

## MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL ATODOL (MEMORANDWM RHIF 2)

### Bil Rhent Masnachol (Coronafeirws)

1. Gosodir y Memorandwm Cydsyniad Deddfwriaethol Atodol hwn dan Reol Sefydlog 29.2. Mae Rheol Sefydlog 29 yn rhagnodi bod rhaid gosod Memorandwm Cydsyniad Deddfwriaethol, a bod modd cyflwyno Cynnig Cydsyniad Deddfwriaethol gerbron Senedd Cymru os bydd Bil Seneddol y DU yn gwneud darpariaeth mewn perthynas â Chymru at unrhyw ddiben o fewn cymhwysedd deddfwriaethol Senedd Cymru, neu sy'n addasu cymhwysedd deddfwriaethol Senedd Cymru.
2. Cafodd y Bil Rhent Masnachol (Coronafeirws) (y "Bil") ei gyflwyno yn Nhŷ'r Cyffredin ar 9 Tachwedd 2021 a dechreuwyd ei ystyried yn Nhŷ'r Arglwyddi ar 13 Ionawr 2022 gyda cham Pwyllgor Tŷ'r Arglwyddi yn dod i ben ar 10 Chwefror. Ar 28 Chwefror, cyflwynodd Llywodraeth y DU 10 gwelliant i'w hystyried yng ngham Adroddiad yr Arglwyddi a fydd yn cael ei gynnal ar 14 Mawrth. Mae pump o'r gwelliannau hyn yn gwneud darpariaeth sy'n dod dan gymhwysedd deddfwriaethol Senedd Cymru.
3. Mae fersiwn ddiweddaraf y Bil, fel y'i diwygiwyd yng Ngham Pwyllgor Tŷ'r Arglwyddi, ar gael yma:

[Bil Rhent Masnachol \(Coronafeirws\) \(fel y'i diwygiwyd yn yr Uwch Bwyllgor\)](#)

4. Mae copi o'r gwelliannau i'r Bil a gyflwynwyd gan Lywodraeth y DU ar gyfer Cam Adroddiad yr Arglwyddi (y "Gwelliannau a Gyflwynwyd") ar gael yma:

[1492 \(parliament.uk\)](https://www.parliament.uk)

### Amcanion y Polisi

5. Amcanion y Bil yw gwneud darpariaeth sy'n golygu bod rhyddhad rhag talu rhai dyledion rhent dan denantiaethau busnes y mae'r coronafeirws yn effeithio'n andwyol arnynt, ar gael drwy gymrodeddu; ac at ddibenion cysylltiedig.

### Crynodeb o'r Bil

6. Noddir y Bil gan yr Adran Busnes, Ynni a Strategaeth Ddiwydiannol.
7. Roedd y Memorandwm Cydsyniad Deddfwriaethol a osodwyd ar 3 Rhagfyr 2021 yn seiliedig ar y Bil a gyflwynwyd yn Senedd y DU ar 9 Tachwedd 2021. Mae crynodeb llawn o'r Bil fel y'i cyflwynwyd wedi'i gynnwys yn y Memorandwm Cydsyniad Deddfwriaethol hwnnw, lle nodais hefyd y canlynol:

- a) Byddai angen cydsyniad deddfwriaethol y Senedd ar gyfer darpariaethau canlynol y Bil: Cymal 9 (i'r graddau y mae Cymal 9 yn ymwneud ag ymestyn y "cyfnod moratoriwm"); Cymal 23; Cymal 27 (i'r graddau y mae'r Cymal yn ymwneud â materion o fewn cymhwysedd deddfwriaethol y Senedd); ac Atodlen 2.
- b) Er bod Llywodraeth Cymru fwy neu lai yn fodlon ag egwyddorion y Bil, roedd pryderon ynghylch y ffordd y drafftwyd Cymalau 9 a 27 y Bil (fel y'u cyflwynwyd) i'r graddau na allwn ar y pryd argymhell bod y Senedd yn rhoi ei chydsyniad i'r Bil.

