

# Constitutional and Legislative Affairs Committee

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Meeting Venue:

**Committee Room 2 – Senedd**

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Meeting date:

**10 November 2014**

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Meeting time:

**13.30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

**Gareth Williams**

Committee Clerk

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## Agenda

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### **1 Introduction, apologies, substitutions and declarations of interest**

### **2 Evidence in relation to the Planning (Wales) Bill (Pages 1 – 46)**

*(Indicative time 1.30pm)*

Carl Sargeant AM, Minister for Natural Resources

CLA(4)–27–14 – Research Service Briefing

CLA(4)–27–14 – Legal Advice Note

### **3 Section 109 Order: The Government of Wales Act 2006 (Amendment) Order 2015 (Pages 47 – 60)**

Evidence from Carl Sargeant AM, Minister for Natural Resources

CLA(4)–27–14 – Paper 1 – Order

CLA(4)–27–14 – Paper 2 – Explanatory Memorandum

CLA(4)–27–14 – Paper 3 – Letter from the Minister, 5 November 2014

CLA(4)-27-14 – Research Service Briefing

#### **4 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 (Pages 61 – 63)**

CLA(4)-27-14 – Paper 4 – Statutory instruments with clear reports

##### Negative Resolution Instruments

#### **CLA456 – The Local Government Byelaws (Fixed Penalties) (Wales) Regulations 2014**

Negative procedure; Date made: 9 October 2014; Date laid: 13 October 2014;

Coming into force date: 7 November 2014

#### **CLA458 – The Civil Enforcement of Bus Lane and Moving Traffic Contraventions (City and County of Cardiff) Designation Order 2014**

Negative procedure; Date made: 8 October 2014; Date laid: 14 October 2014;

Coming into force date: 10 November 2014

#### **CLA459 – The Civil Enforcement of Parking Contraventions (City and County of Cardiff) Designation (Amendment) Order 2014**

Negative procedure; Date made: 8 October 2014; Date laid: 14 October 2014;

Coming into force date: 7 November 2014

#### **CLA460 – The Planning (Hazardous Substances) (Determination of Procedure) (Prescribed Period) (Wales) Regulations 2014**

Negative procedure; Date made: 14 October 2014; Date laid: 17 October 2014;

Coming into force date: 12 November 2014

#### **CLA461 – The Town and Country Planning (Determination of Procedure) (Prescribed Period) (Wales) Regulations 2014**

Negative procedure; Date made: 14 October 2014; Date laid: 17 October 2014;

Coming into force date: 12 November 2014

#### **CLA462 – The Planning (Listed Buildings and Conservation Areas) (Determination of**

## **Procedure) (Prescribed Period) (Wales) Regulations 2014**

Negative procedure; Date made: 14 October 2014; Date laid: 17 October 2014;  
Coming into force date: 12 November 2014

## **5 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

### Affirmative Resolution Instruments

**CLA457 – The Local Government Byelaws (Wales) Act 2012 (Amendment) Order 2014**  
(Pages 64 – 79)

Affirmative procedure; Date made: Not stated; Date laid: 13 October 2014; Coming into force date: Not stated

**CLA(4)–27–14 – Paper 5 – Report**

**CLA(4)–27–14 – Paper 6 – Order**

**CLA(4)–27–14 – Paper 7 – Explanatory Memorandum**

## **6 Paper to Note (Pages 80 – 83)**

**CLA(4)–27–14 – Paper 8– European Commission Reasoned Opinion on Storage of Metallic Mercury Waste**

## **7 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(vi) the committee is deliberating on the content, conclusion or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

**Italian EU Presidency: debate on EU Institutional Reforms (Pages 84 – 103)**

**CLA(4)–27–14 – Paper 9– Italian Presidency: debate on EU Institutional Reforms, including role of national parliaments**

**CLA(4)–27–14 – Paper 10 –Paper to Note CALRE Declaration**

**Draft Report Well-being of Future Generations (Wales) Bill (Pages 104 – 129)**

**CLA(4)–27–14 – Paper 11 – Draft Report**

**Final Report Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill**  
(Pages 130 – 149)

**CLA(4)-27-14 – Paper 12 – Final Report**

**Final Report Financial Education and Inclusion (Wales) Bill** (Pages 150 – 170)

**CLA(4)-27-14 – Paper 13 – Final Report**

**Making Laws Inquiry** (Pages 171 – 185)

**CLA(4)-27-14 – Paper 14 – Feedback from 13 October Pierhead Event**

**CLA(4)-27-14 – Paper 15 – Notes of roundtable discussions**

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By virtue of paragraph(s) vi of Standing Order 17.42

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# Agenda Item 3

*Proposed Order in Council laid before the National Assembly for Wales under section 109 of the Government of Wales Act 2006.*

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## DRAFT STATUTORY INSTRUMENTS

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**2015 No. XXXX**

### **CONSTITUTIONAL LAW**

### **DEVOLUTION, WALES**

### **The Government of Wales Act 2006 (Amendment) Order 2015**

*Made* - - - - [ ] 2015

*Coming into force* - - [ ] 2015

At the Court at Buckingham Palace, the [ ] day of [ ] 2015

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament and of the National Assembly for Wales:

Now, therefore, Her Majesty, in exercise of the powers conferred by section 109 of the Government of Wales Act 2006(a) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

#### **Title and commencement**

- 1.—(1) This Order may be cited as the Government of Wales Act 2006 (Amendment) Order 2015.
- (2) This Order comes into force on the day after the day on which it is made..

#### **Amendment of the Government of Wales Act 2006 (c.32)**

2. In paragraph 5(2)(a) of Part 2 of Schedule 7 to the Government of Wales Act 2006, after “78,” insert “79.”

Clerk to the Privy Council

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(a) 2006 c.32.



## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends Schedule 7 to the Government of Wales Act 2006 so as to confer legislative competence upon the National Assembly for Wales to amend section 79 of that Act (sustainable development).

