

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Lleoliad:
Ystafell Bwyllgora 1 – Y Senedd

Dyddiad:
Dydd Llun, 5 Rhagfyr 2011

Amser:
14:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



I gael rhagor o wybodaeth, cysylltwch a:

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Agenda

1. Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau
2. Offerynnau nad ydynt yn cynnwys unrhyw faterion i'w codi o dan Reolau Sefydlog 21.2 a 21.3.

Offerynnau'r weithdrefn penderfyniad negyddol

CLA63 – Gorchymyn Daliadau Amaethyddol (Unedau Cynhyrchu) (Cymru) 2011
Y weithdrefn negyddol. Fe'i gwnaed ar 22 Tachwedd 2011. Fe'i gosodwyd ar 24 Tachwedd 2011. Yn dod i rym ar 21 Rhagfyr 2011.

Offerynnau'r weithdrefn penderfyniad cadarnhaol

Dim

Offerynnau heb weithdrefn

CLA62 – Gorchymyn Diogelu Bwyd (Gwaharddiadau Brys) (Ymbelydredd mewn Defaid) (Cymru) (Dirymu'n Rhannol) 2011
Dim gweithdrefn. Fe'i gwnaed ar 16 Tachwedd 2011. Fe'i gosodwyd ar 18 Tachwedd

2011. Yn dod i rym ar 9 Rhagfyr 2011.

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

Offerynnau'r weithdrefn penderfyniad negyddol

Dim

Offerynnau'r weithdrefn penderfyniad cadarnhaol

CLA61 – Rheoliadau Gemau Olympaidd a Gemau Paralympaidd Llundain (Hysbysebu a Masnachu) (Cymru) 2012 (Tudalennau 1 – 55)

Y weithdrefn gadarnhaol. Ni nodwyd y dyddiad y'u gwnaed. Ni nodwyd y dyddiad y'u gosodwyd. Yn dod i rym yn unol â Rheoliad 1(2).

4. Y Mesur Seneddol ynghylch Diogelu Rhyddidau (Cynnig Cydsyniad Deddfwriaethol) (Tudalennau 56 – 66)

Papurau: CLA(4)-14-11(p1) – Nodyn briffio gan y Gwasanaeth Cyfreithiol ar y Mesur Seneddol ynghylch Diogelu Rhyddidau (Memorandwm Cydsyniad Deddfwriaethol)

5. Gohebiaeth y Pwyllgor

CLA31 – Gorchymyn y Cwricwlwm Cenedlaethol (Trefniadau Asesu wrth Dderbyn i'r Cyfnod Sylfaen) (Cymru) 2011 a CLA32 – Gorchymyn y Cwricwlwm Cenedlaethol (Trefniadau Asesu Diwedd y Cyfnod Sylfaen a Dirymu Trefniadau Asesu'r Cyfnod Allweddol Cyntaf) (Cymru) 2011 (Tudalennau 67 – 75)

CLA(4)-08-11(p3) – Llythyr gan y Cadeirydd i'r Gweinidog dyddiedig 27 Medi 2011

CLA(4)-08-11(p4) – Ymateb y Gweinidog dyddiedig 4 Hydref 2011(Saesneg yn unig)

CLA(4)-10-11(p3) – Llythyr gan y Cadeirydd i'r Gweinidog dyddiedig 19 Hydref 2011(Saesneg yn unig)

CLA(4)-10-11(p4) – Ymateb y Gweinidog dyddiedig 31 Hydref 2011(Saesneg yn unig)

CLA(4)-14-11(p2) – Llythyr gan y Cadeirydd dyddiedig 14 Tachwedd 2011 (Saesneg yn unig)

CLA(4)-14-11(p3) – Ymateb y Gweinidog dyddiedig 29 Tachwedd 2011(Saesneg yn unig)

6. Dyddiad y cyfarfod nesaf (Tudalennau 76 – 86)

Papurau i'w nodi:

CLA(4)-13-11- Adroddiad ar y cyfarfod a gynhaliwyd ar 28 Tachwedd 2011
CLA(4)-14-11(p4) - Tystiolaeth ychwanegol gan Gyngor Ffoaduriaid Cymru
(Saesneg yn unig)

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

Caiff pwyllgor 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.

8. Trafod y dystiolaeth a gyflwynwyd i'r ymchwiliad hyd yma a'r materion sy'n dod i'r amlwg (Tudalennau 87 - 91)

Papurau:

CLA(4)-14-11(p5) - Ymchwiliad i roi pwerau i Weinidogion Cymru yn Neddfau'r DU - y materion sy'n dod i'r amlwg ac amlinelliad o'r argymhellion

Trawsgrifiad

View the [meeting transcript](#).

Eitem 3.1

CLA(4)-14-11

CLA61

Adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Teitl: Rheoliadau Gemau Olympaidd a Gemau Paralympaidd Llundain (Hysbysebu a Masnachu) (Cymru) 2012
Gweithdrefn: Cadarnhaol

Mae'r Rheoliadau drafft hyn, a wnaed o dan adrannau 19, 20, 22(8), 25, 26 a 28(6) o Ddeddf Gemau Olympaidd a Gemau Paralympaidd Llundain 2006, yn rheoli gweithgaredd hysbysebu a masnachu o amgylch yr unig ganolfan ddigwyddiadau Olympaidd yng Nghymru, sef Stadiwm y Mileniwm, Caerdydd, yn ystod y cyfnodau pan fydd digwyddiadau Olympaidd yn cael eu cynnal yn y stadiwm. Bwriedir iddynt ategu Contract y Ddinas Groesawu y cytunodd llywodraethau Cymru a'r Deyrnas Unedig ei gweithredu drwy rwystro marchnata rhagod. Mae'r Rheoliadau'n galluogi Awdurdod Gweithredu'r Gemau Olympaidd ("yr Awdurdod") a Phwyllgor Trefnu Llundain ("y Pwyllgor") i benderfynu pa weithgaredd masnachu a gaiff ei gynnal a pha hysbysebion a gaiff eu harddangos mewn 'parth digwyddiadau' penodol o amgylch Stadiwm y Mileniwm, er bod y Rheoliadau'n cynnwys eithriadau er mwyn galluogi busnesau i barhau i hysbysebu a masnachu heb amharu'n ormodol arnynt.

Materion technegol: craffu

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

Rhinweddau: craffu

Nodwyd y pwyntiau a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3(ii) mewn perthynas â'r offeryn drafft hwn - ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad.

Cefndir

Dyma'r tro cyntaf i'r pwerau yn Neddf Gemau Olympaidd a Gemau Paralympaidd Llundain 2006 ar gyfer rheoleiddio gweithgareddau hysbysebu a masnachu yn yr ardal ger digwyddiadau'r gemau Olympaidd gael eu harfer yng Nghymru. Mae Rheoliadau tebyg yn cael eu gwneud yn Lloegr a'r Alban.

Cynhaliwyd ymgynghoriad ar y cyd â Lloegr a'r Alban rhwng 7 Mawrth a 30 Mai 2011.

Cafwyd cyfanswm o 50 o ymatebion ac nid oedd yr un ohonynt yn berthnasol i Gymru yn uniongyrchol.

Materion a nodwyd gan Lywodraeth Cymru sydd o ddiddordeb arbennig i'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Dim

Materion eraill

Dygwyd nifer o faterion eraill i sylw'r Pwyllgor mewn tystiolaeth ysgrifenedig.

Y diffiniad eang o 'Marchnata Rhagod'

Caiff "hysbyseb" ac "ymgyrch marchnata rhagod" eu diffinio yn Rheoliad 5(1).

Ystyr hysbyseb yw unrhyw air, llythyren, delwedd (gan gynnwys logos ac unrhyw ddulliau eraill o frandio), marc, sain, golau, model, arwydd, hysbyslen, bwrdd, hysbysiad, sgrîn, cysgodlen, bleind, baner, dyfais, trwsiad neu ddarluniad, p'un a yw'n oleuedig ai peidio, sydd o ran ei natur yn hyrwyddo, yn hysbysebu, yn cyhoeddi neu'n cyfarwyddo ac yn cael ei ddefnyddio neu ei defnyddio'n gyfan gwbl neu'n rhannol er mwyn gwneud hynny.

Mae'r Rheoliadau'n diffinio ymgyrch marchnata rhagod (p'un a yw'n un weithred neu'n gyfres o weithredoedd) fel ymgyrch sydd wedi'i bwriadu'n benodol i hyrwyddo, hysbysebu, cyhoeddi neu gyfarwyddo nwyddau neu wasanaethau, neu berson sy'n darparu nwyddau neu wasanaethau o fewn parth digwyddiadau yn ystod cyfnod digwyddiad.

Mae'r Memorandwm Esboniadol yn nodi bod y Rheoliadau'n angenrheidiol er mwyn rhoi contract y ddinas groesawu, sy'n ei gwneud yn ofynnol bod yn rhaid mynd i'r afael â marchnata rhagod, ar waith.

Mae'r Rheoliadau'n darparu y bydd yn rhaid i berson sydd am ymgymryd â gweithgareddau hysbysebu o fewn y parth digwyddiadau yn ystod cyfnod y digwyddiad, yn amodol ar rai eithriadau, gael caniatâd penodol gan Bwyllgor Trefnu Llundain y Gemau Olympaidd a Pharalympaidd ("y Pwyllgor Trefnu") o flaen llaw. Bydd y broses awdurdodi'n sicrhau mai dim ond hysbysebion a fydd yn gyson â nodau'r Rheoliadau a ganiateir. Mae'r Rheoliadau'n darparu nifer o eithriadau i alluogi busnesau i barhau i weithredu yn ôl yr arfer o'u heiddo heb ddefnyddio hysbysebion a fydd yn mynd yn groes i nodau'r

Rheoliadau. Mae eithriadau eraill hefyd i amryw o ddulliau penodol o hysbysebu nad ydynt yn mynd yn groes i nodau'r Rheoliadau.

Ar gyfer grwpiau, ac eithrio partneriaid a deiliaid trwyddedau noddwyr answyddogol, bydd y Pwyllgor Trefnu yn cynnal proses ymgeisio gyhoeddus a fydd am ddim.

Y farn gyffredinol yw, cyhyd â nad ydych yn ceisio camarwain y cyhoedd i feddwl bod cysylltiad rhwng eich busnes chi â gemau 2012 a'u noddwyr, a'ch bod yn cydymffurfio â Rheoliadau 2011, ni ddylech gael eich erlyn.

Cosbau

Bydd unrhyw achos o hysbysebu neu fasnachu heb drwydded ddilys yn mynd yn groes i'r Rheoliadau a bydd yn drosedd o dan adran 22 o Ddeddf Gemau Olympaidd a Gemau Paralympaidd Llundain 2006, a bydd cosb ar ffurf dirwy o hyd at £20,000. Y Ddeddf yn hytrach na'r Rheoliadau hyn sy'n darparu ar gyfer y drosedd hon.

Canllawiau

Mae Awdurdod Gweithredu'r Gemau Olympaidd wedi cyhoeddi canllawiau'n ddiweddar ar hysbysebu a masnachu yn ystod y gemau, a gellir dod o hyd iddynt [yma](#)¹.

Gwrthdroi'r baich

Mae'r Rheoliadau'n darparu y bydd person sydd â budd mewn busnes, nwyddau neu wasanaethau, neu sy'n gyfrifol amdanynt, yn atebol os bydd y busnes yn mynd yn groes i'r Rheoliadau, neu os yw'r tramgwydd yn ymwneud â nwyddau neu wasnaethau. Yn yr un modd, bydd person sy'n berchen ar dir neu sy'n ei ddefnyddio yn gyfrifol am unrhyw dramgwydd a gyflawnir ar y tir hwnnw.

Yn y ddau achos, gall person osgoi atebolrwydd am y tramgwedd os gall profi bod y tramgwydd wedi digwydd heb yn wybod iddo neu er gwaetha'r ffaith ei fod wedi cymryd pob cam posibl i atal y tramgwydd rhag digwydd, rhag parhau i ddigwydd neu rhag digwydd eto.

Gan hynny, mae'r Rheoliadau'n gwrthdroi'r baich profi mewn achosion o dramgwydd troseddol.

Yn yr asesiad hawliau dynol sydd yn Atodiad B i'r Memorandwm Esboniadol, mae Llywodraeth y DU yn derbyn y gellid dadlau bod y Rheoliadau'n amharu ar yr hawl i dybio bod person yn ddieuog fel y

¹ <http://www.london2012.com/documents/oda-publications/detailed-provisions-of-the-advertising-and-trading-regulations.pdf>

cadarnheir yn Erthygl 6(2) o Siarter Hawliau Dynol Ewrop. Rhoddir y cyfiawnhâd a ganlyn dros hynny.

An interference with the right to be presumed innocent will be justified where it is confined “within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence.” Putting this another way, an interference will be justified where it furthers a legitimate aim and is reasonably proportionate to that aim.

In paragraph 12 above, we have set out the three general objectives of the Regulations. The reverse onus provision is intended to contribute to the achievement of those objectives. In addition, it is specifically intended to ensure that people who are responsible for businesses that contravene the Regulations, or goods or services in relation to which a contravention occurs, or land on which a contravention takes place, are held accountable for the contravention or, at least, take reasonable steps to prevent a contravention occurring.

The reversal of onus is reasonably proportionate to those objectives. The onus (to prove a lack of knowledge or reasonable preventative steps) will only transfer to an accused once the prosecution has proven that a contravention of the regulations has occurred (that is, that there has been advertising or trading activity in contravention of the regulations). The prosecution would also have to prove that the contravention was undertaken by a business for which the defendant was responsible, or that it related to a good or service for which the person was responsible, or that it occurred on land which the person owned or occupied. Accordingly, the prosecution will be required to make out the main elements of an offence before the onus shifts to the defendant.

In addition, once the onus is reversed, the matters that a person is required to prove in order to benefit from the defence are peculiarly within the knowledge of the person – that they did not know about the trading or advertising or that they took reasonable steps to prevent the trading or advertising from occurring. The burden on the accused person would, accordingly, not be difficult for a person to discharge if they have no knowledge of the advertising or trading at issue or have taken steps to prevent

Nododd y Cydbwyllgor Hawliau Dynol yn ei bymthegfed adroddiad ar Fil Senedd y DU ynghylch Gemau Olympaidd a Gemau Paralympaidd Llundain:-

*"We accept that, in light of the guidance recently given by the House of Lords on assessing the compatibility of reverse onus provisions (Sheldrake -v- DPP), this clause is compatible with the presumption of innocence in Article 6 (2) ECHR because the matters in relation to which the defendant bears a legal burden of proof (knowledge of, or efforts made to prevent, and advertisement) are not arbitrary, but matters within his particular knowledge, and do not go beyond what is reasonable for the defendant to establish."*²

Cyrff elusennol / di-elw

Mae Rheoliad 7 yn cynnwys eithriad i'r cyfyngiadau hysbysebu mewn perthynas â chyrff di-elw sy'n cyfrannu at weithgareddau y mae bwriad iddynt gyfleu cefnogaeth neu wrthwynebiad i ddaliadau neu weithredoedd unrhyw berson neu gorff o bersonau, roi cyhoeddusrwydd i gred, achos neu ymgyrch, neu gofnodi neu goffáu digwyddiad.

Diffinnir "corff di-elw" yn Rheoliad 5 fel corff y mae'n ofynnol iddo ddefnyddio'i incwm at ddibenion elusennol neu gyhoeddus, ac sydd wedi'i wahardd rhag dosbarthu ei asedau ymhlith ei aelodau (ac eithrio at ddibenion elusennol neu gyhoeddus).

Traddodi nwyddau

Roedd y Rheoliadau drafft yr ymgynghorwyd arnynt ym mis Mawrth 2011 yn darparu eithriadau cyfyngedig ar draddodi nwyddau, ond mae'r Rheoliadau presennol yn darparu eithriad i'r cyfyngiadau ar fasnachu yn Rheoliad 14(1)(c) o ran "*gwerthu neu draddodi eitem i berson mewn mangre sy'n cyffinio â phriffordd*". Er enghraifft, byddai hynny'n caniatáu i unigolion sy'n traddodi pitsas neu gatalogau ymgymryd â gweithgaredd o'r fath ym mharth y digwyddiad heb fynd yn groes i'r Rheoliadau.

Cymesuredd

Mae Llywodraeth Cymru yn nodi yn y Memorandwm Esboniadol bod y Rheoliadau'n cynnwys cyfaddawd rhwng ceisio cyflawnio nodau cyffredinol y Rheoliadau, sef:-

² Pymthegfed adroddiad y Cydbwyllgor Hawliau Dynol – 20 Mawrth 2006

- Sicrhau bod delwedd gyson gan y gemau ledled Llundain a'r Deyrnas Unedig;
- Sicrhau nad oes marchnata rhagod yn digwydd yn agos at leoliadau'r digwyddiadau; a
- Sicrhau y gall gwylwyr a'r rhai sy'n cymryd rhan yn y gemau gyrraedd a gadael lleoliadau'n rhwydd ac yn ddiogel,

a cheisio galluogi sefydliadau sydd wedi'u lleoli o fewn parth y digwyddiadau i 'barhau yn ôl yr arfer' tra'n cadw'r un lefel o reolaeth a gweinyddiaethau eraill.

Mae'r cyfyngiadau mewn grym am gyfanswm o 13 niwrnod, ac nid ydynt yn ymestyn ymhellach na 500 metr o fynedfa lleoliad pan fydd hyn ar hyd prif lwybr mynediad, ac maent yn llawer llai na hyn mewn mannau eraill.

Noda y Memorandwm Esboniadol hefyd:-

"If the regulations are not made it will mean the Host City Contract cannot be fulfilled in Wales and there is a risk that the football matches would be moved to an alternative stadium in England".

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

Tachwedd 2011

Rheoliadau drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru ar 18 Tachwedd 2011 o dan adrannau 20(2) a 26(2) o Ddeddf Gemau Olympaidd a Gemau Paralympaidd Llundain 2006, i'w cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

OFFERYNNAU STATUDOL
CYMRU DRAFFT

2012 Rhif (Cy.)

**Y GEMAU OLYMPAIDD A'R
GEMAU PARALYMPAIDD,
CYMRU**

**Rheoliadau Gemau Olympaidd a
Gemau Paralympaidd Llundain
(Hysbysebu a Masnachu) (Cymru)
2012**

NODYN ESBONIADOL

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

Mae'r Rheoliadau hyn yn rheoli gweithgaredd hysbysebu a gweithgaredd masnachu yn Stadiwm y Mileniwm, Caerdydd, ac o'i amgylch (y "parth digwyddiadau") yn ystod y cyfnodau pan fydd digwyddiadau Gemau Olympaidd a Gemau Paralympaidd Llundain 2012 yn cael eu cynnal ("cyfnod digwyddiad").

Mae'r Rheoliadau wedi eu gwneud o dan adrannau 19, 20(1), 22(8), 25, 26(1) a 28(6) o Ddeddf Gemau Olympaidd a Gemau Paralympaidd Llundain 2006 ("y Ddeddf"). Mae adran 21(1) o'r Ddeddf yn ei gwneud yn dramgwydd torri rheoliadau hysbysebu sydd wedi eu gwneud o dan adran 19 o'r Ddeddf honno, ac mae adran 27 o'r Ddeddf yn darparu ei bod yn dramgwydd torri rheoliadau masnachu sydd wedi eu gwneud o dan adran 25 o'r Ddeddf honno.

Darpariaethau cyffredinol sydd yn Rhan 1 o'r Rheoliadau.

Mae un parth digwyddiadau yng Nghymru, sef parth Stadiwm y Mileniwm, a ddiffinnir yn rheoliad 3 drwy gyfeirio at y map sydd ar gael i'w archwilio yn

swyddfeydd Llywodraeth Cymru a Chyngor Caerdydd. Mae rheoliad 3 hefyd yn diffinio cyfnod digwyddiad.

Mae Rhan 2 o'r Rheoliadau yn cynnwys darpariaethau manwl sy'n ymwneud â gweithgaredd hysbysebu yn y parth digwyddiadau yn ystod cyfnod digwyddiad.

Mae rheoliad 5(1) yn diffinio "gweithgaredd hysbysebu" i olygu arddangos hysbyseb neu ddosbarthu neu ddarparu deunydd hyrwyddo. Mae "hysbyseb", "arddangos hysbyseb" a "deunydd hyrwyddo" wedi eu diffinio yn yr un rheoliad. Mae darpariaeth benodol wedi ei gwneud yn rheoliad 5(3) ar gyfer hysbysebion sy'n cael eu harddangos ar ffonau symudol a dyfeisiau tebyg eraill.

Mae rheoliad 6 yn darparu ar gyfer gwaharddiad ar hysbysebu ac yn pennu pobl sydd i'w trin fel rhai sy'n bodloni'r meini prawf ar gyfer ymhel â gweithgaredd hysbysebu.

O dan adran 21(2) o'r Ddeddf, mae'n amddiffyniad i berson a gyhuddir o dramgwydd o dan adran 21(1) o'r Ddeddf os yw'n profi bod y toriad wedi digwydd heb iddo wybod hynny neu er gwaethaf y ffaith ei fod wedi cymryd pob cam rhesymol i'w atal rhag digwydd neu (pan ddaeth yn ymwybodol ohono ar ôl iddo gychwyn) rhag parhau.

Yn ychwanegol at yr amddiffyniad hwn, mae rheoliadau 7 i 10 yn pennu eithriadau i'r gwaharddiad ar hysbysebu.

Mae'r eithriadau yn rheoliad 9 wedi eu gwneud ar lun darpariaethau yn Rheoliadau Cynllunio Gwlad a Thref (Rheoli Hysbysebion) 1992 ("Rheoliadau 1992").

Yn ogystal â'r eithriadau a bennir yn rheoliadau 7 i 10, mae rheoliad 11 yn darparu na fydd y gwaharddiad ar hysbysebu'n gymwys i weithgaredd hysbysebu yr ymgymerir â hwy neu a reolir gan y "London Organising Committee of the Olympic Games and Paralympic Games Limited" ("LOCOG"), neu berson a awdurdodir gan LOCOG.

Mae hawl LOCOG i ymhel â gweithgaredd hysbysebu ac unrhyw awdurdodiad a roddir ganddo yn ddarostyngedig i'r amodau a bennir yn rheoliad 11(4), gan gynnwys bod yr hysbysebwr yn dal trwydded y mae'n ofynnol ei chael, yn ychwanegol at awdurdodiad o dan reoliad 11, cyn y caiff y person hwnnw ymhel â gweithgaredd hysbysebu (p'un ai mewn man penodol neu'n gyffredinol).

