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STATUTORY INSTRUMENTS

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**2012 No. 1248 (W.153)**

**EDUCATION, WALES**

**The Recognised Persons (Monetary Penalties)  
(Determination of Turnover) (Wales) Order 2012**

*Made* - - - - 9 May 2012  
*Coming into force* - - 9 May 2012

The Welsh Ministers make the following Order in exercise of the powers conferred on them by section 32AB(2) of the Education Act 1997(1).

In accordance with section 54(2A) of that Act(2) a draft of this Order was laid before and approved by a resolution of the National Assembly for Wales.

**Title, commencement and application**

1.—(1) The title of this Order is the Recognised Persons (Monetary Penalties) (Determination of Turnover) (Wales) Order 2012.

(2) This Order comes into force on 9 May 2012 and applies in relation to Wales.

**Interpretation**

2.—(1) In this Order—

“the Act” (“*y Ddeddf*”) means the Education Act 1997;

“business year” (“*blwyddyn fusnes*”) means a period of six or more months in respect of which a recognised person 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 the Welsh Ministers give notice to a recognised person under section 32AA(6) of the Act of their intention to impose a monetary penalty on the recognised person;

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

(2) In this Order “applicable turnover” (“*trosiant cymwysadwy*”) means any amounts, calculated in conformity with normal accounting practice in the United Kingdom, which are —

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(1) 1997 c. 44; section 32AB was inserted by section 24 of the Education Act 2011 (c. 21).  
(2) 1997 c. 44; section 54(2A) was inserted by section 24 of the Education Act 2011 (c. 21).

- (a) derived by the recognised person from the provision of goods and services falling within the recognised person's ordinary activities in the United Kingdom; and
  - (b) received by the recognised person in the course of the recognised person's ordinary activities in the United Kingdom by way of gift, grant or subsidy,
- after deduction of trade discounts, value added tax and other taxes based on the amounts so derived or received;

**Determination of turnover for the purposes of section 32AB of the Act**

3.—(1) The turnover of a recognised person for the purposes of section 32AB(1) of the Act is to be determined in accordance with this article.

- (2) Where there is a preceding business year —
  - (a) if the preceding business year is a period of twelve months, the turnover is the applicable turnover for that entire preceding business year;
  - (b) if the preceding business year is a period of more or less than twelve months, the turnover is the applicable turnover in that business year divided by the number of months in that business year and multiplied by twelve.
- (3) Where there is no preceding business year —
  - (a) the turnover is the applicable turnover for the period of twelve months ending on the last day of the month preceding the month of the date of notice; or
  - (b) if the recognised person has applicable turnover for a period of less than twelve months, the turnover is the applicable turnover for that period divided by the number of months in that period and multiplied by twelve.

*Leighton Andrews*  
Minister for Education and Skills, one of the  
Welsh Ministers

9 May 2012

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## EXPLANATORY NOTE

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

This Order makes provision for the determination of turnover of a recognised person for the purposes of section 32AB of the Education Act 1997 (“the 1997 Act”).

Section 32AA of the 1997 Act provides that, if it appears to the Welsh Ministers that a recognised person (as defined in section 32A(5) of the 1997 Act) has failed to comply with a condition of their recognition under section 32(3A) and (4) of the 1997 Act, the Welsh Ministers may impose a monetary penalty on that person. The amount of monetary penalty may be whatever the Welsh Ministers decide is appropriate in all the circumstances of the case, but must not exceed 10% of the recognised person’s turnover, as determined by this Order.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order.