd dychwelyd at yr arfer gwreiddiol o ddefnyddio'r wyddor Saesneg ar gyfer yr is-baragraffau yn nhestunau'r ddwy iaith. Y prif eglurhad oedd y byddai Aelodau yn rheolaidd yn cynnig a thrafod gwelliannau i Fesurau drafft, a byddai'n llai dryslyd i gyfeirio at baragraffau (y

drydedd lefel israrnnu mewn deddfwriaeth sylfaenol) sydd wedi'u labelu yn yr un ffordd yn nhestunau'r ddwy iaith.

Parhawyd â'r arfer hwnnw gyda Biliau a gyflwynwyd yn ystod y Cynulliad presennol.

Mae Llywodraeth Cymru bellach wedi penderfynu ymestyn yr arfer hwnnw i Offerynnau Statudol, er na ellir eu diwygio yn yr un modd â Biliau. Er bod hyn yn sicrhau dull cyson ym mhob deddfwriaeth sydd gerbron y Cynulliad ar hyn o bryd, mae'n anghyson â'r arfer gydag Offerynnau Statudol dros y deuddeg mlynedd diwethaf.

Tynnwyd sylw'r Cynulliad i'r mater hwn o dan Reol Sefydlog 21.3(ii), sef ei fod o bwys gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debygol o fod o ddiddordeb i'r Cynulliad.

Cynghorwyr Cyfreithiol
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Mai 2012

Mae'r Llywodraeth wedi ymateb fel a ganlyn:

Rheoliadau Atal Llygredd Nitradau (Cymru) (Diwygio) 2012

Yn unol ag adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol, mae Llywodraeth Cymru yn cadarnhau y defnyddir yr wyddor Saesneg i nodi is-baragraffau yn nhestun Cymraeg offerynnau statudol o hyn ymlaen. Y rheswm dros ddefnyddio'r wyddor Saesneg mewn testunau deddfwriaethol Cymraeg yw ein bod yn meddwl ei bod yn llai tebygol y bydd dryswch yn codi mewn achos llys ac yn nhrafodion y Cynulliad, yn enwedig pan fyddir yn cyfeirio at y ddau destun drwy gyfrwng cyfieithu ar y pryd. Y bwriad y tu ôl i'r newid yw hybu defnydd o destunau deddfwriaethol Cymraeg drwy symud rhwystr i ddefnydd effeithiol ohonynt.

Fel y cydnabuwyd yn adroddiad y Pwyllgor, mae'r newid hwn yn sicrhau dull cyson o drin y ffordd y nodir paragraffau ac is-baragraffau ym mhob ddeddfwriaeth ddwyieithog a ddaw gerbron y Cynulliad, gan fod yr arfer a benderfynwyd gan y Llywydd yn ystod y Trydydd Cynulliad yn parhau o ran Biliau. Y bwriad y tu ôl i'r newid yw hybu defnydd o destunau deddfwriaethol Cymraeg drwy symud rhwystr – er yn rhwystr bach - i ddefnydd effeithiol ohonynt.

2012 Rhif 1238 (Cy. 151)

AMAETHYDDIAETH, CYMRU

DŴR, CYMRU

Rheoliadau Atal Llygredd Nitradau (Cymru) (Diwygio) 2012

NODYN ESBONIADOL

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

Mae'r Rheoliadau hyn yn dirymu ac yn disodli darpariaethau penodol yn Rheoliadau Atal Llygredd Nitradau (Cymru) 2008 (O.S. 2008/3143 (Cy.278)) ("y prif Reoliadau") sy'n ymwneud â dynodi parthau perygl nitradau.

Mae'r prif Reoliadau'n gweithredu, yng Nghymru, Gyfarwyddeb y Cyngor 91/676/EEC ynghylch diogelu dyfroedd rhag llygredd gan nitradau o ffynonellau amaethyddol (OJ Rhif L375, 31.12.1991, t.1).

Mae'r ddarpariaeth a wneir gan y Rheoliadau hyn yn ymwneud â'r adolygiad gan Weinidogion Cymru o ddynodi parthau perygl nitradau yn 2009 gan y prif Reoliadau. Mae'r adolygiad yn ofynnol gan reoliad 11 o'r prif Reoliadau.

Gwneir darpariaeth gan y Rheoliadau hyn i Asiantaeth yr Amgylchedd wneud argymhellion i Weinidogion Cymru, bod Gweinidogion Cymru'n cyhoeddi ac yn hysbysu'r penderfyniadau y maent â'u bryd ar eu gwneud yn dilyn yr argymhellion hynny, ac i apelau i gael eu gwneud i Weinidogion Cymru, ac i berson a benodwyd gan Weinidogion Cymru benderfynu arnynt.

Mae rheoliad 2 yn dirymu ac yn disodli rheoliad 2 o'r prif Reoliadau. Mae rheoliad 2, ar ôl yr amnewid, yn penderfynu cymhwysiad y rhannau amrywiol o'r prif Reoliadau yn dilyn yr amnewid (gan reoliad 3 o'r Rheoliadau hyn) o ddarpariaethau o fewn Rhan 2 o'r prif Reoliadau.

Mae rheoliad 3 yn dirymu ac yn disodli rheoliadau 7, 8, 9 a 10 o'r prif Reoliadau.

Mae rheoliad 7 o'r prif Reoliadau, ar ôl yr amnewid, yn parhau â'r dynodiad o'r parthau perygl nitradau a wnaed gan y prif Reoliadau. Mae hefyd yn darparu bod Asiantaeth yr Amgylchedd yn cynorthwyo Gweinidogion Cymru yn eu hadolygiad o'r parthau drwy wneud argymhellion iddynt ynghylch dynodi ardaloedd yn barthau perygl nitradau, bod Gweinidogion Cymru'n cyhoeddi'r argymhellion hynny y mae eu bryd ar eu derbyn (gyda diwygiadau neu hebddynt) ac i gyflwyno hysbysiad i berchenogion a meddianwyr y tir yr effeithir arno.

Mae rheoliad 8 o'r prif Reoliadau, ar ôl yr amnewid, yn disodli'r trefniadau apelio yn Rhan 2 o'r prif Reoliadau (a oedd yn gymwys mewn perthynas â dynodi parthau perygl nitradau yn 2009). Gwneir darpariaeth bod apelau'n cael eu gwneud, ar seiliau penodedig ac o fewn terfyn amser penodedig, gan y personau yr anfonwyd hysbysiad o dan reoliad 7 atynt. Gosodir gofynion o ran ffurf yr apelau. Gwneir darpariaeth i apelau gael eu gwneud i Weinidogion Cymru, ond bod unrhyw apêl a gyflwynir i gael ei hailgyfeirio i berson a benodwyd gan Weinidogion Cymru ar gyfer ei hystyried a phenderfynu arni.

Mae rheoliad 9 o'r prif Reoliadau, ar ôl yr amnewid, yn gwneud darpariaeth ynghylch ystyried apelau gan y person penodedig a phenderfynu arnynt. Mae hyn yn cynnwys darpariaeth o ran y weithdrefn ar gyfer rhoi sylwadau, cynnal gwrandawiad llafar mewn amgylchiadau eithriadol, tynnu apelau yn ôl, a chostau.

Mae rheoliad 10 o'r prif Reoliadau, ar ôl yr amnewid, yn darparu bod Gweinidogion Cymru wedi eu rhwymo wrth benderfyniad y person penodedig, ac maent i gyhoeddi'r penderfyniadau hynny.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar wneud Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ystyriwyd nad oedd hi'n anghenrheidiol i wneud asesiad effaith rheoleiddiol o ran costau a manteision tebygol cydymffurfio â'r Rheoliadau hyn.

2012 Rhif 1238 (Cy. 151)

AMAETHYDDIAETH, CYMRU

DŴR, CYMRU

Rheoliadau Atal Llygredd Nitradau (Cymru) (Diwygio) 2012

Gwnaed *5 Mai 2012*

Gosodwyd gerbron Cynulliad Cenedlaethol Cymru *9 Mai 2012*

Yn dod i rym *1 Mehefin 2012*

Mae Gweinidogion Cymru wedi eu dynodi(**1**) at ddibenion adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972(**2**) mewn perthynas â materion sy'n ymwneud â diogelu dyfroedd rhag y llygredd a achosir gan nitradau o ffynonellau amaethyddol. Gan arfer y pwerau a roddwyd iddynt gan yr adran honno, mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn:

Enwi, cychwyn, cymhwyso a dehongli

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Atal Llygredd Nitradau (Cymru) (Diwygio) 2012 a deuant i rym ar 1 Mehefin 2012.

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

(3) Yn y Rheoliadau hyn, ystyr "y prif Reoliadau" yw Rheoliadau Atal Llygredd Nitradau (Cymru) 2008 (**3**).

(**1**) *Gweler* O.S. 2001/2555 am y dynodiad a roddwyd i Gynulliad Cenedlaethol Cymru. Yn rhinwedd adran 59 o Ddeddf Llywodraeth Cymru 2006, a pharagraff 28(1) o Atodlen 11 iddi, mae'r dynodiad hwnnw wedi ei freinio bellach yng Ngweinidogion Cymru.

(**2**) 1972 p. 68. Diwygiwyd adran 2(2) gan adran 3(3) o Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008 (p.7) a Rhan 1 o'r Atodlen iddi, a chan adran 27(1)(a) o Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006 (p.51).

(**3**) O.S. 2008/3143 (Cy.278), a ddiwygiwyd gan O.S. 2010/489 (Cy.55).

Amnewid rheoliad 2

2. Yn lle rheoliad 2 (cymhwyso) o'r prif Reoliadau, rhodder—

"Cymhwyso

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

(2) Mae Rhannau 3 i 8 yn gymwys yn unig i ddaliad mewn parth perygl nitradau a ddynodir felly gan y Rheoliadau hyn.

(3) Yn achos daliad sy'n rhannol o fewn parth perygl nitradau a ddynodir felly gan y Rheoliadau hyn, mae Rhannau 3 i 8 yn gymwys yn unig i'r rhan o'r daliad sydd o fewn y parth, ac mae cyfeiriad at ddaliad o fewn Rhannau 3 i 8 yn gyfeiriad at y rhan honno.".

Amnewid rheoliadau 7 i 10

3. Yn lle rheoliadau 7 (dynodi parthau perygl nitradau), 8 (cais am ddatganiad), 9 (achosion cyfreithiol gerbron y person penodedig) a 10 (effaith y canfyddiadau a wneir gan y person penodedig) yn y prif Reoliadau, rhodder—

"Dynodi parthau perygl nitradau

7.—(1) Yn y Rhan hon—

ystyr "daliad perthnasol" (*"relevant holding*") yw tir ynghyd â'i adeiladau cysylltiedig sydd ar gael i'r meddiannydd ac sy'n cael eu defnyddio i dyfu cnydau mewn pridd neu fagu da byw at ddibenion amaethyddol, ac sydd yn gyfan gwbl neu'n rhannol o fewn ardal—

(a) y mae'r Asiantaeth yn ei argymell; a

(b) bod Gweinidogion Cymru â'u bryd ar dderbyn (gyda diwygiadau neu hebddynt)

a ddylai gael ei ddynodi yn barth perygl nitradau, neu a ddylai barhau i gael ei ddynodi felly at ddibenion y Rheoliadau hyn;

ystyr "y person penodedig" ("the appointed person") yw'r person a benodwyd gan Weinidogion Cymru.

(2) Mae'r ardaloedd a nodir ar y map o'r enw "Parthau Perygl Nitradau Map Mynegai 2008" ("*Nitrate Vulnerable Zones Index Map 2008"*) ac a adneuwyd yn swyddfeydd Gweinidogion Cymru ym Mharc Cathays, Caerdydd, CF10 3NQ yn cael eu dynodi yn barthau perygl nitradau at ddibenion y Rheoliadau hyn.

(3) Parthau perygl nitradau yw darnau o dir sy'n draenio i ddyfroedd llygredig ac sy'n cyfrannu at lygru'r dyfroedd hynny.

(4) I gynorthwyo Gweinidogion Cymru mewn perthynas â'u ddyletswyddau o dan reoliad 11(3), rhaid i'r Asiantaeth, ar 1 Mehefin 2012, ac ar yr hwyraf, bob pedair blynedd sy'n dilyn, wneud argymhellion i Weinidogion Cymru, drwy gyfeirio at y materion a grybwyllir yn rheoliad 11(3)(a) i (c), ynghylch pa ardaloedd y dylid eu dynodi'n barthau perygl nitradau neu a ddylai barhau i gael eu dynodi felly at ddibenion y Rheoliadau hyn.

