

## Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

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Lleoliad:  
Ystafell Bwyllgora 2 – y Senedd

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Dyddiad:  
Dydd Llun, 25 Mehefin 2012

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Amser:  
14:30

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



I gael rhagor o wybodaeth, cysylltwch a:

**Steve George**  
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### Agenda

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#### **1. Cyflwyniad, ymddiheuriadau, dirprwyon a datganiadau o fuddiant**

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

**2.**

Offerynnau'r weithdrefn penderfyniad negyddol

Dim

Offerynnau'r weithdrefn penderfyniad cadarnhaol

Dim

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

Offerynnau'r weithdrefn penderfyniad negyddol

26)

Y weithdrefn negyddol. Fe'u gwnaed ar 5 Mehefin 2012. Fe'u gosodwyd ar 12 Mehefin 2012. Yn dod i rym ar 6 Gorffennaf 2012.

#### Offerynnau'r weithdrefn penderfyniad cadarnhaol

Dim

#### Offerynnau'r weithdrefn penderfyniad uwchgadarnhaol

### **CLA155 – Gorchymyn Corff Adnoddau Naturiol Cymru (Sefydlu) 2012** (Tudalennau 27 – 58)

Y weithdrefn penderfyniad uwchgadarnhaol. Fe'i gwnaed 2012. Ni nodwyd y dyddiad fe'u gosodwyd. Dyddiad dod i rym – gweler erthygl 1

### **4. Ymchwiliadau'r Pwyllgor: Ymchwiliad i sefydlu awdurdodaeth ar wahân i Gymru** (Tudalennau 59 – 68)

**Yn bresennol:**

Yr Arglwydd Morris o Aberafan

**Papurau:**

CLA(4)-15-12(p1) – Ymatebion ychwanegol WJ – Yr Arglwydd Morris o Aberafan

### **5. Papurau i'w nodi**

**Adroddiad ar fonitro sybsidiaredd (Ionawr 2012 – Ebrill 2012)** (Tudalennau 69 – 80)

**Papur:**

CLA(4)-15-12(p2) – Adroddiad ar fonitro sybsidiaredd (Ionawr 2012 – Ebrill 2012) (Saesneg yn unig)

**Adroddiad ar y cyfarfod a gynhaliwyd ar 18 Mehefin 2012** (Tudalennau 81 – 82)  
CLA(4)-14-12 – Adroddiad ar y cyfarfod a gynhaliwyd ar 18 Mehefin 2012

**Dyddiad y cyfarfod nesaf**

2 Gorffennaf 2012

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

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

[Trawsgrifiad o'r cyfarfod.](#)

# Eitem 3.1

## Adroddiad Drafft y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

CLA157

**Teitl: Rheoliadau Iechyd Planhigion (Ffioedd) (Cymru) 2012**

**Gweithdrefn: Negyddol**

Mae'r Rheoliadau hyn, sy'n gymwys o ran Cymru, yn pennu ffioedd sy'n daladwy i Weinidogion Cymru ym maes iechyd planhigion. Mae'r ffioedd yn daladwy mewn perthynas ag arolygiadau penodedig a gweithrediadau eraill a gyflawnir yn unol â Chyfarwyddeb y Cyngor 2000/29/EC ar fesurau i amddiffyn rhag dwyn i mewn i'r Gymuned organebau sy'n niweidiol i blanhigion neu gynhyrchion planhigion, a rhag i'r organebau hynny ymledu o fewn y Gymuned.

Yn ogystal, mae'r Rheoliadau yn cydgrynhoi nifer o offerynnau blaenorol a oedd yn ymdrin ar wahân â ffioedd penodol ynglŷn ag iechyd planhigion.

**Materion technegol: craffu**

O dan Reol Sefydlog 21.2 gwahoddir y Cynulliad i roi sylw arbennig i'r offeryn hwn:-

Yn benodol, ynghylch Rheoliad 3 (3) ceir anghysondeb rhwng y testun Saesneg a'r testun Cymraeg. Mae yna eiriau ychwanegol yn y testun Cymraeg na chaiff eu hadlewyrchu yn y testun Saesneg.

Credwn mai'r testun Saesneg yw'r fersiwn gywir.

[Rheol Sefydlog 21.2 (vii) ei bod yn ymddangos bod anghysondebau rhwng ystyr testun Cymraeg a thestun Saesneg] a [Rheol Sefydlog 21.2 (vi) ei bod yn ymddangos bod gwaith drafftio'r offeryn neu'r drafft yn ddiffygiol neu ei fod yn methu â bodloni gofynion statudol].

**Rhinweddau: craffu**

Ni nodwyd unrhyw bwyntiau i adrodd arnynt o dan Reol Sefydlog 21.3 mewn cysylltiad â'r offeryn hwn ar hyn o bryd.

**Cynghorwyr cyfreithiol**

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

**Mehafin 2012**

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

***INSERT RESPONSE***

**Rheoliadau Iechyd Planhigion (Ffioedd) (Cymru) 2012**

Mae'r Llywodraeth yn derbyn yr anghysondeb yr adroddwyd arno rhwng y testun Cymraeg a'r testun Saesneg a gafwyd yn niwygiad terfynol yr Offeryn Statudol drafft cyn iddo gael ei wneud wrth dynnu testun dianghenraid. Tynnwyd y testun perthnasol o destun Saesneg yr Offeryn Statudol, ond drwy amryfusedd cadwyd y darn yn y testun Cymraeg. O wybod nad oes unrhyw effaith gan y testun perthnasol ar ystyr yr offeryn nac ar y canlyniad y bwriedir iddo ei gael, mae'r Llywodraeth yn bwriadu diwygio'r testun Cymraeg pan gaiff ei gyhoeddi.

**2012 Rhif 1493 (Cy. 191)**

**IECHYD PLANHIGION,  
CYMRU**

**Rheoliadau Iechyd Planhigion  
(Ffioedd) (Cymru) 2012**

**NODYN ESBONIADOL**

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

Mae'r Rheoliadau hyn, sy'n gymwys o ran Cymru, yn pennu ffioedd sy'n daladwy i Weinidogion Cymru ym maes iechyd planhigion.

Mae'r ffioedd yn daladwy mewn perthynas ag arolygiadau penodedig a gweithrediadau eraill a gyflawnir yn unol â Chyfarwyddeb y Cyngor 2000/29/EC ar fesurau i amddiffyn rhag dwyn i mewn i'r Gymuned organebau sy'n niweidiol i blanhigion neu gynhyrchion planhigion, a rhag i'r organebau hynny ymledu o fewn y Gymuned (OJ Rhif L 169, 10.7.2000, t.1).

Pennir y ffioedd am wiriadau dogfennol, gwiriadau adnabod a gwiriadau iechyd planhigion mewn perthynas â mewnfurion penodol o blanhigion, cynhyrchion planhigion a gwrthrychau eraill o drydydd gwledydd (rheoliad 2 ac Atodlenni 1, 2 a 3), yn unol â'r gofyniad yn Erthygl 13d o Gyfarwyddeb 2000/29/EC.

Mae'r Rheoliadau yn cydgrynhoi nifer o offerynnau blaenorol a oedd yn ymdrin ar wahân â ffioedd penodol ynglŷn ag iechyd planhigion; dirymir yr offerynnau blaenorol hynny (rheoliad 7). Nid yw'r Rheoliadau hyn yn cyflwyno unrhyw fathau newydd o ffioedd.

Mae lefelau'r ffioedd y darperir ar eu cyfer yn yr offeryn hwn yn rhan o symudiad fesul cam, dros gyfnod o dair blynedd, tuag at ffioedd sy'n adennill y gost lawn. Cynyddir y rhan fwyaf o'r ffioedd yn sylweddol: pennir cynnydd o 229% mewn ffioedd arolygu mewnfurio, 52% yn y ffioedd mewn perthynas â thatws hadyd, 160% mewn ffioedd trwyddedu, 184% yn y ffioedd am arolygu tatws sy'n tarddu o'r Aifft, a 55% yn y ffioedd am wasanaethau pasbortau

planhigion. Darperir manylion pellach yn y Memorandwm Esboniadol.

Paratowyd asesiadau rheoleiddiol o effaith yr offeryn hwn ar gostau busnes, mewn perthynas â phob un o'r pum math o ffioedd y mae'r offeryn hwn yn ymwneud â hwy, ac maent ar gael gan Adran yr Amgylchedd a Datblygu Cynaliadwy, Llywodraeth Cymru, Parc Cathays, Caerdydd CF10 3NQ.

**2012 Rhif 1493 (Cy. 191)**

**IECHYD PLANHIGION,  
CYMRU**

**Rheoliadau Iechyd Planhigion  
(Ffioedd) (Cymru) 2012**

*Gwnaed* 5 Mehefin 2012

*Gosodwyd gerbron Cymulliad Cenedlaethol  
Cymru* 12 Mehefin 2012

*Yn dod i rym* 6 Gorffennaf 2012

Mae Gweinidogion Cymru wedi eu dynodi(1) at ddibenion adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972(2) mewn perthynas â pholisi amaethyddol cyffredin yr Undeb Ewropeaidd.

Mae Gweinidogion Cymru yn gwneud rheoliad 7(a), (b) ac (c) drwy arfer pwerau a roddir gan adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972.

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn, ac eithrio rheoliad 7(a), (b) ac (c), gyda chydysniad y Trysorlys, drwy arfer y pwerau a roddir gan adran 56(1) a (2) o Ddeddf Cyllid 1973(3) ac a freiniwyd bellach ynddynt hwy.(4)

**Enwi, cymhwyso, cychwyn a dehongli**

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Iechyd Planhigion (Ffioedd) (Cymru) 2012. Maent yn gymwys o ran Cymru a deuant i rym ar 6 Gorffennaf 2012.

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- (1) Yn rhinwedd Erthygl 3 o Orchymyn y Cymunedau Ewropeaidd (Dynodi) (Rhif 5) 2010, O.S. 2010/2690.  
(2) 1972 p.68; diwygiwyd adran 2(2) gan adran 27(1)(a) o Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006 (p.51) a Rhan 1 o'r Atodlen i Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008 (p.7).  
(3) 1973 p.51. Diddymwyd is-adran (6) o adran 56 gan Ddeddf Cyfraith Statud (Diddymiaidau) 1977 (p.18).  
(4) Yn rhinwedd adran 59(5) o Ddeddf Llwydraeth Cymru 2006 p.32



(2) Yn y Rheoliadau hyn—

- (a) ystyr “y Gyfarwyddeb” (“*the Directive*”) yw Gyfarwyddeb y Cyngor 2000/29/EC ar fesurau i amddiffyn rhag dwyn i mewn i'r Gymuned organebau sy'n niweidiol i blanhigion neu gynhyrchion planhigion, a rhag i'r organebau hynny ymledu o fewn y Gymuned(1); a
- (b) ystyr “y GIP” (“*the PHO*”) yw Gorchymyn Iechyd Planhigion (Cymru) 2006(2).

(3) Mae i'r termau a ddefnyddir yn y Rheoliadau hyn, ac y defnyddir eu cyfystyron Saesneg yn y Gyfarwyddeb, yr un ystyr yn y Rheoliadau hyn ag a roddir i'w cyfystyron Saesneg yn y Gyfarwyddeb.

### **Ffioedd arolygu mewnforio**

2.—(1) Mae'r rheoliad hwn yn gymwys mewn perthynas â llwythi o—

- (a) planhigion, cynhyrchion planhigion a gwrthrychau eraill o ddisgrifiad a bennir yng ngholofn 1 o Atodlen 1 a restrir yn Rhan B o Atodiad V i'r Gyfarwyddeb, a
- (b) hadau *Solanaceae*, pa un a restrir hwy ai peidio yn y Rhan honno,

a ddygir i mewn i Gymru o wlad neu diriogaeth ac eithrio un sydd o fewn yr Undeb Ewropeaidd neu sy'n destun cytundeb a wnaed o dan erthygl 12(6) o'r GIP.

(2) Ar yr adeg y mewnforir llwyth y mae'r rheoliad hwn yn gymwys iddo, rhaid i'r mewnforiwr dalu i Weinidogion Cymru—

- (a) y ffi a bennir—
  - (i) yng ngholofn 3 o Atodlen 1 mewn perthynas â llwyth o blanhigyn, cynnyrch planhigion neu wrthrych arall a restrir yng ngholofn 1 o'r Atodlen honno, ac eithrio llwyth o blanhigyn neu gynnyrch planhigion y mae paragraff (ii) o'r is-baragraff hwn yn gymwys iddo; neu
  - (ii) yng ngholofn 4 o Atodlen 2 mewn perthynas â llwyth o blanhigyn neu gynnyrch planhigion a restrir yng ngholofn 1 o'r Atodlen honno ac sy'n tarddu o wlad a restrir yng ngholofn 3 o'r Atodlen honno; a
- (b) y ffioedd a bennir yng ngholofn 3 o Atodlen 3 am wiriad dogfennol a gwiriad adnabod.

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(1) OJ Rhif L 169, 10.7.2000, t.1, fel y'i diwygiwyd ddiwethaf gan Gyfarwyddeb y Comisiwn 2010/1/EU (OJ Rhif L 7, 12.1.2010, t.17).

(2) O.S. 2006/1643 (Cy.158).

(3) Ond, pan gynhelir gwiriad iechyd planhigion ar llwyth y tu allan i oriau gwaith yn ystod y dydd, a hynny ar gais y mewnoforiwr neu unrhyw berson arall sy'n gyfrifol am y llwyth, y ffi sy'n daladwy o dan baragraff (2)(a) mewn perthynas â'r llwyth hwnnw yw—

- (a) y ffi a bennir yng ngholofn 4 o Atodlen 1 os yw'r llwyth yn un y mae paragraff (2)(a)(i) yn gymwys iddo; neu
- (b) y ffi a bennir yng ngholofn 5 o Atodlen 2 os yw'r llwyth yn un y mae paragraff (2)(a)(ii) yn gymwys iddo.

(4) Yn y rheoliad hwn, ystyr “oriau gwaith yn ystod y dydd” (“*daytime working hours*”) yw unrhyw amser rhwng yr oriau 8.30 a.m. a 5.00 p.m. ar unrhyw ddiwrnod ac eithrio dydd Sadwrn, dydd Sul, Dydd Nadolig, Dydd Gwener y Groglith neu ddiwrnod sy'n wyl banc o dan Ddeddf Bancio a Thrafodion Ariannol 1971(1) yng Nghymru.

#### **Tatws hadyd: ffioedd**

3.—(1) Mae'r ffioedd a bennir yn Atodlen 4 yn daladwy mewn perthynas â'r swyddogaethau a bennir yng ngholofn 1 o'r Atodlen honno, sy'n ymwneud â chais am—

- (a) ardystiad o datws hadyd yn unol â rheoliad 9 o'r Rheoliadau Tatws Hadyd;
- (b) awdurdodiad i farchnata tatws hadyd yn unol â rheoliad 8 o'r Rheoliadau hynny.

(2) Mae'r ffi sy'n daladwy mewn perthynas â swyddogaeth yn ddarostyngedig i unrhyw leiafswm ffi a bennir yng ngholofn 3 o Atodlen 4 mewn perthynas â'r swyddogaeth honno.

(3) Rhaid talu'r ffi mewn perthynas â swyddogaeth a bennir yn Atodlen 4 i Weinidogion Cymru i gyflawni'r swyddogaeth honno o dan y Rheoliadau Tatws Hadyd ar ran Gweinidogion Cymru.

(4) Yn y rheoliad hwn, ystyr “y Rheoliadau Tatws Hadyd” (“*the Seed Potatoes Regulations*”) yw Rheoliadau Tatws Hadyd (Cymru) 2006(2).

#### **Ffioedd am drwyddedau iechyd planhigion**

4.—(1) Mae'r ffioedd sy'n daladwy o dan y rheoliad hwn yn ymwneud â thrwydded a ddisgrifir yn erthygl 40 neu 41 o'r GIP.

(2) Mewn perthynas â chais neu arolygiad o fath a ddisgrifir yng ngholofn 2 o Atodlen 5, rhaid i berson dalu i Weinidogion Cymru y ffi a bennir yng ngholofn

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(1) 1971 p.80; gweler adran 1 ac Atodlen 1.  
(2) O.S. 2006/2929 (Cy.264).

3 o'r Atodlen honno mewn perthynas â'r math hwnnw o gais neu arolygiad.

### **Ffioedd am awdurdodi pasbortau planhigion**

5.—(1) Rhaid talu'r ffi a bennir ym mharagraff (2) i Weinidogion Cymru mewn perthynas ag unrhyw arolygiad (gan gynnwys arolygiad o gofnodion busnes) a gyflawnir mewn cysylltiad ag—

- (a) cais am awdurdod; neu
- (b) sicrhau cydymffurfiaeth ag unrhyw amodau y rhoddwyd awdurdod yn ddarostyngedig iddynt.

(2) Y ffi yw £31.50 am bob chwarter awr neu ran o chwarter awr (gan gynnwys yr amser a dreulir ar arolygu, ar deithio ac ar weinyddu cysylltiedig), yn ddarostyngedig i leiafswm ffi o £63.00 am bob ymweliad.

(3) Yn y rheoliad hwn, ystyr “awdurdod” (“*authority*”) yw awdurdod i ddyroddi pasbortau planhigion, a roddir o dan erthygl 8 o Orchymyn Iechyd Planhigion (*Phytophthora ramorum*) (Cymru) 2006(1) neu erthygl 29 o'r GIP.

