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OFFERYNNAU STATUDOL  
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WELSH STATUTORY  
INSTRUMENTS

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**2020 Rhif 263 (Cy. 62)**

**2020 No. 263 (W. 62)**

**Y GWASANAETH IECHYD  
GWLADOL, CYMRU**

**NATIONAL HEALTH  
SERVICE, WALES**

Rheoliadau'r Gwasanaeth Iechyd  
Gwladol (Cynllun Atebolrwyddau  
Presennol ar gyfer Ymarfer  
Cyffredinol) (Cymru) 2020

The National Health Service  
(Existing Liabilities Scheme for  
General Practice) (Wales)  
Regulations 2020

**NODYN ESBONIADOL**

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

Mae'r Rheoliadau hyn yn sefydlu'r Cynllun Atebolrwyddau Presennol ar gyfer Ymarfer Cyffredinol ("y Cynllun"). Nid ydynt yn gymwys ond mewn perthynas â gwasanaethau a ddarperir fel rhan o'r GIG yng Nghymru a deuant i rym ar 6 Ebrill 2020.

Mae'r Cynllun yn ymwneud ag atebolrwyddau camweddus sy'n codi o ddigwyddiadau a ddigwyddodd cyn 1 Ebrill 2019 ac y rhoddwyd gwybod amdanynt neu a berwyd ond na roddwyd gwybod amdanynt eto mewn cysylltiad â darparu gwasanaethau meddygol sylfaenol a gwasanaethau gofal iechyd eraill drwy ymarfer cyffredinol fel rhan o'r GIG. Atebolrwyddau esgeuluster clinigol fydd yr atebolrwyddau a gwmpeisir gan y Cynllun yn bennaf.

Mae rheoliadau 2 a 4 yn diffinio termau a ddefnyddir yn y Rheoliadau. Mae rheoliad 3 yn sefydlu'r Cynllun ac yn darparu iddo gael ei weinyddu gan Weinidogion Cymru.

Mae rheoliad 5 yn pennu pwy sy'n "person cymwys", sef personau y caniateir bodloni eu hatebolrwyddau presennol o dan y Cynllun, ar yr amod bod yr atebolrwyddau yn atebolrwyddau y mae'r Cynllun yn gymwys iddynt. Mae hwn yn berson sy'n aelod o sefydliad amddiffyn meddygol neu a oedd, ar y dyddiad perthnasol, yn aelod o sefydliad amddiffyn meddygol a hefyd naill ai'n gontractwr Rhan 4 (person sydd wedi ei gontractio o dan Ran 4 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006 i ddarparu gwasanaethau meddygol sylfaenol, neu i wneud

**EXPLANATORY NOTE**

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

These Regulations establish the Existing Liabilities Scheme for General Practice ("the Scheme"). They apply only in relation to services provided as part of the NHS in Wales and come into force on 6 April 2020.

The Scheme relates to tortious liabilities arising from incidents that occurred before 1 April 2019 which have either been reported or incurred but not yet reported in connection with the provision of primary medical services and other healthcare services by general practice as part of the NHS. In the main, the liabilities covered by the Scheme will be clinical negligence liabilities.

Regulations 2 and 4 define terms used in the Regulations. Regulation 3 establishes the Scheme and provides for it to be administered by the Welsh Ministers.

Regulation 5 specifies who is an "eligible person", namely persons whose existing liabilities may be met under the Scheme, subject to the liabilities being liabilities to which the Scheme applies. This is a person who is or who, on the relevant date was, a member of a medical defence organisation and also either a Part 4 contractor (a person contracted under Part 4 of the National Health Service (Wales) Act 2006 to provide, or make arrangements to provide, primary

trefniadau i ddarparu gwasanaethau meddygol sylfaenol); yn is-gontractwr gwasanaethau meddygol sylfaenol (person sydd wedi ei is-gontractio gan gontractwr Rhan 4 i ddarparu'r gwasanaethau hynny); yn berson sy'n darparu gwasanaethau iechyd ategol; neu'n berson sydd wedi ei gymryd ymlaen gan unrhyw un o'r uchod i ddarparu gwasanaethau meddygol sylfaenol neu wasanaethau iechyd ategol neu i gyflawni gweithgaredd sy'n gysylltiedig â darparu'r gwasanaethau hynny. Y "dyddiad perthnasol" yw'r dyddiad y digwyddodd y weithred neu'r anweithred, a arweiniodd at atebolrwydd presennol, a "gwasanaethau iechyd ategol" yw gwasanaethau GIG, ac eithrio gwasanaethau meddygol sylfaenol, a ddarperir fel rhan o'r ymarfer cyffredinol gan gontractwr Rhan 4, is-gontractwr gwasanaethau meddygol sylfaenol neu berson sydd wedi ei is-gontractio gan y personau hynny i ddarparu'r gwasanaethau iechyd ategol.

