



CYNULLIAD CENEDLAETHOL CYMRU

NATIONAL ASSEMBLY FOR WALES

OFFERYNNAU STATUDOL

STATUTORY INSTRUMENTS

**2006 Rhif 363 (Cy.49)**

**2006 No. 363 (W.49)**

**OMBWDSMON  
GWASANAETHAU  
CYHOEDDUS CYMRU**

**WELSH PUBLIC  
SERVICES  
OMBUDSMAN**

Gorchymyn Ombwdsmon  
Gwasanaethau Cyhoeddus Cymru  
(Awdurdodaeth a Darpariaethau  
Trosiannol ac Arbedion) 2006

The Public Services Ombudsman  
for Wales (Jurisdiction and  
Transitional Provisions and  
Savings) Order 2006

**NODYN ESBONIADOL**

**EXPLANATORY NOTE**

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

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

Mae'r Gorchymyn hwn yn gymwys o ran Cymru. Fe'i gwneir o dan adrannau 10(2), 28(2)(a) 41(1) a (3), 43(1)(b) a 44(2)(b) o Ddeddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2005 (p.10) ("y Ddeddf").

This Order applies in relation to Wales. It is made under sections 10(2), 28(2)(a), 41(1) and (3), 43(1)(b) and 44(2)(b) of the Public Services Ombudsman (Wales) Act 2005 (c.10) ("the Act").

Mae adran 10(2) yn darparu y caiff Cynulliad Cenedlaethol Cymru ("y Cynulliad"), drwy orchymyn, ddiwygio Atodlen 2 i'r Ddeddf (materion wedi'u heithrio) drwy ychwanegu at, tynnu ymaith neu newid cofnod yn yr Atodlen honno. Mae Atodlen 2 yn gosod amryw faterion nad oes gan Ombwdsmon Gwasanaethau Cyhoeddus Cymru, ("yr Ombwdsmon") yn rhinwedd adran 10(1), yr hawl i ymchwilio iddynt. Mae adran 10(3) yn darparu bod rhaid i'r Cynulliad, cyn gwneud gorchymyn o dan adran 10(2), ymgynghori â'r Ombwdsmon.

Section 10(2) provides that the National Assembly for Wales ("the Assembly") may, by order, amend Schedule 2 to the Act (excluded matters) by adding, removing or changing an entry in that Schedule. Schedule 2 sets out various matters that, by virtue of section 10(1), the Public Services Ombudsman for Wales ("the Ombudsman") is not entitled to investigate. Section 10(3) provides that before making an order under section 10(2) the Assembly must consult the Ombudsman.

Mae erthygl 2 yn gosod paragraff 8 newydd yn Atodlen 2 pan ddaw Deddf Ymchwiliadau 2005 i rym (p. 12). Mae Adran 49 o Ddeddf Ymchwiliadau 2005 ac Atodlen 3 iddi yn diddymu adran 84 o Ddeddf y Gwasanaeth Iechyd Gwladol 1977 (p.49). Mae'r hyn a amnewidir gan erthygl 2(a) o'r Gorchymyn hwn yn gwneud y newidiadau canlyniadol angenrheidiol i Atodlen 2. Mae erthygl 2(b) yn hepgor paragraff 10 o Atodlen 2. Mae Adran 4 o'r Ddeddf yn nodi pwy a all wneud cwyn i'r Ombwdsmon. Effaith adran 4(2) yw na all awdurdod rhestredig sy'n gweithredu yn y cyfryw swyddogaeth wneud cwyn i'r Ombwdsmon. Bernir

Article 2 substitutes a new paragraph 8 of Schedule 2 in consequence of the coming into force of the Inquiries Act 2005 (c.12). Section 49 of and Schedule 3 to the Inquiries Act 2005 repeal section 84 of the National Health Service Act 1977 (c.49). The substitution made by article 2(a) of this Order makes the necessary consequential changes to Schedule 2. Article 2(b) omits paragraph 10 of Schedule 2. Section 4 of the Act sets out who can complain to the Ombudsman. The effect of section 4(2) is that a listed authority acting in its capacity as such cannot make a complaint to the Ombudsman. It is, therefore,

felly bod paragraff 10 o Atodlen 2 yn ddianghenraid.

