

## Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

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Lleoliad:  
Ystafell Bwyllgora 1 – Y Senedd

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Dyddiad:  
Dydd Llun, 10 Hydref 2011

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Amser:  
14:30

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



I gael rhagor o wybodaeth, cysylltwch a:

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### Agenda

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1. Cyflwyniad, ymddiheuriadau, dirprwyon a datganiadau o fuddiant
2. Offerynnau nad ydynt yn cynnwys unrhyw faterion i'w codi o dan Reol Sefydlog 21.2 neu 21.3

Offerynnau'r weithdrefn negyddol

#### **CLA44 – Rheoliadau'r Fasnach mewn Anifeiliaid a Chynhyrchion Perthynol (Cymru) 2011**

Gweithdrefn: negyddol. Fe'u gwnaed: 28 Medi 2011. Fe'u gosodwyd: 28 Medi 2011. Yn dod i rym: 19 Hydref 2011.

#### **CLA45 – Rheoliadau'r Cynllun Iechyd Dofednod (Ffioedd) (Cymru) 2011**

Gweithdrefn: negyddol. Fe'u gwnaed: 28 Medi 2011. Fe'u gosodwyd: 28 Medi 2011. Yn dod i rym: 19 Hydref 2011.

Offerynnau'r weithdrefn gadarnhaol

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 negyddol

**CLA43 – Rheoliadau Sgil-gynhyrchion Anifeiliaid (Gorfodi) (Rhif 2) (Cymru) 2011** (Tudalennau 1 – 64)

Gweithdrefn: negyddol. Fe'u gwnaed: 27 Medi 2011. Fe'u gosodwyd: 28 Medi 2011. Yn dod i rym yn unol â rheoliad 31.

Offerynnau'r weithdrefn gadarnhaol

Dim

### **4. Ymchwiliadau'r Pwyllgor: Ymchwiliad i roi pwerau i Weinidogion Cymru yn Neddfau'r DU** (Tudalennau 65 – 94) **Papurau i'w nodi: Tystiolaeth ysgrifenedig:**

CLA(4)-07-11(p1) – CLA GP5 – Undeb Amaethwyr Cymru (Saesneg yn unig)

CLA(4)-07-11(p2) – CLA GP6 – Cyngor Ffoaduriaid Cymru (Saesneg yn unig)

CLA(4)-07-11(p3) – CLA GP7 – Ffederasiwn Heddlu Cymru a Lloegr (Saesneg yn unig)

CLA(4)-06-11(p4) – Canllawiau ar Ddatganoli Rhif 9 (Saesneg yn unig)

**Cynhadledd fideo gyda Dr Paul Cairney, Prifysgol Aberdeen** (Tudalennau 95 – 97)

**CLA(4)-06-11- Papur 2**

**Dr Paul Cairney**, Uwch-ddarlithydd mewn gwleidyddiaeth a chysylltiadau rhwngwladol, Prifysgol Aberdeen (Saesneg yn unig)

### **5. Dyddiad y cyfarfod nesaf**

**Papur i'w nodi:**

CLA(4)-06-11- Adroddiad o'r cyfarfod ar 3 Hydref 2011

### **6. Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer y canlynol:**

Caiff bwyllgor benderfynu gwahardd y cyhoedd o gyfarfod neu unrhyw ran o gyfarfod:

(vi) lle mae'r Pwyllgor yn cyd-drafod cynnwys, casgliadau neu argymhellion adroddiad y mae'n bwriadu ei gyhoeddi.

## **7. Trafod y dystiolaeth a gyflwynwyd i'r ymchwiliad hyd yma Trawsgrifiad**

View the [meeting transcript](#).

# Eitem 3.1

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OFFERYNNAU STATUDOL CYMRU

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**2011 Rhif 2377(Cy. 250)**

**ANIFEILIAID, CYMRU**

**IECHYD ANIFEILIAID**

**IECHYD Y CYHOEDD, CYMRU**

**Rheoliadau Sgil-gynhyrchion  
Anifeiliaid (Gorfodi) (Rhif 2) (Cymru)  
2011**

**NODYN ESBONIADOL**

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

Mae'r Rheoliadau hyn yn gorfodi, yng Nghymru, Reoliad (EC) Rhif 1069/2009 Senedd Ewrop a'r Cyngor sy'n gosod rheolau iechyd o ran sgil-gynhyrchion anifeiliaid a chynhyrchion sy'n dod o anifeiliaid na fwriedir ar gyfer eu bwyta gan bobl ac sy'n diddymu Rheoliad (EC) Rhif 1774/2002. (OJ Rhif L 300, 14.11.2009, t 1) ("Rheoliad Rheolaeth yr UE").

Mae'r Rheoliadau hyn hefyd yn gorfodi, yng Nghymru, Reoliad y Comisiwn Rhif 142/2011 sy'n gweithredu Rheoliad (EC) Rhif 1069/2009 Senedd Ewrop a'r Cyngor sy'n gosod rheolau iechyd o ran sgil-gynhyrchion anifeiliaid a chynhyrchion sy'n dod o anifeiliaid na fwriedir ar gyfer eu bwyta gan bobl ac sy'n gweithredu Cyfarwyddeb y Cyngor 97/78/EC o ran samplau ac eitemau penodol a eithrir o wiriadau milfeddygol wrth y ffin o dan y Gyfarwyddeb honno (OJ Rhif L 54, 26.02.2011) ("Rheoliad Gweithredu'r UE").

O dan Reoliad Rheolaeth yr UE mae rhwymedigaethau ar weithredwyr mewn perthynas â sgil-gynhyrchion anifeiliaid, gan gynnwys rhwymedigaethau o ran gwaredu a defnyddio, gwaharddiadau ar fwydo, a rhoi ar y farchnad. Yn ychwanegol, mae gofynion ar weithredwyr, safleoedd a sefydliadau i gael eu cofrestru neu eu cymeradwyo. Mae'r rhwymedigaethau'n amrywio yn unol â chategoreiddio'r deunyddiau, caiff sgil-gynnyrch anifail mewn risg uwch ei gategoreiddio yn ddeunydd Categori 1,

y risg nesaf yw deunydd Categori 2 ac yna ddeunydd Categori 3. Mae Rheoliad Gweithredu'r UE yn atodi gofynion Rheoliad Rheolaeth yr UE.

Mae'r Rheoliadau hyn yn darparu ar gyfer y canlynol.

1. Mae Gweinidogion Cymru wedi eu dynodi'n awdurdod cymwys a cheir darpariaeth ar gyfer amrywio materion sy'n atodi'r gofynion sylfaenol fel a nodir yng ngholofn 2 o Atodlen 1 i'r Rheoliadau hyn, gan gynnwys dynodi ardaloedd pellennig a mynediad hefyd mewn perthynas â gwaharddiadau ar fwydo yn Erthygl 11 o Rheoliad Rheolaeth yr UE (Rhan 2).

2. Y weithdrefn ac apelau mewn cysylltiad â chofrestru a chymeradwyo (Rhan 3).

3. Gorfodi'r gofynion drwy ddarparu ar gyfer tramgwyddau am dorri'r gofynion fel y'u dynodir yn y Tabl i Atodlen 1 (Rhan 4). Mae'r Tabl yn gosod gofynion Rheoliad Rheolaeth yr UE a Rheoliad Gweithredu'r UE fel y'u hatodir gan ofynion Rheoliad Gweithredu'r UE a'r Rheoliadau hyn, pan fônt yn gymwys. Mae Rheoliad Rheolaeth yr UE a Rheoliad Gweithredu'r UE yn galluogi'r awdurdod cymwys, Gweinidogion Cymru, i roi awdurdodiadau mewn perthynas â gofynion o'r fath. Mae awdurdodiadau o'r fath yn galluogi'r awdurdod cymwys i ddyfarnu a yw cynnyrch yn risg i iechyd dynol neu i iechyd anifeiliaid ai peidio, er enghraifft. Trefnir y bydd rhestr gyflawn o bob awdurdodiad a ddarperir o dan y gofynion ar gael ar wefan Llywodraeth Cymru ([www.cymru.gov.uk](http://www.cymru.gov.uk)). Yn ychwanegol, bydd y wefan honno yn trefnu y bydd yr awdurdodiadau a arferir gan Weinidogion Cymru ar gael.

4. Gorfodi, drwy benodi awdurdodau gorfodi a darparu ar gyfer pwerau gorfodi (Rhan 5).

5. Darpariaethau canlyniadol (Rhan 6 ac Atodlen 2) a dirymiadau a darpariaeth drosiannol (Rhan 7). Yn benodol, mae'r Rheoliadau hyn yn dirymu Rheoliadau Sgilygyrchion Anifeiliaid (Gorfodi) (Cymru) 2011 (O.S. 2011/600 (Cy.88)).

Mae asesiad effaith reoleiddiol o'r effaith a gaiff yr offeryn hwn ar gostau busnes ac ar y sector gwirfoddol ar gael ar wefan Llywodraeth Cymru ([www.cymru.gov.uk](http://www.cymru.gov.uk)).

**2011 Rhif 2377(Cy. 250)**

**ANIFEILIAID, CYMRU**

**IECHYD ANIFEILIAID**

**IECHYD Y CYHOEDD, CYMRU**

Rheoliadau Sgil-gynhyrchion  
Anifeiliaid (Gorfodi) (Rhif 2) (Cymru)  
2011

*Gwnaed*

*27 Medi 2011*

*Gosodwyd gerbron Cynulliad Cenedlaethol Cymru*

*28 Medi 2011*

*Yn dod i rym yn unol â rheoliad 31*

## CYNNWYS

### RHAN 1

#### Cyflwyniad

1. Enwi, cychwyn a chymhwyso
2. Dehongli

### RHAN 2

Yr awdurdod cymwys a darpariaethau amrywiol

3. Yr awdurdod cymwys
- 4.–6. Mynediad
7. Defnyddio gwrtaith organig a deunyddiau i wella pridd
8. Canolfannau casglu
9. Ardaloedd pellennig
10. Rhoi ar y farchnad

### RHAN 3

#### Cofrestru a chymeradwyo

11. Y weithdrefn ar gyfer cofrestru safleoedd a sefydliadau
12. Hysbysiadau awdurdod cymwys mewn cysylltiad â chofrestru
13. Y weithdrefn ar gyfer cymeradwyo
14. Hysbysiad mewn cysylltiad â phenderfyniadau ar gymeradwyo
15. Y rhesymau dros benderfyniadau
16. Y weithdrefn apelio

### RHAN 4

#### Tramgwyddau a chosbau

17. Tramgwyddau mewn cysylltiad â Rheoliad Rheolaeth yr UE a Rheoliad Gweithredu'r UE
18. Y tramgwydd o rwystro
19. Tramgwyddau corfforaethol, tramgwyddau partneriaeth a thramgwyddau cymdeithas anghorfforedig
20. Cosbau

### RHAN 5

#### Gorfodi

21. Awdurdod gorfodi
22. Person awdurdodedig
23. Pwerau mynediad a phwerau ychwanegol
24. Gwarant
25. Hysbysiadau a gyflwynir gan berson awdurdodedig
26. Y pŵer i ddatgelu gwybodaeth at ddibenion gorfodi

### RHAN 6

#### Diwygiadau canlyniadol

27. Diwygiadau canlyniadol

### RHAN 7

#### Dirymiadau, darpariaeth drosiannol a chychwyn

28. Dirymu Rheoliadau Sgil-gynhyrchion Anifeiliaid (Gorfodi) (Cymru) 2011
29. Dirymiadau eraill
30. Darpariaeth drosiannol
31. Cychwyn

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ATODLEN 1 — Gofynion Sgil-gynhyrchion Anifeiliaid

ATODLEN 2 — Diwygiadau Canlyniadol

Mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddwyd iddynt gan adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972, fel y'i darllenir ynghyd â pharagraff 1A o Atodlen 2 iddi(1).

Mae Gweinidogion Cymru wedi eu dynodi at ddibenion adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972 mewn perthynas â mesurau yn y meysydd milfeddygol a ffotoiechydol ar gyfer amddiffyn iechyd y cyhoedd(2).

Mae'r Rheoliadau hyn yn gwneud darpariaeth ar gyfer diben a grybwyllir yn adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972 ac mae'n ymddangos i Weinidogion Cymru ei bod yn hwylus i unrhyw gyfeiriad at Reoliad y Comisiwn (EU) Rhif 142/2011 (sy'n gweithredu Rheoliad (EC) Rhif 1069/2009 Senedd Ewrop a'r Cyngor sy'n gosod rheolau iechyd mewn cysylltiad â sgil-gynhyrchion anifeiliaid a chynhyrchion sy'n dod o anifeiliaid na fwriedir ar gyfer eu bwyta gan bobl ac sy'n gweithredu Gyfarwyddeb y Cyngor 97/78/EC mewn cysylltiad â samplau ac eitemau penodol a eithrir o wiriadau milfeddygol wrth y ffin o dan y Gyfarwyddeb honno(3)) gael ei ddehongli fel cyfeiriad at yr offeryn hwnnw fel y'i diwygiwyd o bryd i'w gilydd.

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(1) 1972 p. 68. Mewnosodwyd paragraff 1A o Atodlen 2 gan adran 28 o Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006 (p. 51).

(2) O.S. 2008/1792.

(3) OJ Rhif L 54, 26.02.2011, a ddiwygiwyd gan Gyfarwyddeb y Cyngor 2010/63/EU (OJ Rhif L 276, 20.10.2010, t 33).



# RHAN 1

## Cyflwyniad

### Enwi, cychwyn a chymhwyso

#### 1. O ran y Rheoliadau hyn—

- (a) eu henw yw Rheoliadau Sgil-gynhyrchion Anifeiliaid (Gorfodi) (Rhif 2) (Cymru) 2011;
- (b) maent yn dod i rym yn unol â rheoliad 31; ac
- (c) maent yn gymwys o ran Cymru.

### Dehongli

#### 2.—(1) Yn y Rheoliadau hyn—

mae i “awdurdod cymwys” (“*competent authority*”) yr ystyr a roddir yn rheoliad 3;

ystyr “awdurdod gorfodi” (“*enforcement authority*”) yw corff sy'n arfer swyddogaethau o dan reoliad 21(1) neu (2);

mae i “gofyniad sgil-gynhyrchion anifeiliaid” (“*animal by-product requirement*”) yr ystyr a roddir yn rheoliad 17(2);

mae “llong” (“*ship*”) yn cynnwys hofranlong, cwch ymsuddol neu unrhyw gwch arnofiol arall ond nid llestr—

- (a) sy'n gorwedd yn barhaol ar wely'r môr neu sydd ynghlwm yn barhaol wrth wely'r môr; neu
- (b) sy'n osodiad o fewn adran 16 o Ddeddf Ynni 2008(1);

mae “mangre” (“*premises*”) yn cynnwys—

- (a) unrhyw dir, adeilad, sied neu gorlan;
- (b) unrhyw ddaliedydd neu gynhwysydd;
- (c) unrhyw long; neu
- (ch) cerbyd o unrhyw ddisgrifiad;

ystyr “person awdurdodedig” (“*authorised person*”) yw person a awdurdodwyd o dan reoliad 22;

ystyr “Rheoliad Gweithredu'r UE” (“*EU Implementing Regulation*”) yw Rheoliad y Comisiwn (EU) Rhif 142/2011 sy'n gweithredu Rheoliad (EC) Rhif 1069/2009 Senedd Ewrop a'r Cyngor sy'n gosod rheolau iechyd mewn perthynas â sgil-gynhyrchion anifeiliaid a chynhyrchion sy'n dod o anifeiliaid na fwriedir ar gyfer eu bwyta gan bobl ac sy'n gweithredu Cyfarwyddeb y Cyngor 97/78/EC mewn cysylltiad â

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(1) 2008 p. 32.

samplau ac eitemau penodol a eithrir o wiriadau milfeddygol wrth y ffin o dan y Gyfarwyddeb honno(1) fel y'i diwygir o bryd i'w gilydd;

ystyr “Rheoliad Rheolaeth yr UE” (“*EU Control Regulation*”) yw Rheoliad (EC) Rhif 1069/2009 Senedd Ewrop a'r Cyngor sy'n gosod rheolau iechyd mewn cysylltiad â sgil-gynhyrchion anifeiliaid a chynhyrchion sy'n dod o anifeiliaid na fwriedir ar gyfer eu bwyta gan bobl ac sy'n diddymu Rheoliad (EC) Rhif 1774/2002 (Rheoliad Sgil-gynhyrchion Anifeiliaid)(2).

(2) Mae i ymadroddion a ddefnyddir yn y Rheoliadau hyn ac a ddefnyddir hefyd yn Rheoliad Rheolaeth yr UE neu yn Rheoliad Gweithredu'r UE yr un ystyr yn y Rheoliadau hyn ag a roddir i'r ymadroddion Saesneg cyfatebol yn Rheoliad Rheolaeth yr UE neu yn Rheoliad Gweithredu'r UE.

## RHAN 2

Yr awdurdod cymwys a darpariaethau amrywiol

### Yr awdurdod cymwys

3. Yr awdurdod cymwys at ddibenion Rheoliad Rheolaeth yr UE a Rheoliad Gweithredu'r UE yw Gweinidogion Cymru.

### Mynediad

4. Mewn perthynas â gwaharddiad ar fwydo yn Erthygl 11(1)(a), (b) neu (d) (cyfyngiadau ar ddefnydd) o Reoliad Rheolaeth yr UE, mae gofynion rheoliad 5 yn gymwys.

5.—(1) Rhaid peidio â chludo sgil-gynhyrchion anifeiliaid, gan gynnwys gwastraff arlwygo, i unrhyw fangre pe bai gan anifeiliaid a ffermir fynediad at sgil-gynhyrchion anifeiliaid o'r fath.

(2) Nid yw paragraff (1) yn gymwys ar gyfer cynhyrchion sy'n dod o anifeiliaid, ac eithrio—

- (a) cynhyrchion sy'n dod o wastraff arlwygo; neu
- (b) blawd cig ac esgyrn sy'n dod o ddeunydd Categori 2 a phroteinau anifeiliaid wedi eu prosesu y bwriadwyd eu defnyddio fel gwrteithiau organig a deunyddiau i wella pridd neu eu defnyddio ynddynt, nad ydynt yn cydymffurfio â gofynion

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(1) OJ Rhif L 54, 26.02.2011.

(2) OJ Rhif L 300, 14.11.2009, t1.

Erthygl 32(1)(d) (rhoi ar y farchnad a defnyddio)  
o Reoliad Rheolaeth yr UE.

6. Rhaid cadw carcass neu ran o garcas unrhyw anifail a ffermir na chafodd ei gigydda ar gyfer ei fwyta gan bobl, hyd nes y'i traddodir neu y'i gwaredir, yn y fath fodd a fydd yn sicrhau na fydd unrhyw anifail neu aderyn yn gallu cael mynediad at y carcass neu'r rhan o garcas.

### **Defnyddio gwrteithiau organig a deunyddiau i wella pridd**

7.—(1) Os defnyddir gwrteithiau organig neu ddeunyddiau i wella pridd ar dir, ni chaiff neb ganiatáu i foch gael mynediad at y tir hwnnw na chael eu bwydo â phorfa wedi ei dorri o dir o'r fath am gyfnod o 60 o ddiwrnodau sy'n dechrau ar yr adeg y defnyddir y gwrteithiau organig neu'r deunyddiau i wella pridd.

(2) Nid yw paragraff (1) yn gymwys ar gyfer y gwrteithiau organig neu'r deunyddiau i wella pridd a ganlyn—

- (a) tail;
- (b) llaeth;
- (c) cynhyrchion yn seiliedig ar laeth;
- (ch) cynhyrchion sy'n dod o laeth;
- (d) llaeth tor;
- (dd) cynhyrchion o laeth tor; neu
- (e) cynnwys y llwybr treulio.

### **Canolfannau casglu**

8. Mae safle prosesu ar gyfer deunydd Categori 2 a gafodd ei gymeradwyo at ddibenion bod yn ganolfan gasglu ar gyfer deunydd Categori 2 wedi ei awdurdodi'n ganolfan gasglu.

### **Ardaloedd pellennig**

9. Mae'r ardaloedd canlynol yn ardaloedd pellennig at ddibenion Erthygl 19(1)(b) o Reoliad Rheolaeth yr UE (casglu, cludo a gwaredu)—

- (a) Ynys Enlli;
- (b) Ynys Byr;
- (c) Ynys Dewi;
- (ch) Ynys Echni.

### **Rhoi ar y farchnad**

10. Mae rhoi ar y farchnad wlaen sydd heb ei drin a blew sydd heb ei drin o ffermydd neu o sefydliadau neu

safleoedd wedi cael ei awdurdodi ac eithrio os ydynt yn cyflwyno risg o unrhyw glefyd trosglwyddadwy drwy'r cynhyrchion hynny i fodau dynol neu i anifeiliaid.

## RHAN 3

### Cofrestru a chymeradwyo

#### **Y weithdrefn ar gyfer cofrestru safleoedd a sefydliadau**

**11.** Rhaid hysbysu'r awdurdod cymwys yn ysgrifenedig, pan fo hynny'n cael ei wneud—

- (a) gyda'r bwriad o gofrestru yn unol ag Erthygl 23(1) (cofrestru gweithredwyr, sefydliadau neu safleoedd) o Reoliad Rheolaeth yr UE; neu
- (b) hysbysu'r awdurdod o newidiadau yn unol ag Erthygl 23(2) am y Rheoliad hwnnw.

#### **Hysbysiadau am awdurdod cymwys mewn cysylltiad â chofrestru**

**12.** Rhaid i'r awdurdod cymwys roi hysbysiad ysgrifenedig i'r canlynol—

- (a) y gweithredwr sydd wedi hysbysu yn unol â rheoliad 11 am y canlynol—
  - (i) cofrestriad gweithredwr o'r fath; neu
  - (ii) y penderfyniad i beidio â chofrestru;
- (b) gweithredwr cofrestredig am y canlynol—
  - (i) gwaharddiad a wnaed o dan Erthygl 46(2) (gwaharddiad ar weithrediadau) o Reoliad Rheolaeth yr UE;
  - (ii) gofyniad i gydymffurfio ag Erthygl 23(1)(b) neu (2) o Reoliad Rheolaeth yr UE (gwybodaeth am weithgareddau a'r wybodaeth ddiweddaraf);
  - (iii) diwygiad o'r cofrestriad neu ddiweddu'r cofrestriad pan fo gweithredwr wedi hysbysu'r awdurdod cymwys am gau sefydliad yn unol ag Erthygl 23(2) (yr wybodaeth ddiweddaraf) o Reoliad Rheolaeth yr UE.

#### **Y weithdrefn ar gyfer cymeradwyo**

**13.** Rhaid i weithredwyr y mae Erthygl 24(1) (cymeradwyo sefydliadau neu safleoedd) o Reoliad Rheolaeth yr UE yn gymwys iddynt, wneud cais ysgrifenedig i awdurdod cymwys i gael eu cymeradwyaeth, gan gynnwys cymeradwyaeth ar ôl cael

cymeradwyaeth dros dro pan fo Erthygl 33 o Reoliad Gweithredu'r UE (ailgymeradwyo safleoedd a sefydliadau ar ôl rhoi cymeradwyaeth dros dro) yn gymwys.

### **Hysbysiad mewn cysylltiad â phenderfyniadau ar gymeradwyo**

**14.** Rhaid i'r awdurdod cymwys roi hysbysiad ysgrifenedig i'r canlynol—

- (a) y ceisydd am gymeradwyaeth, am y canlynol—
  - (i) rhoi cymeradwyaeth yn unol ag Erthyglau 24 (cymeradwyo) a 44 (y weithdrefn ar gyfer cymeradwyo) o Reoliad Rheolaeth yr UE;
  - (ii) rhoi cymeradwyaeth amodol yn unol ag Erthyglau 24 a 44 o Reoliad Rheolaeth yr UE, neu ymestyn y gymeradwyaeth honno yn unol â'r Erthygl honno; neu
  - (iii) gwrthod rhoi cymeradwyaeth mewn cysylltiad â chais cychwynnol neu estyniad;
- (b) pan fo cymeradwyaeth amodol wedi cael ei rhoi yn unol ag Erthyglau 24 a 44 o Reoliad Rheolaeth yr UE, gweithredwr y safle neu'r sefydliad yn ddarostyngedig i gymeradwyaeth o'r fath, am y canlynol—
  - (i) rhoi cymeradwyaeth lawn;
  - (ii) ymestyn cymeradwyaeth o'r fath;
  - (iii) gosod amodau yn unol ag Erthygl 46(1)(c) (ataliadau dros dro, tynnu'n ôl a gwaharddiadau ar weithredwyr) o Reoliad Rheolaeth yr UE;
  - (iv) atal dros dro gymeradwyaeth o'r fath yn unol ag Erthygl 46(1)(a) o Reoliad Rheolaeth yr UE;
  - (v) tynnu'n ôl gymeradwyaeth o'r fath yn unol ag Erthygl 46(1)(b) o Reoliad Rheolaeth yr UE;
  - (vi) gwneud gwaharddiad yn unol ag Erthygl 46(2) o Reoliad Rheolaeth yr UE; neu
  - (vii) gwrthod ymestyn cymeradwyaeth lawn neu wrthod rhoi cymeradwyaeth lawn;
- (c) gweithredwr safle neu sefydliad wedi ei gymeradwyo, am y canlynol—
  - (i) gosod amodau yn unol ag Erthygl 46(1)(c) o Reoliad Rheolaeth yr UE (atal dros dro, tynnu'n ôl);
  - (ii) atal dros dro gymeradwyaeth o'r fath yn unol ag Erthygl 46(1)(a) o Reoliad Rheolaeth yr UE;

- (iii) gwneud gwaharddiad yn unol ag Erthygl 46(2) o Reoliad Rheolaeth yr UE; neu
- (iv) tynnu'n ôl gymeradwyaeth o'r fath yn unol ag Erthygl 46(1)(b) o Reoliad Rheolaeth yr UE.