Mae rheoliad 6 yn pennu'r atebolrwyddau presennol y mae'r Cynllun yn gymwys iddynt a'r dyddiad y bydd yn gymwys i'r atebolrwyddau presennol hynny ohono. Y rhain yw atebolrwyddau presennol sy'n ddyledus i drydydd parti sy'n codi o weithredoedd neu anweithredoedd sy'n gysylltiedig â darparu gwasanaethau meddygol sylfaenol neu wasanaethau iechyd ategol ac sy'n achosi anaf personol neu niwed i'r trydydd parti. Cwmpesir atebolrwyddau presennol personau cymwys o dan y Cynllun pan fo Gweinidogion Cymru wedi ymrwmo i drefniant contractiol â sefydliad amddiffyn meddygol ac, o dan y trefniant contractiol hwnnw, mae Gweinidogion Cymru wedi cytuno i ystyried darparu indemniad neu gynhorthwy yn ôl disgrisiwn ar gyfer gweithredoedd neu anweithredoedd aelodau a chyn-aelodau'r sefydliad amddiffyn meddygol.

Mae gweithredoedd neu anweithredoedd cyflogaion person cymwys neu eraill, y mae person cymwys wedi eu cymryd ymlaen i gyflawni gweithgareddau sy'n gysylltiedig â darparu gwasanaethau meddygol sylfaenol neu wasanaethau GIG eraill ar gyfer y person cymwys neu y mae person cymwys yn caniatáu iddynt wneud hynny, hefyd wedi eu cwmpasu o dan y Cynllun.

Mae rheoliadau 7 i 10 yn darparu i daliadau gael eu gwneud o dan y Cynllun, gan gynnwys rheoliad 9 sy'n nodi o dan ba amgylchiadau y caiff Gweinidogion Cymru benderfynu nad oes unrhyw daliad i'w wneud.

Mae rheoliad 11 yn galluogi Gweinidogion Cymru i'w gwneud yn ofynnol i berson cymwys ddarparu gwybodaeth a chynhorthwy i Weiniogion Cymru at ddibenion y Cynllun.

medical services); a primary medical services sub-contractor (a person sub-contracted by a Part 4 contractor to provide such services); a person providing ancillary health services; or a person engaged by any of the above to provide or carry out an activity connected to the provision of primary medical services or ancillary health services. The "relevant date" is the date on which the act or omission, giving rise to an existing liability, occurred and "ancillary health services" are NHS services, other than primary medical services, provided as part of general practice by a Part 4 contractor, a primary medical services sub-contractor or a person sub-contracted by such persons to provide the ancillary health services.

Regulation 6 specifies the existing liabilities to which the Scheme applies and the date from which it will apply to those existing liabilities. These are existing liabilities owed to a third party that arise from acts or omissions connected to the provision of primary medical services or ancillary health services and which result in personal injury or harm to the third party. Existing liabilities of eligible persons are covered under the Scheme where the Welsh Ministers have entered into a contractual arrangement with a medical defence organisation and, under that contractual arrangement, the Welsh Ministers have agreed to consider providing discretionary indemnity or assistance for acts or omissions of members and former members of the medical defence organisation.

Acts or omissions of an eligible person's employees or others engaged or permitted by an eligible person to carry out activities connected to the provision of primary medical services or other NHS services for the eligible person are also covered under the Scheme.

Regulations 7 to 10 provide for payments to be made under the Scheme, including regulation 9 which sets out circumstances in which the Welsh Ministers may decide that no payment is to be made.

Regulation 11 enables the Welsh Ministers to require an eligible person to provide information and assistance to the Welsh Ministers for the purposes of the Scheme.

Mae rheoliad 12 yn gosod dyletswydd ar Weinidogion Cymru i roi gwybodaeth ar gael i berson cymwys ynghylch cyfarwyddydau neu ganllawiau a roddir gan Weinidogion Cymru mewn perthynas â'r Cynllun.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. Lluniwyd asesiad effaith rheoleiddiol sy'n ymwneud â'r offeryn hwn o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn. Gellir cael copi oddi wrth: Y Gyfarwyddiaeth Gofal Sylfaenol a Gwyddor Iechyd, Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

Regulation 12 places the Welsh Ministers under a duty to make information available to an eligible person about directions or guidance given by the Welsh Ministers in relation to the Scheme.

The Welsh Ministers Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. A regulatory impact assessment relating to this instrument has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Primary Care and Health Science Directorate, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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Presennol ar gyfer Ymarfer  
Cyffredinol) (Cymru) 2020

The National Health Service  
(Existing Liabilities Scheme for  
General Practice) (Wales)  
Regulations 2020

*Gwnaed* 11 Mawrth 2020

*Made* 11 March 2020

*Gosodwyd gerbron Cynulliad Cenedlaethol  
Cymru* 13 Mawrth 2020

*Laid before the National Assembly for Wales*  
13 March 2020

*Yn dod i rym* 6 Ebrill 2020

*Coming into force* 6 April 2020

Mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddir gan adrannau 30(8) a (9), a 203(9) a (10) o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006(1).

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 30(8) and (9), and 203(9) and (10) of the National Health Service (Wales) Act 2006(1).

