

## CYNULLIAD YN UNIG

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru i roi gwybodaeth a chynngor i Aelodau'r Cynulliad a'u staff am faterion y mae'r Cynulliad a'i bwyllgorau'n eu hystyried ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cynngor a geir yn y ddogfen hon yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd parti.

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### Nodyn Cyngor Cyfreithiol

#### MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL (5) – Y BIL MENTER A DIWYGIO RHEOLEIDDIO –

#### Cefndir

1. Ar 11 Ionawr 2013, cyflwynodd Alun Davies AC, y Dirprwy Weinidog Amaethyddiaeth, Pysgodfeydd, Bwyd a Rhaglenni Ewropeaidd, yr hysbysiad a ganlyn ynghylch cynnig –

*“Cynnig bod Cynulliad Cenedlaethol Cymru, yn unol â Rheol Sefydlog 29.6, yn cytuno y dylai Senedd y DU ystyried darpariaethau'r Bil Menter a Diwygio Rheoleiddio sy'n ymwneud â diddymu Bwrdd Cyflogau Amaethyddol Cymru a Lloegr, i'r graddau y maent yn dod o fewn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol.”*

2. Trafododd y Pwyllgor Busnes y Memorandwm Cydsyniad Deddfwriaethol (“y Memorandwm”) ar 15 Ionawr 2013, a chytunodd i beidio â chyfeirio'r Memorandwm at bwyllgor i'w ystyried oherwydd prinder amser ac i'r Cynnig Cydsyniad Deddfwriaethol gael ei drafod yn y Cyfarfod Llawn ddydd Mawrth 29 Ionawr 2013. Diben y nodyn hwn yw hwyluso'r drafodaeth honno.

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3. Dyma'r pumed Memorandwm sy'n ymwneud â'r Bil Menter a Diwygio Rheoleiddio ("y Bil"). Cafodd Memorandwm blaenorol ei osod ar 12 Mehefin mewn perthynas â'r diwydiant dŵr a gosodwyd un arall ar 10 Gorffennaf mewn perthynas â'r Banc Buddsoddi Gwyrdd. Gosodwyd trydydd Memorandwm ar 5 Hydref 2012 mewn cysylltiad â darpariaethau'r Bil sy'n ymwneud â phŵer i Weinidogion Cymru gynnwys cymalau machlud ac adolygu mewn is-ddeddfwriaeth, i'r graddau y maent yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru. Gosodwyd Memorandwm arall hefyd ar 11 Ionawr 2013 mewn cysylltiad â darpariaethau'r Bil sy'n ei gwneud yn ofynnol i gyflenwyr nwyddau a gwasanaethau ddarparu data electronig i gwsmeriaid. Nid yw'r materion yr ymdriniwyd â hwy yn y Memoranda hynny wedi'u cynnwys yn y dadansoddiad a ganlyn.

### Y Bil

4. Cyflwynodd yr Ysgrifennydd Gwladol dros Fusnes, Arloesi a Sgiliau y Bil yn Nhŷ'r Cyffredin ar 23 Mai 2012. Roedd y Bil yn destun Ail Ddarlleniad ar 11 Mehefin 2012 cyn iddo symud i'r Cyfnod Pwyllgor. Daeth ei daith drwy Dŷ'r Cyffredin i ben ar 17 Hydref, ac mae bellach yn y Cyfnod Pwyllgor yn Nhŷ'r Arglwyddi. Mae'r Bil yn cynnwys chwe Rhan. Mae'r Memorandwm presennol yn ychwanegu un cymal newydd ac un atodlen newydd. Maent yn ymddangos fel gwelliannau 28ZK a 28ZU yn yr wythfed restr o welliannau wedi'u didoli i'w cynnig yn yr Uwch Bwyllgor, ac maent wedi'u hatodi i'r nodyn hwn er hwylustod yn Atodiad 'A'. Gwelliannau'r Llywodraeth yw'r rhain yn enw'r Arglwydd Younger o Leckie, Is-ysgrifennydd Gwladol Seneddol a Llefarydd y Llywodraeth ar ran yr Adran Busnes, Arloesi a Sgiliau yn Nhŷ'r Arglwyddi.
6. Yn ôl y Nodiadau Esboniadol, prif ddiben y Bil yw annog twf hirdymor a symleiddio rheoliadau yn gyffredinol.
7. Gan fod y cymalau hyn yn agored i welliannau nad ydynt wedi eu derbyn hyd yn hyn, nid oes esboniad o'u diben i'w gael yn y Bil.
8. Ystyriodd yr Uwch Bwyllgor y gwelliannau ar 16 Ionawr 2013.