Mae erthygl 3 yn diwygio Atodlen 3 (awdurdodau rhestredig) drwy ychwanegu cyfeiriad at y Bwrdd Cynghorau Iechyd Cymuned yng Nghymru fel awdurdod rhestredig, i ddod ag ef o fewn cylch gorchwyl yr Ombudsmon.

Mae adran 41(3) yn darparu y caiff y Cynulliad, drwy Orchymyn, ddiwygio'r diffiniad o "family health service provider in Wales" (gweler adran 41(1)). Mae adran 41(4) yn darparu bod rhaid i'r Cynulliad ymgynghori ag unrhyw bersonau sydd yn ei dyb ef yn briodol cyn gwneud gorchymyn o'r fath.

Mae erthyglau 4 i 7 yn peri bod y diffiniad o "family health service provider in Wales" yn fwy cyfatebol i'r diffiniad yn adran 2A (2) o Ddeddf Comisiynwyr y Gwasanaeth Iechyd 1993 (p. 46).

Mae adran 41(1) yn darparu, ymhlith pethau eraill, mai ystyr "relevant tribunal" yn y Ddeddf yw tribiwnlys (gan gynnwys tribiwnlys o un person yn unig) a bennir drwy orchymyn wedi'i wneud gan y Cynulliad.

Mae erthygl 8 yn darparu bod tribiwnlys prisio yng Nghymru yn dribiwnlys perthnasol at ddibenion y Ddeddf. Mae hefyd yn gwneud darpariaeth drosiannol (yn erthygl 8(2)) parthed gweithrediadau staff gweinyddol tribiwnlysoedd prisio yng Nghymru cyn 15 Chwefror 2006 o ran apeliadau a gychwynwyd ac y gorffennwyd â hwy cyn y dyddiad hwnnw. Ar y dyddiad hwnnw daw Rheoliadau Tribiwnlysoedd Prisio (Cymru) 2005 (O.S. 2005/3364) i rym yn llawn. Mae'r rheoliadau hyn yn diddymu'r tribiwnlysoedd prisio blaenorol ac yn gosod rhai newydd yn eu lle.

considered that paragraph 10 of Schedule 2 is otiose.

Article 3 amends Schedule 3 (listed authorities) by adding reference to the Board of Community Health Councils in Wales as a listed authority, so as to bring it within the Ombudsman's remit.

Section 41(3) provides that the Assembly may, by order, amend the definition of "family health service provider in Wales" (see section 41(1)). Section 41(4) provides that before the Assembly makes such an order it must consult such persons as it thinks appropriate.

Articles 4 to 7 bring the definition of "family health service provider in Wales" more closely into line with the definition in section 2A(2) of the Health Service Commissioners Act 1993 (c. 46).

Section 41(1) provides, amongst other things, that in the Act a "relevant tribunal" means a tribunal (including a tribunal consisting of only one person) specified by order made by the Assembly.

Article 8 provides that a valuation tribunal in Wales is a relevant tribunal for the purpose of the Act. It also makes transitional provision (in article 8(2)) in respect of action taken by administrative staff of valuation tribunals in Wales before 15 February 2006 in respect of appeals initiated and disposed of by that date. On that date the Valuation Tribunals (Wales) Regulations 2005 (S.I. 2005/3364) come fully into force. Those regulations abolish the former valuation tribunals and replace them with new ones.

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Gorchymyn Ombwdsmon  
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Trosiannol ac Arbedion) 2006

The Public Services Ombudsman  
for Wales (Jurisdiction and  
Transitional Provisions and  
Savings) Order 2006

*Wedi'i wneud* 14 Chwefror 2006

*Made* 14 February 2006

*Yn dod i rym* 1 Ebrill 2006

*Coming into force* 1 April 2006

Mae Cynulliad Cenedlaethol Cymru, drwy arfer y pwerau a roddwyd iddo gan adrannau 10(2), 28(2)(a), 41(1) a (3), 43(1)(b) a 44(2)(b) o Ddeddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2005(1), ac wedi cynnal yr ymgynghoriad sy'n ofynnol gan adrannau 10(3), 28(4) a 41(4) o'r Ddeddf honno, yn gwneud y Gorchymyn canlynol:

