



CYNULLIAD CENEDLAETHOL CYMRU

NATIONAL ASSEMBLY FOR WALES

OFFERYNNAU STATUDOL

STATUTORY INSTRUMENTS

2004 Rhif 2733 (Cy.240)

2004 No. 2733 (W.240)

ADDYSG, CYMRU

EDUCATION, WALES

**Rheoliadau Addysg (Safonau
Iechyd) (Cymru) 2004**

**The Education (Health Standards)
(Wales) Regulations 2004**

NODYN ESBONIADOL

EXPLANATORY NOTE

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

(This note is not part of the Regulations)

Mae'r Rheoliadau hyn yn nodi, at ddibenion adran 141 o Ddeddf Addysg 2002, y gweithgareddau y caiff person eu gwneud dim ond os oes ganddo'r gynnwdd gorrfforol neu'r iechyd i'w gwneud. Mae'r Rheoliadau yn gymwys i berson sy'n darparu addysg mewn ysgol, sefydliad addysg bellach neu fan arall o dan gontract gydag AALI (neu gyda pherson sy'n arfer swyddogaethau ar ran AALI). Maent hefyd yn gymwys pan fo person yn gweithio o dan gontract i AALI neu gorff llywodraethu ysgol neu sefydliad addysg bellach i wneud gwaith ar wahân i ddarparu addysg ond sy'n dod â'r person i gyswllt â phlant yn gyson. Mae'r gweithgareddau a ragnodwyd fel a ganlyn:-

These Regulations set out, for the purposes of section 141 of the Education Act 2002, the activities which a person can carry out only if he or she has the health or physical capacity to do so. The Regulations apply to a person providing education at a school, at a further education institution or elsewhere under a contract with an LEA (or with a person exercising functions on behalf of an LEA). They also apply where a person is working under a contract for an LEA or governing body of a school or further education institution, other than in the provision of education, but in work which brings the person regularly into contact with children. The prescribed activities are as follows:-

- (a) cynllunio a pharatoi gwersi a chyrsgiau i blant;
- (b) cyflwyno gwersi i blant;
- (c) asesu datblygiad, cynnydd a chyrhaeddiad plant;
- (ch) adrodd ar ddatblygiad, cynnydd a chyrhaeddiad plant;
- (d) gweithgaredd sy'n cynorthwyo neu'n cefnogi addysgu;
- (dd) goruchwylio, cynorthwyo a chefnogi plentyn;
- (e) gweithgaredd gweinyddol neu drefniadol sy'n cefnogi wrth ddarparu addysg; ac
- (f) gweithgaredd sy'n atodol i ddarparu addysg.

- (a) planning and preparing lessons and courses for children;
- (b) delivering lessons to children;
- (c) assessing the development, progress and attainment of children;
- (d) reporting on the development, progress and attainment of children;
- (e) an activity which assists or supports teaching;
- (f) supervising, assisting and supporting a child;
- (g) an administrative or organisational activity which supports the provision of education; and
- (h) an activity which is ancillary to the provision of education.

Dylid trin person sy'n derbyn pensiwn ymddeol ar sail afiechyd fel pe na bai ganddo'r gynneddf gorfforol na'r iechyd i wneud y pedwar gweithgaredd cyntaf a restrir uchod, sy'n weithgareddau addysgu. Er hynny, os oes gan y person y gynneddf gorfforol neu'r iechyd i wneud, gall wneud pedwar gweithgaredd olaf y rhestr. Nid yw'r cyfyngiad ar y sawl sy'n derbyn pensiwn ymddeol oherwydd afiechyd yn gymwys i berson a oedd â hawl i'r fath bensiwn cyn 1 Ebrill 1997 ac sy'n gweithio'n rhan-amser.

Mae'r Rheoliadau hefyd yn nodi sut y dylid penderfynu ar gwestiynau o ran pa un a oes gan berson y gynneddf gorfforol neu'r iechyd i wneud gweithgaredd y mae wedi'i gymryd ymlaen i'w wneud. Mae hyn yn cynnwys cynnig cyfle i'r person roi tystiolaeth feddygol gerbron a gwneud sylwadau, a threfnu archwiliadau meddygol.

Mae'r Rheoliadau hyn yn dirymu ac yn disodli darpariaethau'r Rheoliadau Addysg (Cymwysterau a Safonau Iechyd Athrawon) (Cymru) 1999 sy'n ymwneud â chynneddf feddyliol a chorfforol ac iechyd.

