



OFFERYNNAU STATUDOL
CYMRU

2010 Rhif 989 (Cy.98) (C.67)

**GOFAL CYMDEITHASOL,
CYMRU**

Gorchymyn Deddf Iechyd a Gofal
Cymdeithasol 2008 (Cychwyn Rhif
2 a Darpariaethau Trosiannol)
(Cymru) 2010

NODYN ESBONIADOL

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

Mae'r gorchymyn hwn yn rhoi effaith i adran 148 o Ddeddf Iechyd a Gofal Cymdeithasol 2008 ("y Ddeddf"). Mae'r adran hon yn gwneud diwygiadau i adrannau 24 a 32 o Ddeddf Cymorth Gwladol 1948 ("Deddf 1948") ac adran 2 o Ddeddf Cleifion Cronig a Phersonau Anabl 1970 ("Deddf 1970").

O dan Ran 3 o Ddeddf 1948 ac adran 2 o Ddeddf 1970, mae awdurdod lleol yn atebol am ddarparu gwasanaethau ar gyfer pobl sy'n preswyl fel arfer yn ei ardal. Pan fo preswylfa arferol person yn destun anghydfod rhwng dau awdurdod lleol neu ragor, mae adran 32 o Ddeddf 1948 yn darparu y gellir atgyfeirio'r anghydfod at yr Ysgrifennydd Gwladol neu at Weinidogion Cymru er mwyn iddo neu iddynt ddyfarnu arno.

O ran darparu llety preswyl, ceir yn adran 24 o Ddeddf 1948 ddarpariaethau ychwanegol ynghylch preswylfa arferol. Yn lle is-adrannau (6) a (7) o adran 24 rhoddir is-adrannau (6) a (6A) newydd. Mae'r is-adrannau newydd yn darparu y bernir bod person y darperir llety'r GIG ar ei gyfer yn cadw ei breswylfa arferol yn yr ardal lle'r oedd y person yn preswyl cyn i lety'r GIG gael ei ddarparu, ni waeth ai lleoliad mewn ysbyty neu leoliad o fath arall yw'r lleoliad. Mae erthygl 3(1) yn gwneud darpariaeth drosiannol i'w gwneud yn glir na fydd y diwygiad yn effeithio ar y rhai sydd eisoes mewn lleoliadau'r GIG nad ydynt yn lleoliadau mewn ysbyty yn union cyn i'r ddarpariaeth ddod i rym ond y bydd y diwygiad yn dod yn effeithiol ar gyfer cleifion mewn ysbytai sydd wedi eu breinio mewn Byrddau Iechyd Lleol ar yr adeg honno.

WELSH STATUTORY
INSTRUMENTS

2010 No. 989 (W.98) (C.67)

**SOCIAL CARE,
WALES**

The Health and Social Care Act
2008 (Commencement No. 2 and
Transitional Provisions) (Wales)
Order 2010

EXPLANATORY NOTE

(This note is not part of the Order)

This order brings into effect section 148 of the Health and Social Care Act 2008 ("the Act"). This section makes amendments to sections 24 and 32 of the National Assistance Act 1948 ("the 1948 Act") and section 2 of the Chronically Sick and Disabled Persons Act 1970 ("the 1970 Act").

Under Part 3 of the 1948 Act and section 2 of the 1970 Act, a local authority is liable for the provision of services for people who are ordinarily resident in its area. Where two or more local authorities are in dispute about a person's ordinary residence, section 32 of the 1948 Act provides that they can refer the dispute to the Secretary of State or the Welsh Ministers for determination.

In relation to the provision of residential accommodation, section 24 of the 1948 Act sets out additional provisions about ordinary residence. Subsections (6) and (7) of section 24 are replaced by new subsections (6) and (6A). The new subsections provide that a person provided with NHS accommodation is deemed to retain his or her ordinary residence in the area in which the person was residing before the NHS accommodation was provided, regardless of whether this placement is in hospital or another sort of placement. Article 3(1) makes transitional provision to clarify that the amendment will not affect those who are already in non-hospital NHS placements immediately before the provision comes into force but will take effect for patients in hospitals vested in Local Health Boards at that time.

Mae adran 148(2) o'r Ddeddf yn diwygio adran 32 o Ddeddf 1948 er mwyn ei gwneud yn glir sut y bydd anghydfodau, gan gynnwys anghydfodau sy'n ymwneud ag awdurdod yng Nghymru ac awdurdod yn Lloegr yn cael eu datrys. Mae'r diwygiad yn rhoi dyletswydd ar yr Ysgrifennydd Gwladol a Gweinidogion Cymru i wneud a chyhoeddi trefniadau mewn perthynas â hyn.

Mae adran 148(3) o'r Ddeddf yn diwygio adran 2 o Ddeddf 1970 er mwyn gwneud anghydfodau rhwng awdurdodau lleol ynghylch preswylfa arferol yn ddarostyngedig i ddyfarniad drwy gyfrwng y weithdrefn o dan adran 32 o Ddeddf 1948.