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9. Rhoddodd cynigydd y gwelliannau, yr Arglwydd Younger o Leckie, yr eglurhad canlynol dros gynnig y gwelliannau. Mae'r eglurhad wedi'i gynnwys yn llawn oherwydd bod angen canfod diben y gwelliannau, fel y gellir gweld o baragraffau 14 ymlaen o'r nodyn cyngor hwn.

*Viscount Younger of Leckie: The Agricultural Wages Board and Agricultural Wages Committees were set up in their current form nearly 65 years ago. The board was established at a time when there was little statutory employment protection for workers. Today the situation is very different and all workers are protected by the National Minimum Wage Act and working time regulations. Before I proceed any further, I want to reassure noble Lords that this Government firmly support the national minimum wage.*

*The Agricultural Wages Board is the only remaining sector wage council—all others have now been abolished. There is now no compelling reason why the agriculture sector alone should continue to be subject to a separate statutory employment regime. Let me explain why.*

*The agriculture industry today is very different. First, such businesses are often not just dependent on agriculture. Technological developments and increased mechanisation mean that there is no longer such dependency on manual labour in order to carry out agricultural functions. This has enabled businesses to expand and take on other, complementary work. The sectors within agriculture are therefore becoming increasingly diverse and many farm businesses now carry out non-agricultural activities alongside more traditional farming enterprises—for example bed and breakfast, and farm shops, where workers would not necessarily be covered by the agricultural wages order.*

*The agricultural wages order, which is made each year by the Agricultural Wages Board, takes no account of these changes within the agriculture industry. The process is one of "one size fits all" and this imposes a rigid and no longer appropriate structure on what are in reality nowadays myriad businesses that come under the umbrella*

*term of "the agriculture sector". The order is overly complicated and its provisions are wide-ranging and restrictive, hampering the ability of the industry to offer more flexible, modern employment packages. These amendments will end the separate statutory employment regime for agricultural workers in England and Wales and make amendments to the National Minimum Wage Act to bring the agricultural industry within the scope of the national minimum wage. The Government will also make amendments to secondary legislation to ensure that agricultural workers are adequately protected by the working time regulations.*

*The abolition of the Agricultural Wages Board and the associated agricultural minimum wage regime will enable farmers to offer terms and conditions for new workers that suit their particular circumstances and take account of the requirements of the specific farming sector. They will also be able to agree more flexible terms with existing workers by mutual consent. It will make it easier for farm businesses to employ workers, including taking on new workers, and encourage longer-term employment, thereby boosting growth and creating job opportunities.*

*The abolition of the Agricultural Wages Board will also mean that a single employment regime applies to all types of activities. This will bring transparency for both employers and workers, which is increasingly important given the diversity of farm businesses, not least in the interests of fairness and as the distinction between agricultural and non-agricultural activities becomes blurred. Even within the agricultural sector there can be confusion as to whether activities are covered by the agricultural wages order. For example, where a business packs and trims salad produce that is both grown on the farm and bought in, the packing of the home-grown produce is covered by the agricultural wages order, whereas the packing of the bought-in produce may not necessarily be. There are similar examples of confusion in the dairy and livestock sectors. Abolition will lift administrative and regulatory burdens from farm businesses and enable them to focus on their core business activity. It should encourage farmers to offer more in the way of longer-term*

*employment, including the payment of annual salaries. All of this will encourage the development of a sustainable and prosperous industry for the future.*

*For the avoidance of any doubt, let me offer some further reassurance. Agricultural workers who have contractual rights reflecting the terms of the agricultural wages order at the time of the abolition of the board will continue to have those rights until such time as the contract might be varied by agreement between the employer and the worker or until the contract comes to an end. Moving forward, it is important to bear in mind that if agriculture-based businesses want to retain and attract able and well-qualified people, they need to offer remuneration packages that are competitive. We know that the majority of workers in the agriculture sector already benefit from terms and conditions that are above the agricultural minimum wage rates. Currently, about 60% of permanent agricultural workers over the age of 22 are paid above the agriculture wages order minima. There is no reason why they should find themselves in a worse position in the absence of the board. The Government have asked the Low Pay Commission to include agricultural workers in its considerations when providing recommendations for all of the elements of the national minimum wage in order to achieve the smooth integration of agricultural workers in England and Wales.*