**Enwi, cychwyn a chymhwyso**

**Title, commencement and application**

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau'r Gwasanaeth Iechyd Gwladol (Cynllun Atebolrwyddau Presennol ar gyfer Ymarfer Cyffredinol) (Cymru) 2020.

1.—(1) The title of these Regulations is the National Health Service (Existing Liabilities Scheme for General Practice) (Wales) Regulations 2020.

(2) Daw'r Rheoliadau hyn i rym ar 6 Ebrill 2020.

(2) These Regulations come into force on 6 April 2020.

(3) Mae'r Rheoliadau hyn yn gymwys o ran Cymru.

(3) These Regulations apply in relation to Wales.

**Dehongli**

**Interpretation**

2. Yn y Rheoliadau hyn—

2. In these Regulations—

ystyr “atebolrwydd perthnasol” (“*relevant liability*”) yw atebolrwydd presennol y mae'r Cynllun yn gymwys iddo;

“the 2006 Act” (“*Deddf 2006*”) means the National Health Service (Wales) Act 2006;

(1) 2006 p. 42; gweler adran 206(1) am y diffiniadau o “prescribed” a “regulations”. Mewnosodwyd is-adrannau (8) a (9) yn adran 30 gan adran 1 o Ddeddf y Gwasanaeth Iechyd Gwladol (Indemniadau) (Cymru) 2020 (dccc 2).

(1) 2006 c. 42; see section 206(1) for the definitions of “prescribed” and “regulations”. Subsections (8) and (9) of section 30 were inserted by section 1 of the National Health Service (Indemnities) (Wales) Act 2020 (anaw 2).

ystyr “Bwrdd Iechyd Lleol” (“*Local Health Board*”) yw Bwrdd Iechyd Lleol sydd wedi ei sefydlu yn unol ag adran 11(2) o Ddeddf 2006;

ystyr “contractwr Rhan 4” (“*Part 4 contractor*”) yw person sy’n darparu gwasanaethau meddygol sylfaenol, neu sy’n gwneud trefniadau ar gyfer darparu gwasanaethau meddygol sylfaenol, yn unol â threfniant contractiol (gan gynnwys trefniant neu gytundeb contractiol sy’n rhan o set o drefniadau ar gyfer darparu gwasanaethau, yn ychwanegol at y gwasanaethau meddygol sylfaenol) a wneir â’r person hwnnw o dan un o’r darpariaethau a ganlyn o Ddeddf 2006—

- (a) adran 41(2)(b) (gwasanaethau meddygol sylfaenol),
- (b) adran 42(1) (contractau gwasanaethau meddygol cyffredinol: rhagarweiniol), neu
- (c) adran 50 (trefniadau gan Fwrdd Iechyd Lleol ar gyfer darparu gwasanaethau meddygol sylfaenol);

ystyr “y Cynllun” (“*the Scheme*”) yw’r cynllun sydd wedi ei sefydlu gan reoliad 3(1);

ystyr “Deddf 2006” (“*the 2006 Act*”) yw Deddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006;

ystyr “y gwasanaeth iechyd” (“*the health service*”) yw’r gwasanaeth iechyd a barheir o dan adran 1(1) o Ddeddf 2006;

ystyr “gwasanaethau iechyd ategol” (“*ancillary health services*”) yw gwasanaethau, ac eithrio gwasanaethau meddygol sylfaenol, a ddarperir fel rhan o’r gwasanaeth iechyd gan berson a oedd, ar adeg darparu’r gwasanaethau—

- (a) yn gcontractwr Rhan 4 a’i brif weithgaredd oedd darparu gwasanaethau meddygol sylfaenol,
- (b) yn is-gcontractwr gwasanaethau meddygol sylfaenol a’i brif weithgaredd oedd darparu gwasanaethau meddygol sylfaenol, neu
- (c) yn berson a oedd yn darparu’r gwasanaethau o dan drefniant contractiol â pherson a grybwyllir ym mharagraff (a) neu (b);

ystyr “gwasanaethau meddygol sylfaenol” (“*primary medical services*”) yw’r gwasanaethau meddygol sylfaenol y mae’r Bwrdd Iechyd Lleol o dan ddyletswydd i’w sicrhau yn unol ag adran 41 o Ddeddf 2006;

ystyr “is-gcontractwr gwasanaethau meddygol sylfaenol” (“*primary medical services sub-contractor*”) yw person sy’n darparu gwasanaethau meddygol sylfaenol o dan drefniant contractiol a wneir â chontractwr Rhan 4;

“ancillary health services” (“*gwasanaethau iechyd ategol*”) means services, other than primary medical services, provided as part of the health service by a person who, at the time of providing the services, was—

- (a) a Part 4 contractor whose principal activity consisted of the provision of primary medical services,
- (b) a primary medical services sub-contractor whose principal activity consisted of the provision of primary medical services, or
- (c) a person providing the services under a contractual arrangement with a person mentioned in paragraph (a) or (b);