Mae'r ddarpariaeth drosiannol yn erthygl 3(2) yn darparu na fydd y diwygiad hwn yn weithredol mewn perthynas ag unrhyw achos sydd eisoes yn destun achos llys ar y diwrnod y daw'r diwygiad i rym.

Section 148 (2) of the Act amends section 32 of the 1948 Act to clarify how disputes, including those which involve an authority in England and an authority in Wales, will be resolved. The amendment places a duty on the Secretary of State and the Welsh Ministers to make and publish arrangements in this regard.

Section 148(3) of the Act amends section 2 of the 1970 Act to make disputes between local authorities about ordinary residence subject to determination through the procedure under section 32 of the 1948 Act.

The transitional provision in article 3(2) provides that this amendment will not operate in relation to any case which is already the subject of court proceedings on the day the amendment comes into force.

Nodyn am orchmynion cychwyn blaenorol

Cafodd darpariaethau canlynol y Ddeddf eu dwyn i rym o ran Cymru drwy gyfrwng gorchmynion cychwyn a wnaed gan Weinidogion Cymru cyn dyddiad y gorchymyn hwn.

<i>Y ddarpariaeth</i>	<i>Dyddiad cychwyn</i>	<i>Rhifyr O.S.</i>
a.147	6 Ebrill 2009	2009/631 (Cy.57)
a.166 (i'r graddau y mae'n ymwneud â Rhan 5 o Atodlen 15)	6 Ebrill 2009	2009/631 (Cy.57)
Atodlen 13	6 Ebrill 2009	2009/631 (Cy.57)
Rhan 5 o Atodlen 15	6 Ebrill 2009	2009/631 (Cy.57)

Note as to earlier commencement orders

The following provisions of the Act have been brought into force in relation to Wales by commencement orders made by the Welsh Ministers before the date of this order.

<i>Provision</i>	<i>Date of commencement</i>	<i>S.I. number</i>
s.147	6 April 2009	2009/631 (W.57)
s.166 (so far as it relates to Part 5 of Schedule 15)	6 April 2009	2009/631 (W.57)
Schedule 13	6 April 2009	2009/631 (W.57)
Part 5 of Schedule 15	6 April 2009	2009/631 (W.57)

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Gorchymyn Deddf Iechyd a Gofal
Cymdeithasol 2008 (Cychwyn Rhif
2 a Darpariaethau Trosiannol)
(Cymru) 2010

Gwnaed 24 Mawrth 2010

*Gosodwyd gerbron Cynulliad
Cenedlaethol Cymru* 26 Mawrth 2010

Yn dod i rym 19 Ebrill 2010

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddwyd gan adrannau 161(3) a (4), 167(2) ac adran 170(3) o Ddeddf Iechyd a Gofal Cymdeithasol 2008(1), ac ar ôl ymgynghori â'r Ysgrifennydd Gwladol yn unol ag adran 172(4) o'r Ddeddf honno, yn gwneud y gorchymyn a ganlyn:

Enwi, dehongli a chymhwyso

1.–(1) Enw'r Gorchymyn hwn yw Gorchymyn Deddf Iechyd a Gofal Cymdeithasol 2008 (Cychwyn Rhif 2 a Darpariaethau Trosiannol) (Cymru) 2010.

(2) Yn y Gorchymyn hwn –

ystyr "Deddf 1948" ("*1948 Act*") yw Deddf Cymorth Gwladol 1948 (2);

ystyr "Deddf 1970" ("*1970 Act*") yw Deddf Cleifion Cronig a Phersonau Anabl 1970 (3);

ystyr "Deddf 2008" ("*the 2008 Act*") yw Deddf Iechyd a Gofal Cymdeithasol 2008;

mae i "diwrnod penodedig" ("*appointed day*") yr ystyr a roddir yn erthygl 2;

(1) 2008 p.14.
(2) 1948 p.29.
(3) 1970 p.44.

2010 No. 989 (W.98) (C.67)

**SOCIAL CARE,
WALES**

The Health and Social Care Act
2008 (Commencement No. 2 and
Transitional Provisions) (Wales)
Order 2010

Made 24 March 2010

*Laid before the National
Assembly for Wales* 26 March 2010

Coming into force 19 April 2010

The Welsh Ministers, in exercise of the powers conferred by sections 161(3) and (4), 167(2) and section 170(3) of the Health and Social Care Act 2008(1), and after consultation with the Secretary of State in accordance with section 172(4) of that Act, make the following order:

Citation, interpretation and application

1.–(1) The title of this Order is the Health and Social Care Act 2008 (Commencement No. 2 and Transitional Provisions) (Wales) Order 2010.