(5) Mae unrhyw argymhellion ynghylch y materion a gaiff eu datgan yn rheoliad 7(4) ac a gafodd eu gwneud gan yr Asiantaeth cyn 1 Mehefin 2012 yn cael effaith fel petaent wedi eu gwneud ar y dyddiad hwnnw.

(6) Rhaid i Weinidogion Cymru gyhoeddi'r argymhellion hynny a wnaed gan yr Asiantaeth y maent â'u bryd ar eu derbyn (gyda diwygiadau neu hebddynt) ac anfon hysbysiad o'r argymhellion i unrhyw berchennog neu feddiannydd daliad perthnasol.

(7) Rhaid i hysbysiad gynnwys cyfeiriad at dudalen ar wefan a gynhelir gan yr Asiantaeth neu Weinidogion Cymru, lle y mae modd dod o hyd i'r argymhelliad perthnasol (gydag unrhyw ddiwygiad y mae Gweinidogion Cymru â'u bryd ar ei wneud iddo).

Apelau

8.—(1) Caiff perchennog neu feddiannydd daliad perthnasol yr anfonwyd hysbysiad iddo o dan reoliad 7(6) apelio i Weinidogion Cymru yn erbyn yr hysbysiad hwnnw.

(2) Dim ond ar un neu ragor o'r seiliau a nodir ym mharagraff (3) y ceir apelio.

(3) Y seiliau yw bod, mewn perthynas â'r daliad perthnasol neu unrhyw ran ohono, na ddylai Gweinidogion Cymru dderbyn argymhellion yr Asiantaeth (yn ddarostyngedig i unrhyw ddiwygiad y mae Gweinidogion Cymru â'u bryd ar ei wneud iddynt) oherwydd—

(a) nad yw'r daliad perthnasol nac unrhyw ran ohono yn draenio i ddŵr—

(i) y mae Gweinidogion Cymru â'u bryd ar ei ddynodi ei fod yn llygredig neu wedi ei ddynodi felly, neu

(ii) sydd wedi cael ei nodi felly yn Lloegr; neu

(b) bod y daliad perthnasol neu unrhyw ran ohono yn draenio i ddŵr na ddylai Gweinidogion Cymru ddynodi ei fod yn llygredig, neu na ddyllai barhau i gael ei ddynodi felly.

(4) Mae'r apêl i'w seilio ar naill ai—

(a) data a ddarparwyd gan yr apelydd; neu

(b) tystiolaeth a ddarparwyd gan yr apelydd sy'n dangos fod y data y mae Gweinidogion Cymru'n dibynnu arno yn anghywir.

(5) Rhaid i'r apêl—

(a) gael ei gwneud yn ysgrifenedig yn y dull a'r ffurf a gyhoeddir gan Weinidogion Cymru;

(b) cynnwys manylion yr holl dystiolaeth y mae'r apelydd yn bwriadu dibynnu arni; ac

(c) bod yn nwylo Gweinidogion Cymru ddim hwyrach na 35 o ddiwrnodau ar ôl y dyddiad yr anfonodd Gweinidogion Cymru'r hysbysebiad y mae'r apêl yn ymwneud ag ef.

(6) Rhaid i Weinidogion Cymru ailgyfeirio'r apêl at y person penodedig ar gyfer ei ystyriaeth a'i benderfyniad arni.

Achosion gerbron y person penodedig

9.—(1) Os yw'r person penodedig wedi ei fodloni bod apêl a gyflwynwyd yn cydymffurfio â gofynion rheoliad 8 ym mhob manylyn o bwys, rhaid i'r person penodedig fynd ymlaen i wneud penderfyniad ar yr apêl.

(2) Mae'r weithdrefn ar gyfer gwneud penderfyniad ar yr apêl i'w phennu gan y person penodedig.

(3) Ond mae hynny yn ddarostyngedig i ddarpariaethau canlynol y rheoliad hwn.

(4) Cyn penderfynu ar yr apêl rhaid i'r person penodedig, gan ganiatáu'r cyfnod hwnnw sy'n rhesymol—

(a) gwahodd yr apelydd a Gweinidogion Cymru i gyflwyno sylwadau a dogfennau ategol mewn perthynas â'r apêl;

(b) anfon i Weinidogion Cymru gopi o unrhyw sylwadau a dogfennau ategol a gyflwynwyd gan yr apelydd;

(c) anfon i'r apelydd gopi o unrhyw sylwadau a dogfennau ategol a gyflwynwyd gan Weinidogion Cymru;

(d) rhoi cyfle i'r apelydd a Gweinidogion Cymru gyflwyno sylwadaethau i'r person penodedig ar sylwadau a dogfennau ategol y naill a'r llall.

(5) Caiff y person penodedig, ar unrhyw adeg, ofyn am wybodaeth bellach gan yr apelydd neu gan Weinidogion Cymru.

(6) Caiff y person penodedig wahodd unrhyw berson yr ymddengys bod ganddo fuddiant sylweddol mewn apêl i gyflwyno sylwadau, ond rhaid iddo ganiatáu i'r apelydd a Gweinidogion Cymru gael y cyfle i gyflwyno sylwadaethau ar unrhyw un o'r sylwadau a wnaed.

(7) Caiff y person penodedig anwybyddu unrhyw sylwadau, sylwadaethau neu ddogfennau sydd wedi eu cyflwyno mewn modd nad yw'n unol â'r Rheoliadau hyn.

(8) Os yw'r person penodedig wedi ei fodloni bod amgylchiadau eithriadol yn bodoli, caiff gynnal gwrandawiad llafar.

(9) Mewn gwrandawiad llafar mae gan y apelydd a Gweinidogion Cymru hawl i ymddangos, a chaiff y person penodedig ganiatáu i unrhyw barti arall ymddangos gerbron.

(10) Wrth benderfynu ar yr apêl, rhaid i'r person penodedig anfon copi o'r penderfyniad i bawb a oedd yn barti i'r apêl.

(11) Rhaid i bob un sy'n barti i apêl ddwyn ei gostau ei hun.

(12) Caiff yr apelydd dynnu apêl yn ôl ar unrhyw adeg cyn i'r person penodedig benderfynu arni.

(13) Mae tynnu apêl yn ôl yn effeithiol wrth i'r apelydd roi hysbysiad ysgrifenedig i'r person penodedig.

(14) Os tynnir apêl yn ôl mae'r person penodedig yn peidio â bod o dan ddyletswydd i'w hystyried a phenderfynu arni.

Effaith y penderfyniadau a wneir gan y person penodedig

10.—(1) Mae Gweinidogion Cymru wedi eu rhwymo wrth benderfyniad y person penodedig ar yr apêl.

(2) Rhaid i Weinidogion Cymru gyhoeddi penderfyniadau'r apelau gan y person penodedig ar wefan a gynhelir ganddynt.".

John Griffiths

Y Gweinidog Amgylchedd a Datblygu Cynaliadwy, un o Weinidogion Cymru

5 Mai 2012

Explanatory Memorandum to The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2012

This Explanatory Memorandum has been prepared by Department for Environment and Sustainable Development and is laid before the National Assembly for Wales 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 Nitrate Pollution Prevention (Wales) Regulations 2008

John Griffiths

Minister for Environment and Sustainable Development

5 May 2012

1. Description

The EC Nitrates Directive (91/676/EEC) ("the Nitrates Directive") is intended to reduce water pollution caused by nitrates from agricultural sources and to prevent any further pollution. The Nitrates Directive is transposed in Wales by the Nitrate Pollution Prevention (Wales) Regulations 2008 (as amended) ("the 2008 Regulations")[1].

Since the introduction of the Nitrates Directive in 1991, Member States have been required to assess and designate areas as Nitrate Vulnerable Zones (NVZs) and produce an Action Programme of measures to reduce levels of nitrogen entering watercourses. Member States are required to review their implementation of the Nitrates Directive every four years. The outcome of the review is used to make appropriate amendments to the NVZs and/or the measures in the Nitrates Action Programme. A review is currently underway, and must be completed by the end of 2012.

The 2008 Regulations provide for appeals to be made against proposed designations, but the provisions relate specifically to the 2008 designations process. It is therefore necessary to replace them by making the present Regulations. This will ensure that persons affected by the emerging conclusions of the review will be notified of the Welsh Government's proposals and have an opportunity to appeal against them.

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

Section 3 of this Memorandum explains that these Regulations are made in reliance on section 2(2) of the European Communities Act 1972. By virtue of section 59(3) of the Government of Wales Act 2006, the Welsh Ministers are to determine whether an instrument made in exercise of the section 2(2) powers is to be subject to the negative or affirmative procedure.

These Regulations do not amend an Assembly Act or Measure, or an Act of Parliament, nor do they create offences, impose civil penalties or involve substantial government expenditure. The provision made by them consists of applying, to the current review of NVZ designations, a process for the making and determination of appeals. That process, in its key features, is the same as that provided by the 2008 Regulations, although subject to limited technical amendment and elaboration intended to improve clarity and certainty.

Accordingly, the Welsh Ministers have determined that these Regulations are to be subject to the negative procedure.

[1] S.I 2008/3143 (W.278), amended by S.I. 2010/489 (W.55)

3. Legislative background

Section 2(2) of the European Communities Act 1972 provides that a Minister of the Crown or government department may be designated by Order in Council for the purposes of making provision to implement any EU obligation of the United Kingdom, or dealing any matters arising out of or related to such obligations.

This power to designate was extended to the National Assembly for Wales by Section 29(1) of the Government of Wales Act 1998. The European Communities (Designation) (No.2) Order 2001[2] designated the Assembly for the purpose of section 2(2) in relation to the protection of waters against pollution caused by nitrates from agricultural sources. As this is the subject matter of the Nitrates Directive, it follows that the Assembly was empowered to make any legislation necessary to transpose the Directive. However, the Order authorised the Assembly only to make regulations which applied in relation to Wales.

By virtue of section 59 of, and paragraph 28 of Schedule 11 to, the Government of Wales Act 2006, the designation of the Assembly now has effect as a designation of the Welsh Ministers. In reliance on this designation, the Welsh Ministers have made the 2008 Regulations and the present Regulations, which, taken together, transpose the Nitrates Directive in relation to Wales.

4. Purpose & intended effect of the legislation

The 1991 Nitrates Directive requires Member States to establish Action Programmes, which set out specific good agricultural practice measures for farmers to follow in order to reduce nitrate pollution. It requires Member States to apply the Action Programme either throughout their national territory (whole Wales NVZ designation), or to specific areas where farmers have to implement the measures (with farmers in other areas being subject only to other national baseline standards).

The Nitrates Directive requires reviews of both the extent of the NVZs and the effectiveness of the Action Programme every four years. The outcomes of the reviews are to be used to make appropriate amendments (i.e. revise the NVZs and/or the Action Programme measures). A review is currently under way and must be completed by the end of 2012.

The Welsh Government consulted on its review in December 2011. The consultation period closed on 16 March 2012. The consultation sought views on, amongst other matters, whether it was appropriate to continue with the current regime of designation of discrete NVZs, or to adopt a whole territory designation approach.

[2] SI 2001/2555

Details were given of the process which it was intended to follow if the discrete NVZ designation approach were to be adopted. This process consisted of Environment Agency recommendations to the Welsh Government, publication and notification to affected farmers of those recommendations which the Welsh Government was minded to accept, and a 28 day "window" for making of appeals, which would be handled by the Planning Inspectorate.

Following consideration of the consultation responses (see Section 5 below), the Welsh Government decided to continue the existing regime of discrete NVZ designations, and to give effect to its proposals for appeals.

Part 2 of the 2008 Regulations made provision for appeals and for the review of nitrate vulnerable zones, but the appeal provisions relate specifically to the 2008 designations process. It is therefore necessary to replace them, and that is the purpose of the present Regulations. The new provisions carry forward the key features of the previous provisions, but with elaboration of some details and technical changes to procedure which are intended to improve the clarity and effectiveness of the appeal process. The 2008 Regulations provided for designation of NVZs, but for affected persons to be able to apply for a declaration that land should not be designated. However, if that application was successful, the result was not a revocation of the designation but provision that the land should be treated as if it had not been designated. The present regulations make provision for a process of provisional designation (following recommendations by the Environment Agency), for appeals, and for the outcome of the appeals to be binding on the Welsh Government when it makes its final decision.

