These notes refer to the Planning (Wales) Act 2026 (asc 6)
which received Royal Assent on 27 April 2026

PLANNING (WALES) ACT 2026

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Planning (Wales) Act 2026 that was passed by Senedd Cymru on 10 March 2026 and received Royal Assent on 27 April 2026. They have been prepared by the Welsh Government to assist the reader of the Act. The Explanatory Notes relate to the Act as it received Royal Assent.[1] They should be read in conjunction with the Act but are not part of it.

2. These notes do not provide a comprehensive description of the contents of the Act. Where a provision of the Act does not seem to require explanation or comment, none is given.

3. In these Explanatory Notes a number of terms and abbreviations have been adopted, including:

CJC	Corporate joint committee
NDF	National Development Framework for Wales
NRW	Natural Resources Wales
PEDW	Planning and Environment Decisions Wales
TAN	Technical Advice Note
the Consequential Provisions Act	Planning (Consequential Provisions) (Wales) Act 2026 (asc 7)
the 1961 Act	Land Compensation Act 1961 (c. 33)
the 1965 Act	Compulsory Purchase Act 1965 (c. 56)
the 1980 Act	Highways Act 1980 (c. 66)
the 1990 Act	Town and Country Planning Act 1990 (c. 8)
the 1991 Act	Planning and Compensation Act 1991 (c. 34)
the 1995 Act	Environment Act 1995 (c. 25)
the 2012 Order	The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (S.I. 2012/801 (W. 110))
the 2023 Act	Historic Environment (Wales) Act 2023 (asc 3)

[1] Changes that have been made to the Act since it received Royal Assent can be identified using the "Changes to Legislation" facility at www.legislation.gov.uk/changes

4. References to local authorities and planning authorities are to those in Wales unless otherwise indicated. References to criminal penalties on the "standard scale" are to the levels of maximum fines defined in section 122 of the Sentencing Act 2020 (c. 17) (see Schedule 1 to the Legislation (Wales) Act 2019 (anaw 4)).

5. References are made to subordinate legislation made under the 1990 Act and other legislation that has been restated in the Act. Section 35 of the Legislation (Wales) Act 2019 deals with the situation where existing legislation is repealed and re-enacted in an Act of the Senedd. Section 35(3) of that Act provides that, if subordinate legislation that was made under the repealed legislation could also be made under the new Senedd Act, it continues to have effect as if it had been made under the new Act. Therefore, subordinate legislation made under legislation that has been restated in the Planning (Wales) Act 2026 will continue to have effect in relation to Wales as if it had been made under that Act.

SUMMARY AND BACKGROUND

6. The Act brings together the principal legislation relating to town and country planning in Wales. It is organised into 15 Parts.

   a. Part 1 provides an introduction and overview and explains certain concepts – notably "development" and the "planning authority" – that are critical to an understanding of the Act.

   b. Part 2 sets out the law relating to the development plan that is the policy basis for the modern system of planning control.

   c. Part 3 provides that planning permission is required for development and makes provision about how that permission may be granted (including by a development order or following an application to the planning authority). This includes procedures for appealing against decisions and modifying and revoking permission.

   d. Part 4 describes the action that may be taken where development is carried out without permission. Where the service of a notice does not resolve the problem, the authority may itself take action or prosecute those responsible.

   e. Part 5 provides a system whereby a certificate of lawfulness may be obtained, stating conclusively that permission is not required for development that has occurred or is being contemplated.

   f. Chapter 1 of Part 6 deals with obligations that may be created – either unilaterally or by agreement – to restrict or regulate the development of land, usually alongside the grant of permission, or to require developers to provide funding for infrastructure and other improvements. Chapter 2 of Part 6 outlines the system by which the community infrastructure levy may be charged by a planning authority to enable it to obtain such funding.

g. Part 7 contains other powers relating to the use or condition of land. Chapter 1 enables a planning authority or the Welsh Ministers to make discontinuance orders that require landowners to end an existing, lawful use of land, or to remove buildings or works. Where the land is being, or has been, used for mining operations, they may make a prohibition order or a protection order requiring the use to cease and the land to be restored. Chapter 2 of Part 7 enables an authority to issue a maintenance of land notice requiring the owners of land to take remedial action where its condition is harming the amenity of the surrounding area. Here too, in either situation, where the service of an order or notice does not resolve the problem, the authority may itself take action or prosecute those responsible.

