



OFFERYNNAU STATUDOL
CYMRU

WELSH STATUTORY
INSTRUMENTS

2015 Rhif 1920 (Cy. 286)

2015 No. 1920 (W. 286)

**GOFAL CYMDEITHASOL,
CYMRU**

SOCIAL CARE, WALES

**Rheoliadau Gofal a Chymorth
(Methiant Busnes) (Cymru) 2015**

**The Care and Support (Business
Failure) (Wales) Regulations 2015**

NODYN ESBONIADOL

EXPLANATORY NOTE

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

(This note is not part of the Regulations)

Mae adrannau 189 i 191 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 (“y Ddeddf”) yn gosod dyletswyddau (“dyletswyddau dros dro”) ar awdurdodau lleol yng Nghymru i ddiwallu anghenion gofal a chymorth oedolion, neu anghenion gofalwyr am gymorth, o dan amgylchiadau pan fo darparwyr cofrestredig gofal yn methu â pharhau i weithredu oherwydd “methiant busnes”.

Sections 189 to 191 of the Social Services and Well-being (Wales) Act 2014 (“the Act”) impose duties (“temporary duties”) on local authorities in Wales to meet care and support needs of adults, or support needs of carers, in circumstances where registered providers of care are unable to carry on because of “business failure”.

Mae'r Rheoliadau hyn yn gwneud darpariaeth ynglŷn â'r dehongliad, at y dibenion hynny, o “methiant busnes” ac ynglŷn â'r amgylchiadau pan fo person i'w drin fel pe bai'n methu â gwneud rhywbeth oherwydd “methiant busnes”.

These Regulations make provision as to the interpretation, for those purposes, of “business failure” and as to circumstances in which a person is to be treated as unable to do something because of “business failure”.

Mae rheoliad 2 yn nodi'r digwyddiadau sy'n gyfystyr â “methiant busnes” at ddibenion y dyletswyddau dros dro ar awdurdodau lleol yng Nghymru.

Regulation 2 sets out the events which constitute “business failure” for the purposes of the temporary duties on local authorities in Wales.

Mewn perthynas â darparwr, nad yw'n unigolyn, sydd wedi ei gofrestru yng Nghymru, mae methiant busnes yn cynnwys—

In relation to a provider, other than an individual, registered in Wales, business failure consists of—

- penodi gweinyddwr;
- penodi derbynnydd;
- penodi derbynnydd gweinyddol;
- pasio penderfyniad i ddirwyn busnes i ben yn wirfoddol mewn achos o ddirwyn i ben yn wirfoddol gan y credydwr;
- gwneud gorchymyn dirwyn i ben;
- gwneud gorchymynion methdalau pan fo aelodau unigol o bartneriaeth yn cyflwyno deiseb methdalau ar y cyd;

- the appointment of an administrator;
- the appointment of a receiver;
- the appointment of an administrative receiver;
- the passing of a resolution for a voluntary winding up in a creditors' voluntary winding up;
- the making of a winding up order;
- the making of bankruptcy orders where individual members of a partnership present a joint bankruptcy petition;

- mewn perthynas ag elusen anghorfforedig, ymddiriedolwyr yr elusen yn methu â thalu eu dyledion wrth iddynt ddod yn ddyledus;
- pob aelod o bartneriaeth yn cael ei wneud yn fethdalwr; neu
- trefniant gwirfoddol yn cael ei gymeradwyo o dan Ddeddf Ansoffedd 1986 (“Deddf 1986”) neu Orchymyn Ansoffedd (Gogledd Iwerddon) 1989 (“Gorchymyn 1989”).

Mewn perthynas â darparwr sy'n unigolyn sydd wedi ei gofrestru yng Nghymru, mae “methiant busnes” yn cynnwys yr unigolyn yn cael ei wneud yn fethdalwr neu'n cynnig trefniant gwirfoddol unigol neu'n ymrwmo i drefniant o'r fath o dan Ran 8 o Ddeddf 1986 neu Ran 8 o Orchymyn 1989, neu fod yr unigolyn yn destun gorchymyn rhyddhau o ddyled o dan Ran VIIA o Ddeddf 1986 neu Ran 7A o Orchymyn 1989.