### **Y diweddaraf am y sefyllfa ers cyhoeddi Memorandwm Cydsyniad Deddfwriaethol cyntaf y Bil**

8. Yn dilyn trafodaethau helaeth rhwng Llywodraeth y DU a Llywodraeth Cymru ar lefel swyddogion a Gweinidogion, mae Llywodraeth y DU wedi gosod y Gwelliannau a Gyflwynwyd, sy'n cynnwys gwelliannau i Gymalau 9, 23 a 27 y Bil a chreu dau Gymal newydd i'r Bil (sef Cymalau 23A a 27A). Mae'r Memorandwm Cydsyniad Deddfwriaethol Atodol hwn yn nodi fy safbwynt ar y gwelliannau hyn.

### **Cymalau 9, 23 a 23A y Bil**

9. Yng ngoleuni'r Gwelliannau a Gyflwynwyd, cawn ar ddeall y bydd Cymalau 9, 23 a 23A y Bil yn cael eu drafftio fel y dangosir yn Atodiad 1 (a nodir at ddibenion enghreifftiol yn unig).
10. Fel y drafftwyd yn wreiddiol, nid oedd gallu'r Ysgrifennydd Gwladol i wneud rheoliadau i ymestyn y cyfnod cyfeirio i gymrodeddu yn gwneud unrhyw ddarpariaeth ar gyfer troi at Weinidogion Cymru cyn i'r pŵer hwn gael ei arfer. Er bod y pŵer i wneud rheoliadau'n ymdrin â materion a gedwir yn ôl, roedd hefyd yn ymdrin â materion sy'n dod o fewn cymhwysedd deddfwriaethol y Senedd, gan y byddai arfer y pŵer hefyd wedi arwain at ymestyn y "cyfnod moratoriwm" at ddibenion Cymal 23 ac Atodlen 2 y Bil.
11. Fodd bynnag, mae'r gwelliannau i Gymalau 9, 23 a 23A y Bil yn darparu, pan fydd yr Ysgrifennydd Gwladol yn penderfynu ymestyn y cyfnod cymrodeddu yn achos tenantiaethau busnes yng Nghymru (a ddiffinnir fel tenantiaeth busnes sy'n cynnwys mangre yng Nghymru) y caiff yr Ysgrifennydd Gwladol wneud rheoliadau i ymestyn y cyfnod a bennir yn adran 23(2)(b)(i) (yn achos dyledion rhent gwarchoddedig o dan denantiaeth busnes yng Nghymru) am yr un cyfnod, y bydd angen cydsyniad Gweinidogion Cymru pan fydd estyniad o'r fath i'r cyfnod a bennir yn adran 23(2)(b)(i) yn cael effaith at ddibenion Atodlen 2 i'r Bil (ar wahân i ddibenion paragraff 3(6) a (7) Atodlen 2).
12. Yn yr amgylchiadau rwyf yn argymhell bod y Senedd yn cefnogi'r gwelliannau yng Nghymalau 9, 23 a 23A y Bil.

