



OFFERYNNAU STATUDOL
CYMRU

2012 Rhif 1248 (Cy.153)

ADDYSG, CYMRU

Gorchymyn Personau
Cydnabyddedig (Cosbau Ariannol)
(Penderfynu Trosiant) (Cymru)
2012

NODYN ESBONIADOL

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

Mae'r Gorchymyn hwn yn gwneud darpariaeth ar gyfer penderfynu trosiant person cydnabyddedig ("recognised person") at ddibenion adran 32AB o Ddeddf Addysg 1997 ("Deddf 1997").

Mae adran 32AA o Ddeddf 1997 yn darparu y caiff Gweinidogion Cymru osod cosb ariannol ar berson cydnabyddedig (fel y diffinnir "*recognised person*" yn adran 32A(5) o Ddeddf 1997), os yw'n ymddangos i Weinidogion Cymru fod y person hwnnw wedi methu â chydymffurfio ag un o amodau ei gydnabyddiaeth o dan adran 32(3A) a (4) o Ddeddf 1997. Caiff swm y gosb ariannol fod yr hyn a benderfynir sy'n briodol gan Weinidogion Cymru, o ystyried holl amgylchiadau'r achos, ond ni chaiff y gosb ariannol fod yn fwy na 10% o drostiant y person cydnabyddedig, fel y'i penderfynir gan y Gorchymyn hwn.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Gorchymyn hwn. O ganlyniad, ni thybiwyd bod angen cynnal asesiad effaith rheoleiddiol o gostau a buddion tebygol cydymffurfio â'r Gorchymyn hwn.

WELSH STATUTORY
INSTRUMENTS

2012 No. 1248 (W.153)

EDUCATION, WALES

The Recognised Persons (Monetary
Penalties) (Determination of
Turnover) (Wales) Order
2012

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the determination of turnover of a recognised person for the purposes of section 32AB of the Education Act 1997 ("the 1997 Act").

Section 32AA of the 1997 Act provides that, if it appears to the Welsh Ministers that a recognised person (as defined in section 32A(5) of the 1997 Act) has failed to comply with a condition of their recognition under section 32(3A) and (4) of the 1997 Act, the Welsh Ministers may impose a monetary penalty on that person. The amount of monetary penalty may be whatever the Welsh Ministers decide is appropriate in all the circumstances of the case, but must not exceed 10% of the recognised person's turnover, as determined by this Order.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order.

2012 Rhif 1248 (Cy.153)

ADDYSG, CYMRU

**Gorchymyn Personau
Cydnabyddedig (Cosbau Ariannol)
(Penderfynu Trosiant) (Cymru)
2012**

Gwnaed 9 Mai 2012
Yn dod i rym 9 Mai 2012

Mae Gweinidogion Cymru yn gwneud y Gorchymyn canlynol drwy arfer y pwerau a roddwyd iddynt gan adran 32AB(2) o Ddeddf Addysg 1997(1).

Yn unol ag adran 54(2A) o'r Ddeddf honno(2) gosodwyd drafft o'r Gorchymyn hwn gerbron Cynulliad Cenedlaethol Cymru a chymeradwywyd ef drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Personau Cydnabyddedig (Cosbau Ariannol) (Penderfynu Trosiant) (Cymru) 2012.

(2) Daw'r Gorchymyn hwn i rym ar 9 Mai 2012 ac y mae'n gymwys o ran Cymru.

Dehongli

2.—(1) Yn y Gorchymyn hwn—

ystyr "blwyddyn fusnes" ("*business year*") yw cyfnod, o chwe mis neu ragor, y mae'r person cydnabyddedig yn cyhoeddi cyfrifon mewn perthynas ag ef, neu, os na chyhoeddwyd cyfrifon o'r fath am y cyfnod, yn paratoi cyfrifon mewn perthynas ag ef;

ystyr "blwyddyn fusnes flaenorol" ("*preceding business year*") yw'r flwyddyn fusnes yn union cyn y dyddiad hysbysu;

(1) 1997 p.44; mewnosodwyd adran 32AB gan adran 24 o Ddeddf Addysg 2011 (p.21).

(2) 1997 p.44; mewnosodwyd adran 54(2A) gan adran 24 o Ddeddf Addysg 2011 (p.21).

2012 No. 1248 (W.153)

EDUCATION, WALES

**The Recognised Persons (Monetary
Penalties) (Determination of
Turnover) (Wales) Order
2012**

Made 9 May 2012
Coming into force 9 May 2012

The Welsh Ministers make the following Order in exercise of the powers conferred on them by section 32AB(2) of the Education Act 1997(1).

In accordance with section 54(2A) of that Act(2) a draft of this Order was laid before and approved by a resolution of the National Assembly for Wales.

Title, commencement and application

1.—(1) The title of this Order is the Recognised Persons (Monetary Penalties) (Determination of Turnover) (Wales) Order 2012.

(2) This Order comes into force on 9 May 2012 and applies in relation to Wales.