Mae Rhan 3 o'r Rheoliadau yn cynnwys darpariaethau manwl sy'n ymwneud â gweithgaredd masnachu yn y parth digwyddiadau yn ystod cyfnod digwyddiad.

Mae rheoliad 12 yn diffinio “gweithgaredd masnachu” i olygu cyflawni un neu fwy o'r gweithgareddau a bennir yn y rheoliad hwnnw mewn man cyhoeddus agored.

Mae rheoliad 13 yn darparu ar gyfer gwaharddiad ar fasnachu ac yn pennu pobl sydd i'w trin fel rhai sy'n bodloni'r meini prawf ar gyfer ymhel â gweithgaredd masnachu.

Mae rheoliad 14 yn pennu eithriadau i'r gwaharddiad ar hysbysebu.

Yn ychwanegol at yr eithriadau a bennir yn rheoliad 14, mae rheoliad 15 yn darparu na fydd y gwaharddiad ar fasnachu yn gymwys i weithgaredd masnachu yr ymgwymerir ag ef yn unol ag awdurdodiad a roddwyd gan Awdurdod Gweithredu'r Gemau Olympaidd (“ODA”) neu berson y mae swyddogaeth rhoi awdurdodiadau wedi ei dirprwyo iddo gan ODA.

Mae Rhan 4 o'r Rheoliadau yn gwneud darpariaeth i berson sydd wedi gwneud cais am awdurdodiad ac sy'n anfonlon ar benderfyniad yr awdurdodwr, ofyn i ODA adolygu'r penderfyniad hwnnw.

Mae Rhan 5 yn darparu ar gyfer iawndal i berson y mae ei eiddo wedi ei ddifrodi yn ystod arfer neu arfer honedig o bŵer gorfodi o dan adran 22 neu 28 o Ddeddf 2006.

Rheoliadau drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru ar 18 Tachwedd 2011 o dan adrannau 20(2) a 26(2) o Ddeddf Gemau Olympaidd a Gemau Paralympaidd Llundain 2006, i'w cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

OFFERYNNAU STATUDOL
CYMRU DRAFFT

2012 Rhif (Cy.)

Y GEMAU OLYMPAIDD A'R GEMAU PARALYMPAIDD, CYMRU

Rheoliadau Gemau Olympaidd a Gemau Paralympaidd Llundain (Hysbysebu a Masnachu) (Cymru) 2012

Gwnaed

Yn dod i rym yn unol â rheoliad 1(2)

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddwyd gan adrannau 19, 20(1), 22(8), 25, 26(1) a 28(6) o Ddeddf Gemau Olympaidd a Gemau Paralympaidd Llundain 2006(1) ac a freiniwyd bellach ynddynt hwy(2), yn gwneud y Rheoliadau a ganlyn.

Mae Gweinidogion Cymru wedi ymgynghori yn unol â'r gofynion a nodir yn adrannau 20(3) a 26(3) ac wedi rhoi sylw i'r materion y cyfeirir atynt yn adrannau 19(2) a 25(2) o'r Ddeddf honno.

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- (1) 2006 p.12. Cafodd adrannau 19, 20, 25 a 26 eu diwygio gan baragraff 6 o'r Atodlen i O.S. 2007/2129 a pharagraff 8 o'r Atodlen i O.S. 2010/1551.
- (2) Mae adran 41(4) o Ddeddf Gemau Olympaidd a Gemau Paralympaidd Llundain 2006 yn darparu y bydd adrannau 19 i 30, wrth eu cymhwyso i bethau a wneir yng Nghymru, yn cael effaith fel petai cyfeiriad at yr Ysgrifennydd Gwladol yn gyfeiriad at Gynulliad Cenedlaethol Cymru. Trosglwyddwyd swyddogaethau Cynulliad Cenedlaethol Cymru i Weinidogion Cymru yn rhinwedd adran 162 o Ddeddf Llywodraeth Cymru 2006 (p.32) a pharagraffau 30(1) a 30(2)(c) o Atodlen 11 iddi.

Gosodwyd drafft o'r Rheoliadau hyn gerbron Cynulliad Cenedlaethol Cymru a'i gymeradwyo ganddo drwy benderfyniad yn unol ag adrannau 20(2) a 26(2) o'r Ddeddf honno(1).

RHAN 1

Cyflwyniad

Enwi, cychwyn, dirwyn i ben a chymhwyso

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Gemau Olympaidd a Gemau Paralympaidd Llundain (Hysbysebu a Masnachu) (Cymru) 2012.

(2) Deuant i rym drannoeth y diwrnod y'u gwneir.

(3) Mae eu heffaith yn peidio ar ddiwedd 14 Awst 2012.

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

Cymhwyso i'r Goron

2.—(1) Mae'r darpariaethau canlynol yn rhwymo'r Goron—

(a) rheoliadau 5 i 11, a

(b) rheoliadau 3, 4, 16 a 17 i'r graddau y maent yn ymwneud â gweithgaredd hysbysebu.

(2) Ond nid oes dim yn y Rheoliadau hyn sy'n gwneud y Goron yn atebol am dramgwydd.

Dehongli'n Gyffredinol

3. Yn y Rheoliadau hyn—

ystyr “adeilad” (“*building*”) yw adeilad parhaol ond nid yw'n cynnwys caban ffôn;

ystyr “caban ffôn” (“*telephone kiosk*”) yw unrhyw gaban, bwth, cwfl acwstig, cysgodfa neu adeiledd tebyg a godir neu a osodir er mwyn amgáu neu gynnal cyfarpar cyfathrebu electronig a hwnnw'n fan lle y mae gwasanaeth cyfathrebu electronig wedi ei ddarparu (neu lle y mae i'w ddarparu) gan weithredwr cod cyfathrebu electronig;

ystyr “cyfnod digwyddiad” (“*event period*”) yw pob un o'r cyfnodau a ganlyn—

(1) Mae adrannau 20(2) a 26(2) o Ddeddf Gemau Olympaidd a Gemau Paralympaidd Llundain 2006 yn darparu na chaniateir i reoliadau a wneir o dan adrannau 19 a 25 yn ôl eu trefn o'r Ddeddf honno gael eu gwneud oni fydd drafft o'r rheoliadau wedi ei osod gerbron dau dŷ'r Senedd a'i gymeradwyo ganddynt drwy benderfyniad. Mae adran 41(4) o'r Ddeddf honno'n darparu y bydd adrannau 19 i 30, wrth eu cymhwyso i bethau a wneir yng Nghymru, yn cael effaith fel petai cyfeiriad at benderfyniad y naill Dŷ Senedd a'r llall neu benderfyniad y naill neu'r llall yn gyfeiriad at benderfyniad Cynulliad Cenedlaethol Cymru.

- (a) y cyfnod sy'n dechrau am 00:01 ar 24 Gorffennaf 2012 ac sy'n dod i ben am 23:59 ar 28 Gorffennaf 2012,
- (b) y cyfnod sy'n dechrau am 00:01 ar 30 Gorffennaf 2012 ac sy'n dod i ben am 23:59 ar 4 Awst 2012, ac
- (c) y cyfnod sy'n dechrau am 00:01 ar 9 Awst 2012 ac sy'n dod i ben am 23:59 ar 10 Awst 2012;

ystyr “daliedydd” (“*receptacle*”) yw unrhyw beth sy'n cael ei ddefnyddio (p'un a yw wedi ei wneuthur neu wedi ei addasu at ddefnydd o'r fath) fel cynhwysydd i unrhyw eitem neu i arddangos unrhyw eitem, gan gynnwys—

- (a) unrhyw gerbyd, trelar neu ferfa, neu
- (b) unrhyw fasedd, bag, blwch, llestr, stondin, stand, îsl, bwrdd, neu hambwrdd;

ystyr “y Ddeddf” (“*the Act*”) yw Deddf Gemau Olympaidd a Gemau Paralympaidd Llundain 2006;

mae “eitem” (“*article*”) yn cynnwys peth byw;

nid yw “papur newydd neu gyfnodolyn” (“*newspaper or periodical*”) yn cynnwys papur newydd neu gyfnodolyn sydd wedi ei fwriadu'n benodol i hysbysebu un neu fwy o'r canlynol o fewn parth digwyddiadau yn ystod cyfnod digwyddiad—

- (a) nwyddau neu wasanaethau,
- (b) person sy'n darparu nwyddau neu wasanaethau;

ystyr “parth digwyddiadau” (“*event zone*”) yw parth Stadiwm y Mileniwm, sef yr ardal y mae llinell werdd ddotiog yn ffin allanol iddi, gan gynnwys y gofod awyr uwchben yr ardal honno, a ddangosir ar y map sydd wedi ei lofnodi ar ran Gweinidogion Cymru, sy'n dwyn enw'r parth digwyddiadau, enw'r Rheoliadau hyn, a'r dyddiad Medi 2011, ac y mae printiau ohono wedi eu hadneuo ac ar gael i'w harchwilio yn swyddfeydd Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ ac yn swyddfeydd Cyngor Caerdydd yn Neuadd y Sir, Glanfa Iwerydd, Caerdydd, CF10 4UW, ac yn Neuadd y Ddinas, Parc Cathays, Caerdydd, CF10 3ND;

ystyr “Rheoliadau 1992” (“*the 1992 Regulations*”) yw Rheoliadau Cynllunio Gwlad a Thref (Rheoli Hysbysebion) 1992(1); ac

(1) O.S. 1992/666, fel y'i diwygiwyd gan O.S. 1994/2351; mae offerynnau diwygio eraill ond nid oes unrhyw un ohonynt yn berthnasol i'r Rheoliadau hyn.

mae “trwydded” (“*licence*”) yn cynnwys unrhyw fath o gydsyniad, tystysgrif, caniatâd neu awdurdod (drwy ba enw bynnag) a roddir gan dirfeddiannwr, awdurdod lleol neu berson arall yn unol ag unrhyw ddeddfiad, Siarter neu ddogfen arall.

Yr effaith ar ddeddfwriaeth arall etc.

4. Nid oes dim yn y Rheoliadau hyn—

- (a) sy'n awdurdodi person i wneud unrhyw beth sydd wedi ei wahardd (p'un ai mewn man penodol neu'n gyffredinol) drwy neu o dan unrhyw ddeddfiad neu reol o'r gyfraith, na
- (b) yn effeithio ar ofyniad mewn unrhyw ddeddfiad neu reol o'r gyfraith bod person yn dal trwydded cyn ymhel â gweithgaredd y mae'n ofynnol cael y drwydded honno'n ar ei gyfer (p'un ai mewn man penodol neu'n gyffredinol).

RHAN 2

Gweithgaredd Hysbysebu

Dehongli'r Rhan hon

5.—(1) Yn y Rhan hon—

mae “arddangos hysbyseb” (“*displaying an advertisement*”) yn cynnwys (heb leihau effaith yr ymadrodd hwnnw'n gyffredinol)—

- (a) taflunio, allyrru neu sgrinio hysbyseb neu ei rhoi ar ddangos,
 - (b) cario neu ddal hysbyseb neu gyfarpar a ddefnyddir i arddangos hysbyseb,
 - (c) darparu bod—
 - (i) hysbyseb yn cael ei harddangos ar anifail, neu
 - (ii) cyfarpar a ddefnyddir i arddangos hysbyseb yn cael ei gario neu ei ddal gan anifail,
 - (ch) gwneud un neu fwy o'r canlynol fel rhan o ymgyrch marchnata rhagod—
 - (i) cario neu ddal eiddo personol y mae hysbyseb wedi ei harddangos arno,
 - (ii) gwisgo gwisg hysbysebu,
 - (iii) arddangos hysbyseb ar gorff unigolyn;
- ystyr “corff di-elw” (“*not-for-profit body*”) yw corff sydd, yn rhinwedd ei gyfansoddiad neu unrhyw ddeddfiad—
- (a) yn un y mae'n ofynnol iddo (ar ôl talu all daliadau) ddefnyddio'r cyfan o'i incwm, ac

unrhyw gyfalaf y mae'n ei wario, at ddibenion elusennol neu gyhoeddus, a

- (b) wedi ei wahardd rhag dosbarthu'n uniongyrchol neu'n anuniongyrchol ymhlith ei aelodau unrhyw ran o'i asedau (ac eithrio at ddibenion elusennol neu gyhoeddus);

ystyr “deunydd hyrwyddo” (“*promotional material*”) yw dogfen neu eitem a ddosberthir neu a ddarperir yn gyfan gwbl neu'n rhannol er mwyn hyrwyddo, hysbysebu, cyhoeddi neu gyfarwyddo;

ystyr “gweithgaredd hysbysebu” (“*advertising activity*”) yw—

- (a) arddangos hysbyseb, neu
- (b) dosbarthu neu ddarparu deunydd hyrwyddo;

ystyr “gwisg hysbysebu” (“*advertising attire*”) yw—

- (a) trwsiad sy'n hysbyseb, neu
- (b) dilledyn y mae hysbyseb wedi ei harddangos arno;

ystyr “hysbyseb” (“*advertisement*”) yw unrhyw air, llythyren, delwedd, marc, sain, golau, model, arwydd, hysbyslen, bwrdd, hysbysiad, sgrîn, cysgodlen, bleind, baner, dyfais, trwsiad neu ddarluniad, p'un a yw'n oleuedig ai peidio, sydd o ran ei natur yn hyrwyddo, yn hysbysebu, yn cyhoeddi neu'n cyfarwyddo ac yn cael ei ddefnyddio neu ei defnyddio'n gyfan gwbl neu'n rhannol er mwyn gwneud hynny;

ystyr “hysbysebwr” (“*advertiser*”) yw person sy'n ymhel â gweithgaredd hysbysebu; ac

ystyr “ymgyrch marchnata rhagod” (“*ambush marketing campaign*”) yw ymgyrch (p'un a yw'n un weithred neu'n gyfres o weithredoedd) sydd wedi ei bwriadu'n benodol i hyrwyddo, hysbysebu, cyhoeddi neu gyfarwyddo un neu fwy o'r canlynol o fewn parth digwyddiadau yn ystod cyfnod digwyddiad—

- (a) nwyddau neu wasanaethau,
- (b) person sy'n darparu nwyddau neu wasanaethau.

(2) Yn y Rhan hon, mae cyfeiriad at berson sy'n ymhel â gweithgaredd hysbysebu i'w drin fel cyfeiriad sy'n cynnwys person y mae rheoliad 6(2) yn gymwys iddo.

(3) Nid yw gweithgaredd hysbysebu sy'n cynnwys arddangos hysbyseb ar ddyfais gyfathrebu bersonol i'w drin fel gweithgaredd hysbysebu at ddibenion y Rhan hon onid yw'r hysbysebwr yn bwriadu bod yr hysbyseb yn cael ei harddangos, drwy gyfrwng y ddyfais, i'r cyhoedd yn gyffredinol (yn hytrach na'i harddangos i neb ond yr unigolyn sy'n defnyddio'r ddyfais).

(4) Ym mharagraff (3), ystyr “dyfais gyfathrebu bersonol” (“*personal communication device*”) yw ffôn symudol neu ddyfais gyfathrebu ryngweithiol bersonol arall.

Rheoli gweithgaredd hysbysebu

6.—(1) Rhaid i berson beidio ag ymhel â gweithgaredd hysbysebu yn y parth digwyddiadau yn ystod cyfnod digwyddiad.

(2) Mae person i'w drin fel un sy'n mynd yn groes i baragraff (1) os yw'n trefnu (ar unrhyw bryd ac mewn unrhyw le) i weithgaredd hysbysebu gael ei gynnal yn y parth digwyddiadau yn ystod cyfnod digwyddiad.

(3) Mae person i'w drin hefyd fel un sy'n mynd yn groes i baragraff (1) os yw gweithgaredd hysbysebu yn y parth digwyddiadau yn ystod cyfnod digwyddiad—

- (a) yn ymwneud â nwyddau, gwasanaethau, busnes neu gonsýrn arall y mae ganddo fuddiant ynddo neu y mae'n gyfrifol amdano, neu
- (b) yn cael ei gynnal ar dir, mangre neu eiddo arall y mae'n berchen arno neu arni neu y mae'n ei feddiannu neu'n ei meddiannu neu y mae ganddo gyfrifoldeb dros ei reoli neu ei rheoli.

(4) Heb leihau effaith paragraff (3) yn gyffredinol—

- (a) mae person i'w drin fel un sydd â buddiant mewn busnes neu gonsýrn arall, neu gyfrifoldeb dros y naill neu'r llall, os yw'n swyddog i'r busnes neu'r consýrn hwnnw,
- (b) mae person i'w drin fel un sydd â buddiant mewn nwyddau neu wasanaethau, neu gyfrifoldeb dros y naill neu'r llall, os yw'n swyddog i fusnes neu gonsýrn arall sydd â buddiant yn y nwyddau neu'r gwasanaethau, neu sy'n gyfrifol am y nwyddau neu'r gwasanaethau hynny, ac
- (c) mae person i'w drin fel un sydd â chyfrifoldeb dros reoli tir, mangre neu eiddo arall os yw'n swyddog i fusnes neu gonsýrn arall sy'n berchen ar y tir, y fangre neu'r eiddo arall, yn ei feddiannu neu'n ei meddiannu neu sydd â chyfrifoldeb dros ei reoli neu ei rheoli.

(5) Ym mharagraff (4), ystyr “swyddog” (“*an officer*”) yw cyfarwyddwr, rheolwr, ysgrifennydd neu swyddog arall tebyg.

(6) Mae'r rheoliad hwn yn gymwys o ran gweithgaredd hysbysebu p'un a yw'n cynnwys canlyniad neu barhad gweithgaredd a gyflawnwyd cyn i'r Rheoliadau hyn ddod i rym.

Eithriad ar gyfer gwrthdystiadau, etc.

7.—(1) Nid yw rheoliad 6 yn gymwys i weithgaredd hysbysebu sydd wedi ei fwriadu—

- (a) i ddangos cefnogaeth neu wrthwynebiad i ddaliadau neu weithredoedd unrhyw berson neu gorff o bersonau,
- (b) i roi cyhoeddusrwydd i gred, achos neu ymgyrch, neu
- (c) i gofnodi neu goffáu digwyddiad.

(2) Ond nid yw'r eithriad hwn yn gymwys i weithgaredd hysbysebu sy'n hyrwyddo neu'n hysbysebu—

- (a) nwyddau neu wasanaethau, neu
- (b) person neu gorff (ac eithrio corff di-elw) sy'n darparu nwyddau neu wasanaethau.

Eithriad ar gyfer unigolion sy'n gwisgo gwisg hysbysebu, yn arddangos hysbysebion ar eu cyrff, neu'n cario eiddo personol

8.—(1) Nid yw rheoliad 6 yn gymwys i unigolion sy'n ymhel â gweithgaredd hysbysebu yn unig drwy wneud un neu fwy o'r canlynol, oni bai eu bod yn gwybod neu fod ganddynt le rhesymol i gredu eu bod yn cymryd rhan mewn ymgyrch marchnata rhagod—

- (a) gwisgo gwisg hysbysebu,
- (b) arddangos hysbyseb ar gorff yr unigolyn,
- (c) cario neu ddal eiddo personol y mae hysbyseb wedi ei harddangos arno.

(2) Nid yw'r ffaith bod yr eithriad hwn yn gymwys i unigolion yn effeithio ar gymhwyso rheoliad 6 i unrhyw berson arall (p'un ai mewn cysylltiad â'r un gweithgaredd hysbysebu neu fel arall).

Eithriadau ar lun Rheoliadau 1992

9.—(1) Nid yw rheoliad 6 yn gymwys i weithgaredd hysbysebu sy'n cynnwys arddangos hysbyseb—

- (a) o fewn Dosbarth a bennir yng ngholofn gyntaf Atodlen 2 i Reoliadau 1992 cyhyd â bod yr arddangosiad neu'r hysbyseb yn cydymffurfio â'r amodau y cyfeirir atynt yn rheoliad 3(2) o'r Rheoliadau hynny,
- (b) o fewn Dosbarth a bennir yn Rhan 1 o Atodlen 3 i Reoliadau 1992 yn ddarostyngedig i'r amodau a'r cyfyngiadau y cyfeirir atynt yn rheoliad 6(1)(a) a (b) o'r Rheoliadau hynny, neu
- (c) sy'n hysbyseb oleuedig ar fangre busnes—
 - (i) y rhoddwyd iddi gydsyniad pendant o fewn ystyr "express consent" a nodir yn rheoliad 5(1) o Reoliadau 1992 cyn y

dyddiad y daeth y Rheoliadau hyn i rym,
a

- (ii) sy'n cydymffurfio â'r amodau a'r cyfyngiadau a bennir ym mharagraffau (2) i (11) o Ddosbarth 4B yn Rhan 1 o Atodlen 3 i Reoliadau 1992.

(2) Ond nid yw'r eithriad hwn yn gymwys i arddangos hysbyseb—

- (a) o fewn Dosbarth A (hysbysebion ar falŵns),
- (b) o fewn Dosbarth B (hysbysebion a arddangosir ar dir caeëdig) pan fo'r tir caeëdig y mae'r hysbyseb wedi ei harddangos arno—
 - (i) yn orsaf reilffordd (a'i iardiau) neu'n orsaf fysiau (ynghyd â'i blaengwrt, p'un a yw wedi ei amgáu ai peidio), neu
 - (ii) yn dir caeëdig (gan gynnwys stadiwm chwaraeon neu adeilad arall) y mae Digwyddiad Olympaidd Llundain(1) yn cael ei gynnal neu i'w gynnal arno neu ynddo,
- (c) o fewn Dosbarth D (hysbysebion a ymgorfforir yn adeiladwaith adeiladau) nad oedd yn bodoli ar y dyddiad y daeth y Rheoliadau hyn i rym,
- (ch) o fewn Dosbarth J (hysbysebion a arddangosir y tu mewn i adeiladau), ac eithrio hysbysiad busnes esempt, pan fo'r adeilad y mae'r hysbyseb wedi ei harddangos ynddo—
 - (i) yn rhan neu'n ffurfio rhan o orsaf reilffordd neu orsaf fysiau, neu
 - (ii) yn stadiwm chwaraeon neu'n adeilad arall y mae Digwyddiad Olympaidd Llundain yn cael ei gynnal neu i'w gynnal ynddo,
- (d) o fewn Dosbarth 1B (hysbysebion a arddangosir gan awdurdodau cynllunio lleol)—
 - (i) nad yw wedi ei harddangos yn gyfan gwbl er mwyn cyhoeddi neu gyfarwyddo mewn perthynas ag unrhyw un o swyddogaethau'r awdurdod cynllunio lleol y mae wedi ei harddangos drwyddo, a
 - (ii) nad yw'n rhesymol ofynnol iddi gael ei harddangos i gyflawni'r swyddogaethau hynny'n ddiogel neu'n effeithlon,

(1) Mae'r term cyfatebol Saesneg, sef "London Olympic Event", wedi ei ddiffinio yn adran 1(3)(b) o'r Ddeddf.

