



CYNULLIAD CENEDLAETHOL CYMRU

NATIONAL ASSEMBLY FOR WALES

OFFERYNNAU STATUDOL

STATUTORY INSTRUMENTS

2007 Rhif 969 (Cy.86)

2007 No. 969 (W.86)

**LLYWODRAETH LEOL,
CYMRU**

**LOCAL GOVERNMENT,
WALES**

Gorchymyn Llywodraeth Leol
(Mynediad at Wybodaeth)
(Amrywio) (Cymru) 2007

The Local Government (Access to
Information) (Variation) (Wales)
Order 2007

NODYN ESBONIADOL

EXPLANATORY NOTE

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

(This note is not part of the Order)

Mae'r Gorchymyn hwn yn gymwys o ran prif gynghorau yng Nghymru. Mae'n gwneud newidiadau i Ran 5A (mynediad at gyfarfodydd a dogfennau awdurdodau, pwyllgorau ac is-bwyllgorau penodol) o Ddeddf Llywodraeth Leol 1972 ("Deddf 1972") ac Atodlen 12A iddi (mynediad at wybodaeth: gwybodaeth esempt), sydd ill dwy yn ymwneud â mynediad at gyfarfodydd a dogfennau prif gynghorau a phwyllgorau ac is-bwyllgorau penodol y cynghorau hynny.

This Order applies in relation to principal councils in Wales. It makes changes to Part 5A (access to meetings and documents of certain authorities, committees and sub-committees) of, and Schedule 12A (access to information: exempt information) to, the Local Government Act 1972 ("the 1972 Act") both of which are concerned with access to meetings and documents of principal councils and certain committees and sub-committees of those councils.

Mae adran 100A(4) (mynediad i gyfarfodydd prif gynghorau) o Ddeddf 1972 yn benodol yn caniatáu i brif gyngor gau'r cyhoedd allan o gyfarfod pryd bynnag y bo'n debygol y bydd gwybodaeth esempt yn cael ei datgelu i'r cyhoedd fel arall. Diffinnir gwybodaeth esempt yn adran 100I (gwybodaeth esempt a'r pŵer i amrywio Atodlen 12A) o Ddeddf 1972 fel gwybodaeth y mae ei disgrifiadau, at ddibenion Rhan 5A, yn ddisgrifiadau a bennir am y tro yn Rhan 1 o Atodlen 12A.

Section 100A(4) (admission to meetings of principal councils) of the 1972 Act in particular permits a principal council to exclude the public from a meeting whenever it is likely that there would otherwise be a disclosure of exempt information to the public. Exempt information is defined in section 100I (exempt information and power to vary Schedule 12A) of the 1972 Act as information the descriptions of which are, for the purposes of Part 5A, those for the time being specified in Part 1 of Schedule 12A.

Mae Rhannau 1 i 3 o Atodlen 12A yn gymwys o ran prif gynghorau yn Lloegr. Mae Rhannau 4 i 6 o'r Atodlen honno yn gymwys o ran prif gynghorau yng Nghymru. Mae'r Gorchymyn hwn yn rhoi Rhannau 4 i 6 newydd yn Atodlen 12A.

Parts 1 to 3 of Schedule 12A apply in relation to principal councils in England. Parts 4 to 6 of that Schedule apply in relation to principal councils in Wales. This Order substitutes new Parts 4 to 6 into Schedule 12A.

Yn y Rhan 4 newydd, disodlir rhai o'r disgrifiadau o wybodaeth a restrir yn y Rhan 4 bresennol gan ddisgrifiadau symlach a chliriach.

In the new Part 4, some of the descriptions of information listed in the existing Part 4 are replaced by simpler and clearer descriptions.

Yn y Rhan 5 newydd, disodlir rhai o'r cymwysterau gan brawf lles y cyhoedd.

Gwneir hefyd ddiwygiadau canlyniadol i adran 100F (hawliau mynediad ychwanegol at ddogfennau ar gyfer aelodau o brif gynghorau) o Ddeddf 1972.

In the new Part 5, some of the qualifications are replaced by a public interest test.

Consequential amendments are also made to section 100F (additional rights of access to documents for members of principal councils) of the 1972 Act.