## **Cymalau 27 a 27A y Bil**

13. Yng ngoleuni'r Gwelliannau a Gyflwynwyd, cawn ar ddeall y bydd Cymalau 27 a 27A y Bil yn cael eu drafftio fel y dangosir yn Atodiad 2 (a nodir at ddibenion enghreifftiol yn unig).
14. Fel y'i drafftwyd yn wreiddiol, roedd yr Ysgrifennydd Gwladol yn gallu defnyddio pwerau dan Gymal 27 y Bil mewn perthynas â'r darpariaethau hynny yn y Bil sy'n dod o fewn cymhwysedd deddfwriaethol y Senedd a heb i Weinidogion Cymru allu arfer unrhyw reolaeth na dylanwad mewn perthynas â hynny.
15. Fodd bynnag, mae'r fersiwn ddiweddaraf o Gymal 27 yn sicrhau na fyddai pwerau'r Ysgrifennydd Gwladol dan Gymal 27 yn ymarferadwy dim ond gyda chydysyniad Gweinidogion Cymru i'r graddau y mae'n ymwneud ag ail-gymhwyso, mewn perthynas â thenantiaethau busnes yng Nghymru, (a) Atodlen 2 ar wahân i baragraff 3(6) a (7); (b) adran 23 i'r graddau y mae'n ymwneud ag Atodlen 2 ar wahân i baragraff 3(6) a (7); ac (c) Rhan 1 a Rhan 4 i'r graddau y mae'n ymwneud â'r ddarpariaeth a grybwyllir ym mharagraffau (a) a (b). Rydym o'r farn bod hyn yn cwmpasu elfennau sylweddol y Bil sydd o fewn cymhwysedd deddfwriaethol y Senedd.
16. Mae'r drafftio yng Nghymal 27A hefyd yn galluogi Gweinidogion Cymru i arfer y pŵer a roddir gan Gymal 27, ar yr un pryd â'r Ysgrifennydd Gwladol, i'r graddau y mae'n ymwneud ag ail-gymhwyso, mewn perthynas â thenantiaethau busnes Cymru (a) Atodlen 2 ac eithrio paragraff 3(6) a (7); (b) adran 23 i'r graddau y mae'n ymwneud ag Atodlen 2 ar wahân i baragraff 3(6) a (7); ac (c) Rhan 1 a Rhan 4 i'r graddau y mae'n ymwneud â'r ddarpariaeth ym mharagraffau (a) a (b).
17. Mae'r drafftio wedi'i ddiweddararu hefyd yn gwneud darpariaeth i sicrhau na fydd y pwerau a roddir i'r Ysgrifennydd Gwladol dan Gymal 27 mewn perthynas â'r darpariaethau hyn yn dod o dan gwmpas Paragraff 11(1)(a) Atodlen 7B i Ddeddf Llywodraeth Cymru 2006.
18. Yn yr amgylchiadau rwyf yn argymhell bod y Senedd yn cefnogi'r gwelliannau yng Nghymalau 27 a 27A y Bil.

## **Goblygiadau ariannol**

19. Ar hyn o bryd nid oes unrhyw oblygiadau ariannol ychwanegol i Lywodraeth Cymru na'r Senedd o ganlyniad i'r pwerau yn y bil hwn.

## **Casgliad**

20. Er nad yw'r Gwelliannau a Gyflwynwyd yn adlewyrchu'n llawn y gwelliannau roeddwn i wedi gofyn amdanynt yn wreiddiol ar gyfer y Bil, rwyf o'r farn bod y gwelliannau i Gymalau 9 a 27 y Bil, ar y cyd â'r gwelliannau yng Nghymalau 23, 23A a 27A y Bil, yn gwella safle

gwreiddiol Llywodraeth y DU yn sylweddol. Mae hyn wedi dilyn trafodaethau helaeth a brys gyda Llywodraeth y DU ar lefel swyddogion a Gweinidogion.

21. Yn fy marn i, mae'n briodol defnyddio'r Bil fel cyfrwng i geisio datrys ôl-ddyledion rhent masnachol sydd heb eu talu yng Nghymru sy'n golygu dyledion rhent gwarchodedig at ddibenion y Bil, gan fynd ati hefyd i ddiogelu'r busnesau hynny yng Nghymru sy'n dod o dan gwmpas y Bil. Rwyf felly'n argymhell bod y Senedd yn cefnogi'r cynigion ac yn rhoi ei chydysyniad.

**Vaughan Gething AS**  
**Gweinidog yr Economi**  
**3 Mawrth 2022**

## ATODIAD 1

### **Drafft o Gymalau 9, 23 a 23A y Bil gyda'r Gwelliannau a Gyflwynwyd (a ddangosir at ddibenion enghreifftiol yn unig)**

#### Clause 9 (Period for making a reference to arbitration)

- “(1) This section applies where the tenant and the landlord under a business tenancy are not in agreement as to the resolution of the matter of relief from payment of a protected rent debt.*
- (2) A reference to arbitration may be made by either the tenant or the landlord within the period of six months beginning with the day on which this Act is passed.*
- (3) The Secretary of State may by regulations made by statutory instrument extend the period allowed by subsection (2) for making references to arbitration in the case of—*
- (a) English business tenancies,*
  - (b) Welsh business tenancies, or*
  - (c) English business tenancies and Welsh business tenancies.*
- (4) A statutory instrument containing regulations under subsection (3) is subject to annulment in pursuance of a resolution of either House of Parliament.”*