- (dd) o fewn Dosbarth 3D (hysbysebion sy'n cyhoeddi digwyddiadau a gweithgareddau lleol) sy'n hyrwyddo neu'n hysbysebu—
 - (i) nwyddau neu wasanaethau, neu
 - (ii) person neu gorff (ac eithrio corff di-elw) sy'n darparu nwyddau neu wasanaethau,
 - (e) o fewn Dosbarth 3F (hysbysebion sy'n ymwneud â syrcau teithiol, ffeiriau neu adloniannau teithiol tebyg),
 - (f) o fewn Dosbarth 7B (baneri ar safleoedd datblygu preswyl) nad yw'n ymwneud â'r datblygiad nac â pherson sy'n cyflawni'r datblygiad neu agwedd ar y datblygiad,
 - (ff) o fewn Dosbarth 8 (hysbysebion ar hysbysfyrddau),
 - (g) o fewn Dosbarth 9 (hysbysebion ar adeileddau priffordd),
 - (ng) o fewn Dosbarth 12 (hysbysebion a arddangosir y tu mewn i adeiladau), ac eithrio hysbyseb busnes esempt, pan fo'r adeilad y mae'r hysbyseb wedi ei harddangos ynddo—
 - (i) yn rhan neu'n ffurfio rhan o orsaf reilffordd neu orsaf fysiau, neu
 - (ii) yn stadiwm chwaraeon neu'n adeilad arall y mae Digwyddiad Olympaidd Llundain yn cael ei gynnal neu i'w gynnal ynddo,
 - (h) o fewn Dosbarth 13 (hysbysebion ar safleoedd a ddefnyddir i arddangos hysbysebion heb gydsyniad pendant),
 - (i) o fewn Dosbarth 14 (hysbysebion a arddangosir ar ôl i gydsyniad pendant ddirwyn i ben).
- (3) Yn y rheoliad hwn—
- (a) ystyr “hysbysiad busnes esempt” (“*exempt business advertisement*”) yw hysbyseb (p'un ai'n oleuedig ai peidio) a arddangosir ar fangre busnes y tu mewn i adeilad (neu flaengwrt sy'n gysylltiedig â mangre o'r fath) sy'n cyfeirio'n gyfan gwbl at unrhyw rai neu'r cyfan o'r canlynol: y busnes sy'n cael ei redeg, y nwyddau neu'r gwasanaethau sy'n cael eu darparu neu enw neu gymwysterau'r person sy'n rhedeg y busnes, neu'n darparu'r nwyddau neu'r gwasanaethau, ar y fangre honno,
 - (b) mae cyfeiriad at “Dosbarth” (“*Class*”) hysbyseb yn gyfeiriad at Ddosbarth cyfatebol hysbyseb yn Atodlen 2 neu (yn ôl fel y digwydd) 3 i Reoliadau 1992, ac

- (c) mae i “mangre busnes” a “blaengwrt” yr un ystyr â “*business premises*” a “*forecourt*” yn Atodlen 3 i Reoliadau 1992(1).

(4) At ddibenion y rheoliad hwn—

- (a) mae Rhan 2 o Atodlen 3 i Reoliadau 1992 yn gymwys i ddehongli'r Atodlen honno,
- (b) mae cyfeiriad at adeilad yn Atodlen 2 neu 3 i Reoliadau 1992 i'w ddehongli'n unol â'r diffiniad o adeilad yn rheoliad 3 o'r Rheoliadau hyn,
- (c) mae cyfeiriad at arddangos hysbyseb (sut bynnag y mae wedi ei eirio) yn Atodlen 2 neu 3 i Reoliadau 1992 i'w ddehongli'n unol â'r diffiniad yn rheoliad 5 o'r Rheoliadau hyn, ac
- (ch) mae cyfeiriad at gerbyd yn Atodlen 2 i Reoliadau 1992 yn cynnwys beic.

Eithriadau eraill

10.—(1) Nid yw rheoliad 6 yn gymwys i'r gweithgaredd hysbysebu a ganlyn—

- (a) arddangos hysbyseb sy'n cael ei defnyddio'n gyfan gwbl fel—
 - (i) cofeb, neu
 - (ii) signal rheilffordd,
- (b) dosbarthu neu ddarparu papur newydd neu gyfnodolyn cyfredol, naill heb ddaliedydd neu o ddaliedydd nad yw'n achosi ymyrraeth ormodol neu anghyfleustra gormodol i bersonau sy'n defnyddio'r stryd,
- (c) gweithgaredd hysbysebu yr ymgymerir ag ef yn unol ag amod sydd ynghlwm wrth awdurdodiad a roddwyd o dan reoliad 15 (gweithgaredd masnachu a awdurdodir gan Awdurdod Gweithredu'r Gemau Olympaidd etc.),
- (ch) arddangos hysbyseb ar awyren at un neu fwy o'r dibenion a ganlyn—
 - (i) cydymffurfio â chyfraith y Deyrnas Unedig neu unrhyw wlad arall, sef y gyfraith sydd mewn grym mewn perthynas â'r awyren,
 - (ii) sicrhau diogelwch yr awyren neu unrhyw berson neu eiddo ynddi,
 - (iii) hyrwyddo, gan neu ar ran adran o'r Llywodraeth gan gynnwys Llywodraeth Cynulliad Cymru, gan berson sy'n gweithredu o dan unrhyw ddyletswydd gyhoeddus neu gan berson sy'n darparu cyfleusterau ambiwlans neu gyfleusterau

(1) Gweler paragraff 1(1) o Ran 2 o Atodlen 3 i Reoliadau 1992.

achub drwy'r awyr, fesurau mewn cysylltiad ag amgylchiadau, sy'n bodoli neu ar ddyfod ar yr adeg y mae'r awyren yn cael ei defnyddio, ac a allai achosi perygl i bersonau neu eiddo,

- (iv) dibenion amddiffyn sifil, dibenion milwrol neu ddibenion heddlu,
- (d) arddangos marc neu arysgrif (ac eithrio arwydd goleuedig) ar gorff awyren neu hofrennydd, neu
- (dd) arddangos hysbyseb ar ddodrefnyn stryd ar yr amod—
 - (i) bod yr hysbyseb heb ei oleuo,
 - (ii) mai'r unig bethau y mae'r hysbyseb yn eu dwyn yw enw, manylion cyswllt a dyfais (neu unrhyw un neu fwy o'r pethau hynny) gweithgynhyrchydd, perchennog neu weithredwr y dodrefn stryd (neu unrhyw un neu fwy o'r personau hynny), a
 - (iii) nad yw'r hysbyseb wedi ei harddangos fel rhan o ymgyrch marchnata rhagod.

Hysbysebu yr ymgymerir ag ef neu a awdurdodir gan Bwyllgor Trefnu Llundain

11.—(1) Nid yw rheoliad 6 yn gymwys i weithgaredd hysbysebu yr ymgymerir ag ef neu a reolir gan—

- (a) Pwyllgor Trefnu Llundain(1), na
- (b) unrhyw berson a awdurdodir gan y Pwyllgor hwnnw (p'un a yw'n ddarostyngedig i delerau ac amodau a osodwyd gan y Pwyllgor hwnnw ai peidio a ph'un a yw'n unol â chytundeb nawdd neu gytundeb masnachol arall gyda'r Pwyllgor hwnnw ai peidio).

(2) Yn ddarostyngedig i'r Rheoliadau hyn, mae gan Bwyllgor Trefnu Llundain ddisgresiwn llwyr mewn cysylltiad â phob cais am awdurdodiad a gyflwynir iddo.

(3) Rhaid i Bwyllgor Trefnu Llundain roi sylw i ddarpariaethau Contract y Ddinas Groesawu(2) cyn ymhel â gweithgaredd hysbysebu neu roi awdurdodiad o dan y rheoliad hwn.

(1) Mae'r term cyfatebol Saesneg, sef "the London Organising Committee", wedi ei ddiffinio yn adran 1(3)(d) o'r Ddeddf. Ers pasio'r Ddeddf, mae "the London Organising Committee" wedi newid ei enw cofrestredig i "The London Organising Committee of the Olympic Games and Paralympic Games Limited."

(2) Mae'r term Saesneg cyfatebol, sef "Host City Contract", wedi ei ddiffinio yn adran 1(3)(e) o'r Ddeddf.

(4) Mae hawl Pwyllgor Trefnu Llundain i ymhel â gweithgaredd hysbysebu yn unol â'r rheoliad hwn ac unrhyw awdurdodiad a roddir ganddo yn ddarostyngedig i bob un o'r amodau a ganlyn—

- (a) bod yr hysbysebwr yn dal unrhyw drwydded y mae'n ofynnol ei chael, yn ychwanegol at awdurdodiad gan neu o dan y rheoliad hwn, cyn y caiff person ymhel â gweithgaredd hysbysebu (p'un ai mewn man penodol neu'n gyffredinol),
- (b) na chaiff unrhyw hysbyseb ei lleoli neu ei harddangos yn y fath fodd ag i—
 - (i) peryglu personau sy'n defnyddio unrhyw briffordd, rheilffordd, neu ddyfrffordd,
 - (ii) cuddio unrhyw arwydd traffig, signal rheilffordd neu gymorth mordwyo neu awyrlwio, neu atal yr arwydd, y signal neu'r cymorth hwnnw rhag cael ei ddehongli'n ddiraffferth, neu
 - (iii) atal gweithrediad unrhyw ddyfais a ddefnyddir at ddibenion diogelwch neu wyladwriaeth neu i fesur cyflymder unrhyw gerbyd, ac
- (c) bod yr hysbysebwr yn cadw unrhyw hysbyseb mewn cyflwr na fydd—
 - (i) yn amharu ar amwynder gweledol y safle, na
 - (ii) yn gosod y cyhoedd mewn perygl.

RHAN 3

Gweithgaredd Masnachu

Dehongli'r Rhan hon

12.—(1) Yn y Rhan hon—

- (a) mae cyfeiriad at berson sy'n ymhel â gweithgaredd masnachu i'w drin fel cyfeiriad sy'n cynnwys person y mae rheoliad 13(2) yn gymwys iddo;
- (b) mae cyfeiriad (sut bynnag y mae wedi ei eirio) at werthu eitem yn cynnwys rhoi eitem ar ddangos i'w gwerthu neu ei chynnig i'w gwerthu;
- (c) mae cyfeiriad (sut bynnag y mae wedi ei eirio) at gyflenwi gwasanaeth yn cynnwys cynnig cyflenwi gwasanaeth;
- (ch) mae i "cerbyd modur" yr un ystyr â "*motor vehicle*" yn Neddf Traffig Ffyrdd 1988(1);

(1) 1988 p. 52. Gweler adran 185 o'r Ddeddf honno.

- (d) ystyr “man cyhoeddus agored” (“*open public place*”) yw—
 - (i) priffordd, neu
 - (ii) man arall—
 - (aa) y caiff y cyhoedd fynd iddo (p'un ai'n gyffredinol neu at ddibenion y gweithgaredd masnachu yn unig), a
 - (bb) nad yw mewn adeilad ac eithrio un sydd wedi ei ddylunio neu'n cael ei ddefnyddio'n gyffredinol i barcio ceir;
- (dd) ystyr “perfformiad drama” (“*performance of a play*”) yw perfformiad unrhyw ddarn o waith dramatig, p'un a yw'n cynnwys byrfyfyr ai peidio—
 - (i) a hwnnw'n ddarn sy'n cael ei gyflawni'n gyfan gwbl neu'n rhannol gan un neu fwy o bersonau sy'n bresennol mewn gwirionedd ac yn perfformio, a
 - (ii) lle y mae'r cyfan neu ran sylweddol o'r hyn a wneir gan y person neu'r personau sy'n perfformio, p'un ai drwy gyfrwng lleferydd, canu neu weithred, yn cynnwys chwarae rôl;
- (e) ystyr “adloniant cyhoeddus” (“*public entertainment*”) yw adloniant o un neu fwy o'r disgrifiadau canlynol a ddarperir ar gyfer aelodau o'r cyhoedd—
 - (i) perfformiad o gerddoriaeth fyw,
 - (ii) unrhyw chwarae cerddoriaeth sydd wedi ei recordio,
 - (iii) perfformiad dawn,
 - (iv) perfformiad drama,
 - (v) adloniant o ddisgrifiad tebyg i'r hyn sy'n dod o fewn paragraffau (i) i (iv);
- (f) mae “gwerthu eitem” (“*selling an article*”) yn cynnwys (heb leihau effaith y term hwnnw'n gyffredinol) fasnachu gan berson sy'n gweithredu fel pedler (p'un a yw o dan awdurdod tystysgrif pedler a roddwyd o dan adran 4 o Ddeddf Bedleriaid 1871(2)); ac
- (ff) ystyr “gweithgaredd masnachu” (“*trading activity*”) yw cyflawni un neu fwy o'r gweithgareddau canlynol mewn man cyhoeddus agored—
 - (i) gwerthu eitem,

(2) 1871 p. 96. Diwygiwyd adran 4 gan adran 2 o Ddeddf Bedleriaid 1881 (p. 45), adran 31(5) a (6) o Ddeddf Cyfraith Trosedd 1977 (p. 45), ac adran 46 o Ddeddf Cyfiawnder Troseddol 1982 (p. 48).

- (ii) cyflenwi gwasanaeth,
- (iii) gwneud apêl i aelodau o'r cyhoedd roi arian (drwy ba fodd bynnag) neu eiddo arall (neu'r ddau) at ddibenion elusennol neu ddibenion eraill (p'un a yw wedi ei awdurdodi gan neu o dan unrhyw ddeddfiad),
- (iv) darparu adloniant cyhoeddus er elw neu gydnabyddiaeth.

(2) Wrth ddyfarnu a yw gweithgaredd yn gyfystyr â gweithgaredd masnachu at ddibenion y Rhan hon, mae'r materion canlynol i'w diystyru—

- (a) y ffaith nad yw elw neu gydnabyddiaeth sy'n deillio o'r gweithgaredd yn dod yn eiddo i'r person sy'n cyflawni'r gweithgaredd mewn gwirionedd,
- (b) y ffaith nad yw'r naill barti na'r llall i drafodiad mewn man cyhoeddus agored lle y mae un neu fwy o'r gweithgareddau canlynol yn digwydd—
 - (i) cynnig eitem i'w gwerthu neu ei rhoi ar ddangos i'w gwerthu,
 - (ii) cynnig i gyflenwi gwasanaeth,
 - (iii) cwblhau'r trafodiad,
- (c) y ffaith nad yw trafodiad wedi ei gwblhau mewn man cyhoeddus agored, os yw un o'r gweithgareddau canlynol neu'r ddau ohonynt yn digwydd yn y man hwnnw—
 - (i) cynnig eitem i'w gwerthu neu ei rhoi ar ddangos i'w gwerthu,
 - (ii) cynnig i gyflenwi gwasanaeth,
- (ch) y ffaith bod eitem a werthwyd mewn gwirionedd neu wasanaeth a gyflenwyd mewn gwirionedd yn wahanol i'r hyn a gynigiwyd i'w gwerthu neu a roddwyd ar ddangos i'w gwerthu.

Rheoli masnachu

13.—(1) Rhaid i berson beidio ag ymhel â gweithgaredd masnachu yn y parth digwyddiadau yn ystod cyfnod digwyddiad.

(2) Mae person i'w drin fel un sy'n mynd yn groes i baragraff (1) os yw'n trefnu (ar unrhyw bryd ac mewn unrhyw le) i weithgaredd masnachu gael ei gynnal yn y parth digwyddiadau yn ystod cyfnod digwyddiad.

(3) Mae person i'w drin hefyd fel un sy'n mynd yn groes i baragraff (1) os yw gweithgaredd masnachu yn y parth digwyddiadau yn ystod cyfnod digwyddiad—

- (a) yn un y mae busnes neu gonsŷrn arall yn ymgymryd ag ef a hwnnw'n fusnes neu

gonsŷrn y mae ganddo fuddiant ynddo neu y mae'n gyfrifol amdano, neu

- (b) yn cael ei gynnal ar dir y mae'n berchen arno neu'n ei feddiannu neu y mae ganddo gyfrifoldeb dros ei reoli.

(4) Ond nid yw paragraff (3) yn gymwys i berson sy'n profi—

- (a) bod y gweithgaredd masnachu wedi ei gynnal heb iddo wybod hynny, neu
- (b) bod y person hwnnw wedi cymryd pob cam rhesymol i atal y gweithgaredd masnachu rhag cael ei gynnal neu, pan fo wedi ei gynnal, i'w atal rhag parhau neu ailddigwydd.

(5) Heb leihau effaith paragraff (3) yn gyffredinol—

- (a) mae person i'w drin fel un sydd â buddiant mewn busnes neu gonsŷrn arall, neu gyfrifoldeb dros y naill neu'r llall, os yw'n swyddog i'r busnes neu'r consŷrn hwnnw,
- (b) mae person i'w drin fel un sydd â chyfrifoldeb dros reoli tir os yw'n swyddog i fusnes neu gonsŷrn arall sy'n berchen ar y tir, sy'n ei feddiannu neu sydd â chyfrifoldeb dros reoli'r tir hwnnw.

(6) Ym mharagraff (5), ystyr “swyddog” (“*an officer*”) yw cyfarwyddwr, rheolwr, ysgrifennydd neu swyddog arall tebyg.

(7) Mae'r rheoliad hwn yn gymwys o ran gweithgaredd masnachu p'un a yw'n cynnwys canlyniad neu barhad gweithgaredd a gyflawnwyd cyn i'r Rheoliadau hyn ddod i rym ai peidio.

Eithriadau

14.—(1) Nid yw rheoliad 13 yn gymwys i'r gweithgaredd masnachu a ganlyn—

- (a) gwerthu papur newydd neu gyfnodolyn cyfredol, naill ai heb ddaliedydd neu o ddaliedydd nad yw'n achosi ymyrraeth ormodol neu anghyfleustra gormodol i bersonau sy'n defnyddio'r stryd,
- (b) gweithgaredd masnachu yr ymgymeryd ag ef neu a reolir gan Bwyllgor Trefnu Llundain ar dir caeëdig y mae Digwyddiad Olympaidd Llundain yn cael ei gynnal neu i'w gynnal arno,
- (c) gwerthu neu draddodi eitem i berson mewn mangre sy'n cyffinio â phriffordd,
- (ch) gwerthu cerbyd modur ar dir preifat sy'n cael ei ddefnyddio'n gyffredinol i werthu cerbydau modur,
- (d) cyflenwi gwasanaethau glanhau cerbydau modur ar dir preifat sy'n cael ei ddefnyddio'n gyffredinol i gyflenwi'r gwasanaethau hynny,

- (dd) cyflenwi gwasanaethau parcio cerbydau modur mewn adeilad neu ar dir arall sydd wedi ei ddylunio neu sy'n cael ei ddefnyddio'n gyffredinol i barcio cerbydau modur,
- (e) darparu cyfleuster iechydol cyhoeddus,
- (f) darparu caban ffôn parhaol,
- (ff) masnachu fel gweithredwr teithiau cerdded,
- (g) cyflenwi gwasanaethau trafnidiaeth gyhoeddus gan gynnwys gwasanaethau i dwristiaid, neu
- (ng) gweithgaredd masnachu ar dir preifat sy'n gyfagos â mangre fanwerthu esempt ar yr amod bod y gweithgaredd masnachu—
 - (i) yn ffurfio rhan o fusnes arferol perchennog y fangre neu berson sydd wedi ei asesu ar gyfer ardreth fusnes unffurf mewn cysylltiad â'r fangre, a
 - (ii) yn cael ei gynnal yn ystod y cyfnod y mae'r fangre ar agor i'r cyhoedd ar gyfer busnes.

(2) Yn y rheoliad hwn—

mae i “cyfleuster iechydol” yr un ystyr â “*sanitary convenience*” yn Neddf Adeiladu 1984(1);

ystyr “gwasanaethau i dwristiaid” (“*tourist services*”) yw gwasanaethau trafnidiaeth gyhoeddus er budd twristiaid yn bennaf;

ystyr “gweithredwr teithiau cerdded” (“*walking tour operator*”) yw person sy'n cyflenwi gwasanaethau i'r cyhoedd sy'n cynnwys teithiau mewn ardal ar ddeudroed; ac

ystyr “mangre fanwerthu esempt” (“*exempt retail premises*”) yw adeilad a ddefnyddir fel rheol fel—

- (a) siop,
- (b) bwyty, bar, neu fangre arall a ddefnyddir i gyflenwi prydau bwyd, lluniaeth neu alcohol i'r cyhoedd, neu
- (c) gorsaf betrol.

Gweithgaredd masnachu a awdurdodir gan Awdurdod Gweithredu'r Gemau Olympaidd etc.

15.—(1) Nid yw rheoliad 13 yn gymwys i weithgaredd masnachu yr ymgymerir ag ef yn unol ag awdurdodiad a roddir gan yr Awdurdod(2).

(2) Yn ddarostyngedig i'r Rheoliadau hyn, mae gan yr Awdurdod ddisgresiwn llwyr mewn cysylltiad â phob cais am awdurdodiad.

(1) 1984 p. 55. Gweler adran 126 o'r Ddeddf honno.
 (2) O dan adran 25(7) o'r Ddeddf, caniateir i awdurdodiad a roddir gan yr Awdurdod fod yn ddarostyngedig i delerau ac amodau.

(3) Rhaid i'r Awdurdod roi sylw i ddarpariaethau Contract y Ddinas Groesawu cyn rhoi awdurdodiad o dan y rheoliad hwn.