### **Tatws sy'n tarddu o'r Aifft: ffioedd**

6.—(1) Pan fo arolygydd yn cymryd sampl o datws sy'n tarddu o'r Aifft, er mwyn canfod, at ddibenion paragraff 5 o'r Atodiad i'r Penderfyniad, a yw'r tatws hynny wedi eu heintio â *Ralstonia solanacearum* (Smith) Yabuuchi et al., rhaid i'r mewnforiwr dalu i Weinidogion Cymru ffi o £87.80 mewn perthynas â phob lot y cymerir sampl ohoni.

(2) Yn y rheoliad hwn, ystyr “y Penderfyniad” (“*the Decision*”) yw Penderfyniad Gweithredu'r Comisiwn 2011/787/EU sy'n awdurdodi Aelod-wladwriaethau i weithredu mesurau argyfwng dros dro yn erbyn lledaenu *Ralstonia solanacearum* (Smith) Yabuuchi et al., mewn cysylltiad â'r Aifft(2).

### **Dirymiadau**

7. Dirymir y canlynol—

- (a) Rheoliadau Iechyd Planhigion (Ffioedd Trwyddedau) (Cymru a Lloegr) 1996(3), o ran Cymru yn unig;
- (b) rheoliad 6 o Reoliadau Tatws sy'n Tarddu o'r Aifft (Cymru) 2004(4);

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(1) O.S. 2006/1344 (Cy.134).

(2) OJ Rhif L 319, 2.12.2011, t.112.

(3) O.S. 1996/26.

(4) O.S. 2004/2245 (Cy.209).

- (c) Rheoliadau Tatws Hadyd (Ffioedd) (Cymru) (Rhif 2) 2006**(1)**;
- (ch) Rheoliadau Iechyd Planhigion (Ffioedd Pasbortau Planhigion) (Cymru) 2007**(2)**;
- (d) Rheoliadau Iechyd Planhigion (Ffioedd Arolygu Mewnforio) (Cymru) 2010**(3)**; ac
- (dd) Rheoliadau Iechyd Planhigion (Ffioedd Arolygu Mewnforio) (Cymru) (Diwygio) 2012**(4)**.

*John Griffiths*

Gweinidog yr Amgylchedd a Datblygu Cynaliadwy,  
un o Weinidogion Cymru

5 Mehefin 2012

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(1) O.S. 2006/2961 (Cy.267).  
(2) O.S. 2007/1765 (Cy.154).  
(3) O.S. 2010/2917 (Cy.242), a ddiwygiwyd gan O.S. 2012/285 (Cy.49).  
(4) O.S. 2012/285 (Cy.49).

Ffioedd Arolygu Mewnforio

<i>Colofn 1</i> <i>Planhigyn, cynnyrch</i> <i>planhigion neu</i> <i>wrthrych arall</i>	<i>Colofn 2</i> <i>Nifer</i>	<i>Colofn 3</i> <i>Ffi am bob llwyth</i> <i>(oriau gwaith yn ystod</i> <i>y dydd)</i> <i>(£)</i>	<i>Colofn 4</i> <i>Ffi am bob llwyth</i> <i>(oriau gwaith heb fod</i> <i>yn ystod y dydd) (£)</i>
Torion, egin blanhigion (ac eithrio deunydd coedwigaeth atgenhedlol), planhigion ifanc mefus neu lysiau	hyd at 10,000 o ran nifer	46.98	70.47
	am bob 1,000 ychwanegol, neu ran o hynny	1.88, hyd at uchafswm o 375.84	2.81, hyd at uchafswm o 563.76
Llwyni, coed (ac eithrio coed Nadolig wedi'u torri), planhigion meithrinfa prennaidd eraill yn cynnwys deunydd coedwigaeth atgenhedlol (ac eithrio hadau)	hyd at 1,000 o ran nifer	46.98	70.47
	am bob 100 ychwanegol, neu ran o hynny	1.15, hyd at uchafswm o 375.84	1.73, hyd at uchafswm o 563.76
Bylbiau, cormau, rhisomau, cloron (ac eithrio cloron tatws) a fwriedir ar gyfer eu plannu	hyd at 200 kg	46.98	70.47
	am bob 10 kg ychwanegol, neu ran o hynny	0.43, hyd at uchafswm o 375.84	0.64, hyd at uchafswm o 563.76
Hadau, meithriniadau meinwe	hyd at 100 kg	20.13	30.20
	am bob 10 kg ychwanegol, neu ran o hynny	0.46, hyd at uchafswm o 375.84	0.69, hyd at uchafswm o 563.76
Planhigion eraill a fwriedir ar gyfer eu plannu, nas pennir yn unman arall yn yr Atodlen hon	hyd at 5,000 o ran nifer	46.98	70.47
	am bob 100 ychwanegol, neu ran o hynny	0.46, hyd at uchafswm o 375.84	0.69, hyd at uchafswm o 563.76
Blodau wedi'u torri	hyd at 20,000 o ran nifer	46.98	70.47
	am bob 1,000 ychwanegol, neu ran o hynny	0.36, hyd at uchafswm o 375.84	0.54, hyd at uchafswm o 563.76
Canghennau gyda	hyd at 100 kg	46.98	70.47

<i>Colofn 1 Planhigyn, cynnyrch planhigion neu wrthrych arall</i>	<i>Colofn 2 Nifer</i>	<i>Colofn 3 Ffi am bob llwyth (oriau gwaith yn ystod y dydd) (£)</i>	<i>Colofn 4 Ffi am bob llwyth (oriau gwaith heb fod yn ystod y dydd) (£)</i>
deiliant, rhannau o gonifferau (ac eithrio coed Nadolig wedi'u torri)	am bob 100 kg ychwanegol, neu ran o hynny	4.67, hyd at uchafswm o 375.84	7.01, hyd at uchafswm o 563.76
Coed Nadolig sydd wedi'u torri	hyd at 1,000 o ran nifer	46.98	70.47
	am bob 100 ychwanegol, neu ran o hynny	4.67, hyd at uchafswm o 375.84	7.01, hyd at uchafswm o 563.76
Dail planhigion, megis perlyisiau, sbeisys a llyisiau deiliog	hyd at 100 kg	46.98	70.47
	am bob 10 kg ychwanegol, neu ran o hynny	4.67, hyd at uchafswm o 375.84	7.01, hyd at uchafswm o 563.76
Ffrwythau, llyisiau (ac eithrio llyisiau deiliog)	hyd at 25,000 kg	46.98	70.47
	am bob 1,000 kg ychwanegol, neu ran o hynny	1.88	2.81
Cloron tatws	hyd at 25,000 kg	140.94 (am bob lot)	211.41 (am bob lot)
	am bob 25,000 kg ychwanegol neu ran o hynny	140.94 (am bob lot)	211.41 (am bob lot)
Pridd a chyfrwng tyfiant, rhisgl	hyd at 25,000 kg	46.98	70.47
	am bob 1,000 kg ychwanegol, neu ran o hynny	1.88, hyd at uchafswm o 375.84	2.81, hyd at uchafswm o 563.76
Grawn	hyd at 25,000 kg	46.98	70.47
	am bob 1,000 kg ychwanegol, neu ran o hynny	1.88, hyd at uchafswm o 1879.19	2.81, hyd at uchafswm o 2818.78
Planhigion eraill neu gynhyrchion planhigion eraill nas pennir yn unman arall yn yr Atodlen hon, ac eithrio coed fforestydd	am bob llwyth	46.98	70.47

ATODLEN 2

Rheoliad 2(2)(a)(ii) a (3)(b)

Ffioedd Arolygu Mewnforio: Cyfraddau Gostyngol

<i>Colofn 1 Genws</i>	<i>Colofn 2 Nifer</i>	<i>Colofn 3 Gwlad tarddiad</i>	<i>Colofn 4 Ffi am bob llwyth (oriau gwaith yn ystod y dydd) (£)</i>	<i>Colofn 5 Ffi am bob llwyth (oriau gwaith heb fod yn ystod y dydd) (£)</i>
<b>Blodau wedi'u torri</b>				
<i>Dianthus</i>	hyd at 20,000 o ran nifer	Colombia	2.35	3.52
		Ecuador	4.70	7.05
		Kenya	2.35	3.52
		Twrci	11.74	17.62
	am bob 1,000 ychwanegol neu ran o hynny	Colombia	0.02, hyd at uchafswm o 18.79	0.03, hyd at uchafswm o 28.19
		Ecuador	0.04, hyd at uchafswm o 37.58	0.07, hyd at uchafswm o 56.38
		Kenya	0.02, hyd at uchafswm o 18.79	0.03, hyd at uchafswm o 28.19
		Twrci	0.10, hyd at uchafswm o 93.96	0.15, hyd at uchafswm o 140.94
<i>Rosa</i>	hyd at 20,000 o ran nifer	Colombia	1.41	2.11
		Ecuador	1.41	2.11
		Ethiopia	2.35	3.52
		Kenya	2.35	3.52
		Tanzania	4.70	7.05
		Uganda	11.74	17.62
		Zambia	11.74	17.62
	am bob 1,000 ychwanegol neu ran o hynny	Colombia	0.01, hyd at uchafswm o 11.28	0.01, hyd at uchafswm o 16.91
		Ecuador	0.01, hyd at uchafswm o 11.28	0.01, hyd at uchafswm o 16.91
		Ethiopia	0.02, hyd at	0.03, hyd at

<i>Colofn 1 Genws</i>	<i>Colofn 2 Nifer</i>	<i>Colofn 3 Gwlad tarddiad</i>	<i>Colofn 4 Ffi am bob llwyth (oriau gwaith yn ystod y dydd) (£)</i>	<i>Colofn 5 Ffi am bob llwyth (oriau gwaith heb fod yn ystod y dydd) (£)</i>
			uchafswm o 18.79	uchafswm o 28.19
		Kenya	0.02, hyd at uchafswm o 18.79	0.03, hyd at uchafswm o 28.19
		Tanzania	0.04, hyd at uchafswm o 37.58	0.07, hyd at uchafswm o 56.38
		Uganda	0.07, hyd at uchafswm o 93.96	0.10, hyd at uchafswm o 140.94
		Zambia	0.07, hyd at uchafswm o 93.96	0.10, hyd at uchafswm o 140.94
<b>Canghennau gyda deiliant</b>				
<i>Phoenix</i>	hyd at 100 kg	Costa Rica	16.44	24.66
	am bob 100 kg ychwanegol neu ran o hynny	Costa Rica	1.63, hyd at uchafswm o 131.54	2.45, hyd at uchafswm o 197.32
<b>Ffrwythau</b>				
<i>Citrus</i>	hyd at 25,000 kg	Yr Aifft	7.05	10.57
		Israel	4.70	7.05
		Mecsico	7.05	10.57
		Moroco	2.35	3.52
		Periw	11.74	17.62
		Twrci	1.41	2.11
		Uruguay	7.05	10.57
		UDA	7.05	10.57
	am bob 1,000 kg ychwanegol neu ran o hynny	Yr Aifft	0.26	0.39
		Israel	0.19	0.28
		Mecsico	0.26	0.39
		Moroco	0.07	0.10
		Periw	0.47	0.70
		Twrci	0.03	0.05
		Uruguay	0.26	0.39



<i>Colofn 1 Genws</i>	<i>Colofn 2 Nifer</i>	<i>Colofn 3 Gwlad tarddiad</i>	<i>Colofn 4 Ffi am bob llwyth (oriau gwaith yn ystod y dydd) (£)</i>	<i>Colofn 5 Ffi am bob llwyth (oriau gwaith heb fod yn ystod y dydd) (£)</i>
		UDA	0.26	0.39
<i>Malus</i>	hyd at 25,000 kg	Ariannin	4.70	7.05
		Brasil	7.05	10.57
		Chile	2.35	3.52
		Tsieina	23.49	35.23
		Seland Newydd	4.70	7.05
		De Affrica	2.35	3.52
		UDA	11.74	17.62
	am bob 1,000 kg ychwanegol neu ran o hynny	Ariannin	0.19	0.28
		Brasil	0.28	0.42
		Chile	0.09	0.14
		Tsieina	0.94	1.40
		Seland Newydd	0.19	0.28
		De Affrica	0.09	0.14
		UDA	0.47	0.70
<i>Passiflora</i>	hyd at 25,000 kg	Colombia	4.70	7.05
		Kenya	4.70	7.05
		De Affrica	23.49	35.23
		Zimbabwe	16.44	24.66
	am bob 1,000 kg ychwanegol neu ran o hynny	Colombia	0.16	0.25
		Kenya	0.16	0.25
		De Affrica	0.92	1.38
		Zimbabwe	0.63	0.94
<i>Prunus</i>	hyd at 25,000 kg	Ariannin	16.44	24.66
		Chile	4.70	7.05
		De Affrica	4.70	7.05
		Twrci	4.70	7.05
		UDA	4.70	7.05
	am bob 1000 kg	Ariannin	0.63	0.94

<i>Colofn 1 Genws</i>	<i>Colofn 2 Nifer</i>	<i>Colofn 3 Gwlad tarddiad</i>	<i>Colofn 4 Ffi am bob llwyth (oriau gwaith yn ystod y dydd) (£)</i>	<i>Colofn 5 Ffi am bob llwyth (oriau gwaith heb fod yn ystod y dydd) (£)</i>
	ychwanegol neu ran o hynny	Chile	0.16	0.25
		De Affrica	0.16	0.25
		Twrci	0.16	0.25
		UDA	0.16	0.25
<i>Pyrus</i>	hyd at 25,000 kg	Ariannin	4.70	7.05
		Chile	11.74	17.62
		Tsieina	16.44	24.66
		De Affrica	4.70	7.05
	am bob 1,000 kg ychwanegol neu ran o hynny	Ariannin	0.16	0.25
		Chile	0.47	0.70
		Tsieina	0.66	0.98
		De Affrica	0.16	0.25
<b>Llysiau</b>				
<i>Solanum melongena</i>	hyd at 25,000 kg	Twrci	4.70	7.05
	am bob 1,000 kg ychwanegol neu ran o hynny	Twrci	0.16	0.25

### ATODLEN 3

Rheoliad 2(2)(b)

#### Ffioedd Arolygu Mewnforio: Gwiriadau Dogfennol a Gwiriadau Adnabod

<i>Colofn 1 Gwiriad</i>	<i>Colofn 2 Nifer</i>	<i>Colofn 3 Ffi (£)</i>
Dogfennol	am bob llwyth	5.36
Adnabod	am bob llwyth hyd at faint llwyth lori, llwyth wagen reilffordd neu lwyth cynhwysydd o faint cymharol	5.36
	am bob llwyth sy'n fwy na'r maint uchod	10.71

## ATODLEN 4

Rheoliad 3

### Tatws Hadyd: Ffioedd

<i>Colofn 1</i> <i>Swyddogaeth</i>		<i>Colofn 2</i> <i>Ffi<sup>(1)</sup> (£)</i>	<i>Colofn 3</i> <i>Lleiafswm ffi (£)</i>
<b>Arolygu cnydau sy'n tyfu a darparu labeli a seliau mewn perthynas â cheisiadau</b>			
Ardystio fel tatws hadyd cyn-sylfaenol		122.57*	n/a
Ardystio fel tatws hadyd sylfaenol a ddosberthir fel:	super elite 1, super elite 2 neu super elite 3	61.29	122.57
	elite 1, elite 2 neu elite 3	61.29	122.57
	A	58.26	116.52
Ardystio fel tatws hadyd ardystiedig		52.96	105.93
Awdurdodiad i farchnata tatws hadyd		122.57*	n/a
<b>Arolygu cloron a gynaeafwyd</b>			
Hyd at ddau arolygiad		18.16	36.32
Trydydd arolygiad ac arolygiadau dilynol		122.57*	n/a

<sup>(1)</sup> Mae'r cyfraddau, a restrir yn y golofn hon ac yng ngholofn 3, sydd wedi eu marcio â seren yn gyfraddau fesul awr neu ran o awr, a'r cyfraddau nad ydynt wedi eu marcio felly yn gyfraddau fesul hanner hectar neu ran o hanner hectar.

## ATODLEN 5

Rheoliad 4(2)

### Ffioedd am Drwyddedau Iechyd Planhigion

<i>Colofn 1</i> <i>Eitem</i>	<i>Colofn 2</i> <i>Math o gais neu arolygiad</i>	<i>Colofn 3</i> <i>Ffi (£)</i>
1	Cais am drwydded ac eithrio trwydded sy'n dod o fewn eitem 2 neu 3	781.27
2	Cais am drwydded mewn perthynas â phridd neu gyfrwng tyfu arall ar gyfer ei ddadansoddi	563.54
3	Cais am drwydded at ddibenion gwyddonol neu ddibenion treialu, sy'n ymwneud â 5 neu ragor o fathau o bethau	781.27, plws 30.74 am bob math o beth dros ben y 5
4	Cais am adnewyddu neu amrywio trwydded gyda newidiadau, pan fo asesiad gwyddonol neu dechnegol yn ofynnol	256.15
5	Cais am adnewyddu trwydded heb newidiadau, neu gais am adnewyddu neu amrywio trwydded gyda newidiadau bach yn unig, pan nad yw asesiad gwyddonol neu dechnegol yn ofynnol	30.74
6	Arolygu a gweithgareddau cysylltiedig (gan gynnwys amser teithio ac amser swyddfa) i fonitro cydymffurfiaeth â thelerau ac amodau trwydded	42.06 am bob awr neu ran o awr



## **Explanatory Memorandum to The Plant Health (Fees) (Wales) Regulations 2012**

This Explanatory Memorandum has been prepared by Sustainable Futures, Natural Environment & Agriculture Team 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 Plant Health (Fees) (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

*John Griffiths*

Minister for Environment & Sustainable Development

5 June 2012

## **1. Description**

The purpose of this instrument is to provide for an increase in the fees payable in relation to plant health services provided by the Food and Environment Research Agency on behalf of Welsh Government, as part of a move towards full cost recovery of such fees, and in doing so, to consolidate several separate fees instruments into one new instrument covering all plant health fees payable in Wales (except export certification fees).