#### **Y rhesymau dros y penderfyniadau**

**15.**—(1) Pan fo'r awdurdod cymwys yn gwneud penderfyniad ac yn hysbysu yn unol â rheoliad 12 neu reoliad 14, rhaid i'r awdurdod cymwys roi rhesymau ysgrifenedig am y penderfyniad hwnnw.

(2) Nid yw paragraff (1) yn gymwys i benderfyniadau a hysbyswyd o dan—

- (a) rheoliad 12(a)(i);
- (b) rheoliad 14(a)(i); neu
- (c) rheoliad 14(b)(i) neu (ii).

#### **Y weithdrefn apelio**

**16.**—(1) Pan fo'r awdurdod cymwys wedi gwneud penderfyniad y mae rheoliad 15(1) yn gymwys iddo, caiff person apelio yn ei erbyn drwy wneud sylwadau ysgrifenedig, o fewn 21 o ddiwrnodau o'r hysbysiad am y penderfyniad hwnnw, i berson a benodwyd at y diben gan Weinidogion Cymru.

(2) Caiff yr awdurdod cymwys hefyd wneud sylwadau ysgrifenedig i'r person penodedig ynglŷn â'r penderfyniad.

(3) Rhaid i'r person penodedig wedyn gyflwyno adroddiad ysgrifenedig i Weinidogion Cymru.

(4) Rhaid i Weinidogion Cymru roi i'r ceisydd hysbysiad ysgrifenedig am ddyfarniad terfynol Gweinidogion Cymru a'r rhesymau drosto.

## **RHAN 4**

### **Tramgwyddau a chosbau**

#### **Tramgwyddau mewn cysylltiad â Rheoliad Rheolaeth yr UE a Rheoliad Gweithredu'r UE**

**17.**—(1) Mae person sy'n methu â chydymffurfio â gofyniad sgil-gynhyrchion anifeiliaid yn cyflawni tramgwydd.

(2) Ystyr “gofyniad sgil-gynhyrchion anifeiliaid” (*“animal by-product requirement”*) yw unrhyw ofyniad yng Ngholofn 2 o Atodlen 1 i'r Rheoliadau hyn fel y'u darllenir ynghyd â'r darpariaethau yng Ngholofn 3 i'r Atodlen honno.

## Y tramgwydd o rwystro

### 18. Mae'n dramgwydd—

- (a) yn fwriadol i rwystro person awdurdodedig;
- (b) heb achos rhesymol i fethu â rhoi i berson awdurdodedig unrhyw wybodaeth neu gymorth neu i ddarparu unrhyw gyfleusterau y gall person o'r fath yn rhesymol ei gwneud neu ei wneud yn ofynnol;
- (c) gan wybod neu'n ddi-hid roi gwybodaeth anwir neu gamarweiniol i berson awdurdodedig; neu
- (ch) i fethu â dangos cofnod neu ddogfen pan fo person awdurdodedig yn gofyn amdano neu amdani.

## Tramgwyddau corfforaethol, tramgwyddau partneriaeth a thramgwyddau cymdeithas anghorfforedig

### 19.—(1) Pan fo—

- (a) tramgwydd o dan y Rheoliadau hyn wedi cael ei gyflawni gan gorff corfforaethol neu gan bartneriaeth neu gan bartneriaeth Albanaidd neu gan gymdeithas anghorfforedig arall; a
- (b) pan brofir bod tramgwydd wedi ei gyflawni gyda chydysyniad neu ymoddefiad unigolyn perthnasol, neu wedi ei briodoli i unrhyw esgeulustod ar ei ran, (gan gynnwys unigolyn sy'n honni ei fod yn gweithredu yn swyddogaeth unigolyn perthnasol),

mae'r unigolyn perthnasol yn ogystal â'r corff corfforaethol, y bartneriaeth, y bartneriaeth Albanaidd neu'r gymdeithas anghorfforedig, yn euog o'r tramgwydd ac mae'n atebol i gael achos yn ei erbyn neu yn ei herbyn a'i gosbi neu ei chosbi yn unol â hynny.

(2) Ym mharagraff (1), ystyr “unigolyn perthnasol” (“*relevant individual*”) yw—

- (a) mewn perthynas â chorff corfforaethol—
  - (i) cyfarwyddwr, rheolwr, ysgrifennydd neu swyddog tebyg arall o'r corff;
  - (ii) pan fo materion y corff yn cael eu rheoli gan ei aelodau, aelod;
- (b) mewn perthynas â phartneriaeth neu bartneriaeth Albanaidd, partner ynddi;
- (c) mewn perthynas â chymdeithas anghorfforedig ac eithrio partneriaeth Albanaidd, person sy'n ymwneud â rheolaeth neu reoli'r gymdeithas.

(3) Caniateir dwyn achos o dramgwydd o dan y Rheoliadau hyn yr honnir ei fod wedi ei gyflawni gan bartneriaeth neu gymdeithas anghorfforedig yn erbyn y

bartneriaeth neu'r gymdeithas yn enw'r bartneriaeth neu'r gymdeithas.

(4) At ddibenion yr achosion ym mharagraff (3)—

- (a) mae rheolau'r llys sy'n ymwneud â chyflwyno dogfennau i gael effaith fel pe bai'r bartneriaeth neu'r gymdeithas anghorfforedig yn gorff corfforaethol; a
- (b) mae'r darpariaethau canlynol yn gymwys fel y maent yn gymwys mewn perthynas â chorff corfforaethol—
  - (i) adran 33 o Ddeddf Cyfiawnder Troseddol 1925(1); a
  - (ii) Atodlen 3 i Ddeddf Llysoedd Ynadon 1980(2).

(5) Mae dirwy a osodir ar bartneriaeth neu gymdeithas anghorfforedig wrth eu collfarnu o dramgwydd o dan y Rheoliadau hyn i'w thalu allan o gronfeydd y bartneriaeth neu'r gymdeithas.

## Cosbau

20. Mae person sy'n euog o dramgwydd o dan y Rheoliadau hyn yn atebol—

- (a) ar gollfarn ddiannod, i ddirwy nad yw'n fwy na'r uchafswm statudol neu garchariad am gyfnod nad yw'n fwy na thri mis, neu'r ddau; neu
- (b) ar gollfarn ar dditiad, i ddirwy neu garchariad am gyfnod nad yw'n fwy na dwy flynedd, neu'r ddau.

## RHAN 5

### Gorfodi

#### Awdurdod gorfodi

21.—(1) Caiff y Rheoliadau hyn eu gorfodi gan y canlynol—

- (a) yr awdurdod lleol;

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- (1) 1925 p. 86. Diddymwyd is-adrannau (1), (2) a (5) o adran 33 gan Ddeddf Llysoedd Ynadon 1952 (p. 55), adran 132 ac Atodlen 6; diwygiwyd is-adran (3) gan Ddeddf y Llysoedd 1971 (p. 23), adran 56(1) ac Atodlen 8, Rhan 2, paragraff 19; diddymwyd is-adran (4) yn rhannol gan Ddeddf y Llysoedd 2003 (p. 39), adran 109(1) a (3), Atodlen 8, paragraff 71 ac Atodlen 10.
  - (2) 1980 p. 43. Diwygiwyd paragraff 2(a) gan Ddeddf Gweithdrefn ac Ymchwiliadau Troseddol 1996 (p. 25), adran 47, Atodlen 1, paragraff 13; diddymwyd paragraff 5 gan Ddeddf Cyfiawnder Troseddol 1991 (p. 53), adrannau 25(2) a 101(2) ac Atodlen 13.



(b) yr awdurdod iechyd porthladd mewn perthynas â dosbarth iechyd porthladd a gyfansoddwyd drwy orchymyn o dan adran 2(3) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984(1), neu

(c) Gweinidogion Cymru mewn perthynas â sefydliadau hylendid bwyd.

(2) Nid yw paragraffau (1)(a) a (b) yn gymwys pan fo Gweinidogion Cymru'n cyfarwyddo bod y ddyletswydd orfodi i'w harfer mewn perthynas ag achosion o ddisgrifiad penodol neu unrhyw achos penodol gan Weinidogion Cymru.

(3) Ym mharagraff (1)(a) ystyr “awdurdod lleol” (*“local authority”*) mewn perthynas ag ardal yw'r cyngor sir neu'r cyngor bwrdeistref sirol ar gyfer yr ardal honno;

(4) Ym mharagraff (1)(b) ystyr “awdurdod iechyd porthladd” (*“port health authority”*) yw'r awdurdod iechyd porthladd ar gyfer y dosbarth hwnnw.

(5) Ym mharagraff (1)(c), ystyr “sefydliad hylendid bwyd” (*“food hygiene establishment”*) yw sefydliad y cyfeirir ato yn rheoliad 5(2) o Reoliadau Hylendid Bwyd (Cymru) 2006(2) y mae gan yr Asiantaeth Safonau Bwyd swyddogaethau gorfodi mewn perthynas ag ef o dan y Rheoliadau hynny.

### **Person awdurdodedig**

**22.** Caiff awdurdod gorfodi awdurdodi'n ysgrifenedig y personau hynny y mae'r awdurdod yn ystyried eu bod yn briodol i weithredu at ddibenion gorfodi'r Rheoliadau hyn.

### **Pwerau mynediad a phwerau ychwanegol**

**23.—(1)** Caiff person awdurdodedig, wrth ddangos awdurdod y person hwnnw os gofynnir amdano—

- (a) mynd i mewn i fangre a'i harchwilio (ac eithrio tŷ annedd) ar bob adeg resymol;
- (b) mynd â'r personau eraill hynny gydag ef ac unrhyw gyfarpar neu ddeunyddiau fel bo angen;
- (c) gwneud yr archwiliad hwnnw neu'r ymchwiliad hwnnw fel bo angen;
- (ch) cyfarwyddo y bydd y fangre, neu ran ohoni, yn cael ei gadael heb aflonyddu arni (p'un ai'n gyffredinol neu mewn agweddau penodol) am ba amser bynnag sy'n rhesymol angenrheidiol at ddibenion unrhyw archwiliad neu ymchwiliad o dan is-baragraff (c);

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(1) 1984 p. 22.

(2) O.S. 2006/31 (Cy.5).

(d) cymryd y mesurau hynny a'r ffotograffau hynny a gwneud y cofnodion hynny ag a ystyrir yn angenrheidiol at ddibenion unrhyw archwiliad neu ymchwiliad o dan is-baragraff (c);

(dd) yn achos unrhyw eitem neu sylwedd a ganfyddir yn neu ar y fangre—

(i) cymryd samplau;

(ii) ei phrofi neu ei brofi neu ei gwneud neu ei wneud yn destun unrhyw broses, os yw'n ymddangos ei bod neu ei fod wedi peri niwed neu'n debygol o beri niwed i iechyd dynol neu i iechyd anifeiliaid neu blanhigion;

(iii) cymryd meddiant ohoni neu ohono a'i chadw neu ei gadw cyhyd ag y bo'n angenrheidiol—

(aa) i'w harchwilio neu i'w archwilio ac arfer y pŵer o fewn paragraff (ii);

(bb) sicrhau nad oes neb yn ymyrryd â hi neu ag ef cyn cwblhau ei harchwilio neu ei archwilio; ac

(cc) sicrhau ei bod ar gael neu ei fod ar gael i'w defnyddio neu i'w ddefnyddio fel tystiolaeth mewn unrhyw achos am dramgwydd o dan y Rheoliadau hyn;

(e) ei gwneud yn ofynnol bod unrhyw gofnodion y mae'n angenrheidiol eu gweld at ddibenion unrhyw archwiliad neu ymchwiliad o dan is-baragraff (c) yn cael eu dangos neu pan fo'r wybodaeth wedi ei chofnodi ar ffurf gyfrifiadurol bod detholiad o'r cofnodion yn cael ei ddangos, ac archwilio a chymryd copïau o'r cofnodion hynny, neu unrhyw gofnod ynddynt;

(f) ei gwneud yn ofynnol i unrhyw berson roi'r cyfleusterau hynny a'r cymorth hwnnw mewn perthynas ag unrhyw faterion neu bethau o dan reolaeth y person hwnnw neu y mae gan y person hwnnw gyfrifoldebau mewn perthynas â hwy ag sy'n angenrheidiol er mwyn galluogi'r person awdurdodedig i arfer unrhyw un o'r pwerau a roddir iddo gan y rheoliad hwn; neu

(ff) marcio unrhyw anifail neu sgil-gynnyrch anifail fel y mae'r person awdurdodedig yn ystyried ei fod yn angenrheidiol.

(2) Pan fo person awdurdodedig yn bwriadu arfer y pŵer ym mharagraff (1)(dd)(ii), rhaid i'r person awdurdodedig—

(a) os gofynnir hynny gan berson sydd yn bresennol ar y pryd ac y mae ganddo gyfrifoldebau mewn perthynas â'r fangre honno, peri bod unrhyw beth

sydd i'w wneud yn rhinwedd y pŵer hwnnw yn cael ei wneud ym mhresenoldeb y person hwnnw;

- (b) ymgynghori â'r personau hynny y mae'n ymddangos i'r person awdurdodedig bod hynny'n briodol at ddibenion canfod pa beryglon, os oes rhai, y gallai ddigwydd wrth wneud unrhyw beth y bwriedir ei wneud o dan y pŵer hwnnw.

(3) Pan fo person awdurdodedig mewn perthynas â'r pŵer ym mharagraff (1)(dd)(iii)—

- (a) yn bwriadu arfer y pŵer hwnnw, rhaid i'r person awdurdodedig, os yw'n ymarferol i wneud hynny, gymryd sampl o'r eitem neu'r sylwedd a rhoi i berson cyfrifol yn y fangre gyfran o'r sampl wedi ei marcio mewn dull sy'n ddigonol i'w hadnabod; neu
- (b) yn arfer y pŵer hwnnw, rhaid i'r person awdurdodedig adael hysbysiad sy'n rhoi manylion am yr eitem neu'r sylwedd sy'n ddigonol i ddynodi beth ydyw ac yn datgan bod meddiant wedi ei gymryd ohoni neu ohono, ac mae hysbysiad o'r fath i gael ei adael naill ai—
  - (i) gyda pherson cyfrifol; neu
  - (ii) os nad yw hynny'n ymarferol, wedi ei osod yn sownd mewn lle amlwg yn y fangre honno.

(4) Nid oes dim yn y rheoliad hwn sy'n gorfodi unrhyw berson i ddangos dogfen y byddai hawl gan y person hwnnw i'w dal yn ôl rhag ei dangos ar sail braint broffesiynol gyfreithiol dan orchymyn datgelu mewn achos yn yr Uchel Lys.

## **Gwarant**

**24.**—(1) Os bydd, mewn perthynas â'r pŵer i fynd i mewn i fangre o dan reoliad 23, ynad heddwch, drwy wybodaeth ysgrifenedig ar lw—

- (a) wedi ei fodloni bod seiliau rhesymol dros gredu bod unrhyw wybodaeth neu ddeunydd yn berthnasol i'r archwiliad neu'r ymchwiliad o dan reoliad 23(1)(c) yn unrhyw fangre o'r fath; a
- (b) wedi ei fodloni—
  - (i) bod mynediad i'r fangre honno wedi ei wrthod, neu'n debygol o gael ei wrthod, a bod hysbysiad o'r bwriad i wneud cais am warant wedi ei roi i'r meddiannydd; neu
  - (ii) y byddai cais am fynediad, neu roi hysbysiad o'r fath, yn mynd yn groes i'r amcan o fynd i mewn, neu fod yr achos yn achos brys, neu fod y fangre honno heb ei meddiannu neu fod y meddiannydd yn absennol dros dro,

caiff yr ynad drwy warant, a fydd yn parhau mewn grym am gyfnod o fis, awdurdodi person awdurdodedig i fynd i mewn i'r fangre, drwy ddefnyddio grym os yw hynny'n angenrheidiol.

(2) Os bydd, mewn perthynas â thŷ annedd, ynad heddwch drwy wybodaeth ysgrifenedig ar lw—

- (a) wedi ei fodloni bod seiliau rhesymol dros gredu bod unrhyw wybodaeth neu ddeunydd yn berthnasol i'r archwiliad neu'r ymchwiliad at ddibenion gorfodi Rheoliad Rheolaeth yr UE, Rheoliad Gweithredu'r UE a'r Rheoliadau hyn mewn mangre o'r fath; a
- (b) wedi ei fodloni bod—
  - (i) mynediad i'r fangre honno wedi ei wrthod, neu'n debygol o gael ei wrthod, a bod hysbysiad o'r bwriad i wneud cais am warant wedi ei roi i'r meddiannydd; neu
  - (ii) y byddai cais am fynediad, neu roi hysbysiad o'r fath, yn mynd yn groes i'r amcan o fynd i mewn, neu fod yr achos yn achos brys, neu fod y fangre honno heb ei meddiannu neu fod y meddiannydd yn absennol dros dro,

caiff yr ynad drwy warant, a fydd yn parhau mewn grym am gyfnod o fis, awdurdodi person awdurdodedig i fynd i mewn i'r fangre honno, drwy ddefnyddio grym os yw hynny'n angenrheidiol, a'i harchwilio.

(3) Pan fo person awdurdodedig wedi ei awdurdodi o dan baragraff (2) i fynd i mewn drwy warant, bydd gan y person awdurdodedig y pwerau yn rheoliad 23(1)(b) i (ff).

### **Hysbysiadau a gyflwynir gan berson awdurdodedig**

**25.—**(1) Caiff person awdurdodedig gyflwyno hysbysiad yn unol â pharagraff (2) pan fo'r person hwnnw—

- (a) yn ystyried bod gofyniad sgil-gynhyrchion anifeiliaid wedi ei dorri, neu fod methiant i gydymffurfio â'r gofyniad; neu
- (b) yn rhesymol yn amau, o ganlyniad i dorri'r gofyniad hwnnw neu fethu â chydymffurfio ag ef, bod mangre yn peri risg i iechyd dynol neu i iechyd anifeiliaid.

(2) Caniateir i hysbysiadau gael eu cyflwyno i feddiannydd unrhyw fangre, neu i'r person sydd â gofal am y fangre—

- (a) yn ei gwneud yn ofynnol i waredu ac, os yw'n gymwys, storio'r canlynol cyn ei waredu—
  - (i) sgil-gynhyrchion anifeiliaid a chynhyrchion sy'n dod o anifeiliaid;

- (ii) deunydd mewn mangre y mae paragraff (1)(b) yn gymwys iddi;
- (b) yn ei gwneud yn ofynnol i lanhau a diheintio mangre y mae paragraff (1)(b) yn gymwys iddi ac, os yw'n gymwys, pennu'r dull ar gyfer y glanhau a'r diheintio hwnnw;
- (c) gwahardd sgil-gynhyrchion anifeiliaid a chynhyrchion sy'n dod o anifeiliaid rhag y canlynol—
  - (i) cael eu symud neu eu cludo i mewn i'r fangre;
  - (ii) cael eu symud neu eu cludo i mewn i'r fangre oni wneir hynny'n unol ag amodau a bennir yn yr hysbysiad, gan gynnwys amod ynglŷn â chwblhau'n foddhaol y glanhau a'r diheintio yn unol â hysbysiad fel a ddarperir yn is-baragraff (b).

(3) Rhaid cydymffurfio â hysbysiad a gyflwynir o dan baragraff (2) a hynny ar draul y person y cyflwynir yr hysbysiad iddo, ac os na chydymffurfir ag ef, caiff person awdurdodedig drefnu cydymffurfedd ag ef ar draul y person hwnnw.

(4) Nid yw paragraff (1) yn gymwys pan fo Erthygl 46(1) (ataliadau dros dro, tynnu'n ôl a gwaharddiadau ar weithrediadau) o Reoliad Rheolaeth yr UE yn gymwys.

#### **Y pŵer i ddatgelu gwybodaeth at ddibenion gorfodi**

**26.**—(1) Mae'r rheoliad hwn yn gymwys i wybodaeth y mae awdurdod gorfodi neu berson awdurdodedig yn ei chael wrth orfodi'r Rheoliadau hyn.

(2) Caiff y person hwnnw ddatgelu'r wybodaeth i unrhyw awdurdod gorfodi neu berson awdurdodedig cyffelyb (a benodwyd yn rhywle arall o fewn y Deyrnas Unedig i orfodi Rheoliad Rheolaeth yr UE a Rheoliad Gweithredu'r UE) at ddibenion eu rôl orfodi.

(3) At ddibenion y rheoliad hwn, mae “awdurdod gorfodi” (“*an enforcement authority*”) yn cynnwys yr Asiantaeth Safonau Bwyd.

## **RHAN 6**

### **Diwygiadau Canlyniadol**

#### **Diwygiadau canlyniadol**

**27.** Mae Atodlen 2 i'r Rheoliadau hyn yn darparu ar gyfer diwygiadau canlyniadol.

## RHAN 7

Dirymiadau, darpariaeth drosiannol a chychwyn

### **Dirymu Rheoliadau Sgil-gynhyrchion Anifeiliaid (Gorfodi) (Cymru) 2011**

**28.**—(1) Mae Rheoliadau Sgil-gynhyrchion Anifeiliaid (Gorfodi) (Cymru) 2011 (“Rheoliadau 2011”)(**1**) wedi eu dirymu.

(2) Mae'r darpariaethau a ddirymwyd gan Reoliadau 2011 wedi eu hadfywio.

(3) Mae'r diwygiadau a wnaed gan ddarpariaethau Atodlen 2 i Reoliadau 2011 wedi eu dadwneud.

### **Dirymiadau eraill**

**29.** Mae'r offerynnau canlynol wedi eu dirymu—

- (a) Rheoliadau Sgil-gynhyrchion Anifeiliaid (Cymru) 2006(**2**); a
- (b) Gorchymyn Ffliw Adar (H5N1) (Diwygiadau Amrywiol) (Cymru) 2007(**3**).

### **Darpariaeth drosiannol**

**30.**—(1) Mae casglu, cludo a gwaredu deunydd Categori 3 yn Erthygl 10(f) o Reoliad Rheolaeth yr UE (deunydd Categori 3) wedi ei awdurdodi ar gyfer y cyfnod sy'n dod i ben ar 31 Rhagfyr 2012, pan fo gofynion paragraff (2) wedi eu bodloni.

(2) Y gofynion yw—

- (a) bod y deunydd yn bodloni Erthygl 36(3) o Reoliad Gweithredu'r UE a pharagraffau (a) i (c) o Bennod 4 o Atodiad 6 iddo: a
- (b) bod y dull o waredu deunydd o'r fath, yn ychwanegol at y dull yn Erthygl 14 o Reoliad Rheolaeth yr UE (gwaredu a defnyddio deunydd Categori 3), yn gwaredu—
  - (i) mewn tirlenwi awdurdodedig heb brosesu ymlaen llaw; neu
  - (ii) pan fo Erthygl 21 o Reoliad Rheolaeth yr UE wedi ei bodloni, i safle bionwy neu safle compostio ar gyfer trawsffurfio yn unol ag awdurdodiad o dan baragraff 2 o Adran 2 o

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(1) O.S. 2011/600 (Cy.88).  
(2) O.S. 2006/1293 (Cy.127).  
(3) O.S. 2007/3375 (Cy.300).

Bennod 3 o Atodiad 5 i Reoliad Gweithredu'r  
UE.

**Cychwyn**

**31.**—(1) Mae rheoliad 28 yn dod i rym am 12.01a.m. ar  
20 Hydref 2011.

(2) Mae gweddill y rheoliadau'n dod i rym am 12.15a.m.  
ar 20 Hydref 2011.