A person who is in receipt of a retirement pension on the grounds of ill health is to be treated as not having the health or physical capacity to carry out the first four activities in the above list, which are teaching activities. However, provided such a person has the health or physical capacity to do so, he or she can carry out the final four activities in the list. The restriction on those in receipt of an ill health retirement pension does not apply to a person who was entitled to such a pension before 1 April 1997 and who works part-time.

The Regulations also set out how questions as to whether a person engaged to carry out an activity has the health or physical capacity to do so are to be determined. This includes offering the person the opportunity to submit medical evidence and to make representations and the arranging of medical examinations.

These Regulations revoke and replace the provisions of the Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999 relating to health and mental and physical capacity.

2004 Rhif 2733 (Cy.240)**2004 No. 2733 (W.240)****ADDYSG, CYMRU****EDUCATION, WALES****Rheoliadau Addysg (Safonau Iechyd) (Cymru) 2004****The Education (Health Standards) (Wales) Regulations 2004***Wedi'u gwneud* 19 Hydref 2004*Made* 19 October 2004*Yn dod i rym* 31 Hydref 2004*Coming into force* 31 October 2004

Mae Cynulliad Cenedlaethol Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddwyd iddo gan adrannau 141 ac 210(7) o Ddeddf Addysg 2002(a).

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred on it by sections 141 and 210(7) of the Education Act 2002(a).

Enwi, cychwyn a chymhwyso**Name, commencement and application**

1. Enw'r Rheoliadau hyn yw'r Rheoliadau Addysg (Safonau Iechyd) (Cymru) 2004 a deuant i rym ar 31 Hydref 2004.

1. These Regulations are called the Education (Health Standards) (Wales) Regulations 2004 and come into force on 31 October 2004.

2. Mae'r Rheoliadau hyn yn gymwys i Gymru.

2. These Regulations apply in relation to Wales.

Dehongli**Interpretation**

3. Yn y Rheoliadau hyn-

3. In these Regulations -

ystyr "addysgu" ("*teaching*", "*to teach*") yw cyflawni unrhyw weithgaredd o'r fath a ragnodwyd gan reoliad 5(1)(a) i (ch);

"the 2002 Act" ("*Deddf 2002*") means the Education Act 2002;

mae "cyflogwr" ("*employer*") yn cynnwys person sy'n cymryd person arall ymlaen i ddarparu gwasanaethau heb iddo fod o dan gcontract cyflogaeth;

"employer" ("*cyflogwr*") includes a person who engages another person to provide services otherwise than under a contract of employment;

ystyr "Deddf 2002" ("*the 2002 Act*") yw Deddf Addysg 2002;

"part-time" ("*rhan-amser*") means not more than two and a half normal working days, or an equivalent period, in any working week;

ystyr "gweithgaredd perthnasol" ("*relevant activity*") yw gweithgaredd o'r fath a ragnodir gan reoliad 5(1)(a) i (f); ac

"relevant activity" ("*gweithgaredd perthnasol*") means an activity of the kind prescribed by regulation 5(1)(a) to (h); and

ystyr "rhan-amser" ("*part-time*") yw gweithio am ddim mwy na dau ddiwrnod a hanner o ddyddiau gwaith arferol, neu gyfnod cyfatebol, mewn unrhyw wythnos waith.

"teaching" ("*addysgu*") means carrying out any activity of the kind prescribed by regulation 5(1)(a) to (d), and "to teach" is to be construed accordingly.

(a) 2002 p.32. *Gweler* adran 212 am yr ystyron sydd i "*prescribed*" a "*regulations*".

(a) 2002 c.32. For the meaning of "*prescribed*" and "*regulations*" *see* section 212.

Dirymiadau

4. Dirymir rheoliadau 5, 6 a 7 o Reoliadau Addysg (Cymwysterau a Safonau Iechyd Athrawon) (Cymru) 1999(a).

Gweithgareddau rhagnodedig

5.-(1) Mae'r holl fathau o weithgareddau a ganlyn wedi'u rhagnodi at ddibenion adran 141 o Ddeddf 2002-

- (a) cynllunio a pharatoi gwersi a chyrsgiau i blant;
- (b) cyflwyno gwersi i blant;
- (c) asesu datblygiad, cynnydd a chyrhaeddiad plant;
- (ch) adrodd ar ddatblygiad, cynnydd a chyrhaeddiad plant;
- (d) gweithgaredd sy'n cynorthwyo neu'n cefnogi addysgu;
- (dd) goruchwylio, cynorthwyo a chefnogi plentyn;
- (e) gweithgaredd gweinyddol neu drefniadol sy'n cefnogi wrth ddarparu addysg; ac
- (f) gweithgaredd sy'n atodol i ddarparu addysg.