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

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

## **3 Legislative background**

3.1 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU (“the Plant Health Directive”) establishes the EU plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce. The Plant Health Directive is implemented in England, for non-forestry matters, by the Plant Health (Wales) (Order) 2006 (SI 2006/1643). Similar but separate legislation operates in England, Scotland and Northern Ireland.

3.2 Article 13d of the Plant Health Directive requires Member States to recover the cost of the import inspections required by the Directive through fees. The Plant Health (Import Inspection Fees) (Wales) Regulations 2010 (S.I. 2010/2917) implement that requirement in Wales. Where reduced checks have been set for trade in a particular commodity from a particular country, on the basis of the compliance record of that trade, a reduced fee is charged.

3.3 In line with the principle that the costs of statutory services should be borne by users who benefit directly from a service, charges also apply for the following activities required by the Plant Health Directive:

- Import inspections on potatoes imported from Egypt through the Potatoes Originating in Egypt (Wales) Regulations 2004 (S.I. 2004/2245)
- Plant health licensing services through the Plant Health (Licence Fees) (England and Wales) Regulations 1996 (S.I. 1996/26)
- Plant passporting services through the Plant Health (Plant Passport Fees) (Wales) Regulations 2007 (S.I. 2007/1765)
- Seed potato certification services through the Seed Potatoes (Fees) (Wales) (No.2) Regulations 2006 (S.I. 2006/2961).

3.4 The reason for making this instrument is to provide for increases in fees payable in relation to plant health, as part of a phased move towards full cost recovery of such fees, and, whilst doing so, to consolidate the various fees instruments specified above into one new instrument.

3.5 The instrument is subject to annulment (the negative procedure).

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

4.1 FERA is responsible in Wales, on behalf of Welsh Government, for provision of plant health statutory services to facilitate trade and prevent the introduction and spread of plant pests and diseases.

4.2 Charging for these services is consistent with the principle that businesses using the service should bear the costs of any measures to prevent harm that they might otherwise cause by their actions or non-actions, since most serious pests and diseases that arrive in this country do so via commercial trade in plants and plant produce. Fees for plant health statutory services have not increased for many years and the current fees do not reflect the true cost of providing the services; with income received from business users currently less than 35% of the cost of the service provision.

4.3 Following a public consultation a phased increase in fees is being introduced to achieve full cost recovery over three years, with 50% of the gap being closed in 2012 and the remainder in two stages in 2013 and 2014. The Plant Health (Fees) (Wales) Regulations 2012 implement the first stage of the move towards cost recovery.

4.4 Most fees are substantially increased: import inspection fees by 229%, fees in relation to seed potatoes by 52%, licensing fees by 160%, fees for inspection of Egyptian potatoes by 184% and fees for plant passporting services by 55%. Full details of the old and new fees are given in the Annex.

#### **5 Consultation**

5.1 A consultation into these proposals to revise fees for five plant health services ran from 11 October to 5 December 2011, and was carried out by FERA on an England and Wales basis. The majority of respondents, although opposed to any increase in fees, favoured a phased increase in fees to achieve full cost recovery over three years.

5.2 Details of the consultation on FERA's review of fees for statutory plant health services, including a summary of responses, can be found at: <http://www.fera.defra.gov.uk/plants/feesChargingReview/consultation.cfm>

#### **6. Regulatory Impact Assessment (RIA)**

Please see below.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Options**

Full Impact Assessments into the proposals were prepared by the Food and Environment Research Agency as part of the Consultation process. Five Impact Assessments were prepared to cover the five pieces of legislation being amended:

- The Plant Health (Licence Fees) (England and Wales) Regulations 1996 (S.I. 1996/26)
- The Potatoes Originating in Egypt (Wales) Regulations 2004 (S.I. 2004/2245)
- The Seed Potatoes (Fees) (Wales) (No.2) Regulations 2006 (S.I. 2006/2961).
- The Plant Health (Plant Passport Fees) (Wales) Regulations 2007 (S.I. 2007/1765)
- The Plant Health (Import Inspection Fees) (Wales) Regulations 2010 (S.I. 2010/2917)

In each case, three options were presented

1. Do nothing
2. Introduction of fee increases to achieve full cost recovery during 2012.
3. Phased introduction of fee increases to achieve Full Cost Recovery by Year 3 of implementation (2014).

Full details of the Impact Assessments can be found in Doc 4.

### **Consultation**

A consultation into these proposals to revise fees for five plant health services ran from 11 October to 5 December 2011, and was carried out by FERA on an England and Wales basis. The majority of respondents, although opposed to any increase in fees, favoured a phased increase in fees to achieve full cost recovery over three years.

Details of the consultation on FERA's review of fees for statutory plant health services, including a summary of responses, can be found at: <http://www.fera.defra.gov.uk/plants/feesChargingReview/consultation.cfm>

### **Competition Assessment**

A Competition Assessment has been completed, it is considered unlikely that the new Regulations will have an adverse affect on competition.

### **Post implementation review**

A post implementation review will be undertaken once full cost recovery has been achieved.





## APPENDIX A

### The Competition Assessment

1. There are two stages to the Competition Assessment. The first is a quick filter that assesses whether there is a risk of a significant detrimental effect on competition. If the test results show that the risk is low (and there are no anticipated significant benefits for competition) you will only need to record the results of the filter test (including a brief description of any competition effects that are anticipated). If, on the other hand, the test results show that the risk is high you will need to contact D E & T Operations Team for further advice on whether a more detailed assessment and possible further action is needed.
2. You should consider the market that will be affected, i.e. the firms that compete against one another to sell the same or similar products or services. A regulation or proposal may impact directly on just one sector or on several, and some regulations may have indirect effects on other, linked, sectors which either supply goods or services to the affected sectors or buy products from them. (e.g. the recreational craft directive affects the engines needed for boats used for leisure purposes. Within this though there are two distinct markets: engine manufactures that make standard engines, and boat builders who modify them for use on leisure boats.) Some regulations impact almost universally on a very wide range of sectors (e.g. the national minimum wage).
3. For a meaningful competition assessment you must ensure that affected markets are correctly identified. Help and /or advice can also be obtained from the OFT, which has published guidance on markets, entitled "Market definition" (OFT403)  
[http://www.of.gov.uk/shared\\_of/business\\_leaflets/ca98\\_guidelines/of403.pdf](http://www.of.gov.uk/shared_of/business_leaflets/ca98_guidelines/of403.pdf).

### The competition filter test

4. This has nine straightforward questions. Where the regulation is likely to have an impact directly on more than one sector (whether directly or indirectly) the competition filter test should be carried out for each sector affected. Where a regulation might impact on many sectors, you will need to identify those sectors that might be affected to the greatest extent. Please contact D E & T Operations Team for further advice
5. The competition filter test is set out below, together with points to consider in answering the questions. Further detail is contained in the OFT's published Guidelines for Competition Assessment (OFT 876) together with examples and references [Competition Policy - The Office of Fair Trading](#)

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

6. Each “yes” answer indicates a possible competition concern.

- “Yes” answers to less than half the questions suggest that the regulation is unlikely to have a significant detrimental effect on competition. As new information comes to light, this result should be re-affirmed by re-applying the filter test.
- “Yes” answers to more than half of the questions indicate that there is some risk that the regulation may have a significant effect on competition and a detailed assessment is necessary. Please contact D E & T Operations Team for further advice.

### Questions 1 to 3: the market

7. Where there are a few large firms in the market, or it is difficult to establish a new firm, competition concerns are more likely.

#### **Question 4: substantially different effect on businesses/organisation**

8. Will the costs fall differently on different businesses/organisation? This is relevant where the costs of complying with a regulation are not proportional to output.

#### **Question 5: changes to market structure**

9. If regulations are likely to penalise certain firms, then this may affect whether those firms stay in business. This could then alter the number or size of firms in the market. The most likely case is where small firms are affected more than large ones are.
10. Consider whether firms that face a greater impact will be able to stay in the market given the additional costs they face. If they have to raise prices as a result of the regulation will customers move to other suppliers?

#### **Questions 6 and 7: penalising new suppliers**

11. Consider whether new suppliers to the market would be affected differently from existing suppliers. An example would be where new firms must meet higher standards immediately, while established firms have a longer period in which to meet them. This could make it harder for the new firms to compete. However, such an effect might be offset by new firms not having to face the costs of changing existing equipment and/or processes, or where existing suppliers have already, voluntarily, decided to carry out the actions required under the regulation.

#### **Question 8: technological change**

12. New technologies may advantage some companies over others who may be driven out of the market. Consider whether technological change will affect the number or size of firms in the market. Where only small changes in technology are happening continuously, this question should be answered "no".

#### **Question 9: restrictions on suppliers**

13. Will the regulation stop suppliers providing products or services that they would otherwise provide? An example would be a regulation imposing minimum standards, thus preventing suppliers from selling lowest cost or quality options. Further examples would be regulations imposing price restrictions or restrictions on what firms use to make their products. If locations are restricted, customers may suffer, especially if there are local markets.

## **Presenting the results of the competition filter test**

14. The findings of the competition filter test should be written up as part of the draft regulatory impact assessment (and should also be included in the final impact assessment if no detailed assessment is required). You should include a clear statement setting out whether there is likely to be any detrimental effects on competition, with reasoning and evidence presented to support this conclusion. If you anticipate any beneficial effects, you should assess these and include them in the write-up. This will improve internal and external consultation and inform Ministers.

## **The detailed assessment**

15. The aim of the detailed assessment is to understand in more depth the potential competition impacts identified whilst carrying out the competition filter test. The Office of Fair Trading's (OFT) "Guidelines for Competition Assessment" (OFT 876) [Competition Policy - The Office of Fair Trading](#) provide detailed guidance on how to approach the detailed assessment. The OFT publication "Market Definition" (OFT 403) [http://www.of.gov.uk/shared\\_of/business\\_leaflets/ca98\\_guidelines/oft403.pdf](http://www.of.gov.uk/shared_of/business_leaflets/ca98_guidelines/oft403.pdf) provides guidance on how to identify the relevant markets.

# Eitem 3.2

CLA155

## Adroddiad Drafft y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

**Teitl: Gorchymyn Corff Adnoddau Naturiol Cymru (Sefydlu) 2012**

### Gweithdrefn: Cadarnhaol

Caiff y gorchymyn drafft hwn ei wneud o dan bwerau sydd wedi'u cynnwys yn adrannau 13 ac 15 o Ddeddf Cyrff Cyhoeddus 2011. Mae'n sefydlu corff statudol newydd, Corff Adnoddau Naturiol Cymru, ac yn darparu ar gyfer ei ffurf, ei ddiben, ei aelodaeth, ei weithdrefn, ei lywodraethu ariannol a'i swyddogaethau cychwynol.

### Materion technegol: craffu

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

Mae erthygl 13(5) yn cynnwys gofyniad mewn rhai amgylchiadau i'r Corff wneud taliad i Weinidogion Cymru. Mae'r geiriau 'to them' wedi'u cynnwys yn y testun Saesneg, ond nid yw 'iddynt' wedi'i gynnwys yn y testun Cymraeg. Mae'r bwriad yn glir, felly byddai'n briodol cynnwys y gair coll pan gaiff y Gorchymyn ei gyhoeddi er mwyn gwneud y ddarpariaeth yn haws i'w deall.

[Rheol Sefydlog 21.2(vi) - ei bod yn ymddangos bod gwaith drafftio'r offeryn yn ddiffygiol.]

### 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.

Hwn yw'r gorchymyn cyntaf i'r Cynulliad Cenedlaethol ei ystyried o dan Ddeddf Cyrff Cyhoeddus 2011 ("Deddf 2011").

Mae'r Gorchymyn yn sefydlu un corff newydd ar gyfer rheoli adnoddau naturiol Cymru. Teitl gweithredol y corff newydd yw *Corff Adnoddau Naturiol Cymru*. Mae Llywodraeth Cymru yn nodi yn y Memorandwm Esboniadol bod y gorchymyn yn sefydlu'r corff mewn modd sy'n sicrhau, cyn iddo drosglwyddo'r holl swyddogaethau priodol iddo, y gall ymgymryd â'r holl waith paratoi angenrheidiol er mwyn sicrhau y bydd y corff newydd yn gwbl weithredol o'r diwrnod cyntaf y bydd yn gyfrifol am yr holl gyfrifoldebau amgylcheddol a gaiff eu trosglwyddo iddo. Bydd y gwaith paratoi yn cynnwys sefydlu strwythurau mewnol y

Corff a pharatoi ar gyfer trosglwyddo swyddogaethau, staff, eiddo a hawliau a rhwymedigaethau eraill mewn deddfwriaeth arall iddo.

Mae'r Gorchymyn yn ddarostyngedig i fath o weithdrefn gadarnhaol yn unol ag adran 19 o Ddeddf 2011. Yn ogystal â gofyniad arferol y weithdrefn gadarnhaol - hynny yw, ni all y gorchymyn gael ei wneud oni bai bod y Cynulliad yn ei gymeradwyo - mae Deddf 2011 yn ei gwneud yn ofynnol i'r Gorchymyn gael ei osod ar ffurf drafft am 40 diwrnod, nad ydynt yn ddiwrnodau yn ystod y toriad. Ar unrhyw adeg o fewn y 30 diwrnod ers i'r Gorchymyn gael ei osod (daw hyn i ben ar 5 Gorffennaf 2012), gall y Cynulliad benderfynu, neu gall pwyllgor a fydd yn craffu ar y Gorchymyn argymhell bod y Gorchymyn drafft yn cael ei osod am 20 diwrnod ychwanegol, nad ydynt yn ddiwrnodau yn ystod y toriad (hynny yw, cyfanswm o 60 diwrnod), cyn y gellir ei wneud. Gall unrhyw argymhelliad gan bwyllgor gael ei ddisodli gan gynnig yn y Cynulliad. Os yw'r Cynulliad yn ei gymeradwyo, neu os bydd cynnig gan bwyllgor yn sefyll, yna rhaid i'r Gorchymyn gael ei osod am 20 diwrnod ychwanegol er mwyn caniatáu gwaith craffu neu ymgynghori pellach. Bydd yn rhaid i Weinidogion Cymru ystyried unrhyw gyflwyniadau, unrhyw benderfyniadau gan y Cynulliad ac unrhyw argymhellion gan bwyllgor y Cynulliad a fu'n craffu ar y Gorchymyn. Os caiff unrhyw newidiadau sylweddol eu gwneud i'r Gorchymyn drafft o ganlyniad, rhaid ailosod y Gorchymyn drafft diwygiedig gerbron y Cynulliad, gyda chrynodeb o'r newidiadau. Yna, byddai'r Gorchymyn drafft diwygiedig yn ddarostyngedig i weithdrefn gadarnhaol arferol y Cynulliad.

Cyfeiriodd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol y Gorchymyn drafft i'r Pwyllgor Amgylchedd a Chynaliadwyedd i'w ystyried ar 11 Mehefin 2012.

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

### **Mehefin 2012**

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

### **Gorchymyn Corff Adnoddau Naturiol Cymru (Sefydlu) 2012**

Mae'r Llywodraeth yn derbyn y pwynt adrodd technegol ac yn bwriadu diwygio'r gwall pan gaiff y Gorchymyn ei chyhoeddi

*Gorchymyn Drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 19 o Ddeddf Cyrff Cyhoeddus 2011, ar gyfer cymeradwyaeth drwy benderfyniad gan Gynulliad Cenedlaethol Cymru*

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OFFERYNNAU STATUDOL  
CYMRU DRAFFT

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**2012 Rhif (Cy. )**

**CYRFF CYHOEDDUS, CYMRU**

**YR AMGYLCHEDD, CYMRU**

**Gorchymyn Corff Adnoddau  
Naturiol Cymru (Sefydlu) 2012**

**NODYN ESBONIADOL**

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

Mae'r Gorchymyn hwn, a wnaed o dan Ddeddf Cyrff Cyhoeddus 2011 ("y Ddeddf"), yn sefydlu corff statudol newydd, Corff Adnoddau Naturiol Cymru ("y Corff"), ac yn darparu ar gyfer ei ffurf, ei ddiben, ei aelodaeth, ei weithdrefn, ei lywodraethu ariannol a'i swyddogaethau cychwynnol.

Prif swyddogaeth y Corff ar y cam hwn yw paratoi i ysgwyddo swyddogaethau rheoleiddio sylweddol a swyddogaethau eraill, sy'n ymwneud ag amgylchedd ac adnoddau naturiol Cymru, yn ddiweddarach. Bydd y gwaith rhagbaratoawl hwn yn cynnwys sefydlu strwythurau mewnol y Corff a pharatoi ar gyfer trosglwyddo'r swyddogaethau hynny, ac ar gyfer trosglwyddo staff, eiddo a hawliau a rhwymedigaethau eraill, mewn deddfwriaeth ddilynol.

Mae'r Corff yn cael ei sefydlu fel hyn oherwydd bod Gweinidogion Cymru yn dal wrthi'n llunio eu cynigion terfynol, o dan y Ddeddf, o ran pa swyddogaethau i'w trosglwyddo i'r Corff o'r sefydliadau presennol, ac a ddylid addasu unrhyw un neu rai o'r swyddogaethau hynny.