*Most of the functions of the 15 Agricultural Wages Committees in England have now lapsed in practice or been replaced by wider legislation. Their only remaining active function is to appoint members of the 16 Agricultural Dwelling House Advisory Committees in England, which are sometimes known as the ADHACs. The committees were established under the Rent (Agriculture) Act 1976 and their function is to give advice to local authorities on rehousing agricultural workers. As a result of changes in housing legislation, the number of requests for advice from ADHACs has declined significantly, to fewer than 10 in each of the last two years. There is no statutory requirement to consult an ADHAC and many local authorities happily take decisions on rehousing without such advice. I hope the Committee agrees that these 31 regional committees in England are*

*now effectively defunct bodies and their continued existence at public expense cannot be justified. With regard to the abolition of the ADHACs in England, I want to assure noble Lords that there are no plans to change the provisions in the Rent (Agriculture) Act 1976 which give security of tenure to protected tenants, and therefore the amendments will not in any way jeopardise the position of tenants with protected tenancies under the 1976 legislation.*

*In summary, these amendments will bring employment practices in the agricultural industry into the 21st century, enabling sustainable growth for the future. They will also remove a number of obsolete public bodies and contribute to the Government's wider programme of public body reform. I hope that, in the light of my remarks, noble Lords will accept them. I beg to move Amendment 28ZK.<sup>1</sup>*

10. Gellir gweld cofnod o'r ddadl drwy'r linc a ganlyn  
[http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/130116\\_gc0001.htm#13011657000101](http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/130116_gc0001.htm#13011657000101)
11. Dim ond drwy unfrydedd y gellir gwneud penderfyniadau i addasu Bil yn yr Uwch Bwyllgor. Gan y bu gwrthwynebiad i'r gwelliant yn y Pwyllgor ar 16 Ionawr 2013, bydd y Tŷ yn awr yn penderfynu ar y mater yn y cyfnod adrodd.

#### Cymhwysedd Deddfwriaethol

12. Mae'r Memorandwm yn nodi mai cymhwysedd deddfwriaethol y Cynulliad o ran 'Amaethyddiaeth, coedwigaeth, anifeiliaid, planhigion a datblygu gwledig' yw'r cymhwysedd perthnasol.
13. Nid yw'r Memorandwm yn rhoi rhagor o wybodaeth am pam mae Llywodraeth Cymru yn ystyried bod y Bil yn gwneud darpariaeth o fewn cymhwysedd deddfwriaethol y Cynulliad.
14. Fel y mae paragraff 2 o'r Memorandwm yn ei egluro, y prawf a nodir yn Rheol Sefydlog 29.1 yw a yw'r Bil yn gwneud darpariaeth 'at unrhyw

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<sup>1</sup> Hansard 16 Ionawr 2013

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*ddiben o fewn cymhwysedd deddfwriaethol y Cynulliad neu'n cael effaith negyddol ar y cymhwysedd hwnnw'. Felly, nid oes yn rhaid i'r ddarpariaeth ei hun fod o fewn y cymhwysedd hwnnw, ar yr amod bod diben y ddarpariaeth yn dod o fewn y cymhwysedd hwnnw.*

15. Mae Adran 108 o Ddeddf Llywodraeth Cymru 2006 ac Atodlen 7 i'r Ddeddf honno yn diffinio cwmpas cymhwysedd deddfwriaethol y Cynulliad. Mae Rhan 1 o Atodlen 7 yn nodi'r pynciau y gall y Cynulliad ddeddfu yn eu cylch, ynghyd ag eithriadau i gymhwysedd deddfwriaethol y Cynulliad. Yn amodol ar eithriadau cyfyngedig, ni all y Cynulliad ddeddfu ar faterion nad ydynt wedi'u cwmpasu gan y pynciau, naill ai oherwydd nad ydynt wedi'u rhestru fel pynciau neu oherwydd eu bod wedi'u rhestru'n benodol fel eithriadau. Mae Rhannau 2 a 3 o Atodlen 7 hefyd yn cynnwys cyfyngiadau ar gymhwysedd y Cynulliad ac eithriadau i'r cyfyngiadau hynny.
16. Mae Adran 108 (7) o Ddeddf Llywodraeth Cymru 2006 yn nodi 'prawf diben' i benderfynu a yw cynnig i ddeddfu yn ymwneud â phwnc sy'n dod o fewn cymhwysedd deddfwriaethol y Cynulliad. Mae'n nodi y dylid penderfynu ar y cwestiwn ynghylch a yw darpariaeth Deddf Cynulliad yn ymwneud ag un neu fwy o'r pynciau yn Rhan 1 o Atodlen 7 neu'n rhan o eithriad drwy gyfeirio at ddiben y ddarpariaeth, gan ystyried (ymysg pethau eraill) ei heffaith ym mhob un o'r amgylchiadau.
17. Ymddengys mai o leiaf un o ddibenion y cynnig, yn ôl yr eglurhad a ddarperir gan yr Arglwydd Younger o Leckie, yw galluogi twf cynaliadwy o fewn y diwydiant amaethyddol. Bydd hyn yn cael ei gyflawni drwy ddod â gweithwyr amaethyddol o fewn y ddeddfwriaeth Isafswm Cyflog Cenedlaethol.
18. Mae sicrhau twf cynaliadwy o fewn y diwydiant amaethyddol yn amlwg yn fater sy'n dod o fewn cymhwysedd deddfwriaethol y Cynulliad. Nid yw Atodlen 7 i Ddeddf Llywodraeth Cymru 2006 yn darparu eithriad penodol ar gyfer cyfraith cyflogaeth.