(2) Ym mharagraff (1)(b), mae "cyflwyno" yn cynnwys cyflwyno drwy ddysgu o bell neu drwy ddulliau dysgu â chymorth cyfrifiadu.

Safonau iechyd

6.-(1) Ni chaiff person wneud gweithgaredd perthnasol oni bai bod ganddo'r gynneddf gorfforol neu'r iechyd i wneud y gweithgaredd hwnnw, o ystyried unrhyw ddyletswydd sydd ar y cyflogwr o dan Ran II o Ddeddf Gwahaniaethu ar Sail Anabledd 1995(b).

(2) Yn ddarostyngedig i baragraff (3), nid ystyrir fod gan berson sy'n derbyn pensiwn ymddeol, yn rhinwedd rheoliad E4(4) o Reoliadau Pensiynau Athrawon 1997(c) (ymddeol oherwydd afiechyd), y gynneddf gorfforol na'r iechyd i addysgu.

(3) Nid yw paragraff (2) yn gymwys i berson a benodwyd i addysgu yn rhan-amser os oedd hawl y person i gael pensiwn o'r fath, fel y'i disgrifir yn y paragraff hwnnw, yn effeithiol cyn 1 Ebrill 1997.

Revocations

4. Regulations 5, 6 and 7 of the Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999(a) are revoked.

Prescribed activities

5.-(1) Each of the following kinds of activity is prescribed for the purposes of section 141 of the 2002 Act -

- (a) planning and preparing lessons and courses for children;
- (b) delivering lessons to children;
- (c) assessing the development, progress and attainment of children;
- (d) reporting on the development, progress and attainment of children;
- (e) an activity which assists or supports teaching;
- (f) supervising, assisting and supporting a child;
- (g) an administrative or organisational activity which supports the provision of education; and
- (h) an activity which is ancillary to the provision of education.

(2) In paragraph (1)(b) "delivering" includes delivery via distance learning or computer aided techniques.

Health standards

6.-(1) A relevant activity may only be carried out by a person if, having regard to any duty of the employer under Part II of the Disability Discrimination Act 1995(b), the person has the health or physical capacity to carry out that activity.

(2) Subject to paragraph (3), a person who is in receipt of a retirement pension by virtue of regulation E4(4) of the Teachers' Pensions Regulations 1997(c) (ill health retirement) is not to be regarded as having the health or physical capacity for teaching.

(3) Paragraph (2) does not apply to a person appointed on a part-time basis to teach if the person's entitlement to receive such pension, as therein described, took effect before 1 April 1997.

(a) O.S. 1999/2817 (Cy.18), fel y'i diwygiwyd gan O.S. 2002/1663 (Cy.158), 2002/2938 (Cy.279), 2003/140 (Cy.12), 2003/2458 (Cy.240), ac fel y dirymwyd rhan fawr ohono gan O.S. 2004/1729 (Cy.173) a 2004/1744 (Cy.183).

(b) 1995 p.50.

(c) O.S. 1997/3001 fel y'i diwygiwyd gan O.S. 1998/2255, 1999/607, 2000/665, 2000/2431, 2000/3028, 2001/871 a 2002/3058.

(a) S.I. 1999/2817 (W.18), as amended by S.I. 2002/1663 (W.158), 2002/2938 (W.279), 2003/140 (W.12), 2003/2458 (W.240) and revoked in large part by S.I. 2004/1729 (W.173) and 2004/1744 (W.183).

(b) 1995 c.50.

(c) S.I. 1997/3001 as amended by S.I. 1998/2255, 1999/607, 2000/665, 2000/2431, 2000/3028, 2001/871 and 2002/3058.

(4) Os cyfyd unrhyw gwestiwn o ran cynneddf gorfforol neu iechyd person i wneud gweithgaredd perthnasol y mae wedi'i gymryd ymlaen i'w wneud, penderfynir ar y cwestiwn hwnnw yn unol â rheoliad 7.