Mae erthygl 6 yn rhoi i'r Corff ei swyddogaethau rhagbaratoawl cychwynnol. Mae paragraff (1) o erthygl 6 yn dynodi'r categorïau o gynigion Gweinidogion Cymru y mae'r swyddogaeth ragbaratoawl hon yn ymwneud â hwy. Os oes angen i gynnig gael ei gymeradwyo gan Gynulliad Cenedlaethol Cymru (neu unrhyw gorff arall) er mwyn



iddo gael ei weithredu, mae paragraff (2) yn ei gwneud yn glir nad oes dim yn y Gorchymyn hwn yn dileu'r angen i gael y gymeradwyaeth honno.

Mae'r Gorchymyn hefyd yn rhoi i'r Corff bwerau eraill y gall fod eu hangen arno er mwyn cyflawni ei swyddogaethau rhagbaratoawl: er enghraifft, y pŵer i ymrwymo i gytundebau (erthygl 9), benthyca arian (erthygl 14) a chyflogi staff (paragraff 13(4) o'r Atodlen). Mae'r Gorchymyn hefyd yn gosod amodau penodol ar arfer swyddogaethau'r Corff (gweler erthyglau 7 ac 8).

Yn y Gorchymyn hwn, ni roddir unrhyw swyddogaethau rheoleiddio sylweddol na swyddogaethau eraill i'r Corff mewn perthynas ag amgylchedd neu adnoddau naturiol Cymru. Oni bai neu hyd nes bod y swyddogaethau hynny'n cael eu trosglwyddo i'r Corff, byddant yn parhau i fod yn swyddogaethau'r cyrff neu'r swydd-ddeiliaid y maent wedi eu breinio ynddynt ar hyn o bryd.

Mae'r Gorchymyn yn breinio nifer o swyddogaethau sy'n ymwneud â'r Corff yng Ngweinidogion Cymru, gan gynnwys y pŵer i benodi a diswyddo nifer o'i aelodau (paragraffau 2, 4 a 7 o'r Atodlen); pwerau o ran ei lywodraethu corfforaethol ac ariannol (paragraffau 10 i 15, 18, 19 ac 21 i 24 o'r Atodlen) a phwerau i roi canllawiau (erthygl 5) a chyfarwyddiadau (erthygl 11) i'r Corff.

*Gorchymyn Drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 19 o Ddeddf Cyrff Cyhoeddus 2011, ar gyfer cymeradwyaeth drwy benderfyniad gan Gynulliad Cenedlaethol Cymru*

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OFFERYNNAU STATUDOL  
CYMRU DRAFFT

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**2012 Rhif (Cy. )**

**CYRFF CYHOEDDUS, CYMRU**

**YR AMGYLCHEDD, CYMRU**

**Gorchymyn Corff Adnoddau  
Naturiol Cymru (Sefydlu) 2012**

*Gwnaed* 2012  
*Yn dod i rym* gweler erthygl 1

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddwyd iddynt gan adrannau 13(7) a 15(1) o Ddeddf Cyrff Cyhoeddus 2011(1) ("y Ddeddf"), yn gwneud y Gorchymyn a ganlyn.

Yn unol ag adran 16 o'r Ddeddf, mae Gweinidogion Cymru o'r farn—

- (a) wedi iddynt roi sylw i'r ffactorau a nodir yn adran 16(1) o'r Ddeddf, bod y Gorchymyn hwn yn ateb y diben o wella'r broses o arfer swyddogaethau cyhoeddus;
- (b) nad yw'r Gorchymyn hwn yn dileu unrhyw ddiogelwch angenrheidiol nac yn atal unrhyw berson rhag parhau i arfer unrhyw hawl neu ryddid y gallai'r person hwnnw ddisgwyl yn rhesymol barhau i'w harfer neu i'w arfer.

Mae Gweinidogion Cymru wedi cynnal ymgynghoriad yn unol ag adran 18 o'r Ddeddf.

Mae drafft o'r Gorchymyn hwn a dogfen esboniadol sy'n cynnwys yr wybodaeth sy'n ofynnol o dan adran 19(2) o'r Ddeddf wedi eu gosod gerbron Cynulliad

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(1) 2011 p.24.

Cenedlaethol Cymru yn unol ag adran 19(1) ar ôl diwedd y cyfnod o ddeuddeng wythnos a grybwyllir yn adran 19(3).

Yn unol ag adran 19(4) o'r Ddeddf, mae'r drafft o'r Gorchymyn hwn fel y'i gosodwyd wedi ei gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru ar ôl diwedd y cyfnod o 40 niwrnod y cyfeirir ato yn y ddarpariaeth honno.

## RHAN 1 - RHAGARWEINIOL

### Enwi a chychwyn

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Corff Adnoddau Naturiol Cymru (Sefydlu) 2012.

(2) Daw'r Gorchymyn hwn i rym drannoeth y diwrnod y caiff ei wneud.

### Dehongli

2. Yn y Gorchymyn hwn, mae i "y Corff" (*"the Body"*) yr ystyr a roddir iddo gan erthygl 3(1).

## RHAN 2 – SEFYDLU A SWYDDOGAETHAU CYFFREDINOL

### Y Corff

3.—(1) Bydd corff corfforaethol o'r enw Corff Adnoddau Naturiol Cymru neu Natural Resources Body for Wales (y cyfeirir ato yn y Gorchymyn hwn fel "y Corff").

(2) Mae'r Atodlen yn cynnwys darpariaethau pellach am y Corff.

### Diben y Corff

4.—(1) Diben y Corff yw sicrhau bod amgylchedd ac adnoddau naturiol Cymru—

- (a) yn cael eu cynnal yn gynaliadwy;
- (b) yn cael eu gwella yn gynaliadwy; ac
- (c) yn cael eu defnyddio yn gynaliadwy.

(2) Yn yr erthygl hon—

- (a) ystyr "yn gynaliadwy" (*"sustainably"*) yw—
  - (i) gyda golwg ar wneud lles, a
  - (ii) mewn modd sydd wedi ei ddylunio i wneud lles,

i bobl, amgylchedd ac economi Cymru yn awr ac yn y dyfodol;

- (b) mae “amgylchedd” (“*environment*”) yn cynnwys, heb gyfyngiad, organeddau byw ac ecosystemau.

(3) Lle bynnag y bo’r Corff yn arfer unrhyw swyddogaeth mewn perthynas â pharth Cymru (fel y diffinnir “*Welsh zone*” yn adran 158(1) o Ddeddf Llywodraeth Cymru 2006(1)), neu unrhyw swyddogaeth sy’n effeithio ar y parth hwnnw, mae’r ddau gyfeiriad at “Cymru” ym mharagraff (1) i’w dehongli fel eu bod yn cynnwys cyfeiriadau at barth Cymru.

(4) Lle bynnag y bo’r Corff yn arfer swyddogaeth mewn perthynas ag unrhyw ardal arall y tu allan i Gymru, neu mewn modd sy’n effeithio ar ardal o’r fath, mae’r ddau gyfeiriad at “Cymru” ym mharagraff (1) i’w dehongli fel eu bod yn cynnwys cyfeiriadau at yr ardal o dan sylw.

(5) Nid yw paragraff (1) yn rhoi i’r Corff bŵer—

- (a) i wneud unrhyw beth na fyddai ganddo’r pŵer i’w wneud fel arall, neu
- (b) i arfer unrhyw un o’i swyddogaethau mewn modd sy’n groes i ddarpariaethau unrhyw ddeddfiad arall neu unrhyw rwymedigaeth UE(2).

### Canllawiau o ran diben y Corff

5.—(1) Caiff Gweinidogion Cymru roi canllawiau i’r Corff o ran y modd y dylai arfer ei swyddogaethau er mwyn rhoi effaith i’w ddiben.

(2) Wrth lunio unrhyw ganllawiau o dan baragraff (1), rhaid i Weinidogion Cymru roi sylw i gyfrifoldebau ac adnoddau’r Corff.

(3) Wrth gyflawni ei swyddogaethau, rhaid i’r Corff roi sylw i’r canllawiau a roddir o dan yr erthygl hon.

(4) Cyn rhoi canllawiau i’r Corff o dan yr erthygl hon, rhaid i Weinidogion Cymru ymgynghori â’r Corff ac unrhyw gyrff neu bersonau eraill y mae Gweinidogion Cymru yn eu hystyried yn briodol.

(5) Rhaid i Weinidogion Cymru gyhoeddi unrhyw ganllawiau a roddir o dan yr erthygl hon cyn gynted ag y bo’n rhesymol ymarferol ar ôl rhoi’r canllawiau.

(6) Mae’r pŵer i roi canllawiau o dan yr erthygl hon yn cynnwys pŵer i’w hamrywio neu i’w dirymu.

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(1) 2006 p.32 (adran 158(1)). Mewnosodwyd y diffiniad o “*Welsh zone*” gan adran 43(2) o Ddeddf y Môr a Mynediad i’r Arfordir 2009 (p.23).

(2) Diffinnir “*EU obligation*” yn Atodlen 1 i Ddeddf y Cymunedau Ewropeaidd 1972 (p.68), fel y’i diwygiwyd gan Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008 (p.7; gweler adran 3 a’r Atodlen). Mae’r diffiniad hwn yn gymwys i ddeddfwriaeth arall yn rhinwedd adran 5 o Ddeddf Dehongli 1978 (p.30) ac Atodlen 1 iddi.

## Swyddogaeth gychwynnol y Corff

6.—(1) Mae gan y Corff y swyddogaethau a nodir yn is-baragraffau (a) a (b)—

- (a) y swyddogaeth o hwyluso'r gwaith o weithredu unrhyw un o gynigion Gweinidogion Cymru ar gyfer trosglwyddo unrhyw un o'r canlynol (wedi ei addasu neu beidio) i'r Corff—
  - (i) unrhyw un o swyddogaethau Cyngor Cefn Gwlad Cymru;
  - (ii) unrhyw un o swyddogaethau Asiantaeth yr Amgylchedd neu'r Comisiynwyr Coedwigaeth sydd wedi ei datganoli i Gymru(1);
  - (iii) unrhyw un o swyddogaethau un o Bwyllgorau Llifogydd ac Arfordir Cymru(2);
  - (iv) unrhyw un o'u swyddogaethau eu hunain sy'n ymwneud â'r amgylchedd; neu
  - (v) unrhyw swyddogaeth amgylcheddol Gymreig(3) unrhyw berson;
- (b) y swyddogaeth o hwyluso'r gwaith o weithredu unrhyw un o gynigion eraill Gweinidogion Cymru a wnaed mewn cysylltiad ag unrhyw gynigion sy'n dod o fewn is-baragraff (a)—
  - (i) sy'n ymwneud â phwnc y cynigion hynny, neu
  - (ii) sy'n ganlyniad neu'n atodol i'r cynigion hynny neu sy'n gysylltiedig â hwy, neu sy'n ymwneud â materion trosiannol.

(2) Mae paragraff (1) yn gymwys i gynnig gan Weinidogion Cymru ni waeth a yw Cynulliad Cenedlaethol Cymru neu unrhyw berson neu gorff arall wedi rhoi unrhyw gydsyniad neu gymeradwyaeth y mae, yn ôl y gyfraith, gweithredu'r cynnig hwnnw yn dibynnu arni, ond nid yw'n dileu'r angen i gael unrhyw gydsyniad neu gymeradwyaeth o'r fath cyn y gellir gweithredu'r cynnig.

7.—(1) Rhaid i'r Corff gyflawni ei swyddogaethau o dan erthygl 6(1) yn ôl y meini prawf a nodir yn y paragraffau a ganlyn.

(2) Y maen prawf cyntaf yw bod yn rhaid i'r Corff sicrhau, i'r graddau y mae'n bosibl heb gyfaddawdu'r gwaith o gyflawni ei swyddogaethau o dan erthygl 6(1), bod yna gydweithredu effeithiol mewn perthynas â'r gwaith o weithredu unrhyw gynnig rhyngddo ef,

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(1) *Gweler* adran 36(1) o Ddeddf Cyrff Cyhoeddus 2011 (p.24).

(2) *Gweler* adran 13(8) o Ddeddf Cyrff Cyhoeddus 2011.

(3) *Gweler* adran 36(1) o Ddeddf Cyrff Cyhoeddus 2011.

Gweinidogion Cymru ac unrhyw berson neu gorff arall—

- (a) y cyfeirir ato yn erthygl 6(1)(a), a
- (b) yr effeithir arno gan y cynnig perthnasol.

(3) Yr ail faen prawf yw na chaniateir i'r Corff ymyrryd ag unrhyw un o'r personau neu'r cyrff a grybwyllir yn erthygl 6(1)(a) wrth iddynt gyflawni unrhyw un o'u swyddogaethau yn effeithiol.

### **Dyletswydd gyffredinol y Corff i roi sylw i gostau a buddiannau wrth arfer pwerau**

8.—(1) Wrth ystyried p'un ai arfer unrhyw bŵer a roddwyd iddo gan unrhyw ddeddfiad neu o dano ai peidio, rhaid i'r Corff ystyried y costau a'r buddiannau sy'n debygol o ddeillio o arfer y pŵer hwnnw neu beidio.

(2) Wrth benderfynu ar y modd i arfer unrhyw bŵer o'r fath, rhaid i'r Corff ystyried y costau a'r buddiannau sy'n debygol o ddeillio o'i arfer yn y modd o dan sylw.

(3) Mae'r dyletswyddau ym mharagraffau (1) a (2) yn gymwys oni bai, neu i'r graddau, ei bod yn afresymol i'r Corff fod yn ddarostyngedig iddynt o ystyried natur neu ddiben y pŵer neu o dan amgylchiadau'r achos penodol.

(4) Ond nid yw'r dyletswyddau hynny'n effeithio ar rwymedigaeth y Corff i gyflawni unrhyw ddyletswyddau, cydymffurfio ag unrhyw ofynion, neu fynd ar drywydd unrhyw amcanion, a osodwyd arno neu a roddwyd iddo gan unrhyw ddeddfiad ac eithrio'r erthygl hon.

### **Swyddogaeth gysylltiedig gyffredinol y Corff**

9.—(1) Caiff y Corff wneud unrhyw beth yr ymddengys iddo ei fod yn gydnaws neu'n gysylltiedig â chyflawni ei swyddogaethau.

(2) Yn benodol, caiff y Corff—

- (a) ymrwymo i gytundebau;
- (b) caffael neu waredu eiddo a gwneud gwaith peirianyddol neu waith adeiladu yn unol â'r hyn y mae'n ei ystyried yn briodol;
- (c) yn ddarostyngedig i gymeradwyaeth Gweinidogion Cymru, ffurfio cyrff corfforaethol neu gaffael neu waredu buddiannau mewn cyrff corfforaethol;
- (d) ffurfio ymddiriedolaethau elusennol;
- (e) derbyn rhoddion;
- (f) buddsoddi arian.

(3) Yn yr erthygl hon, mae "gwaith peirianyddol neu waith adeiladu" (*"engineering or building operations"*), heb ragfarnu cyffredinolrwydd yr ymadrodd hwnnw, yn cynnwys—

- (a) adeiladu, newid, gwella, cynnal a chadw neu ddymchwel unrhyw adeilad neu strwythur neu unrhyw gronfa ddŵr, cwrs dŵr, argae, cored, ffynnon, twll turio neu waith arall, a
- (b) gosod neu addasu unrhyw beiriannau neu gyfarpar neu gael gwared ag unrhyw beiriannau neu gyfarpar.

### **Cyngor a chymorth i Weinidogion Cymru**

**10.** Rhaid i'r Corff roi i Weinidogion Cymru unrhyw gyngor a chymorth y byddant yn gofyn amdanynt.

### **Cyfarwyddiadau**

**11.**—(1) Caiff Gweinidogion Cymru roi cyfarwyddiadau cyffredinol neu benodol i'r Corff o ran arfer ei swyddogaethau.

(2) Rhaid i Weinidogion Cymru gyhoeddi unrhyw gyfarwyddiadau a roddir o dan yr erthygl hon cyn gynted ag y bo'n rhesymol ymarferol ar ôl rhoi'r cyfarwyddiadau.

(3) Mae'r pŵer i roi cyfarwyddiadau o dan yr erthygl hon yn cynnwys pŵer i amrywio neu i ddirymu'r cyfarwyddiadau.

(4) Rhaid i'r Corff gydymffurfio ag unrhyw gyfarwyddiadau a roddir o dan yr erthygl hon.

## **RHAN 3 – MATERION ARIANNOL**

### **Grantiau**

**12.**—(1) Caiff Gweinidogion Cymru roi grantiau i'r Corff.

(2) Gall grant o dan yr erthygl hon gael ei roi yn ddarostyngedig i amodau.

### **Dyletswyddau ariannol cyffredinol**

**13.**—(1) Caiff Gweinidogion Cymru benderfynu dyletswyddau ariannol y Corff.

(2) Gellir gwneud penderfyniadau gwahanol ar gyfer swyddogaethau a gweithgareddau gwahanol y Corff.

(3) Rhaid i Weinidogion Cymru—

- (a) ymgynghori â'r Corff cyn gwneud penderfyniad am ddyletswyddau ariannol y Corff, a
- (b) rhoi hysbysiad i'r Corff am bob penderfyniad o'r fath y maent yn ei wneud.

(4) Caiff penderfyniad o'r fath—

- (a) ymwneud â chyfnod sy'n dechrau cyn y dyddiad y'i gwneir, arno neu ar ei ôl;

- (b) cynnwys darpariaethau atodol; ac
- (c) cael ei amrywio gan benderfyniad dilynol.

(5) Caiff Gweinidogion Cymru roi cyfarwyddyd i'r Corff gan ei gwneud yn ofynnol iddo dalu swm sy'n gyfartal â'r cyfan o unrhyw swm neu ran ohono a bennir yn y cyfarwyddyd, neu unrhyw swm o ddisgrifiad a bennir felly a hwnnw'n swm sy'n cael neu sydd wedi cael ei dderbyn gan y Corff hwnnw.