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(Amrywio) (Cymru) 2007****The Local Government (Access to
Information) (Variation) (Wales)
Order 2007***Wedi'i wneud* 21 Mawrth 2007*Made* 21 March 2007*Yn dod i rym* 21 Ebrill 2007*Coming into force* 21 April 2007

Mae Cynulliad Cenedlaethol Cymru yn gwneud y Gorchymyn canlynol drwy arfer y pwerau a roddwyd iddo gan adrannau 100F(3), a 100I(2) o Ddeddf Llywodraeth Leol 1972(1) a thrwy arfer y pwerau a roddwyd i'r Ysgrifennydd Gwladol o dan adran 254 o'r Ddeddf honno a freiniwyd bellach yng Nghynulliad Cenedlaethol Cymru i'r graddau y maent yn arferadwy o ran Cymru(2):

The National Assembly for Wales makes the following Order in exercise of the powers conferred on it by sections 100F(3) and 100I(2) of the Local Government Act 1972(1) and in exercise of the powers conferred on the Secretary of State under section 254 of that Act which are now vested in the National Assembly for Wales so far as exercisable in relation to Wales(2):

Enwi, cychwyn a dehongli

1.-(1) Enw'r Gorchymyn hwn yw Gorchymyn Llywodraeth Leol (Mynediad at Wybodaeth) (Amrywio) (Cymru) 2007 a daw'r Gorchymyn hwn i rym ar 21 Ebrill 2007.

(2) Yn y Gorchymyn hwn, ystyr "Deddf 1972" ("*the 1972 Act*") yw Deddf Llywodraeth Leol 1972.

Title, commencement and interpretation

1.-(1) The title of this Order is the Local Government (Access to Information) (Variation) (Wales) Order 2007 and this Order comes into force on 21 April 2007.

(2) In this Order, "the 1972 Act" ("*Deddf 1972*") means the Local Government Act 1972.

Hawliau mynediad ychwanegol at ddogfennau ar gyfer aelodau o brif gynghorau

2.-(1) Diwygier adran 100F o Ddeddf 1972 (hawliau mynediad ychwanegol at ddogfennau ar gyfer aelodau o brif gynghorau) fel a ganlyn.

(2) Yn is-adran (1), yn lle "subsections (2) to (2C)" rhodder "subsections (2) to (2E)".

(3) Yn lle is-adran (2)C rhodder -

Additional rights of access to documents for members of principal councils

2.-(1) Section 100F of the 1972 Act (additional rights of access to documents for members of principal councils) is amended as follows.

(2) In subsection (1), for "subsections (2) to (2C)" substitute "subsections (2) to (2E)".

(3) For subsection (2C) substitute -

(1) 1972 p.70. Mewnosodwyd adrannau 100F a 100I gan Ddeddf Llywodraeth Leol (Mynediad at Wybodaeth) 1985 (p.43), adran 1(1) ac fe'i diwygiwyd gan O.S. 2006/88 Gorchymyn Llywodraeth Leol (Mynediad at Wybodaeth) (Amrywio) 2006.

(2) *Gweler* Gorchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672).

(1) 1972 c.70. Sections 100F and 100I were inserted by the Local Government (Access to Information) Act 1985 (c.43), section 1(1) and amended by S.I. 2006/88 The Local Government (Access to Information) (Variation) Order 2006.

(2) *See* the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

"(2C) In relation to a principal council in Wales, subsection (1) above does not require the document to be open to inspection if it appears to the proper officer that it discloses exempt information."

(4) Ar ôl is-adran (2C) rhodder -

"(2D) But subsection (1) above does require (despite subsection (2C) above) the document to be open to inspection if the information is information of a description for the time being falling within -

(a) paragraph 14 of Schedule 12A to this Act (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract), or

(b) paragraph 17 of Schedule 12A to this Act.

(2E) In subsection (2D) above, "the authority" has the meaning given in paragraph 22(2) of Schedule 12A to this Act."

(5) Yn is-adran (3), yn lle "subsections (2) to (2C)" rhodder "subsections (2) to (2E)".

Mynediad at Wybodaeth: gwybodaeth esempt

3. Yn lle Rhannau 4 i 6 o Atodlen 12A i Ddeddf 1972(1) (Gwybodaeth Esempt) rhodder y testun a geir yn yr Atodlen i'r Gorchymyn hwn.

Llofnodwyd ar ran y Cynulliad Cenedlaethol o dan adran 66(1) o Ddeddf Llywodraeth Cymru 1998(2).