## **EXPLANATORY MEMORANDUM**

### **CONSTITUTIONAL LAW: DEVOLUTION, WALES**

#### **THE GOVERNMENT OF WALES ACT 2006 (AMENDMENT) ORDER 2015**

#### **Proposal for an Order under section 109 of the Government of Wales Act 2006 relating to legislative competence to amend section 79 of that Act (sustainable development)**

##### **Introduction**

1. This Memorandum is laid under Standing Order (“SO”) 25 which relates to Orders in Council to be made under section 109 of the Government of Wales Act 2006 (“the 2006 Act”).
2. Section 109 of the 2006 Act empowers Her Majesty, by Order in Council, to amend Schedule 7 to the 2006 Act, provided that the Order has first been approved by the National Assembly for Wales and both Houses of Parliament.
3. SO 25.5 prescribes that, at the same time as a proposed Order under SO 25.4 is laid, an Explanatory Memorandum must also be laid. This Memorandum therefore accompanies the proposed Order and sets out the background to the provisions in the proposed Government of Wales Act 2006 (Amendment) Order 2015.

##### **Summary and purpose of the Order**

4. The instrument (“the Order”) would amend Schedule 7 to the 2006 Act so as to confer legislative competence upon the National Assembly for Wales (“the Assembly”) to make modification of, or confer power by subordinate legislation to make modification of, section 79 (sustainable development) of the Government of Wales Act 2006 (“the 2006 Act”).
5. This Order itself does not make any other change, but would merely allow the Assembly to consider amending section 79 of the 2006 Act, should it choose to do so. The Welsh Government would hope to bring forward such an amendment to section 79 during the course of the Well-being of Future Generations (Wales) Bill (“the WFG Bill”).

##### **Legislative context**

6. Section 108 of the 2006 Act, together with Schedule 7, sets out the extent of the Assembly’s legislative competence to pass Acts of the Assembly. The 2006 Act contains provisions specifying that an Act of the Assembly cannot make modifications of the 2006 Act (Schedule 7, Acts of the Assembly, Part 2, General Restrictions, paragraph 5, subparagraph (1)).

7. Part 2, paragraph 5, sub-paragraph (2) of Schedule 7 to the 2006 Act specifies a list of specific provisions within the 2006 Act to which sub-paragraph (1) does not apply, and to which an Act of the Assembly may therefore make modification or confer power by subordinate legislation to make modifications of, provisions contained in the 2006 Act.
8. Section 109 of the 2006 Act specifies that Her Majesty may by Order in Council amend Schedule 7 to the 2006 Act.
9. This Order amends paragraph 5(2) of Part 2 of Schedule 7 to the 2006 Act to include section 79 (Sustainable development) so as to confer legislative competence upon the Assembly to amend section 79 of the 2006 Act (sustainable development).
10. The Order will come into effect on the day after it is made.
11. The WFG Bill introduced in the Assembly by the Welsh Government on 7 July 2014 and currently under Assembly scrutiny provides for duties on the Welsh Ministers in respect of sustainable development. An amendment to the Bill will be tabled to include a provision making such amendment to the 2006 Act, should this Order be approved.
12. The Bill, subject to the will of the Assembly and to Royal Assent, is anticipated to become law in April 2015.

### **Policy background**

13. Acting on sustainable development is a part of the current Welsh devolution settlement. The Welsh Government is in the process of legislating to add depth and detail to sustainable practice across the public sector and enshrine the commitment to sustainable development within legislation requiring specified public sector organisations to make progress to contribute to the well-being of a sustainable Wales.
14. The current duty on the Welsh Ministers in respect of sustainable development at section 79 of the 2006 Act is to publish a scheme setting out how they will promote sustainable development; report on how the scheme has been implemented each financial year; and report on the scheme's effectiveness.
15. The effectiveness reviews suggest that the existing duty does not go far enough, and there is agreement with this suggestion amongst stakeholders.
16. The independent effectiveness reviews of the implementation of the duty have levelled criticism that the statutory scheme is *"being seen as one of*

*a number of competing priorities, rather than the means by which the [Welsh] Government manages its competing priorities"<sup>1</sup>.*

17. This has also been recognised by the current Commissioner for Sustainable Futures for Wales in his independent commentary on the Welsh Government's Sustainable Development Annual Report 2012/13, where he highlighted "*systemic weakness in the current governance structures for sustainable development and the associated reporting of progress*".
18. The WFG Bill seeks to address these weaknesses by ensuring that the Welsh Ministers (together with specified public bodies) set well-being objectives that are aligned with the well-being goals provided for within the WFG Bill, and that these goals are being achieved in a sustainable way. This means applying the sustainable development principle provided by the WFG Bill, employing the five governance approaches of collaboration (working together); long term thinking (future proofing); prevention (avoiding problems from arising in the first place); integration (looking at all the goals together); and citizen centred policymaking (engaging with people). Embedding sustainable development throughout specified Welsh public bodies requires strong leadership and an exemplary approach at the highest levels.
19. As noted above, the WFG Bill provides substantive duties on the Welsh Ministers in respect of sustainable development and the amendment to section 79 of the 2006 Act will ensure alignment and consistency between the two pieces of legislation and provide clarity in the statute book.
20. The WFG Bill strengthens existing governance arrangements for improving the well-being and sustainable development of Wales in order to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (the sustainable development principle). It identifies well-being goals which specified public bodies are to seek to achieve in order to improve the well-being and sustainable development of Wales both now and in the future. The Bill will:
  - a. Set six statutory well-being goals for the pursuit of the "common aim" of improving the economic, social and environmental well-being of Wales. Specified public bodies will contribute to the well-being goals through the setting and meeting of well-being objectives in accordance with the sustainable development principle;
  - b. Establish the office of the Future Generations Commissioner for Wales;

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<sup>1</sup> *Effectiveness Review of the Sustainable Development Scheme*, 31 January 2012. <http://wales.gov.uk/topics/sustainabledevelopment/publications/effectivenessreview2012/?lang=en>

- c. Establish a Public Services Board for each local authority area in Wales and require them to prepare and publish assessments of local well-being and local well-being plans. (In doing so, the Bill simplifies current requirements as regards integrated community planning, including repealing duties for Health and Social Care Well-being plans, Children and Young People's plans and Community plans.)