(6) Lle yr ymddengys i Weinidogion Cymru fod gan y Corff warged, p'un ai ar gyfrif cyfalaf neu refeniw, cânt gyfarwyddo'r Corff i dalu iddynt swm nad yw'n fwy na'r gwarged hwnnw a bennir yn y cyfarwyddyd.

(7) Rhaid i Weinidogion Cymru ymgynghori â'r Corff cyn rhoi cyfarwyddyd o dan baragraff (5) neu (6).

### **Pwerau benthycu**

**14.**—(1) Caiff y Corff fenthycu yn unol â darpariaethau canlynol yr erthygl hon, ond nid fel arall.

(2) Caiff y Corff fenthycu symiau o'r fath mewn sterling ag y mae eu hangen arno i gyflawni ei rwymedigaethau a'i swyddogaethau.

(3) Caiff y Corff fenthycu—

- (a) gan Weinidogion Cymru, neu
- (b) gan bersonau ac eithrio Gweinidogion Cymru, ond dim ond gyda chydysyniad Gweinidogion Cymru.

(4) Caniateir i gydsyniad gael ei roi o dan baragraff (3)(b) yn ddarostyngedig i amodau.

### **Gwarantau Gweinidogion Cymru o ran benthycu gan y Corff**

**15.**—(1) Caiff Gweinidogion Cymru warantu, yn y fath fodd ac ar yr amodau sy'n briodol yn eu barn hwy, yr ad-daliad o unrhyw brif swm y mae'r Corff yn ei fenthycu gan unrhyw berson, y taliad o log ar y swm hwnnw a chyflawni unrhyw rwymedigaeth ariannol arall sy'n gysylltiedig ag ef.

(2) Os telir unrhyw symiau er mwyn cyflawni gwarant o dan yr erthygl hon, rhaid i'r Corff dalu i Weinidogion Cymru, ar yr adegau ac yn y modd y byddant yn ei gyfarwyddo o bryd i'w gilydd,—

- (a) symiau yn ôl eu cyfarwyddyd i ad-dalu neu tuag at ad-dalu'r symiau hynny a dalwyd, a
- (b) taliadau llog, ar y gyfradd yn ôl eu cyfarwyddyd, ar yr hyn sy'n weddill ar hyn o bryd mewn cysylltiad â'r symiau hynny a dalwyd.



Gweinidog yr Amgylchedd a Datblygu Cynaliadwy,  
un o Weinidogion Cymru

Dyddiad

## Darpariaethau pellach am y Corff

### Statws

1.—(1) Nid yw'r Corff i'w ystyried yn was nac yn asiant i'r Goron neu'n un sy'n mwynhau unrhyw statws, imiwnedd na braint sydd gan y Goron.

(2) Nid yw eiddo'r Corff i'w ystyried yn eiddo'r Goron neu'n eiddo sy'n cael ei ddal ar ran y Goron.

### Aelodaeth

2.—(1) Rhaid i'r Corff gynnwys—

- (a) cadeirydd a benodir gan Weinidogion Cymru;
- (b) dim llai na 5 na mwy nag 11 o aelodau eraill a benodir gan Weinidogion Cymru;
- (c) y prif weithredwr (gweler paragraff 13); a
- (d) dim llai na 2 na dim mwy na 4 o aelodau eraill a benodir gan y Corff.

(2) Yn achos penodiadau cychwynnol i'r Corff, mae penodiadau o dan is-baragraff (1)(d) i'w gwneud gan yr aelodau a benodir o dan is-baragraff (1)(a) i (c), ac mae'r ymadrodd “y Corff” (*“the Body”*) i'w ddehongli yn unol â hynny.

(3) Ni chaniateir i'r cadeirydd a'r aelodau eraill a benodir gan Weinidogion Cymru o dan is-baragraff (1)(b) fod yn gyflogeion i'r Corff a chyfeirir atynt yn yr Atodlen hon fel “aelodau anweithredol” (*“non-executive members”*).

(4) Mae'r prif weithredwr a'r aelodau eraill a benodir gan y Corff o dan is-baragraff (1)(d) i fod yn gyflogeion i'r Corff a chyfeirir atynt yn yr Atodlen hon fel “aelodau gweithredol” (*“executive members”*).

(5) Caiff Gweinidogion Cymru benodi un o'r aelodau anweithredol yn ddirprwy gadeirydd.

(6) Wrth benodi person yn aelod, rhaid i Weinidogion Cymru neu'r Corff (yn ôl y digwydd) roi sylw i'r ffaith ei bod yn ddymunol—

- (a) penodi person sydd â phrofiad o ddelio â mater sy'n berthnasol i arfer swyddogaethau'r Corff neu sydd wedi dangos gallu yn hynny o beth, a
- (b) sicrhau bod amrywiaeth o sgiliau a phrofiad ar gael ymhlith yr aelodau.

### **Darpariaethau pellach yn ymwneud ag aelodaeth gychwynnol**

3. Ym mharagraff 2(6), mae'r cyfeiriad at swyddogaethau'r Corff yn cynnwys unrhyw swyddogaethau a fyddai'n cael eu trosglwyddo i'r Corff pe bai cynnig a wnaed gan Weinidogion Cymru ac sy'n dod o fewn erthygl 6(1) yn cael ei weithredu.

4.—(1) Caiff Gweinidogion Cymru enwebu un aelod o staff Llywodraeth Cynulliad Cymru yn aelod o'r Corff.

(2) Ym mharagraff 2(1), mae'r cyfeiriad at aelodau a benodir gan Weinidogion Cymru yn cynnwys aelod a enwebir o dan y paragraff hwn.

(3) Bydd person a enwebir o dan y paragraff hwn yn peidio â bod yn aelod o'r Corff pan fydd yn peidio â bod yn gyflogedig gan Lywodraeth Cynulliad Cymru, a beth bynnag ar y dyddiad y trosglwyddir unrhyw swyddogaeth i'r Corff o ganlyniad i gynnig gan Weinidogion Cymru sy'n dod o fewn erthygl 6(1).

### **Deiliadaeth swydd**

5. Yn ddarostyngedig i baragraff 4(3) (pan fo'n gymwys) a pharagraffau 6 i 8—

- (a) mae aelod yn dal ac yn gadael ei swydd yn unol â thelerau ei enwebiad neu ei benodiad;
- (b) mae dirprwy gadeirydd yn dal ac yn gadael y swydd honno yn unol â thelerau'r penodiad hwnnw.

6.—(1) Caiff person ymddiswyddo o'i swydd fel aelod anweithredol, neu fel dirprwy gadeirydd, drwy roi hysbysiad ysgrifenedig i Weinidogion Cymru.

(2) Caiff person ymddiswyddo o'i swydd fel aelod gweithredol drwy roi hysbysiad ysgrifenedig i'r Corff.

7.—(1) Caiff Gweinidogion Cymru ddiswyddo person o'i swydd fel aelod anweithredol, neu fel dirprwy gadeirydd, drwy roi hysbysiad ysgrifenedig.

(2) Caiff y Corff ddiswyddo person o'i swydd fel aelod gweithredol drwy roi hysbysiad ysgrifenedig.

(3) Ni chaniateir rhoi hysbysiad o dan y paragraff hwn ond i berson—

- (a) a fu'n absennol o gyfarfodydd y Corff am gyfnod o fwy na 3 mis heb ganiatâd y Corff;
- (b) sydd wedi methu â chydymffurfio â thelerau'r penodiad;
- (c) sydd wedi mynd yn fethdalwr neu wedi gwneud trefniant gyda chredydwyr, y mae ei ystâd wedi ei secwestru yn yr Alban, neu sydd wedi ymuno â rhaglen trefnu dyledion o dan Ran 1 o Ddeddf Trefnu ac Atafaelu Dyledion (yr Alban) 2002 (dsa 17) fel y dyledwr neu

sydd, o dan gyfraith yr Alban, wedi gwneud compôwnd neu drefniant gyda chredydwy'r yr aelod, neu wedi rhoi gweithred ymddiriedaeth ar eu cyfer;

- (d) sydd, ym marn y person sy'n rhoi'r hysbysiad, yn anaddas i barhau â'r penodiad oherwydd camymddygiad; neu
- (e) sydd, ym marn y person sy'n rhoi'r hysbysiad, fel arall yn analluog, yn anaddas neu'n amharod i gyflawni swyddogaethau'r aelod.

**8.**—(1) Bydd person yn peidio â bod yn ddirprwy gadeirydd pan fydd yn peidio â bod yn aelod.

(2) Bydd person yn peidio â bod yn aelod anweithredol pan fydd yn dod yn gyflogai i'r Corff.

(3) Bydd person yn peidio â bod yn aelod gweithredol pan fydd yn peidio â bod yn gyflogai i'r Corff.

**9.**—(1) Caniateir i berson sy'n peidio â bod yn aelod, ac aelod sy'n peidio â bod yn ddirprwy gadeirydd, gael eu hailbenodi i'r swyddi hynny.

(2) Ond ni chaniateir i berson sydd wedi ei ddiswyddo ar sail camymddygiad a nodir ym mharagraff 7(3)(d) gael ei ailbenodi.

### **Cydnabyddiaeth ariannol a phensiynau etc aelodau**

**10.**—(1) Rhaid i'r Corff dalu i'r aelodau anweithredol ac unrhyw ddirprwy gadeirydd y fath gydnabyddiaeth ariannol a'r lwfansau ag a benderfynir gan Weinidogion Cymru.

(2) Caiff Gweinidogion Cymru wneud penderfyniadau gwahanol o dan yr erthygl hon mewn achosion gwahanol.

#### **11. Rhaid i'r Corff—**

- (a) talu'r fath bensiynau neu arian rhodd ag a benderfynir gan Weinidogion Cymru i unrhyw aelod anweithredol neu gyn-aelod anweithredol, neu mewn cysylltiad ag ef;
- (b) talu'r fath symiau ag a benderfynir gan Weinidogion Cymru tuag at ddarpariaeth ar gyfer talu pensiynau neu arian rhodd i unrhyw aelod anweithredol neu gyn-aelod anweithredol, neu mewn cysylltiad ag ef.

#### **12.**—(1) Bydd yr erthygl hon yn gymwys—

- (a) os bydd person yn peidio â bod yn aelod anweithredol, a
- (b) os yw'n ymddangos i Weinidogion Cymru fod yna amgylchiadau arbennig sy'n ei gwneud yn briodol i'r person gael ei ddigolledu.

(2) Caiff Gweinidogion Cymru ei gwneud yn ofynnol i'r Corff dalu i'r person y fath swm o

ddigollediad ag a benderfynir gan Weinidogion Cymru.

### **Staff**

**13.**—(1) Rhaid i'r Corff benodi person yn brif weithredwr.

(2) Rhaid bod y person a benodwyd wedi ei gymeradwyo gan Weinidogion Cymru.

(3) Caiff Gweinidogion Cymru benodi'r prif weithredwr cyntaf.

(4) Caiff y Corff benodi cyflogeion eraill.

**14.**—(1) Caiff y Corff dalu i'w gyflogeion y fath gydnabyddiaeth ariannol a lwfansau ag a benderfynir ganddo.

(2) Dim ond gyda chymeradwyaeth Gweinidogion Cymru y caiff y Corff wneud penderfyniad o dan y paragraff hwn.

**15.**—(1) Caiff y Corff—

(a) talu'r fath bensiynau neu arian rhodd ag a benderfynir ganddo i unrhyw gyflogai neu gyn-gyflogai, neu mewn cysylltiad ag ef, a

(b) talu'r fath symiau ag a benderfynir ganddo tuag at ddarpariaeth ar gyfer talu pensiynau neu arian rhodd i unrhyw gyflogai neu gyn-gyflogai, neu mewn cysylltiad ag ef.

(2) Dim ond gyda chymeradwyaeth Gweinidogion Cymru y caiff y Corff wneud penderfyniad o dan y paragraff hwn.

### **Gweithdrefn**

**16.**—(1) Caiff y Corff benderfynu ei weithdrefn ei hun (gan gynnwys cworwm) a gweithdrefn ei bwyllgorau a'i is-bwyllgorau.

(2) Caiff y Corff awdurdodi ei bwyllgorau a'i is-bwyllgorau i benderfynu eu gweithdrefn eu hunain (gan gynnwys cworwm).

(3) Ond os yw penderfyniad o dan y paragraff hwn yn darparu ar gyfer cworwm unrhyw gyfarfod, ni ellir bodloni'r cworwm oni bai bod y rhan fwyaf o'r aelodau sy'n bresennol yn aelodau anweithredol.

**17.** Ni chaiff unrhyw drafodyn gan y Corff neu unrhyw bwyllgor neu is-bwyllgor ei annilysu gan—

(a) swydd wag cadeirydd, na

(b) unrhyw ddiffyg ym mhenodiad unrhyw aelod.

### **Dirprwyo swyddogaethau**

**18.**—(1) Caiff y Corff awdurdodi un o'i bwyllgorau, ei is-bwyllgorau, ei aelodau neu ei gyflogeion i arfer unrhyw un o'i swyddogaethau.

(2) Oni bai bod y Corff yn penderfynu fel arall, caiff un o bwyllgorau'r Corff awdurdodi un o is-bwyllgorau, aelodau neu gyflogeion y Corff i arfer unrhyw un o swyddogaethau'r pwyllgor hwnnw, gan gynnwys swyddogaethau y mae'r Corff wedi eu dirprwyo iddo.

(3) Oni bai bod y Corff neu'r pwyllgor perthnasol yn penderfynu fel arall, caiff un o is-bwyllgorau'r Corff awdurdodi un o aelodau neu gyflogeion y Corff i arfer unrhyw un o swyddogaethau'r is-bwyllgor hwnnw, gan gynnwys swyddogaethau y mae'r Corff neu bwyllgor wedi eu dirprwyo iddo.

(4) Caiff awdurdodiad o dan ddarpariaethau blaenorol y paragraff hwn fod yn gyffredinol neu'n benodol, a rhaid ei roi yn ysgrifenedig.

(5) Rhaid i'r Corff anfon copi o'r awdurdodiad at Weinidogion Cymru.

(6) Nid yw darpariaethau blaenorol y paragraff hwn yn atal y Corff (neu'r pwyllgor neu'r is-bwyllgor, yn ôl y digwydd) rhag arfer y swyddogaeth o dan sylw.

### **Aelodaeth o bwyllgorau ac is-bwyllgorau**

**19.**—(1) Caiff pwyllgor neu is-bwyllgor gynnwys personau nad ydynt yn aelodau o'r Corff.

(2) Caiff y Corff dalu'r fath gydnabyddiaeth ariannol a lwfansau ag a benderfynir gan Weinidogion Cymru i unrhyw berson—

- (a) sy'n aelod o bwyllgor neu is-bwyllgor, ond
- (b) nad yw'n aelod o'r Corff nac yn gyflogai iddo.

### **Gosod y sêl a phrofi dogfennau**

**20.**—(1) Rhaid i'r weithred o osod sêl y Corff gael ei dilysu drwy lofnod—

- (a) aelod o'r Corff sydd wedi ei awdurdodi (yn gyffredinol neu'n benodol) at y diben hwnnw, neu
- (b) cyflogai sydd wedi ei awdurdodi felly.

(2) Mae dogfen sydd i bob golwg wedi ei gweithredu'n briodol o dan sêl y Corff—

- (a) i'w derbyn fel tystiolaeth, a
- (b) i'w thrin fel pe bai wedi ei gweithredu felly oni ddangosir fel arall.

### **Cynllun Corfforaethol**

**21.**—(1) Cyn dechrau pob blwyddyn ariannol, rhaid i'r Corff—

- (a) llunio cynllun gan nodi sut y mae'n bwriadu cyflawni ei swyddogaethau yn ystod y flwyddyn ariannol ganlynol, a
- (b) cyflwyno'r cynllun i Weinidogion Cymru ei ystyried.

(2) Yn y paragraff hwn—

- (a) ystyr “blwyddyn ariannol” (“*financial year*”) yw'r cyfnod o 12 mis sy'n dod i ben ar 31 Mawrth, a
- (b) blwyddyn ariannol gyntaf y Corff yw'r cyfnod o 12 mis sy'n dod i ben ar yr ail 31 Mawrth ar ôl i'r Corff gael ei sefydlu.

### **Adroddiad blynyddol**

**22.**—(1) Ar gyfer pob blwyddyn ariannol, rhaid i'r Corff—

- (a) llunio adroddiad blynyddol ar sut y mae wedi cyflawni ei swyddogaethau yn ystod y flwyddyn honno, a
- (b) anfon copi o'r adroddiad at Weinidogion Cymru cyn gynted â phosibl ar ôl diwedd y flwyddyn honno.

(2) Rhaid i Weinidogion Cymru osod copi o'r adroddiad gerbron Cynulliad Cenedlaethol Cymru.

(3) Yn y paragraff hwn a pharagraff 23, ystyr “blwyddyn ariannol” (“*financial year*”) yw cyfnod o 12 mis sy'n dod i ben ar 31 Mawrth, ond blwyddyn ariannol gyntaf y Corff yw'r naill neu'r llall o'r canlynol—

- (a) y cyfnod sy'n dechrau ar ddiwrnod sefydlu'r Corff ac sy'n dod i ben ar y 31 Mawrth nesaf, neu
- (b) cyfnod arall, heb fod yn fwy na 2 flynedd, yn ôl cyfarwyddyd Gweinidogion Cymru.

### **Cyfrifon**

**23.**—(1) Ar gyfer pob blwyddyn ariannol, rhaid i'r Corff—

- (a) cadw cyfrifon priodol a chofnodion priodol mewn perthynas â hwy, a
- (b) llunio datganiad o gyfrifon,

yn unol â chyfarwyddiadau Gweinidogion Cymru.