*John Griffiths*

Gweinidog yr Amgylchedd a Datblygu Cynaliadwy, un o  
Weinidogion Cymru

27 Medi 2011

## Gofynion Sgil-gynhyrchion Anifeiliaid

<i>Colofn 1</i> <i>Pwnc y gofyniad</i>	<i>Colofn 2</i> <i>Darpariaethau sy'n cynnwys y gofyniad sylfaenol</i>	<i>Colofn 3</i> <i>Darpariaethau i'w darllen ynghyd â'r ddarpariaeth (neu'r darpariaethau) a grybwyllir yng Ngholofn 2</i>
<b>1.</b> Rhwymedigaeth gyffredinol	Erthygl 4(1) neu (2) o Reoliad Rheolaeth yr UE	Erthygl 3 o Reoliad Gweithredu'r UE
<b>2.</b> Cyfyngiadau cyffredinol ar iechyd anifeiliaid	Erthygl 6(1) o Reoliad Rheolaeth yr UE	Erthygl 4 o Reoliad Gweithredu'r UE
<b>3.</b> Cyfyngiadau ar ddefnyddio at ddibenion bwydo	Erthygl 11 o Reoliad Rheolaeth yr UE	Rheoliadau 4 i 7 o'r Rheoliadau hyn ac Erthygl 5 o Reoliad Gweithredu'r UE
<b>4.</b> Cyfyngiadau ar fynediad at garcasau	Erthyglau 12, 13 a 21(1) o Reoliad Rheolaeth yr UE	Rheoliad 6 o'r Rheoliadau hyn
<b>5.</b> Gwaredu a defnyddio deunydd Categori 1	Erthygl 12 o Reoliad Rheolaeth yr UE, yn ddarostyngedig i Erthygl 16 (b) i (e) o'r Rheoliad hwnnw ac Erthygl 7 o Reoliad Gweithredu'r UE	Erthyglau 6(3) i (5), 8(1), 9(b) ac (c), 11(2), 12(2) a 15 o Reoliad Gweithredu'r UE



<i>Colofn 1</i> <i>Pwnc y gofyniad</i>	<i>Colofn 2</i> <i>Darpariaethau sy'n cynnwys y gofyniad sylfaenol</i>	<i>Colofn 3</i> <i>Darpariaethau i'w darllen ynghyd â'r ddarpariaeth (neu'r darpariaethau) a grybwyllir yng Ngholofn 2</i>
<b>6.</b> Gwaredu a defnyddio deunydd Categori 2	Erthygl 13 o Reoliad Rheolaeth yr UE, yn ddarostyngedig i Erthyglau 15(2)(b) ac 16(b) i (f) ac (h) o'r Rheoliad hwnnw	Rheoliad 8 o'r Rheoliadau hyn ac Erthyglau 6(3) i (5), 8(1), 9(b) ac (c), 10(1), 11(2), 12(2), 13(1) a 15 o Reoliad Gweithredu'r UE
<b>7.</b> Gwaredu a defnyddio deunydd Categori 3	Erthygl 14 o Reoliad Rheolaeth yr UE, yn ddarostyngedig i Erthygl 16 (b) i (h) o'r Rheoliad hwnnw ac Erthygl 7 o Reoliad Gweithredu'r UE	Rheoliad 30 o'r Rheoliadau hyn ac Erthyglau 6(3) i (5), 8(1), 9(b) ac (c), 10(1), 11(2), 12(2), 13(2), 15 a 36(3) o Reoliad Gweithredu'r UE
<b>8.</b> Casglu ac adnabod o ran categori a chludo	Erthygl 21(1) i (4) o Reoliad Rheolaeth yr UE	Erthygl 17 o Reoliad Gweithredu'r UE
<b>9.</b> Gallu olrhain	Erthygl 22(1) a (2) o Reoliad Rheolaeth yr UE	Erthygl 17 o Reoliad Gweithredu'r UE
<b>10.</b> Cofrestru gweithredwyr, sefydliadau neu safleoedd	Erthyglau 23(1) a (2) a 55 o Reoliad Rheolaeth yr UE	Rheoliad 11 o'r Rheoliadau hyn ac Erthyglau 20(1) a (2) a 32(7) o Reoliad Gweithredu'r UE

<i>Colofn 1</i> <i>Pwnc y gofyniad</i>	<i>Colofn 2</i> <i>Darpariaethau sy'n cynnwys y gofyniad sylfaenol</i>	<i>Colofn 3</i> <i>Darpariaethau i'w darllen ynghyd â'r ddarpariaeth (neu'r darpariaethau) a grybwyllir yng Ngholofn 2</i>
<b>11.</b> Cymeradwyo sefydliadau neu safleoedd	Erthyglau 24, 44(3) a 55 o Reoliad Rheolaeth yr UE	Rheoliad 13 o'r Rheoliadau hyn ac Erthyglau 19, 32(7) a 33 o Reoliad Gweithredu'r UE
<b>12.</b> Gofynion hylendid cyffredinol	Erthygl 25 o Reoliad Rheolaeth yr UE	Erthyglau 9(a), 19 a 20 o Reoliad Gweithredu'r UE
<b>13.</b> Trafod sgil-gynhyrchion anifeiliaid mewn busnesau bwyd	Erthygl 26 o Reoliad Rheolaeth yr UE	
<b>14.</b> Gwiriadau eu hunain	Erthygl 28 o Reoliad Rheolaeth yr UE	
<b>15.</b> Dadansoddi peryglon a manau rheoli allweddol	Erthygl 29(1) i (3) o Reoliad Rheolaeth yr UE	

<i>Colofn 1</i> <i>Pwnc y gofyniad</i>	<i>Colofn 2</i> <i>Darpariaethau sy'n cynnwys y gofyniad sylfaenol</i>	<i>Colofn 3</i> <i>Darpariaethau i'w darllen ynghyd â'r ddarpariaeth (neu'r darpariaethau) a grybwyllir yng Ngholofn 2</i>
<b>16.</b> Rhoi ar y farchnad sgil-gynhyrchion anifeiliaid a chynhyrchion sy'n dod o anifeiliaid i'w bwydo i anifeiliaid a ffermir ac eithrio anifeiliaid ffwr	Erthygl 31(1) o Reoliad Rheolaeth yr UE	Erthyglau 21 a 24(2) o Reoliad Gweithredu'r UE
<b>17.</b> Rhoi ar y farchnad a defnyddio gwrteithiau organig a deunyddiau i wella pridd	Erthygl 32(1) a (2) o Reoliad Rheolaeth yr UE	Rheoliad 7(1) o'r Rheoliadau hyn ac Erthyglau 22(1) i (3) a 36(1) o Reoliad Gweithredu'r UE
<b>18.</b> Casglu a symud ar gyfer gweithgynhyrchu cynhyrchion sy'n dod o anifeiliaid	Erthygl 34 o Reoliad Rheolaeth yr UE ac eithrio i'r graddau y mae'n ymwneud â mewforion	Erthygl 33 o Reoliad Rheolaeth yr UE ac Erthygl 23 o Reoliad Gweithredu'r UE
<b>19.</b> Gwahardd defnyddio ar gyfer gweithgynhyrchu cynhyrchion heb ddod o fewn Erthygl 33 neu 36 o Reoliad Rheolaeth yr UE	Erthygl 24(1) o Reoliad Gweithredu'r UE	Erthyglau 33 a 36 o Reoliad Rheolaeth yr UE
<b>20.</b> Rhoi bwyd anifeiliaid anwes ar y farchnad	Erthygl 35 o Reoliad Rheolaeth yr UE	Erthyglau 3 a 24(3) o Reoliad Gweithredu'r UE
<b>21.</b> Rhoi ar y farchnad gynhyrchion eraill sy'n dod o anifeiliaid	Erthygl 36 o Reoliad Rheolaeth yr UE	Rheoliad 10 o'r Rheoliadau hyn ac Erthyglau 3 a 24(1), (2) a (4) o Reoliad Gweithredu'r UE
<b>22.</b> Cyrchu diogel	Erthygl 37(2) o Reoliad Rheolaeth yr UE	

<i>Colofn 1</i>	<i>Colofn 2</i>	<i>Colofn 3</i>
<i>Pwnc y gofyniad</i>	<i>Darpariaethau sy'n cynnwys y gofyniad sylfaenol</i>	<i>Darpariaethau i'w darllen ynghyd â'r ddarpariaeth (neu'r darpariaethau) a grybwyllir yng Ngholofn 2</i>
<b>23.</b> Allforio	Erthygl 43 o Reoliad Rheolaeth yr UE	
<b>24.</b> Rheolaethau ar gyfer anfon	Erthygl 48 o Reoliad Rheolaeth yr UE	Erthyglau 11(3), 12(3) a 31 o Reoliad Gweithredu'r UE

## Diwygiadau Canlyniadol

**Rheoliadau Gwastraff a Reolir (Cofrestru Cludwyr ac Atafaelu Cerbydau) 1991**

1. Yn rheoliad 2 o Reoliadau Gwastraff a Reolir (Cofrestru Cludwyr ac Atafaelu Cerbydau) 1991(1)—

- (a) ym mharagraff(1)(i), yn lle “Article 7(1) or 7(2)” rhodder “Article 21(1) to (3)”; a
- (b) ym mharagraff (2), yn lle’r diffiniad o “the Community Regulation” rhodder—
 

““the Community Regulation” means Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (Animal by-products Regulation);”.

**Rheoliadau Trwyddedu Rheoli Gwastraff 1994**

2. Yn rheoliad 20 o Reoliadau Trwyddedu Rheoli Gwastraff 1994(2), yn lle paragraff (9) rhodder—

“(9) In this regulation, in relation to Wales, “animal by-products” has the meaning given in Article 3(1) of the Community Regulation and “Community Regulation” means Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (Animal by-products Regulation).”.

**Rheoliadau Sgil-gynhyrchion Anifeiliaid (Adnabod) 1995**

3.—(1) Mae Rheoliadau Sgil-gynhyrchion Anifeiliaid (Adnabod) 1995(3) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 2(1)—

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- (1) O.S. 1991/1624, a ddiwygiwyd gan O.S. 2006/937; mae offerynnau diwygio eraill ond nid ydynt yn berthnasol.
  - (2) O.S. 1994/1056, a ddiwygiwyd gan O.S. 2006/937; mae offerynnau diwygio eraill ond nid ydynt yn berthnasol.
  - (3) O.S. 1995/614, offerynnau diwygio eraill sy’n berthnasol yw O.S. 1995/1955, 2002/1619, 2003/1484, O.S. 2006/14.

- (a) hepgorer y diffiniad o “the 2003 Regulations”;
  - (b) yn lle’r diffiniad o “approved incineration plant” rhodder—
    - ““approved incineration plant” means an incineration plant which is approved under Article 24(1)(b) of the Community Regulation;”;
  - (c) yn lle’r diffiniad o “approved rendering plant” rhodder—
    - ““approved rendering plant” means a Category 2 processing plant which is approved under Article 24(1)(a) of the Community Regulation;”;
  - (ch) yn lle’r diffiniad o “the Community Regulation” rhodder—
    - ““the Community Regulation” means Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (Animal by-products Regulation);”;
  - (d) yn lle’r diffiniad o “specified bovine offal” rhodder—
    - ““specified risk material” has the meaning given in Article 3(18) of the Community Regulation;”.
- (3) Yn lle rheoliad 4(b) rhodder—
- “(b) affect the operation of the Animal By-Products (Enforcement) (No. 2) (Wales) Regulations 2011 or any order made, or having effect, under the Animal Health Act 1981.”.
- (4) Yn rheoliad 5—
- (a) ym mharagraff (1)(f), yn lle “specified bovine offal” rhodder “specified risk material”;
  - (b) ym mharagraff (2)(c), yn lle “the 2003 Regulations” rhodder “the Community Regulation”; ac
  - (c) ym mharagraff (2)(d), yn lle “the 2003 Regulations” rhodder “the Community Regulation”.
- (5) Yn rheoliad 9(3)—
- (a) yn is-baragraff (d), yn lle “Article 2.1(c)” rhodder “Article 9”; a
  - (b) yn is-baragraff (e), yn lle “Article 2.1(d)” rhodder “Article 10”.

#### **Rheoliadau Offal Buchol (Gwahardd) (Cymru, Lloegr a'r Alban) (Dirymu) 1995**

4. Yn Rheoliadau Offal Buchol (Gwahardd) (Cymru, Lloegr a'r Alban) (Dirymu) 1995(1), hepgorer rheoliad 3.

#### **Rheoliadau Cynhyrchion sy'n Dod o Anifeiliaid (Mewnforio ac Allforio) 1996**

5.—(1) Mae Rheoliadau Cynhyrchion sy'n Dod o Anifeiliaid (Mewnforio ac Allforio) 1996(2) wedi eu diwygio i'r graddau y maent yn ymwneud â Chymru fel a ganlyn.

(2) Yn rheoliad 1(2)—

- (a) hepgorer y diffiniad o “Directive 90/667”;
- (b) yn y diffiniad o “product of animal origin”, yn is-baragraff (f) yn lle “Directive 90/667” rhodder “Regulation (EC) No. 1069/2009 or Regulation (EU) No. 142/2011”;
- (c) ar ôl y diffiniad o “Regulation 1274/91” mewnosoder—

““Regulation (EC) No. 1069/2009” means Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (Animal by-products Regulation);

“Regulation (EU) No. 142/2011” means Commission Regulation (EU) No. 142/2011 implementing Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive.”.

(3) Yn rheoliad 10, ar ôl pob cyfeiriad at “Directive 92/118” mewnosoder “; Regulation (EC) No. 1069/2009 or Regulation (EU) No. 142/2011”.

(4) Yn rheoliad 11(1)—

- (a) yn is-baragraff (a)—
  - (i) ar ôl “Directive 92/118” mewnosoder “; Regulation (EC) No. 1069/2009 or Regulation (EU) No. 142/2011”; a

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(1) O.S. 1995/1955.

(2) O.S. 1996/3124, a ddiwygiwyd gan O.S. 2006/2407; mae offerynnau diwygio eraill ond nid ydynt yn berthnasol.

(ii) yn lle “paragraphs 1 to 11 or 13 to 15 of Schedule 3, under Directive 90/667” rhodder “paragraphs 1 to 11 or 13 to 16 of Schedule 3”; a

(b) yn is-baragraff (b)—

(i) ar ôl “Directive 92/118” mewnosoder “, Regulation (EC) No. 1069/2009 or Regulation (EU) No. 142/2011”;

(ii) ar ôl “that Directive” mewnosoder “or Regulation”.

(5) Yn rheoliad 12(1)—

(a) ar ôl “Directive 92/118” mewnosoder “, Regulation (EC) No. 1069/2009 or Regulation (EU) No. 142/2011”; a

(b) yn is-baragraff (a), yn lle “paragraphs 1 to 11 or 13 to 15 of Schedule 3, under Directive 90/667” rhodder “paragraphs 1 to 11 or 13 to 16 of Schedule 3”.

(6) Yn Atodlen 3, ailrifur yr ail baragraff 13 (Anifeiliaid hela gwyllt) yn baragraff 15 ac yna ar ôl paragraff 15, mewnosoder—

#### **“Animal By-Products**

**16.** Regulation (EC) No. 1069/2009 and Regulation (EU) No. 142/2011.”.

#### **Rheoliadau Sgil-gynhyrchion Anifeiliaid (Adnabod) (Diwygio) (Cymru) (Rhif 2) 2003**

**6.** Yn Rheoliadau Sgil-gynhyrchion Anifeiliaid (Adnabod) (Diwygio) (Cymru) (Rhif 2) 2003(1), hepgorer rheoliad 4(b).

#### **Gorchymyn Clwy'r Traed a'r Genau (Cymru) 2006**

**7.**—(1) Mae Gorchymyn Clwy'r Traed a'r Genau (Cymru) 2006(2) wedi ei ddiwygio fel a ganlyn.

(2) Yn erthygl 3(1), ar ôl y diffiniad o “raw milk” mewnosoder—

““Regulation (EC) No. 1069/2009” means Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (Animal by-products Regulation);

“Regulation (EU) No. 142/2011” means Commission Regulation (EU) No. 142/2011

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(1) O.S. 2003/2754 (Cy.265).

(2) O.S. 2006/179 (Cy.30), fel y'i diwygiwyd.



implementing Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive;”.

(3) Yn erthygl 26, ym mharagraff (2)(b) yn lle “point 5 of Section II in Part A of Chapter III of Annex VIII to Regulation (EC) No. 1774/2002”, rhodder “Articles 15 and 32 of Regulation (EC) No. 1069/2009 and Articles 10 and 22 of and Section 2 of Chapter I of Annex XI to Regulation (EU) No. 142/2011”.

(4) Yn erthygl 27(2)(c) yn lle “Regulation (EC) No. 1774/2002” rhodder “Regulation (EC) No. 1069/2009”.

(5) Yn Atodlen 4—

(a) ym mharagraff 20(4), yn lle “point 5 of Section II in Part A of Chapter III of Annex VIII to Regulation (EC) No. 1774/2002” rhodder “Articles 15 and 32 of Regulation (EC) No. 1069/2009 and Articles 10 and 22 of and Section 2 of Chapter I of Annex XI to Regulation (EU) No. 142/2011”; a

(b) ym mharagraff 33(4), yn lle “point 5 of Section II in Part A of Chapter III of Annex VIII to Regulation (EC) No. 1774/2002” rhodder “Articles 15 and 32 of Regulation (EC) No. 1069/2009 and Articles 10 and 22 of and Section 2 of Chapter I of Annex XI to Regulation (EU) No. 142/2011”.

(6) Yn Atodlen 5—

(a) ym mharagraff 2, yn lle “article 20 of and points A(2)(c) or (d) of Chapter VI of Annex VIII to Regulation (EC) No. 1774/2002” rhodder “Article 36 of Regulation (EC) No. 1069/2009 and point 28(c) and (d) of Annex I to Regulation (EU) No. 142/2011”;

(b) ym mharagraff 3, yn lle “article 20 of and point A(1) of Chapter VIII to Regulation (EC) No. 1774/2002” rhodder “Article 36 of Regulation (EC) No. 1069/2009 and Article 24(4) of Regulation (EU) No. 142/2011”;

(c) ym mharagraff 5, yn lle “point B(3)(e)(ii) of Chapter IV of Annex VIII to Regulation (EC) No. 1774/2002” rhodder “point 2(b)(ii) of Chapter IV of Annex XIII to Regulation (EU) No. 142/2011”;

(ch) ym mharagraff 6, yn lle “point B(2)(d)(iv) of Chapter IV of Annex VII to Regulation (EC) No. 1774/2002” rhodder “point 3(d) of

Chapter I of Annex XIV to Regulation (EU) No. 142/2011”;

- (d) ym mharagraff 7, yn lle “points B(2), (3) or (4) of Chapter II of Annex VIII to Regulation (EC) No. 1774/2002” rhodder “Chapter II of Annex XIII to Regulation (EU) No. 142/2011”; ac
- (dd) ym mharagraff 8, yn lle “points A(1), (3), or (4) of Chapter VII of Annex VIII to Regulation (EC) No. 1774/2002” rhodder “Chapter VI of Annex XIII to Regulation (EU) No. 142/2011”.

### **Rheoliadau Clwy'r Traed a'r Genau (Rheoli Brechu) (Cymru) 2006**

8. Yn lle paragraff 18(4) o'r Atodlen i Reoliadau Clwy'r Traed a'r Genau (Rheoli Brechu) (Cymru) 2006(1) rhodder—

“(4) Rhaid i feddiannydd unrhyw fangre y cludir tail neu wrtaith iddi gan awdurdod trwydded a roddwyd o dan is-baragraff (3) sicrhau ei fod yn cael ei drin yn unol â'r canlynol—

- (a) Erthyglau 15 a 32 o Reoliad (EC) Rhif 1069/2009 Senedd Ewrop a'r Cyngor; a
- (b) Erthyglau 10 a 22 o Reoliad y Comisiwn (EU) Rhif 142/2011 ac Adran 2 o Bennod I o Atodiad XI iddo sy'n gweithredu Rheoliad (EC) Rhif 1069/2009 Senedd Ewrop a'r Cyngor.”.

### **Rheoliadau Anifeiliaid a Chynhyrchion Anifeiliaid (Mewnforio ac Allforio) (Cymru) 2006**

9. Yn Rhan 1 o Atodlen 3 i Reoliadau Anifeiliaid a Chynhyrchion Anifeiliaid (Mewnforio ac Allforio) (Cymru) 2006(2) yn lle paragraff 7 rhodder—

#### **“Animal by-products**

7. Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (Animal by-products Regulation).

7A. Commission Regulation (EU) No. 142/2011 implementing Regulation (EC) No.

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(1) O.S. 2006/180 (Cy.31), fel y'i diwygiwyd.  
(2) O.S. 2006/1536 (Cy.153), fel y'i diwygiwyd.

1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive.”.

### **Rheoliadau Cynhyrchion sy'n Dod o Anifeiliaid (Mewnforion Trydydd Gwledydd) (Cymru) 2007**

**10.**—(1) Mae Rheoliadau Cynhyrchion sy'n Dod o Anifeiliaid (Mewnforion Trydydd Gwledydd) (Cymru) 2007<sup>(1)</sup> wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 2(1)—

- (a) hepgorer y diffiniad o “Rheoliad (EC) Rhif 1774/2002”; a
- (b) ar ôl y diffiniad o “Rheoliad (EC) Rhif 136/2004” mewnosoder—

“ystyr “Rheoliad (EC) Rhif 1069/2009” (“*Regulation (EC) No. 1069/2009*”) yw Rheoliad (EC) Rhif 1069/2009 Senedd Ewrop a'r Cyngor sy'n gosod rheolau iechyd mewn cysylltiad â sgil-gynhyrchion anifeiliaid a chynhyrchion sy'n dod o anifeiliaid na fwriedir ar gyfer eu bwyta gan bobl ac sy'n diddymu Rheoliad (EC) Rhif 1774/2002 (Rheoliad Sgil-gynhyrchion Anifeiliaid);

“ystyr “Rheoliad (EU) Rhif 142/2011” (“*Regulation (EU) No. 142/2011*”) yw Rheoliad y Comisiwn (EU) Rhif 142/2011 sy'n gweithredu Rheoliad (EC) Rhif 1069/2009 Senedd Ewrop a'r Cyngor sy'n gosod rheolau iechyd mewn cysylltiad â sgil-gynhyrchion anifeiliaid a chynhyrchion sy'n dod o anifeiliaid na fwriedir ar gyfer eu bwyta gan bobl ac sy'n gweithredu Cyfarwyddeb y Cyngor 97/78/EC mewn cysylltiad â samplau ac eitemau penodol a eithrir o wiriadau milfeddygol wrth y ffin o dan y Gyfarwyddeb honno;”.

(3) Yn rheoliad 4—

- (a) ym mharagraff (1), ar y diwedd, mewnosoder “ac eithrio cynhyrchion y mae Erthygl 17 o Reoliad (EC) Rhif 1069/2009 ac Erthyglau 11(2) a 12(2) o Reoliad (EU) Rhif 142/2011 yn gymwys iddynt”;
- (b) ym mharagraff (4)(b), yn lle “Rheoliad (EC) Rhif 1774/2002 a Rheoliadau Sgil-gynhyrchion Anifeiliaid (Cymru) 2006”

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(1) O.S. 2007/376 (Cy.36), fel y'i diwygiwyd.

rhodder “Rheoliad (EC) Rhif 1069/2009 a Rheoliadau Sgil-gynhyrchion Anifeiliaid (Gorfodi) (Rhif 2) (Cymru) 2011”; ac

(c) ym mharagraff (5)(b), yn lle “Reoliad (EC) Rhif 1774/2002” rhodder “Reoliad (EC) Rhif 1069/2009”.

(4) Yn rheoliad 5(1)(a), yn lle “Rheoliad (EC) Rhif 1774/2002” rhodder “Rheoliad (EC) Rhif 1069/2009”.

(5) Yn rheoliad 6(1)(a), yn lle “Rheoliad (EC) Rhif 1774/2002” rhodder “Rheoliad (EC) Rhif 1069/2009”.

(6) Yn rheoliad 21—

(a) ym mharagraff (3)(b), yn lle “Rheoliad (EC) Rhif 1774/2002” rhodder “Rheoliad (EC) Rhif 1069/2009”; a

(b) ym mharagraff (5)(b), yn lle “Rheoliad (EC) Rhif 1774/2002” rhodder “Rheoliad (EC) Rhif 1069/2009”.

(7) Yn rheoliad 22—

(a) ym mharagraff (1), yn lle “â rheoliad 26 o Reoliadau Sgil-gynhyrchion Anifeiliaid (Cymru) 2006” rhodder “ag Erthyglau 17 ac 18 o Reoliad (EC) Rhif 1069/2009 ac Erthyglau 11(2), 12(2) a 14 o Reoliad (EU) Rhif 142/2011”; a

(b) ym mharagraff (3), yn lle “rheoliad 26 o Reoliadau Sgil-gynhyrchion Anifeiliaid (Cymru) 2006” rhodder “Erthyglau 17 ac 18 o Reoliad (EC) Rhif 1069/2009”.

(8) Yn rheoliad 24(4), yn lle “Reoliad (EC) Rhif 1774/2002” rhodder “Reoliad (EC) Rhif 1069/2009”.

(9) Hepgorer rheoliadau 29 i 33.

(10) Yn rheoliad 43(1)(b), yn lle “Reoliad (EC) Rhif 1774/2002” rhodder “Reoliad (EC) Rhif 1069/2009”.

(11) Yn Atodlen 1—

(a) yn Rhan 8, yn lle paragraff 11 rhodder—

“**11.** Rheoliad (EC) Rhif 1069/2009 a Rheoliad (EU) Rhif 142/2011.”; a

(b) hepgorer paragraffau 12 i 14.

### **Gorchymyn Ffliw Adar (H5N1 mewn Dofednod) (Cymru) 2006**

**11.**—(1) Mae Gorchymyn Ffliw Adar (H5N1 mewn Dofednod) (Cymru) 2006(1) wedi ei ddiwygio fel a ganlyn.

(2) Yn erthygl 2—

(a) yn y diffiniad o “bird by-product”, yn lle’r geiriau “Articles 4, 5 or 6 of Regulation (EC)

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(1) O.S. 2006/3309 (Cy.299), fel y’i diwygiwyd.

No. 1774/2002” rhodder “Articles 8, 9 or 10 of Regulation (EC) No. 1069/2009”;

- (b) yn lle’r diffiniad o “Regulation (EC) No. 1774/2002” rhodder—

““Regulation (EC) No. 1069/2009” means Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (Animal by-products Regulation);”; ac

- (c) ar ôl y diffiniad a fewnosodir gan is-baragraff

(b) mewnosoder—

““Regulation (EU) No. 142/2011” means Commission Regulation (EU) No. 142/2011 implementing Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive;”.

- (3) Yn erthygl 3(6), yn lle is-baragraff (c) rhodder—

“(c) the following plants if approved under Article 24 of Regulation (EC) No. 1069/2009—

- (i) incineration plants;
- (ii) co-incineration plants;
- (iii) processing plants;
- (iv) biogas plants;
- (v) composting plants;
- (vi) petfood plants.”.