### **Consultation outcome**

21. This Order has been discussed and agreed with the Wales Office.
22. There has been no public consultation on this draft Order. A number of public consultations have already taken place on the primary legislation which the Welsh Government has introduced which relates to the topic which this Order applies to, as described below, including the impact on the existing duty.
23. An engagement event held in December 2011 to investigate what legislative measures stakeholders considered appropriate highlighted support for the proposal to legislate in respect of the now introduced WFG Bill.
24. A consultation paper took public opinion on what a new legislative proposal may look like in respect of sustainable development in Wales; the consultation ran from 9 May to 17 July 2012. Where present, opinion on how a new law should look in comparison to the existing duty at section 79 was uniform: stakeholders wanted a duty on the Welsh Ministers which went further than the existing provisions requiring a 'scheme to promote' sustainable development.
25. A white paper was published in December 2012 with specific proposals on a new sustainable development law in Wales. The consultation ran from 3 December 2012 to 4 March 2013 and generated 3927 responses (including 3749 campaign responses), which directly informed the development of the approach outlined in the white paper.
26. Responses to this consultation raised no issues with the aim, explicitly stated in the paper, of seeking to amend the existing duty at section 79 of the 2006 Act, so long as doing so did not delay the new sustainable development legislation. Some stakeholders also recognised the importance of a duty in section 79 of the 2006 Act which complemented the new sustainable development legislation.
27. The Welsh Government's report on the Consultation Summary was published in May 2013 and all the responses were published on the Welsh Government website in June 2013. The summary report included details of the organisations notified of the White Paper consultation together with a list of respondents.

## **Financial Implications**

28. There would be no financial implications arising from this Order. A full impact assessment was carried out on the WFG Bill at the time of its introduction to the National Assembly for Wales and was revised following Stage 2 scrutiny.

**Carl Sargeant**  
**Minister for Natural Resources**  
November 2014

Carl Sargeant AC / AM  
Y Gweinidog Cyfoeth Naturiol  
Minister for Natural Resources



Llywodraeth Cymru  
Welsh Government

Chair of the Constitutional and Legislative Affairs Committee

November 2014

Dear

I have today laid before the Assembly a proposed Order under section 109 of the Government of Wales Act 2006 ("the 2006 Act"), which seeks to amend Schedule 7 to the 2006 Act so as to confer legislative competence upon the National Assembly for Wales to amend section 79 (sustainable development) of the 2006 Act.

The Sustainable Development Bill White paper, published in December 2012, set out the Welsh Government's intention to bring replace the existing duty in section 79 of the 2006 Act to promote sustainable development, but that the National Assembly for Wales does not have the legislative competence to amend that section. If this Order is agreed, I intend to bring forward a Government amendment to the Well-being of Future Generations (Wales) Bill ("the Bill") which amends the 2006 Act as soon as I am able to.

Because of the ongoing negotiations with the UK Government to get to this stage, I have not been able to lay this proposed Order before now or to discuss it with you at one of my appearances before the Committee for scrutiny of the Bill, which I would have hoped to do if I had been able to bring the Order forward earlier.

I attach a copy of the Explanatory Memorandum for the Order, also today laid before the Assembly. I know the Committee is extremely busy but if time and calendars permit, I would be happy to appear for a short scrutiny session if that would be helpful. Alternatively, I would be happy to write with further information.

I have copied this letter to Alun Ffred Jones AM, Chair of the Environment and Sustainability Committee].

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a vertical line.

**Carl Sargeant AC / AM**  
Y Gweinidog Cyfoeth Naturiol  
Minister for Natural Resources



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# Agenda Item 4

**Constitutional and Legislative Affairs Committee  
Statutory Instruments with Clear Reports  
10 November 2014**

**CLA456 – The Local Government Byelaws (Fixed Penalties) (Wales)  
Regulations 2014**

**Procedure: Negative**

These Regulations relate to fixed penalties and are made under section 13(3) and (4) of the Local Government Byelaws (Wales) Act 2012 (“the Act”). Regulation 2 prescribes the range within which the amount of a fixed penalty payable in pursuance of a notice under section 12 of the Act must fall. The range is between £50 and £150 inclusive.

The sections of the Act which contain the substantive fixed penalty provisions are not currently in force. The Committee understands that it is intended that they come into force early in 2015, so as to permit local authorities to prepare for the operation of those sections knowing the range of fixed penalties that may be applied.

**CLA458 – The Civil Enforcement of Bus Lane and Moving Traffic  
Contraventions (City and County of Cardiff) Designation Order 2014**

**Procedure: Negative**

This Order designates the area described in the Schedule as a civil enforcement area for bus lane and moving traffic offences for the purposes of Part 6 of the Traffic Management Act 2004.

The practical effect of the Order is to enable the Council of the City and County of Cardiff to enforce bus lane and moving traffic contraventions within the area described in the Schedule to the Order through a civil law regime.

## **CLA459 – The Civil Enforcement of Parking Contraventions (City and County of Cardiff) Designation (Amendment) Order 2014**

**Procedure: Negative**

This Order amends the Civil Enforcement of Parking Contraventions (City and County of Cardiff) Designation Order 2010 (S.I. 2010/1461 (W.133)) so as to include within the civil enforcement area and special enforcement area, certain roads that were previously excluded.