(2) Rhaid i'r Corff gyflwyno'r datganiad o gyfrifon a gaiff ei lunio o dan y paragraff hwn i Archwilydd Cyffredinol Cymru a Gweinidogion Cymru.

(3) Rhaid cyflwyno'r datganiad o gyfrifon ddim hwyrach na 31 Awst yn y flwyddyn ariannol ar ôl y flwyddyn ariannol y mae'r datganiad yn ymwneud â hi.

(4) Rhaid i gyfrifon a datganiadau o gyfrifon y Corff roi darlun gwir a theg o—

- (a) amgylchiadau'r Corff ar ddiwedd y flwyddyn ariannol, a
- (b) incwm a gwariant y Corff yn y flwyddyn ariannol.

(5) Rhaid i Archwilydd Cyffredinol Cymru—

- (a) archwilio ac ardystio'r datganiad o gyfrifon ac adrodd arno;
- (b) rhoi copi o'r datganiad ardystiedig o gyfrifon, ynghyd â'i adroddiad arno, i'r Corff; ac
- (c) heb fod yn hwyrach na 4 mis ar ôl i'r datganiad o gyfrifon gael ei gyflwyno, gosod gerbron Cynulliad Cenedlaethol Cymru gopi o'r datganiad ardystiedig o gyfrifon a'r adroddiad.

### **Gwybodaeth**

**24.**—(1) Rhaid i'r Corff roi i Weinidogion Cymru unrhyw wybodaeth y mae ei hangen arnynt yn ymwneud ag eiddo'r Corff neu â chyflawni ei swyddogaethau neu â'r ffordd y mae'n bwriadu cyflawni ei swyddogaethau.

(2) Rhaid i'r Corff hefyd—

- (a) caniatáu i unrhyw berson a awdurdodir gan Weinidogion Cymru arolygu unrhyw gyfrifon, dogfennau neu gofnodion eraill y Corff (ar unrhyw ffurf), a gwneud copïau ohonynt, a
- (b) rhoi unrhyw esboniad arnynt y mae ei angen ar y person hwnnw neu Weinidogion Cymru.



## **Explanatory Memorandum to the Natural Resources Body for Wales (Establishment) Order 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 Natural Resources Body for Wales (Establishment) Order 2012.

*JOHN GRIFFITHS AM*

MINISTER FOR ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

28 MAY 2012

## 1. Description

This order establishes the new single body for the management of Wales' natural resources. The new body has the working title *Natural Resources Body for Wales*, and this order establishes the body in a way that ensures that, prior to its having transferred to it the full range of appropriate functions, it will be able to undertake the preparatory work necessary to ensure the new body will be able to function fully from the first day it becomes responsible for all the environmental responsibilities that are to be transferred to it. A second order will be brought forward to transfer functions of the Forestry Commission in Wales (FCW)<sup>1</sup>, Environment Agency – Wales (EAW)<sup>2</sup> and the Countryside Commission for Wales (CCW) to the body.

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

The Order is being brought forward under powers contained in sections 13 and 15 of the Public Bodies Act 2011 (“the 2011 Act”)

The Order is subject to a form of affirmative procedure, in accordance with section 19 of the 2011 Act. In addition to the normal requirement of affirmative procedure – i.e. that the Order cannot be made unless the Assembly approves it – the 2011 Act requires that the Order be laid in draft for 40 non-recess days. Moreover, at any time within 30 days of it having been laid, the Assembly may resolve, or a Committee tasked with scrutinising the Order may recommend, that the draft Order be laid for an additional 20 non-recess days (i.e. 60 in all) before it can be made<sup>3</sup>. In that event, the Welsh Ministers will have to have regard to any representations, any resolutions of the Assembly and any recommendations of a Committee of the Assembly tasked with scrutinising the Order. If any material changes are made to the draft Order as a result, the revised draft Order would need to be re-laid before the Assembly, with a statement summarising the changes. This revised draft Order would then be subject to normal affirmative procedure in the Assembly.

Taken as a whole, this procedure is a form of ‘super-affirmative’ procedure.

The Order confers a number of functions on the Welsh Ministers, as follows.

Article 5 - power to give guidance to the Body with respect to the manner in which it should exercise its functions so as to give effect to its purpose. The Body must have regard to this guidance in exercising its functions.

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<sup>1</sup> Technically speaking, the Forestry Commission is one body; FCW is merely an operational name for its arm in Wales. Functions transferred will be Functions of the Forestry Commission but they will, for obvious reasons, be transferred (normally) in so far as they relate to Wales.

<sup>2</sup> A similar point applies, in relation to the Environment Agency, as to the Forestry Commission – see footnote 1.

<sup>3</sup> But the full Assembly could overrule the Committee’s recommendation and revert to the 40-day procedure for the Order.

Article 10 - implied power to request advice and assistance from the Body (to the extent, if any, that the Welsh Ministers do not already have this power under their own incidental powers contained in section 71 of the Government of Wales Act 2006)

Article 11 - power to give the Body directions as to the exercise of its functions. The Body must comply with any such directions.

Article 12 - power to give the Body grants (in addition to the Welsh Ministers' existing powers under s. 70 of the Government of Wales Act 2006)

Article 13 - power to determine the financial duties of the Body, including a power to direct the Body to pay over to the Welsh Ministers sums received by the Body, or the amount of any capital or revenue surplus that the Body may accrue

Article 14 - power to lend to the Body (in addition to the Welsh Ministers' existing powers under s. 70 of the Government of Wales Act 2006) and to consent to the Body's borrowing from another person

Article 15 - power to guarantee loans taken out by the Body (in addition to the Welsh Ministers' existing powers under s. 70 of the Government of Wales Act 2006) and power to make directions ensuring that the Welsh Ministers recover any amounts paid out by them in consequence

Schedule paragraph 2 - power to appoint the chairperson and deputy chairperson of the Body; power to appoint 5 - 11 non-executive (non-employee) members of the Body (any deputy chairperson being one of these). (References in this document to the "Board" of the Body are references to members of the Body).

Schedule paragraph 4 - power to appoint an employee of the Welsh Assembly Government as one of the non-executive members referred to above

Schedule paragraph 7 - power to remove a non-executive member (including the chairperson or deputy chairperson) from office

Schedule paragraphs 10 -12 - power to determine the level of remuneration and allowances of the chairperson, deputy chairperson and other non-executive members and to make other determinations in relation to the payment, or amounts, of pensions, gratuities and compensation to current or former members of the Body

Schedule paragraph 13 - power to appoint, or to approve the appointment of, the first chief executive; and power to approve the appointment of subsequent chief executives

Schedule paragraphs 14 and 15 - power to approve the level of remuneration and allowances of the Body's staff and to approve determinations of the Body

in relation to the amounts of pensions or gratuities to current or former members of staff of the Body

Schedule paragraph 19 - power to determine the remuneration and allowances of co-opted committee or sub-committee members

Schedule paragraphs 21 - 22 - role of considering the Body's advance Corporate Plan and receiving its Annual Report of activities; duty to lay the latter before the Assembly

Schedule paragraphs 23-24 - power to give directions as to the Body's accounts; role of receiving the annual statement of accounts; and implied power to require information relating to the Body's property or discharge or proposed discharge of its functions.

### **3. Legislative background**

Section 13 of the Public Bodies Act 2011 enables the Welsh Ministers to make an Order to establish a new body corporate for the purposes of that section. Other provisions in section 13 enable the Welsh Ministers to transfer certain functions (including those of the Countryside Council for Wales, a Welsh Flood and Coastal Committee and the Welsh devolved functions of the Environment Agency and Forestry Commission) to a new body established under that section. The powers also enable those bodies' functions to be modified, and the modified functions to be transferred to a new body. This Order is being made to establish a new body for the purpose of having functions transferred to it under section 13.

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

#### Purpose

This Order is intended to establish a new single body for the management of Wales' natural resources, referred to for the purposes of this legislation as the Natural Resources Body for Wales.

The overarching purpose ascribed to the new body (article 4) is to ensure that the environment and natural resources of Wales are sustainably maintained, sustainably enhanced and sustainably used. The Welsh Ministers will be able to issue guidance to the Body as to how it should exercise its functions so that it fulfils this purpose.

The purpose recognises the key role of the Body in delivering our central organising principle of sustainable development. In both its regulatory and operational functions it will need to optimise opportunities for delivering well-integrated environmental, social and economic outcomes for the people and communities in Wales.

We want the Body to have a clear role in environmental protection, but also to be tasked with encouraging sustainable and appropriate use of our

environment and natural resources for the present and future benefit of the people and economy of Wales. Through the transparent conduct of its work, the Body will promote a wider understanding of the value of our natural resources and of sustainable development...

### Legal Approach

This is the first of two planned Orders to create the Body as a fully functioning entity: this Order establishes it as a legal entity, while a later Order will be laid in order to vest the body with all the functions necessary to deliver its intended remit. This first Order provides the Body with functions necessary to undertake preparatory work to ensure it will be able to carry out any functions transferred to it by that Order.

This approach to delivering the change follows a well established path for changes of this type, with the establishment of an organisation to work with the legacy bodies to plan and implement transition. Creating the “shadow” arrangement at this stage will allow ownership of the organisational design structures and systems of the new body to rest with those who will ultimately be responsible for introducing and administering them.

### Functions

The functions defined in the Order are interim functions to set the direction for the new Body and to enable the preparatory work to take place for the transfer of its substantive functions in the second Order. The second Order will revoke the main initial preparatory function contained in this Order (article 6).

To this end, the Order defines the initial function of the Body as being facilitating the implementation of any proposal of the Welsh Ministers for the transfer (with or without modification) to the Body of any function of the Countryside Council for Wales; any Welsh devolved function<sup>4</sup> of the Environment Agency or the Forestry Commissioners; any function of a Welsh Flood and Coastal Committee; any of their own functions relating to the environment; or any Welsh environmental function<sup>5</sup> of any person.

The Order also provides for the Body to be able to undertake work that is incidental or conducive to those initial functions during the period until the Body takes up its full functions.

These provisions will enable the Body to do those things necessary to make it into a fully functioning organisation, ready to accept the transfer, in due course, of the full range of environmental powers, duties and functions.

The main provisions cover the following issues and enable the Body to:

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<sup>4</sup> “Welsh devolved function” and “Welsh environmental function” are terms defined in section 36 of the 2011 Act.

<sup>5</sup> See previous footnote.

- Appoint and remunerate a Chair and board members (who – in so far as they are not employees - will be appointed by Ministers) and, through the Board, to appoint a Chief Executive Officer and employee members (transitional provisions will allow Welsh Ministers to make the appointment of the first CEO if this is expedient).
- Appoint staff and make decisions on terms and conditions.
- Contract the services of contractors and consultants. It will be able to occupy accommodation, use telephones, email, other ICT, etc, to communicate internally and externally, and to enter into contracts for ICT design and development, and procure other goods and services
- Enter into arrangements, and be party to agreements, receive and pay money, including: paying salaries; incurring and reimbursing travel and subsistence costs; incurring other costs e.g. maintenance, overheads, utility bills and rent for accommodation.
- Design and deliver (and agree with Welsh Government) the key governance required for running the new body, including: organisation structures, financial schemes of delegation, etc.
- Facilitate the adoption of policies, including statutory guidance to others (e.g. prosecution policy; health and safety policy; Welsh Language Scheme) that can be put into effect when the Body takes up its full functions.
- Take steps to ensure that, from the Body's first day of full operation, arrangements are in place (under powers contained in sections 26-28 of the Public Bodies Act 2011) with the Environment Agency and the Forestry Commission for the provision of certain services.

There are specific provisions relating to the establishment and general functions of the Body which, in addition to detailing its initial functions, include a general duty placed on the Body to have regard to costs and benefits in exercising powers, a requirement to provide advice and assistance to Welsh Ministers if requested and the power for Welsh Ministers to give the Body general or specific directions as to the exercise of its functions.

In addition to the broad powers and duties required to establish and run the new body (referred to above) the Order makes provision with regard to general financial duties and to borrowing powers. In this context, the Order also makes provision with regard to Welsh Ministers' ability to underwrite any borrowing undertaken by the body.

The Schedule also places duties on the Body with regard to reporting upon its functions and the keeping and publishing of accounts.

Whilst the general and financial powers and duties that are conferred upon the Body by this Order will continue to apply, partly or wholly, they will in due course be supplemented by the second Order which will also confer the full

range of functions. For example, the second Order will include powers to investigate, to prosecute, and to raise charges.

The purpose of the powers and duties included in the present Order is to enable the Body to undertake those preparatory functions necessary to ensure the new Body will be able to function fully from the first day it becomes responsible for all the environmental responsibilities that are to be transferred to it.

The Schedule to the Order sets out the status and constitution of the new body and its membership. The Body will be established as a body corporate. It will not be a Crown body, although the second Order could confer Crown status on it in relation to certain functions. It will be a Welsh Government Sponsored Body with the Chair and non-employee Members of its Board being appointed by Welsh Ministers and the appointment of the Body's chief officer being made with the approval of Welsh Ministers.

Details and conditions of tenure and remuneration are also given in the Schedule.

The appointment of the Chair and non-employee Board Members of the new body will be regulated by the Commissioner for Public Appointments.

#### Requirements of the Public Bodies Act 2011

Section 19 of the 2011 Act requires the Welsh Ministers to set out why they think the Order meets the requirements of section 16 of the Act. Section 16 stipulates that the Welsh Ministers may make an Order under section 13 or 14 only if they consider that the Order serves the purpose of improving the exercise of public functions having regard to:

- (a) efficiency,
- (b) effectiveness,
- (c) economy, and
- (d) securing appropriate accountability to the Welsh Ministers.

The Welsh Ministers may make an Order under either of those sections only if they consider that:

- (a) the Order does not remove any necessary protection, and
- (b) the Order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

With regard to the section 16 requirements, it should be noted that this Order is part of a package designed to improve the exercise of public functions, the need for which was clearly articulated in the business case

<http://wales.gov.uk/consultations/environmentandcountryside/eshlivingwalescons/?lang=en&status=closed>).

However, in summary, the Welsh Government is confident that the proposed establishment of the new body will achieve efficiencies and economies, and will provide the most effective means of meeting its environmental objectives. By creating a Wales only body, taking decisions for Wales in Wales, it will improve accountability to the Welsh Ministers and the National Assembly for Wales.

This Order only provides for the creation and general powers of the new body, and the Welsh Ministers do not consider that it affects any necessary protections or the exercise of rights and freedoms by any persons.

### The Business Case

Together, the two Orders are intended to deliver a new body that meets the three main factors driving the proposed changes detailed in the business case:

- The need to modernise regulation and natural resource management;
- The need to focus on Wales' priorities, opportunities and challenges reflected in Welsh legislation and policy; and
- The need to ensure value for money

The Welsh Government has undertaken detailed work to evaluate a range of options, including:

- no change;
- sharing services;
- combinations of two of the existing bodies referred to above (EAW + CCW and FCW + CCW); and
- creating a new single body.

The options were assessed against Value for Money (Net Present Value) and six qualitative criteria: outcomes for the environment; outcomes for people; outcomes for business and the economy; focus on Welsh Government priorities; organisational and operational resilience; and opportunities for staff within Wales.

The business case involved a substantial evaluation, which was undertaken by staff from the existing organisations working with Welsh Government officials over a period of more than twelve months. The final report on the work was presented in the form of a strategic outline business case which was subject to an external independent review, before being presented to Ministers.

It concluded that a single body was the option most likely to deliver the best outcome on each of the six qualitative assessment criteria. It would also deliver the best net economic benefit after taking account of the cost of change and discounting for inflation (£69m over 10 years). It also concluded that the up front cost of change is affordable and that risks can be managed.



Section 5 of this Memorandum summarises the consultation process, focusing particularly on responses that have informed the preparation of this Order; wider issues of how public functions will be exercised as a result of the second Order will be covered by the explanatory document accompanying that Order.

## **5. Consultation**

A series of consultations by the Welsh Government has led to the decision to proceed with the policy decisions underpinning this legislation.

The Welsh Government's new Natural Environment Framework (NEF) focuses on managing our environment as a whole rather than focusing on separate parts. The new approach was the subject of a public consultation (A living Wales – a new framework for our environment, our countryside and our seas) published in September 2010 (<http://wales.gov.uk/consultations/environmentandcountryside/eshlivingwalescons/?lang=en&status=closed>).

This consultation set out the Welsh Government's new approach to the way we manage our land, water and seas. It also showed how we are actively responding to the failure to meet existing biodiversity targets<sup>6</sup>. The document set a broad direction of travel for the Welsh Government's future work and first raised the potential for bringing together the work of existing environmental bodies in Wales.

In order to better develop their understanding of the implications of following this route, Ministers commissioned an initial review of delivery options which reported in January 2011, followed by a full business case published in November 2011 (<http://wales.gov.uk/topics/environmentcountryside/consmanagement/nef/publications/seb/businesscase/?lang>). It set out the benefits, costs and risks of creating a single body, as well as affordability and an outline plan for its establishment.

Most recently, the Welsh Government consulted on the proposed arrangements for establishing and directing a new body for the management of Wales' natural resources. The consultation ran from 9 February 2012 to 2 May 2012 i.e. for a period of twelve weeks. The consultation document was available from the Welsh Government's website (<http://wales.gov.uk/consultations/environmentandcountryside/singlebody/?lang=en&status=closed>).

