



OFFERYNNAU STATUDOL
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WELSH STATUTORY
INSTRUMENTS

2019 Rhif 796 (Cy. 149)

2019 No. 796 (W. 149)

ADDYSG, CYMRU

EDUCATION, WALES

Rheoliadau Cymwysterau Cymru
(Cosbau Ariannol) (Penderfynu ar
Drosiant) 2019

The Qualifications Wales
(Monetary Penalties)
(Determination of Turnover)
Regulations 2019

NODYN ESBONIADOL

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

Mae adran 38(1) o Ddeddf Cymwysterau Cymru 2015 (“y Ddeddf”) yn galluogi Cymwysterau Cymru i osod cosb ariannol ar gorff dyfarnu sydd wedi methu â chydymffurfio ag un o amodau ei gydnabyddiaeth neu amod cymeradwyo y mae ei gymhwyster a gymeradwywyd yn ddarostyngedig iddo.

Mae'r Rheoliadau hyn yn gwneud darpariaeth ynghylch sut i benderfynu ar y swm sydd i'w dalu gan y corff dyfarnu at ddibenion adran 38(3) o'r Ddeddf.

Caniateir i swm y gosb ariannol fod beth bynnag y mae Cymwysterau Cymru yn penderfynu ei fod yn briodol o dan holl amgylchiadau'r achos, ond ni chaniateir iddo fod yn fwy na'r swm a amlinellir gan Weinidogion Cymru yn rheoliad 3 o'r Rheoliadau hyn.

Mae rheoliadau 4 a 5 yn penderfynu ar drosiant corff dyfarnu at ddibenion rheoliad 3.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau 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 Is-adran Cwricwlwm ac Asesu yn yr Adran Addysg a Gwasanaethau Cyhoeddus yn Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 38(1) of the Qualifications Wales Act 2015 (“the Act”) enables Qualifications Wales to impose a monetary penalty on an awarding body that has failed to comply with a condition of its recognition or a condition of approval to which its approved qualification is subject.

These Regulations make provision on how to determine the amount to be paid by the awarding body for the purposes of section 38(3) of the Act.

The amount of monetary penalty may be whatever Qualifications Wales decide is appropriate in all the circumstances of the case, but must not exceed the amount outlined by the Welsh Ministers in regulation 3 of these Regulations.

Regulations 4 and 5 determine the turnover of an awarding body for the purposes of regulation 3.

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 Curriculum and Assessment Division in the Department for Education and Public Services in the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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Gwnaed 3 Ebrill 2019
Yn dod i rym 12 Ebrill 2019

Made 3 April 2019
Coming into force 12 April 2019

Mae Gweinidogion Cymru drwy arfer y pwerau a roddir iddynt gan adrannau 38(3) a 55(1) o Ddeddf Cymwysterau Cymru 2015(1) yn gwneud y Rheoliadau a ganlyn.

The Welsh Ministers in exercise of the powers conferred on them by sections 38(3) and 55(1) of the Qualifications Wales Act 2015(1) make the following Regulations.

Yn unol ag adran 55(2)(b) o'r Ddeddf honno, gosodwyd drafft o'r offeryn hwn gerbron Cynulliad Cenedlaethol Cymru ac fe'i cymeradwywyd ganddo drwy benderfyniad.

In accordance with section 55(2)(b) of that Act, a draft of this instrument was laid before and approved by a resolution of the National Assembly for Wales.

Enwi a chychwyn

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Cymwysterau Cymru (Cosbau Ariannol) (Penderfynu ar Drosiant) 2019.

(2) Daw'r Rheoliadau hyn i rym ar 12 Ebrill 2019.

Title and commencement

1.—(1) The title of these Regulations is the Qualifications Wales (Monetary Penalties) (Determination of Turnover) Regulations 2019.

(2) These Regulations come into force on 12 April 2019.

Dehongli

2.—(1) Yn y Rheoliadau hyn—

ystyr “blwyddyn fusnes” (“*business year*”) yw cyfnod o fwy na 6 mis y mae corff dyfarnu yn cyhoeddi cyfrifon mewn cysylltiad ag ef neu, os nad yw unrhyw gyfrifon o'r fath wedi eu cyhoeddi am y cyfnod, y mae'n llunio cyfrifon mewn cysylltiad ag ef;

Interpretation

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Qualifications Wales Act 2015;

“awarding body” (“*corff dyfarnu*”) has the meaning given by section 57 of the Act;

(1) 2015 dccc 5; gweler y diffiniad o “rheoliadau” yn adran 57(3).

(1) 2015 anaw 5; see the definition of “regulations” in section 57(3).

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

mae i “corff dyfarnu” (“*awarding body*”) yr ystyr a roddir gan adran 57 o Ddeddf 2015;

ystyr “dyddiad hysbysu” (“*date of notice*”) yw’r dyddiad y mae Cymwysterau Cymru yn rhoi hysbysiad i gorff dyfarnu o dan adran 38(4) o’r Ddeddf o’i fwriad i osod cosb ariannol ar y corff dyfarnu;

ystyr “y Ddeddf” (“*the Act*”) yw Ddeddf Cymwysterau Cymru 2015.