- (4) Yn erthygl 14—

- (a) yn lle paragraff (2) rhodder—

“(2) But a veterinary inspector or an inspector acting under the direction of a veterinary inspector may licence the movement of any of the following bird by-products—

- (a) processed animal protein within the meaning of paragraph 5 of Annex I to Regulation (EU) No. 142/2011 which complies with the requirements of paragraph B of Section 1 of Chapter II of Annex X to that Regulation;
- (b) blood products within the meaning of paragraph 4 of Annex I to Regulation (EU) No. 142/2011 which comply with the requirements of paragraph B of

- Section 2 of Chapter II of Annex X to that Regulation;
- (c) rendered fats within the meaning of paragraph 8 of Annex I to Regulation (EU) No. 142/2011 which comply with the requirements of paragraph B of Section 3 of Chapter II of Annex X to that Regulation;
  - (d) gelatine within the meaning of paragraph 12 of Annex I to Regulation (EU) No. 142/2011 which complies with the requirements of paragraph B of Section 5 of Chapter II of Annex X to that Regulation;
  - (e) hydrolysed protein within the meaning of paragraph 14 of Annex I to Regulation (EU) No. 142/2011 which complies with the requirements of paragraph B of Section 5 of Chapter II of Annex X to that Regulation;
  - (f) dicalcium phosphate which complies with the requirements of paragraph B of Section 6 of Chapter II of Annex X to Regulation (EU) No. 142/2011;
  - (g) tricalcium phosphate which complies with the requirements of paragraph B of Section 7 of Chapter II of Annex X to Regulation (EU) No. 142/2011;
  - (h) collagen within the meaning of paragraph 11 of Annex I to Regulation (EU) No. 142/2011 which complies with the requirements of paragraph B of Section 8 of Chapter II of Annex X to that Regulation;
  - (i) egg products which comply with the requirements of paragraph B of Section 9 of Chapter II of Annex X to Regulation (EU) No. 142/2011;
  - (j) processed pet food within the meaning of paragraph 20 of Annex I to Regulation (EU) No. 142/2011 which complies with the requirements of Chapter II of Annex XIII to that Regulation;
  - (k) raw petfood within the meaning of paragraph 21 of Annex I to Regulation (EU) No. 142/2011 which complies with Chapter II of Annex XIII;
  - (l) dogchews within the meaning of paragraph 17 of Annex I to Regulation (EU) No. 142/2011 which comply with the requirements of Chapter II of Annex XIII to that Regulation;

- (m) processed manure and processed manure products which comply with the requirements of Section 2 of Chapter I of Annex XI to Regulation (EU) No. 142/2011;
  - (n) game trophies having undergone a complete taxidermy treatment ensuring their preservation at ambient temperatures within the meaning of Chapter VI of Annex XIII to Regulation (EU) No. 142/2011;
  - (o) those by-products which are transported to designated plants within article 3(6)(c) for disposal, treatment, transformation or use which ensures inactivation of the avian influenza virus;
  - (p) those products which are transported to users or collection centres authorised and registered in accordance with Article 23 of Regulation (EU) No. 142/2011 for the feeding of animals after they have been treated by a method approved by the competent authority which ensures inactivation of the avian influenza virus;
  - (q) untreated feathers or parts of untreated feathers produced from poultry within the meaning of paragraph 30 of Annex I to Regulation (EU) No. 142/2011 which comply with the requirements of paragraph A of Chapter VII of Annex XIII to that Regulation;
  - (r) poultry feathers, feathers from wild game birds or parts of such feathers which have been treated with a steam current or by another method which ensures inactivation of the avian influenza virus.”;
- (b) ym mharagraff (3), yn lle “Annex V to Regulation (EC) No. 1774/2002” rhodder “Regulation (EC) No. 1069/2009 and Annex IV to Regulation (EU) No. 142/2011”; ac
- (c) ym mharagraff (4), yn lle “Chapter X of Annex II to Regulation (EC) No. 1774/2002” rhodder “Chapter III of Annex VIII to Regulation (EU) No. 142/2011”.

## **Gorchymyn Ffliw Adar (H5N1 mewn Adar Gwyllt) (Cymru) 2006**

12.—(1) Mae Gorchymyn Ffliw Adar (H5N1 mewn Adar Gwyllt) (Cymru) 2006(1) wedi ei ddiwygio fel a ganlyn.

(2) Yn erthygl 2—

(a) yn y diffiniad o “bird by-product” yn lle’r geiriau “Articles 4, 5 or 6 of Regulation (EC) No. 1774/2002” rhodder “Articles 8, 9 or 10 of Regulation (EC) No. 1069/2009”;

(b) yn lle’r diffiniad o “Regulation (EC) No. 1774/2002” rhodder—

““Regulation (EC) No. 1069/2009” means Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (Animal by-products Regulation);”; ac

(c) ar ôl y diffiniad a fewnosodir gan is-baragraff (b) mewnosoder—

““Regulation (EU) No. 142/2011” means Commission Regulation (EU) No. 142/2011 implementing Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive;”.

(3) Yn erthygl 13(1), yn lle is-baragraff (c) rhodder—

“(c) the following plants if approved under Article 24 of Regulation (EC) No. 1069/2009—

- (i) incineration plants;
- (ii) co-incineration plants;
- (iii) processing plants;
- (iv) biogas plants;
- (v) composting plants;
- (vi) petfood plants.”.

(4) Yn Atodlen 1—

(a) Ym mharagraff 13, yn lle is-baragraff (2) rhodder—

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(1) O.S. 2006/3310 (Cy.300), fel y’i diwygiwyd.



“(2) A veterinary inspector may not grant or direct the grant of a licence under sub-paragraph (1) unless it is for a movement of—

- (a) processed animal protein within the meaning of paragraph 5 of Annex 1 to Regulation (EU) No. 142/2011 which complies with the requirements of paragraph B of Section 1 of Chapter II of Annex X to that Regulation;
- (b) blood products within the meaning of paragraph 4 of Annex I to Regulation (EU) No. 142/2011 which comply with the requirements of paragraph B of Section 2 of Chapter II of Annex X to that Regulation;
- (c) rendered fats within the meaning of paragraph 8 of Annex I to Regulation (EU) No. 142/2011 which comply with the requirements of paragraph B of Section 3 of Chapter II of Annex X to that Regulation;
- (d) gelatine within the meaning of paragraph 12 of Annex I to Regulation (EU) No. 142/2011 which complies with the requirements of paragraph B of Section 5 of Chapter II of Annex X to that Regulation;
- (e) hydrolysed protein within the meaning of paragraph 14 of Annex I to Regulation (EU) No. 142/2011 which complies with the requirements of paragraph B of Section 5 of Chapter II of Annex X to that Regulation;
- (f) dicalcium phosphate which complies with the requirements of paragraph B of Section 6 of Chapter II of Annex X to Regulation (EU) No. 142/2011;
- (g) tricalcium phosphate which complies with the requirements of paragraph B of Section 7 of Chapter II of Annex X to Regulation (EU) No. 142/2011;
- (h) collagen within the meaning of paragraph 11 of Annex I to Regulation (EU) No. 142/2011 which complies with the requirements of paragraph B of Section 8 of Chapter II of Annex X to that Regulation;
- (i) egg products which comply with the requirements of paragraph B of Section 9 of Chapter II of Annex X to Regulation (EU) No. 142/2011;
- (j) processed pet food within the meaning of paragraph 20 of Annex 1 to Regulation (EU) No. 142/2011 which

- complies with the requirements of Chapter II of Annex XIII to that Regulation;
- (k) raw petfood within the meaning of paragraph 21 of Annex I to Regulation (EU) No. 142/2011 which complies with Chapter II of Annex XIII;
  - (l) dogchews within the meaning of paragraph 17 of Annex I to Regulation (EU) No. 142/2011 which comply with the requirements of Chapter II of Annex XIII to that Regulation;
  - (m) processed manure and processed manure products which comply with the requirements of Section 2 of Chapter I of Annex XI to Regulation (EU) No. 142/2011;
  - (n) game trophies having undergone a complete taxidermy treatment ensuring their preservation at ambient temperatures within the meaning of Chapter VI of Annex XIII to Regulation (EU) No. 142/2011;
  - (o) those by-products which are transported to designated plants within article 13(1)(c), processing plants for disposal, treatment, transformation or use which ensures inactivation of the avian influenza virus;
  - (p) those products which are transported to users or collection centres authorised and registered in accordance with Article 23 of Regulation (EU) No. 142/2011 for the feeding of animals after they have been treated by a method approved by the competent authority which ensures inactivation of the avian influenza virus;
  - (q) untreated feathers or parts of untreated feathers produced from poultry within the meaning of paragraph 30 of Annex 1 to Regulation (EU) No. 142/2011 which comply with the requirements of paragraph A of Chapter VII of Annex XIII to that Regulation;
  - (r) poultry feathers, feathers from wild game birds or parts of such feathers which have been treated with a steam current or by another method which ensures inactivation of the avian influenza virus.”;
- (b) ym mharagraff 13(3), yn lle “Annex V to Regulation (EC) No. 1774/2002” rhodder

“Regulation (EC) No. 1069/2009 and Annex IV to Regulation (EU) No. 142/2011”;

- (c) ym mharagraff 13(5), yn lle “Chapter X of Annex II to Regulation (EC) No. 1774/2002” rhodder “Chapter III of Annex VIII to Regulation (EU) No. 142/2011”;
- (ch) ym mharagraff 14(a), yn lle “Regulation (EC) No. 1774/2002” rhodder “Regulation (EC) No. 1069/2009 and Section 2 of Chapter I of Annex XI to Regulation (EU) No. 142/2011”;
- (d) ym mharagraff 15(a), yn lle “Regulation (EC) No. 1774/2002” rhodder “Regulation (EC) No. 1069/2009 and Section 2 of Chapter I of Annex XI to Regulation (EU) No. 142/2011”.

### **Rheoliadau Adnabod Gwartheg (Cymru) 2007**

**13.** Yn lle paragraff 3(3) o Atodlen 3 i Reoliadau Adnabod Gwartheg (Cymru) 2007(1), rhodder—

“(3) Os nad yw Gweinidogion Cymru’n darparu pasbort o’r newydd yn lle’r hen un, rhaid peidio â symud yr anifail y mae’n ymwneud ag ef oddi ar y daliad ac eithrio (o dan awdurdod trwydded a roddir gan Weinidogion Cymru)—

- (a) i safle a gymeradwywyd o dan Erthygl 24(1)(a), (b), (c) neu (h) o Reoliad (EC) Rhif 1069/2009 Senedd Ewrop a’r Cyngor; neu
- (b) i ganolfan gasglu gofrestredig sy’n cydymffurfio ag Adran 1 o Bennod II o Atodiad VI o Reoliad y Comisiwn (EU) Rhif 142/2011 sy’n gweithredu Rheoliad (EC) Rhif 1069/2009 Senedd Ewrop a’r Cyngor.”.

### **Gorchymyn Diwygio Deddfwriaethol a Rheoleiddiol (Swyddogaethau Rheoleiddiol) 2007**

**14.** Yn Rhan 2 o’r Atodlen i Orchymyn Diwygio Deddfwriaethol a Rheoleiddiol (Swyddogaethau Rheoleiddiol) 2007(2), o dan y croesbennawd “animal health and welfare”—

- (a) hepgorer y cofnod “Animal By-Products Regulations 2005”; a
- (b) ar ôl y cofnod “Veterinary Medicines Regulations 2008” mewnosoder “Animal By-Products (Enforcement) (No. 2) (Wales) Regulations 2011”.

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(1) O.S. 2007/842 (Cy.74).

(2) O.S. 2007/3544, a ddiwygiwyd gan O.S. 2009/2981; mae offerynnau diwygio eraill ond nid ydynt yn berthnasol.

## **Rheoliadau Cynhyrchion Cosmetig (Diogelwch) 2008**

15. Yn y Tabl yn Atodlen 3 i Reoliadau Cynhyrchion Cosmetig (Diogelwch) 2008(1), yng nghofnod rhif 419, yn lle “Articles 4 and 5 respectively of Regulation (EC) No. 1774/2002 of the European Parliament and of the Council and ingredients derived therefrom”, rhodder “Articles 8 and 9 respectively of Regulation (EC) No. 1069/2009 of the European Parliament and of the Council and ingredients derived therefrom”.

## **Gorchymyn Crynodaau Anifeiliaid (Cymru) 2010**

16. Yn erthygl 8(2) o Orchymyn Crynodaau Anifeiliaid (Cymru) 2010(2), yn lle “Reoliadau Sgilynghyrchion Anifeiliaid (Cymru) 2006” rhodder “Reoliad (EC) Rhif 1069/2009 Senedd Ewrop a'r Cyngor”.

## **Rheoliadau Trwyddedu Amgylcheddol (Cymru a Lloegr) 2010**

17.—(1) Mae Rheoliadau Trwyddedu Amgylcheddol (Cymru a Lloegr) 2010(3) wedi eu diwygio fel a ganlyn i'r graddau y maent yn ymwneud â Chymru.

(2) Yn rheoliad 2(1)—

- (a) hepgorer y diffiniad o “the Animal By-Products Regulations”; a
- (b) ar ôl y diffiniad o “regulated facility” mewnosoder—

““Regulation (EC) No. 1069/2009” means Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (Animal by-products Regulation);”.

(3) Ym mharagraff 1 o Adran 5.1 o Bennod 5 o Ran 2 o Atodlen 1, yn y diffiniad o “excluded plant”, yn lle is-baragraff (a)(vii) rhodder—

“(vii) animal carcasses as regulated by Regulation (EC) No. 1069/2009;”.

(4) Yn Adran 6.8 o Bennod 6 o Atodlen 1, hepgorer paragraff 1(g) ac (i).

(5) Ym mharagraff 2(3) o Atodlen 2, yn lle “the authority responsible for granting an authorisation

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- (1) O.S. 2008/1284, a ddiwygiwyd gan O.S. 2008/2173; mae offerynnau diwygio eraill ond nid ydynt yn berthnasol.
  - (2) O.S. 2010/900 (Cy.93).
  - (3) O.S. 2010/675, a ddiwygiwyd gan O.S. 2010/2172; mae offerynnau diwygio eraill ond nid ydynt yn berthnasol.

under regulation 27 of the Animal By-Products Regulations” rhodder “the competent authority for the purposes of Regulation (EC) No. 1069/2009”.

(6) Yn y tabl ym mharagraff T13(2) o Adran 2 o Bennod 3 o Ran 1 o Atodlen 3, yn y trydydd cofnod (200199) yn lle'r geiriau “the Animal By-Products Regulations” rhodder “Regulation (EC) No. 1069/2009”.

(7) Ym mharagraff T22 o Adran 2 o Bennod 3 o Ran 1 o Atodlen 3—

(a) yn is-baragraff (3)(b), yn lle “an authorisation under regulation 27 of the Animal By-Products Regulations” rhodder “the requirements of paragraphs 2(a) or (b) and 4 of Section 1 of Chapter II of Annex VI to Regulation (EU) No. 142/2011”; a

(b) yn lle is-baragraff (4) rhodder—

“(4) In this paragraph—

(a) “animal by-product” has the meaning given in Article 3(1) of Regulation (EC) No. 1069/2009;

(b) “collection centre” has the meaning given in paragraph 53 of Annex 1 to Commission Regulation (EU) No. 142/2011 implementing Regulation (EC) No. 1069/2009 of the European Parliament and of the Council.”.

### **Rheoliadau      Enseffalopathïau      Sbyngffurf Trosglwyddadwy (Cymru) 2008**

**18.**—(1) Mae Rheoliadau Enseffalopathïau Sbyngffurf Trosglwyddadwy (Cymru) 2008(1) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 2(1)—

(a) hepgorer y diffiniad o “Rheoliad (EC) Rhif 1774/2002”; a

(b) mewnosoder ar ôl y diffiniad o “Rheoliad (EC) Rhif 882/2004”—

“ystyr “Rheoliad (EC) Rhif 1069/2009” (“*Regulation (EC) No. 1069/2009*”) yw Rheoliad (EC) Rhif 1069/2009 Senedd Ewrop a'r Cyngor sy'n gosod rheolau iechyd mewn cysylltiad â sgil-gynhyrchion anifeiliaid a chynhyrchion sy'n dod o anifeiliaid na fwriedir ar gyfer eu bwyta gan bobl ac sy'n diddymu Rheoliad (EC) Rhif 1774/2002 (Rheoliad Sgil-gynhyrchion Anifeiliaid);”.

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(1) O.S. 2008/3154 (Cy.282).

(3) Yn rheoliad 4(2), yn lle “Rheoliad (EC) Rhif 1774/2002” rhodder “Rheoliad (EC) Rhif 1069/2009”.

(4) Yn Atodlen 1, hepgorer paragraff (b).

(5) Yn Atodlen 6, hepgorer paragraffau 1(2) a (3), 2(5), 3 ac 18.

### **Rheoliadau Milheintiau a Sgil-gynhyrchion Anifeiliaid (Ffioedd) (Cymru) 2008**

**19.**—(1) Mae Rheoliadau Milheintiau a Sgil-gynhyrchion Anifeiliaid (Ffioedd) (Cymru) 2008(1) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 2, hepgorer y diffiniad o “Rheoliadau 2006”.

(3) Yn rheoliad 3, hepgorer “rheoliad 21 o Reoliadau 2006 neu” a “reoliad 21 o Reoliadau 2006 neu” ym mha le bynnag y maent yn ymddangos.

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(1) O.S. 2008/2716 (Cy.245).

## **Explanatory Memorandum to the Animal By-Products (Enforcement) (No.2) (Wales) Regulations 2011**

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

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Animal By-Products (Enforcement) (No.2) (Wales) Regulations 2011. I am satisfied that the benefits outweigh any costs.

*John Griffiths AM*

Minister for Environment and Sustainable Development, one of the Welsh Ministers

27 September 2011

## **1. Description**

Animal By-Products (ABP) Regulation (EC No.1774/2002) protected animal & public health by controlling the use and disposal of ABPs not intended for human consumption. Following extensive consultation, the new ABP Regulation (EC No. 1069/2009) updating the current rules was agreed in April 2009, following a first reading agreement between the EP & Council (published in the Official Journal on 14 November 2009) and came into force on 4 March 2011. The technical details (Implementing Rules) for the Regulation have been laid down in a separate legal act. The implementing rules, Regulation (EC) 142/2011 came into force simultaneously with the new Regulation on 4 March 2011.

The Welsh Assembly Government introduced new ABP Regulations with effect from 4 March 2011. The Animal By-Products (Enforcement) (Wales) Regulations 2011 (“the 2011 Regulations”) replaced the current Animal By-Product (Wales) Regulations 2006 thus implementing the EU requirements.

The Animal By-Products (Enforcement) (No.2) (Wales) Regulations 2011 (“the No 2 Regulations”) revoke and replace the Animal By-Products (Enforcement) (Wales) Regulations 2011. They will be made bilingually.

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

Due to the public and animal health risks associated with a prolonged enforcement gap, it was necessary to breach the 21 day rule and produce the 2011 Regulations in English only. The Minister agreed to this on the condition that bilingual regulations would be made and laid for 21 days in due course.

The Constitutional Affairs Committee raised a number of issues with the 2011 Regulations and the Government’s view, supported by its lawyers, is that the 2011 Regulations are fully enforceable and that the technical points raised by the report do not materially affect the enforceability of the new legislative provisions in the 2011 Regulations.

The powers of entry provisions in the 2011 Regulations have been revisited in the No 2 Regulations to take account of the human rights issues raised in the report.

The Government is satisfied that the penalties set out in the 2011 Regulations and which will be replicated in the No 2 Regulations are reasonable and proportionate. The penalties are identical to the England ABP Regulations which came into force on the 23<sup>rd</sup> March 2011. Non-compliance with the provisions of the Regulations could lead to potential severe risks to human and animal health and the penalties reflect the seriousness of this risk.

Because the revocations and amendments in the 2011 Regulations have taken effect, section 15 of the Interpretation Act is being used to revive those revocations and amendments before the No.2 Regulations can take effect.



### **3. Legislative background**

The Welsh Ministers are designated to implement European legislation in relation to veterinary and phytosanitary fields for the protection of public health by virtue of SI 2008/1792. The proposed No.2 Regulations will be made by the Welsh Ministers under section 2(2) of the European Communities Act 1972 using this designation.

The instrument is subject to the negative procedure.

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

The objectives of the new EU ABP Regulation and hence domestic legislation to implement are to introduce a set of updated rules on animal by-products providing legal certainty, simplified requirements and reductions in the administrative burden on operators. It also raised the issue that the 2002 European Regulation (1774/2002) needed to be updated to reflect new scientific/technological/practical experience since the adoption of that European Regulation, and updates the categorisation of ABPs according to the risk they pose. The effect will be to make ABP controls more effective and efficient, and reduce administrative burdens on business while ensuring continued protection of public and animal health and food safety.

In Wales there are approximately 250 premises approved to handle or dispose of ABPs. In addition to that there are approximately 200 educational establishments, taxidermists and wool collection points that use and dispose of ABPs in line with the derogations permitted in the current European Regulation.

The Council adopted the current European Regulation in April 2009 (1069/2009) (published in Official Journal 14 November 2009), following a first reading agreement with the European Parliament. The technical details (Implementing Rules) for the Regulation were laid down in a separate legal act. The implementing rules (142/2011) came into force on 4 March 2011.

The previous Animal By-products (ABP) European Regulation 1774/2002/EC was introduced in 2002 in response to a number of crises affecting the safety of public and animal health as regards products of animal origin - linked in particular to Transmissible Spongiform Encephalopathies, dioxin contamination, and outbreaks of Classical Swine Fever and Foot and Mouth Disease. The Regulation consolidated, simplified and replaced 19 previous legal acts. It also introduced stricter rules for the approval of certain premises, the channelling and traceability of ABPs and controls based on risk categories for different types of ABP in order to guarantee the safety of final products intended for feed or technical uses.

In 2005 the Commission submitted a report to the European Parliament and Council reflecting on the experience of Member States in implementing the 2002 Regulation. The report stated that although the legislation was working well and generally met its overall objectives, there were areas where changes need to be considered in order to update the legislation and to provide legal certainty, simplify it and thereby reduce administrative burdens. It also raised the issue that the 2002 Regulation needed to

be updated to reflect new information which has emerged since the adoption of that Regulation. For example, the products and industries in relation to ABP was wider ranging than foreseen by the legislators at the time of the adoption of the Regulation; and further information on the risks posed by certain ABP material, and the effectiveness of treatment standards in producing a “safe” product, has now become available. Furthermore some plants handling ABPs were subject to legislation under other European controls, such as pharmaceutical companies and there was duplication of control without benefit.

The Commission considered retaining the current rules unchanged or adopting non-regulatory tools but concluded that a regulatory review was most likely to provide effective solutions. Following extensive consultation, the Commission’s new 2009 Regulation has been designed to address the identified shortfalls, in particular:

- Clarity of scope
- Proportionate categorisation of ABPs
- Removal of double approvals
- Derogations
- Provision for the possibility of on farm containment of fallen stock prior to disposal subject to European Food Safety Authority approval.

## **5. Consultation**

The details of consultation undertaken are included in the RIA below.

## **REGULATORY IMPACT ASSESSMENT**

### **Options**

During its review the Commission considered various options for updating the EU ABP legislation, such as retaining the current rules unchanged, or adopting non-regulatory tools, but concluded that regulatory change was most likely to provide effective solutions. The Government agrees with this analysis. In order to minimise the impact on business, when putting in place replacement domestic legislation the Government proposes to impose the minimum burden on industry consistent with meeting its obligations to enforce the EU ABP Regulation. The Government’s view is that it should take advantage in full of the majority of the potential derogations available to member states, seeking to leave in place controls only in the minority of cases where there are public & animal health issues which override potential economic benefits. Details of the derogations and their impacts are detailed in the costs & benefits section below.

The regulation is broadly deregulatory affecting a diverse range of industrial sectors and some members of the public. In some instances there are cost increases but many of these are expected to be quite small & overall are more than offset by any benefits. Attempts were made to monetise cost increases but this has proved to be not possible without disproportionate effort.

The two main monetised benefits affect respectively the small retail sector and the shell fish processing sector. Both benefits take the form of cost reductions to the affected sectors. In the former case this arises from food waste disposal costs and amounts to about £35m a year. In the latter case it arises from the disposal of shell material and comes to about £5.4m a year. For more detail see table of impacts below - items 7 and 14.

The EU ABP Regulations include provision for on-farm containment of carcasses prior to disposal which will provide farmers with additional options when dealing with their fallen stock. WAG has funded research into on-farm containment in the form of a bio-reducer system. Following satisfactory completion of the research, WAG will support an application to the European Food Safety Authority (EFSA) for it to be considered an accepted process under the revised regulations.

## Costs & benefits

Below is an assessment of the impact of the derogations available in implementing the EU regulation in domestic legislation. The article numbers refer to ABP Regulation (EC No. 1069/2009).