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<sup>6</sup> The National Assembly's Sustainability Committee published the report of its inquiry into biodiversity in Wales in January 2011. The inquiry found that Wales had failed to meet both international and national targets. The targets included the binding agreement at the international Convention on Biological Diversity (CBD) in 2002 to achieve a significant reduction of the current rate of biodiversity loss at the global, regional and national level and the 2001 commitment by the EU Heads of State and Government to a target of halting the decline of biodiversity in the EU and restoring habitats and natural systems by 2010.

In particular, the consultation sought views on the following:

- The overall proposals for establishing the new body (including the business case).
- Proposals for implementing the legal changes required to establish the new body.
- Our ambitions for the new body, together with the way in which we intend to frame its overall purpose.
- Our proposed arrangements for customer and stakeholder engagement, including mechanisms for ensuring accountability and transparency in the work of the new body.
- Our proposals for the main functions and powers of the body, including consideration of some elements of Welsh Government functions and Internal Drainage Boards.
- Our proposals for the status of the body and how it will be governed, including arrangements for an executive board and wider stakeholder engagement.
- How we propose to take forward issues around cross-border governance and our proposals for the links to Welsh Government Ministers to ensure that the body will be fully accountable to Ministers.

The consultation document sought views on 12 specific questions covering the above issues.

A total of 308 consultation responses were received. There were 223 responses from organisations and 85 responses from private individuals.

The overall analysis showed that more than 60% of the 308 respondents to the consultation supported the overall proposal to manage natural resources in a more integrated way and to establish a single body by bringing together the existing functions of EAW, CCW and FCW. Approximately 10% of respondents were opposed, with the remainder not expressing any specific views on the overall proposition, or expressing views which were closely balanced.

The sectors which broadly supported the proposal to establish a single body included private individuals, environmental/ conservation bodies, local authorities and/ or their representatives, the fisheries sector, the access and recreation sector, other business and industry, other public sector bodies, academic/ research bodies and the third sector.

Just under half of the responses from the forestry sector were broadly in favour of the proposal, with the remaining responses unsupportive or neutral. Other sectors which were less supportive of the proposal were professional bodies, local partnership groups, trade unions and consultants.

The key themes emerging from the consultation were:

- Many of the respondents in support of the overall proposal cited a wide range of potential benefits in establishing a single body.

- Some respondents set out their concerns about establishing a single body. These included environmental concerns, issues around resources and transition, as well as specific issues raised by the forestry sector and industry.
- The phased approach to the creation of the body and further development of the legislation was generally supported as respondents agreed that there was a need to carry out the approach efficiently so there is no detrimental effect on existing services and to ensure business continuity.
- There were many views on the principal aim and strategic objective, with most of the respondents suggesting amendments to either the principal aim or strategic objectives or both.
- There was broad support for the approach to the delivery framework, although it was recognised that more work was needed on the actual outcomes and objectives.
- The list of functions for the new body was generally thought to be reasonable, though many detailed points were suggested.
- Many respondents agreed with the proposal to transfer marine and wildlife licensing, and tree and plant health, functions to the new body.
- The importance of the new body having a good scientific base was emphasised. There was support for the proposal for the Welsh Government to co-ordinate investment in environmental research, although many thought that the new body should have flexibility to define and implement its own research.
- In general the proposals for the status, governance and accountability of the new body were welcomed. Most respondents agreed that the body should be established as a Welsh Government Sponsored Body which is independent from government. There was widespread support for transparency and accountability across the whole range of the body's work.
- Overall the proposals for the stakeholder arrangements were welcomed. Respondents emphasised the importance of pro-active stakeholder engagement and that the success of the new body was dependent on having strong stakeholder arrangements. Many respondents highlighted that any arrangements must be developed in conjunction with stakeholders.
- In general there was support for the proposals relating to the regulatory arrangements, including clear separation of regulatory and operational work in situations where the body regulates its own activities.
- Many respondents supported the need to simplify regulatory systems, though there were concerns from some that this should not be allowed to impact on environmental protection. Transparency of decision-making and the publication of decision documents were widely supported.

Of those responses that were of particular significance to this Order, were those concerning the phased approach to the creation of the body and further development of the legislation. This was generally supported as respondents agreed that there was a need to carry out the approach efficiently so as to

avoid any detrimental effect on existing services and to ensure business continuity.

A significant majority of respondents were broadly supportive of the development of the new body, with most of the respondents suggesting amendments to either the aim or the objectives, or both. In drafting of the overarching aim included in this Order, we have taken those views fully into account, along with suggestions made by the three existing bodies and views expressed by Assembly Members in the Plenary debate on the consultation responses held on 22 May 2012.

Those consultation responses that relate more to the second Order will be summarised and addressed in the explanatory document that accompanies that Order.

## **6. Regulatory Impact Assessment (RIA)**

No regulatory impact assessment has been prepared for this Order. This is because the purpose of this Order is solely to create a body corporate under section 13 of the Public Bodies Act 2011 to enable certain key arrangements and decisions to be made prior to the full transfer of functions to the body from the Countryside Council for Wales, Environment Agency - Wales, Forestry Commission – Wales, Welsh Government and, potentially, other bodies.

There are therefore no identifiable costs to consumers or businesses associated with the implementation of this Order. Costs and benefits for the Welsh Government and the three existing bodies are set out in the business case. This has been published and subject to consideration by the Environment and Sustainability Committee.

The wider context including the costs, benefits and risks of the overall change has been set out in the business case and the subsequent consultation.

At this point, the new body will not act in a regulatory role nor will it exercise any functions on behalf of the Welsh Government; the functions which will eventually be vested in it will continue to be exercised by the existing environmental bodies up to the full vesting date.

The Order has no impact on –

- (a) the statutory duties of the Welsh Ministers concerning equality of opportunity (section 77 of the Government of Wales Act 2006), the Welsh language (section 78) and sustainable development (section 79); or
- (b) the local government, voluntary sector and business schemes made under sections 73, 74 and 75 of the Government of Wales Act 2006 respectively.

Where the new body, whilst acting in its “shadow” role, has to formulate any policies in advance of the full vesting date (e.g. with regard to equality, Welsh language, enforcement, etc.) to enable the body to function fully upon vesting, the body will undertake any relevant consultation and/or impact assessment.

A further Order will be laid in due course to effect the transfer (and where necessary, the modification) of the full range of relevant functions. That Order will be accompanied by a further explanatory memorandum and any appropriate regulatory impact assessment.

# Eitem 4

RT HON LORD MORRIS OF ABERAVON, KG, QC



27 March 2012

Mr. Steve George, Committee Clerk  
Constitutional & Legal Affairs Committee  
National Assembly for Wales  
Cardiff Bay, Cardiff,  
CF99 1NA

*By email to: [CLA.Committee@wales.gov.uk](mailto:CLA.Committee@wales.gov.uk)*

Dear Mr. George

**Oral Evidence to the Constitutional & Legislative Affairs Committee of the Welsh Assembly**

I have pleasure in enclosing a copy of my Oral Evidence. As you can see I have expanded Clause 21.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Lord Morris".

Enc:

cc: Mr. Carwyn Jones, First Minister  
Lord Prys Davies  
Mr. Justice Roderick Evans  
The Rt Hon the Lord Judge  
Lord Justice Pill  
Lord Carnworth



1. I am grateful for the opportunity to make my observations to the Constitutional and Legislative Affairs Committee of the Welsh Assembly.
2. My starting point is that I am a devolutionist which, short of considerable argumentation, means that I wish to bring government closer to the people in Wales. At first blush a separate Welsh (legal) jurisdiction is not a governmental activity, although one of the consequences of the considerable development in powers for the Welsh Assembly since my first proposals in 1976 is that there is a new corpus of law emanating from the Assembly, both before and after the new powers recently granted to it.
3. I would say in passing that in any negotiation between the Assembly and the Westminster Government for further powers there are matters of governmental activity which should have a high priority, such as accountability for Welsh broadcasting, the police, aspects of energy production and perhaps a re-appraisal of how to achieve greater democratic accountability, possibly jointly, of the responsibilities of the Environmental Agency in Wales. I deliberately do not traverse what might be termed "the financial relationship with Westminster", a re-appraisal of which is long overdue.
4. The Secretary of State for Wales had few powers in the beginning. Under governments of both persuasions, those powers were substantially increased, particularly during the period of my stewardship of the office from 1974-79. The driving force for the negotiation for new powers, which occurred simultaneously with the presentation of devolution proposals, was the need to create administrative experience in the Welsh Office in new fields which could serve as the building blocks for the powers of the future Assembly. Without such acquisition the new Assembly would have an even steeper learning curve. I deal with this aspect of my work in some detail in my book *"Fifty Years in Politics and the Law"* chapters 16 and 17.
5. I mention these matters since politics is "the art of the possible". Wise politicians might wish to prioritise more transfers of political decision making, which this proposal is not, however desirable it may be.
6. Let me welcome the administrative decisions which have been taken by a wise judiciary to ensure that the sittings of various important courts now take place in Wales. As enumerated none of these, I surmise, would have unintended political devolutionary consequences.
7. Not having practised as a lawyer in Wales since my very young days I have no experience of the consequences of devolution on practitioners in Wales. I surmise that a lawyer in the civil – possibly criminal field, advising a client on matters in Wales would have to ensure that he checked both the effect of Westminster laws, and laws emanating from Cardiff, both before and after the granting recently of "law-making" powers to the National Assembly. These matters might have to be judicially determined wherever the case was set down.
8. I am, however, unclear as to what a separate jurisdiction entails. I am not alone in this as the first question the Committee asks is the meaning of the term "Separate Welsh Jurisdiction". Short of Wales becoming an independent state nothing can really be wholly



separate. Even the devolution proposals which I proposed and now adopted in subsequent legislation envisaged the judicial determination of disputes between the Assembly and Westminster by the Supreme Court in London.

At least we have a clear answer to one part of the question. A "Separate Welsh Jurisdiction" cannot mean the undermining of this.

9. On the assumption that a more limited "Separate Welsh Jurisdiction" is contemplated in the question it must mean higher and lower courts operating separately from the courts of England. Judges, I presume, would be appointed specifically to the courts in Wales. This harkens back to the courts of the Great Session in Wales (abolished in 1830) to which judges were specifically appointed and I think I am right in my recollection, could still practice as counsel in the courts at Westminster nonetheless.
10. In one of the arguments that used to be put to me when I was working out my proposals for devolution was that Wales, unlike Scotland, did not have a separate legal system with its legal corpus quite distinct from the English Common Law. My reply was "so be it; what does it matter?" The repatriation of democratic decision-making was a different issue and independent of a legal jurisdiction and was no bar to devolution, in our case in Wales.
11. I note that in civil matters there is an appeal from the Scottish Courts direct to the Supreme Court and I surmise if Scotland achieved independence this would be discontinued.
12. However, it is for the proposers of a "Separate Welsh Jurisdiction" to set out what they mean by it, and not for consultees to guess. Does it mean a separate court of appeal in Wales?
13. I have, however, a limited experience of the courts in Northern Ireland as I held the office of Attorney General there, concurrent with being the A.G. for England and Wales. My main responsibilities were for the criminal law with my own Director of Public Prosecutions for the Province whom I supervised and discussed cases of difficulty. The A.G.'s responsibilities were, of course, wider. In addition, and it is not an exhaustive list but the Attorney was the guardian of the public interest. I had a responsibility for commencing contempt cases, for charities and determining whether a Nolle should be entered in prosecutions. This is not an exhaustive list. I have no recollection of any difficulty arising from the fact that Northern Ireland had a separate jurisdiction. I had appropriate relations with the judiciary in the course of my regular visits. I was honoured to be called to the Bar of Northern Ireland.
14. My most onerous responsibility was taking decisions on a very frequent basis, though not as frequent as some of my predecessors, as to whether a defendant should have a jury trial for an indictable offence, or be tried by "The Diplock Courts" without a jury. As a life-long jury man in criminal trials and one of its defenders, I admired the stewardship of the judiciary in their exercise of their probably unwelcome jurisdiction.

15. I understood, because of the small size of the judiciary, both of the High Court and the Court of Appeal, there could be practical difficulties in ensuring that the availability of judges who had not already been “contaminated” by previous knowledge of other stages of a case. My understanding was that any such problems could be and were overcome.
16. This leads me to a conclusion that before the Committee proceeds any further it might wish to canvass the practical implications of whatever is on the table by taking advice from judges, lawyers and others experienced in the work of the Courts of both Northern Ireland and Scotland.
17. Since preparing my evidence I have had the advantage of consulting with the Rt Hon the Lord Carswell, a former Lord of Appeal in Ordinary and Lord Chief Justice of Northern Ireland. I have, with his consent, attached his analysis in a separate and independent factual note.
18. It is not at this stage possible to estimate the cost of creating an “independent jurisdiction”. I surmise they would be considerable. The Committee might want to consider this as a priority.
19. It is self-evident that the pool for the appointment of Chief Justice and judges of the Court of Appeal in Wales would be small if it were decided that promotions would only be made from within the Welsh Judiciary. If, as is likely, a separate Attorney General for Wales were to be appointed, his relationship with the Attorney General for England and Wales would have to be decided. In Northern Ireland the England & Wales Attorney General is still the Advocate General I believe.
20. I am told that in Dublin the model adopted is a judge-led system, which must be demanding on judicial time. In Northern Ireland there is a Director of the Court Service who consults where appropriate with the Lord Chief Justice. If this were the model adopted for Wales, a Director of the Court Service would be required. Other issues to be determined would be family courts and responsibility for magistracy.
21. It may be that it would be more fruitful for the Committee to inquire how the recent developments of court sittings in Wales might be extended and consolidated. I do not know what proportion of Welsh court work is involved in the “Regular Sittings” of the Court of Appeal Division, or indeed the other courts. A presumption that “Welsh work” should be set down for hearing in Wales I surmise would be welcomed.

It may be that a way forward is to delineate that part of the Ministry of Justice and the administrative machinery of the courts further to Wales. It would mean a recognition of the need for special provision for Wales given that the Assembly has law-making powers, as opposed to the present unitary jurisdiction. I am not competent to advise on such policies. If the political will is there some practical progress could be achieved without incurring significant expenditure.

22. I do not think there is any further assistance I can give.

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Note:

The acknowledged legal historian for Northern Ireland is Sir Anthony Hart, a retired High Court Judge and Professor Desmond Greer has written extensively and authoritatively in this field.

Note on "Requirements of a Legal Jurisdiction" is attached.



*Lord Morris of Aberavon*

*27/3/2012*

## Requirements of a separate legal jurisdiction

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### 1. Judiciary

A separate judiciary, both first instance and appellate. Matters requiring consideration include:

- Appointment – a judicial appointments commission, or some other mechanism; the question then arises who has the final say in the appointment, Lord Chancellor or First Minister or some other person (appointments made by The Queen are made on the recommendation of a minister), and whether that person can refuse the appointments commission's recommendation or only refer it back for reconsideration;
- Qualification for appointment – would it be only members of the local Bar, or would members of the English Bar be eligible?

### 2. Barristers

Matters requiring consideration include:

- Qualification for call to the Bar;
- Queen's Counsel or equivalent, and who appoints or recommends for appointment;
- Rights of audience of other Bars (bearing in mind the EU requirements), and rights of such persons to be called to the Bar of Wales;
- Training facilities, both pre- and post-call;

- A complaints and discipline structure;
- An equivalent of the Bar Council to govern the Bar;
- An inn of court or other corporate body.

### **3. Solicitors**

Similar considerations to those relating to barristers, a corporate body such as the Law Society, requirements for admission, training, complaints and discipline.

### **4. Rules of court**

A separate legal system would require its own rules of court, with a rule-making body.

### **5. Court administration**

A self-contained organisation, funded and appointed locally, to run the courts and administer the judiciary (the court service now in place may or may not be sufficient).

### **6. Local legal materials**

Text books relating to the local corpus of law and statute books would be required in the course of time.

### **7. Crown and prosecution service**

An attorney general to head the Crown legal service, a director of public prosecutions and a public prosecutions department, a Crown Office to handle Government legal matters, a youth justice service and various ombudsmen or inspectors to oversee and regulate different aspects of the law and the legal profession.

## **8. Law commission**

A body to consider the development of the law and make recommendations to the Assembly is likely to be required.

All this would have to be negotiated in the light of issues of removal of jurisdiction of English courts and professional bodies and the extent of jurisdiction of Parliament over Welsh legal affairs. That would require primary legislation in Parliament.

Sources for Northern Ireland include the Government of Ireland Act 1920, the Judicature (Northern Ireland) Act 1978, the Justice (Northern Ireland) Act 2002 and such text books as those of Sir Arthur Quekett and Harry Calvert.





## Constitutional and Legislative Affairs Committee

Subsidiarity monitoring report (January 2012 - April 2012)

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Date of paper:

June 2012

This briefing has been produced by the Research Service for use by the Constitutional and Legislative Affairs Committee.

For further information, contact Owain Roberts in the Research Service  
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Research  
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## Contents

<b>1.</b>	<b>Introduction.....</b>	<b>3</b>
<b>2.</b>	<b>The monitoring process.....</b>	<b>3</b>
<b>3.</b>	<b>Overview of draft EU legislative proposals received (January 2012 - April 2012)</b>	<b>5</b>
3.1.	EU legislative proposals identified as raising subsidiarity concerns .....	5
3.2.	EU legislative proposals that did not raise any subsidiarity concerns.....	6

## 1. Introduction

Under Standing Order 21, a “responsible committee” in the Assembly (currently the Constitutional and Legislative Affairs Committee) is empowered to consider draft EU legislation that relates to matters within the legislative competence of the Assembly or to the functions of the Welsh Ministers and of the Counsel General, to identify whether it complies with the principle of subsidiarity.