## **CLA460 – The Planning (Hazardous Substances) (Determination of Procedure) (Prescribed Period) (Wales) Regulations 2014**

**Procedure: Negative**

These Regulations are made by the Welsh Ministers in exercise of the powers conferred by sections 21B and 40 of the Planning (Hazardous Substances) Act 1990 (“the 1990 Act”). These Regulations are preceded by the Town and Country Planning (Determination of Procedure) (Wales) Order 2014, which inserted section 21B into the 1990 Act.

Section 21B of the 1990 Act gives the Welsh Ministers the power to determine the procedure for certain proceedings in Wales, namely proceedings for applications referred to the Welsh Ministers under section 20 and appeals under section 21 of the 1990 Act. Determinations of procedure for such proceedings must be made by the Welsh Ministers before the end of the prescribed period. These Regulations prescribe that period as seven working days from the relevant date, which is defined for these purposes.

**CLA461 – The Town and Country Planning (Determination of Procedure)  
(Prescribed Period) (Wales) Regulations 2014**

**Procedure: Negative**

These Regulations are made by the Welsh Ministers in exercise of the powers conferred on them by sections 319B and 333 of the Town and Country Planning Act 1990 (“the 1990 Act”). These Regulations are preceded by the Town and Country Planning (Determination of Procedure) (Wales) Order 2014, which inserted section 319B into the 1990 Act.

Section 319B of the 1990 Act gives the Welsh Ministers the power to determine the procedure for certain proceedings in Wales, namely proceedings for applications referred to the Welsh Ministers under section 77 and appeals under sections 78, 174, 195 and 208 of the 1990 Act. Determinations of procedure for such proceedings must be made by the Welsh Ministers before the end of the prescribed period. These Regulations prescribe that period as seven working days from the relevant date, which is defined for these purposes.

**CLA462 – The Planning (Listed Buildings and Conservation Areas)  
(Determination of Procedure) (Prescribed Period) (Wales) Regulations 2014**

**Procedure: Negative**

These Regulations are made by the Welsh Ministers in exercise of the powers conferred on them by sections 88E and 93 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the 1990 Act”). These Regulations are preceded by the Town and Country Planning (Determination of Procedure) (Wales) Order 2014, which inserted section 88E into the 1990 Act.

Section 88E of the 1990 Act gives the Welsh Ministers the power to determine the procedure for certain proceedings in Wales, namely proceedings for applications referred to the Welsh Ministers under section 12 and appeals under sections 20 and 39 of the 1990 Act. Determinations of procedure for such proceedings must be made by the Welsh Ministers before the end of the prescribed period. These Regulations prescribe that

period as seven working days from the relevant date, which is defined for these purposes..

# Agenda Item 5.1

## Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-27-14

### CLA457 – The Local Government Byelaws (Wales) Act 2012 (Amendment) Order 2014

This Order amends Parts 1 and 2 of Schedule 1 to the Local Government Byelaws (Wales) Act 2012 (“the Act”) and is made under sections 9 and 16 of the Act. Article 2 of this Order adds to the list of byelaws that the relevant types of authorities may make without confirmation by amending Table 1 in Part 1 of Schedule 1 to the Act. This Order also adds to the list of enactments byelaws under which may provide for fixed penalty notices to be offered. Article 3 amends Table 2 in Part 2 of Schedule 1 to the Act in order to do so.

The sections of the Act to which the Schedules will apply are not currently in force. The Committee understands that it is intended that they come into force early in 2015, so as to permit local authorities to prepare for the operation of those sections knowing the full range of byelaw-making powers to which they will apply.

**Procedure: Affirmative**

#### **Technical Scrutiny**

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

#### **Merits Scrutiny**

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

The Order refers to various Local Acts that permit the making of byelaws. Paragraph 2 of the Explanatory Memorandum explains that during the consultation on this Order, no concerns were expressed regarding the

accessibility of those Acts. Some of them are available on the legislation.gov.uk website of the National Archives, but others are not.

The Committee **recommends** that the Welsh Government works with the National Archives and local authorities to ensure that all Local Acts that relate to Wales are available on this website, particularly those referred to in Public General Acts of the National Assembly.

[Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly]

### Legal Advisers

Constitutional and Legislative Affairs Committee

October 2014

### Government's response:

**The Local Government Byelaws (Wales) Act 2012 (Amendment) Order 2014**

**The proposal to add to Schedule 1 of the Local Government Byelaws (Wales) Act 2012 the byelaw-making powers in the local Acts referred to in the Order responds to representations made in the course of the Assembly's scrutiny. In evidence submitted to the Assembly's Committee for Communities, Equality and Local Government in the course of the Assembly's scrutiny of the Bill, it was suggested that the Welsh Ministers should consider whether other Acts should be added to Schedule 1. In particular, the Council of the City and County of Swansea argued that the Swansea City Council (Tawe Barrage) Act 1986 should be added to Schedule 1, and in its report the Committee recommended that the Minister should consider doing so. In response to this, the then Minister for Local Government agreed to consider adding further Acts to Schedule 1 and Welsh Government officials carried out a further review of local Acts.**

**The draft Order was itself consulted on as part of a formal 12 week consultation by the Welsh Government and the consultees included local government bodies and the public. None of the consultation responses expressed any concern about the accessibility of the local Acts the Order refers to. This draft Order itself will of course be as accessible to the public as all other subordinate legislation laid before the Assembly and made by the Welsh Ministers.**

**All legislation from 1988 onwards is published on the [legislation.gov.uk](http://legislation.gov.uk) website, as is most legislation that predates then. There are however exceptions as this process has highlighted. Publication of legislation is the responsibility of the National Archive but the Welsh Ministers accept the recommendation that the Welsh Government should work with the Archive, and with local authorities, to seek to ensure that all local Acts that relate to areas in Wales are available on [legislation.gov.uk](http://legislation.gov.uk) (particularly those referred to in Public General Acts of the Assembly).**



*Draft Order laid before the National Assembly for Wales under section 21(4) of the Local Government Byelaws (Wales) Act 2012 for approval by resolution of the National Assembly for Wales.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2014 No. (W.)**

**LOCAL GOVERNMENT,  
BYELAWS, WALES**

**The Local Government Byelaws  
(Wales) Act 2012 (Amendment)  
Order 2014**

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends Parts 1 and 2 of Schedule 1 to the Local Government Byelaws (Wales) Act 2012 (“the Act”) and is made under sections 9 and 16 of the Act.