Interpretation

2.—(1) In this Order—

"the Act" ("*y Ddeddf*") means the Education Act 1997;

"business year" ("*blwyddyn fusnes*") means a period of six or more months in respect of which a recognised person publishes accounts or, if no such accounts have been published for the period, prepares accounts;

(1) 1997 c.44; section 32AB was inserted by section 24 of the Education Act 2011 (c.21).

(2) 1997 c.44; section 54(2A) was inserted by section 24 of the Education Act 2011 (c.21).

ystyr "dyddiad hysbysu" ("*date of notice*") yw'r dyddiad pan fo Gweinidogion Cymru yn rhoi hysbysiad i berson cydnabyddedig o dan adran 32AA(6) o'r Ddeddf o'u bwriad i osod cosb ariannol ar y person cydnabyddedig;

ystyr "y Ddeddf" ("*the Act*") yw Deddf Addysg 1997;

(2) Yn y Gorchymyn hwn ystyr "trosiant cymwysadwy" ("*applicable turnover*") yw unrhyw symiau, a gyfrifir yn unol ag arferion cyfrifyddu arferol yn y Deyrnas Unedig, a'r rheini'n rhai—

- (a) y mae'r person cydnabyddedig wedi eu deillio o ddarparu nwyddau a gwasanaethau sy'n dod o fewn ei weithgareddau cyffredin yn y Deyrnas Unedig; a
- (b) a dderbynnir ar ffurf rhodd, grant neu gymhorthdal gan y person cydnabyddedig, wrth iddo gyflawni ei weithgareddau cyffredin yn y Deyrnas Unedig,

ar ôl didynnu disgowntiau masnach, treth ar werth a threthi eraill sy'n seiliedig ar y symiau sy'n deillio neu a dderbynnir felly;

Penderfynu trosiant at ddibenion adran 32AB o'r Ddeddf

3.—(1) Rhaid penderfynu trosiant person cydnabyddedig at ddibenion adran 32AB(1) o'r Ddeddf yn unol â'r erthygl hon.

- (2) Os oes blwyddyn fusnes flaenorol—
 - (a) os yw'r flwyddyn fusnes flaenorol yn gyfnod o ddeuddeg mis, y trosiant yw'r trosiant cymwysadwy am y cyfan o'r flwyddyn fusnes flaenorol honno;
 - (b) os yw'r flwyddyn fusnes flaenorol yn fwy neu'n llai na chyfnod o ddeuddeg mis, y trosiant yw'r trosiant cymwysadwy yn y flwyddyn fusnes honno wedi ei rannu gyda nifer y misoedd yn y flwyddyn fusnes honno a'i luosi gyda deuddeg.
- (3) Os nad oes blwyddyn fusnes flaenorol—
 - (a) y trosiant yw'r trosiant cymwysadwy am y cyfnod o ddeuddeg mis sy'n dod i ben ar ddiwrnod olaf y mis sy'n rhagflaenu'r mis sy'n cynnwys y dyddiad hysbysu; neu
 - (b) os oes gan y person cydnabyddedig drosiant cymwysadwy am gyfnod sy'n llai na deuddeg mis, y trosiant yw'r trosiant cymwysadwy am y cyfnod hwnnw wedi ei rannu gyda nifer y misoedd yn y cyfnod hwnnw a'i luosi gyda deuddeg.

"date of notice" ("*dyddiad hysbysu*") means the date on which the Welsh Ministers give notice to a recognised person under section 32AA(6) of the Act of their intention to impose a monetary penalty on the recognised person;

"preceding business year" ("*blwyddyn fusnes flaenorol*") means the business year immediately preceding the date of notice;

(2) In this Order "applicable turnover" ("*trosiant cymwysadwy*") means any amounts, calculated in conformity with normal accounting practice in the United Kingdom, which are —

- (a) derived by the recognised person from the provision of goods and services falling within the recognised person's ordinary activities in the United Kingdom; and
- (b) received by the recognised person in the course of the recognised person's ordinary activities in the United Kingdom by way of gift, grant or subsidy,

after deduction of trade discounts, value added tax and other taxes based on the amounts so derived or received;

Determination of turnover for the purposes of section 32AB of the Act

3.—(1) The turnover of a recognised person for the purposes of section 32AB(1) of the Act is to be determined in accordance with this article.

- (2) Where there is a preceding business year —
 - (a) if the preceding business year is a period of twelve months, the turnover is the applicable turnover for that entire preceding business year;
 - (b) if the preceding business year is a period of more or less than twelve months, the turnover is the applicable turnover in that business year divided by the number of months in that business year and multiplied by twelve.
- (3) Where there is no preceding business year —
 - (a) the turnover is the applicable turnover for the period of twelve months ending on the last day of the month preceding the month of the date of notice; or
 - (b) if the recognised person has applicable turnover for a period of less than twelve months, the turnover is the applicable turnover for that period divided by the number of months in that period and multiplied by twelve.

Leighton Andrews

Y Gweinidog Addysg a Sgiliau, un o Weinidogion
Cymru

Minister for Education and Skills, one of the Welsh
Ministers

9 Mai 2012

9 May 2012

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