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INSTRUMENTS

**2022 Rhif 424 (Cy. 105)**

**2022 No. 424 (W. 105)**

**LLYWODRAETH LEOL,  
CYMRU**

**LOCAL GOVERNMENT,  
WALES**

**Gorchymyn Llywodraeth Leol  
(Awdurdodau Perthnasol) (Pŵer i  
Fasnachu) (Cymru) 2022**

**The Local Government (Relevant  
Authorities) (Power to Trade)  
(Wales) Order 2022**

**NODYN ESBONIADOL**

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

Mae adran 95 (pŵer i fasnachu mewn gweithgareddau sy'n gysylltiedig â swyddogaethau drwy gwmni) o Ddeddf Llywodraeth Leol 2003 ("y Ddeddf") yn rhoi pŵer i Weinidogion Cymru, drwy orchymyn, i awdurdodi awdurdodau perthnasol i wneud unrhyw beth at ddiben masnachol y maent wedi eu hawdurdodi i'w wneud er mwyn cyflawni unrhyw un neu ragor o'u swyddogaethau cyffredin ("y pŵer i fasnachu") ac i wneud darpariaeth bellach mewn perthynas ag arfer y pŵer i fasnachu gan awdurdod perthnasol. Mae adran 96 o'r Ddeddf yn rhoi pŵer i Weinidogion Cymru osod amodau ar arfer y pŵer i fasnachu.

O dan adran 95(4) o'r Ddeddf, ni chaniateir arfer y pŵer i fasnachu ond drwy gwmni.

Mae erthygl 1 o'r Gorchymyn hwn yn pennu'r awdurdodau perthnasol y mae'r Gorchymyn hwn yn gymwys iddynt.

Mae erthygl 2 yn awdurdodi awdurdodau perthnasol i wneud unrhyw beth at ddiben masnachol y maent wedi eu hawdurdodi i'w wneud er mwyn cyflawni unrhyw un neu ragor o'u swyddogaethau cyffredin. Mae hefyd yn rhagnodi'r amodau y mae rhaid i awdurdod perthnasol eu bodloni cyn arfer y pŵer i fasnachu.

Mae erthygl 3 yn ei gwneud yn ofynnol i awdurdod perthnasol gyhoeddi unrhyw achos busnes a gymeradwyir yn unol ag erthygl 2(2)(b) cyn gynted ag y bo'n rhesymol ymarferol.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

Section 95 (power to trade in function-related activities through a company) of the Local Government Act 2003 ("the Act") confers a power on the Welsh Ministers, by order, to authorise relevant authorities to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions ("the power to trade") and to make further provision in relation to a relevant authority's exercise of the power to trade. Section 96 of the Act confers a power on the Welsh Ministers to impose conditions on the exercise of the power to trade.

Under section 95(4) of the Act, the power to trade must only be exercisable through a company.

Article 1 of this Order specifies the relevant authorities to which this Order applies.

Article 2 authorises relevant authorities to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions. It also prescribes the conditions that a relevant authority must meet before exercising the power to trade.

Article 3 requires a relevant authority to publish any business case approved in accordance with article 2(2)(b) as soon as reasonably practicable.

Mae erthygl 4 yn ei gwneud yn ofynnol i awdurdod perthnasol adennill unrhyw gostau y mae'n mynd iddynt ar gyfer unrhyw beth a gyflenwir ganddo i gwmni y mae'n arfer y pŵer i fasnachu drwyddo, oddi wrth y cwmni hwnnw.

Mae erthygl 5 yn dirymu Gorchymyn Llywodraeth Leol (Awdurdodau Gwerth Gorau) (Pŵer i Fasnachu) (Cymru) 2006.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Gorchymyn hwn. O ganlyniad, lluniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Gorchymyn hwn. Gellir cael copi oddi wrth: yr Is-adran Democratiaeth Llywodraeth Leol, Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

Article 4 requires a relevant authority to recover any costs incurred by it for anything that it supplies to a company through which it is exercising power to trade, from that company.

Article 5 revokes the Local Government (Best Value Authorities) (Power to Trade) (Wales) Order 2006.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Local Government Democracy Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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**LOCAL GOVERNMENT,  
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**Gorchymyn Llywodraeth Leol  
(Awdurdodau Perthnasol) (Pŵer i  
Fasnachu) (Cymru) 2022**

**The Local Government (Relevant  
Authorities) (Power to Trade)  
(Wales) Order 2022**

*Gwnaed* 4 Ebrill 2022  
*Gosodwyd gerbron Senedd*  
*Cymru* 6 Ebrill 2022  
*Yn dod i rym* 5 Mai 2022

*Made* 4 April 2022  
*Laid before Senedd Cymru* 6 April 2022  
*Coming into force* 5 May 2022

Mae Gweinidogion Cymru yn gwneud y Gorchymyn a ganlyn drwy arfer y pwerau a roddir iddynt gan adrannau 95(1)(a) a (3)(1), 96(1), (3)(b) ac (c)(2) a 123(1) o Ddeddf Llywodraeth Leol 2003(3).