“eligible person” (“*person cymwys*”) means a person specified in regulation 5;

“the health service” (“*y gwasanaeth iechyd*”) means the health service continued under section 1(1) of the 2006 Act;

“Local Health Board” (“*Bwrdd Iechyd Lleol*”) means a Local Health Board established in accordance with section 11(2) of the 2006 Act;

“medical defence organisation” (“*sefydliad amddiffyn meddygol*”) means an organisation—

- (a) that does not carry on activities for the purposes of making profits for distribution to its members or others, and
- (b) whose objects include the provision of professional indemnity cover, on a discretionary basis, for the persons providing services as part of the health service;

“Part 4 contractor” (“*contractwr Rhan 4*”) means a person providing, or making arrangements for the provision of, primary medical services in accordance with a contractual arrangement (including a contractual arrangement or agreement that is part of a set of arrangements for the provision of services, in addition to the primary medical services) made with that person under one of the following provisions of the 2006 Act—

- (a) section 41(2)(b) (primary medical services),
- (b) section 42(1) (general medical services contracts: introductory), or
- (c) section 50 (arrangements by a Local Health Board for the provision of primary medical services);

“primary medical services” (“*gwasanaethau meddygol sylfaenol*”) means the primary medical services that the Local Health Board is under a duty to secure in accordance with section 41 of the 2006 Act;

ystyr “person cymwys” (“*eligible person*”) yw person a bennir yn rheoliad 5;

ystyr “sefydliad amddiffyn meddygol” (“*medical defence organisation*”) yw sefydliad—

- (a) nad yw’n cynnal gweithgareddau at ddibenion gwneud elw ar gyfer ei ddosbarthu i’w aelodau neu i eraill, a
- (b) y mae ei amcanion yn cynnwys darparu sicrwydd indemniad proffesiynol, yn ôl disgrisiwn, ar gyfer y personau sy’n darparu gwasanaethau fel rhan o’r gwasanaeth iechyd;

ystyr “swyddogaeth berthnasol” (“*relevant function*”) yw—

- (a) darparu’r canlynol neu wneud trefniadau ar gyfer darparu’r canlynol—
  - (i) gwasanaethau meddygol sylfaenol, neu
  - (ii) gwasanaethau iechyd ategol, neu
- (b) cyflawni gweithgaredd mewn cysylltiad ag unrhyw un neu ragor o’r gweithgareddau a grybwyllir ym mharagraff (a).

### Sefydlu a gweinyddu’r Cynllun

3.—(1) Mae cynllun, sydd i’w alw’n Gynllun Atebolrwyddau Presennol ar gyfer Ymarfer Cyffredinol, wedi ei sefydlu.

(2) Gweinidogion Cymru sydd i weinyddu’r Cynllun.

### Ystyr “atebolrwydd presennol”

4. Yn y Rheoliadau hyn, ystyr “atebolrwydd presennol” yw atebolrwydd mewn camwedd o dan gyfraith Cymru a Lloegr sy’n ddyledus gan berson cymwys i drydydd parti sy’n codi o weithred neu anweithred—

- (a) a ddigwyddodd cyn 1 Ebrill 2019,
- (b) a oedd yn gysylltiedig â swyddogaeth berthnasol,
- (c) sy’n achosi anaf personol neu golled, neu a achosodd anaf personol neu golled, i’r trydydd parti, a
- (d) a oedd yn weithred neu’n anweithred ar ran y person cymwys neu gyflogai i’r person cymwys, a oedd yn gysylltiedig â gwneud diagnosis o salwch neu ofal neu driniaeth unrhyw berson.

“primary medical services sub-contractor” (“*is-gontractwr gwasanaethau meddygol sylfaenol*”) means a person providing primary medical services under a contractual arrangement made with a Part 4 contractor;

“relevant function” (“*swyddogaeth berthnasol*”) means—

- (a) providing or making arrangements for the provision of—
  - (i) primary medical services, or
  - (ii) ancillary health services, or
- (b) carrying out an activity in connection with any of the activities mentioned in paragraph (a);

“relevant liability” (“*atebolrwydd perthnasol*”) means an existing liability to which the Scheme applies;

“the Scheme” (“*y Cynllun*”) means the scheme established by regulation 3(1).

### Establishment and administration of the Scheme

3.—(1) A scheme, to be known as the Existing Liabilities Scheme for General Practice, is established.

(2) The Scheme is to be administered by the Welsh Ministers.

### Meaning of “existing liability”

4. In these Regulations, “existing liability” means a liability in tort under the law of England and Wales owed by an eligible person to a third party which arises from an act or omission that—

- (a) occurred before 1 April 2019,
- (b) was connected to a relevant function,
- (c) results, or resulted, in personal injury or loss to the third party, and
- (d) was an act or omission on the part of the eligible person or an employee of the eligible person, connected to the diagnosis of an illness or the care or treatment of any person.