Section 9 of the Act provides that the Welsh Ministers may, by order, amend Part 1 of Schedule 1 to the Act (byelaws not requiring confirmation) by adding to or subtracting from the list of enactments, or by amending the type of authority that may make byelaws without confirmation.

This Order adds to the list of byelaws that the relevant types of authorities may make without confirmation. Article 2 amends Table 1 in Part 1 of Schedule 1 to the Act.

Section 16 of the Act provides that the Welsh Ministers may, by order, amend Part 2 of Schedule 1 to the Act (byelaws in relation to which fixed penalties may be issued) by adding to or subtracting from the list of enactments, or by amending the type of authority that may offer fixed penalty notices.

This Order adds to the list of enactments byelaws under which may provide for fixed penalty notices to be offered. Article 3 amends Table 2 in Part 2 of Schedule 1 to the Act.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Democracy, Ethics and Partnership Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

*Draft Order laid before the National Assembly for Wales under section 21(4) of the Local Government Byelaws (Wales) Act 2012 for approval by resolution of the National Assembly for Wales.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2014 No. (W.)**

**LOCAL GOVERNMENT,  
BYELAWS, WALES**

**The Local Government Byelaws  
(Wales) Act 2012 (Amendment)  
Order 2014**

*Made* \*\*\*

*Coming into force* \*\*\*

The Welsh Ministers make the following Order in exercise of the powers conferred on them by sections 9 and 16 of the Local Government Byelaws (Wales) Act 2012(1).

A draft of this Order was laid before, and approved by a resolution of, the National Assembly for Wales in accordance with section 21(4) of that Act.

**Title, commencement and interpretation**

1.—(1) The title of this Order is the Local Government Byelaws (Wales) Act 2012 (Amendment) Order 2014.

(2) This Order comes into force on the day after the day on which it is made.

(3) In this Order “the Act” (“*y Ddeddf*”) means the Local Government Byelaws (Wales) Act 2012.

**Amendment of Part 1 of Schedule 1 to the Act**

2.—(1) Table 1 in Part 1 of Schedule 1 to the Act (byelaws not requiring confirmation) is amended as follows.

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(1) 2012 anaw 2.

(2) After the row relating to byelaws made under section 19 of the Public Libraries and Museums Act 1964 insert—

|  |                      |  |
|--|----------------------|--|
| “Section 41 of the Glamorgan County Council Act 1973 | Heating undertakings | County council and county borough council” |
|--|----------------------|--|

(3) After the row relating to byelaws made under section 57(7) of the Road Traffic Regulation Act 1984 insert—

|  |                      |  |
|--|----------------------|--|
| “Section 41 of the Clwyd County Council Act 1985 | Leisure centres      | County council and county borough council  |
| Section 42 of the Clwyd County Council Act 1985  | Temporary structures | County council and county borough council” |

(4) After the row relating to byelaws made under section 23 of the Housing Act 1985 insert—

|   |   |   |
|---|---|---|
| “Section 53 of the Swansea City Council (Tawe Barrage) Act 1986 | Upstream river                          | County council (Swansea)                  |
| Section 31 of the Mid Glamorgan County Council Act 1987         | Porthcawl Harbour                       | County borough council (Bridgend)         |
| Section 14 of the West Glamorgan Act 1987                       | Leisure centres                         | County council and county borough council |
| Section 36 of the West Glamorgan Act 1987                       | Policing and control of pedestrian ways | County council and county borough council |

|   |                      |  |
|---|----------------------|--|
| Section 41 of the West Glamorgan Act 1987 | Temporary structures | County council and county borough council  |
| Section 63 of the West Glamorgan Act 1987 | Swansea Market       | County council (Swansea)                   |
| Section 45 of the Dyfed Act 1987          | Temporary structures | County council and county borough council” |

(5) In the row beginning “Section 2 of this Act”, after “Good rule and government” insert “and the prevention and suppression of nuisances”.

**Amendment of Part 2 of Schedule 1 to the Act**

3.—(1) Table 2 in Part 2 of Schedule 1 to the Act (byelaws in relation to which fixed penalties may be issued) is amended as follows.

(2) After the row relating to byelaws made under section 57(7) of the Road Traffic Regulation Act 1984 insert—

|  |                      |  |
|--|----------------------|--|
| “Section 41 of the Clwyd County Council Act 1985 | Leisure centres      | County council and county borough council  |
| Section 42 of the Clwyd County Council Act 1985  | Temporary structures | County council and county borough council” |

(3) After the row relating to byelaws made under section 23 of the Housing Act 1985 insert—

|   |                   |                          |
|---|-------------------|--------------------------|
| “Section 53 of the Swansea City Council (Tawe Barrage) Act 1986 | Upstream river    | County council (Swansea) |
| Section 31 of the Mid Glamorgan                                 | Porthcawl Harbour | County borough council   |

|   |   |  |
|---|---|--|
| County Council Act 1987                   |   | (Bridgend)                                 |
| Section 14 of the West Glamorgan Act 1987 | Leisure centres                         | County council and county borough council  |
| Section 36 of the West Glamorgan Act 1987 | Policing and control of pedestrian ways | County council and county borough council  |
| Section 41 of the West Glamorgan Act 1987 | Temporary structures                    | County council and county borough council  |
| Section 63 of the West Glamorgan Act 1987 | Swansea Market                          | County council (Swansea)                   |
| Section 45 of the Dyfed Act 1987          | Temporary structures                    | County council and county borough council” |

(4) In the row beginning “Section 2 of this Act”, after “Good rule and government” insert “and the prevention and suppression of nuisances”.