#### Clause 23 (Temporary moratorium on enforcement of protected rent debts)

- “(1) Schedule 2 contains—*
- (a) provision preventing a landlord who is owed a protected rent debt from using the following remedies in relation to (or on the basis of) the debt during the moratorium period—*
    - (i) making a debt claim in civil proceedings;*
    - (ii) using the commercial rent arrears recovery power;*
    - (iii) enforcing a right of re-entry or forfeiture;*
    - (iv) using a tenant's deposit;*
  - (b) retrospective provision in relation to certain debt claims made by such a landlord before the start of the moratorium period for the protected rent debt;*
  - (c) provision relating to the right of such a landlord during the moratorium period to appropriate any rent paid by the tenant;*
  - (d) retrospective provision in relation to the right of such a landlord to appropriate any rent paid by the tenant before the start of the moratorium period for the protected rent debt;*
  - (e) provision connected with certain things mentioned in paragraphs (a) to (d).*

- (2) *In this section “the moratorium period”, in relation to a protected rent debt, is the period—*
- (a) *beginning with the day on which this Act is passed, and*
  - (b) *ending—*
    - (i) *where the matter of relief from payment of the protected rent debt is not referred to arbitration within the period of six months beginning with that day, with the last day of that period, or*
    - (ii) *where that matter is referred to arbitration, with the day on which the arbitration concludes.*
- (2A) *Subsection (2) is subject to any extension of the period mentioned in paragraph (b)(i) that—*
- (a) *is made by or by virtue of section 23A, and*
  - (b) *has effect in relation to the protected rent debt.*
- (3) *For the purposes of subsection (2)(b) an arbitration concludes when—*
- (a) *the arbitration proceedings are abandoned or withdrawn by the parties,*
  - (b) *the time period for appealing expires without an appeal being brought, or*
  - (c) *any appeal brought within that period is finally determined, abandoned or withdrawn.*
- (4) *In this section “arbitration” means arbitration under Part 2.”*

Clause 23A (Alteration of moratorium period)

- “(1) *In this section “extension regulations” means regulations under section 9(3) extending the period allowed by section 9(2) for making references to arbitration.*
- (2) *Where extension regulations made by virtue of section 9(3)(a) or (c) extend that period in the case of English business tenancies, the period specified in section 23(2)(b)(i), so far as it applies in the case of a protected rent debt under an English business tenancy, is extended for the same period of time.*
- (3) *Subsection (4) below applies where extension regulations made by virtue of section 9(3)(b) or (c) extend that period in the case of Welsh business tenancies.*
- (4) *The Secretary of State may by regulations made by statutory instrument extend the period specified in section 23(2)(b)(i), so far as it applies in the case of a protected rent debt under a Welsh business tenancy, for the same period of time.*

- (5) *Regulations under subsection (4) must provide for the extension referred to in that subsection—*  
*(a) to have effect for the purposes of this Part including the purposes of Schedule 2, or*  
*(b) to have effect for the purposes of this Part other than the purposes of Schedule 2.*
- (6) *The power to make the provision referred to in subsection (5)(a) is exercisable only with the consent of the Welsh Ministers to the extension having effect for the purposes of Schedule 2 other than the purposes of paragraph 3(6) and (7).*
- (7) *A statutory instrument containing regulations under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.”*

## ATODIAD 2

### **Drafft o Gymalau 27 a 27A y Bil gyda'r Gwelliannau a Gyflwynwyd (a ddangosir at ddibenion enghreifftiol yn unig)**

#### Clause 27 (Power to apply Act in relation to future periods of coronavirus control)

*“(1) The Secretary of State may by regulations provide for this Act (apart from this section) to apply again in relation to rent debts under business tenancies adversely affected by closure requirements.*