Regulation 2 revokes and replaces regulation 2 of the 2008 Regulations. Its purpose is to complement the provision made by Regulation 3 and clarify the application of the 2008 Regulations. Parts 3 to 8 of the 2008 Regulations comprise the Action Programme required by the Directive. However, the measures in the programme are only to be applied to land which has been designated as an NVZ. However, the remainder of the 2008 Regulations, as now amended, need to apply in relation to all of Wales. The new Regulation 2 gives effect to this**.**

Regulation 3 revokes and replaces Regulations 7, 8, 9 and 10 of the 2008 Regulations.

The **new Regulation 7**:

a) makes provision to recognise the Environment Agency's role in making recommendations to the Welsh Ministers as part of the review process, and for the Welsh Ministers to publish and notify to affected persons the recommendations they are minded to accept (with or without amendment)

b) retains the current definition and designation of NVZs. It is intended that any amendments made to the current designations following the conclusion of the appeals process will be given effect by a further amendment of the 2008 Regulations in due course.

The **new Regulation 8** provides the right to appeal in terms equivalent to the right to apply for a declaration under the 2008 Regulations. The first of the specified grounds has been expanded to deal with the possibility of cross-border scenarios, so that a farmer who wishes to assert that their land does not drain into polluted water can do so irrespective of whether the polluted water is in Wales or England.

In relation to the second appeal ground, it is recognised that it is in theory possible that a farmer in Wales will wish to challenge the "polluted" status of water in England, and that no provision is made for this. However, the subject matter of an appeal here would be a decision made by the Secretary of State in relation to water in England, and the Welsh Ministers' power to make the Regulations is limited to provision in relation to Wales. In any event, it is considered that this scenario (and its equivalent in relation to polluted water in Wales) is highly unlikely to arise in practice: if it should do so, the Welsh Government will work with Defra to ensure that any necessary further provision is made.

The **new Regulation 9** makes provision for the consideration and determination of appeals by a person appointed by the Welsh Ministers: as previously, it is intended that in practice this will be a Planning Inspectorate Inspector. The provision made about procedure broadly follows that made by the 2008 Regulations. However, to assist transparency and certainty, more detailed provision is made about aspects of the process (e.g. what is to happen if further information is needed or the appellant decides to withdraw their appeal). The provision made is modelled on the established process for planning appeals. In addition, to better reflect the independence of the appeal determination:

a) it is expressly provided that, except as specifically set out on the face of the Regulations, the process is a matter for the appointed person to decide.

b) the provision made by the 2008 Regulations to define the basis of the appointed person's determination has been omitted. This is now left to appointed person's discretion, but the normal public law principles relevant to appeal determinations will of course apply.

The **new Regulation 10** provides simply that the determinations of the appointed person are binding on the Welsh Ministers. The effect is the same as under the 2008 Regulations, namely that at the end of the process of review, the designations of NVZs will have effect in accordance with the appeal decisions.

5. Consultation

As stated above at Section 4, the Welsh Government recently consulted on the Review of Nitrate Vulnerable Zones in Wales. This consultation closed on the 16 March and asked for views on proposals to revise the coverage of Nitrate

Vulnerable Zones and modify the Nitrates Action Programme measures implemented within the Nitrate Vulnerable Zones.

The consultation included a section on the proposed appeals procedure, which would take effect as part of the process of the review if (and only if) the current approach of designating discrete NVZs were to be retained. It was considered unnecessary to ask any specific consultation question on the appeal proposals given that these amounted in essence to a continuation of the 2008 arrangements. However, respondents were asked to state, with reasons, whether they preferred the option of discrete designation (option 1) or the alternative of whole territory designation (option 2). As the appeal proposals formed an integral part of option1 it was open to respondents to comment on them if they wished. However, the only responses received simply endorsed the inclusion of an appeals process.

6. Regulatory Impact Assessment (RIA)

An RIA has not been undertaken as these amendments to Regulations do not create an additional regulatory burden. This is in line with Section 4.2 of the Welsh Ministers' RIA code which states that the Welsh Ministers policy is not to carry out an RIA:

"Where routine technical amendments or factual amendments are required to update regulations etc. that have no major policy impact. "

The Regulations provide only for a process for the making and determination of appeals in relation to the current NVZ review, thus securing continuation of the regime established by the 2008 Regulations. To improve clarity and certainty, that process includes limited technical amendment and elaboration of the provision made for appeals by the 2008 Regulations, but the key features and effect remain as before.

The previous RIA, drafted when the 2008 Regulations were made, assessed both the environmental and economic impact of the action programme measures on affected farmers. It used the total number of affected farmers to assess the impact across the whole of Wales.

Following the completion of the current review and the determination of any appeal, it is envisaged that an RIA will be produced when further amendment regulations are made early next year to give effect to any revisions to the designation of NVZs and to the action programme.

Given the subject matter and effect of the Regulations, it is considered that they do not have any effect relevant to the statutory duties at sections 77 – 79 of the Government of Wales Act 2006, or to the statutory partners (sections 72 – 75).

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

CLA(4)-11-12

CLA142

Adroddiad Drafft y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Teitl: Gorchymyn Iechyd Meddwl (Gwasanaethau Iechyd Meddwl Eilaidd) (Cymru) 2012

Gweithdrefn: Cadarnhaol

Mae'r Gorchymyn hwn yn darparu, at ddibenion Rhannau 2 a 3 o Fesur Iechyd Meddwl (Cymru) 2010, na chaiff gwasanaethau cymorth iechyd meddwl sylfaenol lleol sydd ar gael mewn ardaloedd awdurdod lleol penodol eu hystyried yn wasanaethau iechyd meddwl eilaidd yn yr ardal awdurdod lleol honno.
Mae'r gorchymyn yn darparu ymhellach y caiff gwasanaethau yn Lloegr, yr Alban neu Ogledd Iwerddon sy'n cyfateb i wasanaethau iechyd meddwl eilaidd a ddarperir yng Nghymru eu hystyried yn wasanaethau iechyd meddwl eilaidd at rai dibenion yn Rhan 3 o'r Mesur.

Materion technegol: craffu

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

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

NEU

[O dan Reol Sefydlog 21.3.(ii) gwahoddir y pwyllgor i ystyried a ddylai'r Cynulliad roi sylw arbennig i'r offeryn hwn gan ei fod yn codi materion polisi cyhoeddus sy'n debygol o fod o ddiddordeb i'r Cynulliad.

- Mae Rhan 2 o'r Mesur yn cynnwys gofynion mewn perthynas â chydlynu gofal a chynllunio gofal a thriniaeth. Mae Rhan 3 o'r Mesur yn galluogi oedolion cymwys sydd wedi cael eu rhyddhau o wasanaethau iechyd meddwl eilaidd i atgyfeirio eu hunain yn ôl i wasanaethau eilaidd yn uniongyrchol os ydynt yn credu bod eu hiechyd meddwl yn gwaethygu.
- Mae Erthygl 3 o'r Gorchymyn yn golygu gwahardd unrhyw wasanaeth neu driniaeth a nodwyd ac sydd ar gael fel rhan o wasanaeth iechyd meddwl sylfaenol lleol mewn ardal awdurdod lleol o dan Ran 1 o'r Mesur o ofynion Rhannau 2 a 3 o'r Mesur.

- O ganlyniad, ni fydd angen i ddarparwyr gwasanaeth (byrddau iechyd lleol ac awdurdodau lleol) benodi cydlynwyr gofal neu ddarparu cynlluniau gofal a thriniaeth i unigolion sy'n defnyddio gwasanaethau neu driniaeth a ystyrir yn wasanaethau cymorth iechyd meddwl sylfaenol lleol mewn ardal awdurdod lleol. Canlyniad arall yw na fydd hawl gan unigolyn sydd wedi cael ei ryddhau o wasanaethau a ddarperir fel rhan o wasanaeth cymorth iechyd sylfaenol lleol i gael ailasesiad.
- Mae'r Gorchymyn yn ymestyn hawl y rhai sy'n gymwys i gael asesiad o dan Ran 3 o'r Mesur i bobl sydd wedi cael gwasanaethau iechyd meddwl eilaidd (sy'n cyfateb i'r rhai a ddarperir yng Nghymru) yn Lloegr, yr Alban neu Ogledd Iwerddon.]

Cynghorwyr Cyfreithiol
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

8 Mai 2012

Gorchymyn drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 52(5)(a) o Fesur Iechyd Meddwl (Cymru) 2010 i'w gymeradwyo drwy benderfyniad Cynulliad Cenedlaethol Cymru.

OFFERYNNAU STATUDOL
CYMRU DRAFFT

2012 Rhif (Cy.)

IECHYD MEDDWL, CYMRU

Gorchymyn Iechyd Meddwl (Gwasanaethau Iechyd Meddwl Eilaidd) (Cymru) 2012

NODYN ESBONIADOL

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

At ddibenion Rhannau 2 a 3 o Fesur Iechyd Meddwl (Cymru) 2010 ("y Mesur"), mae erthygl 3 o'r Gorchymyn hwn yn darparu nad yw gwasanaethau cymorth iechyd meddwl sylfaenol lleol sy'n cael eu rhoi ar gael mewn ardal awdurdod lleol benodol o dan gynllun i'w hystyried fel gwasanaethau iechyd meddwl eilaidd yn yr ardal awdurdod lleol honno.

Effaith erthygl 3 yw'r canlynol: nid yw'r gofynion sy'n ymwneud â chydgysylltu a chynllunio gofal a thriniaeth a ddarperir gan Ran 2 o'r Mesur yn gymwys i unigolyn nad yw ond yn derbyn y gwasanaethau neu driniaeth sy'n cael eu rhoi ar gael fel gwasanaethau cymorth iechyd meddwl sylfaenol lleol yn yr ardal awdurdod lleol lle y mae preswylfa arferol yr unigolyn hwnnw. Hefyd, ni fydd unigolyn nad yw ond wedi derbyn gwasanaethau o'r fath yn gymwys ar gyfer asesiad o dan Ran 3 o'r Mesur.

Mae erthygl 4 o'r Gorchymyn hwn yn darparu y bydd gwasanaethau yn Lloegr, yr Alban neu yng Ngogledd Iwerddon, sy'n gyfwerth â gwasanaethau iechyd meddwl eilaidd a ddarperir yng Nghymru, yn cael eu hystyried yn wasanaethau iechyd meddwl eilaidd at ddibenion penodol yn Rhan 3 o'r Mesur.

Effaith erthygl 4 yw galluogi oedolion sydd wedi derbyn y gwasanaethau hynny yn Lloegr, yr Alban neu yng Ngogledd Iwerddon, ond sydd bellach yn preswylio yng Nghymru, i fod yn gymwys ar gyfer asesiad o dan Ran 3 o'r Mesur, ar yr amod eu bod yn

bodloni'r meini prawf ar gyfer yr hawl a ddarperir yn adran 22 o'r Mesur.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar wneud Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Gorchymyn hwn. O ganlyniad, paratowyd asesiad effaith rheoleiddiol o'r costau a'r buddiannau sy'n debygol o ddeillio o gydymffurfio â'r Gorchymyn hwn. Gellir cael copi gan y Tîm Deddfwriaeth Iechyd Meddwl, Yr Adran Iechyd, Gwasanaethau Cymdeithasol a Phlant, Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

Gorchymyn drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 52(5)(a) o Fesur Iechyd Meddwl (Cymru) 2010 i'w gymeradwyo drwy benderfyniad Cynulliad Cenedlaethol Cymru.

OFFERYNNAU STATUDOL
CYMRU DRAFFT

2012 Rhif (Cy.)

IECHYD MEDDWL, CYMRU

Gorchymyn Iechyd Meddwl (Gwasanaethau Iechyd Meddwl Eilaidd) (Cymru) 2012

Gwnaed	*2012*
Yn dod i rym	*6 Mehefin 2012*

Mae Gweinidogion Cymru yn gwneud y Gorchymyn hwn, drwy arfer y pwerau a roddwyd gan adrannau 49(4) a 52(2) o Fesur Iechyd Meddwl (Cymru) 2010(**1**).

Gosodwyd drafft o'r offeryn hwn gerbron Cynulliad Cenedlaethol Cymru yn unol ag adran 52(5)(a) o'r Mesur, a'i gymeradwyo gan benderfyniad Cynulliad Cenedlaethol Cymru.

Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Iechyd Meddwl (Gwasanaethau Iechyd Meddwl Eilaidd) (Cymru) 2012, a daw i rym ar 6 Mehefin 2012.

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

Dehongli

2. Yn y Gorchymyn hwn, ystyr "y Mesur" ("*the Measure*") yw Mesur Iechyd Meddwl (Cymru) 2010.

(**1**) 2010 mccc 7.