h. Part 8 requires consent to be obtained for the display of advertisements. Part 9 requires those carrying out of works to a tree to obtain consent where it is protected by a tree preservation order or a woodland preservation order, or to notify the planning authority if it is in a conservation area. In both cases, the details of the consent regime are to be provided in regulations. Breach of these requirements is a criminal offence.

i. Part 10 empowers local authorities and government departments (which includes the Welsh Ministers and a Minister of the Crown) to acquire or appropriate land for planning purposes.

j. Part 11 enables the resolution of problems where highways are affected either by development that has been authorised under Part 3 or by works for which land has been acquired under Part 10.

k. Part 12 reflects the particular circumstances of statutory undertakers and enables their operational needs to be taken into account in planning decisions. It also protects the rights of statutory undertakers and operators of networks under the electronic communications code (generally referred to in these Notes as "network operators") where they are affected by land acquisition and enables them to service new development.

l. Part 13 enables those whose land is affected by planning or other proposals (namely blighted land) to require the planning authority to purchase it.

m. Part 14 contains general provisions as to the exercise of planning functions by planning authorities, the Welsh Ministers and inspectors acting on their behalf, including the levying of fees. It also enables the lawfulness of decisions under the Act to be challenged in the High Court.

n. Part 15 makes further general provision for the purposes of the Act, including provision conferring powers to require information and relating to the service of documents. It also defines technical terms used throughout the Act and directs readers to where in the Act more specialised definitions may be found.

7. The main Act that has been restated in this Act is the Town and Country Planning Act 1990 (c. 8) ('the 1990 Act'). However, the Act also includes relevant provisions from other enactments, including:

a. Public Health Act 1936 (c. 49);

b. Local Government Act 1972 (c. 70);

c. Highways Act 1980 (c. 66);

d. the Planning and Compensation Act 1991 (c. 34) ('the 1991 Act');

e. the Environment Act 1995 (c. 25) ('the 1995 Act');

f. the Planning and Compulsory Purchase Act 2004 (c. 5) ('the 2004 Act');

g. the Planning Act 2008 (c. 29) ('the 2008 Act'); and

h. the Planning (Wales) Act 2015 (anaw 4) ('the 2015 Act').

8. Consolidation has provided an opportunity to incorporate relevant provisions from secondary legislation into the Act where appropriate. This course has generally been taken where the secondary legislation is well-established and is not likely to require frequent amendment.

9. In addition to being supplemented by relevant secondary legislation, the primary legislation is also supported by a series of policy documents, Technical Advice Notes (TANs) that are detailed guidance on specific topics and other pieces of guidance. The principal piece of guidance is *Planning Policy Wales* (Edition 12, published February 2024).

COMMENTARY ON SECTIONS
PART 1 – INTRODUCTORY PROVISIONS
Chapter 1 – Introduction and overview
Section 1 – Introduction to this Act

10. This section introduces the Planning (Wales) Act 2026. Subsection (1) is a statement about the status of the Act as part of a code of Welsh law. This statement has been included to improve the accessibility of the law in Wales and is an approach that will be adopted in future consolidation Acts and in any reform Acts that contain a comprehensive statement of the primary legislation on a topic.

11. This declaration of status is intended to help persons interested in the law on a particular topic – town and country planning in this instance – find and classify it more easily. The reference to the Act's status has been included with a view to subordinate legislation made under the Act making identical provision. The Welsh Government's intention is that primary, secondary and tertiary legislation (mostly guidance) will in future be categorised and published as coherent codes of law.

12. Classifying Acts in this way is consistent with the recommendation made by the Law Commission in its report *Form and Accessibility of the Law Applicable in Wales* (Law Com No 366, 2016). That report acknowledged the importance for the accessibility of the law in maintaining the integrity of the law. Giving an Act the status of a code is intended to encourage a move away from a situation where the law on a particular topic is spread across a number of separate pieces of primary legislation. Rather, the intention is that future Senedd Bills are enacted and maintained in a way that allows users of legislation to find as much of the law affecting a particular topic as possible by reading a single Senedd Act or subordinate legislation made under it.

13. The planning system was introduced in more or less its present form in the Town and Country Planning Act 1947 (c. 51); that was amended by various Acts and replaced by the Town and Country Planning Act 1962 (c. 38). That too was amended by various Acts including the Town and Country Planning Act 1968 (c. 72) and then replaced by the Town and Country Planning Act 1971 (c. 78). The 1971 Act and the Acts that subsequently amended it were replaced by four Acts:

    a. the 1990 Act;

    b. the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9);

    c. the Planning (Hazardous Substances) Act 1990 (c. 10) ('the 1990 Hazardous Substances Act'); and

    d. the Planning (Consequential Provisions) Act 1990 (c. 11).