The National Assembly for Wales, in exercise of powers conferred on it by sections 10(2), 28(2)(a), 41(1) and (3), 43(1)(b) and 44(2)(b) of the Public Services Ombudsman (Wales) Act 2005(1), and having carried out such consultation as is required by sections 10(3), 28(4) and 41(4) of that Act, makes the following Order:

**Enwi, cychwyn, cymhwyso a dehongli****Title, commencement, application and interpretation**

1.-(1) Enw'r Gorchymyn hwn yw Gorchymyn Ombwdsmon Gwasanaethau Cyhoeddus Cymru (Awdurdodaeth a Darpariaethau Trosiannol ac Arbedion) 2006 a daw i rym ar 1 Ebrill 2006.

1.-(1) The title of this Order is the Public Services Ombudsman for Wales (Jurisdiction and Transitional Provisions and Savings) Order 2006 and it comes into force on 1 April 2006.

(2) Mae'r Gorchymyn hwn yn gymwys o ran Cymru.

(2) This Order applies in relation to Wales.

(3) Yn y Gorchymyn hwn-

(3) In this Order-

(a) ystyr "y Ddeddf" ("*the Act*") yw Deddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2005,

(a) "the Act" ("*y Ddeddf*") means the Public Services Ombudsman (Wales) Act 2005,

(b) ystyr "Deddf 1977" ("*the 1977 Act*") yw Deddf y Gwasanaeth Iechyd Gwladol 1977(2), ac

(b) "the 1977 Act" ("*Ddeddf 1977*") means the National Health Service Act 1977(2), and

(c) ystyr "Deddf 2003" ("*the 2003 Act*") yw Deddf Iechyd a Gofal Cymdeithasol (Iechyd Cymunedol a Safonau) 2003(3).

(c) "the 2003 Act" ("*Ddeddf 2003*") means the Health and Social Care (Community Health and Standards) Act 2003(3).

(1) 2005 p. 10.

(2) 1977 p. 49.

(3) 2003 p. 43.

(1) 2005 c. 10.

(2) 1977 c. 49.

(3) 2003 c. 43.

(4) Yn y Gorchymyn hwn mae cyfeiriadau at adrannau ac Atodlenni, oni fynegir yn wahanol, yn gyfeiriadau at adrannau o'r Ddeddf ac at Atodlenni iddi.

#### **Diwygiadau i Atodlen 2 (materion wedi'u heithrio)**

##### **2. Yn Atodlen 2-**

(a) yn lle paragraff 8 rhodder-

" 8. Action under-

- (a) the National Health Service Act 1977,
- (b) Part 1 of the National Health Service and Community Care Act 1990,
- (c) Part 1 of the Health Act 1999 (with the exception of sections 33 to 38), or
- (ch) Part 1 of the Health and Social Care (Community Health and Standards) Act 2003,

where the action is or has been the subject of an inquiry under the Inquiries Act 2005.", a

(b) hepgorer paragraff 10.

#### **Diwygiad i Atodlen 3 (awdurdodau rhestredig)**

3. Yn Atodlen 3, ar ôl y cofnod sy'n ymwneud â Chyngor Gofal Cymru mewnosoder-

"The Board of Community Health Councils in Wales"

in relation to all its functions.

#### **Diwygiad i'r diffiniad o "family health service provider in Wales"**

4. Yn adran 41(1), yn y diffiniad o "family health service provider in Wales"-

- (a) ym mharagraff (a) yn lle "section 28Q" rhodder "section 28K or 28Q",
- (b) ym mharagraff (c) yn lle "primary medical or dental services" rhodder "primary medical services or primary dental services", ac
- (c) hepgorer paragraff (d).