Issue and sectors affected	Current Position/Baseline	New derogation/provision	Use of derogation/provision	Costs and Benefits relative to current position/baseline	Overall impact
<p><b>2. Derogation Articles 16 (c) and 18 (1):</b> Use of certain ABPs for feeding to animals</p> <p><b>Affected sectors:</b> Fishing bait producers/users, those feeding certain wild animals/birds, cat &amp; dog shelters</p>	<p>The derogation from the current regulation allows MSs to set conditions to control public and animal health risks for the collection and use of Category 2 material from animals which were not killed or did not die from actual or suspected disease communicable to humans or animals, and of Category 3 material for feeding to the following animals:</p>	<p>The derogation from the new regulation allows MSs to set conditions to control public and animal health risks for the collection and use of these materials for the following <b>additional</b> categories of animals:</p> <ol style="list-style-type: none"> <li>1) Fur animals (not applicable in UK in any case);</li> <li>2) Cats and dogs in shelters (applicable);</li> <li>3) Worms for fishing bait (applicable).</li> </ol>	<p>The Welsh Government believe that there would be a risk to animal and public health if the feeding of category 3 material was allowed for all wild animals. Therefore we will make use of this derogation but will limit the feeding of category 3 material only to wild birds in domestic gardens. We will also use the derogation to allow feeding</p>	<p>Compared with current position, there will be a very small benefit as this largely regularises the current position.</p>	<p>Small net benefit</p>

	<p>(a) Zoo animals</p> <p>(b) Circus animals</p> <p>(c) Reptiles/birds of prey other than zoo or circus animals</p> <p>(d) Dogs from recognised kennels or packs of hounds</p> <p>(e) Maggots for fishing bait</p> <p>(f) wild animals (not currently in use in England)</p>		<p>category 2 and 3 material to cats and dogs in shelters (although we are not aware of any demand for this) and to allow feeding to worms used for fishing bait which will regularise the current position.</p> <p>N.B Animals are not permitted to be farmed in the UK for fur so this will not apply.</p>		
<p><b>3. Derogation</b></p> <p><b>Articles 16 (c) and 18 (2):</b> Feeding of Category 1 material to zoo animals &amp; necrophagous birds</p> <p><b>Affected sectors:</b> Zoos,</p>	<p>The current Regulation does not allow Cat 1 material to be fed to zoo animals.</p> <p>There are no programmes approved in Wales (or the rest of the UK) for feeding Cat 1 material to necrophagous bird species - so does not apply</p>	<p>The derogation from the new Regulation allows MSs to authorise the feeding to zoo animals of Category 1 material under Article 8(b) (ii) (i.e. entire bodies/parts of dead animals containing SRM at time of disposal), and of material derived from zoo animals.</p>	<p>Government intend to take advantage of this derogation <b>in full.</b></p> <p>This would allow zoos etc to “re-cycle” their own fallen stock that fall under Category 1 (e.g. entire deceased antelopes, zebras) to their carnivorous animals (e.g. big cats) in addition to the Cat 2 material that is already permitted. Additional controls would be attached to feeding animals containing SRM.</p>	<p>Compared with the current position, there will be a small benefit to those few zoos which want to feed carnivorous animals in this way. Many zoos will be unaffected as they do not keep carnivorous species.</p>	<p>Very small net benefit overall</p>
<p><b>4. Derogation</b></p> <p><b>Articles 16(d) and 19(1)(a):</b></p>	<p>The derogation from the current Regulation</p>	<p>The derogation from the new Regulation allows MSs to authorise</p>	<p>Government intend to take advantage of this derogation</p>	<p>Costs of burial are likely to be lower than rendering/</p>	<p>Small reduction of costs associated with burial rather</p>

<p>Burial of pet animals</p> <p><b>Affected sectors:</b> Pet owners, horse owners</p>	<p>allows the burial of pet animals. Wales currently apply this derogation, and includes 'pet horses' under the description of 'pet animals'.</p> <p>Other equidae are not currently included in derogation.</p>	<p>the disposal by burial of dead pet animals <b>and all equidae.</b></p>	<p><b>in full.</b></p> <p>Government will allow the burial of all equidae but we would recommend that the owners of dead equidae should first of all consider disposal of the carcass via the normal route for ABPs. Alternatively owners could consider the burial of the animal subject to any Environment Agency or Local Authority controls</p>	<p>incineration in most cases, but burial is not always practical and the horse industry does not anticipate there will be a major increase in burial from horse owners. There will be a negligible increase in disease risk of burial, as opposed to incineration.</p>	<p>than incineration. Small increase in benefits associated with wider choice of method of disposal.</p>
<p><b>5. Derogation</b></p> <p><b>Articles 16(d) and 19(1)(b):</b> Disposal in <b>remote areas</b> by burning/burial on site or by other means under official supervision of <b>Category 1 material</b> under Article 8(a)(v) (i.e. wild animals) and 8(b)(ii) (i.e. entire bodies or parts of dead animals containing SRM at time of disposal), and <b>Category 2 + 3 material.</b></p> <p><b>Affected sectors:</b></p>	<p>The derogation from the current Regulation is the same as the one presented in the new Regulation- but the present derogation does not allow MSs to authorise disposal of diseased wild animals in remote areas, instead requiring their disposal by rendering or incineration.</p>	<p>The derogation from the new Regulation <b>now includes</b> Cat 1 wild animals, when suspected of being infected with diseases communicable to humans or animals.</p> <p>It also allows for burial.</p>	<p>Government intend to take advantage of this derogation <b>in full.</b></p> <p>We consider that burial is the most expedient and practical method of disposal in remote areas.</p>	<p>In practice few dead diseased wild animals will come to the attention of landowners and the effect should be minimal.</p>	<p>There will be a very small reduction in the costs to landowners.</p>

Landowners					
<p><b>6. Derogation</b></p> <p><b>Articles 16 (d) and 19 (1) (c):</b> Disposal of fallen Stock carcasses in areas where <u>access is practically impossible or where access would only be possible under circumstances</u>, related to geographical or climatic reasons or due to a natural disaster, which would pose a risk to the health and safety of the personnel carrying out the collection or where access would necessitate the use of disproportionately onerous means of collection.</p> <p><b>Affected sectors:</b> Livestock farmers, fallen stock collection and disposal sector</p>	<p>The current Regulation says that fallen stock must be collected and disposed of in line with ABPR, except in a very few specific circumstances.</p>	<p>The new derogation from the Regulation says that MSs may now authorise the disposal by burning/burial on site or by other means under official supervision of <b>Category 1 material</b> under Article 8(b)(ii), (i.e. entire bodies/parts of dead animals containing SRM at time of disposal), <b>Category 2</b> and <b>Category 3 material</b> in areas where <u>access is practically impossible or where access would only be possible under circumstances</u>, related to geographical or climatic reasons or due to a natural disaster, which would pose a risk to the health and safety of the personnel carrying out the collection or where access would necessitate the use of disproportionately onerous means of collection.</p>	<p>The Government intend to take advantage of this derogation <b>in full</b>, where the farmer is able to demonstrate that the appropriate criteria are met. Will provide guidance on the conditions to apply to ensure the derogation is not subject to abuse.</p>	<p>There will be a small reduction in costs for livestock farmers who will be now able to dispose of fallen stock in areas meeting these criteria by burial on site or leaving them to degrade naturally (depending on the circumstances), rather than being obliged to arrange for their collection &amp; disposal by rendering/incineration. There will be a very small associated increase in disease risk.</p>	<p>Small reduction in overall costs.</p>
<p><b>7. Derogation</b></p> <p><b>Articles 16(d) and 19(1)(d):</b> Small Quantities of ABPs</p> <p><b>Affected sectors:</b> Small Retailers</p>	<p>The current Regulation says that all ABPs must be disposed of in line with the Regulation.</p>	<p>The derogation from the new Regulation says that MSs may authorise the disposal of 20kg (or potentially 50kg) per week of raw meat and fish arising from retailers outside of the control of the</p>	<p>The Government intend to take advantage of this derogation <b>in full using the 20kg limit</b>, as the terms which the Commission has set out for the detailed</p>	<p>There will be considerable reduction in costs to small retailers and food manufacturers. There will be a very small associated increase in disease risk.</p>	<p>Evidence provided by the British Retail Consortium and the Association of Convenience Stores suggests the cost saving to this sector could be in the</p>

		ABPR (50kg only permissible where MS have provided detailed justification to the Commission).	justification required to apply the 50kg limit cannot be met in the UK  In any case bodies representing retailers have said that the 20kg limit will accommodate the requirements of most small retail outlets.		range £30m to £40m a year (on a UK basis). This is based on a cost saving of about £1,000 a year per shop across the sector. Within the sector there might be in the order of 20,000 non-affiliated independent convenience stores which would probably fall within the definition of 'small business'.
<b>8. Derogation</b>  <b>Article 16 (f):</b> Use of ABPs in Bio-Dynamic preparations  <b>Affected sectors:</b> Farmers & landowners, those wishing to prepare & apply bio-dynamic preparations to land	The current Regulation does not authorise the use of bio-dynamic preparations.	The derogation from the new Regulation says that MSs may allow Cat 2 and 3 materials to be used for the preparation and application to land of bio-dynamic preparations as per Article 12(1) (c) of Regulation 834/2007.  MS have discretion to set conditions.	The Government intend to take advantage of this derogation <b>in full</b> in order to meet specialist demand in this area.	There will be a small benefit to those wishing to prepare and apply bio-dynamic preparations to land, (although in practice this change largely regularises the current position.)	
<b>9. Derogation</b>  <b>Article 16 (g):</b> Use of ABPs for Pet Food  <b>Affected sectors:</b> Pet food manufacturers, individuals wishing to feed such material	Under the current Regulation only "petfood", (processed or raw) which has been prepared in accordance with the requirements of the regulation may be fed to pet animals.	The derogation from the new Regulation allows MSs to set out conditions which permit Category 3 material to be used for feeding to pets (instead of the regulation's requirements which apply to manufacturers of raw and processed petfood products).  MS have discretion to set conditions.	The Government will not be taking advantage of this derogation.	The controls necessary to address the risks identified would be equal to the existing approval process as a petfood plant, which is already provided for in the Regulations.	No direct benefit or additional costs/impacts.

<p><b>10. Derogation</b></p> <p><b>Article 16 (h):</b> Disposal of ABPs on farm</p> <p><b>Affected sectors:</b> Livestock farmers</p>	<p>The current Regulation does not permit the disposal of ABPs arising from surgical intervention or birth of animals on farm, they must be disposed of in line with the Regulation (rendering/incineration).</p>	<p>The derogation from the new Regulation allows MSs to authorise ABPs (except Category 1 material) arising from surgical intervention on live animals or during birth of animals on farm to be disposed of on that farm.</p> <p>MS have discretion to set conditions.</p>	<p>The Government intend to take advantage of this derogation <b>in part.</b></p> <p>We propose to allow material to be disposed of on farm, with the exception of foetuses or placenta, where there may be a risk of spreading disease to humans or animals (e.g. aborted calf foetuses/placenta where there may be a risk of diseases such as brucellosis).</p>	<p>The derogation as proposed would bring a small benefit to livestock farmers who would benefit from a reduction in certain disposal costs (although to some extent this may just regularise current practice). There would be a very small associated increase in disease risk.</p> <p>If the derogation were fully implemented, there might be a further slight reduction in costs to farmers, but with significant potential disease risks which might then result in higher costs, e.g. if animals were suffering from a notifiable disease, or burial was not carried out correctly.</p>	<p>Small net benefit</p>
<p><b>11. New Provision</b></p> <p><b>Article 13 (e) (ii):</b> ABPs used for Composting &amp; biogas</p> <p><b>Affected sectors:</b> Biogas plants, those supplying them with raw material</p>	<p>The current Regulation permits the composting or anaerobic digestion (biogas) of Category 3 ABPs. A limited number of Category 2 materials such as manure and milk can also be composted or anaerobically digested, provided they are not considered a</p>	<p>The new Regulation maintains this regime and expands it slightly to include milk products, and Category 2 egg and egg products.</p>	<p>The Government intend to take advantage of this new provision <b>in full.</b></p> <p>The new provision allows a wider range of material to be used without a significantly increased disease risk. It also removes a previous anomaly where Category 2 milk</p>	<p>There will be a small benefit to compost and biogas plants and those who supply them, who will now be able to supply/use a wider range of material.</p>	<p>Small net benefit</p>



	disease risk.		could be composted but not products derived from the milk.		
<p><b>12. Relaxation of current domestic controls</b></p> <p>National provisions on composting of catering waste on the premises on which it originates.</p> <p><b>Affected sectors:</b> Composting/ anaerobic digestion community (including domestic householders), specifically small community composting or anaerobic digestion projects.</p>	<p>The current Regulation says that catering waste intended for composting or anaerobic digestion must be sent to an AH approved plant.</p> <p>There is a current exception for 'home composting' which permits the composting of catering waste on the premises of origin without the need for an approval from AH, provided that the resultant compost is used only on those premises.</p>	<p>The Government intend to broaden the home composting exception to allow for composting and anaerobic digestion on the premises of origin <b>or elsewhere</b>, without approval from AH, provided that livestock cannot gain access to this material.</p>	<p>The Government intend to relax the current national controls to allow for off-site disposal of 'home composting'</p>	<p>Compared with the current position, if Government implement this new provision there will be a significant benefit to the composting/ anaerobic digestion community particularly for small-scale community composting and anaerobic digestion projects who may be able to operate without the requirement for a full plant approval from Animal Health</p>	<p>Benefit to sector likely but sector unable to quantify due to uncertainty about potential take up</p>
<p><b>13. New Provision</b></p> <p><b>Article 13 (f):</b> Application of ABPs to land</p> <p><b>Affected sectors:</b> Landowners, users/ suppliers of certain waste ABP material</p>	<p>The current Regulation allows Category 2 digestive tract content separated from digestive tract, milk and colostrum to be applied to land without processing, if the MS considers this does not present a risk of spreading serious transmissible</p>	<p>The new Regulation maintains this regime, also now enables Category 2 milk-based products to be spread to land unprocessed, and also certain lower risk Category 3 materials.</p>	<p>The Government intend to take advantage of this new provision <b>in full</b>.</p> <p>With milk and milk products there may be a potential risk of disease spread when they are applied to land in the case of a notifiable disease outbreak. A requirement to</p>	<p>There would be a small benefit to suppliers/users of this waste ABP material derived from its increased potential use. There will be a very small associated increase in disease risk.</p>	<p>Small net benefit</p>

	disease.		allow restrictions relating to animal and public health to be imposed if necessary would be included in any new provision to mitigate the increased disease risk.		
<p><b>14. New provision</b></p> <p><b>Article 14 (h):</b> Use of shellfish shells</p> <p><b>Affected sectors:</b> Shellfish sector</p>	The current Regulation requires all shellfish shells to undergo at least "Method 7" processing (i.e. rendering) before use.	<p>1) The new Regulation enables MSs to determine conditions for disposal of shells from shellfish <b>in which soft tissue remains.</b></p> <p>2) Article 2.2(d) in any case removes from scope shells <b>where no soft tissue remains.</b></p>	<p>The Government intend to take advantage of this new provision subject to the following conditions:</p> <p>1) Any shells with flesh present would need to be processed (subject to rendering/heat treatment) in accordance with the Regulation to ensure there is no public and animal health risk.</p> <p>2) operators will be required to demonstrate that the shells are "free of flesh" (using criteria to be laid down), in which case controls on their use would be removed from the scope of the regulation.</p>	There would be a substantial benefit to the shellfish sector from the potential sale of shells without flesh remaining for productive uses, and from the less costly disposal requirements, compared with current requirement (rendering).	Net benefit to industry of removing shells from scope of the regulation. This amounts to about £4.4m a year as a consequence of a disposal cost saving of about £70/t rising to over £6m a year after 5 years as the tonnage increases (UK figures).
<p><b>15. New provision</b></p>	The current Regulation requires	The new Regulation allows Category 3 egg	The Government intends to take	There will be a benefit to industry, as the cost of rendering	Egg sector acknowledge benefit but

<p><b>Article 14 (h):</b> Egg shells to land</p> <p><b>Affected sectors:</b> Egg Processing Industry, farmers</p>	<p>eggshells to undergo at least "Method 7" processing (i.e. rendering) before use.</p>	<p>shells to be used under conditions determined by the MS which prevent risks arising to public and animal health.</p>	<p>advantage of this new provision, to put in place less burdensome control measures which operators may use as an alternative to processing but which will still protect animal and public health.</p>	<p>is approximately twice that of putting shell onto land without processing. There will also be some potential reduction in the carbon footprint from not needing to render product, as well as a benefit to the land to which shell would be applied.</p> <p>This will create additional avenues for disposal of egg shell, making the industry more viable.</p> <p>There will also be an additional saving to landowners using shells as a soil improver for application to the land.</p>	<p>unable to quantify</p>
<p><b>16. New Provision</b></p> <p><b>Article 32: Use of organic fertilisers</b></p> <p><b>Affected sectors:</b> Landowners, renderers</p>	<p>The current Regulation permits the application to land of organic fertilisers and soil improvers (OF/SI) derived from processing Cat '2 or Cat '3 material in an approved processing (rendering) plant. Cat' 1 material cannot be used for the production of OF/SI. Cat' 2 material can only be used where it is pressure-rendered in</p>	<p>The new Regulation allows MSs to adopt national rules imposing conditions or restrictions on the use of organic fertilisers and soil improvers if they are justified to protect public or animal health.</p> <p>The Implementing Regulation set down conditions that must be complied with.</p>	<p>The Government do not intend to impose additional national restrictions(whi ch it does at present in relation to certain material)</p> <p>However, would propose to keep a grazing restriction of two months in the case of pigs, and 21 days for other livestock after application of</p>	<p>Compared with the current position there will be a small benefit to industry, permitting the use of category 2 and category 3 processed animal protein in organic fertilisers and soil improvers provided that they are mixed with a suitable material so that they are not palatable to livestock and cannot be used in animal feed.</p>	<p>Small net benefit</p>

	accordance with the Regulation. Cat 3 materials may use any of the processing standards set out in the Regulation.		OF/SI to land (the regulation permits MSs to set a minimum period of 21 days).		
<p><b>17. New Requirements</b></p> <p><b>Article 41</b> Imports of ABPs from third countries into the EU</p> <p><b>Affected sectors:</b> Importers of ABPs,</p>	<p>The current Regulation sets down detailed rules for the importation of ABPs from third countries and the documentation which needs to accompany the consignments (usually in the form of health certificates).</p>	<p>The new Regulations requirements update and consolidate the existing import rules. Notable changes are:</p> <p>1) Scope has been increased (and correspondingly the model declaration) for use of intermediate products (ABPs which have undergone a degree of processing but are not finished). For example, the definition now includes medicinal products, veterinary medicinal products and active implantable medical devices; some Cat 1 &amp; Cat 2 materials are now specifically included; and blood from live animals (including from livestock species) is now listed for use as an intermediate product.</p> <p>2) Import authorisation requirements for specific ABPs (such as aquatic and terrestrial invertebrates, rodentia and</p>	<p>The Government intends to <b>fully implement</b> the changes in the new Regulation, which tend to simplify and consolidate the requirements for both importers and for the Competent Authority.</p>	<p>Compared with the current position the Government expects that when the changes are considered in aggregate they should have a positive benefit/outcome (with any small costs being outweighed by the benefits) for both Government and Industry, since the changes tend to be de-regulatory, allowing industry to make greater use of ABPs with less intervention from Government.</p> <p>These changes should enable greater use of intermediate products with savings for both industry and Government (e.g. more widespread use of the model declaration rather than individual authorisations).</p> <p>The reclassification of ABPs from e.g. Cat' 2 to 3 and the relaxation around some of</p>	Small net benefit

		<p>lagomorpha) are now less prescriptive.</p> <p>3) Research and diagnostic samples imported via another Member State need to be presented to a BIP on entry to the EU, but not vet checked, and the Member State of destination notified via TRACES. Most research and diagnostic samples are imported directly into the UK, so likely to have little impact,</p> <p>4) Trade samples and display items need to be imported via a BIP for vet checks. Trade samples also need to be channelled to their final destination. It is estimated that in 2010 only 18 trade samples and 8 display items were imported, leading to a small additional cost to industry.</p>		<p>the rules for Cat' 1 material, should increase the scope for imports and their usage, which should be beneficial for industry and Government.</p>	
<p><b>18. Implementing Regulation</b></p> <p><b>Annex XIV section II, Chapter IV, Part II:</b> Colostrum for feeding</p> <p><b>Affected sectors:</b> Livestock owners</p>	<p>The current Regulation does not permit the supply of colostrums directly from one farm to another farm within the same MS for feeding purposes.</p>	<p>The new Implementing Regulation provides by way of derogation from controls on colostrum for the competent authority to authorise the supply of colostrum from one farm to another farm within the same MS for feeding purposes under conditions which prevent the transmission of health risks.</p>	<p>The Government intends to apply this derogation under conditions which prevent the potential spread of animal diseases</p>	<p>There will be a small benefit to livestock owners due to the increased availability and reduced cost of obtaining commercial colostrum. The likely demand for transferring colostrum from one farm to another is not, according to the dairy industry, thought to be very great.</p>	<p>Small net benefit</p>

				Providing guidance is followed, there will only be a very small associated increase in disease risk.	
<p><b>19. Implementing Regulation</b></p> <p><b>Annex XVII, Chapter VII: Unprocessed wool</b></p> <p><b>Affected sectors:</b> Wool industry</p>	The current Regulation does not permit unprocessed wool to be placed on the market.	The new Implementing Regulation provides for the competent authority to authorise the placing on the market of unprocessed wool under conditions which prevent the transmission of health risks.	<p>The Government intends to apply this derogation without restrictions, provided the operator registers with Animal Health to enable tracing of the wool in case. restrictions needed to be put in place in the case of a notifiable disease outbreak.</p> <p>Otherwise, no controls are proposed as the risks, are minimal.</p>	There will be a small benefit to the wool sector who can take advantage of the new potential for movement, storage and placing on the market of wool without restrictions (including for example composting of wool without restrictions). There will be a negligible associated increase in disease risk.	Small net benefit

## Consultation

A six week consultation was held seeking views on how to implement the available derogations in Wales. The consultation package was sent to around 350 representative bodies and individuals, and was also made available on the Welsh Government website. Six responses were received and there was broad support for our proposals.

A summary of responses and The Welsh Assembly's response will be available at [www.wales.gov.uk](http://www.wales.gov.uk)

As a result of the consultation the original suggestion to restrict the derogation to allow the burial of pets and equidae to pet equidae has been extended to all equidae.

## Competition Assessment

The competition assessment is at Annex A

### **Post implementation review**

A post implementation review will take place three to five years after implementation of the policy. The effect of the subordinate legislation will be assessed against the net cost saving to businesses compared with the previous regulations with no increase in risks to animal and public health.

Information will be gathered through stakeholder engagement and delivery and enforcement agency feedback. Areas that could be improved will be highlighted for possible amendment.

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

### Conclusion

It is unlikely that there will be any detrimental effects on competition.



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

**CLA43**

**Teitl: Rheoliadau Sgil-gynhyrchion Anifeiliaid (Gorfodi) (Rhif 2) (Cymru) 2011**

**Gweithdrefn:** Negyddol

Mae'r Rheoliadau hyn yn gorfodi, yng Nghymru, Reoliad (EC) Rhif 1069/2009 Senedd Ewrop a'r Cyngor sy'n gosod rheolau iechyd o ran sgil-gynhyrchion anifeiliaid a chynhyrchion sy'n dod o anifeiliaid na fwriedir ar gyfer eu bwyta gan bobl ac sy'n diddymu Rheoliad (EC) Rhif 1774/2002 ("Rheoliad Rheolaeth yr UE"). Mae'r Rheoliadau hyn hefyd yn gorfodi, yng Nghymru, Reoliad y Comisiwn Rhif 142/2011 sy'n gweithredu Rheoliad (EC) Rhif 1069/2009 Senedd Ewrop a'r Cyngor sy'n gosod rheolau iechyd o ran sgil-gynhyrchion anifeiliaid a chynhyrchion sy'n dod o anifeiliaid na fwriedir ar gyfer eu bwyta gan bobl ac sy'n gweithredu Cyfarwyddeb y Cyngor 97/78/EC o ran samplau ac eitemau penodol a eithrir o wiriadau milfeddygol wrth y ffin o dan y Gyfarwyddeb honno ("Rheoliad Gweithredu'r UE"), ac sy'n rhoi atodiad technegol i'r rheoliadau hynny o reoliad rheolaeth yr UE. Mae'r Rheoliadau hyn yn dirymu ac yn disodli Rheoliadau Sgilgynhyrchion Anifeiliaid (Gorfodi) (Cymru) 2011.

**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**

Bu Pwyllgor Materion Cyfansoddiadol y Trydydd Cynulliad (y Pwyllgor) yn ystyried "*Rheoliadau Sgil-gynhyrchion Anifeiliaid (Gorfodi) (Cymru) 2011*" (CA553) ar 17 Mawrth 2011. Mae'r rheoliadau sydd gerbron y Pwyllgor ar hyn o bryd (Rheoliadau Rhif 2) yn dirymu ac yn disodli'r rheoliadau blaenorol (y rheoliadau gwreiddiol).

Roedd y rheoliadau gwreiddiol, pan y'u cyflwynwyd, yn torri'r rheol 21 diwrnod er mwyn sicrhau nad oedd "bwllch gorfodi" rhyngddynt a chyfundrefn orfodi flaenorol. Adroddodd y Pwyllgor ynghylch nifer helaeth o ddiffygion technegol yn y rheoliadau gwreiddiol yn ogystal â phwyntiau ehangach ar rinweddau'r rheoliadau. Nid oes fawr o amheuaeth bod nifer o'r diffygion technegol, gan gynnwys y ffaith mai yn Saesneg y lluniwyd y rheoliadau, wedi'u hachosi gan y ffaith iddynt gael eu gwneud ar fyrder.

Roedd y rheoliadau gwreiddiol hefyd yn codi pwyntiau rhinweddau sylweddol gan gynnwys pryderon ynghylch hawliau dynol a'r hawl eithaf dilyffethair i gael mynediad i dai annedd preifat a phryderon ynghylch cymesuredd y

cosbau y gellir eu rhoi o dan y rheoliadau. Mae adroddiad y Pwyllgor ar y rheoliadau gwreiddiol wedi'i atodi er gwybodaeth.