Cosb ariannol: swm

3.—(1) Ni chaniateir i swm cosb ariannol a osodir ar gorff dyfarnu o dan adran 38 o’r Ddeddf fod yn fwy na 10% o drosiant y corff dyfarnu.

(2) Mae trosiant corff dyfarnu at ddibenion paragraff (1) i’w benderfynu yn unol â rheoliadau 4 a 5.

(3) Yn ddarostyngedig i baragraff (1), caniateir i’r swm fod beth bynnag y mae Cymwysterau Cymru yn penderfynu ei fod yn briodol o dan holl amgylchiadau’r achos.

Penderfynu ar drosiant at ddibenion rheoliad 3

4.—(1) Pan fo’r flwyddyn fusnes flaenorol yn gyfnod o 12 mis, trosiant corff dyfarnu yw trosiant cymwys y corff am y flwyddyn fusnes flaenorol gyfan.

(2) Pan nad oedd y flwyddyn fusnes flaenorol yn hafal i 12 mis, y trosiant yw trosiant cymwys y corff dyfarnu am y flwyddyn fusnes honno wedi ei rannu â nifer y misoedd yn y flwyddyn fusnes honno ac wedi ei luosi â 12.

(3) Pan nad oedd blwyddyn fusnes flaenorol, y trosiant yw’r trosiant cymwys am y 12 mis sy’n dod i ben ar ddiwrnod olaf y mis cyn y mis y mae’r dyddiad hysbysu yn dod ynddo.

(4) Pan fo gan y corff dyfarnu, wrth gymhwyso paragraff (3), drosiant am gyfnod o lai na 12 mis, y trosiant yw’r trosiant cymwys yn y cyfnod hwnnw wedi ei rannu â nifer y misoedd yn y cyfnod hwnnw ac wedi ei luosi â 12.

(5) Yn y rheoliad hwn—

mae i “trosiant cymwys” yr ystyr a roddir yn rheoliad 5.

“business year” (“*blwyddyn fusnes*”) means a period of more than 6 months in respect of which an awarding body publishes accounts or, if no such accounts have been published for the period, prepares accounts;

“date of notice” (“*dyddiad hysbysu*”) means the date on which Qualifications Wales gives notice to an awarding body under section 38(4) of the Act of their intention to impose a monetary penalty on the awarding body;

“preceding business year” (“*blwyddyn fusnes flaenorol*”) means the business year immediately preceding the date of notice.

Monetary penalty: amount

3.—(1) The amount of a monetary penalty imposed on an awarding body under section 38 of the Act must not exceed 10% of the awarding body’s turnover.

(2) The turnover of an awarding body for the purposes of paragraph (1) is to be determined in accordance with regulations 4 and 5.

(3) Subject to paragraph (1), the amount may be whatever Qualifications Wales decide is appropriate in all the circumstances of the case.

Determination of turnover for the purposes of regulation 3

4.—(1) Where the preceding business year is a period of 12 months, the turnover of an awarding body is the body’s applicable turnover for the entire preceding business year.

(2) Where the preceding business year did not equal 12 months, the turnover is the awarding body’s applicable turnover for that business year divided by the number of months in that business year and multiplied by 12.

(3) Where there was no preceding business year, the turnover is the applicable turnover for the 12 months ending on the last day of the month preceding the month in which the date of the notice falls.

(4) Where in the application of paragraph (3) the awarding body has turnover for a period of less than 12 months, the turnover is the applicable turnover in that period divided by the number of months in that period and multiplied by 12.

(5) In this regulation—

“applicable turnover” has the meaning given in regulation 5.

Trosiant cymwys

5.—(1) At ddibenion rheoliad 4, trosiant cymwys corff dyfarnu yw cyfanswm—

- (a) pob swm sy'n dod i'r corff am ddarparu nwyddau a gwasanaethau sy'n dod o fewn gweithgareddau arferol y corff yn y Deyrnas Unedig; a
- (b) pob swm arall a geir gan y corff yng nghwrs gweithgareddau arferol y corff yn y Deyrnas Unedig ar ffurf rhodd, grant, cymhorthdal neu ffi aelodaeth,

ar ôl didynnu gostyngiadau masnach, treth ar waith a threthi eraill yn seiliedig ar y symiau sy'n dod felly neu a geir felly.

(2) Mae'r symiau i'w cyfrifo gan gydymffurfio ag egwyddorion cyfrifyddu a dderbynnir yn gyffredinol yn y Deyrnas Unedig.

Applicable turnover

5.—(1) For the purposes of regulation 4, the applicable turnover of an awarding body is the sum of—

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

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

(2) The amounts are to be calculated in conformity with generally accepted accounting principles in the United Kingdom.

Kirsty Williams

Y Gweinidog Addysg, un o Weinidogion Cymru
3 Ebrill 2019

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Minister for Education, one of the Welsh Ministers
3 April 2019

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