#### **Darpariaethau arbed mewn perthynas â'r diffiniad o "family health service provider in Wales"**

5. Mewn perthynas ag unrhyw gŵyn ynglŷn â mater a ddigwyddodd cyn 1 Ebrill 2004-

(a) yn lle paragraff (a) o'r diffiniad o "family health service provider in Wales" (fel y'i diwygiwyd gan erthygl 4(a) o'r Gorchymyn hwn) rhodder-

"(a) individuals undertaking to provide in Wales general medical services or general dental services under Part 2 of the National Health Service Act 1977;" a

(4) In this Order references to sections and Schedules are, unless otherwise stated, references to sections of, and Schedules to, the Act.

#### **Amendments to Schedule 2 (excluded matters)**

##### **2. In Schedule 2-**

(a) for paragraph 8 substitute-

" 8. Action under-

- (a) the National Health Service Act 1977,
- (b) Part 1 of the National Health Service and Community Care Act 1990,
- (c) Part 1 of the Health Act 1999 (with the exception of sections 33 to 38), or
- (d) Part 1 of the Health and Social Care (Community Health and Standards) Act 2003,

where the action is or has been the subject of an inquiry under the Inquiries Act 2005 ." , and

(b) omit paragraph 10.

#### **Amendment to Schedule 3 (listed authorities)**

3. In Schedule 3, after the entry relating to the Care Council for Wales insert-

"The Board of Community Health Councils in Wales"

in relation to all its functions.

#### **Amendment of the definition of "family health service provider in Wales"**

4. In section 41(1), in the definition of "family health service provider in Wales"-

- (a) in paragraph (a) for "section 28Q" substitute "section 28K or 28Q",
- (b) in paragraph (c) for "primary medical or dental services" substitute "primary medical services or primary dental services", and
- (c) omit paragraph (d).

#### **Saving provisions in relation to the definition of "family health service provider in Wales"**

5. In relation to any complaint in respect of a matter which occurred before 1 April 2004-

(a) for paragraph (a) of the definition of "family health service provider in Wales" (as amended by article 4(a) of this Order) substitute-

"(a) individuals undertaking to provide in Wales general medical services or general dental services under Part 2 of the National Health Service Act 1977;" and

(b) yn lle paragraff (c) o'r diffiniad o "family health service provider in Wales" (fel y'i diwygiwyd gan erthygl 4(b) o'r Gorchymyn hwn) rhodder-

"(c) individuals performing in Wales personal medical services or personal dental services in accordance with arrangements made under section 28C of the National Health Service Act 1977 (except as employees of, or otherwise on behalf of, a health service body or an independent provider);".

### **Darpariaethau darffodol mewn perthynas â'r diffiniad o "family health service provider in Wales"**

6.-(1) Mewn amgylchiadau ac eithrio'r rhai a ddisgrifir yn erthygl 5 a hyd nes y daw adran 172(1) o Ddeddf 2003 i rym mewn perthynas â chontractau gwasanaethau deintyddol cyffredinol-

(a) (ym mharagraff (a) o'r diffiniad o "family health service provider in Wales" (fel y'i diwygiwyd gan erthygl 4(a) o'r Gorchymyn hwn) yn lle "section 28K or 28Q" rhodder "section 28Q";

(b) ym mharagraff (c) o'r diffiniad o "family health service provider in Wales" (fel y'i diwygiwyd gan erthygl 4(b) o'r Gorchymyn hwn) yn lle "primary dental services" rhodder "personal dental services", ac

(c) ar ôl paragraff (c) o'r diffiniad o "family health service provider in Wales" (fel y'i diwygiwyd gan erthygl 4(b) o'r Gorchymyn hwn) mewnosoder-

"(d) an individual who, at that time, had undertaken to provide in Wales general dental services under Part 2 of that Act."

(2) Hyd nes y daw adran 28C o Ddeddf 1977 i rym o ran Cymru, rhaid cymryd, at ddibenion y rhan honno o'r diffiniad o "family health service provider in Wales" fel y'i diwygiwyd gan erthygl 4(b) ac fel y'i amnewidiwyd gan erthygl 5(b) o'r Gorchymyn hwn sy'n cyfeirio at drefniadau a wneir o dan yr adran honno, ei fod yn cyfeirio'n unig at gynllun peilot o dan Ran 1 o'r Ddeddf honno.