(4) Mae awdurdodiad a roddir o dan y rheoliad hwn yn ddarostyngedig i'r amod bod rhaid i unrhyw berson sy'n ymhel â gweithgaredd masnachu gan ddibynnu ar yr awdurdodiad ddal unrhyw drwydded y mae'n ofynnol ei chael, yn ychwanegol at awdurdodiad o dan y rheoliad hwn, cyn y caiff y person ymhel â gweithgaredd masnachu (p'un ai mewn man penodol neu'n gyffredinol).

(5) Yn y rheoliad hwn ystyr "Awdurdod" ("*Authority*") yw—

- (a) Awdurdod Gweithredu'r Gemau Olympaidd, neu
- (b) person y mae swyddogaeth rhoi awdurdodiadau at ddibenion y rheoliad hwn wedi ei dirprwyo iddo gan Awdurdod Gweithredu'r Gemau Olympaidd.

RHAN 4

Hawliau adolygu

Dehongli'r Rhan hon

16. Yn y Rhan hon—

ystyr "awdurdodiad" ("*authorisation*") yw awdurdodiad a roddir—

- (a) o dan reoliad 11(1)(b) mewn perthynas â gweithgaredd hysbysebu, neu
- (b) o dan reoliad 15 mewn perthynas â gweithgaredd masnachu;

ystyr "awdurdodwr" ("*authoriser*")—

- (a) mewn perthynas â chais am awdurdodiad o dan reoliad 11(1)(b), yw Pwyllgor Trefnu Llundain, neu
- (b) mewn perthynas â chais am awdurdodiad o dan reoliad 15, yw'r Awdurdod (o fewn ystyr y rheoliad hwnnw); ac

mae i "ceisydd" ("*applicant*") yr ystyr a roddir iddo yn rheoliad 17(1).

Yr hawl i geisio adolygiad

17.—(1) Caiff person sydd wedi gwneud cais am awdurdodiad ("ceisydd") ac sy'n anfodlon ar benderfyniad yr awdurdodwr ofyn i Awdurdod Gweithredu'r Gemau Olympaidd adolygu'r penderfyniad hwnnw.

(2) Rhaid bod cais o'r fath—

- (a) mewn ysgrifen,

- (b) yn cynnwys yr wybodaeth neu'r dystiolaeth honno y mae'r ceisydd yn barnu ei bod yn berthnasol neu rhaid bod gwybodaeth neu dystiolaeth o'r fath yn dod gyda'r cais, ac
- (c) yn cael ei wneud o fewn cyfnod o 21 o ddiwrnodau gan ddechrau ar y dyddiad y mynegwyd penderfyniad yr awdurdodwr i'r ceisydd.

(3) Rhaid i Awdurdod Gweithredu'r Gemau Olympaidd adolygu penderfyniad yr awdurdodwr o fewn cyfnod o 21 o ddiwrnodau gan ddechrau ar y dyddiad a gaiff gais o'r fath.

(4) Wrth adolygu penderfyniad yr awdurdodwr, caiff Awdurdod Gweithredu'r Gemau Olympaidd—

- (a) cadarnhau'r penderfyniad gwreiddiol, neu
- (b) rhoi penderfyniad newydd yn lle'r penderfyniad gwreiddiol.

(5) Cyn gynted ag y bo'n ymarferol ar ôl gwneud penderfyniad ar yr adolygiad, rhaid i Awdurdod Gweithredu'r Gemau Olympaidd anfon hysbysiad ysgrifenedig at y ceisydd yn rhoi gwybod iddo am benderfyniad yr Awdurdod a'r rhesymau dros y penderfyniad hwnnw.

(6) Mae penderfyniad Awdurdod Gweithredu'r Gemau Olympaidd ar yr adolygiad yn derfynol.

RHAN 5

Iawndal

Dehongli'r Rhan hon

18. Yn y Rhan hon—

ystyr “awdurdod perthnasol” (“*relevant authority*”), mewn perthynas ag arfer neu arfer honedig o bŵer o dan adran 22 neu 28 o'r Ddeddf—

- (a) os oedd yr arfer neu'r arfer honedig o'r pŵer gan swyddog gorfodi, yw Awdurdod Gweithredu'r Gemau Olympaidd, neu
- (b) os oedd yr arfer neu'r arfer honedig o'r pŵer gan gwnstabl, yw awdurdod heddlu yr heddlu y mae'r cwnstabl yn aelod ohono;

mae i “hawlydd” (“*claimant*”) yr ystyr a roddir iddo yn rheoliad 20(1);

mae i “hysbysiad am hawliad” (“*notice of claim*”) yr ystyr a roddir yn rheoliad 20(1);

ystyr “hysbysiad penderfynu” (“*decision notice*”) yw hysbysiad a ddyroddwyd gan awdurdod perthnasol o dan reoliad 22(2)(b) neu (3); ac

ystyr “swyddog gorfodi” (“*enforcement officer*”) yw person a ddynodwyd at ddibenion adran 22 neu

28 o'r Ddeddf (pwerau gorfodi) gan Awdurdod Gweithredu'r Gemau Olympaidd.

Hawl i gael iawndal am ddifrod i eiddo

19.—(1) Mae gan berson y mae ei eiddo wedi ei ddifrodi yn ystod arfer neu arfer honedig o bŵer o dan adran 22 neu 28 o'r Ddeddf hawl i gael iawndal gan yr awdurdod perthnasol yn unol â'r Rhan hon.

(2) Ond nid oes gan berson sydd, yn ôl cred resymol yr awdurdod perthnasol, yn gyfrifol am dorri'r Rheoliadau hyn, hawl i gael iawndal.

(3) Swm yr iawndal sy'n daladwy yw cyfanswm—

- (a) cost trwsio'r eiddo er mwyn ei adfer i'w gyflwr blaenorol (neu, yn achos eiddo sy'n amhosibl, neu nad yw'n werth chweil yn fasnachol, ei drwsio, cost rhoi eiddo newydd yn ei le), a
- (b) unrhyw golled arall a oedd yn ganlyniad uniongyrchol i'r difrod i'r eiddo.

Hysbysiad am hawliad

20.—(1) Caiff person sydd â hawl i gael iawndal o dan y Rhan hon (“hawlydd”) anfon hysbysiad ysgrifenedig (“hysbysiad am hawliad”) i'r awdurdod perthnasol yn hawlio'r iawndal hwnnw.

(2) Rhaid i hysbysiad am hawliad gael ei anfon o fewn—

- (a) cyfnod o 30 o ddiwrnodau gan ddechrau ar y dyddiad y digwyddodd y difrod, neu
- (b) unrhyw gyfnod hwy y cytunir arno gan yr awdurdod perthnasol mewn ysgrifen.

(3) Rhaid i hysbysiad am hawliad gynnwys yr holl wybodaeth a thystiolaeth ganlynol neu rhaid iddynt ddod gyda'r hysbysiad hwnnw—

- (a) enw llawn yr hawlydd,
- (b) y dyddiad y digwyddodd y difrod,
- (c) y cyfeiriad neu'r man lle y digwyddodd y difrod,
- (ch) disgrifiad—
 - (i) o'r eiddo a ddifrodwyd,
 - (ii) o natur y difrod, a
 - (iii) o natur unrhyw golled pellach a ddeilliodd yn uniongyrchol o'r difrod y mae iawndal yn cael ei hawlio amdano,
- (d) swm yr iawndal sy'n cael ei hawlio (yn unol â rheoliad 19(3)) a'r sail a ddefnyddir i gyfrifo swm yr iawndal, a
- (dd) ffotograffau, derbynebâu, dyfynbrisiau neu dystiolaeth arall am y materion y cyfeiriwyd atynt yn is-baragraffau (b) i (d).

Pwysu a mesur a yw'r wybodaeth a'r dystiolaeth a gafwyd yn ddigonol

21.—(1) O fewn y cyfnod o 14 o ddiwrnodau gan ddechrau ar y dyddiad y mae'r awdurdod perthnasol yn cael hysbysiad am hawliad, rhaid iddo ddyfarnu a yw wedi cael digon o wybodaeth a thystiolaeth i'w alluogi i benderfynu'r materion a ganlyn—

- (a) a oes gan yr hawlydd hawl i gael iawndal o dan y Rhan hon,
- (b) ac os oes, swm yr iawndal.

(2) Os yw'r awdurdod yn dyfarnu nad yw wedi cael digon o wybodaeth neu dystiolaeth, rhaid iddo anfon at yr hawlydd hysbysiad ysgrifenedig yn nodi'r wybodaeth neu'r dystiolaeth bellach y mae ei hangen ar yr awdurdod.

(3) Rhaid i'r hawlydd anfon i'r awdurdod yr wybodaeth neu'r dystiolaeth a nodir yn yr hysbysiad hwnnw o fewn—

- (a) cyfnod o 14 o ddiwrnodau gan ddechrau ar y dyddiad y bydd yr hawlydd yn cael yr hysbysiad, neu
- (b) unrhyw gyfnod hwy y cytunir arno gan yr awdurdod perthnasol mewn ysgrifen.

(4) O fewn cyfnod o 7 niwrnod gan ddechrau ar y dyddiad y bydd yr awdurdod yn cael unrhyw wybodaeth neu dystiolaeth bellach ar ôl hysbysiad o'r fath, rhaid iddo wneud y dyfarniad y cyfeiriwyd ato ym mharagraff (1) unwaith eto (a bydd paragraffau eraill y rheoliad hwn yn gymwys i'r dyfarniad newydd hwnnw).

Penderfyniad awdurdod ar hawliad

22.—(1) Os yw awdurdod perthnasol yn dyfarnu o dan reoliad 21 ei fod wedi cael digon o wybodaeth a thystiolaeth, rhaid iddo, o fewn cyfnod o 14 o ddiwrnodau gan ddechrau ar ddyddiad y dyfarniad hwnnw, benderfynu'r materion y cyfeiriwyd atynt yn rheoliad 21(1)(a) a (b).

(2) Os yw'r awdurdod yn penderfynu bod gan yr hawlydd hawl i gael iawndal, rhaid iddo—

- (a) talu i'r hawlydd y swm iawndal a nodir yn yr hysbysiad am hawliad, neu
- (b) os yw'n penderfynu bod gan yr hawlydd hawl i gael swm iawndal llai, anfon hysbysiad mewn ysgrifen at yr hawlydd—
 - (i) yn cynnig y swm llai hwnnw i'r hawlydd, a
 - (ii) yn datgan y rhesymau dros ei benderfyniad.

(3) Os yw'r awdurdod yn penderfynu nad oes hawl gan yr hawlydd i gael iawndal, rhaid iddo anfon hysbysiad mewn ysgrifen at yr hawlydd—

- (i) yn gwrthod yr hawliad, a
- (ii) yn nodi'r rhesymau dros ei benderfyniad.

(4) Caiff hawlydd sy'n cael hysbysiad penderfynu sy'n cynnig swm iawndal sy'n llai na'r hyn a nodwyd yn yr hysbysiad am hawliad gytuno, mewn ysgrifen, i dderbyn y swm llai hwnnw (ac yn yr achos hwnnw rhaid i'r awdurdod dalu'r swm hwnnw i'r hawlydd).

(5) Rhaid i hysbysiad penderfynu gynnwys manylion hawliau'r hawlydd—

- (a) i ofyn am adolygiad o'r penderfyniad, o dan reoliad 23, a
- (b) i apelio yn erbyn penderfyniad ar adolygiad, o dan reoliad 24.

Adolygu penderfyniad ar hawliad

23.—(1) Caiff hawlydd sy'n cael hysbysiad penderfynu ofyn i'r awdurdod perthnasol adolygu ei benderfyniad.

(2) Rhaid bod cais o'r fath—

- (a) mewn ysgrifen,
- (b) yn cael ei wneud o fewn—
 - (i) cyfnod o 14 o ddiwrnodau gan ddechrau ar y dyddiad y cafwyd yr hysbysiad penderfynu, neu
 - (ii) unrhyw gyfnod hwy y cytunir arno mewn ysgrifen gan yr awdurdod perthnasol, ac
- (c) yn cynnwys yr wybodaeth neu'r dystiolaeth honno y mae'r hawlydd yn barnu ei bod yn berthnasol neu rhaid bod gwybodaeth neu dystiolaeth o'r fath yn dod gyda'r cais.

(3) O fewn cyfnod o 14 o ddiwrnodau gan ddechrau ar y dyddiad y bydd awdurdod perthnasol yn cael cais o'r fath, rhaid iddo adolygu ei benderfyniad o dan reoliad 22.

(4) Wrth adolygu ei benderfyniad, caiff yr awdurdod—

- (a) cadarnhau'r penderfyniad gwreiddiol, neu
- (b) rhoi penderfyniad newydd yn lle'r penderfyniad gwreiddiol.

(5) Ond wrth adolygu ei benderfyniad, ni chaiff yr awdurdod roi swm iawndal llai yn lle'r hyn a nodwyd yn yr hysbysiad penderfynu.

(6) Rhaid i'r awdurdod anfon hysbysiad ysgrifenedig at yr hawlydd yn rhoi gwybod iddo am ei benderfyniad ar yr adolygiad a'r rhesymau dros y penderfyniad hwnnw.

(7) Rhaid i hysbysiad o dan baragraff (6) gynnwys manylion hawl yr hawlydd i apelio yn erbyn penderfyniad ar adolygiad o dan reoliad 24.

Apelio i'r llys sirol

24.—(1) Caiff hawlydd sy'n anfodlon ar benderfyniad yr awdurdod perthnasol ar adolygiad o dan reoliad 23 apelio i'r llys sirol.

(2) Rhaid dwyn apêl o fewn cyfnod o 21 o ddiwrnodau gan ddechrau ar y dyddiad y cafodd yr hawlydd hysbysiad ysgrifenedig am benderfyniad yr awdurdod ar adolygiad.

(3) Caiff y llys roi caniatâd i apêl gael ei dwyn ar ôl diwedd y cyfnod hwnnw, ond dim ond os yw wedi ei fodloni—

- (a) pan fo caniatâd yn cael ei geisio cyn diwedd y cyfnod hwnnw, bod rheswm da pam nad yw'r hawlydd yn gallu dwyn yr apêl mewn pryd, neu
- (b) pan fo caniatâd yn cael ei geisio ar ôl diwedd y cyfnod hwnnw, bod rheswm da dros fethiant yr hawlydd i ddwyn yr apêl mewn pryd ac am unrhyw oedi cyn gwneud cais am ganiatâd.

(4) Rhaid i apêl o dan y rheoliad hwn fod ar ffurf ailwrandawriad a chaiff y llys wneud y cyfryw orchymyn yn cadarnhau, yn diddymu neu'n amrywio'r penderfyniad ag y gwêl yn dda.

Gweinidog yr Amgylchedd a Datblygu Cynaliadwy,
un o Weinidogion Cymru

Dyddiad

Explanatory Memorandum to The London Olympic Games and Paralympic Games (Advertising and Street Trading) (Wales) Regulations 2012.

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 London Olympic Games and Paralympic Games (Advertising and Street Trading) (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

John Griffiths AM

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

17 November 2011

PART 1

1. Description

These regulations control advertising and outdoor trading around the only Olympic event centre in Wales, the Millennium Stadium, Cardiff, during periods when Olympic events take place in the stadium. They are intended to uphold the Host City Contract that both the UK and Welsh Governments promised to implement by preventing ambush marketing.

The regulations enable the Olympic Delivery Authority and the London Organising Committee to determine what trading takes place and advertising is displayed within a designated 'event zone' around the Millennium Stadium, although the regulations contain exemptions to allow businesses to trade and advertise with minimal disruption.

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

None

3. Legislative background

The power to make the regulations is provided by sections 19, 20, 22 (8), 25, 26 and 28 (6) of the London Olympic Games and Paralympic Games Act 2006 which were amended by paragraph 6 of the schedule of S.I 2007/2129 and paragraph 8 of the schedule to S.I 2010/1551. By virtue of section 162 of, and paragraph 30 of schedule 11 to, the Government of Wales Act 2006, functions of the National Assembly for Wales transferred to the Welsh Ministers who now make the following regulations.

The Welsh Ministers have consulted in accordance with sections 20(3) and 26(3) and have had regard to the matters referred to in sections 19(2) and 25(2) of that Act. A draft of these regulations is laid before the National Assembly for Wales in accordance with sections 20(2) and 26(2) of that Act, the instrument being subject to the approval of the Assembly.

4. Purpose & intended effect of the legislation

The 2006 Act and these regulations are necessary to give effect to commitments given by the UK Government to the International Olympic Committee ("IOC") at their request as part of London's bid to stage the 2012 Olympic and Paralympic Games. In particular, on 9 November 2004, the then Secretary of State for Culture, Media and Sport provided the following guarantee (amongst others) to the IOC:

"On behalf of the United Kingdom Government, I, Tessa Jowell, guarantee that:

...

(d) in addition to the United Kingdom's existing laws which already:

(i) protect intellectual property rights;

- (ii) control street vending, illegal fly-posting and aerial advertising airspace; and
- (iii) provide for a system of planning permission for billboards, in good time to meet the deadline of 30 June 2010, the UK Government will introduce the legislation necessary to effectively reduce and prevent ambush marketing and eliminate street vending in the vicinity of Olympic sites, as well as control advertising space and airspace during the period of the Games (including for two weeks before the Games).

The Secretary of State's guarantee is reflected in the Host City Contract – the contract between the IOC, the Greater London Authority (“GLA”), the British Olympic Association (“BOA”) and the London Organising Committee of the Olympic Games and Paralympic Games Limited (“LOCOG”) which provides for the staging of the Olympic and Paralympic Games in London in 2012. Clauses 46 and 48 of the Contract require the GLA, BOA and LOCOG to combat ambush marketing. While the UK Government and Welsh Government are not party to the Host City Contract, in a letter to the IOC dated 9 November 2004, the Prime Minister confirmed that “the United Kingdom Government ... guarantees the respect of the Olympic Charter and the Host City Contract.”

When the Bill that became the 2006 Act was going through Parliament, the Welsh Government secured powers that enable the Welsh Ministers to prepare the subordinate legislation necessary to fulfil the guarantee, in respect of Olympic events to be held in Wales.

The Millennium Stadium in Cardiff is a Olympic venue that will host football group games and some later stage games. There are no planned Paralympic events to be held in Wales.

Protecting the Olympic and Paralympic brands are a key part of the LOCOG official sponsoring and licensing programmes. The value of an association with the London 2012 Games is greatly enhanced by exclusivity. While there is already legislation in the UK which regulates advertising and street trading, tailored provision is needed for the Olympics and Paralympics both to act as a stronger deterrent to ambush marketing and illegal trading and because existing powers are unsuited to deliver the IOC's requirements. Therefore, regulations are required to control advertising and street trading in the vicinity of the events to be held in the Millennium Stadium.

Separate regulations will be made in Scotland, where Hamden Park is an Olympic football venue and in England where most Olympic events will take place, although each of the the three separate regulations have common aims, to ensure:

- the Games have a consistent look and feel across London and the UK;
- we can prevent ambush marketing within the vicinity of venues^[1]; and

[1] Ambush marketing describes activities undertaken by businesses not sponsoring an event which nevertheless suggest they or their products are associated with the event or which seek

- spectators and those participating in the Games can get in and out of venues easily and safely.

The Regulations contain a trade off between seeking to achieve the above aims while seeking to maintain 'business as usual' for those organisations located within the event zone and to maintain the same extent of controls as those in the other administrations to avoid business in Wales being restricted to a greater extent than their counterparts in England or Scotland.

Wide definitions of advertising and street trading are therefore used in the regulations designed to prevent ambush marketing but the impact for businesses located in the event zone is lessened by many exemptions.

The geographical extent of the controls has been set on a pragmatic basis. It recognises that ambush marketing is difficult to control in the Millennium Stadium's city centre location, but the event zone has been made wide enough to cover the most popular routes to the Millennium Stadium, enabling effective enforcement based on experiences of previous major events, while minimising the disruption to existing businesses located within the zone and to those business that wish to advertise and undertake street trading during the Games.

The extent of the disruption is further reduced in that the restrictions would only be in force the day before and the actual day each match is played. Due to the way the matches are grouped together, there will be three blocks of restrictions or 'event periods':

- 24 July to 28 July 2012
- 30 July to 4 August 2012
- 9 August to 10 August 2012

If the regulations are not made it will mean the Host City Contract cannot be fulfilled in Wales and there is a risk that the football matches would be moved to an alternative stadium in England. The benefits of increased visitors to Cardiff would therefore also not be realised, set against the costs to individuals and businesses unable to advertise or trade within in the vicinity of the stadium as a result of the proposed controls. Full details of costs and benefits are set out in the Regulatory Impact Assessment at Part 2.

5. Consultation

Draft regulations were issued for consultation and details are included in the Regulatory Impact Assessment at Part 2.

to exploit the interest in the event by exposing their brands to spectators at the event and/or watching the event on TV around the world.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

The following options are those available to achieve the aims and intended effect of the regulations, that:

- the Games have a consistent look and feel across London and the UK;
- we can prevent ambush marketing within the vicinity of venues; and
- spectators and those participating in the Games can get in and out of venues easily and safely.

Option 1 - Do Nothing

We could do nothing and rely on existing legislation. We could utilise existing legislation and accept it was not drafted with such a large and time critical event in mind.

Option 2 - Act proportionately and limit scope of the restrictions

We could be proportionate and limit the scope of the restrictions. In the technical manual the IOC requests that advertising and concessions be controlled by the organising committee between main access points (train/bus stations, airports) and the venue. The IOC does not state how far this extends to but advises that: 'no publicity, or branding of any kind appears on or from the field of play or field of performance at any Olympic venue or other Olympic site, not appears within the sightlines of viewing spectators, nor within view of the television cameras'. We could aim to cover only the nearest transport hubs and identify key sites which could be used to promote brands within 200m of the venue perimeter.

Option 3 - Zero tolerance approach with requirements to cover a wide space around the venue

We could pursue a "zero tolerance" approach with the regulations preventing any and every advertiser and trader from conducting business within a wide space around the venue. Previous host nations have brought in stringent laws to regularise advertising and trading. In 2000 Sydney law makers restricted advertising within a 1km perimeter of the main Games venues. In 2004 the Athens Olympic and Paralympic organising committee cut the number of billboards around the city, clearing 10,000 from buildings and city rooftops. In 2008 the Beijing organisers ensured that all advertising was strictly controlled not just on billboards but on all public transport, at airports and city streets.

Costs and Benefits

Option 1: Do nothing approach and rely on exiting legislation.