21 Mawrth 2007

D. Elis-Thomas

Llywydd y Cynulliad Cenedlaethol

"(2C) In relation to a principal council in Wales, subsection (1) above does not require the document to be open to inspection if it appears to the proper officer that it discloses exempt information."

(4) After subsection (2C) insert -

"(2D) But subsection (1) above does require (despite subsection (2C) above) the document to be open to inspection if the information is information of a description for the time being falling within -

(a) paragraph 14 of Schedule 12A to this Act (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract), or

(b) paragraph 17 of Schedule 12A to this Act.

(2E) In subsection (2D) above, "the authority" has the meaning given in paragraph 22(2) of Schedule 12A to this Act."

(5) In subsection (3), for "subsections (2) to (2C)" substitute "subsections (2) to (2E)".

Access to Information : exempt information

3. For Parts 4 to 6 of Schedule 12A to the 1972 Act(1) (Exempt Information) substitute the text set out in the Schedule to this Order.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(2).

21 March 2007

The Presiding Officer of the National Assembly

(1) Mewnosodwyd Atodlen 12A gan Ddeddf Llywodraeth Leol (Mynediad at Wybodaeth) 1985, adran 1(2) ac Atodlen 1, Rhan 1 ac fe'i diwygiwyd gan O.S. 2006/88 Gorchymyn Llywodraeth Leol (Mynediad at Wybodaeth) (Amrywio) 2006.

(2) 1998 p.38.

(1) Schedule 12A was inserted by the Local Government (Access to Information) Act 1985, section 1(2) and Schedule 1, Part 1 and amended by S.I. 2006/88 The Local Government (Access to Information) (Variation) Order 2006.

(2) 1998 c.38.

"PART 4

DESCRIPTIONS OF EXEMPT INFORMATION: WALES

- 12.** Information relating to a particular individual.
- 13.** Information which is likely to reveal the identity of an individual.
- 14.** Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 15.** Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
- 16.** Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 17.** Information which reveals that the authority proposes -
- (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
- 18.** Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

PART 5

QUALIFICATIONS: WALES

- 19.** Information falling within paragraph 14 above is not exempt information by virtue of that paragraph if it is required to be registered under -
- (a) the Companies Act 1985**(1)**;
 - (b) the Friendly Societies Act 1974**(2)**;
 - (c) the Friendly Societies Act 1992**(3)**;
 - (d) the Industrial and Provident Societies Acts 1965 to 1978**(4)**;
 - (e) the Building Societies Act 1986**(5)**; or
 - (f) the Charities Act 1993**(6)**.
- 20.** Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992**(7)**.

(1) 1985 c.6.
(2) 1974 c.46.
(3) 1992 c.40.
(4) 1965 c.12, 1967 c.48, 1975 c.41 and 1978 c.34.
(5) 1986 c.53.
(6) 1993 c.10.
(7) S.I. 1992/1492.

21. Information which -

- (a) falls within any of paragraphs 12 to 15, 17 and 18 above; and
- (b) is not prevented from being exempt by virtue of paragraph 19 or 20 above,

is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

PART 6

INTERPRETATION: WALES

22.-(1) In Parts 4 and 5 and this Part of this Schedule -

"employee" means a person employed under a contract of service;

"financial or business affairs" includes contemplated, as well as past or current, activities;

"labour relations matter" means -

- (a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992⁽¹⁾ (matters which may be the subject of a trade dispute, within the meaning of that Act); or
- (b) any dispute about a matter falling within paragraph (a) above;

and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;

"office-holder", in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority;

"registered" in relation to information required to be registered under the Building Societies Act 1986⁽²⁾, means recorded in the public file of any building society (within the meaning of that Act).

(2) Any reference in Parts 4 and 5 and this Part of this Schedule to "the authority" is a reference to the principal council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined and includes a reference -

- (a) in the case of a principal council, to any committee or sub-committee of the council; and
- (b) in the case of a committee, to -
 - (i) any constituent principal council;
 - (ii) any other principal council by which appointments are made to the committee or whose functions the committee discharges; and
 - (iii) any other committee or sub-committee of a principal council falling within sub-paragraph (i) or (ii) above; and
- (c) in the case of a sub-committee, to -
 - (i) the committee, or any of the committees, of which it is a sub-committee; and
 - (ii) any principal council which falls within paragraph (b) above in relation to that committee."

(1) 1992 c.52.

(2) 1986 c.53.

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