Ystyr gwasanaethau iechyd meddwl eilaidd at ddibenion Rhannau 2 a 3 o'r Mesur

3. Nid yw gwasanaethau a thriniaeth sydd yn cael eu rhoi ar gael fel gwasanaethau cymorth iechyd meddwl sylfaenol lleol(**1**) mewn ardal awdurdod lleol benodol o dan gynllun(**2**) i'w hystyried fel gwasanaethau iechyd meddwl eilaidd(**3**) at ddibenion Rhan 2 (cydgysylltu a chynllunio gofal ar gyfer defnyddwyr gwasanaethau iechyd meddwl eilaidd) a Rhan 3 (asesiadau ar ddefnyddwyr blaenorol o wasanaethau iechyd meddwl eilaidd) o'r Mesur yn yr ardal awdurdod lleol honno.

Ystyr gwasanaethau iechyd meddwl eilaidd at ddibenion hawl i asesiad yn Rhan 3 o'r Mesur

4. Mae gwasanaeth a ddarperir yn Lloegr, yr Alban neu yng Ngogledd Iwerddon, sy'n gyfwerth â gwasanaeth iechyd meddwl eilaidd a ddarperir yng Nghymru, i'w ystyried yn wasanaeth iechyd meddwl eilaidd at ddibenion adran 22 (hawl i asesiad) ac adran 23 (asesiadau: y cyfnod rhyddhau perthnasol) o'r Mesur.

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol, un o Weinidogion Cymru

Dyddiad

(**1**) *Gweler* adran 5 (ystyr "gwasanaethau cymorth iechyd meddwl sylfaenol lleol") o'r Mesur am ystyr gwasanaethau cymorth iechyd meddwl sylfaenol lleol.

(**2**) *Gweler* adran 2 (cynlluniau ar y cyd ar gyfer darparu gwasanaethau cymorth iechyd meddwl sylfaenol lleol) ac adran 4 (methiannau i gytuno ar gynlluniau) o'r Mesur sy'n ymwneud â chynlluniau ar gyfer darparu gwasanaethau cymorth iechyd meddwl sylfaenol lleol mewn ardaloedd awdurdod lleol.

(**3**) *Gweler* adran 49 (ystyr gwasanaethau iechyd meddwl eilaidd) o'r Mesur am ystyr gwasanaethau iechyd meddwl eilaidd.

Explanatory Memorandum to the Mental Health (Secondary Mental Health Services) (Wales) Order 2012

This Explanatory Memorandum has been prepared by the Department for Health, Social Services and Children 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 Mental Health (Secondary Mental Health Services) (Wales) Order 2012. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths AM

Minister for Health and Social Services

1 May 2012

Description

1. The Mental Health (Secondary Mental Health Services) (Wales) Order 2012 makes provision which:

    a. amends the existing definition of secondary mental health services provided at section 49 of the Measure so that services provided as local primary mental health support services (within the meaning of section 5 of the Mental Health (Wales) Measure 2010 ('the Measure')) in a local authority area are not regarded as secondary mental health services for the purposes of Parts 2 and 3 within that local authority area. This means that the requirements surrounding care coordination and care and treatment planning set out in Part 2 of the Measure do not apply to individuals who are only in receipt of what are regarded - within the local authority area in which those individuals are usually resident - as local primary mental health services. Also, individuals who have received only such services will not be eligible for assessment under Part 3 of the Measure.

    b. extends the existing definition of secondary mental health services provided at section 49 of the Measure to include certain services provided in other parts of the UK for the purposes of sections 22 (entitlement to assessment) and 23 (assessments: the relevant discharge period) of the Measure. This enables adults who have received such services, but who are now usually resident in Wales, to request assessment under Part 3 of the Measure (provided that they satisfy the eligibility criteria provided in section 22 of the Measure).

Matters of special interest to the Constitutional and Legislative Affairs Committee

2. This Order contains articles which relate to Parts 1, 2 and 3 of the Measure. It is the second piece of subordinate legislation to be made relating to Part 2 of the Measure (the first being the Mental Health (Care coordination and Care and Treatment Planning) (Wales) Regulations 2011), and the second to be made relating to Part 3 (the first being the Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011)[1].

[1] The Mental Health (Primary Care Referrals and Eligibility to Conduct Primary Mental Health Assessments (Wales) Regulations 2012 (relating to Part 1 of the Measure) and the Mental Health (Regional Provision) (Wales) Regulations 2012 (relating to Parts 1 and 3 of the Measure) are both scheduled for consideration by the National Assembly for Wales in May 2012. If the Mental Health (Regional Provision) (Wales) Regulations 2012 are approved by the Assembly and made by the Welsh Ministers, references to 'local authority areas' in this Explanatory Memorandum and Regulatory Impact Assessment should be read as 'regions'.

Legislative background

3. This Order may be made in exercise of powers conferred on the Welsh Ministers by sections 49(4) and 52(2) of the Measure.

4. This Order is subject to the affirmative procedure.

Purpose and intended effect of the legislation

5. This Order affects Parts 2 and Part 3 of the Mental Health (Wales) Measure 2010 - although it uses the definition of Local Primary Mental Health Support Services under Part 1.

Part 1 Local Primary Mental Health Support Services

6. Part 1 of the Measure aims to strengthen the role of primary care in the delivery of mental health services by ensuring that throughout Wales there will be local primary care mental health support services. These will be delivered by Local Health Boards ('LHBs') and local authorities in partnership, and it is expected that these services will operate either within, or alongside, existing GP practices.

Part 2 – Coordination of and Care Planning for Secondary Mental Health Service Users

7. Part 2 of the Measure seeks to provide that all relevant patients (of any age) who have been accepted into secondary mental health services in Wales have a dedicated care coordinator and care and treatment plan, and that service providers (LHBs and local authorities) act in a coordinated manner to improve the effectiveness of the mental health services provided to an individual.

Part 3 – Assessments of Former Users of Secondary Mental Health Services

8. Part 3 of the Measure will enable eligible adults who have been discharged from secondary mental health services, but who subsequently believe that their mental health is deteriorating to such a point as to require such care and treatment again, to refer themselves back to secondary services directly, without necessarily needing to first go to their general practitioner or elsewhere for a referral.

9. To this end, Part 3 of the Measure requires 'local mental health partners' in each local authority area (i.e. the relevant LHB and local authority) to agree arrangements for dealing with requests from former users of secondary mental health services for assessment of their mental health.

Part 6 – Miscellaneous and Supplemental, section 49: Meaning of Secondary Mental Health Services

10. Section 49(1) of the Measure provides that secondary mental health services are:

(a) a service in the form of treatment for an individual's mental disorder which is provided under Part 1 of the National Health Service (Wales) Act 2006;

(b) a service provided under section 117 of the Mental Health Act 1983;

(c) a community care service the main purpose of which is to meet a need related to an adult's mental health;

(d) a service provided for a child under Part III of the Children Act 1989 the main purpose of which is to meet a need related to that child's mental health.

12. Section 49(2) goes on to provide that a service is not to be taken as being provided under Part 1 of the NHS (Wales) Act 2006 if that service is provided under:

(a) section 41 of that Act;

(b) a general medical services contract entered into by a Local Health Board under section 42 of that Act;

(c) arrangements for the provision of primary medical services entered into by a Local Health Board under section 50 of that Act;

(d) Schedule 1 to that Act.

13. The main effect of section 49(2) is to exclude services provided under a General Medical Services contract from being considered as a secondary mental health service for the purposes of the Measure.

14. The definition provided by section 49 means that, in effect, all services provided to an individual for the treatment of, or to meet needs related to, their mental health - except those which are delivered as part of the General Medical Services contract - are considered to be secondary mental health services. This includes services provided as part of local primary mental health support services.

15. This Order amends the definition of secondary mental health services at section 49 by providing that services and treatments made available and provided as part of a local primary mental health support service (within the meaning of section 5 of the Measure) in a particular local authority area are not to be considered as secondary mental health services for the purposes of Parts 2 and 3 of the Measure in that local authority area.

16. Separately, this Order also provides that services in England, Scotland and Northern Ireland that are the equivalent of secondary mental health services provided in Wales are to be regarded as secondary mental health services for the purposes of sections 22 (entitlement to assessment) and 23 (assessments: the relevant discharge period) in Part 3 of the Measure.

Effect of this Order: Exemption of Local Primary Mental Health Support Services from Meaning of Secondary Mental Health Services

17. This Order has the effect of excluding any service or treatment identified and made available as part of a local primary mental health support service in a local authority area under Part 1 of the Measure from the requirements of Parts 2 and 3 of the Measure in that local authority area. This is because Article 3 provides that any such services or treatment are not to be considered as a secondary mental health service for the purposes of Parts 2 and 3 of the Measure (schemes for the identification and provision of local primary mental health support services are agreed by a Local Health Board and local authority under section 2 of the Measure, or made under section 4 of the Measure).

18. In practice this means that the provisions of Parts 2 and 3 of the Measure are disapplied in respect of any service or treatment which is identified and made available as part of a local primary mental health support service in a local authority area under Part 1 of the Measure. Service providers (LHBs and local authorities) will not be required to appoint care coordinators or provide care and treatment plans for individuals accessing services or treatment which are regarded as local primary mental health support services within a local authority area. Similarly, where individuals have received services delivered as part of local primary mental health support services, they will not be entitled to seek reassessment within 3 years of being discharged from such a service.

19. This ensures that the requirements for care and treatment planning under part 2, which are intended to improve the coordination of mental health services for people with complex or enduring needs, do not apply to services delivered as part of local primary mental health support services, and that the entitlement to request assessment following discharge applies only to those individuals who have previously received mental health services for complex or enduring needs.

20. This approach clarifies the Welsh Government's policy intention, and removes ambiguity as to which services are to be considered as secondary mental health services for the purposes of Parts 2 and 3 of the Measure.

Effect of this Order: Extension

21. This order has the effect of ensuring that people who meet the eligibility criteria provided in section 22 of the Measure and who have previously received what are regarded as secondary mental health services in other parts of the United Kingdom, but who are currently resident in Wales, have the same entitlement to request an assessment as individuals who have previously received secondary mental health services delivered in Wales.

REGULATORY IMPACT ASSESSMENT

Options

22. This section of the Regulatory Impact Assessment (RIA) presents two different options in relation to the policy objectives of the proposed Order (see Section 4 of Part 1 of this document). Both of the options are analysed in terms of how far they would achieve the Government's objectives, along with the risks associated with each. The costs and benefits of each option are set out in Section 7 of this RIA.

22. The options are:

- Option 1 - Do nothing;
- Option 2 - Deliver the policy objectives through the Order.

Option 1 – Do nothing

23. This option proposes not making the Order.

24. Failing to make Article 3 of this Order, which excludes services made available and provided under a joint scheme as part of the local primary mental health support services in a particular local authority area from the meaning of secondary mental health services in that local authority area, would mean that many local primary mental health support services would be subject to the requirements surrounding care coordination and care and treatment planning under Part 2 of the Measure. This was not the intended effect of Part 2 of the Measure. Services provided under Part 1 of the Measure are intended to strengthen primary care services through the functions set out in section 5 of the Measure and are expected to provide a bridge between General Practitioner services and secondary mental health services.

25. Local primary mental health support services are intended to increase capacity at primary care level to offer assessment, brief therapy interventions, onward referral, advice and information for people of all ages. If such services were subject to the requirements of Part 2, which are designed to improve care coordination and planning for people with severe and enduring mental health problems, this would increase the administrative processes to a level that is disproportionate for the effective delivery of these services.

26. Not excluding local primary mental health support services from Parts 2 and 3 by Order would not therefore prevent the overall operation of Part 2 or Part 3 of the measure, but it is likely to have a detrimental effect upon the operation of Part 1 which is undesirable.

27. In relation to Part 3 of the Measure, if services provided as part of local primary mental health support services are not excluded from being considered as

secondary mental health services for the purposes of Part 3, then the entitlement to request reassessment directly from secondary mental health services would extend to individuals who had received these services. Again, this was not the intended effect of this Part of the Measure, which was designed to ensure a direct route back to specialist services for those individuals with complex or enduring mental health problems.

28. Article 4 of the Order enables services provided in England, Scotland and Northern Ireland which are the equivalent of secondary mental health services provided in Wales to be regarded as secondary mental health services for certain purposes in Part 3 of the Measure. Failing to make Article 4, would mean that individuals who had previously received such secondary mental health services in another part of the UK, but who were now usually resident in Wales, would not be entitled to request reassessment directly from secondary mental health services.