The principle of subsidiarity is enshrined in Article 5 of the Treaty on European Union:

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.<sup>1</sup>

In addition, the application of the principle is governed by the Protocol on the Application of the Principles of Subsidiarity and Proportionality. The relevant part in relation to the work of the Assembly is included in the first paragraph of Article 6:

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. **It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.** *[RS emphasis]*<sup>2</sup>

## 2. The monitoring process

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<sup>1</sup> Official Journal of the European Union, [\*Consolidated version of the Treaty on European Union\*](#), C83/204, 30 March 2010

<sup>2</sup> Official Journal of the European Union, [\*Protocol on the Application of the Principles of Subsidiarity and Proportionality\*](#), C310/207, 16 December 2004

In order to ensure that the Constitutional and Legislative Affairs Committee fulfils its subsidiarity monitoring function effectively as set out in Standing Orders, Assembly officials monitor all draft EU legislative proposals that apply to Wales on a systematic basis to check whether they raise any subsidiarity concerns. The way in which Assembly officials monitor these proposals is outlined below for information:

- The Assembly in the first instance is notified of all proposals published by the European Commission for consideration through a list (known as the “batch list”) which is sent by the Foreign and Commonwealth Office on behalf of the UK Government to the Research Service for information.
- The relevant UK Government department will then prepare an Explanatory Memorandum (EM) based on the proposals included on the batch list usually within 4 to 6 weeks of the initial notification by the Foreign and Commonwealth Office. Each EM includes an assessment of the policy impact of the proposals (including whether the UK Government department believes the proposal raises any subsidiarity concerns). Copies of each EM are also sent to the Assembly via the Research Service.
- The Research Service filters the EMs received to check whether the proposal they relate to are “legislative” or “non-legislative”<sup>3</sup> and whether they encompass issues which may be of interest to the Assembly (i.e. relating to devolved matters).
- Those EMs that relate to proposals that are both “legislative” and deal with issues of interest to the Assembly are then checked further by officials from the Assembly’s Legal Services, Brussels Office and the Research Service to see whether they raise any potential subsidiarity concerns.
- If a proposal raises subsidiarity concerns, Assembly officials will alert the Constitutional and Legislative Affairs Committee immediately whereupon Members will be asked to consider whether the Committee should ask either or both Houses at Westminster to issue a “reasoned opinion” on the proposal or not.
- Those proposals which are “legislative” and relate to devolved matters but raise no subsidiarity concerns are then collated in a monitoring report produced by the Research Service which is considered as a paper to note by the Constitutional and Legislative Affairs Committee during each term in an Assembly year (Autumn [September–December], Spring [January–April] and Summer [May – August]).

This report therefore includes a general overview of those draft EU legislative proposals received by the Assembly’s Research Service between January and April 2012, and provides further information about those proposals that were identified by Assembly officials as being both “legislative” in nature and relating to devolved matters.

Please note however that this report only monitors “legislative” proposals, **it does not contain details of any “non-legislative proposals” that may be relevant to the work of the Assembly.** These are monitored on a separate basis by the Research Service.

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<sup>3</sup> Subsidiarity concerns can only be raised in relation to draft “legislative” proposals.

### 3. Overview of draft EU legislative proposals received (January 2012 – April 2012)

A total of 147 UK Government EMs relating to EU proposals were received by the Assembly's Research Service between 1 January 2012 and 31 April 2012. Of these, 29 EMs were identified by Assembly officials as being both "legislative" in nature and of interest to the Assembly. Following further analysis by officials from the Assembly's Legal Service, Brussels Office and Research Service, these were subsequently filtered as follows:

- 1 proposal was identified as raising subsidiarity concerns and was the subject of a "written representation" by the Constitutional and Legislative Affairs Committee to the relevant committees in the House of Commons and House of Lords.
- 28 proposals did not raise any subsidiarity concerns.

Additional details about these filtered proposals are included below.

#### 3.1. *EU legislative proposals identified as raising subsidiarity concerns*

<u>Date EM emailed</u>	<u>Title, description and timeline</u>
17 January 2012	<p><i>Proposal for a Directive of the European Parliament and of the Council on <b>Public Procurement</b></i> (COM(2011)896).</p> <p>Concerns relating to this proposal were raised by the Assembly's Enterprise and Business Committee in February 2012. It was subsequently considered by the Constitutional and Legislative Affairs Committee on 20 February 2012 where Members agreed to make a written representation under Standing Order 21 to the House of Commons' European Scrutiny Committee and the House of Lords' European Union Committee.</p> <p>The Committee's concerns were then incorporated into a "reasoned opinion" issued by the House of Commons in relation to the draft proposal on 6 March 2012.</p> <p>This was the first time that an Assembly Committee had utilised the powers available under Standing Order 21 to raise subsidiarity concerns in relation to an EU legislative proposal.</p>

### 3.2. EU legislative proposals that did not raise any subsidiarity concerns

<u>Date EM emailed</u>	<u>Title and description</u>
5 January 2012	<p><i>Proposal for a Regulation of the European Parliament and the Council <b><u>establishing Horizon 2020 – The Framework Programme for Research and Innovation (2014 – 2020)</u></b> (COM(2011)809).</i></p> <p>This proposal is part of a range of documents (detailed below) which establishes the Commission’s proposals for the EU’s next framework programme for research and innovation – Horizon 2010.</p>
5 January 2012	<p><i>Proposal for a Council Decision establishing the <b><u>Specific Programme Implementing Horizon 2020 – The Framework Programme for Research and Innovation (2014 - 2020)</u></b> (COM(2011)811).</i></p> <p>See COM(2011)809.</p>
5 January 2012	<p><i><b><u>Commission Staff Working Paper accompanying the Communication from the Commission on Horizon 2020 – The Framework Programme for Research and Innovation, a Proposal for a Regulation of the European Parliament and of the Council establishing Horizon 2020 – The Framework Programme for Research and Innovation (2014 - 2020), a Proposal for a Council Decision establishing the Specific Programme implementing Horizon 2020 – The Framework Programme for Research and Innovation (2014 - 2020) and a Proposal for a Council Regulation on the Research and Training Programme of the European Atomic Energy Community (2014 - 2018) complementing the Horizon 2020 – The Framework Programme for Research and Innovation – <u>Impact Assessment</u></u></b> (SEC(2011)1427).</i></p> <p>See COM(2011)809.</p>
5 January 2012	<p><i><b><u>Commission Staff Working Paper accompanying the Communication from the Commission on Horizon 2020 – The Framework Programme for Research and Innovation, Proposal for a Regulation of the European Parliament and of the Council establishing Horizon 2020 – The framework Programme for Research and Innovation (2014 - 2020), Proposal for a Council Decision establishing the Specific Programme implementing Horizon 2020 – The Framework Programme for Research and Innovation (2014 - 2020) and a Proposal for a Council Regulation on the Research and Training Programme of the European Atomic Energy Community (2014 -</u></b></i></p>

2018) complementing the Horizon 2020 - The Framework Programme for Research and Innovation - **Executive Summary of the Impact Assessment** (SEC(2011)1428).

See COM(2011)809.

5 January  
2012

*Proposal for Regulation of the European Parliament and of the Council **laying down the rules for the participation and dissemination in Horizon 2020** - The Framework Programme for Research and Innovation (2014 - 2020)* (COM(2011)810).

The proposal sets out the single set of rules intended for governing the application, evaluation, participation and dissemination processes for Horizon 2020.

5 January  
2012

*Proposal for a Council Regulation on the **Research and Training Programme of the European Atomic Energy Community (2014 - 2020)** complementing the Horizon 2020 - The Framework programme for Research and Innovation* (COM(2011)812).

This proposal sets out the Euratom-related elements of the Horizon 2020 programme.

6 January  
2012

*Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No.294/2008 **establishing the European Institute of Innovation and Technology (EIT)*** (COM(2011)817).

This proposal amends the EIT regulation for its operation from 2014–2020 based on the experiences and lessons learnt during the initial period of setting up the EIT.

6 January  
2012

*Proposal for a Decision of the European Parliament and of the Council on the **Strategic Innovation Agenda of the European Institute of Innovation and Technology (EIT): The contribution of the EIT to a more innovative Europe*** (COM(2011)822).

This proposal (along with COM(2011)817) amends the EIT regulation for its operation from 2014–2020 based on the experiences and lessons learnt during the initial period of setting up the EIT.

10 January 2012	<p><i>Proposal for a Regulation of the European Parliament and of the Council establishing a <b><u>Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (2014 - 2020)</u></b> (COM(2011)834).</i></p> <p>The proposal aims to establish a “Programme for the Competitiveness of Enterprises and SMEs” which is designed to support the Europe 2020 strategy to ensure that SMEs are able to take full advantage of the Single Market’s potential.</p>
10 January 2012	<p><i>Proposal for a Decision of the European Parliament and of the Council on <b><u>serious cross-border threats to health</u></b> (COM(2011)866).</i></p> <p>The proposal intends to strengthen current capacities and structures on health security to protect EU citizens from serious cross border threats that might affect public health.</p>
12 January 2012	<p><i>Proposal for a Regulation of the European Parliament and of the Council on <b><u>the European Maritime and Fisheries Fund</u></b> [repealing Council Regulation (EC) No.1198/2006 and Council Regulation(EC) No.861/2006 and Council Regulation No.XXX/2011 on integrated maritime policy (COM(2011)804).</i></p> <p>The proposal establishes the European Maritime Fisheries Fund to replace the European Fisheries Fund from 1 January 2014 and will run until the end of December 2020.</p>
12 January 2012	<p><i>Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/98/EC on <b><u>re-use of public sector information</u></b> (COM(2011)877).</i></p> <p>This proposal amends the “Re-Use Directive” in order to bring about a further degree of harmonisation of the legal rules governing the re-use of public sector information at the European level.</p>
17 January 2012	<p><i>Proposal for a Directive of the European Parliament and of the Council on the award of <b><u>concession contracts</u></b> (COM(2011)897).</i></p> <p>The proposal aims to extend and expand the European rules governing the award of “concession” contracts by public authorities and utilities, in parallel with proposals to modernise the public and utilities procurement rules.</p>

17 January 2012	<p><i>Proposal for a Directive of the European Parliament and of the Council on <b><u>procurement by entities operating in the water, energy, transport and postal services sectors</u></b> (COM(2011)895).</i></p> <p>The proposal replaces the “Utilities Directive” and the “Public Sector Directive” which contain detailed procedural rules that apply to public procurements above certain thresholds.</p>
18 January 2012	<p><i>Proposal for a Regulation of the European Parliament and of the Council on the <b><u>establishment of a Programme for the Environment and Climate Action (LIFE)</u></b> (COM(2011)874).</i></p> <p>The proposal provides for the continuation of the LIFE programme for 2014–2020 to support EU environment and climate objectives.</p>
18 January 2012	<p><i>Proposal for a Regulation of the European Parliament and of the Council on certain measures in relation to countries allowing non-sustainable fishing for the purpose of <b><u>the conservation of fish stocks</u></b> (COM(2011)888).</i></p> <p>The proposal establishes a framework of trade measures that could be implemented against countries that are judged to be allowing non-sustainable fishing on stocks in which the EU has a common interest in their management.</p>
27 January 2012	<p><i>Proposal for a Council Regulation establishing for the period 2014-2020 the programme "<b><u>Europe for Citizens</u></b>" (COM(2011)884).</i></p> <p>The proposal builds on the existing programme which ends in December 2013. It aims to enhance capacity for civic participation at the Union level.</p>
30 January 2012	<p><i>Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the <b><u>recognition of professional qualifications</u></b> and Regulation on administrative cooperation through the Internal Market Information System (COM(2011)883).</i></p> <p>The proposal updates the Recognition of Professional Qualifications Directive and introduces a number of new processes which aim to facilitate free movement in the regulated professions throughout the EU.</p>



2 February 2012	<p><i>Proposal for a Directive of the European Parliament and of the Council amending Directive 2004/40/EC on <b><u>minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields)</u></b> (eighteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (COM(2012)15).</i></p> <p>The proposal will further delay the transposition of Directive 2004/40/EC from 30 April 2012 to 30 April 2014.</p>
20 February 2012	<p><i>Report from the Commission to the European Parliament and the Council on the <b><u>outcome of the review of Annex X to Directive 2000/60/EC of the European Parliament and of the Council on priority substances in the field of water policy</u></b> (COM(2011)875).</i></p> <p>This proposal relates to proposal COM(2011)876 which will aim to review the list of substances which are identified as priority hazardous substances in water.</p>
20 February 2012	<p><i>Proposal for a Directive of the European Parliament and of the Council amending Directives 2000/60/EC and 2008/105/EC as regards <b><u>priority substances in the field of water policy</u></b> (COM(2011)876)</i></p> <p>This proposal will aim to review the list of substances which are identified as priority hazardous substances in water.</p>
20 February 2012	<p><i>Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No.1342/2008 of 18 December 2008 <b><u>establishing a long-term plan for cod stocks and the fisheries exploiting those stocks</u></b> (COM(2012)21).</i></p> <p>The proposal aims to delegate powers to the Commission allowing the modification of parts of the “cod recovery plan” without the need to pass through the co-decision process.</p>
22 February 2012	<p><i>Proposal for a Council Decision establishing the position to be adopted on behalf of the European Union with regard to the <b><u>proposals for amending Annexes II and III to the Protocol concerning Specially Protected Areas</u></b></i></p>

**and Biological Diversity in the Mediterranean of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean at the seventeenth meeting of the Contracting Parties**  
(COM(2012)47).

The provides for an EU position at the “Barcelona Convention” to secure EU support to place 6 species of shark on Annex II (list of threatened and endangered species) to the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean.

19 March  
2012

*Proposal for a Regulation of the European Parliament and of the Council on the **non-commercial movement of pet animals*** (COM(2012)89).

The proposal clarifies the animal health requirements that apply to the non-commercial movement of pets following the expiry of the transitional regime (Regulation 288/2003).

19 March  
2012

*Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/65/EEC as regards the **animal health requirements governing intra-Union trade in and imports into the Union of dogs, cats and ferrets*** (COM(2012)90).

The proposal amends an existing Directive relating to animal health rules for trade between Member States of the EU and import from third countries of non-livestock species.

19 April  
2012

*Proposal for Council Directive amending Annex I to European Parliament and Council Directive 94/62/EC on **packaging and packaging waste*** (COM(2012)141).

The proposal adds new illustrative examples of packaging and non-packaging the “Packaging and Waste Directive”.

19 April  
2012

*Proposal for a Council Directive laying down requirements for the **protection of the health of the general public with regard to radioactive substances in water intended for human consumption*** (COM(2012)122).

The proposal sets out similar standards as those included in “the Drinking Water Directive” in relation to radioactivity in water intended for human consumption but specifies one new standard for Radon and new



monitoring frequencies and additional analytical requirements.

26 April  
2012

*Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators as regards **the placing on the market of portable batteries and accumulators containing cadmium intended for use in cordless power tools** (SWD(12)65).*

The proposal amends the “Batteries Directive” by amending the exemption that allows cadmium to be used in batteries for cordless power tools so that the exemption ceases to have effect from 1 January 2016.

# Eitem 5.2

Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



## **Y Pwyllgor Materion Cyfansoddiasol a Deddfwriaethol**

**Adroddiad: CLA(4)-14-12: 18 Mehefin 2012**

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

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

### **Offerynnau'r Weithdrefn Penderfyniad Negyddol**

**CLA156 – Rheoliadau Tribiwnlys Anghenion Addysgol Arbennig Cymru (Diwygio) 2012**

**Gweithdrefn:** Negyddol.

**Fe'u gwnaed:** 25 Mai 2012.

**Fe'u gosodwyd:** 30 Mai 2012.

**Yn dod i rym:** 21 Mehefin 2012

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

**CLA154 – Rheoliadau Seibiannau i Ofalwyr Plant Anabl (Cymru) 2012**

**Gweithdrefn:** Cadarnhaol.

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

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

**Yn dod i rym:** 28 Mehefin 2012

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

### **Offerynnau'r Weithdrefn Penderfyniad Negyddol**

Dim

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

Dim

### **Busnes arall**

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

Clywodd y Pwyllgor dystiolaeth lafar gan yr Athro Thomas Glyn Watkin, Pennaeth Ysgol y Gyfraith, Prifysgol Bangor. Gofynnodd yr Aelodau am nodyn ar Gynhadledd y Llefarydd 1918.

**CLA151 – Rheoliadau Addysg (Benthyciadau Myfyrwyr) (Ad-dalu) (Diwygio) (Rhif 2) 2012**

Nododd y Pwyllgor fod esboniad y Prif Weinidog ynghylch absenoldeb fersiynau Cymraeg o'r Offerynnau Statudol a wnaed ar y cyd â Gweinidogion y DU yn y cyfarfod ar 11 Tachwedd 2011 yn gymwys hefyd i CLA151 – Rheoliadau Addysg (Benthyciadau Myfyrwyr) (Ad-dalu) (Diwygio) (Rhif 2) 2012.

**Penderfynu i gyfarfod yn breifat**

Yn unol â Rheolau Sefydlog 17.42(vi) a (ix) penderfynodd y Pwyllgor i wahardd y cyhoedd o weddill y cyfarfod er mwyn trafod goblygiadau'r Memorandwm Cydsyniad Deddfwriaethol (y Bil Llywodraeth Leol) i'r ddadl ar adroddiad y Pwyllgor ar yr ymchwiliad i roi pwerau i Weinidogion Cymru yn Neddfau'r DU a'r dystiolaeth sydd wedi'i chyflwyno hyd yn hyn fel rhan o'r ymchwiliad i sefydlu awdurdodaeth ar wahân i Gymru.

**David Melding AC**  
**Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol.**

**18 Mehefin 2012**