Date

## **Explanatory Memorandum to the Local Government Byelaws (Wales) Act 2012 (Amendment) Order 2014**

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

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Government Byelaws (Wales) Act 2012 (Amendment) Order 2014. I am satisfied the benefits outweigh any costs.

Leighton Andrews AM  
Minister for Public Services  
25 September 2014

## **1. Description**

This Order amends Parts 1 and 2 of Schedule 1 to the Local Government Byelaws (Wales) Act 2012 (“the Act”). Part 1 contains a list of enactments byelaws made under which do not require confirmation by the Welsh Ministers. Part 2 contains a list of enactments byelaws made under which can provide for the issue of fixed penalties for breaches of the byelaws.

Byelaws previously not included in these lists may be identified by the Welsh Government, the legislating authorities or other sources. The Order adds byelaws which meet the Welsh Government’s criteria and are similar to other byelaws already on the list.

For the purposes of the Act, legislating authorities are county or county borough councils; community councils; National Park authorities in Wales or the Countryside Council for Wales<sup>1</sup>.

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

This draft Order lists byelaw-making powers to be added to Schedule 1 to the Act, which are contained in historic local Acts and as a result may not be immediately accessible. However, the relevant provisions remain in force and the draft Order was produced in response to points raised by the National Assembly’s Communities, Equality and Local Government Committee during the Assembly’s scrutiny of the Bill, having considered the evidence submitted to it. The Order was consulted on in draft for a period of 12 weeks and the consultees included the public and local government. The consultation responses did not express concerns about the accessibility of the legislation containing the relevant byelaw-making powers. This draft Order itself will of course be as accessible to the public as all other subordinate legislation laid before the Assembly and made by the Welsh Ministers.

## **3. Legislative background**

The powers enabling this instrument to be made are contained in sections 9 and 16 of the Act.

Section 9 states the Welsh Ministers may by Order amend Part 1 of Schedule 1 (byelaws not requiring confirmation) by adding to or subtracting from the list of enactments, or by amending the type of authority which may make byelaws without confirmation.

Section 16 states the Welsh Ministers may by Order amend Part 2 of Schedule 1 (byelaws in relation to which fixed penalty notices may be issued) by adding or subtracting from the list of enactments, or by amending the type of authority

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<sup>1</sup> It is intended to use the forthcoming Environment Bill to amend the Act separately to substitute references to Natural Resources Wales for references to the Countryside Council for Wales.



which may offer fixed penalty notices. This Order will follow the Affirmative Resolution procedure.

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

The purpose of sections 9 and 16 of the Act is to make it possible to add new legislation or subtract existing legislation from Schedule 1. This means byelaw powers subject to the requirement for confirmation may be considered by the Welsh Government for exemption from this requirement and may be modified to include enforcement via FPNs.

The effect of the exercise of the powers under section 9 of the Act could bring about an increase in the list of byelaw powers which do not need confirmation by the Welsh Ministers and thereby increase ownership of legislating authorities for this regulatory mechanism. The converse effect of subtracting legislation from Schedule 1 Part 1 would give the Welsh Ministers the ability to re-instate the need for confirmation should the need arise.

At present, the Order contains 10 local Acts recommended for exemption from the need for confirmation and 9 local Acts for use of FPNs. One of these Acts was identified by the Communities, Equality and Local Government Committee during the Stage 1 Committee stage in March 2012. Following a commitment made by the then Minister for Local Government and Communities, Carl Sargeant AM, to review the byelaw-making powers in these and other Local Acts officials have trawled through relevant legislation. The Acts in the Order have very similar characteristics to Acts on the original Schedule 1 and are therefore recommended for inclusion.

#### **5. Consultation**

Consultation with local government on the proposed Act as a whole took place (21 June 2010 to 17 September 2010) to sound out views on proposals to simplify the confirmation process as well as to use fixed penalties for enforcement. The majority of respondents were in favour of the proposals. A report on the responses may be found on the Welsh Government archive website

<http://www.webarchive.org.uk/wayback/archive/20110228135938/http://wales.gov.uk/consultations/localgovernment/byelaws/?lang=en&status=closed>

Consultation specifically on the draft Order took place from 17 February to 11 May 2014 together with consultation on other subordinate legislation and draft statutory guidance to be made under the Act. Details on link below:

<http://wales.gov.uk/consultations/localgovernment/140213-local-government-byelaws-consultation/?status=closed&lang=en>

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

## **Options**

### **Purpose and intended effect of the legislation**

#### Option 1 - Do nothing

Unless the order-making power is exercised, Schedule 1 will remain static. This means it would not be possible to include enactments which were not previously identified as being suitable to benefit from exemption from the need for the Welsh Ministers' confirmation. Similarly, it would not be possible to include additional enactments to take advantage of enforcement via fixed penalty notices.

Conversely, it would also mean enactments could not be subtracted from Schedule 1 if it was deemed appropriate to do so.

The "do nothing" option would mean reform of the byelaw process would be restricted.

#### Option 2 – Do minimum

Limit Schedule 1 to the existing byelaw powers plus the additional 10 powers which would be included under the current Order.

#### Option 3 - Introduce the Order

The Order makes it possible for an increased number of byelaws to be made by legislating authorities without the need for confirmation by the Welsh Government. It also means many more byelaws may be enforced by FPNs. This makes the process for adopting byelaws less bureaucratic for legislating authorities and as a result encourages the use of byelaws as a regulatory mechanism.

During the passage of the Act, work continued to identify additional byelaw making powers for which confirmation by the Welsh Ministers was no longer deemed appropriate and / or for which enforcement through FPNs would be suitable.

We have identified 10 local Acts to be added to Part 1 of Schedule 1 (byelaws not subject to confirmation) and nine to be added to Part 2 (byelaws in relation to which FPNs may be issued). These are listed in the draft Order.