## Personau cymwys

5.—(1) Mae person cymwys yn berson sydd neu a oedd, ar y dyddiad perthnasol—

- (a) yn aelod o sefydliad amddiffyn meddygol ac yn berson sy'n dod o fewn paragraff (2), neu
- (b) yn berson y mae person sy'n dod o fewn is-baragraff (a) wedi ei gymryd ymlaen i gyflawni swyddogaeth berthnasol neu y mae person o'r fath yn caniatáu iddo gyflawni swyddogaeth berthnasol.

(2) Mae'r personau a ganlyn yn dod o fewn y paragraff hwn—

- (a) contractwr Rhan 4,
- (b) is-gontractwr gwasanaethau meddygol sylfaenol, neu
- (c) person sy'n darparu gwasanaethau iechyd ategol.

(3) Ym mharagraff (1), ystyr “dyddiad perthnasol” yw'r dyddiad y digwyddodd y weithred neu'r anweithred a arweiniodd at atebolrwydd presennol sydd gan y person cymwys.

## Atebolrwyddau y mae'r Cynllun yn gymwys iddynt

6.—(1) Yn ddarostyngedig i baragraff (2), mae'r Cynllun yn gymwys i atebolrwydd presennol—

- (a) pan fo Gweinidogion Cymru wedi ymrwmo i drefniant contractiol â sefydliad amddiffyn meddygol, a
- (b) o dan y trefniant hwnnw, pan fo'n ofynnol i Weindogion Cymru ystyried darparu indemniad neu gynhorthwy mewn cysylltiad â gweithred neu anweithred ar ran aelod, neu gyn-aelod, o'r sefydliad amddiffyn meddygol sy'n arwain at yr atebolrwydd presennol.

(2) Mae'r Cynllun yn gymwys i atebolrwydd presennol sy'n dod o fewn paragraff (1) o 1 Ebrill 2021 neu unrhyw ddyddiad cynharach y mae Gweinidogion Cymru yn penderfynu arno.

(3) Rhaid i Weindogion Cymru gyhoeddi unrhyw ddyddiad y penderfynir arno o dan baragraff (2) yn y London Gazette, yr Edinburgh Gazette a'r Belfast Gazette.

## Taliadau o dan y Cynllun

7.—(1) Caiff Gweinidogion Cymru benderfynu a yw taliad o dan y Cynllun i'w wneud mewn cysylltiad ag atebolrwydd perthnasol.

(2) Caniateir i daliad o dan y Cynllun gael ei wneud i berson cymwys neu ar ei ran.

## Eligible persons

5.—(1) An eligible person is a person who is, or who, on the relevant date, was—

- (a) a member of a medical defence organisation and a person falling within paragraph (2), or
- (b) a person engaged or permitted to carry out a relevant function by a person falling within sub-paragraph (a).

(2) The following persons fall within this paragraph—

- (a) a Part 4 contractor,
- (b) a primary medical services sub-contractor, or
- (c) a person providing ancillary health services.

(3) In paragraph (1), “relevant date” means the date on which the act or omission giving rise to an existing liability of the eligible person, occurred.

## Liabilities to which the Scheme applies

6.—(1) Subject to paragraph (2), the Scheme applies to an existing liability where—

- (a) the Welsh Ministers have entered into a contractual arrangement with a medical defence organisation, and
- (b) under that arrangement, the Welsh Ministers are required to consider providing indemnity or assistance in respect of an act or omission on the part of a member, or former member, of the medical defence organisation which gives rise to the existing liability.

(2) The Scheme applies to an existing liability falling within paragraph (1) from 1 April 2021 or any earlier date determined by the Welsh Ministers.

(3) The Welsh Ministers must publish any date determined under paragraph (2) in the London, Edinburgh and Belfast Gazettes.

## Payments under the Scheme

7.—(1) The Welsh Ministers may determine whether a payment under the Scheme is to be made in respect of a relevant liability.

(2) A payment under the Scheme may be made to, or on behalf of, an eligible person.

(3) Caniateir i daliad o dan y Cynllun gael ei wneud hefyd pan fo person cymwys—

- (a) wedi marw,
- (b) wedi ei ddi-ddymu neu ei ddirwyn i ben (o fewn ystyr “dissolved” a “wound up” yn Neddf Cwmnïau 2006(1)), neu
- (c) wedi mynd i ansolfedd neu wedi mynd yn fethdalwr.

(4) Gweinidogion Cymru sydd i benderfynu ar swm unrhyw daliad a wneir o dan y Cynllun yn unol â rheoliad 8.

(5) Yn y rheoliad hwn—

- (a) mae i “methdalwr” yr un ystyr ag a roddir i “bankrupt” yn adran 381(1) o Ddeddf Ansolffedd 1986(2) (“Bankrupt” a’r derminoleg gysylltiedig), a
- (b) mae i “ansolfedd” yr un ystyr ag a roddir i “insolvency” yn adran 247(1)(3) o Ddeddf Ansolffedd 1986 (ystyr “insolvency” a “go into liquidation”).