30. Not providing for this in the Order would not therefore prevent the overall operation of Part 3 of the Measure. It would however leave a disparity in entitlement for people living in Wales based on where in the United Kingdom they had previously received secondary mental health services. This would also impact upon people from Wales who had been sent to a prison outside Wales and whilst in custody had received secondary mental health services. On their return to Wales such individuals would not have a right to request a reassessment of their mental health should they feel it was deteriorating.

31. The Welsh Government therefore considers that not making this Order would significantly undermine the operation and intentions of Parts 2 and 3 of the Measure.

Option 2 – Make Order

32. This option proposes making the Order.

33. Article 3 of the Order will ensure that there is certainty amongst service providers as to which services are to be considered as secondary mental health services, by clarifying that local primary mental health support services identified and made available in a local joint scheme agreed under Part 1 of the Measure are not to be considered as secondary mental health services for the purposes of Parts 2 and 3.

34. This approach will allow the local mental health partners responsible for providing local primary mental health services for an area to consider and determine the mental health services that will be included in their local joint scheme for local primary mental health support services in the knowledge that all other mental health services delivered in the area (other than under the General Medical Services Contract) will therefore be considered to be secondary mental health services. Any services which are not made available and provided under the joint scheme for local primary mental health support services will be subject to the requirements of Parts 2 and 3 of the Measure.

35. This will provide local mental health partners with flexibility to build upon the primary care-based services which are already being provided (except those delivered under the General Medical Services Contract), and to design appropriate pathways as part of a continuum of mental health service provision.

36. This approach will also serve to avoid unnecessary or excessive bureaucracy associated with service delivery within local primary mental health support services.

37. This Order is considered central to the operation of the Measure, but there are some limited risks associated with making it: local determination of what will be included in the local mental health partners' joint scheme for the delivery of local primary mental health support services, and therefore locally determining what will be considered secondary mental health services, could lead to variation between different parts of Wales.

38. It could also be the case that an intervention offered as a treatment in relation to a person's mental health is delivered as part of a Part 1 local primary mental health support service in one area of Wales, but in another area it is not and is therefore delivered as a secondary mental health service. This would mean that in one area the requirements for the appointment of a care coordinator and production of a care plan would apply, along with the right to request assessment under part 3 when discharged from the service, and in the other it would not.

39. However, it is considered unlikely that local mental health partners would agree that the cornerstones of community mental health services for people with severe and enduring mental health problems would be delivered through a Part 1 scheme, and it is such specialist services that the requirements of Parts 2 and 3 are intended to support.

40. To further mitigate any risk the Welsh Government will issue further guidance to service providers in relation to this matter.

41. Article 4 of this Order will ensure that people who have previously received services which are the equivalent of secondary mental health services provided in Wales in other parts of the United Kingdom, but who are currently resident in Wales, receive the same right to request an assessment as individuals who have previously received secondary mental health services delivered in Wales. Examples may include individuals who have travelled to other parts of the United Kingdom for employment or on holiday and have required treatment from a community mental health team, or admission to a psychiatric hospital, or prisoners who have been in prison outside of Wales and whilst in custody have received secondary mental health services, such as Prison Inreach, or have needed to be admitted to a psychiatric hospital.

42. This Article also ensures that where an individual has moved to reside in Wales, having previously been resident elsewhere in the United Kingdom and having received services in that place which are the equivalent of secondary mental health services provided in Wales, they have the same right to request an

assessment as a former recipient of Welsh secondary mental health services. This Article will ensure equity of access for such individuals.

Costs and benefits

43. The costs associated with developing and delivering local primary mental health support services under Part 1 of the Measure, care and treatment planning under Part 2 and assessments of former users of secondary mental health services under Part 3 are set out in the Explanatory Memorandum to the Measure[2]. This Order will not impact on the costs set out in that document.

Costs and benefits of Option 1 (do nothing)

44. The potential costs to LHBs and local authorities in *not* making this Order arise from their being required to implement the care and treatment planning duties of Part 2 for local primary mental health support services. This would be likely to increase the time required for care and treatment planning, which would have the effect of reducing time and available resources for delivering interventions. Such a possible effect runs counter to the principle of proportionality for care and treatment planning as set out in the Code of Practice to Parts 2 and 3 of the Measure.

45. In relation to Part 3, costs may also arise if service providers are required to conduct assessments of individuals who have previously received services delivered as part of local primary mental health support services. Other potential costs relate to the inability of people who, whilst now living in Wales, have previously received secondary mental health services elsewhere in the United Kingdom: lack of entitlement to assessment could result in the possibility of potential for intervention being delayed, with more intensive and costly interventions perhaps being required if the individual's condition were to further deteriorate as a result of their not being able to access prompt assessment under the Part 3 provisions.

46. There are no discernable benefits in not making the Order.

Costs and benefits of Option 2 (make Order)

47. It is not anticipated that any additional costs beyond those set out in relation to Parts 1, 2 and 3 in the Explanatory Memorandum which accompanied the Measure would be incurred by local authorities or LHBs as a result of this Order.

48. The intended effect of the Measure is that the requirements of Part 2 should ensure effective coordination and planning of care for people with severe mental health problems whose complex care needs could not be met in a primary care setting, and that access to assessment under Part 3 would be available to

[2] http://www.assemblywales.org/bus-home/bus-legislation/bus-legmeasures/business-legislation-measures-mhs-2.htm

individuals who had received specialist services for severe or enduring mental health problems.

49. Providing entitlement to request an assessment to individuals currently resident in Wales who previously received secondary mental health services elsewhere in the United Kingdom is not expected to introduce a significant additional burden upon services.

Summary

50. **Option 2 (make Order)** best meets the Government's objectives.

Consultation

51. In winter 2011/12 the Welsh Government undertook a formal 12 week consultation on the Order. 36 written responses were received, including from Local Health Boards in Wales.

52. A detailed consultation report has been published on the Welsh Government's website, but a summary of the views received is set out in the following paragraphs.

53. Stakeholder opinion was divided in regard to whether the Order provided certainty about what would be considered secondary mental health services, with 50% of those who responded to the question believing that it would, and 50% disagreeing. Many respondents observed that such certainty would only be provided when local primary mental health support schemes had been agreed by LHBs and local authorities. Several respondents suggested that unless the Welsh Government issued clear guidance regarding those services it considered as appropriate for delivery as local primary mental health support services and those which it considered should more appropriately be delivered within secondary services, a 'postcode lottery' may emerge, with different services being provided in primary or secondary care in different areas.

54. By contrast, several stakeholders argued that it was correct that service providers should be able to determine for themselves those services which would be delivered within primary or secondary care. These respondents felt that local service planners and providers would be best-placed to understand the demographics, characteristics and demands of local populations and draw up local primary mental health support service schemes which were appropriate to those circumstances. A number of stakeholders also felt that service providers should not include services within their primary care scheme simply to avoid the care coordination and care and treatment planning requirements of Part 2 of the Measure. Several asked that the Welsh Government include a clear statement on this matter in its forthcoming guidance on primary/secondary mental health services.

55. The Welsh Government agrees that, ultimately, certainty as to which mental health services are to be delivered within secondary mental health services and which as part of local primary mental health support services will only be provided when local primary mental health support service joint schemes have been agreed for each LHB region by LHBs and local authorities. However, the Welsh Government is content that the approach proposed in the Order provides a workable mechanism whereby mental health service providers are able to determine at a local level which of the services they deliver are to be considered as secondary mental health services, and as such subject to the provisions of Parts 2 and 3 of the Measure. Consultation responses indicate that this approach has adequate support in principle, and recognises that many of the issues raised by respondents relate to uncertainty at the time of consultation as to which services might be subsequently be delivered with primary or secondary care in local areas under such arrangements.

56. On 20 March 2012, the Welsh Government published *Policy Implementation Guidance on Local Primary Mental health Support Services and Secondary mental Health Services for the Purposes of the Mental Health (Wales) Measure 2010 and Related Subordinate legislation*[3]. This document provides guidance to LHBs and local authorities as to what is meant by 'local primary mental health support services' and 'secondary mental health services' for the purposes of the Measure, and the subordinate legislation which underpins it; the principles which informed the development of the Measure and the aims the legislation is seeking to achieve, and examples of the types of services the Welsh Government would consider to be most appropriately delivered, and conditions which might most appropriately be managed, within primary and secondary care settings under Parts 1, 2 and 3 of the Measure.

57. Given that this guidance addresses many of the concerns raised by some stakeholders in their consultation responses, providing greater clarity and illustrative examples around primary and secondary services, and in the light of the fact that there was no majority against introducing the legislation (and that over 90% of respondents believed that the Order should be made), officials believe it is appropriate to lay the Order before the National Assembly for Wales for its consideration.

Competition assessment

58. The competition filter is required to be completed if the subordinate legislation affects business, charities and/or the voluntary sector. The filter is therefore not required in respect of this Order.

Post implementation review

59. Section 48 of the Measure places the Welsh Ministers under a duty to the review the operation of Measure, and to publish a report of the findings of the review.

[3] http://wales.gov.uk/topics/health/publications/health/guidance/measure/?lang=en

60. The report must be published no later than four years after the commencement of the principal provisions of Parts 1, 2, 3 and 4 of the Measure.

61. It is intended that the review relating to Parts 1, 2 and 3, will take account of this Order.

62. The reports of such reviews must be placed before the National Assembly for Wales, in accordance with section 48(9) of the Measure.

Adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

CLA143

Teitl: Gorchymyn Cadw Mincod (Gwahardd) (Cymru) 2012

Mae'r Gorchymyn hwn, drwy arfer y pŵer a roddwyd gan adran 10 o Ddeddf Anifeiliaid Dinistriol a Fewnforir 1932, yn gwahardd cadw mincod yng Nghymru.

Gweithdrefn: **Cadarnhaol**

Materion Technegol: Craffu

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

Rhinweddau: Craffu

Nodwyd y pwyntiau a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn ar y cam hwn:-

- dirymwyd y Gorchymyn blaenorol, yn gwahardd cadw mincod, yn 2004 o ganlyniad i amryfusedd gweinyddol. Felly, ni fu'r gwaharddiad y mae'r Gorchymyn hwn yn ceisio ei gyflwyno mewn grym am tua wyth mlynedd;

- nid yw Llywodraeth Cymru wedi cael unrhyw geisiadau i ganiatáu i fincod gael eu cadw yn ystod y pum mlynedd diwethaf ac nid yw'n rhagweld y bydd cyflwyno'r Gorchymyn hwn yn effeithio ar unrhyw grwpiau yng Nghymru;

- ni fu ymgynghori ar y cynnig hwn a honnir na fu unrhyw ddiddordeb cyhoeddus yn y mater yn ystod y pum mlynedd diwethaf;

- y prif gyfiawnhad dros gyflwyno'r Gorchymyn hwn yw oherwydd gallai peidio â gwneud hynny danseilio'r ymdrechion i gael gwared ar fincod o ardaloedd penodol neu'r effaith gadarnhaol y mae'r gystadleuaeth rhwng mincod a dyfrgwn yn ei gael ar niferoedd y mincod a'u dosbarthiad.

Mae'r Pwyllgor yn pryderu ynghylch yr hyn a ganlyn:

- ni ddarparwyd unrhyw dystiolaeth i gefnogi'r rheswm dros gyflwyno'r Gorchymyn. Ymhellach, mae'r dystiolaeth sydd ar gael (ar effaith ymarferol y ffaith na fu gwaharddiad am yr wyth mlynedd diwethaf) yn awgrymu bod amheuaeth os oes angen y Gorchymyn yn awr.

- mae'r Gorchymyn yn cael ei gyflwyno i reoleiddio amryfusedd gweinyddol yn unig yr ymddengys na chafodd unrhyw effaith ymarferol am o leiaf bum mlynedd (wyth o bosibl).

Cytunodd y Pwyllgor i gyflwyno adroddiad i'r Cynulliad o dan Reol Sefydlog 21.3 yn nodi:

- bod y mater yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad;
- y gallai'r Gorchymyn arfaethedig fod yn anaddas yn awr ar sail y ffaith bod yr amgylchiadau wedi newid ers y gwnaed Gorchymyn 2004 sydd bellach wedi'i ddirymu.