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19. Barn y Gwasanaethau Cyfreithiol yw, yn unol â'r prawf a nodir yn Rheol Sefydlog 29, bod y gwelliant yn gwneud darpariaeth at ddiben sy'n dod o fewn cymhwysedd deddfwriaethol y Cynulliad, sef sicrhau twf cynaliadwy o fewn y diwydiant amaethyddol.
20. Efallai yr hoffai Aelodau wybod hefyd, er bod y gwelliant yn ceisio diddymu'r Pwyllgorau Cyflogau Amaethyddol a'r Pwyllgorau Cyngori ar Anhedd-dai Amaethyddol yn Lloegr, bydd y cyrff hyn yn parhau i fodoli yng Nghymru gan eu bod yn gyrff datganoledig. Gweinidogion Cymru sydd â'r pŵer i ddiwygio neu ddiddymu'r cyrff hyn o dan adran 28 o Ddeddf Llywodraeth Cymru 1998 (fel y'i diwygiwyd) ac Atodlen 4 i'r Ddeddf honno. Mae hyn yn ategu'r farn bod y cynnig presennol i ddiddymu'r Bwrdd Cyflogau Amaethyddol, fel corff cysylltiedig, yn ymwneud ag amaethyddiaeth.

### Casgliad

21. Barn y Gwasanaethau Cyfreithiol yw y bydd y Bil yn gwneud darpariaeth mewn cysylltiad â Chymru, am ddiben sydd o fewn cymhwysedd deddfwriaethol y Cynulliad.
22. Er na dderbyniwyd y gwelliant i'r Bil, mae Rheol Sefydlog 29.2 (iii) yn darparu bod yn rhaid i aelod o'r Llywodraeth osod memorandwm mewn cysylltiad ag unrhyw Fil a gyflwynir gan Senedd y DU sydd, yn rhinwedd y gwelliannau a gyflwynir gan Weinidog y Goron yn y naill Dŷ neu'r llall, yn gwneud (neu a fyddai'n gwneud) darpariaeth berthnasol am y tro cyntaf.
23. Mae Rheol Sefydlog 29.7 yn darparu bod yn rhaid i'r Cynulliad ystyried cynnig cydsyniad deddfwriaethol a gyflwynwyd.

Y Gwasanaethau Cyfreithiol  
Ionawr 2013



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After Clause 63

VISCOUNT YOUNGER OF LECKIE

**Amendment 28ZK**

Insert the following new Clause—

**“Abolition of Agricultural Wages Board and related English bodies**

- (1) The Agricultural Wages Board for England and Wales is abolished.
- (2) Every agricultural wages committee for an area in England is abolished.
- (3) Every agricultural dwelling–house advisory committee for an area in England is abolished.
- (4) Schedule (Abolition of Agricultural Wages Board and related English bodies: consequential provision) (abolition of Agricultural Wages Board and related English bodies: consequential provision) has effect.”

After Schedule 19

VISCOUNT YOUNGER OF LECKIE

**Amendment 28ZU**

Insert the following new Schedule—

“Abolition of Agricultural Wages Board and related English bodies:  
consequential provision

1 In section 28 of the Rent (Agriculture) Act 1976 (duty of housing authority upon receiving application that agricultural worker be re–housed etc.), in subsection (3), for “The authority” substitute “If the dwelling–house is in Wales, the authority”.

2 The repeals and revocations in the following table have effect.

Reference Extent of repeal or revocation

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Agricultural Wages Act 1948 (c. 47) Section 1.