#### **Materion perthnasol wrth benderfynu ar swm taliad o dan y Cynllun**

**8.**—(1) Wrth benderfynu ar swm taliad o dan y Cynllun, rhaid i Weinidogion Cymru roi sylw i’r materion (“materion perthnasol”) a bennir yn y paragraffau a ganlyn.

(2) Pan fo iawndal wedi ei ddyfarndalu gan lys yn erbyn person cymwys, y materion perthnasol yw swm—

- (a) y dyfarndal,
- (b) y costau cyfreithiol a’r costau cysylltiedig a ddyfarndelir i’r hawlydd, ac
- (c) unrhyw gostau cyfreithiol a chostau cysylltiedig yr eir iddynt gan neu ar ran y person cymwys.

(3) Pan fo person cymwys, mewn unrhyw achos cyfreithiol, wedi cytuno ar setliad neu pan gytunwyd ar setliad o’r fath ar ei ran, y materion perthnasol yw swm—

- (a) unrhyw swm a delir neu sy’n daladwy gan y person cymwys mewn perthynas â’r hawliad am iawndal,

(3) A payment under the Scheme may also be made where an eligible person—

- (a) has died,
- (b) has been dissolved or wound up (within the meaning of the Companies Act 2006(1)), or
- (c) has entered into insolvency or is bankrupt.

(4) The amount of any payment made under the Scheme is to be determined by the Welsh Ministers in accordance with regulation 8.

(5) In this regulation—

- (a) “bankrupt” has the same meaning as that given in section 381(1) of the Insolvency Act 1986(2) (“Bankrupt” and associated terminology), and
- (b) “insolvency” has the same meaning as that given in section 247(1)(3) of the Insolvency Act 1986 (meaning of “insolvency” and “go into liquidation”).

#### **Relevant matters in determining the amount of a payment under the Scheme**

**8.**—(1) In determining the amount of a payment under the Scheme, the Welsh Ministers must have regard to the matters (“relevant matters”) specified in the following paragraphs.

(2) Where an award of damages has been made by a court against an eligible person, the relevant matters are the amount of—

- (a) the award,
- (b) the legal and associated costs awarded to the claimant, and
- (c) any legal and associated costs incurred by, or on behalf of, the eligible person.

(3) Where, in any legal proceedings, a settlement has been agreed to by, or on behalf of, an eligible person, the relevant matters are the amount of—

- (a) any sum paid or payable by the eligible person in relation to the claim for damages,

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(1) 2006 p. 46.

(2) 1986 p. 45. Diwygiwyd adran 381(1) o Ddeddf Ansolffedd 1986 gan Ddeddf Menter a Diwygio Rheoleiddio 2013 (p. 24), adran 71(3), Atodlen 19, paragraffau 1, a 52(1) a (2).

(3) Diwygiwyd adran 247(1) o Ddeddf Ansolffedd 1986 gan Ddeddf Menter 2002 (p. 40), adran 248(3), Atodlen 17, paragraffau 9, a 33(1) a (2).

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(1) 2006 c. 46.

(2) 1986 c. 45. Section 381(1) of the Insolvency Act 1986 was amended by the Enterprise and Regulatory Reform Act 2013 (c. 24), section 71(3), Schedule 19, paragraphs 1, and 52(1) and (2).

(3) Section 247(1) of the Insolvency Act 1986 was amended by the Enterprise Act 2002 (c. 40), section 248(3), Schedule 17, paragraphs 9, and 33(1) and (2).



- (b) unrhyw gyfraniad gan y person cymwys tuag at unrhyw gostau cyfreithiol a chostau cysylltiedig yr eir iddynt gan yr hawlydd, ac
- (c) unrhyw gostau cyfreithiol a chostau cysylltiedig yr eir iddynt gan neu ar ran y person cymwys.

(4) Pan fo llys, mewn unrhyw achos cyfreithiol, wedi gwrthod dyfarndalu iawndal yn erbyn person cymwys, y materion perthnasol yw—

- (a) swm unrhyw gostau cyfreithiol a chostau cysylltiedig yr eir iddynt gan neu ar ran y person cymwys, a
- (b) y graddau nad yw'r costau hynny yn adenilladwy naill ai gan yr hawlydd neu gan yr Asiantaeth Cymorth Cyfreithiol o dan reoliadau(1) sydd wedi eu gwneud o dan adran 26(5) o Ddeddf Cymorth Cyfreithiol, Dedfrydu a Chosbi Troseddwyr 2012(2) (costau mewn achosion sifil).

(5) Pan fo person cymwys, ac eithrio yng nghwrs achos cyfreithiol, wedi cytuno, pa un ai er mwyn setlo hawliad yn erbyn y person cymwys neu fel arall, i wneud unrhyw daliad i berson, neu unrhyw gyfraniad tuag at y costau cyfreithiol a'r costau cysylltiedig yr eir iddynt gan berson, mewn cysylltiad ag atebolrwydd perthnasol, y materion perthnasol yw swm—

- (a) y taliad,
- (b) unrhyw gyfraniad, ac
- (c) unrhyw gostau cyfreithiol a chostau cysylltiedig yr eir iddynt gan neu ar ran y person cymwys.