Economic Benefits

- Status quo is preserved
- Free market for companies and individuals to derive commercial benefit from Olympic and Paralympic Games
- No additional expenditure incurred in authorising and enforcing.

Social Benefits

- None

Environmental Benefits

- None

Economic Costs

- The IOC could take legal action in respect of the Welsh Government failing to deliver on commitments made in the bidding process and contained in the Host City Contract.
- Companies and individuals may not comply with the existing regulations (may act illegally) where the penalty for doing so is lower than the potential commercial gain, or where enforcement is weak.
- Enforcement officers are unable to respond to illegal advertising and trading within the strict timeframes of the Olympic or Paralympic Games.
- The UK's inability to deal with ambush marketing means it is too high a risk to be allowed to host major events thus denying a significant future income.
- Current legislation does not effectively meet our three principal policy objectives.

Social Costs

- None

Environmental Costs

- None

Option 2: Do what is proportionate and limit the scope of the restrictions.

Economic Benefits

- Government and other bid stakeholders able to deliver the commitments made as part of the bidding process (in the Candidature File and associated guarantees as well as by signing the Host City Contract).
- The UK is considered a good option for future major events.

Social Benefits

- The people attending the games can experience a consistent celebratory look and feel to them.

Environmental Benefits

- None

Economic Costs

- Limiting advertising and street trading has a financial impact of around £15,000 depending on numbers of authorisations.
- Cost to ODA to enforce the regulations
- That a tightening of the laws on advertising and trading even for a small period is unpalatable to the general public.

Social Costs

- None

Environmental Costs

- None

Option 3: Zero tolerance approach with requirements to cover a wide space around the venue

Economic Benefits

- Government and other bid stakeholders able to deliver the commitments made as part of the bidding process (in the Candidature File and associated guarantees as well as by signing the Host City Contract).
- High satisfaction from the IOC and sponsors leading to the UK being considered for future major events.

Social Benefits

- The people attending the games can experience a consistent celebratory look and feel to them.

Environmental Benefits

- None

Economic Costs

- High outlay as enforcement would need to cover large distances for significant periods.

Social Costs

- That such stringent control on advertising and street trading would be unpalatable to the general public.

Environmental Costs

- None

Preferred Option

Taking account of the responses to the 12 week public consultation our chosen option is option 2.

In framing the draft regulations the Welsh Government's aim was to strike a balance between fully meeting commitments made to the IOC in the Host City

Contract and enabling businesses to continue to trade and advertise in event zones with minimal disruption.

The consultation sought to canvass opinion as to whether the draft regulations met this aim. Responding bodies broadly agreed that we had defined advertising and trading appropriately to meet the objectives of the regulations. 66% of respondents felt we have got the balance right or partially right between protecting sponsors and allowing business to operate as usual.

Responding bodies broadly agreed that by introducing temporary regulations that are only in force when an event is taking place and only apply in the event zones was proportionate and reasonable.

Whilst the consultation endorsed our approach to the regulations, respondents noted that businesses operating in event zones will need clear advice and information. The Welsh Government is working with the UK Government and the ODA on a range of communication products.

Explanation of costs calculation

Costs have been identified for option 2 and within that, 3 potential scenarios of impact are assessed. Financial impact is measured by the losses which businesses in Cardiff might incur as a result of new regulations on advertising and trading before and during the Olympic Games. The losses which are being measured are from existing trading not the losses which might arise from the extra revenues because of higher visitor numbers during the Games. Extra revenues generated as a result of the Games would be neutralised by losses as a result of the laws that come with the Games.

Advertising methodology

Any market consists of buyers and sellers who will both obtain benefits from buying and selling. The regulation of a market may have consequences for either of these groups and potentially other related markets.

For sellers we can estimate the total revenue of sites within the area and the potential losses. For the regulation under consideration it is generally assumed that the sellers of advertising space will be able to sell their existing outdoor media space generally to sponsors of the Games if not generally to other buyers. In some cases the advertising space may be at a higher price and there may be some gains for sellers. These are not estimated but are likely to be a few high prestige sites where sponsors might wish to compete for these locations. The majority of existing (and some new/bespoke) outdoor media sites in areas covered by the regulations (as well as other sites in London and other venue cities) were offered to Games sponsors via an auction process, initiated by LOCOG, which closed in May. Although at the end of the auction a high proportion of sites were not sold in the zones covered by the Regulations, the owners of the space are still free to sell this to Games sponsors and LOCOG is having initial discussions with the Outdoor Media Centre (the trade body of the owners of the space), in relation to authorising the remaining unsold

space to be sold to some advertisers which do not conflict with the London 2012 sponsor's products and services and whose adverts will not undermine the purposes of the regulations. This is likely to include advertising by governmental bodies and agencies, tourist attractions, theatre companies, museums, music, books and films. In practice therefore it is reasonable to expect any losses, if any to sellers, to be mitigated largely by sales to sponsors and/or these other companies. Some scenarios are estimated with less take up of advertising space as a result of the outcome of the auction than those estimated prior to the consultation.

For buyers there are potential losses but these are less tangible. The costs therefore will potentially lie with the buyers of advertising space who have a preference for a local site who are displaced by the sponsors (whose business is more international). Many buyers may be content to use other space or find substitute advertising media. It is not practical to estimate precisely the numbers of advertisers who benefit from a particular location but given the scale of the regulation perimeter the numbers are expected to be few. For these reasons it was concluded any potential loss to buyers should be excluded from the base advertising costs and scenarios.

Advertising sites are identified using the Postar database which lists advertising spaces in public areas such as roadside billboards, posters on kiosks etc. For Cardiff, 34 sites were identified within the regulation perimeter. For each of the advertising sites a price per day was established taking account of the type of road and size of the advertisement. For sellers this provides the potential revenue per site. Also the number of days the regulations were expected to apply to each venue has been taken into account.

Multiplying the price per day and number of affected days provides the potential revenue per site. This is then adjusted by an assumption that 15% of that space will not be taken up by advertisers. Two further scenarios are used to provide the low scenario (5%) and high scenario (25%). These scenarios are estimated based on the recent LOCOG auction process.

- Base scenario: 15% advertising space not taken: loss of £1,800
- Scenario 1: High cost scenario: 25% advertising space not taken up: loss of £5,000
- Scenario 2: Low cost scenario: 5% advertising space not taken up: loss of £700.

Trading methodology

Traders prohibited by the regulations will be those trading in open public places in the vicinity of the Millennium Stadium. Some traders may be exempt or be able to move to a suitable alternative site but estimates provided are based on the assumption that any traders subject to these regulations will have to cease trading for the appropriate period.

The Welsh Government sought the assistance of Cardiff Council to identify existing licensed street traders within or near to the zones. This information informed the total identified traders affected. These were three permanent licensed trading sites and a further 14 pitches for which licenses are issued during major events on a discretionary basis: nine event merchandising pitches and five catering sites. The nine event merchandising sites are very popular with regular traders and operate on a rota system of allocation. There are currently a total of twenty-three people on the rota system. The five food sites also tend to be operated consistently by the same traders. The three permanent licensed trading sites comprise two green grocers and a coffee stand. Other than the permanent pitches, the other sites are licensed on a discretionary basis by the council but have been included in this impact analysis, which is therefore represents 'a worse case scenario' in terms of street trading. The income forgone by the traders has been estimated in two ways:

Earnings can be based on the customer sales group using the Annual Survey of Hourly Earnings (ASHE) data. The ASHE database is a highly regarded and a widely used data source. This is a survey of earnings across the UK and provided incomes for broad ranges of occupations. Customer sales include street traders but other sales occupational groups. This earnings figure may not represent all the labour input into a small business. It is expected that an individual street trading unit might employ more than one person not necessarily in direct selling but including activities such as deliveries or other assistance. The evidence of incomes using the earnings data is used here as a proxy for profit of traders where there are few barriers to entry and where risks are limited. An estimate of two persons per site is used based on National Association of Business and Market Authorities (NABMA). These estimates suggest a national annual average of around £44,000 per business. These estimates are adjusted by a regional earnings index.

The profitability of business is an alternative approach to measuring the impact and arguably is better adjusted to the particular occupational group. The main disadvantage of this approach is the lack of any direct measure. Using sources that work with street traders we can estimate the turnover in the retail market to be around £3.5 bn (2009 estimates). These estimates indicate that there are 95,000 people working in 45,700 retail trading businesses and therefore suggest a turnover per business of around £75,000. The same source estimates gross profits of around 50% of turnover. A further question is whether turnover data might be fully reported by traders so any realistic level of profitability might underestimate incomes but net profit rates would be less than 50%. An estimate of 50% of turnover is used as the estimate for profitability taking these two factors into account.

These two estimates are quite close and an average of the two has been preferred as the final measure. The average of these estimates has been updated to 2010 values using RPI to make them consistent with advertising values, which are already in 2010 values.

The following process is used to calculate the loss to traders:
Number of traders x no of days the traders will be affected x average earnings/profit per day (adjusted for Cardiff = earnings/profit).

To estimate the loss to traders this estimation is adjusted based on the assumption from the ODA that 50% of traders will be prevented from trading, which provides the final estimate for loss to traders. This represents the base case. The factor is varied by 25% and 75% representing the low and high estimates respectively.

- Base scenario: 50% street trading disallowed (loss of £13k).
- Scenario 1: 75% street trading disallowed (loss of £19k).
- Scenario 2: 25% street trading disallowed (loss of £6k).

Advertising and street trading combined

Three costs are identified based on the three scenarios (the estimates produced are based on 2010 values):

- Base scenario: 15% advertising space not taken up and 50% street trading disallowed (loss of £15k).
- Scenario 1: High cost scenario: 25% advertising space not taken up and 75% street trading disallowed (loss of £24k).
- Scenario 2: Low cost scenario: 5% advertising space not taken up and 25% street trading disallowed (loss of £7k).

All three scenarios are based on estimates of the impact of the regulations on existing habitual trading.

We estimate that our best estimate of costs lie with our base scenario.

Risks and assumptions

The UK has not hosted an Olympic Games since 1948, so it is difficult to calculate the extent of unauthorised advertising and trading that might occur during a London Games. However, the experience of previous host cities is that non-sponsors make sustained and creative attempts to benefit commercially from the Games. The regulations must be designed to counter such attempts.

However it is also recognised that the Olympic Games represents an opportunity for local business to benefit commercially and in these austere times, it should not be the role of Government to prevent that. Consequently the risk of ambush marketing must be weighed against the opportunities for local businesses to exploit the influx of potential trade.

In developing the policy two major assumptions have been made:

- That despite efforts a number of local businesses will not be aware of these restrictions and will, in ignorance, breach the regulations;

- That some companies will know about the regulations but will be prepared to risk the penalties to market their products.

The enforcement of the regulations will take into account these two extremes and deal appropriately and sensitively to the range of breaches that may occur.

Wider impacts

The Games will be the largest special event ever hosted by the country and will attract an unprecedented level of commercial activity in public spaces in the proximity of the Games venues, unless it is carefully regulated. Street trading and commercial advertising at the street level, through distribution of pamphlets, flyers, and product samples, can cause congestion and litter adversely affecting the enjoyment of the games by residents and visitors alike. The regulations strengthen our ability to regulate activities on the streets in the vicinity of Games sites.

Public consultation

In developing option 2 a joint consultation was issued with England and Scotland. A 12 week public consultation took place between 07 March and 30 May 2011. Over 600 stakeholders were alerted to the consultation through a variety of methods including letter, email, leaflet drop and utilising the communication methods of trading, business and advertising associations. In total across Great Britain there were 50 responses, none of which were from Wales. The bulk of respondents can be broken down as follows; 18 responses from local authorities and local authority groups, 8 from the advertising and press industry, and 3 from the sporting industry, with the remaining responses coming from a range of individual businesses, traders and residents.

Few respondents questioned the need for the regulations, understanding the requirement to protect sponsors and enhance the UK's reputation as a host of an international event. Most respondents were broadly positive of the policy direction taken. The responses on the whole addressed technical detail in specific areas rather than stating the approach was fundamentally wrong. The comments on whether the definition of advertising and trading were right and the views expressed on the exceptions were very helpful to the Welsh Government. Changes have been made to the regulations as a result of these comments. The consultation has contributed significantly and positively to the way the regulations have now been framed and drafted.

Amongst other things, the Welsh Government was keen to hear how people felt the regulations would impact on certain groups of people. Three key points were made in terms of how the regulations would have a financial impact on people:

- Unsurprisingly the majority of respondents felt that traders in the regulated zones could be disadvantaged by the regulations. If habitual traders fail to get authorisation from the ODA and they are not found an alternative trading venue then clearly their revenues will be reduced.

- One respondent from the advertising industry felt sellers of advertising space should be compensated if advertising hoardings remained unsold at Games time.
- One respondent noted that venues which regularly host large scale events will already have business arrangements with a variety of traders, some of these traders will only come in to support specific events. If they are not authorised by the ODA then this will have an adverse effect on both the venue's and traders' earnings.

These points are addressed as part of the development of the implementation plan.

Summary and Implementation Plan

In order to adopt a proportionate approach the Welsh Government has tailored the common policy approach across the three administrations to the environment of Cardiff around the Millennium Stadium. The regulations apply in three blocks for a total of 13 days – the match days themselves and the days immediately before matches. The coverage of the regulations extend no further than 500 metres from a venue entrance where this is along a main access route but is substantially less otherwise. It covers less than half of the central shopping streets of Cardiff city centre. In combination with the other event zones across Great Britain they are to less than 0.01% of the land mass of Great Britain. As a consequence of these strict spatial and temporal restrictions, a permanent impact on competition in the affected areas is very unlikely.

In the regulated zone (during the event period) the regulations will override any existing advertising and street trading authorisations and licences. That means that advertisers and traders will need to be authorised by or under the regulations (in addition to holding current authorisations and licences under the general law).

Existing and usual outdoor trading and advertising within the zones has been identified as part of the consideration of the impact of the regulations. In drafting the regulations we have considered whether business in its current format would breach the three objectives of the regulations. Where it is clear that a breach of the objectives would not occur, an exception has been drafted into the regulations. However where the business has the potential to undermine the objectives, the policy is to rely on the authorisation process to allow a case by case consideration. This allows for a filter process.

Authorisation

In addition to exemptions on the face of the regulations, there will be an authorisation process whereby advertisers and existing street traders can apply to advertise and trade during the Olympic period. LOCOG, which is identified by the draft regulations as the designated body to authorise advertising will permit advertising which does not conflict with the aims of the regulations,

including advertising by London 2012 sponsors on existing outdoor advertising sites in the vicinity of the stadium.

LOCOG has indicated that it proposes to authorise advertising activity which is consistent with the aims of the regulations and has identified the following types of activity which it therefore anticipates authorising:

- advertising activity undertaken by London 2012 sponsors for products within their sponsor category, including displaying advertisements on outdoor advertising spaces in the vicinity of venues in respect of which LOCOG has entered into option agreements;
- the display of London 2012 “Look” (i.e. decorative Games related street dressing) displayed by local authorities and other organisations, with LOCOG’s agreement;
- advertising activity undertaken by non-commercial partners (including the local authority and government departments)
- permanent or customary advertising which is not specifically excepted by the regulations but which does not suggest that the brand advertised is associated with the Games and does not seek to gain advantage for the brand advertised by reason of its proximity to a Games venue (examples may include some large illuminated signage on the forecourt of petrol stations or films advertised outside a cinema).

In response to the fact that a high proportion of outdoor media sites in the zones covered by the regulations were not purchased by Games sponsors during the initial auction of those sites LOCOG is also now having initial discussions with the Outdoor Media Centre (the trade body of the owners of the space), in relation to authorising the remaining unsold space to be sold to some advertisers which do not conflict with the London 2012 sponsor's products and services and whose adverts will not undermine the purposes of the regulations. This is likely to include advertising by government bodies and agencies, tourist attractions, theatre companies, museums, music, books and films. LOCOG will continue to monitor the advertising space sold and will work with the industry to maximise sales.

In the case of trading the ODA is responsible for issuing authorisations. The ODA will look to the three main policy objectives when considering authorisation. The focus will be on ensuring that existing businesses can continue to operate, or operate with conditions attached, without compromising the main objectives.

Financial Assistance

The ODA is required under section 29(1)(b) of the 2006 Act to work with persons likely to be prevented by the regulations from carrying out their habitual

trading activities in attempting to identify acceptable alternatives. The ODA is permitted under section 29(3)(b) to give assistance (which may include financial assistance) in complying with or avoiding breaches of the regulations however the ODA has taken the position of considering itself bound by the wording of section 29(1)(b). Therefore the financial assistance will be provided to assist traders in complying with or avoiding breaches of the regulations by making payments to help the trader identify acceptable alternatives (i.e. an alternative location).

While the ODA notes the discretionary powers contained in section 29(3)(b) to give assistance (which may include financial assistance) to those affected by the advertising regulations it does not have a duty to work with them to identify acceptable alternatives and therefore will not consider the provision of financial assistance in respect of advertisers or owners of advertising space. The rationale for this is that most outdoor traders have some capacity to relocate i.e. the equipment they use is constructed to be mobile. Consequently there is the practical possibility of relocation even if there are difficulties in doing this. An advertising space has some level of permanency to it and therefore relocation even with financial assistance is not viable. In addition in the most part comprises that own advertising space have it as part of a wider business model and are not reliant on advertising, or on a small proportion of advertising space, to generate its sole income. That is not to say that ODA will not give assistance in complying with or avoiding breaches of the regulations if space remains unsold through the authorisation process. ODA will not provide financial assistance to the owner of the advertising space but will work with them to avoid breaches of the regulations.

Any financial assistance provided to traders by the ODA is likely to be up to a maximum of £200 per day. This figure has been calculated taking into account:

- The pro-rata refund of the trader's annual licence (consent/permission) fee
- Possible additional licence (consent/permission) fee
- Storage charges for stock and stall
- Van hire

The ODA estimate that of the 50% denied authorisation, 40% (2 in 5 of those denied) will be offered financial assistance to relocate. In the case of Cardiff financial assistance would potentially only apply to the three permanent licensed traders. This means assistance could cost around £2,600 in the base scenario, which assumes one of the three traders being denied a licence but offered financial assistance.

Assistance to street traders is calculated by estimating the number of traders and days of trading affected. This calculation provides the number of days eligible for assistance which is multiplied by the level of assistance (£200)

Enforcement

The regulations may be enforced by the police or by enforcement officers designated by the ODA. It is only right that the police focus on safety and

security matters at Games time and therefore the ODA will take the lead on enforcement. It is looking to designate enforcement officers from the local authority, who are experienced in dealing with street trading and advertising offences (for example Trading Standards Officers and Planning Enforcement Officers). ODA will take a light touch approach to minor infringements that can easily be rectified by giving advice but persistent offenders could face having items seized, removed or destroyed. Serious and deliberate ambush marketing attempts will be dealt with using the full enforcement powers conferred on designated officers, and may result in prosecution through the criminal courts.

The ODA's approach is to fund small teams of designated enforcement officers from local authorities attached to local venues who will prioritise dealing with more serious breaches of the regulations. They estimate that the cost of enforcement of the regulations across Great Britain at the 28 venues and events involving 33 local authorities and a total of 342 enforcement days will be £868,000 (which includes the storage of seized items, payment for officers and specialist equipment). The cost for enforcement at Cardiff, including the assistance of council officials, is therefore estimated around £35,000 based on the proportion of enforcement days occurring.

Statutory Duties (GOWA 2006) of the Welsh Ministers and their Sectoral Interests

Sectors

The regulations will not have any financial implications for Welsh devolved budgets, with the costs and risks of enforcing the regulations being borne by the ODA.

The following organisations will be affected by the regulations:

Local Planning Authorities

The ODA is responsible for enforcement of the regulations, they will rely on assistance from council officers but will arrange contractual terms and funding with the council. The regulations will apply in only 'event zone' in Wales which is the Millennium Stadium, therefore only Cardiff Council will be affected. During the 'relevant event period' the regulations may prevent the use of existing advertising and trading authorisations and licences which have been authorised by the local authority.

The definition of street trading is to be extended to include certain activities where they take place in an open public place. This was highlighted as a concern by local planning authorities in the consultation stages of these regulations they wanted a clearer definition of open public space. Local planning authorities are unlikely to benefit from the impact of the games, but Cardiff Council will not bear costs after the events compared to authorities in England dealing with legacy regeneration schemes such as at the Olympic Park.

Street Traders

The regulations will supplement the existing permissions and will apply despite any licences or consents currently in existence under which a person is otherwise authorised to trade. This means that a person will need to be authorised under the 2012 Games regulations (as well as under the existing law) in order to trade in the areas where the regulations apply, during the periods when they apply. Those given permission to trade will receive substantial benefits but those affected will be the traders not authorised to trade for reasons such as number limitations and the goods sold by the trader.

There are only three permanent street traders located within the proposed event zone who may be affected. Cardiff Council issues licences for other pitches in the event zone on a discretionary basis depending on the nature of the event taking place at the stadium. Therefore traders who take part in the council's rota system are not normally guaranteed an income from events.

Advertising Agencies

Advertising that is displayed must generally be information in connection with the Games or relate to the business undertaken at premises in the event zone. Therefore the main impact in respect of advertising will be owners of poster hoardings where the advertisement is generally unconnected with business activities normally undertaken at the site. Loss of advertising revenue from normal sources will be offset to some degree by sales of advertising space to official sponsors.

Voluntary Sector

Trading by not-for-profit businesses and charity collections are restricted in the same way as other forms of street trading. This is intended to avoid congestion within the event zone, thereby fulfilling one of the aims of the regulations although permission could be sought from the ODA. However not-for-profit organisations are able to benefit from exemptions to the advertising controls.

Duties

Equality of opportunity (Equality, Diversity and Inclusion Division)

There is no evidence available that suggests the regulations will cause significant issues in respect of equality of opportunity, however annex B contains further analysis of human rights issues.

The Welsh language

The regulations do not discriminate on the basis of the language of advertisements displayed. As the regulations are about restricting what is displayed rather than requiring advertisements to be provided, there are no opportunities to promote the Welsh language

Sustainable development

The restrictive nature of these regulations together with their short term nature mean that no significant sustainable development issues arise.

Consultation

Details of the consultation undertaken are provided above. A detailed analysis of the consultation responses can be found on the Department of Culture Media and Sport website.