O dan y Ddeddf, mae'r dyletswyddau dros dro yn cael eu sbarduno pan fo darparwr cofrestredig yn methu â rhedeg sefydliad neu ei reoli neu'n methu â rhedeg asiantaeth neu ei rheoli oherwydd methiant busnes. Mae rheoliad 2(1)(b) yn darparu bod darparwr i'w drin fel pe bai'n methu â rhedeg sefydliad neu ei reoli neu'n methu â rhedeg asiantaeth neu ei rheoli oherwydd methiant busnes os yw methiant y darparwr â gwneud hynny yn dilyn methiant busnes.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ni luniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

- in relation to an unincorporated charity, the charity trustees becoming unable to pay their debts as they fall due;
- all members of a partnership being made bankrupt; or
- a voluntary arrangement being approved under the Insolvency Act 1986 (“the 1986 Act”) or the Insolvency (Northern Ireland) Order 1989 (“the 1989 Order”).

In relation to a provider who is an individual registered in Wales, “business failure” consists of the individual being made bankrupt or proposing or entering into an individual voluntary arrangement under Part 8 of the 1986 Act or Part 8 of the 1989 Order, or being the subject of a debt relief order under Part VIIA of the 1986 Act or Part 7A of the 1989 Order.

Under the Act, the temporary duties are triggered where a registered provider becomes unable to carry on or manage an establishment or agency because of business failure. Regulation 2(1)(b) provides that a provider is to be treated as unable to carry on or manage an establishment or agency because of business failure if the provider's inability to do so follows business failure.

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 not been prepared as to the likely costs and benefits of complying with these Regulations.

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**The Care and Support (Business
Failure) (Wales) Regulations 2015**

Gwnaed 18 Tachwedd 2015

Made 18 November 2015

*Gosodwyd gerbron Cynulliad Cenedlaethol
Cymru* 20 Tachwedd 2015

*Laid before the National Assembly
for Wales* 20 November 2015

Yn dod i rym 6 Ebrill 2016

Coming into force 6 April 2016

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddwyd gan adrannau 191(7) a 196(2) o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014(1), yn gwneud y Rheoliadau a ganlyn:

The Welsh Ministers, in exercise of the powers conferred by sections 191(7) and 196(2) of the Social Services and Well-being (Wales) Act 2014(1), make the following Regulations:

Enwi, cychwyn, cymhwyso a dehongli

Title, commencement, application and interpretation

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Gofal a Chymorth (Methiant Busnes) (Cymru) 2015 a deuant i rym ar 6 Ebrill 2016.

1.—(1) The title of these Regulations is the Care and Support (Business Failure) (Wales) Regulations 2015 and they come into force on 6 April 2016.

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

(2) These Regulations apply in relation to Wales.

(3) Yn y Rheoliadau hyn—

(3) In these Regulations—

ystyr “achos o ddirwyn i ben yn wirfoddol gan yr aelodau” (“*a members' voluntary winding up*”) yw dirwyn busnes i ben pan fo datganiad statudol wedi ei wneud o dan adran 89 o Ddeddf 1986 neu erthygl 75 o Orchymyn 1989(2);

“the Act” (“*y Ddeddf*”) means the Social Services and Well-being (Wales) Act 2014;

“the 1986 Act” (“*Deddf 1986*”) means the Insolvency Act 1986(2);

“the 1989 Order” (“*Gorchymyn 1989*”) means the Insolvency (Northern Ireland) Order 1989(3);

ystyr “darparwr” (“*a provider*”) yw person sydd wedi ei gofrestru o dan Ran 2 o Ddeddf Safonau

“a members' voluntary winding up” (“*achos o ddirwyn i ben yn wirfoddol gan yr aelodau*”) means a winding up where a statutory declaration has been made under section 89 of the 1986 Act or

(1) 2014 decc 4.