(6) Pan fo person cymwys wedi cytuno i gael ei rwymo gan benderfyniad gan unrhyw berson o ran gwneud taliad gan y person cymwys mewn cysylltiad ag atebolrwydd perthnasol, y materion perthnasol yw swm—

- (a) y taliad,
- (b) unrhyw gostau cyfreithiol neu gostau cysylltiedig a ddyfarndelir i'r hawlydd, ac
- (c) unrhyw gostau cyfreithiol neu gostau cysylltiedig yr eir iddynt gan neu ar ran y person cymwys.

### **Yr amgylchiadau na chaniateir i daliad gael ei wneud odanynt o dan y Cynllun**

9. Heb gyfyngu ar bwerau Gweinidogion Cymru o dan reoliad 7, caiff Gweinidogion Cymru benderfynu nad oes taliad i'w wneud o dan y Cynllun—

- (b) any contribution by the eligible person towards any legal and associated costs incurred by the claimant, and
- (c) any legal and associated costs incurred by, or on behalf of, the eligible person.

(4) Where, in any legal proceedings, a court has declined to award damages against an eligible person, the relevant matters are—

- (a) the amount of any legal and associated costs incurred by, or on behalf of, the eligible person, and
- (b) the extent to which those costs are not recoverable either from the claimant or from the Legal Aid Agency under regulations(1) made under section 26(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(2) (costs in civil proceedings).

(5) Where, other than in the course of legal proceedings, an eligible person has agreed, whether in settlement of a claim against the eligible person or otherwise, to make any payment to, or any contribution towards the legal and associated costs incurred by, a person in respect of a relevant liability, the relevant matters are the amount of—

- (a) the payment,
- (b) any contribution, and
- (c) any legal and associated costs incurred by, or on behalf of, the eligible person.

(6) Where an eligible person has agreed to be bound by the determination of any person as to the making of a payment by the eligible person in respect of a relevant liability, the relevant matters are the amount of—

- (a) the payment,
- (b) any legal or associated costs awarded to the claimant, and
- (c) any legal or associated costs incurred by, or on behalf of, the eligible person.

### **Circumstances in which a payment may not be made under the Scheme**

9. Without limit to the Welsh Ministers' powers under regulation 7, the Welsh Ministers may determine that a payment is not to be made under the Scheme where—

(1) O.S. 2013/611.  
(2) 2012 p. 10.

(1) S.I. 2013/611.  
(2) 2012 c. 10.

- (a) pan fo'r person cymwys wedi cyfaddef atebolrwydd, heb gael cydsyniad ysgrifenedig Gweinidogion Cymru yn gyntaf,
  - (b) pan fo llys wedi penderfynu ar atebolrwydd mewn achos a gynhelir gan neu ar ran y person cymwys, ac eithrio gan ymgynghori â Gweinidogion Cymru,
  - (c) pan na fo'r person cymwys wedi cydymffurfio ag amod a osodir gan Weinidogion Cymru mewn perthynas â hawliad,
  - (d) pan fo taliad yn dod i'w wneud gan y person cymwys a, heb gael cydsyniad ysgrifenedig Gweinidogion Cymru yn gyntaf, pan fo'r person cymwys yn cytuno—
    - (i) i gael ei rwymo gan benderfyniad gan unrhyw berson o ran gwneud taliad mewn cysylltiad ag atebolrwydd perthnasol y mae'r Cynllun yn gymwys iddo, neu
    - (ii) i wneud unrhyw daliad arall mewn cysylltiad â'r atebolrwydd perthnasol, ac eithrio yng nghwrs achos cyfreithiol neu i wneud taliad o ganlyniad i setliad mewn achos cyfreithiol,
  - (e) pan fyddai'r taliad yn swm sy'n llai nag unrhyw swm a bennir gan Weinidogion Cymru fel yr isafswm sy'n daladwy o dan y Cynllun mewn cysylltiad ag atebolrwydd perthnasol, neu
  - (f) pan fo'r person cymwys wedi methu (pa un ai'n gyfan gwbl neu'n rhannol) â chydymffurfio â hysbysiad o dan reoliad 11.
- (a) the eligible person has made an admission of liability, without first obtaining the Welsh Ministers' written consent,
  - (b) liability has been determined by a court in proceedings conducted by, or on behalf of, the eligible person, otherwise than in consultation with the Welsh Ministers,
  - (c) the eligible person has not complied with a condition imposed by the Welsh Ministers in relation to a claim,
  - (d) a payment falls to be made by the eligible person and, without first obtaining the Welsh Ministers' written consent, the eligible person agrees to—
    - (i) be bound by the determination of any person as to the making of a payment in respect of a relevant liability to which the Scheme applies, or
    - (ii) make any other payment in respect of the relevant liability, otherwise than in the course of legal proceedings or agrees to make a payment in consequence of a settlement of legal proceedings,
  - (e) the payment would be an amount less than any amount specified by the Welsh Ministers as being the minimum amount payable under the Scheme in respect of a relevant liability, or
  - (f) the eligible person has failed (whether fully or in part) to comply with a notice under regulation 11.

