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INSTRUMENTS

2023 Rhif 1327 (Cy. 238)

2023 No. 1327 (W. 238)

**GOFAL CYMDEITHASOL,
CYMRU**

SOCIAL CARE, WALES

**Rheoliadau Gwasanaethau
Rheoleiddiedig (Gwasanaethau
Preswyl Ysgolion Arbennig)
(Cymru) 2023**

**The Regulated Services (Special
School Residential Services)
(Wales) Regulations 2023**

NODYN ESBONIADOL

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

Mae'r Rheoliadau hyn yn rhagnodi bod y ddarpariaeth o lety a gofal neu nyrsio i ddisgybl ysgol arbennig yn "gwasanaeth rheoleiddiedig" at ddibenion Rhan 1 o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 ("y Ddeddf") a byddant yn ei gwneud yn ofynnol i berson sy'n darparu gwasanaeth o'r fath gofrestru o dan y Ddeddf.

At ddibenion y Rheoliadau hyn, ysgolion, pa un a gânt eu cynnal gan awdurdod lleol ai peidio, sy'n rhoi darpariaeth ddysgu ychwanegol i ddisgyblion ag anghenion dysgu ychwanegol yw ysgolion arbennig.

Cyfeirir at y gwasanaeth hwn fel Gwasanaeth Preswyl Ysgol Arbennig.

Mae Rheoliad 4 yn ddarpariaeth drosiannol sy'n atal dros dro effaith adran 5 o'r Ddeddf ar gyfer darparwyr presennol unrhyw wasanaethau preswyl ysgolion arbennig sydd wedi eu cynnwys mewn cais i gofrestru cyn 1 Gorffennaf 2024.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, lluniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn. Gellir cael copi oddi wrth: Yr Adran Iechyd a Gwasanaethau Cymdeithasol, Llywodraeth Cymru, Parc Cathays, CF10 3NQ ac fe'i cyhoeddir ar www.llyw.cymru.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the provision of accommodation and care or nursing to a pupil of a special school as a "regulated service" for the purposes of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the Act") and will require a person providing such a service to register under the Act.

For the purposes of these Regulations, special schools are schools, whether or not maintained by a local authority, which provide additional learning provision for pupils with additional learning needs.

This service is referred to as a Special School Residential Service.

Regulation 4 is a transitional provision which suspends the effect of section 5 of the Act for existing providers of any special school residential services which are included in an application to register before 1 July 2024.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, CF10 3NQ and is published on www.gov.wales.

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Rheoliadau Gwasanaethau
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Preswyl Ysgolion Arbennig)
(Cymru) 2023

The Regulated Services (Special
School Residential Services)
(Wales) Regulations 2023

Gwnaed am 12.05 p.m. ar 6 Rhagfyr 2023

Made at 12.05 p.m. on 6 December 2023

Yn dod i rym 31 Rhagfyr 2023

Coming into force 31 December 2023

Mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddir gan adrannau 2(1)(i)(1), 186(1) a 187(1) o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016(2) (“y Ddeddf”) ac ar ôl ymgynghori ag unrhyw bersonau sy’n briodol yn eu barn hwy, fel sy’n ofynnol gan adran 2(4) o’r Ddeddf.

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 2(1)(i)(1), 186(1) and 187(1) of the Regulation and Inspection of Social Care (Wales) Act 2016(2) (“the Act”) and having consulted such persons as they think appropriate, as required by section 2(4) of the Act.

Gosodwyd drafft o’r Rheoliadau hyn gerbron Senedd Cymru o dan adran 187(2)(a) o’r Ddeddf ac mae wedi ei gymeradwyo drwy benderfyniad gan Senedd Cymru.

A draft of these Regulations was laid before Senedd Cymru under section 187(2)(a) of the Act and has been approved by a resolution of Senedd Cymru.

Enwi, dod i rym a dehongli

Title, coming into force and interpretation

1.—(1) Enw’r Rheoliadau hyn yw Rheoliadau Gwasanaethau Rheoleiddiedig (Gwasanaethau Preswyl Ysgolion Arbennig) (Cymru) 2023.

1.—(1) The title of these Regulations is the Regulated Services (Special School Residential Services) (Wales) Regulations 2023.