(2) *Gweler* O.S. 2001/1090 a 2012/3013 o ran cymhwyso adran 89 i Bartneriaethau Atebolrwydd Cyfyngedig a Sefydliadau Elusennol Corfforedig yn ôl eu trefn. O ran cymhwyso adran 89 i gwmnïau cydweithredol a chymdeithasau budd cymunedol, *gweler* adran 123 o Ddeddf Cwmnïau Cydweithredol a Chymdeithasau Budd Cymunedol 2014 (p. 14). O ran cymhwyso erthygl 75 o Orchymyn 1989 i gymdeithasau diwydiannol a darbodus yng Ngogledd Iwerddon, *gweler* adran 64 o Ddeddf Cymdeithasau Diwydiannol a Darbodus (Gogledd Iwerddon) 1969 (p. 24), fel y'i hamnewidiwyd gan O.S. 2009/1941.

(1) 2014 anaw 4.

(2) 1986 c. 45.

(3) S.I. 1989/2405 (N.I. 19)

Gofal 2000(1) mewn cysylltiad â sefydliad neu asiantaeth;

ystyr “Deddf 1986” (“*the 1986 Act*”) yw Deddf Ansolfedd 1986(2);

ystyr “y Ddeddf” (“*the Act*”) yw Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014;

ystyr “Gorchymyn 1989” (“*the 1989 Order*”) yw Gorchymyn Ansolfedd (Gogledd Iwerddon) 1989(3);

ystyr “y swm perthnasol” (“*the relevant amount*”) yw’r swm a bennir yn adran 123(1)(a) o Ddeddf 1986 (diffiniad o fethiant â thalu dyledion).

Methiant busnes

2.—(1) At ddibenion adrannau 189 a 191 o’r Ddeddf—

- (a) mae i fethiant busnes yr ystyr a roddir ym mharagraffau (2) i (5); a
- (b) mae darparwr i’w drin fel pe bai’n methu â rhedeg sefydliad neu ei reoli neu’n methu â rhedeg asiantaeth neu ei rheoli oherwydd methiant busnes os yw methiant y darparwr â gwneud hynny yn dilyn methiant busnes.

(2) Pan na fo darparwr yn unigolyn, mae methiant busnes yn golygu, mewn cysylltiad â’r darparwr hwnnw—

- (a) bod penodi gweinyddwr (o fewn yr ystyr a roddir i “administrator” gan baragraff 1(1) o Atodlen B1 i Ddeddf 1986(4) neu baragraff 2(1) o Atodlen B1 i Orchymyn 1989(5)) yn cymryd effaith;
- (b) bod derbynnydd yn cael ei benodi;
- (c) bod derbynnydd gweinyddol fel y diffinnir “administrative receiver” yn adran 251 o Ddeddf 1986 neu erthygl 5 o Orchymyn 1989 yn cael ei benodi;
- (d) bod penderfyniad i ddirwyn busnes i ben yn wirfoddol yn cael ei basio ac eithrio mewn achos o ddirwyn i ben yn wirfoddol gan yr aelodau;
- (e) bod gorchymyn dirwyn i ben yn cael ei wneud;

article 75 of the 1989 Order(1);

“a provider” (“*darparwr*”) means a person registered under Part 2 of the Care Standards Act 2000(2) in respect of an establishment or agency;

“the relevant amount” (“*y swm perthnasol*”) means the amount specified in section 123(1)(a) of the 1986 Act (definition of inability to pay debts).

Business failure

2.—(1) For the purposes of sections 189 and 191 of the Act—

- (a) business failure has the meaning given in paragraphs (2) to (5); and
- (b) a provider is to be treated as unable to carry on or manage an establishment or an agency because of business failure if the provider’s inability to do so follows business failure.

(2) Where a provider is not an individual, business failure means that, in respect of that provider—

- (a) the appointment of an administrator (within the meaning given by paragraph 1(1) of Schedule B1 to the 1986 Act(3) or paragraph 2(1) of Schedule B1 to the 1989 Order(4)) takes effect;
- (b) a receiver is appointed;
- (c) an administrative receiver as defined in section 251 of the 1986 Act or article 5 of the 1989 Order is appointed;
- (d) a resolution for a voluntary winding up is passed other than in a members’ voluntary winding up;
- (e) a winding up order is made;

(1) 2000 p. 14.