A joint consultation document was issued containing separate regulations from Wales, England and Scotland. It issued in March 2011 for a period of 12 weeks from the 07 March to the 30 May 2011. The document sought the views of those likely to be affected such as street traders and their representative organisations, pedlars, advertisers and local authorities. However, we also welcomed views from others. The main issues the consultation sought views on were: the scope of advertising activity and trading which we propose to regulate, the areas within which the regulations will apply (which we have called the 'event zones') and the time periods during which the regulations will be in force (which we have called the 'event periods').

Over 600 stakeholders were alerted to the consultation through a variety of methods including letter, email, leaflet drop, and utilising the communication methods of trading, business and advertising associations. Cardiff Council directly notified street traders while nine Welsh stakeholders that were directly consulted on the regulations they included:

- Arriva Trains Wales
- Cardiff Council
- CBI Wales
- Planning Aid Wales
- Planning Officers Society Wales
- Police
- RTPI
- Welsh Local Government Association
- Welsh Language Board

Detailed analysis of the responses can be found in the DCMS document 'The Government Response to advertising and trading regulations London 2012' available via the DCMS website.

In total 50 responses were received to the consultation. The bulk of respondents can be broadly broken down as follows; 18 responses from local authorities and local authority groups, 8 from the advertising and press industry, and 3 from the sporting industry, with the remaining responses coming from a range of individual businesses, traders and residents. Of the 50 responses received, there was none relating to Wales specifically, with none of the respondents being residents of Wales or representing a Welsh business or organisational interest.

Competition Assessment

Both advertising and trading will be limited in terms of what product they can promote however this limitation will only be in place within a restricted area and for a limited time. The regulations affect the official sponsors of the Games in a different way to other business wishing to advertise in the event zone. However, the regulations should not have significant effects on the normal trading of business with premises within the event zone.

The competition filter (at **Appendix A**) does not indicate any significant concerns in relation to the proposed regulation.

Post implementation review

The success of the Olympic and Paralympic 2012 Games will be evaluated after the Games and consideration of the laws that support that success will be part of that evaluation.

APPENDIX A

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

The difference in costs between firms will depend on whether the business premises display advertisements that exceed deemed consent limits. Costs are generally likely to be greater for firms with larger premises with no impact on competition as we are not making a permanent change to business in the area.

APPENDIX B

Human Rights Assessment

Introduction

1. Sections 19 and 25 of the London Olympic Games and Paralympic Games Act 2006 ("2006 Act") require Ministers to make regulations about advertising and trading in the vicinity of London 2012 Games events.
2. Ministers have prepared draft Regulations which were the subject of a public consultation exercise in early 2011.
3. This paper assesses the impact of the Regulations on the rights and fundamental freedoms affirmed by the European Convention on Human Rights ("ECHR") and given further effect in UK law by the Human Right Act 1998.

Freedom of Expression and Protection of Possessions

Impact of Regulations

4. Article 10 of the ECHR affirms the right to freedom of expression. During the London 2012 Games, the Regulations will restrict a person's ability to engage in advertising activity as well as some forms of trading that may include an element of "expression" in small areas around London 2012 events. By doing so, the Regulations will interfere with the Article 10 rights of people who wish to engage in those activities.
5. Article 1 to the First Protocol to the ECHR ("A1P1") protects a person's "possessions" from unjustified appropriation or interference by the State. The benefit of a licence, permit, certificate or consent (a "licence") to carry on a profitable activity can amount to a "possession" for A1P1 purposes. The Regulations will apply despite any licence granted before or after the Regulations come into force and will restrict a person's ability to engage in advertising and trading activity in accordance with an existing licence (in the small areas where the Regulations apply, during the Games period). Accordingly, the Regulations will arguably interfere with the A1P1 rights of current licensees.
6. Further, the Regulations will limit the uses to which land and other property (again, within the small areas where the Regulations apply) may be put during the Games period. They will prevent, for example, a land owner from using his or her land (or allowing his or her land to be used) for advertising or trading activities. This may also amount to an interference with land or other property owners' A1P1 rights.

Justification

7. Interferences with the rights to freedom of expression and protection of one's possessions may be justified on related grounds.

8. An interference with freedom of expression will be justified under Article 10(2) of the ECHR where it is prescribed by law, where it furthers a “legitimate aim” referred to in Article 10(2), and where it is necessary in a democratic society. States are accorded a broad margin of appreciation under Article 10 for restrictions on commercial expression.

9. Likewise, an interference with possessions will be justified under A1P1 where it is “lawful” (that is, imposed by sufficiently accessible, precise and foreseeable law), where it pursues a legitimate aim which is in the general interest, and where it is proportionate to that aim (that is, it strikes a “fair balance” between the general interests of the community and the individual’s fundamental rights).

10. The interferences in the Regulations with Article 10 and A1P1 rights will be prescribed by law that is accessible, precise and foreseeable. As we have noted, sections 19 and 25 of the 2006 Act set out Ministers’ powers to make regulations about advertising and trading in the vicinity of London 2012 Games events (indeed, those sections require Ministers to make such regulations). The Regulations specify:

- the areas to which the restrictions apply;
- the periods during which they will apply; and
- the types of advertising and trading activities that are covered by the regulations.

11. The Regulations were the subject of a consultation process that both informed the public about their proposed content and invited responses. The Regulations have been amended in light of responses to the consultation. They will be debated in draft in Parliament and will be made by the Minister only if the draft is approved by both Houses. The Regulations will be publicly available and the Olympic Delivery Authority will make arrangements to have their effect brought to the attention of persons likely to be affected or interested.

12. The Regulations are intended to meet commitments given by the UK Government to the International Olympic Committee in London’s bid to host the 2012 Games. The main aims are:

- to ensure all Olympic and Paralympic events have a consistent celebratory look and feel to them;
- to prevent ambush marketing within the vicinity of venues ; and
- to ensure people can easily access the venues.

13. These aims are consistent with legitimate aims that justify an interference with Article 10 and A1P1 rights. The Games are a once-in-a-lifetime occasion and it is reasonable for the Government to enact measures to facilitate the staging of the Games, even where those measures necessitate a limited and temporary interference with individuals’ rights.

14. Moreover, the Regulations further the interests of public safety at Games time by ensuring that competitors, officials, spectators and other people attending events are able smoothly to enter and exit venues. They also protect the rights of those that have made a commercial contribution to the staging of the Games (without which the Games could not take place) by preventing advertising and trading activities that amount to ambush marketing. It is legitimate in a democratic society to take steps to protect commercial investments which have a public interest element to them. In this case, the social benefits of the Games could not be achieved without such commercial investments.

15. The Regulations are reasonable and proportionate. They strike a fair balance between the community's general interests (as reflected in the objectives underlying the Regulations) and individuals' rights to freedom of expression and protection of possessions. They interfere with those rights to the minimum extent necessary to meet the underlying objectives described above.

16. For example, the Regulations apply only to small, individually drawn areas around each Games venue. In most cases, these areas extend only a few hundred metres from a venue's perimeter. Where an area does not pose a risk to the objectives underlying the Regulations, it has been excluded from the Regulations, even if it is situated close to a Games venue. In aggregate, the area covered by the Regulations represents a very small proportion of the total land area of the United Kingdom.

17. Further, the Regulations are a temporary measure – they only apply for short periods tailored for each venue by reference to the times when Games events are to take place. The longest period that the Regulations apply to any one place is 35 days (in the area around the main Olympic Park). This period is made up of two phases (one of 22 days for the Olympic Games, and another of 13 days for the Paralympic Games) separated by a period of two weeks during which the Regulations will not apply. For many venues, the Regulations will apply only for a few days. The Regulations cease to have any effect on the day after the closing ceremony of the Paralympic Games.

18. The Regulations contain a number of exceptions which exempt advertising and trading activity that does not undermine the objectives underlying the Regulations. For example, there is an exception for demonstrations and related activity. This exempts acts that are intended to demonstrate support for or opposition to the views or actions of a person or body. It also exempts acts that are intended to publicise a belief, cause or campaign or mark or commemorate an event. The exception would cover (for example) carrying a placard during a protest march, displaying a poster promoting a particular religious belief, or distributing flyers in support of a political party. The exception does not apply to any commercial activity – activity that promotes or advertises a good, service or supplier of a good or service (unless that supplier is a not-for-profit body).

19. There are a number of detailed exceptions for advertisements that do not require express consent from local planning authorities under the current law. These exceptions have the effect (for example) of exempting certain types of advertisements

on business premises (such as standard shop signs) and advertisements on vehicles not principally used to display advertisements.

20. Likewise, there are a number of detailed exceptions for trading activity, which exempt (for example) operating as a newsvendor, providing various motor vehicle-related services on private land (such as, running a car sale yard), and trading on private land adjacent to shops, cafés and related premises, and petrol stations.

21. In addition to specific exceptions, the Regulations provide for advertising and trading activity to be authorised by the London Organising Committee of the Olympic Games and Paralympic Games Limited (“LOCOG”) and the Olympic Delivery Authority (“ODA”) respectively. LOCOG and ODA will publish documents setting out their approach to authorisation and, in general, will authorise advertising and trading that is not inconsistent with the objectives underlying the Regulations.

22. The combined effect of the exceptions set out in the Regulations and LOCOG’s and the ODA’s authorisation functions is that only those forms of advertising and trading activity that are inconsistent with the legitimate aims of the Regulations will be prohibited.

Right to be Presumed Innocent

Impact of Regulations

23. Article 6(2) of the ECHR affirms the right to be presumed innocent until proven guilty according to law. The Regulations provide that a person who has an interest in or is responsible for a business, good or service, will be liable for a contravention of the regulations by the business or if the contravention relates to the good or service. Similarly, a person who owns or occupies land will be responsible for any contravention of the Regulations that takes place on the land. In both cases a person can escape liability if they prove that the contravention took place without their knowledge or despite them haven taken all reasonable steps to prevent a contravention from occurring, continuing or recurring. By requiring an accused person to prove the elements of the defence the usual onus is reversed and the Regulations could be said to interfere with the right to be presumed innocent affirmed by Article 6(2).

Justification

24. An interference with the right to be presumed innocent will be justified where it is confined “within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence.” Putting this another way, an interference will be justified where it furthers a legitimate aim and is reasonably proportionate to that aim.

25. In paragraph 12 above, we have set out the three general objectives of the Regulations. The reverse onus provision is intended to contribute to the achievement of those objectives. In addition, it is specifically intended to ensure that people who are responsible for businesses that contravene the Regulations, or goods or services

in relation to which a contravention occurs, or land on which a contravention takes place, are held accountable for the contravention or, at least, take reasonable steps to prevent a contravention occurring.

26. The reversal of onus is reasonably proportionate to those objectives. The onus (to prove a lack of knowledge or reasonable preventative steps) will only transfer to an accused once the prosecution has proven that a contravention of the regulations has occurred (that is, that there has been advertising or trading activity in contravention of the regulations). The prosecution would also have to prove that the contravention was undertaken by a business for which the defendant was responsible, or that it related to a good or service for which the person was responsible, or that it occurred on land which the person owned or occupied. Accordingly, the prosecution will be required to make out the main elements of an offence before the onus shifts to the defendant.

27. In addition, once the onus is reversed, the matters that a person is required to prove in order to benefit from the defence are peculiarly within the knowledge of the person – that they did not know about the trading or advertising or that they took reasonable steps to prevent the trading or advertising from occurring. The burden on the accused person would, accordingly, not be difficult for a person to discharge if they have no knowledge of the advertising or trading at issue or have taken steps to prevent it.

Conclusion

28. In light of the above analysis, we have concluded that any interference with a person's Article 6, 10 or A1P1 rights by the Regulations is justified.

Eitem 4

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

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

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Bil Senedd y DU ynghylch Diogelu Rhyddidau

Memorandwm Cydsyniad Deddfwriaethol

Nodyn Cyngor Cyfreithiol

Cefndir

1. Ar 10 Tachwedd 2011, gosododd Prif Weinidog Cymru Femorandwm Cydsyniad Deddfwriaethol mewn perthynas â Bil Senedd y DU ynghylch Diogelu Rhyddidau. Ar 15 Tachwedd 2011, cafodd y Memorandwm ei ystyried gan y Pwyllgor Busnes a chafodd ei gyfeirio at y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol i graffu arno o dan Reol Sefydlog 29.4 cyn iddo gael ei drafod yn y Cyfarfod Llawn. Cytunwyd mai'r dyddiad ar gyfer cyflwyno adroddiad arno fydd 24 Ionawr 2012 fan bellaf. Diben y Nodyn hwn yw darparu gwybodaeth ar gyfer y trafodaethau hynny.

Y Bil

2. Cafodd y Bil Ail Ddarlleniad yn Nhŷ'r Cyffredin ar 1 Mawrth 2011 a chwblhaodd ei daith drwy Dŷ'r Cyffredin ar 11 Tachwedd 2011. Ers hynny, mae wedi cael Ail Ddarlleniad yn Nhŷ'r Arglwyddi, a bwriedir cychwyn y Cyfnod Pwyllgor ar 29 Tachwedd 2011.

3. Mae saith Rhan i'r Bil, sy'n cynnwys:

- darpariaeth mewn perthynas â chadw a dinistrio olion bysedd, olion esgidiau a samplau DNA a phroffiliau a gymerwyd yn ystod ymchwiliad troseddol;
- gofyniad ar ysgolion a cholegau addysg bellach i gael caniatâd gan riant pob plentyn sydd o dan 18 mlwydd oed ac sy'n mynychu'r ysgol neu'r coleg, cyn y gall yr ysgol neu'r coleg brosesu gwybodaeth fiometrigrig am y plentyn;
- darpariaeth mewn perthynas â rheoli ymhellach y defnydd o dechnoleg Teledu Cylch Cyfyng, Systemau Adnabod Rhifau Ceir yn Awtomatig a

thechnoleg camerâu gwyliadwriaeth eraill a weithredir gan yr heddlu ac awdurdodau lleol;

- diwygio Deddf Rheoleiddio Pwerau Ymchwilio 2000 i'w gwneud yn ofynnol i awdurdodau lleol gael cymeradwyaeth farnwrol ar gyfer defnyddio unrhyw un o'r tair techneg ymchwilio cudd sydd ar gael iddynt o dan y Ddeddf, sef caffael a datgelu data cyfathrebu, a'r defnydd o system wylidwriaeth gyfeiriedig a ffynonellau gwybodaeth ddynol guddiedig;
- darpariaeth mewn perthynas â phwerau i fynd ar dir neu i mewn i eiddo arall. Mae'r darpariaethau'n galluogi Gweinidog y Goron (neu Weinidogion Cymru), drwy orchymyn, i ddiddymu pwerau mynediad dianghenraid, i ychwanegu mesurau diogelwch mewn perthynas ag arfer pwerau o'r fath, neu i gael pwerau newydd yn lle pwerau o'r fath yn amodol ar fesurau diogelwch ychwanegol. Rhoddir dyletswydd ar bob Gweinidog Cabinet i adolygu'r pwerau mynediad presennol gyda'r bwriad o ystyried a ddylid arfer unrhyw un o'r pwerau gwneud gorchmynion uchod. Gwneir darpariaeth hefyd ar gyfer arfer y pwerau mynediad, sy'n destun darpariaethau cod ymarfer;
- darpariaeth mewn perthynas â gorfodi tramgwyddau parcio;
- darpariaeth mewn perthynas â phwerau gwrthderfysgaeth;
- diwygio Deddf Diogelu Grwpiau Agored i Niwed 2006;
- diwygio Deddf yr Heddlu 1997, sy'n nodi'r fframwaith ar gyfer datgelu collfarnau troseddol a gwybodaeth berthnasol arall ar dystysgrifau a roddwyd gan y Swyddfa Cofnodion Troseddol;
- darpariaeth i sefydlu sefydliad newydd o'r enw y Gwasanaeth Datgelu a Gwahardd, a fydd yn disodli'r Awdurdod Diogelu Annibynnol a'r Swyddfa Cofnodion Troseddol ac yn dwyn ynghyd eu swyddogaethau;
- darpariaeth i berson wneud cais i'r Ysgrifennydd Gwladol i ddiystyru collfarn neu rybudd am dramgwydd o dan adran 12 neu 13 o Ddeddf Troseddau Rhywiol 1956, a throseddau cysylltiedig, sy'n cynnwys cael rhyw hoyw cydsyniol â pherson arall 16 oed neu hŷn;
- diddymu adran 43 o Ddeddf Cyfiawnder Troseddol 2003, sy'n creu darpariaeth i rai treialon penodol o dwyll gael eu cynnal heb reithgor; ac
- yn cael gwared ar y cyfyngiadau ar yr adegau pan ellir cynnal priodas neu wasanaeth partneriaeth sifil.

4. Yn Rhan 6, ceir y pwnc ar gyfer y Memorandwm Cydsyniad Deddfwriaethol presennol ac mae'n diwygio Deddf Rhyddid Gwybodaeth 2000 a Deddf Diogelu Data 1998. Mae pedwar o newidiadau. Yn gyntaf, mae'n diwygio'r Ddeddf Rhyddid Gwybodaeth i greu darpariaeth sy'n caniatáu i awdurdodau lleol aildefnyddio setiau data, yn amodol ar y Ddeddf honno. Yn ail, mae'n diwygio'r diffiniad o gwmni sydd o dan berchnogaeth gyhoeddus at ddibenion y Ddeddf Rhyddid Gwybodaeth fel ei fod yn cynnwys cwmnïau sydd o dan berchnogaeth dau awdurdod lleol neu fwy. Yn drydydd, mae'n ymgorffori gwelliannau a wnaed yng Ngogledd Iwerddon i'r Ddeddf Rhyddid Gwybodaeth gan Ddeddf Llywodraethu a Diwygio Cyfansoddiadol 2010. Yn olaf, mae'n diwygio'r Ddeddf Rhyddid Gwybodaeth a'r Ddeddf Diogelu Data i adolygu'r trefniadau ar gyfer penodi i

swyddfa'r Comisiynydd Gwybodaeth a'r cyfnod yn y swydd, ac i wneud newidiadau i rôl yr Ysgrifennydd Gwladol mewn perthynas â'r swyddogaethau penodol a roddir ar waith gan y Comisiynydd Gwybodaeth.

Y Memorandwm Cydsyniad Deddfwriaethol

5. Cafodd Memorandwm Cydsyniad Deddfwriaethol blaenorol mewn perthynas â'r Bil hwn ei ystyried gan y Cynulliad ar 15 Mawrth 2011 (NDM4680): "Cynnig bod Cynulliad Cenedlaethol Cymru, yn unol â Rheol Sefydlog 26.4, yn cytuno y dylai Senedd y DU ystyried darpariaethau yn y Mesur Seneddol ynghylch Diogelu Rhyddidau i'r graddau y maent yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru." Er i'r Cynnig hwnnw gael ei fynegi mewn termau cyffredinol iawn, roedd cymhwysedd deddfwriaethol y Cynulliad ar y pryd yn gyfyngedig iawn. Cafodd cymhwysedd deddfwriaethol y Cynulliad ei ymestyn yn sylweddol pan ddaeth Rhan 4 o Ddeddf Llywodraeth Cymru 2006 i rym, ac mae Memorandwm Cydsyniad Deddfwriaethol arall yn angenrheidiol ym marn y Llywodraeth.

6. Mae'r cynnig newydd yn darllen fel a ganlyn: "Bod Cynulliad Cenedlaethol Cymru, yn unol â Rheol Sefydlog 29.6, yn cytuno y dylai Senedd y DU ystyried, yn ychwanegol at y darpariaethau y cyfeiriwyd atynt yn NDM4680, y darpariaethau pellach hynny a ddygwyd gerbron yn y Bil Diogelu Rhyddidau sy'n ymwneud â rhyddid gwybodaeth a diogelu data, i'r graddau y maent yn dod o fewn cymhwysedd Cynulliad Cenedlaethol Cymru."

7. Mae'r cynnig yn deillio o welliannau a gynigiwyd gan yr Ysgrifennydd Cartref yn ystod y Cyfnod Adrodd yn Nhŷ'r Cyffredin, a bellach maent wedi'u cynnwys fel rhannau o gymal 100 yn y Bil. Mae testun y cymal hwnnw wedi'i nodi yn Atodiad 1 i'r papur hwn, ac mae'r testun a ychwanegwyd gan y gwelliannau wedi'i danlinellu. Ceir esboniad manwl o gymal 100, a ddaw o'r Memorandwm Esboniadol a baratowyd gan y Swyddfa Gartref ar gyfer y trafodion Seneddol, yn Atodiad 2 i'r papur hwn.

8. Mae'r gwelliannau'n ymwneud yn benodol ag awdurdodau cyhoeddus yn codi tâl mewn cysylltiad â gwneud y gwaith sydd o dan hawlfraint ar gael i'w ailddefnyddio. Mae Llywodraeth Cymru yn esbonio ym mharagraff 7 o'i Femorandwm Cydsyniad Deddfwriaethol y rhesymau dros y gwelliannau fel a ganlyn:

"Roedd y gwelliannau'n ymwneud â'r darpariaethau codi tâl, a fyddai wedi cael yr effaith anfwriadol o gael gwared ar y posibilrwydd o godi tâl am unrhyw setiau data y gofynnir amdanynt gan awdurdod cyhoeddus. Nod y gwelliannau yw cadw'r pwerau statudol presennol i godi tâl a darparu pŵer i wneud rheoliadau newydd er mwyn caniatáu codi tâl. Byddai'r gwelliannau hyn yn sicrhau (1) y gall yr holl awdurdodau cyhoeddus sydd â phwerau statudol ar hyn o bryd (ac eithrio o dan Reoliadau Ailddefnyddio Gwybodaeth y Sector Cyhoeddus 2005) barhau i ddefnyddio'r pwerau hynny i godi tâl a

(2) y gall yr holl awdurdodau cyhoeddus nad ydynt yn meddu ar eu pwerau statudol eu hunain, ond y cânt ddefnyddio Rheoliadau Ailddefnyddio Gwybodaeth y Sector Cyhoeddus i godi tâl, neu sy'n codi tâl o dan bŵer anstatudol (ee cyfraith gyffredin neu bwerau uchelfreiniol), barhau i godi tâl o dan y rheoliadau newydd."