(2) Daw’r Rheoliadau hyn i rym ar 31 Rhagfyr 2023.

(2) These Regulations come into force on 31 December 2023.

(3) Yn y Rheoliadau hyn—

(3) In these Regulations —

ystyr “y Ddeddf” (“*the Act*”) yw Deddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016.

“the Act” (“*y Ddeddf*”) means the Regulation and Inspection of Social Care (Wales) Act 2016.

(1) Mae adran 2(1)(i) yn cyfeirio at wasanaeth “a ragnodir”. Diffinnir “a ragnodir” a “rhagnodedig” yn adran 189 o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 i olygu “wedi ei ragnodi drwy reoliadau a wneir gan Weinidogion Cymru”.

(2) 2016 dccc 2.

(1) Section 2(1)(i) refers to a service which is “prescribed”. “Prescribed” is defined in section 189 of the Regulation and Inspection of Social Care (Wales) Act 2016 to mean “prescribed by regulations made by Welsh Ministers”.

(2) 2016 anaw 2.

Ystyr gwasanaeth preswyl ysgol arbennig

2.—(1) Ystyr “gwasanaeth preswyl ysgol arbennig” (“*special school residential service*”) yw'r ddarpariaeth o lety ynghyd â gofal neu nyrsio mewn ysgol arbennig yng Nghymru ar gyfer disgyblion yr ysgol.

(2) Ond nid yw llety ynghyd â gofal neu nyrsio a ddarperir mewn ysgol arbennig yng Nghymru ar gyfer disgyblion yn wasanaeth preswyl ysgol arbennig os y'i darperir—

- (a) mewn man lle y darperir gwasanaeth cartref gofal,
- (b) mewn man lle y darperir gwasanaeth llety diogel, neu
- (c) mewn ysbyty.

(3) Yn y rheoliad hwn—

mae i “anghenion dysgu ychwanegol” (“*additional learning needs*”) a “darpariaeth ddysgu ychwanegol” (“*additional learning provision*”) yr ystyron a roddir gan adran 2 ac adran 3 o Ddeddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018(1);

ystyr “awdurdod lleol” (“*local authority*”) yw cyngor sir neu gyngor bwrdeistref sirol yng Nghymru;

ystyr “disgybl” (“*pupil*”) yw person sy'n cael addysg yn yr ysgol arbennig;

mae i “gofal” (“*care*”) yr ystyr a roddir gan adran 3(1)(a) o'r Ddeddf;

mae i “gwasanaeth cartref gofal” (“*care home service*”) yr ystyr a roddir gan baragraff 1 o Atodlen 1 i'r Ddeddf;

mae i “gwasanaeth llety diogel” (“*secure accommodation service*”) yr ystyr a roddir gan baragraff 2 o Atodlen 1 i'r Ddeddf;

ystyr “nyrs” (“*nurse*”) yw nyrs gymwysedig neu fydwraig gymwysedig sydd wedi cofrestru â'r Cyngor Nyrsio a Bydwreigiaeth yn unol ag erthygl 5 o Orchymyn Nyrsio a Bydwreigiaeth 2001(2);

ystyr “nyrsio” (“*nursing*”) yw gwasanaeth sy'n cynnwys naill ai ddarparu gofal neu gynllunio, goruchwyllo neu ddirprwyo'r gwaith o ddarparu gofal, ond mae'n eithrio unrhyw wasanaeth nad oes angen iddo, o ran ei natur a'r amgylchiadau y mae i'w ddarparu ynddynt, gael ei ddarparu gan nyrs;

Meaning of special school residential service

2.—(1) A “special school residential service” (“*gwasanaeth preswyl ysgol arbennig*”) is the provision of accommodation together with care or nursing at a special school in Wales for pupils of the school.

(2) But accommodation together with care or nursing provided at a special school in Wales for pupils is not a special school residential service if it is provided at—

- (a) a place where a care home service is provided,
- (b) a place where a secure accommodation service is provided, or
- (c) a hospital.

(3) In this regulation—

“additional learning needs” (“*anghenion dysgu ychwanegol*”) and “additional learning provision” (“*darpariaeth ddysgu ychwanegol*”) have the meanings given by section 2 and section 3 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018(1);

“care” (“*gofal*”) has the meaning given by section 3(1)(a) of the Act;

“care home service” (“*gwasanaeth cartref gofal*”) has the meaning given by paragraph 1 of Schedule 1 to the Act;

“hospital” (“*ysbyty*”) means—

- (a) a health service hospital within the meaning given by the National Health Service (Wales) Act 2006(2),
- (b) an independent hospital within the meaning given by the Care Standards Act 2000(3), and
- (c) an independent clinic within the meaning given by the Care Standards Act 2000;

“local authority” (“*awdurdod lleol*”) means the council of a county or county borough in Wales;

“nurse” (“*nyrs*”) means a qualified nurse or qualified midwife registered with the Nursing and Midwifery Council in accordance with article 5 of the Nursing and Midwifery Order 2001(4);

“nursing” (“*nyrsio*”) means a service which involves either the provision of care or the planning, supervision or delegation of the provision of care, but excludes any service which by its nature and in the circumstances in which it is to be provided, does not need to be provided by a nurse;

(1) 2018 decc 2.
(2) O.S. 2002/253.

(1) 2018 anaw 2.
(2) 2006 c. 42.
(3) 2000 c. 14.
(4) S.I. 2002/253.

ystyr “ysbyty” (“*hospital*”) yw—

- (a) ysbyty gwasanaeth iechyd o fewn yr ystyr a roddir i “health service hospital” gan Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006(1),
- (b) ysbyty annibynnol o fewn yr ystyr a roddir i “independent hospital” gan Ddeddf Safonau Gofal 2000(2), ac
- (c) clinig annibynnol o fewn yr ystyr a roddir i “independent clinic” gan Ddeddf Safonau Gofal 2000;

mae i “ysgol” yr ystyr a roddir i “school” gan adran 4 o Ddeddf Addysg 1996(3);

ystyr “ysgol arbennig” (“*special school*”) yw ysgol, pa un a gaiff ei chynnal gan awdurdod lleol ai peidio, y mae’r cyfan o’i darpariaeth addysgol, neu’r rhan fwyaf ohoni, wedi ei threfnu’n arbennig er mwyn creu darpariaeth ddysgu ychwanegol ar gyfer personau ag anghenion dysgu ychwanegol.

Rhagnodi bod gwasanaeth preswyl ysgol arbennig yn wasanaeth rheoleiddiedig

3. Rhagnodir bod gwasanaeth preswyl ysgol arbennig yn wasanaeth rheoleiddiedig at ddibenion Rhan 1 o’r Ddeddf.

Darpariaeth drosiannol ar gyfer darparwyr presennol

4.—(1) Nid yw adran 5 o’r Ddeddf (gofyniad i gofrestru) yn gymwys i ddarparwr presennol yn ystod y cyfnod trosiannol mewn cysylltiad â gwasanaeth perthnasol.

(2) Yn y rheoliad hwn—

ystyr cyfnod trosiannol (“*transition period*”) yw’r cyfnod sy’n dechrau â dyddiad dod i rym y rheoliadau hyn ac sy’n dod i ben naill ai—

- (a) ar y dyddiad pan fydd y cais i Weinidogion Cymru yn cael ei benderfynu; neu
- (b) mewn achos pan fo penderfyniad gan Weinidogion Cymru yn destun apêl i’r tribiwnlys neu apêl ddilynol, ar ddyddiad dyfarniad yr apêl honno neu ddyfarniad unrhyw apêl ddilynol;

ystyr “darparwr presennol” (“*existing provider*”) yw person sy’n darparu gwasanaeth preswyl ysgol arbennig yn union cyn dyddiad dod i rym y rheoliadau hyn;

“pupil” (“*disgybl*”) means a person who is receiving education at the special school;

“secure accommodation service” (“*gwasanaeth llety diogel*”) has the meaning given by paragraph 2 of Schedule 1 to the Act;

“school” (“*ysgol*”) has the meaning given by section 4 of the Education Act 1996(1);

“special school” (“*ysgol arbennig*”) means a school, whether or not maintained by a local authority, all or most of whose educational provision is specially organised to make additional learning provision for persons with additional learning needs.