(2) 1986 p. 45.

(3) O.S. 1989/2405 (G.I. 19).

(4) Mewnosodwyd Atodlen B1 gan adran 248(2) o Ddeddf Menter 2002 (p. 40), ac Atodlen 16 iddi. O ran cymhwyso Rhan 2 o Ddeddf 1986 i gwmniau cydweithredol a chymdeithasau budd cymunedol, gweler O.S. 2014/229 fel y’i diwygiwyd gan O.S. 2014/1822.

(5) Mewnosodwyd Atodlen B1 gan O.S. 2005/1455 (G.I. 10).

(1) See S.I. 2001/1090 and 2012/3013 as to the application of section 89 to Limited Liability Partnerships and Charitable Incorporated Organisations respectively. As to the application of section 89 to co-operative and community benefit societies, see section 123 of the Co-operative and Community Benefit Societies Act 2014 (c. 14). As to the application of article 75 of the 1989 Order to industrial and provident societies in Northern Ireland, see section 64 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24), as substituted by S.I. 2009/1941.

(2) 2000 c.14.

(3) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c. 40). As to the application of Part 2 of the 1986 Act to co-operative and community benefit societies, see S.I. 2014/229 as amended by S.I. 2014/1822.

(4) Schedule B1 was inserted by S.I. 2005/1455 (N.I. 10).

- (f) bod gorchymyn yn rhinwedd erthygl 11 o Orchymyn Partneriaethau Ansolffent 1994 (deiseb methdalau ar y cyd gan aelodau unigol o bartneriaeth ansolffent)(1) yn cael ei wneud;
- (g) bod gorchymyn yn rhinwedd erthygl 11 o Orchymyn Partneriaethau Ansolffent (Gogledd Iwerddon) 1995 (deiseb methdalau ar y cyd gan aelodau unigol o bartneriaeth ansolffent)(2) yn cael ei wneud;
- (h) bod ymddiriedolwyr elusen y darparwr yn methu â thalu eu dyledion wrth iddynt ddod yn ddyledus;
- (i) bod pob aelod o'r bartneriaeth (mewn achos pan fo'r darparwr yn bartneriaeth) yn cael ei wneud yn fethdalwr; neu
- (j) bod trefniant gwirfoddol sydd wedi ei gynnig at ddibenion Rhan I o Ddeddf 1986(3) neu Ran 2 o Orchymyn 1989 wedi ei gymeradwyo o dan y Rhan honno o'r Ddeddf honno neu'r Gorchymyn hwnnw.

(3) Mewn perthynas â darparwr sy'n unigolyn, mae methiant busnes yn golygu—

- (a) bod yr unigolyn yn cael ei wneud yn fethdalwr;
- (b) bod yr unigolyn yn cynnig trefniant gwirfoddol yn unol â Rhan 8 o Ddeddf 1986 neu Ran 8 o Orchymyn 1989 neu'n ymrwymo i drefniant o'r fath; neu
- (c) bod gorchymyn rhyddhau o ddyled yn cael ei wneud o dan Ran VIIA o Ddeddf 1986 neu Ran 7A o Orchymyn 1989(4).

(4) At ddibenion paragraff (2)(h), mae person yn ymddiriedolwr elusen darparwr—

- (a) os yw'r darparwr yn elusen sy'n anghorfforedig; a
- (b) os yw'r person yn un o ymddiriedolwyr yr elusen honno.