Cynghorwyr Cyfreithiol
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Mai 2012

Gorchymyn a wnaed gan Weinidog yr Amgylchedd a Datblygu Cynaliadwy, un o Weinidogion Cymru, ac a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 10(1) o Ddeddf Anifeiliaid Dinistriol a Fewnforir 1932, i'w gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

O F F E R Y N N A U S T A T U D O L
C Y M R U

2012 Rhif (Cy.)

ANIFEILIAID, CYMRU

ANIFEILIAID DINISTRIOL

Gorchymyn Cadw Mincod (Gwahardd) (Cymru) 2012

NODYN ESBONIADOL

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

Mae'r Gorchymyn hwn, drwy arfer y pŵer a roddwyd gan adran 10 o Ddeddf Anifeiliaid Dinistriol a Fewnforir 1932 ("y Ddeddf"), yn gwahardd cadw mincod yng Nghymru.

Mae adran 10 o'r Ddeddf yn darparu, mewn perthynas â Gorchymyn a wneir yn unol â'r adran honno, fod darpariaethau'r Ddeddf yn gymwys fel y maent yn gymwys i fwsglygod, yn ddarostyngedig i'r eithriadau a'r addasiadau hynny a bennir yn y Gorchymyn. Yn y Gorchymyn hwn, gwneir eithriadau mewn perthynas ag adrannau 5(2) a 6(1)(f) o'r Ddeddf. Mae adran 5(2) o'r Ddeddf yn ymwneud â'r ddyletswydd sydd ar feddianwyr tir i roi hysbysiad am bresenoldeb mincod, nad ydynt yn cael eu cadw o dan drwydded, ar eu tir. Mae adran 6(1)(f) o'r Ddeddf yn darparu ar gyfer trosedd pan fo meddiannydd tir yn methu â rhoi hysbysiad o'r fath o dan adran 5(2).

Nid oes asesiad effaith rheoleiddiol wedi ei lunio ar gyfer y Gorchymyn hwn, gan na ragwelir y bydd yn effeithio o gwbl ar gostau busnes na'r sector gwirfoddol.

Gorchymyn a wnaed gan Weinidog yr Amgylchedd a Datblygu Cynaliadwy, un o Weinidogion Cymru, ac a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 10(1) o Ddeddf Anifeiliaid Dinistriol a Fewnforir 1932, i'w gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

O F F E R Y N N A U S T A T U D O L
C Y M R U

2012 Rhif (Cy.)

ANIFEILIAID, CYMRU

ANIFEILIAID DINISTRIOL

Gorchymyn Cadw Mincod (Gwahardd) (Cymru) 2012

Gwnaed	*8 Mai 2012*
Gosodwyd gerbron Cynulliad Cenedlaethol Cymru	*8 Mai 2012*
Yn dod i rym	*1 Mehefin 2012*

Mae Gweinidogion Cymru, a hwythau wedi eu bodloni oherwydd arferion dinistriol y rhywogaeth famalaidd anfrodorol sy'n destun y Gorchymyn hwn ei bod yn ddymunol gwahardd neu reoli eu cadw ac i ddifa unrhyw rai a all fod yn rhydd, ac wrth arfer y pwerau a roddwyd gan adran 10(1) o Ddeddf Anifeiliaid Dinistriol a Fewnforir 1932(**1**) ac a freiniwyd bellach ynddynt hwy(**2**), yn gwneud y Gorchymyn a ganlyn:

(**1**) 1932 p. 12; diwygiwyd adran 11 (dehongli) gan O.S. 1992/3302.

(**2**) Trosglwyddwyd swyddogaethau'r Gweinidog Amaethyddiaeth, Pysgodfeydd a Bwyd o dan adran 10 o'r Ddeddf i'r Gweinidog hwnnw ac i Ysgrifennydd Gwladol Cymru ar y cyd yn rhinwedd Gorchymyn Trosglwyddo Swyddogaethau (Cymru) 1969 (O.S.1969/388). Trosglwyddwyd y swyddogaethau hynny, i'r graddau y maent yn arferadwy o ran Cymru, i Gynulliad Cenedlaethol Cymru yn rhinwedd erthygl 2 o Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672) ac Atodlen 1 iddo, ac fe'u breiniwyd yng Ngweinidogion Cymru yn rhinwedd adran 162 o Ddeddf Llywodraeth Cymru 2006 a pharagraff 30 o Atodlen 11 iddi (p. 32). Mae Gorchymyn 1999 yn darparu ar gyfer eithriad i'r trosglwyddiad swyddogaethau o dan adran 10 o'r Ddeddf pan fo arfer y swyddogaethau yn ymwneud â mewnforio anifeiliaid y mae'r Ddeddf honno'n ymwneud â hwy ond nid yw'r eithriad hwnnw yn berthnasol i'r Gorchymyn hwn.

Enwi, cymhwyso a chychwyn

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Cadw Mincod (Gwahardd) (Cymru) 2012.

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

(3) Daw'r Gorchymyn hwn i rym ar 1 Mehefin 2012.

Dehongli

2. Yn y Gorchymyn hwn—

(a) ystyr "y Ddeddf" ("*the Act*") yw Deddf Anifeiliaid Dinistriol a Fewnforir 1932; a

(b) ystyr "minc" ("*mink*") yw'r anifail o'r rhywogaeth *mustela vison*.

Gwahardd cadw mincod

3.—(1) Mae cadw mincod wedi ei wahardd.

(2) Wrth gymhwyso'r Ddeddf mewn perthynas â mincod, mae'r canlynol i'w hepgor—

(a) adran 5(2), a

(b) adran 6(1), paragraff (f) a'r cyfeiriad at gosb mewn achos o drosedd o dan baragraff (f).

John Griffiths

Gweinidog yr Amgylchedd a Datblygu Cynaliadwy, un o Weinidogion Cymru

8 Mai 2012

Explanatory Memorandum to The Mink Keeping Order (Wales) 2012.

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Mink Keeping Order (Wales) 2012.

John Griffiths

Minister for Environment and Sustainable Development

8 May 2012

1. Description

This Order prohibits the keeping of mink in Wales.

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

Section 10 of the Destructive Imported Animals Act 1932 sets out the procedure to be followed in relation to this SI; 'an order made under this section shall be of no effect until a resolution approving it has been passed by each House of Parliament' This means that the Welsh Ministers may make this Order, but that it can not be of effect until approved by resolution of the Assembly.

3. Legislative background

The Mink Keeping (Prohibition) (Wales) Order 2012 will be made under section 10 of the Destructive Imported Animals Act 1932. This Act regulates the keeping of certain specified imported animals that are considered destructive. The Act was originally introduced after muskrat established a breeding population in the United Kingdom following escapes from fur farms. Subsequently, the controls specified in the Act have been applied to other species by Orders issued under the Act. Currently, Orders apply to the muskrat, grey squirrel, coypu and non-indigenous rabbits.

Since fur farming was banned by the Fur Farming (Prohibition) Act 2000 only so called 'special licences' for the keeping of mink have been issued. These permit the keeping of mink for exhibition, or for purposes of scientific research or other exceptional purposes (Section 8(1) of the 1932 Act).

4. Purpose & intended effect of the legislation

The purpose of this legislation is to control the keeping of mink in Wales, as they are considered animals that are destructive to the natural environment under the Destructive Imported Animals Act 1932.

Due to earlier escapes from fur farms, mink have become widespread and well-established within the natural environment, and this has been identified as a major factor in the decline of the native water vole. De-regulating the keeping of mink is not considered appropriate at this time as it would undermine efforts to eradicate mink from localised areas.

It has been the long standing policy of the UK Government and Devolved Administrations to prohibit the keeping of mink, and the Mink Keeping (Wales) Order 2000 was introduced as part of this policy. However in 2004 this Order was allowed to lapse as a result of an administrative oversight. Introduction of the Mink Keeping (Wales) Order 2012 will ensure that the keeping of mink is prohibited across the United Kingdom.

The Welsh Government has not received any applications to keep mink in the last five years, thus it is anticipated that there are no groups in Wales who would be affected by the introduction of this Order.

5. Consultation

Consultation on this proposal was not conducted. It has been the long standing policy of the UK Government and Devolved Administrations to prohibit the keeping of mink, and the Mink Keeping (Wales) Order 2000 was introduced as part of this policy. De-regulating the keeping of mink could appear to undermine efforts to eradicate mink from localised areas or the benefits that competition from otters is having on mink numbers and distribution.

There has been no public interest in this issue in the last five years, and as such the Minister for Environment & Sustainable Development agreed that consultation on the re-introduction of the Mink Keeping Order was not necessary.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been completed for this Order as it has no impacts on the cost to business.

CLA WJ 28

Inquiry into the establishment of a separate Welsh jurisdiction
Response from Mr Emyr Lewis and Professor Dan Wincott (Cardiff University)

MEMORANDUM TO THE CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE OF THE NATIONAL ASSEMBLY'S INQUIRY INTO THE ESTABLISHMENT OF A SEPARATE WELSH JURISDICTION

Professor Dan Wincott

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Summary

1.1 Jurisdiction relates to the question of "Who has legal authority within a particular legal framework to do what in respect of what, whom and where?"

1.2 Within the framework of the UK constitution, there already exist a distinct Welsh legislative and executive jurisdiction, and in certain limited areas, judicial jurisdiction through distinct tribunals and other fora for particular types of cases.

1.3 The concept of jurisdiction within the UK is complex. Even the currently recognised jurisdictions can only be said to be "separate" up to a point.

1.4 There already exists such a thing as a body of law which applies to Wales. The differences between this and the law which applies in England are likely to increase over time.

1.5 It is essential that Courts in Wales decide cases on the basis of distinct Welsh Law and that Lawyers can advise and represent their clients on this basis.

1.6 There is a need to plan now for the increasing divergence that appears to be an inevitable consequence of political reality.

1.7 Whatever happens, lawyers advising clients in Wales and judges hearing cases in Wales must have the necessary knowledge of Welsh law.

1.8 Jurisdiction over only devolved matters, as in a federal state, would not be in accordance with the UK model, and could create intractable problems.

1.9 Detailed analysis is needed of how cross-border issues work between current UK jurisdictions, and how these might work for a Welsh jurisdiction and of the likely economic costs and benefits of a distinct Welsh jurisdiction.

1.10 If there were to be a distinct Welsh jurisdiction, the Northern Ireland model seems a suitable precedent. This would have implications for the Supreme Court.

2. The word "jurisdiction"

2.1 The word "jurisdicton" is capable of meaning several different things, and of being applied in several different contexts.

2.2 For instance, at one end of the scale, in international law, jurisdiction is spoken of as an aspect of the sovereignty of states. States are said to have legislative, executive or judicial jurisdiction in respect of their territory and their people. This means that they have the legal authority within the framework of international law, to make, to implement and to enforce binding laws which apply at least within their territory, and may apply in respect of their people outside their territory. In this context, jurisdiction is described as an aspect of the sovereignty of the state.

2.3 At the other end of the scale, in the context of Magistrates' Courts "jurisdiction" is used to describe the extent of the powers of the courts to hear and determine cases etc. So, magistrates are said to have no jurisdiction to hear criminal cases of particular kinds, which must be heard in the Crown Court. Magistrates' Courts in coastal areas have jurisdiction in respect of certain crimes committed on board ship. Before the law was changed in 2006, Magistrates' Courts had jurisdiction to hear civil cases only in relation to their local area.

2.4 If there is a general theme which runs through these uses of the word, it is the question "Who has legal authority within a particular legal framework to do what in respect of what, whom and where?"

2.5 So, if we look at Wales today, we can say that:

2.5.1 the Welsh Assembly has legislative jurisdiction by having legal authority to make laws relating to the subjects in Schedule 7 of the Government of Wales Act 2006; which apply only in relation to Wales and which do not extend beyond England and Wales;

2.5.2 the Welsh Ministers have executive jurisdiction by having legal authority to take executive action within Wales in respect of the areas devolved to them.

3. "Separate" Jurisdiction

3.1 In the context of recent developments in Welsh law, the word "jurisdiction" has tended to be used in the context of a "separate" or "distinct" legal jurisdiction for Wales, referring to the creation (or possibly, more accurately, re-establishment) of a distinct system of courts for Wales.

3.2 In considering jurisdiction, it is useful to bear in mind, however, that jurisdiction in the sense of legal authority to do things can be quite a complex and many-layered phenomenon. For instance, jurisdiction may be exclusive or not exclusive, conditional or unconditional.

3.3 So, for instance, the Welsh Assembly's legislative jurisdiction is not exclusive, since the UK Parliament retains concurrent power to legislate over all devolved areas (the requirement for Assembly consent if Parliament legislates is a matter of convention, not law). The Welsh Ministers' executive jurisdiction is in some cases exclusive, in others concurrent with UK Ministers and in others conditional on Treasury consent.