Ar y llaw arall, mae'r Pwyllgor yn falch o nodi nad oes diffygion technegol wedi'u nodi o ran rheoliadau rhif 2, sy'n cael eu llunio yn Gymraeg ac yn Saesneg.

Mae'r Pwyllgor hefyd yn falch o nodi bod rheoliadau rhif 2 bellach yn cynnwys darpariaethau sy'n diogelu perchnogion tai preifat drwy'r ddarpariaeth benodol bod angen cael gwarant i orfodi'r hawl i gael mynediad.

Er bod y cosbau yn rheoliadau rhif 2 yr un peth â'r rheiny yn y rheoliadau gwreiddiol, mae'r Memorandwm Esboniadol yn esbonio bod y cosbau yr un fath â'r rhai a ddefnyddir yn Lloegr ac y gallai methu â chydymffurfio â darpariaethau'r rheoliadau arwain at risgiau difrifol i iechyd pobl ac anifeiliaid. Mae'r cosbau'n adlewyrchu difrifoldeb y risg hwn ac mae'r Pwyllgor yn fodlon derbyn barn y Llywodraeth ar y pwynt hwnnw.

Ar sail pryder y Pwyllgor blaenorol ynghylch y rheoliadau gwreiddiol, creda'r Pwyllgor ei bod yn bwysig nodi'n gyhoeddus nad yw'r pryderon hyn yn berthnasol i reoliadau rhif 2.

Cytuna'r Pwyllgor felly i adrodd y dylai'r Cynulliad roi sylw arbennig i'r rheoliadau ar y sail eu bod yn codi materion o bwysigrwydd gwleidyddol neu gyfreithiol sy'n debyg o fod o ddiddordeb i'r Cynulliad. [Rheol Sefydlog 21.3(ii)]

**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Hydref 2011**

**Atodiad i Adroddiad y Pwyllgor Materion Cyfansoddiadol a  
Deddfwriaethol ynghylch CLA43 (Rheoliadau Sgil-gynhyrchion Anifeiliaid  
(Gorfodi) (Rhif 2) (Cymru) 2011)**

# Eitem 4

CLA GP5

## **Constitutional and Legislative Affairs Committee**

**Inquiry into the Granting of Powers to Welsh Ministers in UK Laws**

**Response from Farmers Union of Wales**

# **NATIONAL ASSEMBLY FOR WALES' CONSTITUTIONAL AND LEGISLATIVE COMMITTEE'S INQUIRY INTO THE GRANTING OF POWERS TO WELSH MINISTERS IN UK LAWS**

**Response from the Farmers' Union of Wales**

**September 2011**

## **NATIONAL ASSEMBLY FOR WALES' CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE'S INQUIRY INTO THE GRANTING OF POWERS TO WELSH MINISTERS IN UK LAWS**

### **Response from the Farmers' Union of Wales**

#### **INTRODUCTION**

1. The Farmers' Union of Wales welcomes this opportunity to contribute to the Constitutional and Legislative Affairs Committee's Inquiry into the Granting of Powers to Welsh Ministers in UK Laws, with particular reference to how this practice impacts on the scrutiny of legislation affecting rural Wales.
2. The Farmers' Union of Wales (FUW) supported Devolution and the establishment of a National Assembly for Wales believing that this would enable Wales to promote, develop and institute policies that were designed specifically to cater for the needs and aspirations of the people of Wales.
3. The Union firmly believes that the interests of farmers and the rural economy of Wales are best served by policies and legislation determined and fashioned, wherever possible, by the elected representatives of the National Assembly for Wales who would be more attuned to the particular concerns and needs of Wales' rural areas.
4. As a means of achieving this, the Union supported the strengthening of the powers and responsibilities afforded to the National Assembly for Wales, believing that legislative parity was needed between Wales and the other devolved nations.
5. The Union, therefore, welcomed the Referendum on Further Law Making Powers for Wales held earlier this year.

#### Questions

**The extent of the current National Assembly scrutiny of delegated powers given to Welsh Ministers through provisions in UK Acts and through other statutory mechanisms.**

6. The FUW believes that the National Assembly for Wales should have the opportunity to comment on all legislation pertaining to Wales, whether emanating from Westminster or Cardiff, and that full scrutiny should be undertaken by the appropriate Assembly Committee to ensure total transparency and appropriateness of any new legislation implemented in Wales.
7. The current practice, where the National Assembly does not have the power to formally scrutinise those UK Acts of Parliament which confer powers directly onto Welsh Ministers is a cause of concern to the Union.
8. The FUW believes that unless the National Assembly, through an appropriate scrutiny Committee, is able to influence primary legislation through Assembly Ministers prior to its drafting in Westminster, then the opportunity to shape the content of such legislation could be compromised.
9. The Union believes that the various scrutiny Committees within the Assembly play a vital role in informing and shaping the activities undertaken by the Welsh Government.
10. During the third Assembly, the Union became increasingly concerned over the decline in emphasis given to the reports, recommendations and advice provided by scrutiny Committees to Assembly Ministers.
11. The FUW was particularly disappointed that, under the current Welsh Government, the Business Committee abolished the Rural Development Sub-Committee, thus, in its view, weakening the opportunity for discussion and debate on the particular challenges facing the rural economy in Wales.
12. While acknowledging that the Environment and Sustainability Committee will establish, when needed, 'Task and Finishing Groups' to look at specific issues affecting rural areas, such as the recently formed Common Agricultural Policy Task and Finish Group, the FUW believes that, due to the predominately rural nature of Wales and the importance of agriculture to rural areas, a separate Committee was needed to consider and scrutinise any issues and legislation which affects agriculture or rural Wales.
13. The Union believes that, for the scrutiny process to be seen to be working, the current process whereby Westminster can confer powers directly onto Welsh Ministers, without involving the National Assembly, needs to be amended so that the National Assembly is able to fully scrutinise any relevant pieces of legislation.

**The extent to which the National Assembly is able to exercise robust scrutiny of such processes through its Standing Orders.**

14. As outlined in the Annex document issued with the Inquiry letter, the National Assembly has no formal role in scrutinising powers transferred to Welsh Ministers through UK Acts of Parliament.

15. The FUW believes that the Assembly's role in the process needs to be formalised to prevent inappropriate legislation or parts of legislation being implemented in Wales.
16. At present, when a UK Act of Parliament confers powers directly onto Welsh Ministers, the Standing Orders, particularly Standing Order 30, only requires a written statement regarding the Bill and its provisions. Once this statement has been laid, there is no requirement for it, or the actual legislation, to be scrutinised by the Business Committee or, by referral, a relevant Committee.
17. The Union supports the comments made by the Constitutional Affairs Committee during the third Assembly regarding amending the Standing Orders to enable legislation applied to both the Assembly and individual Welsh Ministers to be scrutinised at an appropriate point. The subsequent changes made to the Standing Orders, particularly Standing Order 30, appear to be insufficient to address these recommendations and subsequently the level of scrutiny which can be undertaken.
18. If Welsh Ministers are to be more accountable to the National Assembly and the relevant Assembly Committees, the Union believes that Standing Order 30 should be amended to increase the level of scrutiny of UK legislation which confers powers directly onto Welsh Ministers.
19. These amendments should include referral of the statement and the actual legislation to the Business Committee who, in turn, would be able to scrutinise and comment on the documents or refer them to the Committee with the relevant knowledge and expertise to undertake this work. Similar provisions are contained within paragraph 29.4 of Standing Order 29 which the Union believes could be used as a basis to amend Standing Order 30.
20. Standing Order 21, paragraphs 21.8 and 21.9, already confers powers on a 'responsible Committee' to consider draft European Union legislation and make written representations on behalf of the National Assembly, to the relevant Committee in the House of Commons or the House of Lords. The Union also believes that, with some minor amendments, there is scope within this Standing Order to extend this to include the scrutiny of UK legislation which confers powers directly onto Welsh Ministers.

**The relevance of the UK Government's Devolution Guidance Notes in the light of recent Welsh constitutional developments.**

21. The Union is concerned that the Devolution Guidance Notes have yet to be updated to reflect the changes in the powers afforded to the National Assembly following the outcome of the Referendum. It believes that this work should be undertaken as a matter of urgency to ensure that UK Government acts appropriately following the changes brought about by the Referendum.

**The procedures for Legislative Consent Motions compared to the position in the other devolved legislatures.**

22. The Union welcomes the changes to Standing Order 29, for the fourth Assembly, which bestows the appropriate Assembly Committee with the ability to scrutinise and report on a Legislative Consent Motion (LCM) and the legislation which led to it being tabled.
23. In practice, this scrutiny can only take place if the Business Committee refers the LCM to the relevant Committee. The Union believes that the Business Committee should be required to refer all LCMs to the most appropriate Committee. This would allow the legislation to be fully debated and reported and allow the tabling of amendments which would allow the legislation to be adapted for Wales.
24. The Union also believes that an Assembly Committee should be able to request the referral of an LCM to it if it believes that it is important or could have implications for the work areas within its remit.
25. The FUW supports the conclusion of the Scottish Parliament's Procedures Committee in its report on 'The Sewel Convention' that "any legislation must either be the product of its own deliberations [the Scottish Parliament] or require its explicit consent. Either way, it remains in control".

29<sup>th</sup> September 2011



## **Constitutional and Legislative Affairs Committee**

### **Inquiry into the Granting of Powers to Welsh Ministers in UK Laws**

#### **Response from Welsh Refugee Council**



### **Response by the Welsh Refugee Council to the Constitutional and Legislative Affairs Committee into the Granting of Powers to Welsh Ministers in UK Law**

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#### Background on the Welsh Refugee Council

1. The Welsh Refugee Council was established in 1990 and now employs 32 staff and has 60 volunteers. Its head office is in Cardiff and it has offices in Newport, Swansea and Wrexham. In 2010/11 it provided 22,366 advice sessions to asylum seekers, and provided nearly 7,000 advice sessions to refugees. As well as providing advice services to asylum seekers and refugees it has an influencing role and function. It receives funding from the Welsh Government, UK Border Agency, Diana Fund, Children in Need, Community Fund and Lloyds TSB Charitable Trust.

#### Inquiry Response

2. We are pleased to respond to this inquiry. As is generally agreed Devolution is a process which most commentators, including ourselves, arguing that it has made significant benefits to the people of Wales. As Devolution has matured stating the obvious the complexity of law making has increased and we welcome how this process is being embedded into the thinking and practice of the National Assembly for Wales.
3. One of our many roles is to explain to Refugee Community Groups about how the process of influencing the political process is structured in Wales and strategies for influencing both the National Assembly for Wales and the Welsh

Government. We are therefore after a simple, clear and straight forward process free of nuance and subtext, which has clear outcomes within the process and is easily understood. Whether this is possible is a challenge and we would like any changes made to be measured against this framework. This is especially important if all sectors in civil society are to engage effectively with the law making processes.

4. If given a simple choice between Westminster legislation giving powers to Welsh Ministers or the National Assembly for Wales giving powers to Welsh Ministers, we would like one approach that is consistent. However we are aware that the devolutionary settlement does not allow this currently. However, whilst it may be good for the process to be clear to the citizen if one approach was adopted we do not want simplicity to replace effectiveness.
5. We are aware of the deficiencies in the powers of Welsh Ministers, which are articulated in provision about Welsh Ministers in the UK August 2011 and we do not intend amplifying them further in our submission.
6. Our specific concern in responding to this is to ensure a high level of monitoring between a UK Government function which is non-devolved such as immigration. We often see lack of clarity operationally between London and Cardiff in the interface of two competing jurisdictions. As an example the current UKBA Consultation on Family Migration takes no account that health is a devolved competency. It in fact suggests a challenge to Welsh Government Policy and Practice. We would therefore like Welsh Ministers to have a more robust scrutiny role when there is an interaction between UK and Welsh Legislation and Policy and Practice. This is especially important where Cross Party Support in Wales articulates a significantly different approach to broad social issues such as Child Safeguarding or the Protection of Vulnerable Adults. Immigration may also be considered to be one of these issues. As an example the National Assembly for Wales sees inclusion as a two way process between refugee and host community. Whereas UK Government sees integration as being the responsibility of the refugee solely.
7. As a significant example which currently concerns us UKBA and WLGA are developing proposals on 'Age Assessment' of asylum seeking children which has no involvement of Welsh Government, the Children's Commissioner or broader civil society. Under our current system of legislative scrutiny these arrangements can continue without any scrutiny, which affects Welsh children as evidenced by the commitments articulated in the recent Refugee Inclusion Strategy and Refugee Inclusion Action Plan. We would therefore like powers for Welsh Ministers to increase so they are able to monitor the level of protection required so that it is consistent with the Welsh Government policy framework.
8. Additionally we see inconsistencies in the way that London and Cardiff deal with the monitoring of International Conventions and again we would like consideration to be given to the scrutiny of International Treaties, so it is consistent up and down the M4 corridor. Welsh Ministers do after all have a range of responsibilities under International Treaties, though they are not

signatories directly per se, they will be responsible for delivering significant Treaty obligations in their own right.

9. In conclusion we welcome the opportunity to respond to this Inquiry and are happy to develop any points raised, if this is felt to be appropriate.

A Michael Lewis  
CEO  
29<sup>th</sup> September 2011



## ***'Influence, Represent Negotiate'***

**The Committee Clerk  
Constitutional and Legislative Affairs Committee  
Tŷ Hywel  
National Assembly for Wales  
Cardiff CF99 1NA**

*E-mail:* [CLA.Committee@wales.gov.uk](mailto:CLA.Committee@wales.gov.uk)

Dear Sir,

### **Consultation – The granting of powers to Welsh Ministers**

#### **1. Introduction**

The Police Federation was formed in 1919 by an Act of Parliament. In the UK, it currently represents over 140,000 police officers and some 7,600 in Wales. This is made up of 98% of all uniformed and CID ranks from Constable to Chief Inspector. The Superintendents Association and Association of Chief Police Officers form the remaining 2%.

The Federation's membership comes from each of Wales' four police forces. It's staff – who are themselves, serving police officers – are elected to their respective roles.

The Federation was established to protect and promote the 'welfare & efficiency' of police officers and in its discharge of functions as laid down by statute.

#### **2. Overview**

The Police Federation of England & Wales (*The Federation*) welcomes the opportunity to provide advice to The Constitutional and Legislative Affairs Committee concerning the granting of powers to Welsh Ministers.

The Federation recognises that there is a changing and differing constitutional base across the UK and as such, the matters being investigated by the Committee are both timely and highly relevant to how 'Cardiff & London' operate in the future. Given that The Federation is a UK-wide organisation, within our submission, we will naturally have a view from both sides of the border.

It may prove useful to the Committee that our submission does answer some (not all) of the issues raised in the consultation, but also, quite deliberately,

touches upon areas that may be regarded presently as being on the periphery. We fully accept that, but the issues and examples we raise are of importance, both historically and in the future and need to be identified as being noteworthy, or even subject to debate, as the devolved power base of Wales changes.

The Federation are happy to have this advice placed in the public domain; we do not however, think we could add further to this advice to the Committee by appearing to give oral evidence.

The Federations advice to the Committee is submitted not as a '*constitutional expert*' but moreso as we regard, as coming from a '*unique user*'. The relevance to that classification is that The Federation recognise that an imbalance exists between the two government institutions at London and Cardiff, whereby *criminal law* is devolved, yet *criminal justice* is presently not devolved. This anomaly places strains and some ambiguity on how policy and powers – moreover their understanding - become devolved and their impact upon existing or planned Welsh Government policy, conferred or granted powers and directions. There are, in short, loose ends within our remit that The Police Federation continually have to focus upon from matters raised by The Welsh and UK Governments.

Devolved functions and responsibilities that impact upon policing in Wales include:

- Council Tax “capping” policy for local and police authorities;
- The unhypothecated funding of local authorities and police authorities in Wales through the local government revenue and capital settlements;
- Cross cutting responsibilities for the strategic approach to the delivery of public services including performance and collaboration, including such policing services;
- Community Safety;
- Relations with the Police and other Criminal Justice Agencies, including counter-terrorism issues (and the part funding thereof such as Wales Extremist & Counter Terrorism Unit);
- Youth Justice;
- Drug and alcohol misuse (including the delivery of the substance misuse strategy);
- Domestic violence;
- Road Safety.

The above are wide ranging and any movement generated by 'UK policy' or 'UK powers' in these matters could create a further imbalance on how the 'UK police' are trained and implement initiatives on the ground for such changes specific in Wales. Naturally this could include powers granted to Welsh Ministers.

It is worthy to note that in November 2006 at an HM School of Governance seminar held in The Senedd, Sir Jeremy Beecham (Beecham Report '*Beyond Boundaries*' on public sector workings), stated that "*policing will fall within the*

*cracks of devolution*". It is a concern that The Federation share, that given the diversity of modern day policing and the demands placed up it. This should be viewed against a backdrop that there does exist a lack of 'coherence' between London and Wales that issues which do affect policing (and the service we give to the public) could, given the devolved settlement, become for Wales, more undefined and un-scrutinised. At its extremities, this issue has potential to become arguably un-democratic and lacking in transparency.

There is a danger therefore, that any subject issue that is prefixed 'policing' – howsoever defined - may seemingly not be considered by London as being of relevance to Wales (when in fact it is) or not worthy of consideration in Wales by the Welsh Government, perhaps through a lack of knowledge.

It would be fair to state, that the understanding of Welsh devolution by Westminster & Whitehall is poor. As such, in 2006, during the *'Police amalgamation process'* under Home Secretary Charles Clarke, we saw policing minister Tony McNulty attending 'the Assembly' completely unaware of the roles and responsibilities of Welsh Ministers in respect of policing.

Later in 2009 during an inquiry led by the House of Commons, Welsh Affairs Committee, the former First Minister, Rhodri Morgan and Sir Jon Shortridge (Permanent Secretary in Wales) gave evidence to the effect that *'London did not understand devolution'* and that *'devolution was seen as an experiment'*.

Of late, under the current UK-coalition Government, the progression of the *Police Reform Bill*, sees a serious lack of understanding by the Police Minister, Nick Herbert on the functions and responsibilities of Welsh Ministers; this criticism is extended also to his government officials. Indicative of this, is the result witnessed by the Legislative Consent Motion on parts of that Bill rejected by The National Assembly for Wales on already devolved functions.

It is worthy to note that prior to this, in 2009, *'The all-Wales Convention'*, headed by Sir Emyr Jones-Parry highlighted in his report (Chapter 4) of concerns in respect of policing and that it was by *"default rather than design"* that the Home Office had some understanding of devolution. This was resolved simply as David Hanson, a Welsh MP, just so happened to be the Minister of State for Policing. Such was the concern that it warranted inclusion in the Conventions report. Seemingly nothing has changed.

Taking the above into consideration, The Federation therefore submits that given the concurrent misunderstanding of the mechanisms of devolution in Wales that as and when powers become 'devolved' and/or 'granted' to Welsh Ministers, they too are likely to have had little or no understanding of present Welsh powers – and how it affects policing - or indeed how they impact upon the development of unique and current Welsh policy. Ergo, any scrutiny will be lacking, missed or un-researched. This then *de facto* extends towards how Ministers in Wales receive such powers, how they are interpreted or are ultimately held accountable for such powers.

It is only with a high degree of detailed advice from stakeholders that such issues can be captured. For example, The Police Federation have, over successive years, been progressing matters in respect of 'mental health'; a serious issue the police are operationally facing daily. Given all-party support in Wales a 'Mental Health (Wales) Measure' – now termed a Bill – has been placed upon the statute. It awaits secondary legislation to 'fill-in' details.

That framework legislation has subsequently been progressed in Wales and The Federation shall be progressing, complex issues, such as, and in lay terms, on how those arrested under S135 and S136 of the Mental Health Act can be dealt with by police, in a non-devolved capacity, but under devolved 'Welsh law'.

The previous UK Labour Government (under Welsh Secretary Paul Murphy) had to have substantial advice passed to their offices to allow 'the boundaries to be stretched' via the [then] LCO process so as to facilitate – in the future – such issues that Welsh Ministers wished to progress that were quite different to those of UK Ministers. Clearly this *ad hoc* process is not conducive with clarity or a smooth transition of devolved powers. The result being that when powers were granted to Health Minister, Edwina Hart AM, the Police Federation had to re-advise of its concerns. But from the police's perspective, (not the NHS) that process, at that very early stage did not have scrutiny by The National Assembly for Wales of the Minister. It was subsequently recognised and rectified. But this issue was reflective of an embryonic legislative and constitutional system that was flawed.

The present Welsh Government are to progress a *Domestic Violence (Wales) Bill*. It has been advised – in Plenary by The First Minister - that there is not to be any criminal justice elements to the Bill, but it will "*place a duty on relevant public sector bodies to have a domestic abuse and 'a violence against women' strategy and support elements in place*". Clearly this process will involve the police and The Police Federation will examine the Bill when it is published.

But to physically affect this future strategy, there will be a need to be a change to current 'policing procedures' and indeed this would demand dedicated training of officers and perhaps additional funding for the police to meet the demands of the new polices in place.

Although, the Bill hasn't been published, natural supposition leads us to highlight that such a strategy should lie in parallel to the current powers of policing (for example '*powers of entry*'). Of course by the very nature of developing legislation, that Bill may well change in its terms. The danger being that this could then start to create differing 'police powers' in Wales to that of England. That in itself could become an issue if such powers were to be granted from Westminster – no matter how small – and indeed how Welsh Ministers could be scrutinised on 'policing' in this respect.

The Police Federation accept that this scenario is presently hypothetical, but the reality exists that a Bill will be forthcoming and if such a Domestic

Violence Strategy – backed by legislation - is to be effective then it will need to have ‘teeth’.

A further example – albeit in the future is worthy of mentioning. That of ‘Smoking in Cars’. The Welsh Government have consulted upon this issue and may decide to progress a Welsh law to stop smoking in cars that have children under the age of 16 as passengers. The Police Federation have submitted evidence in this respect. Essentially, there is no evidence to support that smoking (*per se*) is a road safety issue, but considerable evidence that smoking is a health issue.

Therefore, if the Welsh Government were to follow a legislative route, scrutiny of existing Welsh Ministers powers could be examined for an already devolved function (health) but possibly implemented by a non-devolved function (policing).

In effect ‘the police’ may be directed to uphold this law, that itself, would require some serious thinking between Cardiff and London on where that power and responsibility lays and with whom, The Home Secretary or The Wales Health Minister.

Conclusion:

The Criminal Justice system is not alone in these issues, as an example a Transfer of Function Order was made to allow ‘education’ to be a devolved function to allow teaching in prisons (a non-devolved area), so the problems above are fairly well rehearsed.

The Committee will know that these debates have been made across many portfolios and are regularly exercised. They are reflective of where the dynamic constitutional base of Wales currently lays. Policing has its feet in many camps, acting in both non-devolved and devolved capacities and that adds up to unclear lines of responsibilities and likely continuous legal advice being taken on where powers actually lay. Moreover where scrutiny lays for Welsh Ministers ahead of, or after powers have been granted.

This can be best be defined by the words of David Lambert (Cardiff Law School) who said of devolution “...*we are entering the unknown, a weather-vane of politics, we will all need to look four ways, to Westminster, Cardiff bay, Whitehall and Cathays park. What we have is a seismic shift in constitutional matters, in policy areas and in Wales only law making powers that is going to test the political will, mechanisms and strength of governments. What Wales has, is unique in any government structure and in legislative capacity.....*”

The Police Federation firmly believe that a stout mechanism should exist between The Welsh Government and The National Assembly for Wales to capture these non devolved/devolved issues. And that any powers to be conferred upon Welsh Ministers should have an ‘open conduit’ – ahead of powers being devolved - to allow advice to be passed to both London and



Cardiff upon the implications of such Welsh/English policy. Furthermore, that pre scrutiny could exist so that Ministers can be questioned by subject Committees, perhaps a function of the Constitutional Committee, on where such powers will likely sit amongst Welsh Government policy and for 'the Assembly' (a generic terminology) to define those lines of scrutiny.

**DEVOLUTION GUIDANCE NOTE 9: POST-DEVOLUTION PRIMARY  
LEGISLATION AFFECTING WALES**

## SUMMARY

- The Government of Wales Act 2006 (“the 2006 Act”) creates, from May 2007, a separate legislature, the National Assembly for Wales, and executive, the Welsh Assembly Government. The Act provides for a procedure for Parliament to confer legislative competence on the National Assembly for Wales by Order in Council. This will allow it to pass legislation, known as Assembly Measures, which can do anything an Act of Parliament can do within the general constraints set out in the Act, and within the scope of the particular legislative competence granted. Devolution Guidance Note [16] sets out the procedure for conferring legislative competence on the National Assembly for Wales by Order in Council.
- The White Paper ‘Better Governance for Wales’ set out the policy that *“The Government intends for the future to draft Parliamentary Bills in a way which gives the Assembly wider and more permissive powers to determine the detail of how the provisions should be implemented in Wales”*, which remains the case. This note includes guidance on changing the Assembly’s legislative competence by ‘framework’ provisions in Parliamentary Bills.
- The Memorandum of Understanding between the UK Government and the Devolved Administrations (MoU) says: *“The United Kingdom Government retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The devolved administrations will be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government.”*
- This Convention applies when, under normal circumstances, Parliamentary Bills make provision specifically on matters within the areas where the National Assembly for Wales has legislative competence or the Welsh Ministers have functions. It does not apply when Bills deal with such matters only incidentally to, or consequentially upon, provision made in relation to a non-devolved matter. In these circumstances, the Welsh Assembly Government and Wales Office should nevertheless be consulted .
- The Convention relates to Bills being put before Parliament, but Departments should approach the Welsh Assembly Government on the same basis for Bills being published in draft, even though there is no formal requirement to do so. It should be followed for Private Member’s Bills to be supported by the UK Government.
- The Secretary of State for Wales has overall responsibility for Welsh specific provisions in the UK Government’s legislative programme, and is a member of the Legislative Programme Committee to represent Welsh interests.