(5) At ddibenion paragraff (2)(h), mae ymddiriedolwyr elusen darparwr i'w trin fel pe baent yn methu â thalu eu dyledion wrth iddynt ddod yn ddyledus—

- (f) an order by virtue of article 11 of the Insolvent Partnerships Order 1994 (joint bankruptcy petition by individual members of insolvent partnership)(1) is made;
- (g) an order by virtue of article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 (joint bankruptcy petition by individual members of insolvent partnership)(2) is made;
- (h) the charity trustees of the provider become unable to pay their debts as they fall due;
- (i) every member of the partnership (in a case where the provider is a partnership) is made bankrupt; or
- (j) a voluntary arrangement proposed for the purposes of Part I of the 1986 Act(3) or Part 2 of the 1989 Order has been approved under that Part of that Act or Order.

(3) In relation to a provider who is an individual, business failure means that—

- (a) the individual is made bankrupt;
- (b) a voluntary arrangement pursuant to Part 8 of the 1986 Act or Part 8 of the 1989 Order is proposed by or entered into by the individual; or
- (c) a debt relief order is made under Part VIIA of the 1986 Act or Part 7A of the 1989 Order(4).

(4) For the purposes of paragraph (2)(h), a person is a charity trustee of a provider if—

- (a) the provider is a charity that is unincorporated; and
- (b) the person is a trustee of that charity.

(5) For the purposes of paragraph (2)(h), the charity trustees of a provider are to be treated as becoming unable to pay their debts as they fall due if—

(1) O.S. 1994/2421.

(2) Rh.St. (G.I.) 1995 Rhif 225.

(3) O ran cymhwyso Rhan I o Ddeddf 1986 i gwmnïau cydweithredol a chymdeithasau budd cymunedol, gweler O.S. 2014/229 fel y'i diwygiwyd gan O.S.

(4) Mewnsoodwyd Rhan 7A o Orchymyn 1989 gan Ddeddf Rhyddhau o Ddyled (Gogledd Iwerddon) 2010 (p. 16).

(1) S.I. 1994/2421.

(2) S.R. (N.I.) 1995 No. 225.

(3) As to the application of Part 1 of the 1986 Act to co-operative and community benefit societies, see S.I. 2014/229 as amended by S.I.

(4) Part 7A of the 1989 Order was inserted by the Debt Relief Act (Northern Ireland) 2010 (c. 16).

- | | |
|---|--|
| <p>(a) os yw credydwr y mae ar yr ymddiriedolwyr iddynt swm sy'n fwy na'r swm perthnasol a oedd yn ddyledus bryd hynny wedi cyflwyno i'r ymddiriedolwyr archiad ysgrifenedig sy'n ei gwneud yn ofynnol i'r ymddiriedolwyr dalu'r swm sy'n ddyledus felly a bod yr ymddiriedolwyr, am 3 wythnos wedi hynny, wedi peidio â thalu'r swm neu ei sicrhau neu gyfamodi i'w dalu er boddhad rhesymol y credydwr;</p> | <p>(a) a creditor to whom the trustees are indebted in a sum exceeding the relevant amount then due has served on the trustees a written demand requiring the trustees to pay the sum so due and the trustees have for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;</p> |
| <p>(b) yng Nghymru a Lloegr, os yw darafaeliad neu broses arall a ddyroddir ar ddyfarniad, archddyfarniad neu orchymyn llys o blaid un o greddydwyr yr ymddiriedolwyr heb ei bodloni yn gyfan gwbl neu'n rhannol;</p> | <p>(b) in England and Wales, execution or other process issued on a judgment, decree or order of a court in favour of a creditor of the trustees is returned unsatisfied in whole or in part;</p> |
| <p>(c) yn yr Alban, os yw induciae archiad am daliad ar archddyfarniad cryno, neu fond cofrestredig cryno, neu brotest cofrestredig cryno, wedi dod i ben heb i daliad gael ei wneud; neu</p> | <p>(c) in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made; or</p> |
| <p>(d) yng Ngogledd Iwerddon, os yw tystysgrif anorfodadwyedd wedi ei rhoi mewn cysylltiad â dyfarniad yn erbyn yr ymddiriedolwyr.</p> | <p>(d) in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the trustees.</p> |

Mark Drakeford

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol,
un o Weinidogion Cymru
18 Tachwedd 2015

Minister for Health and Social Services, one of the
Welsh Ministers
18 November 2015

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