3.4 In the case of judicial jurisdiction, there is also variety and complexity.

3.5 In the Court system, the Courts of England and Wales, of Scotland and of Northern Ireland have exclusive jurisdiction over most cases which arise in the respective territories, but they are all subject to the ultimate authority of the Supreme Court of the United Kingdom, and all these courts are subject to, and can be overruled by, the European Court of Justice in certain cases.

3.6 Outside the Court system, in some areas, it can be said that a distinct Welsh jurisdiction already exists. In many areas, there are distinct Welsh Tribunals or other fora, with jurisdiction over Welsh cases. Some of these are administered by the Welsh Government, some are not. One tribunal has been created by legislation of the Welsh Assembly, and has no counterpart outside Wales.[1] There is no reason why other tribunals (or indeed arguably courts) cannot be created by the Welsh Assembly to resolve cases relating to matters within its legislative competence.

3.7 So it is important to recognise (1) that a jurisdiction for Wales would only be separate up to a point; and (2) in respect of certain limited cases, there is already a distinct Welsh jurisdiction.

4. A body of "Welsh law"

4.1 Many of the most strongly articulated arguments for and against introducing a distinct jurisdiction (including some of those quoted in the Committee's scoping paper) are based on principle. Our focus in the rest of this paper is largely on what appear to us to be practical aspects of the question. We consider it worthwhile nevertheless to address one argument of principle, namely that notwithstanding devolution there is only one law of England and Wales, and consequently there should be only one system of courts.

[1] See section 120 Welsh Language (Wales) Measure 2011

4.2 It is stated that in the UK there are three legal jurisdictions: (1) England and Wales, (2) Scotland and (3) Northern Ireland.[2] Each jurisdiction has its own body of law, and its own court system. In the case of Scotland, Scots law (and Courts) pre-dates the union, and differs in many fundamental respects from the law of England and Wales. In the case of Northern Ireland, there is less difference in substantive law. The separate Northern Ireland Courts have their origin in the Government of Ireland Act 1920, which effected the partition of Ireland. Previously there had been one system of courts in Ireland. Even after 1920, there remained an all-Ireland Court of Appeal.

4.3 A striking example of the way in which the twin issues (a discrete body of law and a separate court system) are brought together in discussions of a "separate" or "distinct" jurisdiction for Wales can be found in an extract from a joint Memorandum from the then Secretary of State for Wales and the then First Minister for Wales to the Welsh Affairs Committee, as quoted in paragraph 374 of the Explanatory Notes to the Government of Wales Act 2006. The extract (appended to this Note) explains that a "conferred powers" as opposed to a "reserved powers" model of legislative devolution is appropriate to Wales because England and Wales is (and implicitly should remain) a single jurisdiction. The link between separate laws and a separate jurisdiction is made explicit in the following passage:

If the Assembly had the same general power to legislate as the Scottish Parliament then the consequences for the unity of the England and Wales legal jurisdiction would be considerable. The courts would, as time went by, be increasingly called upon to apply fundamentally different basic principles of law and rules of law of general application which were different in Wales from those which applied in England. The practical consequence would be the need for different systems of legal education, different sets of judges and lawyers and different courts. England and Wales would become separate legal jurisdictions.

4.4 It is worth noting that the devolution dispensation in Wales has been subject to very rapid and far-reaching change since 1998 – and particularly since 2006. The evidence suggests that at the time of drafting the architects of the Government of Wales Act 2006 expected Part 3 to remain in force for a considerable period of time, as did many commentators. The Explanatory Notes might be read as referring to the highly original, and arguably idiosyncratic, systems of competence transfer and legislation created for Wales under Part 3 of the Government of Wales Act 2006 (at least in the early years of Schedule 5), but might be regarded as rather less persuasive in relation to Part 4. (Moreover, some commentary on the 'jurisdiction' question between 2006 and 2011 (and in particular the referendum on the switch from Part 3 to Part 4) may have been predicated on an assumption of Part 3 remaining in force for rather longer than it did.)

4.5 In the context of the present legislative powers of the National Assembly, the view expressed in the Explanatory Notes needs to be considered in the light of two significant aspects of Part 4 of the Government of Wales Act 2006 (which came into force after last year's referendum);

4.5.1 The Assembly can legislate in respect of matters which **relate to** subjects under headings in Schedule 7

4.5.2 This applies unless Schedule 7 **expressly excludes** a particular matter, or another part of the 2006 Act **expressly restricts or prohibits** the Assembly from legislating.

4.6 This means that the *basic principles of law and rules of law of general application* to which the Explanatory Note refers, and which it appears to consider immutable, can themselves be changed by a provision of an Act of the Assembly, provided the enactment in question relates to a Schedule 7 subject, and the change is not excluded by Schedule 7 or otherwise restricted or prohibited.

4.7 An example is given by the law in relation to the smacking of children.

4.7.1 Parents (and others *in loco parentis*, such as teachers) can avoid conviction for certain types of assault against children if the court accepts that what was happening was reasonable

[2] Although Himsworth submits that 'precise authority' for this proposition is 'difficult to cite' and that 'perhaps the most direct *statutory* reference is now to be found in s 41(1) of the Constitutional Reform Act 2005 (2007) MLR at 33

chastisement of the child. While the scope of the defence has been substantially restricted by Acts of Parliament, the defence still exists and can be said to be a *basic principle of law*, since it forms part of the Common Law of England and Wales.[3]

4.7.2 Under Heading 15 of Schedule 7 of the 2006 Act (Social Welfare), the Assembly has the power to make laws relating to "protection and well-being of children".

4.7.3 If it be accepted that an Act removing the defence of reasonable chastisement in all cases would relate to the protection and well-being of Children, then unless there is an express exclusion, prohibition or restriction which would prevent the Assembly from passing such an Act, the Assembly can do so. There is no such exclusion, prohibition or restriction. Other examples could be given where it would be possible for the Assembly to change *basic principles of law and rules of law of general application*.

4.8 It is generally accepted that the law which applies in Wales is already different from that which applies in England, and all the signs are that the differences will increase. If our analysis above is correct, the scope for divergence is perhaps greater than the architects of the 2006 Act envisaged. The adoption of a conferred powers model, as opposed to a reserved powers model, does not decrease the likelihood of a body of law emerging in Wales which is significantly different from the law which applies in England.

4.9 It should also be borne in mind, of course, that divergence is not driven by legislation in Cardiff only. Increasingly the UK Government is bringing forward in Parliament England-only legislation in areas where Wales has not seen the need to change the law.[4]

4.10 In the light of these developments, it does not appear to us to be a sustainable point of view to say that there is no "Welsh law" and no "English law", just one law of England and Wales that is substantively different either side of Offa's Dyke. It may be, as some commentators have suggested, that there comes a "tipping point" at which the degree of difference is such that one can speak of "Welsh law", and that the point has not yet been reached. That seems however to be more of a metaphysical than a practical approach to the question.

4.11 In our view, the practical question is not whether the law of England and Wales retains its mystic unity notwithstanding divergence, but whether there should be a distinct court system for Wales, and if so how should it operate. That, in our view, is what is meant by a distinct Welsh legal jurisdiction.

5. Divergent laws and a jurisdiction

5.1 What might the implications of a distinct body of Welsh Law be for the legal system? Whether it be called a separate Welsh jurisdiction or in the words of Jack Straw "organic development of greater autonomy of the Welsh system" at a minimum, it is essential that Courts in Wales decide cases on the basis of distinct Welsh Law – and that Lawyers can advise and represent their clients on this basis as well. From the perspective of individual citizens of or visitors to Wales, it must be the case that they are entitled to expect that the lawyers who advise them and the judges who hear their cases are well versed in the law which applies.

5.2 In principle, this might happen within a single 'England and Wales' jurisdiction. However, even within this system – and before the shift to Part 4 of Government of Wales Act 2006 – a series of changes to the organisation/administration of the Courts has delineated Wales increasingly clearly as a distinct territory (the changes are described nicely in the call for evidence). Furthermore, in terms of the day-to-day lives of many legal practitioners and their clients, there is already a material difference in many

[3] e.g. *R v Griffin* (1869) 11 Cox CC 402

[4] The legal consequences may be felt in unanticipated areas, which have nothing to do with devolved legislative competence. For instance, it is arguable that recent and proposed reforms in the health system in England are turning health service bodies into economic operators who compete in a market place, with potentially far-reaching consequences for how the law of public procurement and state aid affects them and the NHS in England generally.

areas between what happens in Wales and what happens in England. Legislative momentum and/or inertia in Cardiff and London are likely to increase the difference.

5.3 The possibility exists that some elements of a Welsh Judiciary might emerge as judges working within these territorially delineated Courts decide on matters of distinctive Welsh Law. Should this happen in a gradual, ad hoc and unmanaged manner, that is unlikely to be satisfactory. In our view it is preferable to plan now for the increasing divergence that appears to be an inevitable consequence of political reality.

6. Legal Training, Education and the Professions

6.1 Regardless of whether a distinct court system is developed, lawyers advising clients in Wales, and judges hearing cases in Wales will need to be able to show that they are competent to do so.

6.2 If the concepts of a unified jurisdiction and single law of England and Wales hold sway, it seems to follow that the law which applies in Wales (and how it applies) should be as much part of the training of all professional lawyers in England and Wales as is the law which applies in England (and how that applies).

6.3 Should the unified jurisdiction of England and Wales be maintained, there will be nonetheless a need to ensure that lawyers practicing in Wales can demonstrate competence in the law which applies in Wales, including primary law, and have access to appropriate legal training and education. This need will grow as and when the substance of the laws applying in Wales and those applying in England diverge. A test of competence to practice as a lawyer in Wales might become necessary. Similar considerations will apply to the need for special training for judges sitting in Wales

6.4 If there were to be established a distinct Welsh jurisdiction, all lawyers qualified in England and Wales at the time of its creation could continue to work in both jurisdictions, and similarly all England and Wales judges might sit in Wales.

6.5 The creation of a distinct jurisdiction for Wales would raise questions about the qualifications required to practice as a lawyer within it. There would also be a question about whether lawyers could normally continue to practice on both sides of Offa's Dyke after the creation of a distinct jurisdiction in Wales. Similar considerations would apply to the appointment of judges.

6.6 As far as the academic stage of legal education is concerned, there is no reason why the arrangements which currently exist in respect of Northern Ireland should not apply to Wales. This academic stage of the qualifying law degree is basically the same. Students with degrees from law schools in England and Wales are qualified to enter the professional stage of legal education in Northern Ireland (although they must have studied the Law of Evidence, a criterion which would not apply in respect of Wales). The implications of a distinct jurisdiction in Wales for the professional stage of legal education require further consideration.

7. Distinct Jurisdiction over devolved areas only?

7.1 Most Federal States within the common law family (the US, Canada, Australia) have both Federal and State jurisdictions and there are Courts of each of these jurisdictions that operate within every State.

7.2 The system of jurisdictions in operation within the UK is different, in that (aside from the Supreme Court of the United Kingdom – and previously the Appellate Committee of the House of Lords and, for some purposes, the Judicial Committee of the Privy Council) each of these jurisdictions in effect deals with all matters of law within its defined territory (whether or not legislative competence over that issue has been devolved. Indeed, in the recent era, the jurisdictions have existed without any devolution of legislative competence).

7.3 A possible objection to the creation of a distinct jurisdiction (in the sense of a Court system) in Wales might be that it would not be appropriate for issues over which the National Assembly did not have legislative competence – i.e. non-devolved issues – potentially to be decided differently in the Welsh

courts and in the English ones. On the other hand, precisely that possibility exists at the moment in both Scotland and Northern Ireland.[5]

7.4 Furthermore the prospect of squabbles over which court should have jurisdiction seems more likely where jurisdiction is thematically rather than territorially defined. This is even more so given that the conferred powers model of legislative devolution means that it is by no means clear what is excluded from the Assembly's legislative competence.

7.5 It is also conceivable that there could exist separate exclusive jurisdiction in respect of certain types of cases. It could be argued for instance that, even if nothing else happens, the Administrative Court in Wales should have exclusive jurisdiction over judicial review cases in Wales. The current arrangements require cases which relate to Wales but are issued in London to be transferred to Wales, but it can take a disproportionately long time before the papers reach a judge who makes a decision on the transfer.