### **Darpariaeth drosiannol mewn perthynas â'r diffiniad o "family health service provider in Wales"**

7. Cyhyd â bod contractau rhagosodedig a wnaed yn unol ag adran 176(3) o Ddeddf 2003 (gwasanaethau meddygol cyffredinol: trosiannol) mewn bod, bernir bod unrhyw gyfeiriad at gontract gwasanaethau meddygol cyffredinol neu at gontract o dan adran 28Q o Ddeddf 1977 yn y diffiniad o "family health service provider in Wales" fel y'i diwygiwyd gan erthygl 4(a) ac fel y'i amnewidiwyd gan erthygl 5(a) o'r Gorchymyn hwn, yn cynnwys cyfeiriad at gontract rhagosodedig.

(b) for paragraph (c) of the definition of "family health service provider in Wales" (as amended by article 4(b) of this Order) substitute-

"(c) individuals performing in Wales personal medical services or personal dental services in accordance with arrangements made under section 28C of the National Health Service Act 1977 (except as employees of, or otherwise on behalf of, a health service body or an independent provider);".

### **Transitory provisions in relation to the definition of "family health service provider in Wales"**

6.-(1) In circumstances other than those described in article 5 and until section 172(1) of the 2003 Act comes into force in relation to general dental services contracts-

(a) in paragraph (a) of the definition of "family health service provider in Wales" (as amended by article 4(a) of this Order) for "section 28K or 28Q" substitute "section 28Q",

(b) in paragraph (c) of the definition of "family health service provider in Wales" (as amended by article 4(b) of this Order) for "primary dental services" substitute "personal dental services", and

(c) after paragraph (c) of the definition of "family health service provider in Wales" (as amended by article 4(b) of this Order) insert -

"(d) an individual who, at that time, had undertaken to provide in Wales general dental services under Part 2 of that Act."

(2) Until section 28C of the 1977 Act comes into force in relation to Wales then for the purposes of that part of the definition of "family health service provider in Wales" as amended by article 4(b) and as substituted by article 5(b) of this Order that refers to arrangements made under that section it is to be taken as referring only to a pilot scheme under Part 1 of that Act.

### **Transitional provision in relation to the definition of "family health service provider in Wales"**

7. For as long as default contracts entered into pursuant to section 176(3) of the 2003 Act (general medical services: transitional) exist, any reference to a general medical services contract or to a contract under section 28Q of the 1977 Act in the definition of "family health service provider in Wales" as amended by article 4(a) and as substituted by article 5(a) of this Order is to be deemed to include a reference to a default contract.

### **Tribiwnlysoedd Prasio yng Nghymru**

8.-(1) Mae tribiwnlys prasio yng Nghymru yn dribiwnlys perthnasol at ddibenion y Ddeddf.

(2) Nid oes dim yn Rheoliadau Tribiwnlysoedd Prasio (Cymru) 2005(1) yn rhwystro person rhag gwneud cwyn i'r Ombwdsmon parthed gweithredu perthnasol gan aelod o staff gweinyddol tribiwnlys prasio yng Nghymru cyn 15 Chwefror 2006.

Llofnodwyd ar ran Cynulliad Cenedlaethol Cymru o dan adran 66(1) o Ddeddf Llywodraeth Cymru 1998(2).

14 Chwefror 2006

Dirprwy Lywydd y Cynulliad Cenedlaethol

### **Valuation tribunals in Wales**

8.-(1) A valuation tribunal in Wales is a relevant tribunal for the purposes of the Act.

(2) Nothing in the Valuation Tribunals (Wales) Regulations 2005(1) prevents a person from making a complaint to the Ombudsman in relation to relevant action taken by a member of the administrative staff of a valuation tribunal in Wales before 15 February 2006.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(2).

14 February 2006

The Deputy Presiding Officer of the National Assembly

*John Marek*

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(1) O.S. 2005/3364 (Cy.261).

(2) 1998 p.38.

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(1) S.I. 2005/3364 (W.261)

(2) 1998 c.38.



**2006 Rhif 363 (Cy.49)**

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