### Taliadau ar gyfrif

**10.**—(1) Heb gyfyngu ar bwerau Gweinidogion Cymru o dan reoliad 7, pan fo taliad yn dod i'w wneud gan berson cymwys mewn cysylltiad ag atebolrwydd perthnasol ac na fo Gweinidogion Cymru wedi gwneud penderfyniad eto o dan reoliad 7 o ran a oes taliad i'w wneud mewn cysylltiad â'r atebolrwydd perthnasol, caiff Gweinidogion Cymru wneud taliad ar gyfrif mewn cysylltiad â'r atebolrwydd perthnasol.

(2) Caniateir i daliad ar gyfrif gael ei wneud i berson cymwys neu ar ei ran.

(3) Pan fo swm unrhyw daliad ar gyfrif yn fwy nag unrhyw swm y penderfynir arno wedi hynny o dan reoliad 7, mae'r gweddill yn adenilladwy oddi wrth y person cymwys neu'r person y gwnaed y taliad ar gyfrif iddo.

### Payments on account

**10.**—(1) Without limit to the powers of the Welsh Ministers under regulation 7, where a payment falls to be made by an eligible person in connection with a relevant liability and the Welsh Ministers have not yet made a determination under regulation 7 as to whether a payment is to be made in respect of the relevant liability, the Welsh Ministers may make a payment on account in respect of the relevant liability.

(2) A payment on account may be made to, or on behalf of, an eligible person.

(3) Where the amount of any payment on account exceeds any amount subsequently determined under regulation 7, the excess is recoverable from the eligible person or the person to whom the payment on account was made.

(4) Pan na fo unrhyw daliad i'w wneud o dan reoliad 7 mewn cysylltiad ag atebolrwydd perthnasol, mae unrhyw daliad ar gyfrif a wneir mewn cysylltiad ag atebolrwydd perthnasol yn adenilladwy oddi wrth y person cymwys neu'r person y gwnaed y taliad ar gyfrif iddo.

### **Yr wybodaeth a'r cynhorthwy sydd i'w darparu gan bersonau cymwys**

**11.**—(1) At ddibenion y Cynllun, caiff Gweinidogion Cymru, drwy hysbysiad ysgrifenedig, ei gwneud yn ofynnol i berson cymwys ddarparu i Weinidogion Cymru unrhyw gynhorthwy neu wybodaeth a bennir yn yr hysbysiad.

(2) Caiff hysbysiad a roddir o dan baragraff (1) bennu—

- (a) y dyddiad erbyn pryd y mae rhaid darparu unrhyw gynhorthwy neu wybodaeth a bennir yn yr hysbysiad, a
- (b) y modd y mae'r cynhorthwy neu'r wybodaeth i'w ddarparu neu i'w darparu.

(3) Rhaid i berson cymwys gydymffurfio â hysbysiad o dan baragraff (1).

### **Gwybodaeth o ran unrhyw gyfarwyddydau neu ganllawiau a roddir gan Weinidogion Cymru**

**12.** Rhaid i Weinidogion Cymru roi ar gael i bersonau cymwys yr wybodaeth a ganlyn, ar unrhyw ffurf ac ar unrhyw adegau y mae Gweinidogion Cymru yn ystyried eu bod yn briodol—

- (a) unrhyw gyfarwyddydau a roddir gan Weinidogion Cymru o dan adran 30(5) o Ddeddf 2006, a
- (b) unrhyw ganllawiau a roddir gan Weinidogion Cymru i unrhyw un neu ragor o'r cyrff a bennir yn yr is-adran honno, mewn perthynas â'r Cynllun.

(4) Where no payment is to be made under regulation 7 in respect of a relevant liability, any payment on account made in respect of a relevant liability is recoverable from the eligible person or the person to whom the payment on account was made.

### **Information and assistance to be provided by eligible persons**

**11.**—(1) For the purposes of the Scheme, the Welsh Ministers may, by notice in writing, require an eligible person to provide the Welsh Ministers with such assistance or information as may be specified in the notice.

(2) A notice given under paragraph (1) may specify—

- (a) the date by which any assistance or information specified in the notice must be provided, and
- (b) the manner in which the assistance or information is to be provided.

(3) An eligible person must comply with a notice under paragraph (1).

### **Information as to any directions or guidance given by the Welsh Ministers**

**12.** The Welsh Ministers must make the following information available to eligible persons, in such form and at such times as the Welsh Ministers consider appropriate—

- (a) any directions given by the Welsh Ministers under section 30(5) of the 2006 Act, and
- (b) any guidance given by the Welsh Ministers to any of the bodies specified in that subsection, in relation to the Scheme.

*Vaughan Gething*

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol,  
un o Weinidogion Cymru  
11 Mawrth 2020

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Minister for Health and Social Services, one of the  
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