## Introduction

1} The UK Parliament retains its sovereignty and right to legislate on any matter after devolution. However, the establishment of devolved institutions in Scotland and Wales has created, under the Scotland Act 1998 and the Government of Wales Act 2006, delegated bodies with the power to promote legislation with the force of Acts of the UK Parliament. In order to respect the competence of those bodies under a sovereign Parliament, the UK Government has committed in the Memorandum of Understanding between it and the devolved institutions, not normally ask Parliament to legislate within the competence of those bodies without the agreement of those bodies. The implementation of the Government of Wales Act 2006 therefore places new responsibilities upon Whitehall Departments to consult the Welsh Assembly Government, to obtain the agreement of the Welsh Ministers in certain circumstances and to only proceed with certain provisions in Parliamentary Bills if the National Assembly for Wales agrees to their inclusion. For description of the key elements of the Government of Wales Act 2006 see annex 2.

2} This note sets out guidance for Whitehall Departments on arrangements for managing new legislation affecting the responsibilities of either the National Assembly for Wales or the Welsh Assembly Government. It sets out the expectations of the Cabinet Committee on the Legislative Programme (LP) in giving effect to this policy and how to manage it to ensure smooth running of the UK Government's legislative programme. LP expects devolution issues to be resolved by the time a Bill is brought before the Committee prior to its introduction into Parliament.

3} This note is not concerned with the process by which the Welsh Assembly Government is consulted about policy. Arrangements for this are set out in the MoU, the agreement on Common Working Arrangements (**Devolution Guidance Note 1**) and the bilateral concordats between Whitehall Departments and the Welsh Assembly Government.

4} The UK Government has agreed with the Welsh Assembly Government that they will normally consult each other from an early stage on the development of relevant legislative proposals, in confidence where necessary (**see Devolution Guidance Note 1 Common Working Arrangements, which should be read separately, in particular paragraphs 30-35**). Departments should make clear when information is being passed in confidence.

5} This note does not extend to legislation which deals with emergencies or is similarly exceptional.

6} Guidance on the role of the Secretary of State for Wales, including in relation to primary legislation, is given in Devolution Guidance Note 4 **The Role of the Secretary of State for Wales**. The Secretary of State has overall responsibility for Welsh provisions in the UK Government's legislative programme, as well as for constitutional and devolution policy as it applies to Wales. The Secretary of State for Wales is a member of LP and represents Welsh interests in this respect, regardless of which Department may be sponsoring any particular piece of legislation. Accordingly, the Wales Office needs to be involved at all stages in legislation relating to Wales. Section 33

of the Government of Wales Act 2006 places a duty on the Secretary of State for Wales to consult the National Assembly for Wales after the beginning of each Parliamentary Session on the UK Government's legislative programme and on non-programme Bills agreed for introduction subsequently (unless there are considerations relating to the Bill which make such consultation inappropriate). The consultation must include a personal attendance by the Secretary of State for Wales at Assembly proceedings, and provides an opportunity for the Assembly to consider the content of individual Bills, in addition to the UK Government's choice of priorities.

## **General**

7} In general:

- The MoU indicates that there will be consultation with the Welsh Assembly Government on policy proposals affecting devolved matters whether or not they involve legislative change.
- Where the possibility of particular legislation has not been publicly announced, information going to the Welsh Assembly Government should be passed in confidence. The Welsh Assembly Government will not circulate or allude to Bill material without the consent of the lead Whitehall Department. Additional guidance on confidentiality is given in paragraph 11 of the MoU agreed between the UK Government and the devolved administrations. It is for the administration providing the information to stipulate restrictions on usage. Where such restrictions constrain wider consultation by the Welsh Assembly Government, the duty of confidentiality might extend to other bodies to be consulted, subject to the agreement of the sponsoring Department.
- When primary legislation is prepared by Whitehall Departments, consideration should be given to what arrangements may be required for Wales. The 2006 Act provides for the Assembly's legislative competence to build up incrementally over time, so in many cases, and particularly in the early years, the Assembly will not have the legislative competence to make its own provision for Wales. It is therefore important for Departments to consult the Wales Office and Welsh Assembly Government about all relevant proposals for primary legislation, so that suitable vehicles can be identified. This is particularly important during the bidding stages, to inform the bid from the Secretary of State for Wales for forthcoming programmes.
- Whitehall Departments will in practice deal with the Welsh Assembly Government. Departments should approach the Welsh Assembly Government to gain the consent of the National Assembly for Wales to legislation when appropriate. It will be for the Welsh Assembly Government to indicate the view of the National Assembly for Wales when appropriate and to take whatever steps are required to ascertain that view. Departments should also liaise closely with the Wales Office.
- Whether the consent of the National Assembly for Wales on the one hand, or the Welsh Assembly Government on the other, is needed depends on the nature of the provision in question. The UK

Government's commitments are set out fully at paragraph 17 of this note. Departments should consult the Welsh Assembly Government and the Wales Office on changes in devolved areas of law which are incidental to or consequential on provisions made for non-devolved purposes; the consent of the Assembly is not needed in these circumstances.

- Departmental legal advisers or the Wales Office should be consulted if you are in any doubt about whether a proposal relates to a devolved matter. On some occasions there may be a different opinion about whether devolved matters are affected, and it is always advisable to consult your Departmental legal advisers, as well as the Wales Office and the Welsh Assembly Government, about these issues at an early stage in developing proposals for legislation.

### **Legislative planning**

8} From May 2007, the legislative competence of the National Assembly for Wales will be much more limited in scope than the executive functions of the Welsh Ministers<sup>1</sup>. This is a direct consequence of the unique nature of the Welsh devolution settlement.

9} The National Assembly now has powers to pass Measures in relation to certain education matters and NHS redress. The 2006 Act also confers the power to pass Measures in relation to the operation of the Assembly itself. However as more matters are added to fields within schedule 5, there will be an increasing number of areas where legislation in relation to Wales could be passed either by Parliament or by the Assembly. In such cases the normal expectation is that the Assembly would legislate in relation to Wales. It is however possible that the Welsh Assembly Government will wish to take the opportunity to include provisions in a relevant Parliamentary Bill, rather than promoting a separate Assembly Measure. Such provisions should be included in a Bill at introduction in the UK Parliament.

10} In considering proposals for primary legislation from 2007-08 onwards, therefore, Departments will need to consider whether anything that is proposed for inclusion in a Bill would in fact be within the legislative competence of the Assembly, or would have a negative effect on that competence. This should emerge clearly from early consultation with the Welsh Assembly Government and the Wales Office. It will also be possible at all times to see what the Assembly's legislative competence covers, since it will be defined by the latest version of Schedule 5. This will be available on the Wales Office website ([www.walesoffice.gov.uk](http://www.walesoffice.gov.uk)) and Welsh Assembly Government ([new.wales.gov.uk](http://new.wales.gov.uk)).

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<sup>1</sup> Except where otherwise indicated, references to the Welsh Ministers should be taken as including reference to the First Minister and Counsel General, where they have functions conferred on them individually.

11} The arrangements set out below recognise that the Welsh Ministers' functions will for some time to come extend into areas outside the Assembly's legislative competence. Under the 2006 Act, the Assembly can seek legislative competence in those areas where Welsh Ministers exercise functions, and the arrangements set out below reflect that aspect of the Welsh devolution settlement.

12} There may however be some limited areas where the Welsh Ministers exercise functions, which remain the responsibility of the UK Government, for Wales as well as for England, in relation to which the Assembly could not seek legislative competence. The 2006 Act has flexibility to allow new fields to be added to Schedule 5, either by a UK Bill or by an Order in Council, and the Assembly could then seek legislative competence in relation to those fields in the same way as for the existing fields. As noted at paragraph 3.26 of the Better Governance for Wales White Paper, however, this flexibility would not extend to:

*“those subjects which remain the responsibility of Whitehall Departments for Wales as well as for England. Like Scotland, these would include Fiscal and Monetary Policy, Immigration and Nationality and Social Security. Also excluded would be fields where the Scottish Executive, and the Secretary of State for Scotland before devolution, have functions but the Assembly does not, such as civil and criminal law, the administration of justice, police and the prison service.”*

13} Provisions relating to such areas will remain a matter for the UK Government, regardless of whether a Welsh Minister exercises functions within them or not. Accordingly, the consent of Welsh Ministers to changes to their functions within such areas is not required, although they should be consulted. Departments should always consult Wales Office lawyers for a legal view on whether provisions fall into this category if there is any doubt.

14} By the same token, there will still be many areas where the Assembly does not have legislative competence and where the Welsh Assembly Government will want to seek enabling powers in the UK Government's legislative programme. These could either confer executive functions on the Welsh Ministers, or be 'framework' powers conferring legislative competence on the National Assembly for Wales, or both. There could also be provisions directly implementing a Welsh Assembly Government policy in Wales' although these are now less likely. These could be contained in Wales specific legislation, or in other appropriate Parliamentary Bills. Proposals for the inclusion of provisions in Parliamentary Bills from the Welsh Assembly Government need to be copied to the Wales Office from the outset, and the Wales Office will remain responsible for bidding for Welsh provisions in Bills in forthcoming legislative programmes. In the case of executive functions, or

detailed policy implementation through legislation, the inclusion of such provisions will be agreed in the normal way.

15} For 'framework' powers in Bills, it is important to recognise that they will confer legislative competence on the Assembly by amending Schedule 5 to the 2006 Act, in exactly the same way as Orders in Council conferring such legislative competence under the 2006 Act. Such provisions are consistent with UK Government policy set out in the second bullet point of the summary. As with proposed Orders in Council, the UK Government will need to agree the appropriateness of conferring such legislative competence, and in particular its scope and limits. Accordingly the letter to the relevant Cabinet committee seeking policy clearance for the Bill will need an explicit section on Welsh provisions headed "**Framework Powers for Wales – Scope and Limits and Exceptions**". Framework powers will have to fit within the scope of the legislative vehicle, and it would not be appropriate for the scope of a Bill to be widened simply to accommodate the scope of a proposed framework power. Exceptions are common place and care needs to be exercised to ensure that the legislative competence being conferred does not exceed the executive functions Welsh Ministers already have. When seeking policy clearance for a framework power in a Bill, to assist UK Government Ministers in forming a view as to the appropriateness of the National Assembly for Wales having the power the bid needs to be accompanied by an explanatory memorandum giving a clear description of the purpose for which the power is being sought.

16} As proposed Orders in Council will require policy agreement with all relevant Whitehall Departments, so will framework powers in Bills. The Wales Office has overall responsibility for managing this process for the UK Government. If Departments who are sponsoring Bills which will include a Welsh framework clause would prefer, the Wales Office will ensure that consistent policy agreement is secured. Because such provisions will not contain the legislative detail to deliver Welsh Assembly Government policy a template explanatory memorandum for such provisions has been agreed with the Welsh Assembly Government, which mirrors the explanatory memoranda which will accompany the Orders in Council. Once again, the Wales Office can manage or advise on the production of required supplementary information in the proper format.

17} The Welsh Ministers and the Assembly have executive and legislative competence respectively in certain areas. It therefore follows from the commitment made by the UK Government in the MOU that it will not normally seek to legislate in relation to those matters without the agreement of the devolved institutions. For the purposes of the Welsh devolution settlement Parliamentary Bills can include provisions in relation to Wales for a range of purposes. The different purposes are described here, together with the agreements that will normally be required in each different case:

- *Provisions that modify, impose, confer, remove, or otherwise affect functions of Welsh Ministers.* The consent of the Welsh Ministers should be obtained, through normal consultation between the UK and Welsh Assembly Government, by the time a Bill is considered by LP. **There is an exception to this** which is described in detail in paragraph 12 and 13 above, relating to areas where Welsh Ministers exercise



functions, but which lie outside the areas where legislative competence could be conferred on the National Assembly. In these circumstances, Welsh Ministers should be consulted but consent is not required.

- *Provisions that add to the legislative competence of the Assembly*  
The consent of the Welsh Ministers should be obtained, through normal consultation between UK and Welsh Assembly Governments by the time a Bill is considered by LP. The consent of the National Assembly for Wales is not required.
- *Provisions that have a negative effect on the legislative competence of the Assembly or which is on matters within the legislative competence of the Assembly:*

The Welsh Ministers will need to obtain the consent of the Assembly. By the time a Bill is considered by LP agreement must be reached with Welsh Ministers to promote the relevant motion in the National Assembly for Wales as soon as possible after introduction. In the event that the motion was not passed in the National Assembly, the UK Government would, subject to collective agreement being secured, need to table an appropriate amendment removing the relevant provisions before the Bill reaches its final stage in the House of introduction. The Welsh Ministers will need to have regard to these timing requirements in tabling their motion. The same will apply if any significant amendments are made to the relevant provisions during a Bill's passage. The Wales Office will work with the Welsh Assembly Government to facilitate any consents required.

- *Provisions within the Assembly's legislative competence which are purely supplementary, consequential, incidental, transitional, transitory or saving provisions relating to provisions on non devolved matters.*  
The Welsh Ministers should be consulted, but consent is not required. Departments should consult the Wales Office for a view on whether provisions fall into this category.
- *These consent requirements also apply where UK Ministers have the power to amend primary legislation by Order<sup>2</sup> and it is proposed to make an Order which would have any of the effects set out in the four bullet points above.* Constraints and restrictions are not normally placed on the scope of order making powers in the primary legislation which is conferring those powers, nor may it be possible to assess in advance when Orders made under such powers would fall within the ambit of this guidance note. Therefore, when UK Ministers are proposing to make such an Order, they will be expected to have regard to ensuring that the policy commitments set out here are observed in those Orders as they would be in primary legislation. Where a Bill would confer wide-ranging powers on UK Ministers to amend primary legislation by Order, Departments should pay particular attention to how those provisions would interact with the functions of Welsh Ministers and the legislative competence of the National Assembly.

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<sup>2</sup> In this paragraph, "order" includes any type of subordinate legislation.

18} The series of consents described above applies in normal circumstances. It does not apply in relation to emergency legislation or legislation that is otherwise exceptional.

### **Preparation of Bills and Submission to LP**

19} LP Committee expects all devolution issues to have been resolved by the time the Committee considers whether the Bill should be introduced. This means that, if provisions require the agreement of the Welsh Ministers, agreement with the Welsh Ministers has been reached, and that, in instances where the agreement of the National Assembly for Wales is required, that the Welsh Ministers have agreed to promote the relevant motion in the Assembly. Papers for LP must contain a statement to that effect. In addition papers to LP should:

- Briefly state the effect of the Bill in Wales and whether matters are within devolved competence or matters for UK Ministers or the UK Parliament.
- Briefly identify all agreements and consultations that may be required, both with the Welsh Ministers and the National Assembly for Wales, and within the UK Government, and confirm that they have been secured. The Secretary of State for Wales will be asked to confirm this at LP, so it is essential that the Wales Office is fully involved in the process of reaching these agreements.

20} There should, in addition to any earlier policy discussions, also be consultation with the Welsh Assembly Government as part of the process of formulating instructions to Parliamentary Counsel where these touch on the Welsh Ministers' or Assembly's responsibilities, so that their interests are understood from the outset and any dispute resolution process undertaken in good time.

21} An arrangement that has proved effective in the past is for Welsh Assembly Government lawyers to provide a draft of instructions for the lead Whitehall Department and the Wales Office to approve and then pass on to Parliamentary Counsel. In some cases, it may be appropriate for Parliamentary Counsel to take instructions direct from the Welsh Assembly Government lawyers; but this should be done only where it is the most effective way of operating and the lead Whitehall Departments and their Ministers agree to this arrangement. Instructions sent directly to Parliamentary Counsel in this way still require the active assent of the UK Government - instructions going directly from WAG lawyers to Parliamentary Counsel Office must always begin with a statement that they have been cleared with the Wales Office and lead Department, who will seek on each occasion to take a unified HMG view, rather than requiring two separate departmental clearance procedures, but with the proviso that instructions are always copied to those Departments. Each separate instruction will require such a statement, and subsequent rounds of instructions will also need to be authorised, particularly where those revisions change policy, or include new policies. Framework clauses will continue to require Wales Office authorisation and clearance.

22} Where Departments are sponsoring Bills which act as vehicles for Welsh provisions requested by the Welsh Assembly Government, Welsh Assembly Government support will be essential in order to ensure the smooth passage of the Bill, in relation to the Welsh specific provisions. It is recommended that a standard Service Level Agreement be put in place as soon as clearance to include the Welsh provisions in the Bill is obtained. The Wales Office has overall responsibility for the mechanics of the Welsh devolution settlement so can manage this on behalf of sponsor Departments, if they prefer.

23} Consultation with the Welsh Assembly Government can be facilitated if Departments ensure that Bill material accurately distinguishes between the Welsh Ministers and the National Assembly for Wales. Annex 1 to this note lists some of the main aspects of this. While this is not prescriptive, and is no substitute for detailed discussions, it should ensure that such discussions can focus on any substantive sticking points and are not dominated by relatively minor and technical matters.

### **Bills Published for Pre-Legislative Scrutiny and Private Members Bills**

24} The procedures described above should also be followed for Bills being published in draft. The same procedures should be followed for a Private Member's Bill, if the UK Government intends to support it.

### **During the passage of legislation**

25} During the passage of legislation, the Welsh Assembly Government will provide full support to UK Ministers, as required and on request. If the UK Government proposes to amend a Bill or to accept an amendment, similar arrangements will apply if the amendment falls within devolved competence. Departments should approach the Welsh Assembly Government and Wales Office about such amendments. The Welsh Assembly Government can be expected to recognise the exigencies of the legislative timetables, for example when forced to consider accepting amendments at short notice. All amendments require at least LP clearance. Amendments that change policy or contain new policy will also require policy clearance. If the Welsh Assembly Government is unable to agree how to proceed with the Amendment in the time required the UK Government will be obliged to proceed to meet legislative deadlines, and will act accordingly.

26} Provided that the arrangements set out here have been observed, Ministers resisting non-Government amendments which fall within devolved competence, or Welsh specific provisions within Bills, will be defending provisions which have already obtained the consent of the National Assembly for Wales or Welsh Ministers.

## **ANNEX 1**

### **Referring to the National Assembly for Wales and the Welsh Assembly Government in primary legislation**

I. The following checklist aims to cover some largely technical points in referring to the Assembly and Welsh Assembly Government in UK Government Bills. It is neither exhaustive nor prescriptive. However, it should serve as a useful aide-mémoire for Departments and should minimise the need for discussions with Welsh Assembly Government officials to be dominated by relatively minor issues such as these.

#### **Nomenclature**

- II. Parliamentary Counsel will judge the most suitable way of referring to the National Assembly for Wales, or the Welsh Assembly Government, in a Bill, for example by their formal titles, or by a short title such as "the National Assembly", "the Assembly Government". However, the term "Welsh Assembly" is always to be avoided.
- III. The Government of Wales Act 2006 contains a definition of "Wales", which includes the sea around Wales to a distance of 12 nautical miles. Where a Bill confers functions on the Welsh Ministers or confers legislative competence on the Assembly which could be exercised in relation to the sea or to maritime activities, it should thus normally use the definition of Wales in section 158 of the Government of Wales Act 2006.

#### **Functions in a Bill**

- IV. Executive functions should normally be conferred on "the Welsh Ministers", as the collective term for the First Minister and Welsh Ministers (the Cabinet of the Welsh Assembly Government). It is also possible for functions to be conferred exclusively on the First Minister or on the Counsel General, but this will only be in circumstances where there is a particular reason for doing so. They should not be conferred on "the Welsh Assembly Government".
- V. Commencement provisions in a Bill (i.e. the means by which it comes into force) should normally apply on equal terms to England and Wales, and to UK Ministers and the Welsh Ministers. Again, proposed departures from these two presumptions should be discussed at an early stage in the pre-legislative process.
- VI. While it remains possible to confer functions on the Welsh Ministers by means of a Transfer of Functions Order under section 58 of the Government of Wales Act 2006, newly created Ministerial functions should normally be conferred directly on the Welsh Ministers by primary legislation. To do otherwise can increase the amount of Parliamentary time needed (by requiring Parliament to consider the Order as well as the Bill) and potentially misleads as to the UK Government's intentions (since

Parliament will assume the functions are not being conferred on the Welsh Ministers).

### **Statutory procedures**

- VII. The procedures for the Welsh Ministers to make subordinate legislation will be similar to those applying to UK Ministers, with the Assembly in a similar position to Parliament with respect to powers to approve or annul statutory instruments. Bills conferring subordinate legislation powers on the Welsh Ministers will need to be clear whether they are to be subject to affirmative, negative or no procedure in the Assembly. Welsh Assembly Government lawyers can advise as to drafting precedents.
- VIII. A Bill should not normally subject the actions of the Welsh Ministers to UK Ministerial consent or approval (or vice versa), apart from certain functions which require the consent of HM Treasury. Exceptions to this should be explored as early as possible in the pre-legislative process.
- IX. Where there is a requirement for UK Ministers to consult the Welsh Ministers before acting (or vice versa), this should normally be included in legislation rather than in a concordat.

### **New public bodies**

- X. The Welsh Assembly Government should be consulted at the earliest possible stage over any proposals to create new public bodies relating to its functions in Wales, since it may wish to adopt a different solution to suit Welsh circumstances. In such cases, depending on the timescales involved, it may be more appropriate to consider provision to grant the Assembly the legislative competence which would enable the Welsh Ministers to bring forward their own legislative proposals for consideration by the Assembly.

Where the Welsh Ministers will be wholly or partly responsible for public bodies and offices, these should have statutory titles in Welsh and English (e.g. "There is to be a body corporate called [title of body in English] or, in Welsh [title of body in Welsh]"). Welsh Assembly Government officials will be able to advise on a suitable Welsh title.

- XI. A new public office should only disqualify its holder from membership of the Assembly where that would cause an unavoidable conflict of interest with the Assembly's responsibilities. Disqualification from membership of the House of Commons does not always give rise to disqualification from the Assembly. Disqualification should generally be left to an Order in Council under section 12(1)(b) of the Government of Wales Act 1998 (or, for elections after May 2007, under section 16 (1) (b) of the Government of Wales Act 2006).
- XII. New public bodies which fall solely under the Welsh Ministers' control should normally be subject to their general powers to reform public bodies in Wales (Government of Wales Act 1998, section 28 and Schedule 4,)

these powers will remain in force and become powers of the Welsh Ministers by virtue of the transitional provisions in the Government of Wales Act 2006). A Bill should also normally provide for records of such a body to be Welsh public records (Government of Wales Act 2006, sections 146 and 148).

- XIV. Where the Welsh Ministers are to be wholly responsible for a new body, they should have the power to determine the form of that body's accounts, subject to Treasury consent.
- XV. Bills should provide that the Auditor General for Wales ("AGW"), and not the Comptroller and Auditor General, is to be responsible for auditing the accounts of any body which reports solely to the Welsh Ministers or to the National Assembly for Wales.
- XVI. Where the AGW audits a body's accounts, s/he should also have the power to conduct "value for money" examinations into that body.

### **Consultations and Statements of Policy**

- XVII. Much primary legislation for Wales will continue to be included in England and Wales Bills, although it may well contain distinctive Welsh provisions. To avoid misunderstanding on the part of readers, therefore, any consultation document, White Paper, or other statement of policy relating to legislation should make it clear whether the legislation will contain powers for the Assembly to pass its own Measures in relation to Wales.
- XVIII. Wording should be agreed with the Wales Office and Welsh Assembly Government officials on a case by case basis, but the essence of the statement in relation to Wales might be:  
*"we intend to ask Parliament to grant the National Assembly for Wales legislative competence over a number of matters within the field of [eg: local government]. This will allow the Assembly to pass Measures appropriate to the situation in Wales."*
- XIX. In general, the inclusion of a brief statement of this kind will not require that the document be published jointly with either the Welsh Assembly Government or the Wales Office. Whether a Welsh language version is required will be a matter for the lead Whitehall Department to consider in line with the requirements of its own Welsh language Scheme.

### **Contact details**

- XX. If you have any queries, please contact:

- Head of Legislation and Strategic Policy Branch, Wales Office:  
029 20 898048

- Deputy Director of the Wales Office: 029 20 898483

**Ministry of Justice (Last updated – June 2007)**

## **ANNEX 2**

This annex provides a brief explanation of the component parts of the Government of Wales Act 2006, how they interrelate to confer enhanced legislative competence on the National Assembly for Wales, and how it can be exercised.

### **1. Schedule 5**

Schedule 5 of the Government of Wales Act 2006 will define the scope of the Assembly's legislative competence, within areas where the Welsh Ministers exercise executive functions. Schedule 5 categorises the existing areas of policy responsibility devolved to the Welsh Assembly Government into 20 broad areas. These areas, called Fields, include subjects such as Housing, Education & Training and the Welsh Language.

These Fields will be populated with Matters either by Orders in Council made under Part 3 of GOWA 06 or through framework power provisions in UK Bills. (see below) The Matters will define the legislative competence for the Assembly to make legislation, similar to Acts of Parliament. Matters can only be added if they relate to one or more of the Fields.