*(1A) Regulations under this section may—*

- (a) be made so as to apply in relation to—
  - (i) English business tenancies,*
  - (ii) Welsh business tenancies, or*
  - (iii) English business tenancies and Welsh business tenancies;**
- (b) exclude the provisions mentioned in subsection (7B)(a) to (c) from the provisions being re-applied in relation to Welsh business tenancies.*

*(2) A business tenancy is adversely affected by a closure requirement for the purposes of subsection (1) if—*

- (a) the whole or part of a business carried on at or from the premises comprised in the tenancy, or*
- (b) the whole or part of those premises, is of a description subject to a closure requirement imposed at any time after 7 August 2021.*

*(3) In this section “closure requirement” means a requirement imposed by regulations as a public health response to coronavirus and expressed as an obligation—*

- (a) to close businesses, or parts of businesses, of a specified description, or*
- (b) to close premises, or parts of premises, of a specified description.*

*(4) In subsection (3) “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).*

*(5) The power under this section is exercisable whether or not the closure requirement remains in force when the regulations are made.*

*(6) Subsections (3) to (5) of section 4 apply for purposes of this section as they apply for purposes of section 4.*

*(7) Regulations under this section may—*

- (a) provide for provisions of this Act to apply with such necessary modifications as are specified in the regulations;*

- (b) *make different provision for England and for Wales;*
- (c) *make incidental, supplemental, consequential, saving or transitional provision (including provision amending or otherwise modifying an Act of Parliament).*

*(7A) For the purposes of subsection (7)(b)—*

- (a) *“modifications” means omissions, additions or variations, and*
- (b) *modifications are “necessary” if they appear to the Secretary of State to be necessary for the provisions being reapplied to operate correctly in relation to business tenancies adversely affected by the closure requirements in question.*

*(7B) The power under this section is exercisable only with the consent of the Welsh Ministers so far as it relates to the re-application, in relation to Welsh business tenancies, of—*

- (a) *Schedule 2 apart from paragraph 3(6) and (7),*
- (b) *section 23 so far as relating to Schedule 2 apart from paragraph 3(6) and (7), and*
- (c) *Part 1 and this Part, so far as relating to the provision mentioned in paragraphs (a) and (b).*

*(8) Regulations under this section—*

- (a) *are to be made by statutory instrument, and*
- (b) *may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.”*

Clause 27A (Concurrent power for Welsh Ministers to apply moratorium provisions again)

*(1) The Welsh Ministers may exercise the power conferred by section 27, concurrently with the Secretary of State, so far as it relates to the reapplication, in relation to Welsh business tenancies, of—*

- (a) *Schedule 2 apart from paragraph 3(6) and (7),*
- (b) *section 23 so far as relating to Schedule 2 apart from paragraph 3(6) and (7), and*
- (c) *Part 1 and this Part, so far as relating to the provision mentioned in paragraphs (a) and (b).*

*(2) Section 27 has effect in relation to regulations made by the Welsh Ministers by virtue of this section as if—*

- (a) *references to the Secretary of State were to the Welsh Ministers,*
- (b) *subsection (1A)(a)(i) and (iii) and (b) were omitted,*
- (c) *in subsection (7)—*
  - (i) *the references in paragraph (a) to provisions of this Act were references to provisions mentioned in subsection (1)(a) to (c) above and,*

- (ii) *the reference in paragraph (c) to an Act of Parliament included a reference to an Act or Measure of Senedd Cymru,*
  - (d) *subsection (7B) were omitted, and*
  - (e) *in subsection (8)(b), for “each House of Parliament” there were substituted “Senedd Cymru”.*
  
- (3) *In Schedule 7B to the Government of Wales Act 2006 (general restrictions on legislative competence of Senedd Cymru), in paragraph 11(6)(b) (exceptions to restrictions relating to Ministers of the Crown)—*
  - (a) *omit the “or” at the end of paragraph (vi), and*
  - (b) *after paragraph (viii) insert “;*
    - (ix) *section 27 of the Commercial Rent (Coronavirus) Act 2022.”*