In section 2— (a) in subsection (1)— (a) the words “England and”, and (b) paragraph (a), and (b) subsection (4).

Sections 3 to 4.

Sections 6 to 16.

In section 17— (a) in subsection (1), the definition of “the national minimum wage”, and (b) subsection (1A).

Sections 17A to 19.

Schedules 1, 2 and 4.

The Agricultural Wages Committee Regulations 1949 (S.I. 1949/1885)  
Regulation 3(2)(a) and the word “and” after it.

Regulation 16.

Public Records Act 1958 (c. 51) In the table at the end of paragraph 3 of  
Schedule 1, the words “Agricultural Wages Board.”

Parliamentary Commissioner Act 1967 (c. 13) In Schedule 2, the words  
“Agricultural Wages Board for England and Wales.”

Agriculture Act 1967 (c. 22) Section 67.

Agriculture (Miscellaneous Provisions) Act 1968 (c. 34) Section 46.

Agricultural Wages Committees (Wages Structure) Regulations 1971 (S.I.  
1971/844) The whole instrument.

Agricultural Wages Committees (Areas) Order 1974 (S.I. 1974/515) In article  
3(1), the words— (a) “Subject to the provisions of this order”, and (b) “an  
agricultural wages committee for each county in England and”.

Article 3(2).

Article 4.

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The Schedule.

Social Security (Consequential Provisions) Act 1975 (c. 18) In Schedule 2, paragraph 32.

House of Commons Disqualification Act 1975 (c. 24) In Part 3 of Schedule 1, the words “Member appointed by a Minister of the Crown of the Agricultural Wages Board for England and Wales.”

Northern Ireland Assembly Disqualification Act 1975 (c. 25) In Part 3 of Schedule 1, the words “of the Agricultural Wages Board for England and Wales or”.

Social Security Pensions Act 1975 (c. 60) In Schedule 4, paragraph 10.

Employment Protection Act 1975 (c. 71) Section 97(1) and (2).

Schedule 9.

In Schedule 17, paragraph 12.

Agriculture (Miscellaneous Provisions) Act 1976 (c. 55) In section 4(1)(c), the words from “(including” to the end.

Agricultural Wages Committees (New Combinations of Counties) Order 1981 (S.I. 1981/179) The whole order.

Agricultural Wages Committee (Cleveland, Durham, Northumberland and Tyne and Wear) Order 1989 (S.I. 1989/1173) The whole order.

Social Security (Consequential Provisions) Act 1992 (c. 6) In Schedule 2, paragraph 4.

Agricultural Wages Committees (Areas) (England) Order 1995 (S.I. 1995/3186) The whole order.

Employment Rights Act 1996 (c. 18) In section 35— (a) in subsection (2), paragraph (a) and the word “or” at the end of that paragraph, and (b) in subsection (3), paragraph (b) and the “and” before that paragraph.

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National Minimum Wage Act 1998 (c. 39) In section 16(6)— (a) in the definition of “the agricultural wages legislation”, paragraph (a), and (b) in the definition of “relevant authority”, paragraphs (a), (b) and (c).

In section 16A(5)— (a) in the definition of “enforcement officer”, paragraph (b), and (b) in the definition of “the relevant legislation”, paragraph (b).

Section 46(4)(a).

In section 47— (a) subsection (1)(a), (b) subsection (2)(a) and (d), (c) subsection (4)(a), (d) in subsection (4)(b), the words “(similar provision for Scotland)”, and (e) subsection (6)(a).

In section 55(1), in the definition of “regulations”, the words “by the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly or”.

Part 1 of Schedule 2.

National Minimum Wage Regulations 1998 (S.I. 1999/584) Regulation 38(5)(a).

Freedom of Information Act 2000 (c. 36) In Part 6 of Schedule 1, the words “An Agricultural Wages Board for England and Wales”.

Criminal Justice Act 2003 (c. 44) In Schedule 25, paragraph 28.

Employment Relations Act 2004 (c. 24) Section 47.

In Schedule 1, paragraph 1.

Public Contracts Regulations 2006 (S.I. 2006/5) In Schedule 1, in the entry relating to the Agricultural Wages Board and agricultural wages committees, the words “Board and”.

Employment Act 2008 (c. 24) Section 8(6).

Section 9(6).

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Public Contracts (Scotland) Regulations 2012 (S.S.I. 2012/88) In Schedule 1, in the entry relating to the Agricultural Wages Board and agricultural wages committees, the words “Board and”.