### **Costs & benefits**

#### Costs and benefits – Option 1 do nothing

A best estimate of the administrative cost to local authorities of enacting byelaws is £7000 - £9000 per byelaw (source: Association of Council Secretaries and Solicitors Nov 2011, now called Lawyers in Local Government). This related to the resource cost of drafting the byelaw,

completing consultation and press notices and submitting the byelaw to the Welsh Government for confirmation. A best estimate of the cost to the Welsh Government for confirming a byelaw is £1250 per byelaw (source: Welsh Government). This relates to the cost of policy and legal resources to take the byelaw through the confirmation process. These costs will be reduced for local authorities and Welsh Government for those byelaws which are already on Schedule 1 since staff time would be saved. The option of issuing FPNs, if taken, would remove the need for local authority resources to be used in preparing statements and prosecution files and would also release Magistrate Courts' time.

However, with the "do nothing" option these savings would be restricted to those attributable to the byelaws shown on the original Act which received Royal Assent in November 2012.

#### Cost and benefits – Option 2 do minimum

As a result of removing the requirement for Welsh Ministers' confirmation, the 10 byelaw powers to be added under the Order would be capable of achieving a saving to legislating authorities of approximately £1500 per byelaw (assuming such byelaws were made). It would also be capable of saving Welsh Government about £1250 per byelaw during the corresponding time (again assuming such byelaws were made).

#### Cost and benefits – Option 3 use Order making power

This option would widen the scope of the Act by potentially increasing the number of byelaws which do not require confirmation from the Welsh Ministers and by increasing the number of byelaw-making powers under which authorities may issue FPNs for enforcement.

In the future, the Welsh Government and legislating authorities may identify byelaw powers which are not currently included in Schedule 1. The Welsh Government would need to review these for suitability before an Order amending Schedule 1 could be consulted on.

It is anticipated the Order will be used to add byelaw powers to Schedule 1 rather than to subtract them, although the power under which the Order would be made could also be used to subtract byelaw powers from Schedule 1.

There would be a periodical cost to Welsh Government in staff time to assess new legislation, and prepare and consult on the order. However in the long term this option would reduce bureaucracy for both legislating authorities and the Welsh Government and increase ownership of byelaws by legislating authorities. It would mean authorities would have greater control over the timescales needed to bring their byelaws in to force and ensure they coincide with special requirements eg summer months, special events etc.

The introduction of FPNs would make available an alternative means of enforcement of byelaws. The fines collected in respect of these offences may

be used to fund improvements to implement behaviour-changing measures and make the enforcement system more effective.

The estimate of cost savings for an authority as a result of removal of the requirement for confirmation in respect of a byelaw would be less than the total cost of making each byelaw for a local authority because activities such as consultation and advertising would still need to be carried out; the estimate for cost savings by the Welsh Government is £1250. It is also estimated the savings achieved by issuing an FPN rather than pursuing an offence against a byelaw through the Magistrates Courts would be of the order of £500-£1000 per breach of a byelaw (source: Association of Council Secretaries and Solicitors, Wales Branch, now called Lawyers in Local Government).

Since most authorities already have arrangements for enforcement through FPNs for a variety of offences including littering, noise, offences under dog control orders, graffiti and fly posting in place under the Clean Neighbourhoods and Environment Act 2005, it is anticipated any additional costs of preparation to issue FPNs would largely be limited to awareness training for staff. The best estimate for this is £500 per authority.

### **Summary of preferred option**

The preferred option is Option 3.

In summary, option 3 enables legislating authorities to increase the number of byelaw powers which they may take ownership for without the need for the Welsh Ministers' confirmation. It also makes it possible to increase the use of FPNs. These notices have been proven to be both an efficient method of enforcement and an effective means of changing behaviour.

The benefits of Option 3 are expected to be:

- Increased legislating authority ownership of all byelaws in Schedule One, Part 1.
- Reduced Welsh Government staff costs for byelaws in Schedule One, Part 1.
- additional enforcement option for future byelaws in Schedule One, Part 2.
- a potential release of Magistrate Courts' time; and
- Adding byelaws to Schedule One, Parts 1 and 2 is likely to translate into cost reductions for legislating authorities which choose to develop or amend byelaws.

### **Cross reference**

Please note this EMRIA is accompanied by an EMRIA on Local Government Byelaws (Fixed Penalties) (Wales) Regulations 2014 which is submitted separately.

### **Consultation**

This RIA was sent out for consultation during 17 February to 11 May 2014, together with guidance for the Act as well as the draft Regulations and draft Order. There were no negative responses and no requests for further information on either the draft Order or the corresponding RIA. A summary of responses has been prepared and following approval by the Minister, will be available on the Welsh Government website.

<http://wales.gov.uk/consultations/localgovernment/140213-local-government-byelaws-consultation/?status=closed&lang=en>

### **Competition Assessment**

A competition filter test has been applied to the draft Order. The result of the test suggests there is unlikely to be any detrimental or beneficial effects on competition. Legislating authorities will have increased ownership over the byelaw making process with the removal for the need for confirmation by the Welsh Ministers. The Act also makes consultation a statutory requirement. Authorities will be required to consult the public, business, and the third sector during the initial decision making process during which a byelaw is identified to be the most appropriate means of addressing a problem. Authorities will also need to advertise the byelaw once it is made and before it is finalised.

### **Post implementation review**

The Welsh Government will monitor the impact of the order making process through feedback from legislating authorities and other stakeholders.

# Agenda Item 6

Carl Sargeant AC / AM  
Y Gweinidog Cyfoeth Naturiol  
Minister for Natural Resources



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref LF/CS/4221/14

Alun Ffred Jones AM  
Chair of the Environment and Sustainability  
Committee  
National Assembly for Wales

 November 2014

Dear Alun,

Thank you for your letter of 13 October regarding the recent decision by the European Commission to send a reasoned opinion to the UK Government over failure to fully transpose Directive 2011/97/EU on the storage of metallic mercury considered as waste.