The Welsh Ministers make the following Order in exercise of the powers conferred on them by sections 95(1)(a) and (3)(1), 96(1), (3)(b) and (c)(2) and 123(1) of the Local Government Act 2003(3).

**Enwi, cychwyn, cymhwyso a dehongli**

**Title, commencement, application and interpretation**

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Llywodraeth Leol (Awdurdodau Perthnasol) (Pŵer i Fasnachu) (Cymru) 2022 a daw i rym ar 5 Mai 2022.

1.—(1) The title of this Order is the Local Government (Relevant Authorities) (Power to Trade) (Wales) Order 2022 and it comes into force on 5 May 2022.

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

(2) This Order applies in relation to Wales.

(1) Mae adran 126 o Ddeddf Llywodraeth Leol 2003 yn diffinio mai'r person priodol, o ran Cymru, yw Cynulliad Cenedlaethol Cymru. Trosglwyddwyd swyddogaethau Cynulliad Cenedlaethol Cymru i Weiniogion Cymru yn rhinwedd adran 162 o Ddeddf Llywodraeth Cymru 2006 (p. 32), a pharagraff 30 o Atodlen 11 iddi. Diwygiwyd adran 95 gan baragraff 3(5) o Atodlen 7 i Ddeddf Llywodraeth Leol a Chynnwys y Cyhoedd mewn Iechyd 2007 (p. 28), paragraff 28 o Atodlen 1 i Fesur Llywodraeth Leol (Cymru) 2009 (mccc 2), O.S. 2021/356 (Cy. 107) ac O.S. 2022/372 (Cy. 92). Mae diwygiadau eraill nad ydynt yn berthnasol i'r Gorchymyn hwn.

(2) Diwygiwyd adran 96 gan baragraff 3(6) o Atodlen 7 i Ddeddf Llywodraeth Leol a Chynnwys y Cyhoedd mewn Iechyd 2007.

(3) 2003 p. 26.

(1) Section 126 of the Local Government Act 2003 defines the appropriate person, in relation to Wales, as the National Assembly for Wales. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). Section 95 was amended by paragraph 3(5) of Schedule 7 to the Local Government and Public Involvement in Health Act 2007 (c. 28), paragraph 28 of Schedule 1 to the Local Government (Wales) Measure 2009 (nawm 2), S.I. 2021/356 (W. 107) and S.I. 2022/372 (W. 92). There are other amendments not relevant to this Order.

(2) Section 96 was amended by paragraph 3(6) of Schedule 7 to the Local Government and Public Involvement in Health Act 2007.

(3) 2003 c. 26.

(3) Yn y Gorchymyn hwn—

ystyr “awdurdod perthnasol” (“*relevant authority*”) yw—

- (a) cynghorau sir neu gynghorau bwrdeistref sirol;
- (b) cynghorau cymuned sy’n gynghorau cymuned cymwys o fewn ystyr adran 30(1) o Ddeddf Llywodraeth Leol ac Etholiadau (Cymru) 2021 (“Deddf 2021”)(1);
- (c) awdurdodau Parciau Cenedlaethol;
- (d) awdurdodau tân ac achub, a gyfansoddwyd drwy gynllun o dan adran 2 o Ddeddf y Gwasanaethau Tân ac Achub 2004(2) neu gynllun y mae adran 4 o’r Ddeddf honno yn gymwys iddo;
- (e) cydbwyllgorau corfforedig a sefydlwyd drwy reoliadau a wnaed o dan Ran 5 o Ddeddf 2021;

ystyr “cwmni” (“*company*”) yw cwmni o fewn ystyr Rhan 5 o Ddeddf Llywodraeth Leol a Thai 1989(3);

mae i “swyddogaethau cyffredin” yr ystyr a roddir i “ordinary functions” yn adran 95(7) o Ddeddf Llywodraeth Leol 2003.

**Awdurdodiad i fasnachu mewn gweithgareddau sy’n gysylltiedig â swyddogaethau a’r amodau i’w bodloni cyn arfer y pŵer i fasnachu**

2.—(1) Yn ddarostyngedig i baragraffau (2) a (3), mae awdurdod perthnasol wedi ei awdurdodi i wneud at ddiben masnachol unrhyw beth y’i awdurdodir i’w wneud at ddiben cyflawni unrhyw un neu ragor o’i swyddogaethau cyffredin.

(2) Cyn arfer y pŵer a roddir gan baragraff (1), rhaid i’r awdurdod perthnasol—

- (a) llunio achos busnes i gefnogi’r bwriad i arfer y pŵer, a
- (b) cymeradwyo’r achos busnes hwnnw.

(3) Ystyr “achos busnes” o dan erthygl 2(2) yw datganiad cynhwysfawr ynghylch—

- (a) nodau ac amcanion y bwriad i arfer y pŵer;
- (b) y costau, y buddsoddiadau a’r adnoddau eraill y mae eu hangen er mwyn cyflawni’r nodau a’r amcanion hynny;
- (c) y canlyniadau ariannol y disgwyli’r y bydd y bwriad i arfer y pŵer yn eu cyflawni;

(3) In this Order—

“company” (“*cwmni*”) means a company within the meaning of Part 5 of the Local Government and Housing Act 1989(1);

“ordinary functions” (“*swyddogaethau cyffredin*”) has the meaning given in section 95(7) of the Local Government Act 2003;

“relevant authority” (“*awdurdod perthnasol*”) means—

- (a) county councils or county borough councils;
- (b) community councils which are eligible community councils within the meaning of section 30(1) of the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”)(2);
- (c) National Park authorities;
- (d) fire and rescue authorities, constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004(3) or a scheme to which section 4 of that Act applies;
- (e) corporate joint committees established by regulations made under Part 5 of the 2021 Act.

**Authorisation to trade in function-related activities and conditions to be met before exercising the power to trade**

2.—(1) Subject to paragraphs (2) and (3), a relevant authority is authorised to do for a commercial purpose anything which it is authorised to do for the purpose of carrying on any of its ordinary functions.

(2) Before exercising the power conferred by paragraph (1), the relevant authority must—

- (a) prepare a business case in support of the proposed exercise of the power, and
- (b) approve that business case.

(3) A “business case” under article 2(2) means a comprehensive statement as to—

- (a) the aims and objectives of the proposed exercise of the power;
- (b) the costs, investments and other resources required to achieve those aims and objectives;
- (c) the financial outcomes that are expected to be achieved by the proposed exercise of the power;

(1) 2021 dsc 1.

(2) 2004 p. 21.

(3) 1989 p. 42.

(1) 1989 c. 42.

(2) 2021 asc 1.

(3) 2004 c. 21.

- (d) unrhyw ganlyniadau perthnasol eraill y disgwylir y bydd y bwriad i arfer y pŵer yn eu cyflawni;
- (e) unrhyw risgiau sy'n gysylltiedig â'r bwriad i arfer y pŵer gan gynnwys asesiad o ddirifoldeb y risgiau hynny, ac unrhyw gamau y mae'r awdurdod yn bwriadu eu cymryd i liniaru'r risgiau hynny;
- (f) yr effaith (gan gynnwys yr effaith ar delerau ac amodau cyflogaeth) ar unrhyw staff y mae'n bwriadu eu cyflenwi i gwmni y mae'n bwriadu arfer y pŵer drwyddo;
- (g) y trefniadau bwriadedig ar gyfer staffio'r cwmni y mae'n bwriadu arfer y pŵer drwyddo, gan gynnwys telerau ac amodau cyflogaeth arfaethedig unrhyw staff sydd i'w cyflogi.

- (d) any other relevant outcomes that are expected to be achieved by the proposed exercise of the power;
- (e) any risks associated with the proposed exercise of the power including an assessment of the severity of those risks, and any actions that the authority proposes to take to mitigate those risks;
- (f) the impact (including on the terms and conditions of employment) on any staff that it intends to supply to a company through which it proposes to exercise the power;
- (g) the intended arrangements for the staffing of the company through which it proposes to exercise the power, including the proposed terms and conditions of employment of any staff to be employed.

### Cyhoeddi achos busnes

3. Rhaid i awdurdod perthnasol gyhoeddi unrhyw achos busnes a gymeradwyir yn unol â rheoliad 2(2)(b) cyn gynted ag y bo'n rhesymol ymarferol.

### Publication of business case

3. A relevant authority must publish any business case approved in accordance with article 2(2)(b) as soon as reasonably practicable.

### Gofyniad i adennill costau etc.

4. Rhaid i awdurdod perthnasol adennill costau unrhyw adeiladau ac ystafelloedd, nwyddau, gwasanaethau, staff neu unrhyw beth arall a gyflenwir ganddo i gwmni y mae'n arfer y pŵer a roddir gan erthygl 2(1) drwyddo, oddi wrth y cwmni hwnnw.

### Requirement to recover costs etc

4. A relevant authority must recover the costs of any accommodation, goods, services, staff or any other thing that it supplies to a company through which it is exercising the power conferred by article 2(1), from that company.

### Dirymu

5. Mae Gorchymyn Llywodraeth Leol (Awdurdodau Gwerth Gorau) (Pŵer i Fasnachu) (Cymru) 2006(1) wedi ei ddirymu.

### Revocation

5. The Local Government (Best Value Authorities) (Power to Trade) (Wales) Order 2006(1) is revoked.

*Rebecca Evans*

Y Gweinidog Cyllid a Llywodraeth Leol, un o Weiniogion Cymru  
4 Ebrill 2022

Minister for Finance and Local Government, one of the Welsh Ministers  
4 April 2022

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