Penderfyniadau o ran cynneddf gorfforol neu iechyd

7.-(1) Rhaid unrhyw gwestiwn fel y cyfeirir ato yn rheoliad 6(4) gael ei benderfynu gan y cyflogwr ac, er mwyn iddo wneud hynny -

- (a) rhaid iddo roi cyfle i'r person roi tystiolaeth feddygol gerbron a gwneud sylwadau i'r cyflogwr;
- (b) rhaid i'r cyflogwr ystyried y cyfryw dystiolaeth a sylwadau ac unrhyw dystiolaeth feddygol arall sydd ar gael iddo, gan gynnwys tystiolaeth feddygol sy'n ymwneud â'r person ac a roddwyd i'r cyflogwr yn gyfrinachol ar y sail na fyddai er lles y person dan sylw i'w gweld, a hynny yn nhyb y person a roddodd y dystiolaeth;
- (c) gall y cyflogwr ei gwneud yn ofynnol i'r person gael ei archwilio gan ymarferydd meddygol a chanddo gymhwyster priodol ac a benodwyd gan y cyflogwr;
- (ch) rhaid iddo drefnu archwiliad felly os yw'r person dan sylw yn gofyn amdano; ac
- (d) os nad yw'r person yn ymddangos i gael ei archwilio heb reswm da, neu os yw'n gwrthod neu'n methu â rhyddhau'r wybodaeth feddygol neu wybodaeth arall i'r ymarferydd meddygol y caiff ef ofyn amdani yn rhesymol, caiff y cyflogwr ddod i'r casgliad nad oes gan y person dan sylw y gynneddf gorfforol neu'r iechyd angenrheidiol, os yw'r dystiolaeth a gwybodaeth arall sydd ar gael i'r cyflogwr yn cyfiawnhau hynny, a hynny er gwaethaf y ffaith y byddai fel arall wedi bod yn ddymunol cael tystiolaeth feddygol bellach.

(2) Ar unrhyw adeg cyn yr archwiliad meddygol y cyfeirir ato ym mharagraff (1)(c) neu (ch), caiff y cyflogwr neu'r person gyflwyno i'r ymarferydd meddygol penodedig ddatganiad sy'n cynnwys tystiolaeth neu ddeunydd arall sy'n berthnasol i'r archwiliad.

(4) Where any question arises as to whether a person who has been engaged to carry out a relevant activity has the health or physical capacity to do so, that question is to be determined in accordance with regulation 7.

Determinations as to health or physical capacity

7.-(1) Any such question as is referred to in regulation 6(4) is to be determined by the employer who, in order to do so -

- (a) must afford the person an opportunity to submit medical evidence and make representations to the employer;
- (b) must consider such evidence and representations and any other medical evidence available to the employer, including medical evidence relating to the person which has been supplied to the employer in confidence on the ground that, in the opinion of the person who supplied it, its disclosure to the person to whom it relates would not be in the best interests of that person;
- (c) may require the person to submit to an examination by a qualified medical practitioner appointed by the employer;
- (d) must, if the person in question so requests, arrange for such an examination;
- (e) may, if the person fails to submit to such an examination without good reason or fails or refuses to make available to the medical practitioner who carries out such examination such medical or other information as that practitioner may reasonably require, conclude, if such other evidence and information available to the employer justifies it, that the person in question does not have the necessary health or physical capacity, notwithstanding the fact that it would otherwise have been desirable that further medical evidence be obtained.

(2) At any time before such medical examination as is referred to in paragraph (1)(c) or (d) is undertaken, the employer or the person may submit to the appointed medical practitioner a statement containing evidence or other matter relevant to the examination.

(3) Gall ymarferydd meddygol a chanddo gymhwyster priodol sydd wedi'i benodi gan y person sy'n cael ei archwilio fod yn bresennol yn ystod unrhyw archwiliad meddygol fel y cyfeirir ato ym mharagraff (1)(c) neu (ch).

(3) A qualified medical practitioner appointed by the person being examined may be present during any such medical examination as is referred to in paragraph (1)(c) or (d).

Llofnodwyd ar ran Cynulliad Cenedlaethol Cymru yn unol ag adran 66(1) o Ddeddf Llywodraeth Cymru 1998(a).

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

19 Hydref 2004

19 October 2004

D. Elis-Thomas

Llywydd y Cynulliad Cenedlaethol

The Presiding Officer of the National Assembly

(a) 1998 p.38.

(a) 1998 c.38.

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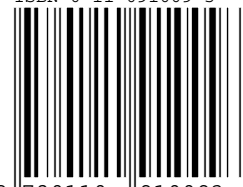
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