8. Barriers and Costs - the need for detailed analysis

8.1 In order to understand properly the implications of a distinct Welsh jurisdiction, there is a lot of detailed work that needs to be done. In our view, the two areas which require the closest attention are cross-border issues and costs.

8.2 Jack Straw, as quoted in the Committee's scoping paper, has spoken of "enormous practical implications" of a move to a separate Welsh jurisdiction. The issues he raises are largely technical matters relating to the relationship between the courts in England (where, of course, a new jurisdiction will also be created) and those in Wales. He is undoubtedly right in rasing the issues. Once more, however, there are precedents. There is no reason in principle why cross-border issues between Wales and other jurisdictions within the UK should not be treated in the same way as those between the three existing jurisdictions. We need to understand how these work, and whether and to what extent they would need to apply differently to Wales, bearing in mind for instance that Wales' land border with England is longer and more densely populated than Scotland's.

8.3 In relation to costs, there is a need for a detailed analysis of the current economics of the administration of justice in England and Wales. Suitable methods for allocating current expenditure equitably between England and Wales would need to be considered in order to determine how much better or worse off Wales might be if it had its own court system with its own budget. To what extent might savings in London overheads be outweighed by loss of economies of scale? To what extent might it be possible to direct funding to issues such as ensuring access to justice to people in remote and deprived communities?

9. The possible components of a Welsh jurisdiction and the impact on the Supreme Court

9.1 If the Northern Ireland model were to be followed, there would be a Welsh Lord Chief Justice and Court of Appeal, mirroring the position in England and Wales. Equity suggests, and we would agree, that Wales should have the same model, but it need not necessarily be so. We consider, however that a Welsh Law Commission would be essential, in that it would be able to prioritise consideration of those issues which are important for the people of Wales.

9.2 A further set of questions is raised about The Supreme Court of the UK. There is some debate in Scotland about whether this Court (particularly in bringing together roles played by the House of Lords and the Judicial Committee of the Privy Council) is (or is becoming) a UK Court, as its name might suggest (whereas the House of Lords was understood to sit as a Scots Law court in relation to Scottish cases). At present the membership of the Supreme Court is usually understood to include members representing each of the three jurisdictions (one Northern Ireland and two Scots as well as the "England and Wales" judges). Should a Welsh jurisdiction be created, there might be a presumption that there

[5] Indeed, in the case of Scotland, Himsworth makes a powerful argument that the jurisdictional difference as between 'Scotland' and 'England and Wales' has generated instances in which different forms of citizenship rights have emerged from the same non-devolved law on either side of Hadrian's Wall.

should also be a Welsh judge on the Supreme Court. It could also be argued that the existence, and over time the growing significance, of a distinct body of Welsh primary law might suggest that there should in any event be a judge with expertise in Welsh law on the Supreme Court.

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Constitutional and Legislative Affairs Committee

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

John Griffiths
Gweinidog yr Amgylchedd a
Datblygu Cynaliadwy
5ed Llawr
Tŷ Hywel
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26 Ebrill 2012

Annwyl Weinidog

CLA124 - The Controlled Waste (England and Wales) Regulations 2012 (Saesneg yn Unig)

Bu'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn trafod yr Offeryn Statudol uchod yn ei gyfarfod ar 23 Ebrill 2012 a chytunwyd y dylwn ddwyn i'ch sylw adroddiad y Pwyllgor ar rinweddau'r Offeryn, a gyhoeddwyd o dan Reol Sefydlog 21.3.

Cytunodd y Pwyllgor y byddai'n gwahodd y Cynulliad i roi sylw arbennig i'r Offeryn hwn ar y sail "ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad" (Rheol Sefydlog 21.3(ii)).

Gosodwyd adroddiad y Pwyllgor yn y Swyddfa Gyflwyno ar 24 Ebrill 2012, ac mae wedi'i atodi er gwybodaeth. Byddwn yn ddiolchgar pe gallech ystyried yr adroddiad a rhoi gwybod i'r Pwyllgor beth yw eich ymateb.

Yn ogystal, nododd y Pwyllgor y byddai'r Rheoliadau yn caniatáu i awdurdodau lleol godi tâl am gasglu a gwaredu gwastraff o eiddo annomestig (gyda rhai eithriadau). Ar hyn o bryd, dim ond am gasglu gwastraff y codir tâl. A wnewch chi egluro pam fod y Rheoliadau'n dilyn y weithdrefn negyddol yn hytrach na'r weithdrefn gadarnhaol yn yr achos hwn er eu bod nhw'n cyflwyno math newydd o dâl.

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Rwy'n anfon copi o'r adroddiad hwn at y Prif Weinidog er gwybodaeth, ac rwyf hefyd wedi gwneud trefniadau i ddwyn yr adroddiad a'r llythyr hwn i sylw Aelodau'r Cynulliad.

Yn gywir

David Melding AC
Cadeirydd

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

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref: CLA 124
Ein cyf/Our ref: SF/JG/1573/12

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4 Mai 2012

Annwyl David,

CLA124 – Rheoliadau Gwastraff a Reolir (Cymru a Lloegr) 2012

Diolch am eich llythyr dyddiedig 26 Ebrill ynghylch adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ar Reoliadau Gwastraff a Reolir 2012. Rydych wedi gofyn i mi ystyried yr adroddiad ac ymateb i'r pwyntiau a godwyd.

Rwy'n nodi'r pwynt cyffredinol ynghylch craffu ar sail rhagoriaeth a bod yr offeryn drafft yn arwain at faterion polisi cyhoeddus sy'n debygol o fod o ddiddordeb i'r Cynulliad. O ran craffu, roedd y cynigion wrth gwrs yn destun ymgynghoriad cyhoeddus llawn. Roedd yr ymateb gan awdurdodau lleol yn arbennig yn dangos bod angen diweddaru'r ddeddfwriaeth a mynd i'r afael â'r anghysondeb lle roedd rhai cynhyrchwyr gwastraff i bob pwrpas yn cael gwasanaeth gwaredu gwastraff am ddim ar draul trethdalwyr lleol. Bydd y newidiadau sy'n rhoi'r pŵer i awdurdodau lleol godi tâl am y gwasanaethau hynny os ydynt o'r farn bod hynny'n briodol hefyd yn annog cynhyrchwyr gwastraff i leihau faint o wastraff maen nhw'n ei anfon i'w waredu.

Ynghylch y ddau fater arall ar wneud yr offeryn yn Gymraeg a Saesneg a dilyn y weithdrefn negyddol yn hytrach na'r weithdrefn gadarnhaol, mae fy nghyngor fel a ganlyn. Mewn perthynas â'r pwynt technegol o dan Reol Sefydlog 21.2 (ix) nad chafodd yr offeryn ei wneud yn ddwyieithog, mae'r rheoliadau'n diweddaru rheoliadau ar y cyd blaenorol ar gyfer Cymru a Lloegr. Gan fod y rheoliadau Ewropeaidd i reoli gwastraff yn gynaliadwy yn unol â'r hierarchaeth wastraff a'r materion y mae awdurdodau lleol yng Nghymru yn eu hwynebu yr un fath ag yn Lloegr yn bennaf, gwnaed penderfyniad i ddiwygio'r rheoliadau gyda'i gilydd. Felly mae'n rhaid i Cynulliad Cenedlaethol Cymru a Senedd y DU gymeradwyo'r rheoliadau. Ni farnwyd felly ei bod yn ymarferol o fewn rheswm gwneud yr offeryn hwn yn ddwyieithog.

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Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.John.Griffiths@wales.gsi.gov.uk

Mewn perthynas â'r cwestiwn a godwyd yn y paragraff olaf ond un yn eich llythyr, oedd yn gofyn am eglurhad ynghylch pam dilynwyd gweithdrefn negyddol y Cynulliad, gwnaed y rheoliadau gan ddibynnu ar bwerau galluogi a roddwyd drwy ddynodiad Gweinidogion Cymru (mewn perthynas ag atal, lleihau a rheoli gwastraff) o dan adran 2(2) Deddf Cymunedau Ewropeaidd 1972 (ECA1972), a phwerau sy'n gallu cael eu harfer gan Weinidogion Cymru o dan adrannau 45(3), 75(7)(d) ac (8) a 96(2)(b) Deddf Diogelu'r Amgylchedd 1990 (EPA1990).

Deddfwyd y ddarpariaeth i gyflwyno'r gallu i awdurdodau casglu gwastraff godi tâl am waredu gwastraff o ffynonellau penodol yn llwyr ar sail y pwerau gallu yn EPA 1990, yn benodol adran 75(8). Mae adran 161 y Ddeddf honno (rheoliadau, gorchmynion a chyfarwyddiadau) i bob pwrpas yn ei gwneud yn ofynnol bod offeryn statudol sy'n cynnwys rheoliadau o dan y Ddeddf honno yn destun y weithdrefn negyddol. Felly, nid yw Deddf 1990 yn cynnig unrhyw ddewis mewn perthynas â gweithdrefn y Cynulliad.

Mae'r rhan o'r rheoliadau a wnaed o dan y pwerau yn adran 2(2) ECA yn drosiad cymharol fach o ddarpariaeth penodol y Gyfarwyddeb Fframwaith Gwastraff 2008, er enghraifft mewn perthynas â sgil-gynhyrchion anifeiliaid fel math o wastraff sy'n cael ei eithrio o gwmpas y Gyfarwyddeb. Er bod dewis gan Weinidogion Cymru wrth arfer yn unol â dynodiad o dan adran 2(2) ECA 1972 ynghylch gweithdrefn y Cynulliad, o dan yr amgylchiadau penderfynwyd y byddai'n briodol dilyn y weithdrefn negyddol mewn perthynas â'r rheoliadau hyn.

Yn gywir,

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

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Adroddiad: CLA(4)-10-12 : 14 Mai 2012

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

Offerynnau nad ydynt yn cynnwys unrhyw faterion i'w codi o dan Reol Sefydlog 21.2 neu 21.3

Offerynnau'r weithdrefn penderfyniad negyddol

CLA138 – Gorchymyn Awdurdodau Tân ac Achub (Cynlluniau Gwella) (Cymru) 2012
Gweithdrefn: Negyddol.
Fe'i gwnaed ar: 21 Ebrill 2012.
Fe'i gosodwyd ar: 25 Ebrill 2012.
Yn dod i rym ar: 21 Mai 2012

CLA139 – Rheoliadau Grantiau a Benthyciadau Dysgu y Cynulliad (Addysg Uwch) (Cymru) (Rhif 2) (Diwygio) (Rhif 2) 2012
Gweithdrefn: Negyddol.
Fe'u gwnaed ar: 26 Ebrill 2012.
Fe'u gosodwyd ar: 27 Ebrill 2012.
Yn dod i rym ar: 18 Mai 2012

CLA140 – Gorchymyn Dynodi Gorfodi Sifil ar Dramgwyddau Parcio (Ceredigion) 2012
Gweithdrefn: Negyddol.
Fe'i gwnaed ar: 29 Ebrill 2012.
Fe'i gosodwyd ar: 1 Mai 2012.
Yn dod i rym ar: 4 Mehefin 2012

CLA141 – Rheoliadau Ychwanegion Bwyd (Cymru) (Diwygio) a Thoddyddion Echdynnu mewn Bwyd (Diwygio) (Cymru) 2012
Gweithdrefn: Negyddol.
Fe'u gwnaed ar: 27 Ebrill 2012.
Fe'u gosodwyd ar: 2 Mai 2012.
Yn dod i rym ar: 23 Mai 2012

Offerynnau'r weithdrefn penderfyniad cadarnhaol

Dim

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

Offerynnau'r weithdrefn penderfyniad negyddol

Dim

Offerynnau'r weithdrefn penderfyniad cadarnhaol

Dim

Materion eraill

Ymchwiliadau'r Pwyllgor: Ymchwiliad i sefydlu awdurdodaeth ar wahân i Gymru

Clywodd y Pwyllgor dystiolaeth lafar gan yr Athro R. Gwynedd Parry, Athro'r Gyfraith a Hanes y Gyfraith, Cyfarwyddwr Sefydliad Hywel Dda, Prifysgol Abertawe.

Penderfyniad i Gyfarfod yn Breifat

Yn unol â Rheol Sefydlog 17.42(vi), penderfynodd y Pwyllgor wahardd y cyhoedd o weddill y cyfarfod i drafod y dystiolaeth a gyflwynwyd hyd yma ar yr ymchwiliad i sefydlu awdurdodaeth ar wahân i Gymru.

Simon Thomas AC
Cadeirydd Dros Dro y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

14 Mai 2012

Yn rhinwedd paragraff(au) ix o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon