CYNULLIAD CENEDLAETHOL CYMRU

OFFERYNNAU STATUDOL

2007 Rhif 947 (Cy.81)

ADDYSG, CYMRU

Rheoliadau Ysgolion Annibynnol (Diwygiadau Amrywiol) (Cymru) 2007

NODYN ESBONIADOL

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

Mae'r Rheoliadau hyn yn gwneud nifer o ddiwygiadau i Reoliadau Ysgolion Annibynnol (Darparu Gwybodaeth) (Cymru) 2003 ("y rheoliadau gwybodaeth") ac i Reoliadau Safonau Ysgolion Annibynnol 2003 ("y rheoliadau safonau").

Caiff y rheoliadau gwybodaeth eu diwygio er mwyn eglurhau'r gofynion a osodir ar berchnogion ysgolion annibynnol ynglŷn â gwneud gwiriadau cofnodion troseddol a gwiriadau cysylltiedig gyda'r Swyddfa Cofnodion Troseddol ynghylch personau sy'n gweithio mewn ysgol annibynnol. Mae'r diwygiadau hefyd yn ei gwneud yn ofynnol i wybodaeth bellach gael ei darparu ynglŷn ag aelodau corff corfforaethol sydd yn berchennog ysgol annibynnol, ac ynglŷn â'r nifer o blant yr edrychir ar eu hôl sy'n cael eu haddysgu mewn ysgol o'r fath.

Caiff y rheoliadau safonau hefyd eu diwygio er mwyn eglurhau gofynion ynglyn â gwiriadau cofnodion troseddol ac er mwyn pennu'r tystysgrifau cofnodion troseddol hynny y mae'n rhaid rhoi copi ohonynt i'r Cynulliad, sef yr awdurdod cofrestru ar gyfer ysgolion annibynnol yng Nghymru.

NATIONAL ASSEMBLY FOR WALES

STATUTORY INSTRUMENTS

2007 No. 947 (W.81)

EDUCATION, WALES

The Independent Schools (Miscellaneous Amendments) (Wales) Regulations 2007

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make a number of amendments to the Independent Schools (Provision of Information) (Wales) Regulations 2003 ("the information regulations") and the Independent School Standards (Wales) Regulations 2003 ("the standards regulations").

The information regulations are amended so as to clarify the requirements imposed upon the proprietors of independent schools as to the carrying out of criminal records, and related, checks with the Criminal Records Bureau as regards persons working at an independent school. The amendments also require additional information to be provided about the members of a corporate body which is the proprietor of an independent school, and the numbers of looked after children being educated at such a school.

The standards regulations are also amended so as to clarify requirements in relation to criminal records checks and to specify those criminal records certificates that must be copied to the Assembly, as registration authority for independent schools in Wales.

OFFERYNNAU STATUDOL

2007 Rhif 947 (Cy.81)

ADDYSG, CYMRU

Rheoliadau Ysgolion Annibynnol (Diwygiadau Amrywiol) (Cymru) 2007

Wedi'u gwneud	*20 Mawrth 2007*
Yn dod i rym	*29 Mawrth 2007*

Mae Cynulliad Cenedlaethol Cymru, trwy arfer y pwerau a roddwyd iddo gan adrannau 157(1), 160(1), 168 a 210(7)(**1**) o Ddeddf Addysg 2002 drwy hyn yn gwneud y Gorchymyn a ganlyn:

Enwi a chychwyn

1. Enw'r Rheoliadau hyn yw Rheoliadau Ysgolion Annibynnol (Diwygiadau Amrywiol) (Cymru) 2007, a deuant i rym ar 29 Mawrth 2007.

Diwygio Rheoliadau Ysgolion Annibynnol (Darparu Gwybodaeth) (Cymru) 2003

2.-(1) Diwygir Rheoliadau Ysgolion Annibynnol (Darparu Gwybodaeth) (Cymru) 2003(**2**) fel a ganlyn.

(2) Yn rheoliad 2(1), mewnosoder y canlynol yn y mannau priodol yn nhrefn yr wyddor -

"ystyr "tystysgrif cofnod troseddol briodol"("*appropriate criminal record certificate*"), mewn perthynas â pherson a gyflogir mewn ysgol, yw -

(i) pan fo'r person yn dal yn yr ysgol swydd a grybwyllir yn rheoliad 5A o Reoliadau Ddeddf yr Heddlu 1997 (Cofnodion Troseddol) 2002(**3**) tystysgrif cofnod troseddol manwl a ddyroddir yn unol ag adran 113B o Ddeddf yr Heddlu 1997(**4**); neu

(**1**) 2002 p. 32. I gael ystyr "prescribed" a "regulations" gweler adran 212(1) o Ddeddf Addysg 2002.

(**2**) O.S. 2003/3230 (Cy. 310).

(**3**) O.S. 2002/233. Mewnosodwyd Rheoliad 5A gan gan O.S. 2006/748 ac fe'i diwygiwyd gan O.S. 2006/2181.

(**4**) 1997 p. 50. Mewnosodwyd adrannau 113A gan Ddeddf Troseddu Cyfundrefnol Difrifol a'r Heddlu 2005 (p. 15).

STATUTORY INSTRUMENTS

2007 No. 947 (W.81)

EDUCATION, WALES

The Independent Schools (Miscellaneous Amendments) (Wales) Regulations 2007

Made	*20 March 2007*
Coming into force	*29 March 2007*

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 157(1), 160(1), 168 and 210(7)(**1**) of the Education Act 2002 hereby makes the following Order:

Title and commencement

1. The title of these Regulations is the Independent Schools (Miscellaneous Amendments) (Wales) Regulations 2007 and they come in force on 29 March 2007.

Amendment of the Independent Schools (Provision of Information) (Wales) Regulations 2003

2.-(1) The Independent Schools (Provision of Information) (Wales) Regulations 2003(**2**) are amended as follows.

(2) In regulation 2(1), the following are inserted at the appropriate alphabetical places -

""appropriate criminal record certificate", in relation to a person employed at a school, means -

(i) where the person holds at the school a position mentioned in regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002(**3**), an enhanced criminal record certificate issued under section 113B of the Police Act 1997(**4**); or

(**1**) 2002 c. 32. For the definitions of "prescribed" and "regulations", see section 212(1) of the Education Act 2002.

(**2**) S.I. 2003/3230 (W. 310).

(**3**) S.I. 2002/233. Regulation 5A was inserted by S.I. 2006/748 and has been amended by S.I. 2006/2181.

(**4**) 1997 c. 50. Section 113B was inserted by the Serious Organised Crime and Police Act 2005 (c. 15).

(ii) pan na fo'r person yn dal swydd o'r fath, tystysgrif cofnod troseddol a ddyroddir o dan adran 113A o Ddeddf yr Heddlu 1997(**1**);

ar yr amod, yn y ddau achos, pan fo'r person yn dal swydd a grybwyllir yn adran 113C(5) o Ddeddf yr Heddlu 1997(**2**), fod y dystysgrif hefyd yn cynnwys yr wybodaeth a bennir yn adran 113C(1) o'r Ddeddf honno."; ac

"mae i "sy'n derbyn gofal gan awdurdod lleol" yr ystyr a roddir i "*looked after by a local authority*" gan adran 22(1) o Ddeddf Plant 1989".

(3) Yn rheoliad 3(ch), ychwaneger y canlynol ar ôl y gair "perchennog" -

"neu gan berson wedi'i awdurdodi gan y perchennog i roi'r dystysgrif ar ran y perchennog".

(4) Ar ddiwedd paragraff 2(2)(b) o'r Atodlen, mewnosoder y canlynol -

"ac (yn ddarostyngedig i is-baragraff (5) isod) ar gyfer pob aelod o'r gorfforaeth, y ffyrm neu'r corff, ei enw llawn, unrhyw enwau blaenorol y cafodd ei adnabod oddi wrthynt, ei gyfeiriad preswyl arferol a'i ddyddiad geni."

(5) Ar ddiwedd paragraff 2 o'r Atodlen, mewnosoder yr is-baragraff a ganlyn -

"(5) At ddibenion y paragraff hwn, pan fo'r perchennog yn gorfforaeth sydd yn gwmni cyfyngedig trwy gyfrannau (yn ystyr Deddf Cwmnïau 1985), nid yw person i gael ei drin fel aelod o'r gorfforaeth oni bai ei fod yn dal o leiaf 5% o gyfalaf cyfrannau'r cwmni."

(6) Ar ôl paragraff 5 o'r Atodlen, mewnosoder y paragraff canlynol -

"5A. Nifer y disgyblion yn yr ysgol sy'n derbyn gofal gan awdurdod lleol."

(7) Yn lle paragraff 7(ch) o'r Atodlen, rhodder -

"pan fo'r person yn berson y mae'n rhaid i'r Ysgrifennydd Gwladol ddyroddi tystysgrif cofnod troseddol o dan adran 113A o Ddeddf yr Heddlu 1997 drosto mewn ymateb i gais a wnaed yn briodol am dystysgrif o'r fath, cadarnhad fod tystysgrif cofnod troseddol briodol ar gael i'r perchennog mewn perthynas â'r person hwnnw.

(8) Ar ddiwedd paragraff 10(c) o'r Atodlen, mewnosoder -

(**1**) Mewnosodwyd adrann 113A gan Ddeddf Troseddu Cyfundrefnol Difrifol a'r Heddlu 2005.

(**2**) Mewnosodwyd Adran 113 gan Ddeddf Troseddu Cyfundrefnol Difrifol a'r Heddlu 2005.

(ii) where the person does not hold such a position, a criminal record certificate issued under section 113A of the Police Act 1997(**1**);

provided that, in both cases, where the person holds a position mentioned in section 113C(5) of the Police Act 1997(**2**), the certificate also contains the information specified in section 113C(1) of that Act"; and

""looked after by a local authority" has the meaning assigned to it by section 22(1) of the Children Act 1989".

(3) In regulation 3(d), the following is inserted after the word "proprietor" -

"or by a person authorised by the proprietor to give the certificate on the proprietor's behalf".

(4) At the end of paragraph 2(2)(b) of the Schedule, the following is inserted -

"and (subject to sub-paragraph (5) below) for each member of the corporation, firm or body, his or her full name, any previous names by which he or she has been known, his or her usual residential address and date of birth."

(5) At the end of paragraph 2 of the Schedule, the following sub-paragraph is inserted -

"(5) For the purposes of this paragraph, where the proprietor is a corporation which is a company limited by shares (within the meaning of the Companies Act 1985), a person is not to be treated as a member of the corporation unless he or she holds at least 5% of the company's share capital."

(6) After paragraph 5 of the Schedule, the following paragraph is inserted -

"5A. The number of pupils at the school who are looked after by a local authority."

(7) For paragraph 7(d) of the Schedule, there is substituted -

"where the person is a person in respect of whom the Secretary of State must issue a criminal record certificate under section 113A of the Police Act 1997 in response to a duly made application for such a certificate, confirmation that an appropriate criminal record certificate in respect of the person is available to the proprietor."

(8) At the end of paragraph 10(c) of the Schedule, there is inserted -

(**1**) Section 113A was inserted by the Serious Organised Crime and Police Act 2005.

(**2**) Section 113C was inserted by the Serious Organised Crime and Police Act 2005.

"(ac eithrio nad oes unrhyw wybodaeth ynghylch cymwysterau yn ofynnol yn achos athro sydd wedi peidio â bod yn gyflogedig)".

(9) Yn lle paragraff 10(ch) o'r Atodlen, rhodder -

"yn achos person sydd wedi cychwyn ar ei gyflogaeth, pan fo'n berson y mae'n rhaid i'r Ysgrifennydd Gwladol ddyroddi tystysgrif cofnod troseddol o dan adran 113A o Ddeddf yr Heddlu 1997 drosto mewn ymateb i gais a wnaed yn briodol am dystysgrif o'r fath, cadarnhad i gydymffurfedd â pharagraff 4(bb) o'r Atodlen i Reoliadau Safonau Ysgolion Annibynnol (Cymru) 2003 (tystysgrif cofnod troseddol i fod ar gael cyn penodi) ddigwydd cyn penodi'r person.

(10) Ar ôl paragraff 13 mewnosoder y paragraff canlynol -

"14. Pan fo newid wedi digwydd yn aelodaeth unrhyw gorfforaeth, ffyrm Albanaidd neu gorff o bersonau a enwir fel perchennog yn y gofrestr, mewn perthynas ag unrhyw aelod newydd a gaiff ei drin fel aelod at ddibenion paragraff 2 o'r Atodlen hon, yr wybodaeth a bennir yn is-baragraff (2) o'r paragraff hwnnw."

Rheoliadau Safonau Ysgolion Annibynnol (Cymru) 2003

3.-(1) Diwygir Rheoliadau Safonau Ysgolion Annibynnol (Cymru) 2003(**1**) fel a ganlyn.

(2) Yn Rheoliad 2, yn y mannau priodol yn nhrefn yr wyddor, mewnosoder y canlynol -

"ystyr "tystysgrif cofnod troseddol briodol" ("*appropriate criminal record certificate*"), mewn perthynas â pherson a gyflogir mewn ysgol, yw -

(i) pan fo'r person yn dal yn yr ysgol swydd a grybwyllir yn rheoliad 5A o Reoliadau Deddf yr Heddlu 1997 (Cofnodion Troseddol) 2002, tystysgrif cofnod troseddol manwl a ddyroddir yn unol ag adran 113B o Ddeddf yr Heddlu 1997; neu

(ii) pan na fo'r person yn dal swydd o'r fath, tystysgrif cofnod troseddol a ddyroddir o dan adran 113A o Ddeddf yr Heddlu 1997;

ar yr amod, yn y ddau achos, pan fo'r person yn dal swydd a grybwyllir yn adran 113C(5) o Ddeddf yr Heddlu 1997, fod y dystysgrif hefyd yn cynnwys yr wybodaeth a bennir yn adran 113C(1) o'r Ddeddf honno."; ac

"ystyr "yr unigolyn cyfrifol" ("*responsible individual*") yw-

(**1**) O.S. 2003/3234 (Cy. 314), fel y'i diwygiwyd gan O.S. 2005/2929.

"(except that no information as regards qualifications is required in the case of a teacher who has ceased employment)".

(9) For paragraph 10(d) of the Schedule, there is substituted -

"in the case of a person who has commenced employment, where he or she is a person in respect of whom the Secretary of State must issue a criminal record certificate under section 113A of the Police Act 1997 in response to a duly made application for such a certificate, confirmation that paragraph 4(bb) of the Schedule to the Independent School Standards (Wales) Regulations 2003 (criminal record certificate to be made available prior to appointment) was complied with prior to the person's appointment."

(10) After paragraph 13 of the Schedule, the following paragraph is inserted -

"14. Where a change has occurred in the membership of any corporation, Scottish firm or body of persons named as the proprietor in the register, in respect of any new member who is treated as a member for the purposes of paragraph 2 of this Schedule, the information specified in sub-paragraph (2) of that paragraph."

Amendment of the Independent School Standards (Wales) Regulations 2003

3.-(1) The Independent School Standards (Wales) Regulations 2003(**1**) are amended as follows.

(2) In regulation 2, at the appropriate alphabetical places, there are inserted the following -

""appropriate criminal record certificate", in relation to a person employed at a school, means -

(i) where the person holds at the school a position mentioned in regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997; or

(ii) where the person does not hold such a position, a criminal record certificate issued under section 113A of the Police Act 1997;

provided that, in both cases, where the person holds a position mentioned in section 113C(5) of the Police Act 1997, the certificate also contains the information specified in section 113C(1) of that Act"; and

""responsible individual" means-

(**1**) S.I. 2003/3234 (W. 314), amended by S.I. 2005/2929.

(i) yr unigolyn sydd â rheolaeth gyflawn dros redeg yr ysgol o ddydd i ddydd; neu

(ii) pan fo'r rheolaeth honno wedi'i rhannu rhwng dau neu fwy o unigolion, yr un ohonynt sydd wedi'i enwebu gan y perchennog fel yr unigolyn cyfrifol."

(3) Ym mharagraff 3(6) o'r Atodlen, ar ôl y gair "Cyntaf" mewnosoder "ysgrifenedig".

(4) Yn lle is-baragraffau (a) a (b) ym mharagraff 4 o'r Atodlen, rhodder -

"(a) yn achos perchennog sy'n unigolyn, os yw'r perchennog wedi gwneud cais am dystysgrif cofnod troseddol briodol a bod y cais hwnnw wedi'i adlofnodi gan y Cynulliad Cenedlaethol at ddibenion Rhan V o Ddeddf yr Heddlu 1997;

(aa) yn achos perchennog sy'n gorfforaeth, ffyrm Albanaidd neu'n gorff o bersonau, bod yr unigolyn cyfrifol wedi gwneud cais am dystysgrif cofnod troseddol briodol a bod y cais hwnnw wedi'i adlofnodi gan y Cynulliad Cenedlaethol at ddibenion Rhan V o Ddeddf yr Heddlu 1997;

(b) yn achos perchennog sy'n gorfforaeth, ffyrm Albanaidd neu'n gorff o bersonau, os yw'r perchennog yn sicrhau fod yna dystysgrif cofnod troseddol briodol ar gael mewn perthynas â phob aelod o'r gorfforaeth, y ffyrm neu'r corff, os yw'r ddau amod a ganlyn yn gymwys:

(i) bod yr aelod yn cael ei drin fel aelod at ddibenion paragraff 2 o'r Atodlen i Reoliadau Ysgolion Annibynnol (Darparu Gwybodaeth) (Cymru) 2003 (aelodau sy'n dal llai na 5% o gyfalaf cyfrannau cwmni i gael eu diystyru); a

(ii) bod yr aelod yn unigolyn y mae'n rhaid i'r Ysgrifennydd Gwladol ddyroddi tystysgrif cofnod troseddol o dan adran 113A o Ddeddf yr Heddlu 1997 drosto mewn ymateb i gais a wneir yn briodol am dystysgrif o'r fath;

(bb) cyn penodi unrhyw aelod o staff i weithio yn yr ysgol, pan fo'r darpar aelod o staff yn unigolyn y mae'n rhaid i'r Ysgrifennydd Gwladol ddyroddi tystysgrif cofnod troseddol o dan adran 113A o Ddeddf yr Heddlu 1997 drosto, fod y perchennog yn sicrhau -

(i) fod yr unigolyn wedi gwneud cais am dystysgrif cofnod troseddol briodol; a

(ii) fod yr unigolyn yn peri bod y dystysgrif ar gael i'r perchennog;".

(i) the individual with overall control of the day to day management of the school; or

(ii) where that control is shared between two or more individuals, the one of them nominated by the proprietor to be the responsible individual."

(3) In paragraph 3(6) of the Schedule, after "satisfactory" there is inserted "written".

(4) For sub-paragraphs (a) and (b) of paragraph 4 of the Schedule, there is substituted -

"(a) in the case of a proprietor who is an individual, the proprietor has applied for an appropriate criminal record certificate and that application has been countersigned by the National Assembly for the purposes of Part V of the Police Act 1997;

(aa) in the case of a proprietor which is a corporation, Scottish firm or body of persons, the responsible individual has applied for an appropriate criminal record certificate and that application has been countersigned by the National Assembly for the purposes of Part V of the Police Act 1997;

(b) in the case of a proprietor which is a corporation, Scottish firm or body of persons, the proprietor ensures that there is available in respect of each member of the corporation, firm or body an appropriate criminal record certificate, if both the following conditions apply:

(i) the member is treated as a member for the purposes of paragraph 2 of the Schedule to the Independent Schools (Provision of Information) (Wales) Regulations 2003 (members holding less than 5% of a company's share capital to be disregarded); and

(ii) the member is an individual in respect of whom the Secretary of State must issue a criminal record certificate under section 113A of the Police Act 1997 in response to a duly made application for such a certificate;

(bb) prior to the appointment of any member of staff to work at the school, where the prospective member of staff is an individual in respect of whom the Secretary of State must issue a criminal record certificate under section 113A of the Police Act 1997, the proprietor ensures that -

(i) the individual has applied for an appropriate criminal record certificate; and

(ii) the individual makes the certificate available to the proprietor;".

(5) Ar ddiwedd paragraff 4 o'r Atodlen, mewnosoder yr is- baragraff a ganlyn -

"(dd) mae unrhyw wladolyn tramor sy'n gweithio yn yr ysgol neu at ei dibenion yn ddarostyngedig i'r gwiriadau a osodir yng nghanllawiau'r Cynulliad Cenedlaethol Cymru "Amddiffyn Plant: Atal Pobl Anaddas rhag Gweithio gyda Phlant a Phobl Ifanc yn y Gwasanaeth Addysg (Cylchlythyr 34/02)".

(6) Ym mharagraff 6 o'r Atodlen -

(i) yn is-baragraff (3)(a), ar ôl "crynodeb o'r adroddiad", mewnosoder "a baratowyd gan y corff hwnnw"; a

(ii) ar ddiwedd is-baragraph (5), mewnosoder "ac eithrio nad oes angen anfon adroddiad at riant sydd wedi cytuno fel arall â'r ysgol".

(5) At the end of paragraph 4 of the Schedule, the following sub-paragraph is inserted -

"(f) any foreign national working at or for the purposes of the school is subject to the checks set out in National Assembly for Wales guidance "Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service" (circular 34/02)".

(6) In paragraph 6 of the Schedule -

(i) in sub-paragraph (3)(a), after "summary report", there is inserted "prepared by that body"; and

(ii) at the end of sub-paragraph (5), there is inserted "except that no report need be sent to a parent who has agreed otherwise with the school".

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

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

20 Mawrth 2007

20 March 2007

D. Elis-Thomas

Llywydd y Cynulliad Cenedlaethol

The Presiding Officer of the National Assembly

(**1**) 1998 c. 38.

(**1**) 1998 c. 38.

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2007 Rhif 947 (Cy.81)

ADDYSG, CYMRU

Rheoliadau Ysgolion Annibynnol (Diwygiadau Amrywiol) (Cymru) 2007

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EDUCATION, WALES

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