The Directive sets out the criteria for the safe storage of metallic mercury wastes. It amends the Landfill Directive to provide a derogation which allows the safe storage of metallic mercury waste for periods greater than 12 months. It was transposed in England and Wales through the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2013 (SI 2013/766). The Commission was notified of the transposition on 3 June 2013.

A Reasoned Opinion was received by the Department for Environment Food and Rural Affairs (Defra) on 25 September 2014 in which the Commission takes the view that the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 2 of this Directive i.e. the Commission consider that transposition has not been effected in England and Wales or, in any event, that notification has not taken place.

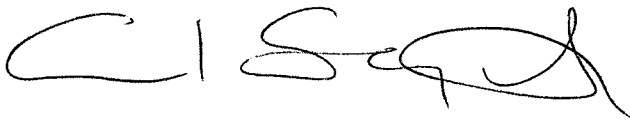
My officials have been in regular contact with Defra officials about this issue. We take this matter seriously and are confident that our legislation meets the Directive's requirements. The Reasoned Opinion challenges the method of legal drafting that the UK has used to give effect to this Directive. The UK's position is that from 26 April 2013 this Directive has been effectively transposed in England and Wales. We will be working with Defra to agree a response strongly contesting the Reasoned Opinion and providing a detailed explanation of the drafting methods employed.

I am copying this letter to David Melding AM, Chair of the Constitutional and Legislative Affairs Committee.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

English Enquiry Line 0845 010 3300  
Llinell Ymholiadau Cymraeg 0845 010 4400  
Correspondence: Carl.Sargeant@wales.gsi.gov.uk  
Printed on 100% recycled paper

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Sargeant', with a stylized flourish at the end.

**Carl Sargeant AC / AM**  
Y Gweinidog Cyfoeth Naturiol  
Minister for Natural Resources



Eich cyf/Your ref  
Ein cyf/Our ref LF/CS/4221/14

Alun Ffred Jones AC  
Cadeirydd Pwyllgor yr Amgylchedd a Chynaliadwyedd  
Cynulliad Cenedlaethol Cymru

5 Tachwedd 2014

Annwyl Alun,

Diolch am eich llythyr dyddiedig 13 Hydref ynghylch y penderfyniad diweddar gan y Comisiwn Ewropeaidd i anfon barn resymedig at Lywodraeth y DU dros fethu â throsi'n llawn Gyfarwyddeb 2011//97/UE ar storio merciwri metalig sy'n cael ei ystyried fel gwastraff.

Mae'r Gyfarwyddeb yn pennu'r meini prawf ar gyfer storio gwastraff merciwri metalig yn ddiogel. Mae'n diwygio'r Gyfarwyddeb Tirlenwi i ddarparu rhanddirymiad sy'n caniatáu i wastraff merciwri metalig gael ei storio'n ddiogel am gyfnodau hwy na 12 mis. Cafodd ei drosi yng Nghymru a Lloegr drwy'r Rheoliadau Trwyddedu Amgylcheddol (Cymru a Lloegr)(Diwygio)(Rhif 2) 2013 (OS 2013/766). Cafodd y Comisiwn ei hysbysu o'r trosiad ar 3 Mehefin 2013.

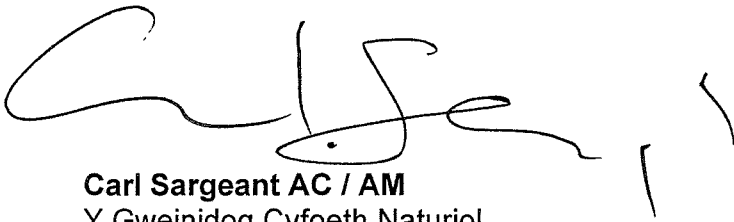
Derbyniwyd Barn Resymedig gan Adran yr Amgylchedd, Bwyd a Materion Gwledig (Defra) ar 25 Medi 2014, pan oedd y Comisiwn o'r farn bod Teyrnas Unedig Prydain Fawr a Gogledd Iwerddon wedi methu a chyflawni ei hymrwymadau o dan Erthygl 2 y Gyfarwyddeb hon h.y. mae'r Comisiwn yn ystyried nad yw'r trosiad hwn wedi dod i rym yng Nghymru a Lloegr, neu, waeth beth yw'r sefyllfa, nad yw'r hysbysu wedi'i wneud.

Bu fy swyddogion mewn cysylltiad â Defra yn rheolaidd am y mater hwn. Rydym yn cymeryd y mater hwn o ddifrif, ac yn hyderus bod ein deddfwriaeth yn bodloni gofynion y Gyfarwyddeb. Mae'r Farn Resymedig yn herio'r dull o ddrafftio cyfreithiol y mae'r DU wedi'i ddefnyddio i weithredu'r Gyfarwyddeb hon. Sefyllfa'r DU yw bod y Gyfarwyddeb hon wedi'i throsi'n effeithiol yng Nghymru a Lloegr o'r 26 Ebrill 2013. Byddwn yn cydweithio â Defra i gytuno ar ymateb yn herio'r Farn Resymedig yn gryf ac yn rhoi eglurhad manwl o'r dulliau drafftio a ddefnyddiwyd.

Rwy'n anfon copi o'r llythyr hwn at David Melding AC, Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol.



Yn gywir

A handwritten signature in black ink, appearing to read 'Carl Sargeant', with a stylized flourish at the end.

**Carl Sargeant AC / AM**  
Y Gweinidog Cyfoeth Naturiol  
Minister for Natural Resources

# Agenda Item 7.1

By virtue of paragraph(s) vi of Standing Order 17.42

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# Agenda Item 7.2

By virtue of paragraph(s) vi of Standing Order 17.42

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# Agenda Item 7.3

By virtue of paragraph(s) vi of Standing Order 17.42

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# Agenda Item 7.4

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