Part 2 of Schedule 5 sets out some general restrictions on the Assembly's legislative competence while Part 3 of Schedule 5 sets out exceptions to those restrictions. These provisions mean that the Assembly will not be able to modify functions of Ministers of the Crown (ie non-devolved functions) without the consent of the Secretary of State, even if they lie within the scope of a matter over which it has legislative competence. This means that, where there are isolated Minister of the Crown functions within subjects which are generally "devolved", the protection of those functions need not be expressed by a specific reservation.

### **2. Framework powers**

Framework powers are one of two legislative vehicles which insert Matters conferring legislative competence into the Fields in Schedule 5 of the Government of Wales Act. The concept of Framework Powers was set out in the Better Governance for Wales White paper in 2005. Framework Powers were included in two UK Acts prior to the full implementation of GOWA 2006. These were NHS Redress Act 2006 and the Education and Inspections Act 2006. They continue to be a valid way for the Welsh Assembly Government to seek legislative competence when appropriate legislative vehicles are available.

Framework Powers take the form of Wales Only clauses in Government Bills. They give the Assembly "wider and more permissive powers to determine the detail of how the provisions should be implemented in Wales". That detail will be contained in Assembly Measures and any subordinate legislation made under them.



### **3. Orders in Council**

Orders in Council are the second of the legislative vehicles which insert Matters confirming legislative competence into the Fields in Schedule 5 of the Government of Wales Act.

The Welsh Assembly Government will normally seek to agree the terms of the Order in Council with the UK Government at two stages: before pre-legislative scrutiny stage in both the Assembly and in Parliament; and before the final (unamendable) draft Order is laid before Parliament for approval.

Devolution Guidance Note 16 will set cover this process.

### **4. Assembly Measures**

Assembly Measures are a new category of legislation that will be made by the National Assembly without reference to Parliament. Once legislative competence has been transferred to the Assembly for a particular Matter under one of the Fields in Schedule 5, the Welsh Assembly Government will be able to bring draft Measures, which can amend existing Acts and make new provisions, before the National Assembly for Wales. The National Assembly's arrangements for scrutinising and approving Assembly Measures will be a matter for the Assembly itself and are set out in its Standing Orders, subject to minimum requirements set out in the Act.

### **5. Schedule 7**

Schedule 7 will define the primary legislative competence of the National Assembly for Wales in the event of a successful referendum to that effect. If a subject is not listed, it will not be within the Assembly's legislative competence. The Schedule also contains general restrictions and exceptions to those restrictions. In particular, the Assembly will not be able to legislate so as to modify any Minister of the Crown function without the consent of the Secretary of State. This means that, where there are isolated Minister of the Crown functions within subjects which are generally "devolved", the protection of those functions need not be expressed by a specific reservation.

### **6. Assembly Acts**

Following a successful referendum, when Schedule 7 comes into force, the Assembly will be able to pass Assembly Acts on anything within the scope of the legislative competence set out in Schedule 7, subject to the restrictions in that Schedule, and in the Government of Wales Act.

# Eitem 4.1

CLA GP2

## Constitutional and Legislative Affairs Committee

### Inquiry into the Granting of Powers to Welsh Ministers in UK Laws

Response from Dr Paul Cairney

#### Inquiry into the Granting of Powers to Welsh Ministers in UK Laws

Paul Cairney, Senior Lecturer and Head of Department, Politics and International Relations, University of Aberdeen [paul.cairney@abdn.ac.uk](mailto:paul.cairney@abdn.ac.uk)

#### Legislative Consent Motions: A Brief Summary of the Scottish Experience

The Inquiry highlights a key distinction in this field:

1. Between Legislative Consent Motions (LCMs or 'Sewel motions') that allow Westminster to legislate on behalf of the devolved assembly, and LCMs that also delegate powers to devolved government ministers (I tried, in vain, to dub them 'reverse-Sewel motions').

There are two further distinctions worthy of discussion when we compare Wales to Scotland:

2. The LCM process *before* and *after* the Scottish Parliament Procedure Committee's 2005 inquiry.
3. Consideration of an LCM, granting powers to devolved government ministers, *before* and *after* it has been passed.

#### 1. Sewel and Reverse-Sewel motions

The Sewel motion process quickly became rather controversial in Scotland, with many opposition political parties (generally nationalist, beginning with the SNP from 1999-2003, then the Greens and Scottish Socialist part from 2003-7) often opposed in principle to their use and likely to express concern about their overuse. Much was made of the idea (articulated by Lord Sewel when responsible for guiding the Scotland Bill through the Lords) that the 'UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature'. This was taken to mean that the process would not happen much at all, prompting commentators to remark on the fact that almost as many Sewel motions were passed as Acts of the Scottish Parliament (also giving the impression that Scotland was handing back powers to Westminster in some way). This was not a convincing argument, given the innocuous nature of many of the motions and the fact that they often referred to very small parts of larger bills. There were more convincing arguments about 'political cowardice', when controversial issues were referred to Westminster, but these proved to be unusual cases (most notably on issues regarding sexuality, the age of consent and civil partnerships).

From 2007 there was an SNP effect, with the Scottish Government more likely to seek ways to legislate in the Scottish Parliament rather than propose a Sewel motion. However, the change was small and it rarely provoked tensions with the UK Government. The SNP used Sewel motions for the sake of expediency and passed 8.5 per year from 2007-11 compared to 9.5 from 1999-2007. Thus, several opposition MSPs pointed out the irony of the SNP using a procedure it had so often opposed in principle, prompting Communities and Sport Minister Stewart Maxwell

to make a remark which could have been said by any Labour/Liberal Democrat minister from 1999-2007:

*It is suggested that the LCM impacts on the Scottish Parliament's legislative competence or is tantamount to our handing back powers to Westminster. Let me be clear: only through changes to the reservations in the Scotland Act 1998 can powers be handed back to Westminster or the legislative competence of our Parliament altered. Individual motions, such as the one that we are discussing, represent no more than a one-off agreement by the Scottish Parliament for Westminster to legislate on our behalf on a specific aspect of a devolved matter (Scottish Parliament Official Report 19.3.08 c.7106-7).*

The SNP were less likely (in opposition, and perhaps also in government) to be opposed to 'reverse-Sewel' motions, giving powers to Scottish ministers, largely because the 'giving powers back to Westminster argument' was reversed. Notably, few commentators were worried about the lack of parliamentary scrutiny involved, prompting Cairney and Keating (2004) to argue:

On the face of it, these motions may seem attractive to devolutionists, since they devolve more responsibility from Westminster. However, the powers are generally conferred on Scottish ministers rather than the Scottish Parliament. They may therefore increase the use of secondary legislation and further tax the Subordinate Legislation Committee ... This is a particularly significant issue, since the usual rules do not seem to apply. Normally, when legislation is processed through the Scottish Parliament, the Subordinate Legislation Committee presses for any new ministerial powers to regulate or produce statutory instruments to be subject to formal scrutiny (for example to be subject to an affirmative resolution in the Scottish Parliament). However, in the case of Sewel motions the legislation is not considered in the same way and Scottish parliamentary committees do not have the opportunity to amend the legislation. Of course, ministers often stress during Sewel discussion that they will consult before regulating, but informal assurances do not carry the same weight as formal obligations and a democratic deficit may eventually be apparent.

In practice, several aspects of devolved and reserved issues may be covered by one motion, since a piece of UK legislation will often cover devolved ground and then leave the implementation to devolved government ministers. Indeed, we might *expect* this combination of outcomes, based on a desire by executives to allow Westminster to legislate for pragmatic reasons (for expediency or policy uniformity; to close loopholes; to deal with entangled responsibilities; to address UK bodies operating in devolved areas) and to address the (generally misleading) idea that power is being given back to Westminster. Consequently, the practice often satisfies devolution sensibilities perhaps at the expense of parliamentary involvement. This lack of parliamentary involvement, in legislative consent and wider public policy issues, is a general feature in Scottish and UK politics.

## 2. The LCM process before and after the Scottish Parliament Procedure Committee's 2005 inquiry

The Procedures Committee's review did not criticise, or call for an end to, the Sewel process (a key recommendation was to call them 'legislative consent motions'). Rather, it recommended a more systematic consideration of each motion in the relevant committee. Subsequently, the convention arose in which the relevant minister would appear before a committee to explain the need for the LCM. This generally involves one (or more) evidence-gathering session, followed by the (generally unused) opportunity to vote on the motion in committee, followed by the (generally unused) opportunity to debate and vote on the motion in plenary. The

outcomes can be tracked either on the Scottish Government website<sup>1</sup> or the Devolution Monitoring reports<sup>2</sup> which, more often than not, summarise the motion and end with ‘There was no debate or vote in plenary’. This outcome reflects the generally-innocuous nature of the matters under consideration. It reminds us of the argument, often pursued by UK Government ministers, that Sewel motions have been used so regularly because UK departments have been sensitive to the charge that they are legislating without devolved parliament consent – causing a large number of small policy issues to receive disproportionate attention.

### 3. Consideration of an LCM, granting powers to devolved government ministers, before and after it has been passed.

In general, the scrutiny of those motions ends after they have been passed. There is little post-legislative scrutiny of Scottish Parliament or UK legislation. A key exception regards the new Scotland Bill which takes forward recommendations (most of which can be found in the Calman Commission report) to extend devolution in a small number of areas and reform, to some extent, the Scottish Parliament’s control over income tax. In this unusual case, the Scottish Parliament passed a motion giving *conditional* consent. It asked the UK Government to reconsider some issues (regarding, for example, how to address a shortfall in income related to income tax volatility and the limits to Scottish ministerial borrowing) and return an amended Scotland Bill to the Scottish Parliament for further approval via a second Sewel motion (the second motion would have been expected later this year, but the size of the SNP win now complicates that process).

#### The Use of Ministerial Powers

As far as I know there has been no systematic study of the use of these powers by Scottish ministers. Such a study would be difficult because the LCM process merely reinforces a process of delegating powers to ministers that operated long before devolution in 1999 (such as the ‘executive devolution’ granted to Scottish ministers, allowing them to decide if new nuclear power stations can be built in Scotland) and continues when legislation is passed by the Scottish Parliament. Scottish Parliament legislation is often amended at stage 2 or stage 3 to make sure that the powers are only used following a *positive* resolution by the Scottish Parliament, rather than allowable unless there is a *negative* resolution. While this seems significant, it also seems to be part of a game between executive and legislature, in which both benefit from the change (the Scottish Government ‘throws it a bone’ and the Scottish Parliament looks like it has amended the legislation effectively). There is very limited scrutiny of this process, for the following reasons:

1. The Scottish Parliament only has the resources to analyse a very small proportion of subordinate legislation in any great depth or to perform the occasional inquiry incorporating post-legislative scrutiny.
2. Subordinate Legislation Committee membership is rarely cherished or sought by MSPs.
3. It is rare for the Scottish Parliament to assert itself in relation to the Scottish Government, either because the government has a majority (1999-2007, 2011 onwards) or because the parties rarely form a united front during periods of minority government (2007-11) or engage at that level of policy detail.

Overall, this is a process (like most others) dominated by executives, with minimal parliamentary involvement beyond the formal process of consent.

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<sup>1</sup> <http://www.scotland.gov.uk/About/Sewel>

<sup>2</sup> <http://www.ucl.ac.uk/constitution-unit/research/research-archive/archive-projects/devolution-monitoring06-09>

Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



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

**Adroddiad: CLA(4)-06-11 : 3 Hydref 2011**

**Mae adroddiadau'r Pwyllgor i'r Cynulliad fel a ganlyn:**

**Offerynnau nad ydynt yn arwain at faterion i'w codi o dan Reol Sefydlog 21.2 neu 21.3**

**Offerynnau'r penderfyniad negyddol**

**CLA41 - Rheoliadau Addysg (Gwybodaeth am Ddisgyblion Unigol) (Cymru) (Diwygio) 2011**

**Gweithdrefn: Negyddol**

**Fe'u gwnaed: 20 Medi 2011**

**Fe'u gosodwyd: 22 Medi 2011**

**Yn dod i rym ar: 14 Hydref 2011**

**Offerynnau'r penderfyniad cadarnhaol**

**CLA42 - Rheoliadau Amddiffyn rhag Tybaco (Gwerthiannau o Beiriannau Gwerthu) (Cymru) 2011**

**Gweithdrefn: Cadarnhaol**

**Fe'u gwnaed: heb ei nodi**

**Fe'u gosodwyd: heb ei nodi**

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

Penderfynodd y Pwyllgor ysgrifennu at y Gweinidog Addysg a Sgiliau i ofyn pam fod dyddiadau dod i rym gwahanol yng Nghymru a Lloegr.

**Offerynnau sy'n arwain at faterion i'w codi o dan Reol Sefydlog 21.2 neu 21.3**

**Offerynnau'r penderfyniad negyddol**

**CLA38 - Rheoliadau Rhywogaethau Estron a Rhywogaethau sy'n Absennol yn Lleol mewn Dyframaethu (Cymru a Lloegr) 2011 (Saesneg yn unig)**

**Gweithdrefn: Negyddol**

**Fe'u gwnaed: 12 Medi 2011**

**Fe'u gosodwyd gerbron Senedd y DU: 16 Medi 2011**

**Fe'u gosodwyd gerbron Cynulliad Cenedlaethol Cymru: 16 Medi 2011**

**Yn dod i rym ar: 10 Hydref 2011**

Penderfynodd y Pwyllgor ysgrifennu at y Dirprwy Weinidog Amaethyddiaeth, Bwyd, Pysgodfeydd a Rhaglenni Ewropeaidd i ddiolch iddo am gytuno i wneud y canlynol yn y dyfodol:

- darparu fersiwn Gymraeg o offerynnau a gaiff eu gwneud ar y cyd â Senedd y DU; a
- darparu Memoranda Esboniadol ar gyfer offerynnau o'r fath mewn ffordd a fyddai'n cynnwys agwedd Gymreig ac wedi'i gyfeirio at y Pwyllgor Cynulliad perthnasol

Cytunodd y Pwyllgor hefyd i gadarnhau'r canlynol gyda'r Dirprwy Weinidog:

- a oedd ei ymrwymadau'n berthnasol i holl Weinidogion Cymru; ac
- yn achos y rheoliadau hyn, a gafwyd asesiad o effaith y rheoliadau ar Gymru yn unig.

### **Offerynnau'r penderfyniad cadarnhaol**

**CLA39 - Rheoliadau Iechyd Meddwl (Eiriolwyr Iechyd Meddwl Annibynnol) (Cymru) 2011**

**Gweithdrefn:** Cadarnhaol

**Fe'u gwnaed:** 2011

**Fe'u gosodwyd:** heb ei nodi

**Yn dod i rym ar:** yn unol â rheoliad 1(2)

**CLA40 - Rheoliadau Iechyd Meddwl (Asesu Defnyddwyr Blaenorol o Wasanaethau Iechyd Meddwl Eilaidd) (Cymru) 2011**

**Gweithdrefn:** Cadarnhaol

**Fe'u gwnaed:** 2011

**Fe'u gosodwyd:** heb ei nodi

**Yn dod i rym ar:** 6 Mehefin 2012

Cytunodd y Pwyllgor ar y pwyntiau adrodd ar yr offerynnau statudol a ganlyn o dan Reolau Sefydlog 21.2 a 21.3. Ceir copi ohonynt yn Atodiadau 1 i 3.

### **Busnes arall**

**Ymchwiliadau'r Pwyllgor: Ymchwiliad i roi pwerau i Weinidogion Cymru yn Neddfau'r DU**

Clywodd y Pwyllgor dystiolaeth lafar gan David Lambert, Cymrawd Ymchwil; Marie Navarro, Cydymaith Ymchwil; a Manon George, Cynorthwydd Ymchwil, o Ganolfan Llywodraethiant Cymru.

### **Penderfyniad i gwrdd 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 i'r ymchwiliad i roi pwerau i Weinidogion Cymru yn Neddfau'r DU.

### **David Melding AC**

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

**3 Hydref 2011**

## **Atodiad 1**

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

**CLA38**

**Teitl: Rheoliadau Rhywogaethau Estron a Rhywogaethau sy'n Absennol yn Lleol mewn Dyframaethu (Cymru a Lloegr) 2011 (Saesneg yn unig)**

**Gweithdrefn:** Negyddol

Mae'r Rheoliadau hyn yn darparu ar gyfer gweithredu a gorfodi rhoi ar waith Reoliad y Cyngor (EC) Rhif 708/2007, ynghylch defnyddio rhywogaethau estron a rhywogaethau o du allan i'r ardal mewn dyframaethu.

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

O dan Reol Sefydlog 21.2 bydd y Cynulliad yn cael ei wahodd i roi sylw arbennig i'r offeryn a ganlyn:

Cafodd y Rheoliadau hyn eu cynhyrchu yn Saesneg yn unig. Yn ogystal, ni chafwyd unrhyw esboniad dros y rheswm pan na chafodd y Rheoliadau hyn eu cynhyrchu'n ddwyieithog. Ymddengys mai'r rheswm dros hyn yw oherwydd mai Adran yr Amgylchedd, Bwyd a Materion Gwledig a baratodd y memorandwm esboniadol ac fe gaiff ei osod gerbron y Senedd ar Orchymyn Ei Mawrhydi. Gan hynny, ni chafwyd unrhyw ymgais i roi sylw i weithdrefnau ac arferion y Cynulliad yn y Memorandwm.

(Rheol Sefydlog 21.2 (ix) nad yw wedi'i wneud neu i'w wneud yn Gymraeg ac yn Saesneg).

#### **Rhinweddau: craffu**

Ni nodwyd unrhyw bwyntiau i fod yn destun adroddiad o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

#### **David Melding AC**

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

**3 Hydref 2011**

**Mae'r Llywodraeth wedi ymateb fel a ganlyn:**

**Rheoliadau Rhywogaethau Estron a Rhywogaethau sy'n Absennol yn Lleol mewn Dyframaethu (Cymru a Lloegr) 2011 (Saesneg yn unig)**



Mae Rheoliadau Rhywogaethau Estron a Rhywogaethau sy'n Absennol yn Lleol mewn Dyframaethu (Cymru a Lloegr) 2011 yn Rheoliadau cyfansawdd a fydd yn gymwys i Gymru a Lloegr, byddant yn ddarostyngedig i'r weithdrefn penderfyniad negyddol yng Nghynulliad Cenedlaethol Cymru ac yn Senedd y Deyrnas Unedig fel ei gilydd. Yn unol â hynny, nid ystyrir ei bod yn rhesymol ymarferol i'r offeryn hwn gael ei wneud yn ddwyieithog na'i osod felly. Yn y dyfodol, mae'n ddymuniad gennym bod cyfieithiad cwrteisi i'r Gymraeg o offerynnau cyfansawdd fel hyn yn cael ei ddarparu gan Lywodraeth Cymru, ar ôl i'r offeryn priodol gael ei wneud, gan gydbwysu'r dymuniad hwnnw gyda'r defnydd mwyaf effeithlon o adnoddau er mwyn cyflawni amcanion polisi Llywodraeth Cymru.

Mae'r Memorandwm Esboniadol sydd wedi ei osod mewn cysylltiad â'r Rheoliadau hyn yn y fformad a fabwysiadwyd cyn y newidiadau diweddar i Reolau Sefydlog sy'n galluogi'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ystyried eitemau sydd hefyd yn ddarostyngedig i weithdrefnau Senedd y Deyrnas Unedig. O dan y Rheolau Sefydlog blaenorol, byddai Gweinidogion Cymru'n gosod Memorandwm Esboniadol o'r fath o'u gwirfodd i gynorthwyo'r aelodau wrth ystyried yr is-ddeddfwriaeth dan sylw. Yr ydym yn derbyn nad yw'r fformad hwn yn briodol bellach a sicrhawn fod staff yn ymwybodol o a) naill ai bod rhan Llywodraeth Cymru yn y gwaith o gynhyrchu'r Memorandwm Esboniadol yn cael ei gwneud yn eglur neu fod Memorandwm Esboniadol ar wahân yn cael ei gynhyrchu o ran Cymru i offerynnau cyfansawdd fel hyn; a b) yn y dyfodol dylai Memoranda Esboniadol gael eu cyfeirio at y Pwyllgor Cynulliad Perthnasol.

## **Atodiad 2**

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

#### **CLA39**

#### **Teitl: Rheoliadau Iechyd Meddwl (Eiriolwyr Iechyd Meddwl Annibynnol) (Cymru) 2011**

**Gweithdrefn:** Cadarnhaol

Mae'r Rheoliadau hyn yn gwneud darpariaeth ynghylch y trefniadau ar gyfer penodi Eiriolwyr Iechyd Meddwl Annibynnol ("EIMAAu") gan gynnwys darpariaeth ynghylch pwy a all gael ei benodi'n EIMA a phersonau y caniateir i EIMA ymweld a chyfweld â nhw er mwyn rhoi cymorth i glaf cymwys Cymreig dan orfodaeth neu i glaf anffurfiol cymwys Cymreig.

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

O dan Reol Sefydlog 21.2, ni nodir unrhyw bwyntiau i gyflwyno adroddiad arnynt mewn cysylltiad â'r offeryn drafft hwn:

#### **Rhinweddau: craffu**

O dan Reol Sefydlog 21.3 (ii) (materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad) gwahoddir y Cynulliad i roi sylw arbennig i'r offeryn a ganlyn.

Mae'r Rheoliadau hyn yn rhan o gyfres o reoliadau sy'n cael eu gwneud gan Weinidogion Cymru o dan bwerau sydd wedi'u rhoi iddynt gan ddarpariaethau ym Mesur Iechyd Meddwl (Cymru) 2010 ("y Mesur") neu o dan ddarpariaethau Deddf Iechyd Meddwl 1983 ("y Ddeddf") fel y'i diwygiwyd gan y Mesur ac sydd wedi'u bwriadu i ddatblygu a gwella gwasanaethau iechyd meddwl yng Nghymru.

Mae'r Rheoliadau hyn yn disodli ac yn dirymu Rheoliadau Iechyd Meddwl (Eiriolwyr Annibynnol Iechyd Meddwl) (Cymru) 2008 ac maent yn cael eu gwneud o dan Ddeddf 1983 yn sgil diwygio'r Ddeddf honno gan Fesur 2010.

Mae'r diwygiadau i'r Ddeddf yn darparu ar gyfer cynllun statudol estynedig o eiriolaeth iechyd meddwl i Gymru yn unig, a hwnnw ar gyfer cleifion sydd o dan orfodaeth o dan y Ddeddf a'r rhai sydd mewn ysbyty neu sefydliad cofrestredig ar sail anffurfiol (hynny yw heb orfodaeth).

O dan y weithdrefn gadarnhaol y mae'r Rheoliadau hyn yn cael eu gwneud ac felly fe gân nhw eu trafod gan y Cynulliad mewn Cyfarfod Llawn.

**David Melding AC**

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

**3 Hydref 2011**

## **Atodiad 3**

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

#### **CLA40**

#### **Teitl: Rheoliadau Iechyd Meddwl (Asesu Defnyddwyr Blaenorol o Wasanaethau Iechyd Meddwl Eilaidd) (Cymru) 2011**

**Gweithdrefn:** Cadarnhaol

Mae'r Rheoliadau hyn yn gwneud darpariaeth ynghylch asesiadau iechyd meddwl i ddefnyddwyr blaenorol gwasanaethau iechyd meddwl eilaidd.

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

O dan Reol Sefydlog 21.2, ni nodir unrhyw bwyntiau i gyflwyno adroddiad arnynt mewn cysylltiad â'r offeryn drafft hwn.

#### **Rhinweddau: craffu**

O dan Reol Sefydlog 21.3 (ii) (materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad) gwahoddir y Cynulliad i roi sylw arbennig i'r offeryn a ganlyn.

Mae'r Rheoliadau hyn yn rhan o gyfres o reoliadau sy'n cael eu gwneud gan Weinidogion Cymru o dan bwerau sydd wedi'u rhoi iddynt gan ddarpariaethau ym Mesur Iechyd Meddwl (Cymru) 2010 ("y Mesur") neu o dan ddarpariaethau Deddf Iechyd Meddwl 1983 fel y'i diwygiwyd gan y Mesur ac sydd wedi'u bwriadu i ddatblygu a gwella gwasanaethau iechyd meddwl yng Nghymru.

O dan Ran 3 o'r Mesur, mae cleifion sydd wedi'u rhyddhau o wasanaethau iechyd meddwl eilaidd ond sydd wedyn yn credu bod eu hiechyd meddwl yn dirywio nes cyrraedd pwynt lle mae angen ymyrraeth arbenigol eto yn cael cyfeirio'u hunain o fewn cyfnod o dair blynedd ar ôl cael eu rhyddhau ("y cyfnod rhyddhau") yn ôl at y gwasanaethau eilaidd.

Y rhai sy'n gymwys yw personau dros 18 oed sydd wedi cael gwasanaethau eilaidd o'r blaen. Er hynny, bydd unigolion sydd wedi cael gwasanaethau eilaidd ac sydd wedi'u rhyddhau ohonyn nhw tra oedden nhw o dan 18 oed hefyd yn gymwys os ydyn nhw'n cyrraedd eu 18 oed yn ystod y cyfnod rhyddhau.

Mae'r darpariaethau yn rhan 3 o'r Mesur yn cyflwyno cyfundrefn sy'n unigryw i Gymru.

O dan y weithdrefn gadarnhaol y mae'r Rheoliadau hyn yn cael eu gwneud ac felly fe gân nhw eu trafod gan y Cynulliad mewn Cyfarfod Llawn.

**David Melding AC**

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

**3 Hydref 2011**