Casgliad

9. Mae'n amlwg bod y mater o fewn cymhwysedd deddfwriaethol y Cynulliad, gan fod 'Mynediad at wybodaeth a gaiff ei chadw gan awdurdodau cyhoeddus mynediad agored' wedi'i gynnwys yn benodol o dan 'Gweinyddiaeth Gyhoeddus' yn Atodlen 7 i Ddeddf Llywodraeth Cymru 2006. Mae Llywodraeth Cymru wedi cadarnhau bod y gwelliannau'n gyson â'i hamcan polisi i warchod ffrydiau ariannu awdurdodau cyhoeddus. Mae'n newid penodol iawn i'r Bil yr oedd y Cynnig blaenorol a gymeradwywyd gan y Cynulliad yn cyfeirio ato, a oedd yn ymwneud â deddfu yn San Steffan ynghylch rhyddhau setiau data. Nid yw'n debygol y bydd Bil Cynulliad yn cael ei gyflwyno yn y dyfodol agos a fyddai'n cynnwys cyfrwng priodol ar gyfer y darpariaethau hyn. Byddai'n ddefnyddiol i ddefnyddwyr y ddeddfwriaeth, ac i awdurdodau lleol yn benodol, pe byddai'r mater o godi tâl yn cael ei drafod ar yr un pryd â'r dyletswyddau sy'n berthnasol iddo a'u bod yn cael eu cynnwys yn yr un ddeddfwriaeth. O dan yr amgylchiadau hyn, ystyrir mai cyflwyno Cynnig Cydsyniad Deddfwriaethol yw'r ffordd briodol o ddelio â'r mater.

10. **Argymhellir bod y Pwyllgor yn ystyried a yw'n cytuno â'r farn hon neu a yw'n dymuno cael rhagor o dystiolaeth cyn dod i benderfyniad a chyflwyno'i adroddiad i'r Cynulliad.**

Part 6

Freedom of information and data protection

Publication of certain datasets

100 Release and publication of datasets held by public authorities .

- (1) The Freedom of Information Act 2000 is amended as follows . .
- (2) In section 11 (means by which communication to be made)— .
 - (a) after subsection (1) insert— .

“(1A) Where— .

 - (a) an applicant makes a request for information to a public authority in respect of information that is, or forms part of, a dataset held by the public authority, and .
 - (b) on making the request for information, the applicant expresses a preference for communication by means of the provision to the applicant of a copy of the information in electronic form, .

the public authority must, so far as reasonably practicable, provide the information to the applicant in an electronic form which is capable of re-use.”
 - (b) In subsection (4), for “subsection (1)” substitute “subsections (1) and 20(1A)”. .
 - (c) After subsection (4) insert— .

“(5) In this Act “dataset” means information comprising a collection of information held in electronic form where all or most of the information in the collection— .

 - (a) has been obtained or recorded for the purpose of providing a public authority with information in connection with the provision of a service by the authority or the carrying out of any other function of the authority, .
 - (b) is factual information which— .
 - (i) is not the product of analysis or interpretation other than calculation, and
 - (ii) is not an official statistic (within the meaning given by section 6(1) of the Statistics and Registration Service Act 2007), and .
 - (c) remains presented in a way that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded.” .
- (3) After section 11 (means by which communication to be made) insert— .

“11A Release of datasets for re-use

 - (1) This section applies where— .
 - (a) a person makes a request for information to a public authority in respect of information that is, or forms part of, a dataset held by the authority, .
 - (b) any of the dataset or part of a dataset so requested is a relevant copyright work, .
 - (c) the public authority is the only owner of the relevant copyright work, and
 - (d) the public authority is communicating the relevant copyright work to the applicant in accordance with this Act. .
 - (2) When communicating the relevant copyright work to the applicant, the public authority must make the relevant copyright work available for re-use by the applicant in accordance with the terms of the specified licence. .
 - (3) The public authority may exercise any power that it has by virtue of regulations under section 11B to charge a fee in connection with making the relevant copyright work available for re-use in accordance with subsection (2). . .

(4) Nothing in this section or section 11B prevents a public authority which is subject to a duty under subsection (2) from exercising any power that it has by or under an enactment other than this Act to charge a fee in connection with making the relevant copyright work available for re-use. .

(5) Where a public authority intends to charge a fee (whether in accordance with regulations under section 11B or as mentioned in subsection (4)) in connection with making a relevant copyright work available for re-use by an applicant, the authority must give the applicant a notice in writing (in this section referred to as a “re-use fee notice”) stating that a fee of an amount specified in, or determined in accordance with, the notice is to be charged by the authority in connection with complying with subsection (2). .

(6) Where a re-use fee notice has been given to the applicant, the public authority is not obliged to comply with subsection (2) while any part of the fee which is required to be paid is unpaid. .

(7) Where a public authority intends to charge a fee as mentioned in subsection (4), the re-use fee notice may be combined with any other notice which is to be given under the power which enables the fee to be charged. .

(8) In this section— .

“copyright owner” has the meaning given by Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act);

“copyright work” has the meaning given by Part 1 of the Act of 1988 (see section 1(2) of that Act);

“database” has the meaning given by section 3A of the Act of 1988;

“database right” has the same meaning as in Part 3 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032);

“owner”, in relation to a relevant copyright work, means—

(a) the copyright owner, or

(b) the owner of the database right in the database;

“relevant copyright work” means—

(a) a copyright work, or

(b) a database subject to a database right,

but excludes a relevant Crown work or a relevant Parliamentary work;

“relevant Crown work” means—

(a) a copyright work in relation to which the Crown is the copyright owner, or

(b) a database in relation to which the Crown is the owner of the database right;

“relevant Parliamentary work” means—

(a) a copyright work in relation to which the House of Commons or the House of Lords is the copyright owner, or

(b) a database in relation to which the House of Commons or the House of Lords is the owner of the database right;

“the specified licence” is the licence specified by the Secretary of State in a code of practice issued under section 45, and the Secretary of State may specify different licences for different purposes.

11B Power to charge fees in relation to release of datasets for re-use .

(1) The Secretary of State may, with the consent of the Treasury, make provision by regulations about the charging of fees by public authorities in connection with making relevant copyright works available for re-use under section 11A(2) or by virtue of section 19(2A)(c). .

(2) Regulations under this section may, in particular— .

(a) prescribe cases in which fees may, or may not, be charged, .

(b) prescribe the amount of any fee payable or provide for any such amount to be determined in such manner as may be prescribed, .

(c) prescribe, or otherwise provide for, times at which fees, or parts of fees, are payable, .

(d) require the provision of information about the manner in which amounts of fees are determined, .

(e) make different provision for different purposes. .

(3) Regulations under this section may, in prescribing the amount of any fee payable or providing for any such amount to be determined in such manner as may be prescribed, provide for a reasonable return on investment..

(4) In this section “relevant copyright work” has the meaning given by section 11A(8).” .

(4) In section 19 (publication schemes)— .

(a) after subsection (2) insert— .

“(2A) A publication scheme must, in particular, include a requirement for the public authority concerned— .

(a) to publish— .

(i) any dataset held by the authority in relation to which a person makes a request for information to the authority, and .

(ii) any up-dated version held by the authority of such a dataset, .
unless the authority is satisfied that it is not appropriate for the dataset to be published,

(b) where reasonably practicable, to publish any dataset the authority publishes by virtue of paragraph (a) in an electronic form which is capable of re-use, .

(c) where any information in a dataset published by virtue of paragraph (a) is a relevant copyright work in relation to which the authority is the only owner, to make the information available for re-use in accordance with the terms of the specified licence. .

(2B) The public authority may exercise any power that it has by virtue of regulations under section 11B to charge a fee in connection with making the relevant copyright work available for re-use in accordance with a requirement imposed by virtue of subsection (2A)(c). .

(2C) Nothing in this section or section 11B prevents a public authority which is subject to such a requirement from exercising any power that it has by or under an enactment other than this Act to charge a fee in connection with making the relevant copyright work available for re-use. .

(2D) Where a public authority intends to charge a fee (whether in accordance with regulations under section 11B or as mentioned in subsection (2C)) in connection with making a relevant copyright work available for re-use by an applicant, the authority must give the applicant a notice in writing (in this section referred to as a “re-use fee notice”) stating that a fee of an amount specified in, or determined in accordance with, the notice is to be charged by the authority in connection with complying with the requirement imposed by virtue of subsection (2A)(c). .

(2E) Where a re-use fee notice has been given to the applicant, the public authority is not obliged to comply with the requirement imposed by virtue of subsection (2A)(c) while any part of the fee which is required to be paid is unpaid. .

(2F) Where a public authority intends to charge a fee as mentioned in subsection (2C), the re-use fee notice may be combined with any other notice which is to be given under the power which enables the fee to be charged.” .

(b) after subsection (7) insert— .

“(8) In this section— .

“copyright owner” has the meaning given by Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act);

- “copyright work” has the meaning given by Part 1 of the Act of 1988 (see section 1(2) of that Act);
- “database” has the meaning given by section 3A of the Act of 1988;
- “database right” has the same meaning as in Part 3 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032S.I. 1997/3032);
- “owner”, in relation to a relevant copyright work, means—
- (a) the copyright owner, or
 - (b) the owner of the database right in the database;
- “relevant copyright work” means—
- (a) a copyright work, or
 - (b) a database subject to a database right,
- but excludes a relevant Crown work or a relevant Parliamentary work;
- “relevant Crown work” means—
- (a) a copyright work in relation to which the Crown is the copyright owner, or
 - (b) a database in relation to which the Crown is the owner of the database right;
- “relevant Parliamentary work” means—
- (a) a copyright work in relation to which the House of Commons or the House of Lords is the copyright owner, or
 - (b) a database in relation to which the House of Commons or the House of Lords is the owner of the database right;
- “the specified licence” has the meaning given by section 11A(8).”
- (5) In section 45 (issue of code of practice)—
- (a) in subsection (2), after paragraph (d) (and before the word “and” at the end of the paragraph), insert—
 - “(da) the disclosure by public authorities of datasets held by them,”, .
 - (b) after subsection (2) insert—
 - “(2A) Provision of the kind mentioned in subsection (2)(da) may, in particular, include provision relating to—
 - (a) the giving of permission for datasets to be re-used, .
 - (b) the disclosure of datasets in an electronic form which is capable of re-use, .
 - (c) the making of datasets available for re-use in accordance with the terms of a licence, .
 - (d) other matters relating to the making of datasets available for re-use, .
 - (e) standards applicable to public authorities in connection with the disclosure of datasets.”, and .
 - (c) in subsection (3) for “The code” substitute “Any code under this section”. .
- (6) In section 84 (interpretation), after the definition of “the Commissioner”, insert—
- ““dataset” has the meaning given by section 11(5);”.

ATODIAD 2

Detholiad o'r Memorandwm Esboniadol ar gyfer Bil Senedd y DU ynghylch Diogelu Rhyddidau fel y'i trosglwyddwyd i Dŷ'r Arglwyddi.

"Part 6: Freedom of information and data protection

Clause 100: Release and publication of datasets held by public authorities

377. Clause 100 amends the Freedom of Information Act 2000 ("FOIA") which currently provides for access to information held by public authorities.

378. Subsection (2) amends section 11 of the FOIA (means by which communication to be made). Paragraph (a) inserts a new subsection (1A) which provides that where a request is made for information that is a dataset, or which forms part of a dataset, held by the public authority, and the applicant requests that information be communicated in an electronic form, then the public authority must, as far as is reasonably practicable, provide the information to the applicant in an electronic form that is capable of re-use, in other words a re-usable format.

379. There is no absolute duty for datasets to be provided in a re-usable format as it is recognised that, in some instances, there may be practical difficulties in relation to costs and IT to convert the format of the information. A re-usable format is one where the information is available in machine-readable form using open standards which enables its re-use and manipulation. If the applicant does not want to have the dataset communicated in electronic form, because for example, he or she wants the dataset in hard copy only, then the new duty in section 11(1A) will not arise. However, the public authority would still need to comply with the preference expressed, by virtue of the existing duty in section 11(1)(a) of the FOIA, and must provide the dataset in hard copy so far as it is reasonably practicable to do so.

380. Paragraph (b) amends section 11(4) by providing that the discretion which a public authority has in relation to the means by which communication of the information is to be made (which is already subject to the duty in section 11(1) of the FOIA) is now additionally subject to the new duty in section 11(1A).

381. Paragraph (c) of subsection (2) inserts new subsection (5) and provides for the definition of "dataset" for the purposes of the Act. The definition makes it clear that a dataset is a subset of information within the meaning of the FOIA. The definition provides that a dataset is a collection of information held in electronic form where all or most of the information meets the criteria set out in the following paragraphs of the new section 11(5).

382. The new subsection (5)(a) requires that the information in a dataset has to have been obtained or recorded by a public authority for the purpose of providing the authority with information in connection with the provision of a service by that authority or the carrying out of any other function of the authority.

383. New subsection (5)(b) requires that the information is factual in nature and (a) is not the product of interpretation or analysis other than calculation, in other words that it is the 'raw' or 'source' data; and (b) provides that it is not an official statistic within the meaning given by the Statistics and Registration Service Act

2007 ("SRSA 2007"). Official statistics have been excluded from the definition of datasets as the production and publication of official statistics is provided for separately in the SRSA 2007.

384. New subsection (5)(c) requires that the information within datasets has not been materially altered since it was obtained or recorded. Datasets which have had 'value' added to them or which have been materially altered, for example in the form of analysis, representation or application of other expertise, would not fall within the definition for the purposes of new subsection (5). Examples of the types of datasets which meet the definition, though not a comprehensive list, will include datasets comprising combinations of letters and numbers used to identify property or locations, such as postcodes and references; datasets comprising numbers and information related to numbers such as spend data; and datasets comprising text or words such as information about job roles in a public authority.

385. Subsection (3) inserts new sections 11A and 11B into the FOIA which provide for the new duty to make a dataset available for re-use and the charging of fees. New section 11A(1) provides for the four criteria which must be met for the new section to apply: (a) that a person must have made a request for a dataset; (b) that the dataset requested includes a 'relevant copyright work'; (c) that the public authority is the only owner of the 'relevant copyright work', in other words that it is not jointly owned with another party or that it is not owned in whole or in part by a third party; and (d) that the public authority is communicating the relevant copyright work to the requester under the FOIA, in other words that the dataset requested is not being withheld under one of the exemptions provided for in the FOIA.

386. New section 11A(2) provides that when communicating such a dataset to an applicant, the public authority must make the dataset available for re-use in accordance with the terms of a specified licence. New section 11A(3) to (7) makes provision for the charging of fees by public authorities for making datasets available for re-use. New subsection (3) provides that a public authority may charge a fee by virtue of regulations made under new section 11B and new subsection (4) preserves existing statutory powers for public authorities to charge a fee. New subsection (5) provides that where a public authority intends to charge a fee, it must give the applicant a "re-use fee notice", which states the amount of the fee which must be paid before the dataset is available for re-use. New subsection (6) provides that where the public authority has given the applicant a re-use notice, it is not required to make the dataset available for re-use until the fee is paid in accordance with the notice; and new subsection (7) provides that if a public authority is exercising any existing statutory power to charge, the authority may combine the re-use fee notice with any other notice in accordance with the relevant statutory power being exercised.

387. New section 11A(8) adds definitions of "copyright owner", "copyright work", "database", "database right", "owner", "relevant copyright work", and "the specified licence" to section 11A of the FOIA. The definition of a "relevant copyright work" excludes a "relevant Crown work" and a "relevant Parliamentary work" which are separately defined.

388. Crown owned works are excluded from the requirement on public authorities to make datasets available for re-use under the terms of a licence specified by the Secretary of State. This is because the Controller of Her Majesty's Stationery Office, who is appointed by letters patent from the Queen to manage Crown owned works,

already has the authority to require these works and databases to be made available for re-use under the terms of a licence.

389. Parliamentary owned works and databases are excluded from the requirement on public authorities to make such datasets available for re-use because it would not be appropriate to make Parliament subject to a direction of the Secretary of State as new section 11A of the FOIA would in effect do by way of the specified licence in the code of practice under section 45 of the FOIA.

390. New section 11B makes further provision about the charging of fees by public authorities for making datasets (containing relevant copyright works) available for re-use. Subsection (1) confers a power on the Secretary of State to make regulations (subject to the negative resolution procedure) about the charging of fees in connection with making the datasets available for re-use in response to requests under the FOIA and publication schemes. Subsections (2) and (3) set out what the regulations may prescribe, such as when a fee may or may not be charged and how much that fee might be.

391. Subsection (4) amends section 19 (publication schemes) of the FOIA. Paragraph (a) inserts new subsections (2A) to (2F) into section 19 of the FOIA. Under new section 19(2A), publication schemes must include a requirement for the public authority to publish any dataset it holds, which is requested by an applicant, and any updated version of a dataset, unless the authority is satisfied that it is not appropriate for the dataset to be so published (new subsection (2A)(a)). It requires public authorities, where reasonably practicable, to publish any dataset under new subsection (2A)(a) in an electronic form which is capable of re-use (new subsection (2A)(b)) Subject to new subsection(2B), it also requires public authorities to make any relevant copyright work (if the authority is the only owner) available for re-use in accordance with the terms of the specified licence. New subsections (2B) to (2F) mirror new section 11A(2A) to (2E) by making equivalent provision in respect of publication schemes for the charging of fees by public authorities for making datasets (where they contain relevant copyright works) available for re-use.

392. Paragraph (b) of subsection (4) inserts a new subsection (8) into section 19 of the FOIA which provides definitions of "copyright owner", "copyright work", "database", "database right", "owner", "relevant copyright work" and "the specified licence". The definition of a "relevant copyright work" excludes a "relevant Crown work" and a "relevant Parliamentary work" which are separately defined.

393. Subsection (5) amends section 45 of the FOIA (issue of code of practice). Paragraph (a) amends the list in section 45(2) of the FOIA, which sets out the matters that must be included in the code of practice made under that section, to insert a new requirement for the code of practice to include provision relating to the disclosure by public authorities of datasets held by them. Paragraph (b) sets out the different provisions relating to the re-use and disclosure of datasets that may, in particular, be included in the code of practice under section 45 of the FOIA. Paragraph (c) amends section 45(3) of the FOIA so as to provide for the possibility of making more than one code of practice under section 45, each of which makes different provision for different public authorities.

394. Subsection (6) inserts into section 84 of the FOIA, which defines the terms used in that Act, a definition of the new term "dataset". “

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Constitutional and Legislative Affairs Committee

Mr Leighton Andrews AC
Y Gweinidog Addysg a Sgiliau,
Llywodraeth Cymru
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Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Bae Caerdydd / Cardiff Bay
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CF99 1NA

27 Medi 2011

Annwyl Weinidog

CLA31 - Gorchymyn y Cwricwlwm Cenedlaethol (Trefniadau Asesu wrth Dderbyn i'r Cyfnod Sylfaen) (Cymru) 2011

A

CLA32 - Gorchymyn Y Cwricwlwm Cenedlaethol (Trefniadau Asesu Diwedd y Cyfnod Sylfaen a Dirymu Trefniadau Asesu'r Cyfnod Allweddol Cyntaf) (Cymru) 2011

Bu'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn trafod yr offerynnau statudol uchod yn ei gyfarfod ar 19 Medi 2011 a chytunwyd y dylwn ddwyn i'ch sylw adroddiadau'r Pwyllgor ar rinweddau'r Rheoliadau, a gyhoeddwyd o dan Reol Sefydlog 21.3.

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

Gosodwyd adroddiadau'r Pwyllgor yn y Swyddfa Gyflwyno ar 23 Medi 2011, ac maent wedi'u hatodi er gwybodaeth. Byddwn yn ddiolchgar pe gallech ystyried yr adroddiad a rhoi gwybod i'r Pwyllgor beth yw eich ymateb.

Byddwch yn sylwi bod y Pwyllgor wedi dod i'r casgliad bod erthygl 5 y Gorchymyn yn cynnwys darpariaeth anghyffredin sy'n galluogi Gweinidogion Cymru i wneud darpariaeth bellach am y Gorchymyn heb yr angen i gyflwyno Gorchymyn diwygio y byddai'r Cynulliad yn gallu craffu arno. Byddai'r Pwyllgor yn gwerthfawrogi cael eglurhad ynghylch a oes unrhyw fwriad gan Weinidogion ar hyn o bryd i ddefnyddio'r pwerau o dan erthygl 5? Os yw'r pŵer yn cael ei ddefnyddio yn y dyfodol, a fydech yn ystyried hybsyu Aelodau'r Cynulliad drwy gyhoeddi datganiad ysgrifenedig ar y mater?

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

Yn gywir

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping tail on the final letter.

David Melding AC
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol



Eich cyf/Your ref CLA31
Ein cyf/Our ref LA/06014/11

David Melding AM
Chair - Constitutional and Legislative Affairs Committee

committeebusiness@Wales.gsi.gov.uk

4 October 2011

David

CLA31 – the National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

And;


CLA32 – the National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Thank you for your letter of 27 September when you provided the Constitutional and Legislative Affairs Committee reports on the above Statutory Instruments.

I note that the Committee agrees that the power in article 5 of the National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011 and in the National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011 is within the scope of section 108(11) of the Education Act 2002. I also note that the inclusion of the article 5 power in an order setting out assessment arrangements for the National Curriculum is not unusual. For example, this power is included in the National Curriculum (Key stage 2 Assessment Arrangements) (Wales) Order 2004 (S.I. 2004/2915) and also the National Curriculum (Key stage 3 Assessment Arrangements) (Wales) Order 2005 (S.I. 2005/1393). Indeed, earlier orders (now revoked) made under the Education Reform Act 1988 and the Education Act 1996 setting out the assessment arrangements for the Key Stages in the National Curriculum also contained this provision. I am not aware that the inclusion of this power in such orders has not been subject to similar comment previously.

I note you state that whilst the use of the power is not unusual, you consider the power is itself unusual and therefore important. Whilst I agree the power is important and not that common, I would draw your attention to the fact that there is similar power for the Secretary of State to make such provision in section 87(11) and (12) of the Education Act 2002. In light of the above I consider the use of the power in the Order to be appropriate.

I do not currently have any plans to make use of the powers under article 5, but any future provision made under the power will be published on the internet.

Yours sincerely


Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

**Y Pwyllgor Materion
Cyfansoddiadol a
Deddfwriaethol**



**Constitutional and Legislative
Affairs Committee**

Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Leighton Andrews AM
Minister for Education and Skills
Welsh Government
5th Floor
Tŷ Hywel
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Bae Caerdydd / Cardiff Bay
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19 October 2011

Dear Minister

CLA31 - The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

CLA32 - The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Thank you for your reply of 4 October to my letter of 27 September. The Constitutional and Legislative Affairs Committee considered your letter at its meeting on 17 October.