(2) In this Order–

"1948 Act" ("*Deddf 1948*") means the National Assistance Act 1948 (2);

"1970 Act" ("*Deddf 1970*") means the Chronically Sick and Disabled Persons Act 1970 (3);

"2008 Act" ("*Deddf 2008*") means the Health and Social Care Act 2008;

"appointed day" ("*diwrnod penodedig*") has the meaning given in article 2;

(1) 2008 c.14.
(2) 1948 c.29.
(3) 1970 c.44.

mae i "llety'r GIG" yr ystyr a roddir i "NHS accommodation" gan adran 24(6A) o Ddeddf 1948(1);

ystyr "llety'r GIG nad yw'n ysbyty" ("*non-hospital NHS accommodation*") yw llety'r GIG nad yw mewn ysbyty wedi ei freinio—

- (a) yn yr Ysgrifennydd Gwladol,
- (b) yn un o Ymddiriedolaethau'r GIG a sefydlwyd o dan Ddeddf y Gwasanaeth Iechyd Gwladol 2006(2), Deddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006(3), neu Ddeddf y Gwasanaeth Iechyd Gwladol (Yr Alban) 1978(4),
- (c) mewn Bwrdd Iechyd Lleol a sefydlwyd o dan Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006; neu,
- (ch) mewn Ymddiriedolaeth Gofal Sylfaenol neu un o ymddiriedolaethau sefydledig y GIG a sefydlwyd o dan Ddeddf y Gwasanaeth Iechyd Gwladol 2006.

(3) Mae'r Gorchymyn hwn yn gymwys o ran Cymru.

Y diwrnod penodedig

2. 19 Ebrill 2010 yw'r diwrnod penodedig ar gyfer dwyn i rym adran 148 o'r Ddeddf.

Darpariaeth drosiannol

3. Nid yw'r diwygiadau a wneir i adran 24 o Ddeddf 1948 (awdurdod sy'n atebol am ddarparu llety) gan adran 148(1) yn effeithiol mewn perthynas â pherson y darperir llety'r GIG nad yw'n ysbyty ar ei gyfer yn union cyn y diwrnod penodedig cyhyd â bod y cyfnod lletya hwnnw'n parhau.

4. Nid yw'r diwygiadau a wneir i adran 2 o Ddeddf 1970 gan adran 148(3) o Ddeddf 2008 yn effeithiol mewn perthynas â chwestiwn sy'n codi o dan adran 2 o Ddeddf 1970 o ran preswylfa arferol person mewn achos lle y mae'r cwestiwn, ar y diwrnod penodedig, yn destun achos llys.

"NHS accommodation" ("*llety'r GIG*") has the meaning given by section 24(6A) of the 1948 Act (1);

"non-hospital NHS accommodation" ("*llety'r GIG nad yw'n ysbyty*") means NHS accommodation which is not at a hospital vested in either –

- (a) the Secretary of State,
- (b) a National Health Service Trust established under the National Health Service Act 2006(2), the National Health Service (Wales) Act 2006(3), or the National Health Service (Scotland) Act 1978(4),
- (c) a Local Health Board established under the National Health Service (Wales) Act 2006; or,
- (d) a Primary Care Trust or an NHS foundation trust established under the National Health Service Act 2006.

(3) This Order applies in relation to Wales.

Appointed day

2. 19 April 2010 is the appointed day for the coming into force of section 148 of the 2008 Act.

Transitional provision

3. The amendments made to section 24 of the 1948 Act (authority liable for provision of accommodation) by section 148(1) do not have effect in relation to a person for whom non-hospital NHS accommodation is being provided immediately before the appointed day so long as that episode of accommodation continues.

4. The amendments made to section 2 of the 1970 Act by section 148(3) of the 2008 Act do not have effect in relation to a question arising under section 2 of the 1970 Act as to a person's ordinary residence in a case where, on the appointed day, the question is the subject of court proceedings.

(1) Mewn osodir adran 24(6A) gan adran 148(1) o Ddeddf 2008. Diffinnir "NHS accommodation" ("*llety'r GIG*") fel "(a) accommodation (at a hospital or elsewhere) provided under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006, or (b) accommodation provided under section 117 of the Mental Health Act 1983 by a Primary Care Trust or Local Health Board, other than accommodation so provided jointly with a local authority" ((a) llety (mewn ysbyty neu fan arall) a ddarperir o dan Ddeddf y Gwasanaeth Iechyd Gwladol 2006 neu Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006, neu (b) llety a ddarperir o dan adran 117 o Ddeddf Iechyd Meddwl 1983 gan Ymddiriedolaeth Gofal Sylfaenol neu Fwrdd Iechyd Lleol, ac eithrio llety a ddarperir felly ar y cyd ag awdurdod lleol").

(2) 2006 p.41.
(3) 2006 p.42.
(4) 1978 p. 29.

(1) Section 24(6A) is inserted by section 148(1) of the 2008 Act. "NHS accommodation" is defined as "(a) accommodation (at a hospital or elsewhere) provided under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006, or (b) accommodation provided under section 117 of the Mental Health Act 1983 by a Primary Care Trust or Local Health Board, other than accommodation so provided jointly with a local authority".

(2) 2006 c.41.
(3) 2006 c.42.
(4) 1978 c. 29.

Gwenda Thomas

Y Dirprwy Weinidog dros Wasanaethau Cymdeithasol,
o dan awdurdod y Gweinidog dros Iechyd a
Gwasanaethau Cymdeithasol, un o Weinidogion
Cymru

Deputy Minister for Social Services, under authority of
the Minister for Health and Social Services, one of the
Welsh Ministers

24 Mawrth 2010

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