Prescription of special school residential service as regulated service

3. A special school residential service is prescribed as a regulated service for the purposes of Part 1 of the Act.

Transitional provision for existing providers

4.—(1) Section 5 of the Act (requirement to register) does not apply to an existing provider during the transition period in respect of a relevant service.

(2) In this regulation—

“existing provider” (“*darparwr presennol*”) means a person who provides a special school residential service immediately before the date of coming into force of these regulations;

“relevant service” (“*gwasanaeth perthnasol*”) means a special school residential service provided at a place which is the subject of an application to register under section 6 of the Act made to the Welsh Ministers before 1 July 2024;

“transition period” (“*cyfnod trosiannol*”) means the period beginning with the date of coming into force of these regulations and ending either—

- (a) on the date when the application to the Welsh Ministers is determined; or

(1) 2006 p. 42.
(2) 2000 p. 14.
(3) 1996 p. 56.

(1) 1996 c. 56.

ystyr “gwasanaeth perthnasol” (“*relevant service*”) yw gwasanaeth preswyl ysgol arbennig a ddarperir mewn lleoliad sy’n destun cais i gofrestru o dan adran 6 o’r Ddeddf a wnaed i Weinidogion Cymru cyn 1 Gorffennaf 2024;

mae i “y tribiwnlys” (“*the tribunal*”) yr un ystyr agyn adran 189 o’r Ddeddf.

(b) in the event that the determination by the Welsh Ministers is subject to an appeal to the tribunal or to a subsequent appeal, on the date on which that or any subsequent appeal is determined;

“the tribunal” has the same meaning as in section 189 of the Act.

Darpariaeth drosiannol ynghylch dehongli “darpariaeth ddysgu ychwanegol” a “personau ag anghenion dysgu ychwanegol”

5. Yn rheoliad 2(3) mae’r cyfeiriadau at “darpariaeth ddysgu ychwanegol” a “personau ag anghenion dysgu ychwanegol” i’w darllen fel pe baent yn cynnwys cyfeiriad at “special educational provision” a “persons with special educational needs” o fewn ystyr adran 312 o Ddeddf Addysg 1996 am gyhyd ag y mae’r arbediad a wneir gan erthygl 4 o Orchymyn Deddf Anghenion Dysgu Ychwanegol a’r Tribiwnlys Addysg (Cymru) 2018 (Cychwyn Rhif 8 a Darpariaethau Trosiannol a Darpariaethau Arbed) 2022(1) yn cael effaith.

Transitional provision about the interpretation of “additional learning provision” and “persons with additional learning needs”

5. In regulation 2(3) the references to “additional learning provision” and “persons with additional learning needs” are to be read as including reference to “special educational provision” and “persons with special educational needs” within the meaning of section 312 of the Education Act 1996 for as long as the saving made by article 4 of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No 8 and Transitional and Saving Provisions) Order 2022(1) has effect.

Julie Morgan

Y Dirprwy Weinidog Gwasanaethau Cymdeithasol o dan awdurdod y Gweinidog Iechyd a Gwasanaethau Cymdeithasol, un o Weinidogion Cymru
Am 12.05 p.m. ar 6 Rhagfyr 2023

Deputy Minister for Social Services under the authority of the Minister for Health and Social Services, one of the Welsh Ministers
At 12.05 p.m. on 6 December 2023

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(1) O.S. 2022/891 (Cy. 188). Mae erthygl 4 yn darparu bod Pennod 1 o Ran 4 o Ddeddf Addysg 1996 yn parhau i gael effaith ar gyfer plentyn sydd â datganiad anghenion addysgol arbennig o dan y Bennod honno er ei bod wedi ei diddymu. Yn unol ag erthygl 10, daw’r cyfnod o dan sylw i ben ar ddiwedd blwyddyn ysgol 2023-2024.

(1) S.I. 2022/891 (W. 188). Article 4 provides for Chapter 1 of Part 4 of the Education Act 1996 to continue to have effect for a child who has a statement of special educational needs under that Chapter in spite of its repeal. Pursuant to article 10, the period in question will come to an end at the end of the 2023-2024 school year.

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