The Committee was grateful for your clarification that Ministers do not have any current intention to use the powers under article 5 and noted that any future provisions made using this power will be published on the internet. However, Committee Members also noted that this falls somewhat short of informing Assembly Members in a written statement as I suggested in my original letter.

The Committee agreed that I should ask you to ensure that, if this power is used, Ministers will write to the Chair of the Constitutional and Legislative Affairs Committee to inform him or her of its use. I hope you will be able to agree that this is neither an onerous nor an unreasonable request.

Yours sincerely

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref CLA31 - CLA32
Ein cyf/Our ref LA/06202/11

David Melding AM
Chair - Constitutional & Legislative Affairs Committee
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31 October 2011

Dear David

CLA31 – the National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

And;

CLA32 – the National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Thank you for your letter of 19 October.

In my reply to your letter of 27 September I confirmed that I currently have no plans to use the powers under article 5 of the above Statutory Instruments and any further provision would be published on the internet.

I anticipate that any provision proposed under article 5 of the above statutory instruments would be the subject of consultation and consequently would appear on the Welsh Government internet site for public scrutiny. Through that consultation process the Constitutional and Legislative Affairs Committee would be free to consider and comment upon any proposed use of the provision. I, therefore, feel that it is unnecessary for me to write separately to the Chair of the Committee to inform him or her of its proposed use.

Yours sincerely
Leighton Andrews

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

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

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**Y Pwyllgor Materion
Cyfansoddiadol a
Deddfwriaethol**



**Constitutional and Legislative
Affairs Committee**

Cynulliad National
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Minister for Education and Skills
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CF99 1NA

14 November 2011

Dear Minister

CLA31 - The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

CLA32 - The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Thank you for your letter of 31 October, which the Committee discussed on 7 November.

The Committee noted that you do not feel it is necessary for you to inform it separately of the proposed use of the provisions set out in article 5 of the above instruments. Your main reason appears to be that you envisage use of the power being subject to consultation, which would allow the Committee to consider any use of the power at the time.

The Committee had some misgivings about your approach, which may you may have based on a misapprehension of the way in which the Committee (or indeed any Assembly Committee) works in practice. The Committee does not routinely check consultations on the Welsh Government's website. Although this is in part a matter of resources, it also reflects the fact that consultations are an exercise for the Government to listen to and engage with stakeholders and the public.

I hope you will agree that the Committee has a reasonable expectation that the Government will bring directly to its attention matters in which they have a legitimate interest or where they have expressed a specific and reasonable interest in receiving information from the Government.

In the light of this, I hope you will be able to reconsider your approach on this matter.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping tail on the final letter.

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LA/06384/11

David Melding AM

Chair - Constitutional & Legislative Affairs Committee

committeebusiness@Wales.gsi.gov.uk

Dear David,

29 November 2011

Thank you for your further letter of 14 November about the above Statutory Instruments and in particular the use of article 5.

Whilst I can fully appreciate that the Committee has expressed an interest in any provision that may come forward under article 5 you will be aware that there are no formal procedures in place for it to scrutinise that provision. As I outlined in my earlier letter the committee would, of course, be free to offer comment and observation as part of any public consultation about the proposed use of the relevant powers.

The purpose of the Article 5 power is to allow the Welsh Ministers to make further provision which gives full effect to, or is supplementary to, provisions in the Order. Any substantial provisions relating to the assessment arrangements for children when they enter and leave the Foundation Phase would have to be contained in an Order which would be scrutinised by the National Assembly for Wales. Article 5, therefore, is intended to provide an appropriate administrative mechanism to give effect to or supplement what is in the Order.

This approach does not in any way diminish or disrespect the work of the Committee - indeed I would encourage the Committee to play a full part in any consultation - it does, however, respect the procedures which Parliament has deemed appropriate for this provision, which I also deem to be appropriate and proportionate. The Education Act 2002, under which these Statutory Instruments have been made, does not allow for any additional scrutiny procedures being applied prior to the powers in article 5 being used.

I therefore, feel it would not be appropriate to introduce a further administrative step which could not serve any purpose in respect of the scrutiny procedures.

Yours sincerely

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

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Eitem 6

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Adroddiad: CLA(4)-13-11 : 28 Tachwedd 2011

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

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

Offerynnau'r Weithdrefn Penderfyniad Negyddol

CLA58 – Rheoliadau Camddefnyddio Sylweddau (Llunio a Gweithredu Strategaeth) (Cymru) (Diwygio) 2011

Gweithdrefn: Negyddol

Fe'u gwnaed ar: 1 Tachwedd 2011

Fe'u gosodwyd ar: 14 Tachwedd 2011

Yn dod i rym ar: 5 Rhagfyr 2011

Offerynnau'r Weithdrefn Penderfyniad Cadarnhaol

Dim

Offerynnau sy'n cynnwys materion i'w codi o dan Reol Sefydlog 21.2 neu 21.3

Offerynnau'r Weithdrefn Penderfyniad Negyddol

CLA57 – The Crime and Disorder (Formulation and Implementation of Strategy) (Wales) (Amendment) Regulations 2011

Gweithdrefn: Negyddol

Fe'u gwnaed ar: 6 Tachwedd 2011

Fe'u gosodwyd gerbron y Senedd ar: 14 Tachwedd 2011.

Fe'u gosodwyd gerbron Cynulliad Cenedlaethol Cymru ar: 14 Tachwedd 2011.

Yn dod i rym ar: 5 Rhagfyr 2011

Offerynnau'r Weithdrefn Penderfyniad Cadarnhaol

CLA59 – Rheoliadau ar gyfer Gofalwyr (Cymru) 2011

Gweithdrefn: Cadarnhaol

Fe'u gwnaed ar: 2011

Fe'u gosodwyd ar: heb ei nodi

Yn dod i rym ar: 1 Ionawr 2012

CLA60 – Gorchymyn Caniatâd Cynllunio (Tynnu'n ôl Orchymyn Datblygu neu Orchymyn Datblygu Lleol) (Iawndal) (Cymru) 2012

Gweithdrefn: Cadarnhaol

Fe'i gwnaed ar: heb ei nodi

Fe'i gosodwyd ar: heb ei nodi

Yn dod i rym ar: 31 Ionawr 2012

Cytunodd y Pwyllgor ar yr adroddiadau hyn o dan Reolau Sefydlog 21.2 a 21.3. Ceir copi ohonynt yn Atodiadau 1 i 3.

Busnes arall

Gohebiaeth y Pwyllgor

CLA46 – Rheoliadau Ymchwiliadau Lleol, Ymchwiliadau Cymwys a Gweithdrefnau Cymwys (Swm Dyddiol Safonol) (Cymru) 2011

Nododd y Pwyllgor ymateb y Gweinidog i lythyr y Cadeirydd dyddiedig 18 Hydref 2011 ynghylch rhinweddau Rheoliadau Ymchwiliadau Lleol, Ymchwiliadau Cymwys a Gweithdrefnau Cymwys (Swm Dyddiol Safonol) (Cymru) 2011.

Ystyried ymchwiliadau'r Pwyllgor ar gyfer y dyfodol

Ymchwiliadau'r Pwyllgor: Awdurdodaeth Cymru?

Cytunodd y Pwyllgor i gynnal ymchwiliad i sefydlu awdurdodaeth annibynnol i Gymru. Cytunodd y Pwyllgor hefyd ar gylch gorchwyl yr ymchwiliad.

David Melding AC

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

28 Tachwedd 2011

Atodiad 1

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

(CLA(4)-13-11)

CLA57

Adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Teitl: The Crime and Disorder (Formulation and Implementation of Strategy) (Wales) (Amendment) Regulations 2011

Y weithdrefn: Negyddol

Mae'r Rheoliadau hyn yn darparu ar gyfer symleiddio'r darpariaethau sy'n ymwneud â grwpiau strategaeth a pharatoi strategaethau yn The Crime and Disorder (Formulation and Implementation of Strategy) (Wales) (Amendment) Regulations 2007 o 5 Rhagfyr 2011.

Craffu Technegol

Nodwyd y pwyntiau a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

1. Mae'n ofynnol gwneud y Gorchymyn ar y cyd gan Weinidogion Cymru a'r Ysgrifennydd Gwladol yn ôl adran 6(9) o Ddeddf Trosedd ac Anhrefn 1998. Felly caiff ei osod gerbron Senedd y DU, ac o'r herwydd, mae wedi'i baratoi yn Saesneg yn unig.

[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 gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

David Melding AC

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

28 Tachwedd 2011

**Mae'r Llywodraeth wedi ymateb fel a ganlyn:
Rheoliadau Trosedd ac Anhrefn (Llunio a Gweithredu Strategaeth)
(Cymru) (Diwygio) 2011**

Fel y nodir yn yr adroddiad, paratowyd y rheoliadau diwygio hyn yn uniaith Saesneg. Yr arfer yw paratoi offerynnau statudol yn uniaith Saesneg lle bo'r offerynnau yn offerynnau ar y cyd a lle y bwriedir eu gosod yn y Senedd. Dyna paham y cafodd y Rheoliadau sydd i'w diwygio, hy y rhai a wnaed yn 2007, eu paratoi hefyd yn uniaith Saesneg.

Atodiad 2

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

(CLA(4)-13-11)

CLA59

Adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Teitl: Rheoliadau Strategaethau ar gyfer Gofalwyr (Cymru) 2011

Gweithdrefn: Cadarnhaol

Mae'r Rheoliadau hyn a wnaed o dan Fesur Strategaethau ar gyfer Gofalwyr (Cymru) 2010:-

- yn gymwys i Fyrddau Iechyd Lleol ac Awdurdodau Lleol, ac yn rhannol i Ymddiriedolaeth GIG Felindre ac Ymddiriedolaeth GIG Gwasanaethau Ambiwlans Cymru;
- yn ei gwneud yn ofynnol i Fyrddau Iechyd Lleol yng Nghymru ac Awdurdodau Lleol sy'n dod o fewn eu hardaloedd i weithio gyda'i gilydd i baratoi a chyhoeddi strategaeth sy'n dangos sut y byddant yn gweithio gyda'i gilydd i helpu a chynnwys gofalwyr yn y trefniadau sy'n cael eu gwneud ar gyfer y rhai y maent yn gofalu amdanynt; ac
- yn gwneud darpariaeth ar gyfer ymgynghori wrth baratoi strategaethau, cynnwys strategaethau, darparu gwybodaeth a chynghor priodol, ymgynghori â gofalwyr neu bersonau y gofelir amdanynt, cyflwyno strategaethau drafft i Weinidogion Cymru, a pharatoi strategaethau ar y cyd.

Materion technegol: craffu

Nodwyd y pwyntiau a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

Rhinweddau: craffu

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

(1) Y Rheoliadau hyn yw'r rhai cyntaf i'w gwneud o dan Fesur Strategaethau ar gyfer Gofalwyr (Cymru) 2010. [Rheol Sefydlog 21.3(ii) - ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad].

(2) Mae Rheoliad 9(7) yn datgan bod yn rhaid cyhoeddi strategaeth y Gofalwyr yn y Gymraeg a'r Saesneg "*oni bai nad yw'n rhesymol ymarferol i wneud hynny*".

Ar sail y darpariaethau manwl yn y Rheoliadau ynghylch paratoi'r strategaethau, a bod bwriad i strategaethau o'r fath gwmpasu cyfnod o dair blynedd, nid yw'n ymddangos bod unrhyw amgylchiadau lle na fyddai'n rhesymol ymarferol i'w cyhoeddi'n ddwyieithog.

Ar ben hynny, mae'r cymhwyster yn Rheoliadau 9(7) yn mynd yn groes i'r egwyddor a nodir yn adran 156(1) o Ddeddf Llywodraeth Cymru 2006 sy'n datgan:-

"(1) The English and Welsh texts of—

(a) any Assembly Measure or Act of the Assembly which is in both English and Welsh when it is enacted, or

(b) any subordinate legislation which is in both English and Welsh when it is made,

are to be treated for all purposes as being of equal standing".

Yr egwyddor yw bod y testunau ond yn gyfartal os cânt eu deddfu neu eu gwneud yn ddwyieithog. Er bod y rheoliadau presennol yn ymwneud â strategaethau yn hytrach na deddfwriaeth, oni bai bod y drafft a gyflwynir i'w gymeradwyo (o dan rheoliad 9(3)) neu welliant (o dan rheoliad 9(6)) a gyflwynir yn ddwyieithog, bydd y drafft a gymeradwyir yn ffurfio'r strategaeth, a bydd unrhyw gyfieithiad yn union hynny.

[Rheol Sefydlog 21.3(ii) - ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad.]

David Melding AC

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

28 Tachwedd 2011

Mae'r Llywodraeth wedi ymateb fel a ganlyn:

Rheoliadau Strategaethau ar gyfer Gofalwyr (Cymru) 2011

Craffu ar sail rhagoriaethau

Ni chynigir ymateb i'r sylw mai'r Rheoliadau hyn yw'r rhai cyntaf i'w gwneud o dan Fesur Strategaethau ar gyfer Gofalwyr (Cymru) 2010.

O ran mater yr iaith, mae adroddiad drafft y Pwyllgor yn tanlinellu bod yn rhaid i awdurdodau gyhoeddi Strategaethau yn Saesneg ac yn y Gymraeg “*oni bai nad yw'n rhesymol ymarferol i wneud hynny*”.

Mae'r adroddiad yn nodi nad yw hyn yn gyson â'r gofyniad bod deddfwriaeth yn cael ei gwneud yn ddwyieithog, y mae adran 156 o Ddeddf Llywodraeth Cymru 2006 yn gymwys iddi. Yn achos deddfwriaeth, mae methiant i sicrhau bod deddfiad yng Nghymru yn cael ei basio yn y Gymraeg a'r Saesneg yn golygu pe bai'r deddfiad yn cael ei gyfieithu'n ddiweddarach i ail iaith, ni fyddai gan y testun yn yr ail iaith statws cyfartal â'r testun yn yr iaith y pasiwyd y deddfiad ynddi.

Gan nad yw'r strategaethau sydd i'w llunio gan “awdurdodau dynodedig” yn ddeddfwriaeth, a heb fod yn un o'r deddfiadau a grybwyllir yn adran 156, ni fyddent, beth bynnag, yn achub mantais o effaith yr adran honno.

Adran 156 yw'r ddarpariaeth sy'n rhoi effaith i'r egwyddor, pan fydd deddfwriaeth yn cael ei phasio yn y Gymraeg a'r Saesneg, yna mae'r ddau destun yn gyfartal eu statws. Nid yw'n gosod egwyddor bod yn rhaid i ddeddfwriaeth sy'n gwneud cyhoeddi dogfennau gan awdurdodau cyhoeddus yn ofynnol gynnwys gofyniad eu bod yn cael eu llunio yn y Gymraeg a'r Saesneg drwy broses sy'n gwarantu statws cyfartal i'r ddwy iaith.

Mae pob un o'r awdurdodau cyhoeddus yr effeithir arnynt gan y Rheoliadau hyn yn ddarostyngedig i ddyletswydd o gael Cynllun Iaith Gymraeg o dan adran 5 o Deddf yr Iaith Gymraeg 1993. Bydd angen iddynt roi sylw i ofynion eu cynlluniau hwy eu hunain.

Mae'r adroddiad drafft yn nodi, oherwydd natur y strategaeth, nad yw'n ymddangos bod unrhyw amgylchiadau na fyddai'n rhesymol ymarferol i gyhoeddi'r strategaeth yn ddwyieithog ynddynt. Cytunir bod amgylchiadau pan na fyddai'n rhesymol ymarferol i gyhoeddi'r strategaeth yn ddwyieithog yn debygol o fod yn brin iawn.

Atodiad 3

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

(CLA(4)-13-11)

CLA60

Adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Teitl: Gorchymyn Caniatâd Cynllunio (Tynnu'n ôl Orchymyn Datblygu neu Orchymyn Datblygu Lleol) (Iawndal) (Cymru) 2012

Gweithdrefn: Cadarnhaol

Mae'r Gorchymyn drafft hwn yn diwygio adran 108 o Ddeddf Cynllunio Gwlad a Thref 1990 ("y Ddeddf") fel y mae'n gymwys i Gymru. Bwriad Llywodraeth Cymru yw cychwyn adrannau 61A i 61D o'r Ddeddf (a fewnosodwyd gan adrannau 40 a 41 o Ddeddf Cynllunio a Phrynu Gorfodol 2004) er mwyn galluogi awdurdodau cynllunio lleol i gyflwyno gorchymynion datblygu lleol, ar ôl ymgynghori, fel y nodir mewn gorchymyn datblygu lleol. Mae adran 107 o'r Ddeddf yn darparu bod iawndal yn daladwy pan fydd caniatâd cynllunio a roddwyd gan awdurdod cynllunio lleol yn cael ei ddirymu neu ei addasu ar ôl hynny. Mae adran 108 o'r Ddeddf yn estyn yr hawl i gael iawndal i amgylchiadau pan fydd caniatâd cynllunio a roddwyd drwy orchymyn datblygu yn cael ei dynnu'n ôl. Mae'r Gorchymyn drafft hwn yn estyn yr hawl i gael iawndal i amgylchiadau penodol pan fydd caniatâd cynllunio a roddwyd drwy orchymyn datblygu lleol yn cael ei dynnu'n ôl ac mae'n cyfyngu mewn amgylchiadau eraill yr hawl i iawndal os bydd caniatâd cynllunio a roddwyd drwy orchymyn datblygu neu orchymyn datblygu lleol yn cael ei dynnu'n ôl. Mae diwygiad pellach yn rhoi pwerau i Weinidogion Cymru bennu materion penodol mewn perthynas â'r hawl i gael iawndal.

Materion technegol: craffu

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

Rhinweddau: craffu

Nodwyd y pwyntiau a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3(ii) mewn perthynas â'r offeryn drafft hwn - ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad.

Mae'r Gorchymyn drafft hwn yn ffurfio rhan o gyfres o offerynnau. Mae paragraff 3.3 o'r memorandwn esboniadol yn nodi:-

Further instruments subject to negative procedure will be made in due course and laid before the National Assembly for Wales giving full effect to provisions relating to local development orders and in exercise of powers conferred by section 108 of the 1990 Act, as amended by this instrument.

Er bod yr offeryn hwn yn darparu ar gyfer trefniadau iawndal pan fydd caniatâd cynllunio a roddwyd drwy orchymyn datblygu lleol yn cael ei dynnu'n ôl yn unig, mae gorchmynion datblygu lleol yn ychwanegiad newydd i'r system rheoli datblygu newydd. Mae gorchymyn datblygu lleol yn orchymyn a wneir gan awdurdod cynllunio lleol a ddefnyddir i roi hawliau datblygu a ganiateir (ee lleihau'r angen i gael caniatâd cynllunio) - yn ychwanegol at y rhai a roddir yn genedlaethol gan Lywodraeth Cymru - i fathau penodol o ddatblygiadau (sydd wedi'u nodi yn y gorchymyn) o fewn ardaloedd penodol (sydd hefyd wedi'u nodi yn y gorchymyn).

David Melding AC

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

28 Tachwedd 2011

The Calman Commission & Asylum Seeking Children

2011



Background

The Welsh Refugee Council has over twenty-one years experience of working with refugees, asylum seekers and refused asylum seekers. It provides confidential and independent advice services across Wales, advocates for the rights of refugees and asylum seekers, supports capacity building for refugee community organisations, and promotes good community relations. Its vision is to ensure that refugees and asylum seekers are safe, and that they get the support they need to rebuild their lives in Wales.

The Welsh Refugee Council's work is guided by the core principle that the right to seek asylum is a fundamental right. This year marks the 60th anniversary of the 1951 UN Convention Relating to the Status of Refugees, an international standard that has provided the essential protection to save hundreds and thousands of lives since it was established.

Findings and Recommendations from the Calman Commission following a submission of evidence from the Scottish Refugee Council

1. The Scottish Refugee Council responded in 2008 to a consultation to the Calman Commission (a Commission organised by Labour, Lib Dems and Conservatives in Scotland looking at what further powers should be devolved). They stated:
2. *'The key concern we have is the extent to which the UK Government has interpreted its reserved competence of immigration to treat any issue related to asylum seekers, asylum-seeking children and refugees as reserved including those areas which are devolved competences of the Scottish Parliament. We contend that this has in many instances run counter to the Scottish Parliament's foundations on human rights, equality and children's rights and raises fundamental questions of democratic and financial accountability.'*
3. This was picked up in the final report of Calman (2009) which stated that:

'RECOMMENDATION 5.7: In dealing with the children of asylum seekers, the relevant UK authorities must recognise the statutory responsibilities of Scottish authorities for the well-being of children in Scotland'.

The Calman Commission & Asylum Seeking Children 2011



<http://www.commissiononscottishdevolution.org.uk/uploads/2009-06-12-csd-final-report-2009fbookmarked.pdf>

4. In 2010 the UK Government published its White Paper on the Scotland Bill. The Bill will implement recommendations of the Final Report of the Commission on Scottish Devolution (the Calman Commission). It will make changes to the finances of the Scottish Parliament, including a new Scottish rate of income tax, and make a number of adjustments to the boundary of devolved responsibilities. The Bill is currently going through Westminster and the majority SNP government are asking for further powers to be devolved.

5. *The Government agrees with the Commission that there should be a single framework for managing immigration in the UK, with the flexibility to meet Scottish needs. The UK Border Agency works closely with Scottish authorities to discuss approaches to immigration policy which work best for Scotland. The Migration Advisory Committee oversees a Scottish Shortage Occupation list to address specific gaps in the Scottish labour market. In respect of another of the Commission's recommendations, the Government is committed to working with Scottish authorities to ensure that their statutory obligations towards the children of asylum seekers are respected.*

6. *UKBA recognises the statutory responsibility of Scottish authorities for the well-being of children in Scotland. The UKBA regional office hosts quarterly meeting of corporate partners from across the asylum community, including refugee charities, to provide a forum to discuss pertinent asylum issues.*

7. For further details please see: 'Strengthening Scotland's Future' (November 2010)
Available online http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/30_11_10_scotlandbill.pdf

Daisy Cole
Head of Influencing, PR and Child Policy

Eitem 8

Mae cyfyngiadau ar y ddogfen hon