14. When it was first enacted, the 1990 Act applied uniformly throughout England and Wales. Since then, it has been the subject of many amendments. Some of those applied in both England and Wales – including those made by the 1991 Act, the 1995 Act, the 2004 Act, the 2008 Act and the Criminal Justice and Courts Act 2015. Under the Government of Wales Act 2006 (c. 32), the Senedd has responsibility for planning legislation in Wales; and most of the town and country planning system in Wales is devolved. The amendments made to the 1990 Act since 2006 have generally applied only in England. But some have applied only in Wales – notably those made by the Local Government (Wales) Act 1994 and the 2015 Act. As a result of this process, the 1990 Act now applies significantly differently in England and Wales.

15. The Planning (Listed Buildings and Conservation Areas) Act 1990 and the Ancient Monuments and Archaeological Areas Act 1979 (c. 46), together with the Historic Environment (Wales) Act 2016 (anaw 4), have been consolidated in relation to Wales by the Historic Environment (Wales) Act 2023 (asc 3) ('the 2023 Act'). The 2023 Act sits alongside the present Act.

16. The 1990 Hazardous Substances Act is largely unaffected by the Act.

17. This Act is accompanied by the Planning (Consequential Provisions) (Wales) Act 2026 (asc 7) ("the Consequential Provisions Act"), which contains amendments to various enactments necessary to ensure that they continue to operate correctly in Wales and in England in light of this Act.

Section 2 – Overview of this Act

18. This section provides an overview of the Act. Subsection (2) explains that Chapter 2 relates to the interpretation of the key concept of "development", and related terms. And Chapter 3 relates to what is meant by a "planning authority".

19. The remaining subsections sets out the contents of each Part of the Act.

Chapter 2 – "Development" and related definitions
Section 3 – Meaning of "development"

20. Subsection (2) defines "development" in wide terms, to include:

    a. the carrying out of operations on land; and

    b. the making of a material change in the use of land.

21. This definition applies for all purposes in the Act (except Chapter 2 of Part 6 relating to community infrastructure levy) (subsection (1)).

22. "Land" is defined by section 408 to include buildings and minerals.

23. The term "operations" is defined in section 4 to include building, engineering and mining operations; and each type of operation is defined further in section 4. Certain types of operations are excluded from the scope of development by section 6(2) to (4). The phrase "on land" is defined (by section 408) to mean "in, on, over or under land" – building and other operations often involve works below and above ground level and may result in the surface of the ground being changed. Development within the scope of subsection (2)(a) is often referred to as "operational development".

24. The term "material change in the use of land" includes a material change in the use of a building or a part of a building. The term is explored further in section 5; and section 6(5) to (7) excludes certain changes of use from the scope of development.

25. Subsection (4) means that in this Chapter, where a piece of land is to be used for the purpose of carrying out operations, that is treated as being operational development under subsection (2)(a), rather than as a material change of use (from a previous use to use as a building site) constituting development under subsection (2)(b).

Section 4 – Building, engineering and mining operations

26. This section expands on the first limb of the definition of development in section 3(2) – the carrying out of building, engineering, mining or other operations (subsection (1)).

27. "Building operations" includes constructing a new building; but subsection (2) explains that it also includes demolishing a building, rebuilding a building and making any structural alteration or addition to a building. And section 408 explains that a "building" includes any structure, and any part of a building or structure, but does not include plant or machinery forming part of a building or structure. As subsection (2)(d) indicates, "building operations" includes any operations of a kind that would normally be undertaken by a builder – but it does not matter by whom they are actually undertaken.

28. Demolition is included within the building operations that constitute development. However, Part 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418) ('the 1995 Order') will be amended so that demolition is generally permitted, subject to conditions in the case of the demolition of a building of more than 50 cubic metres. This replaces the provision in section 55(2)(g) of the 1990 Act whereby the Welsh Ministers had power to direct that certain categories of demolition were not development.

29. The term "engineering operations" is not defined, save that subsection (3) notes that it includes forming or laying out a "means of access" to a highway – a term that is defined in subsection (6). And subsection (4) provides that the placing or assembling of a tank in inland waters for the purposes of fish farming is taken to involve carrying out engineering operations; "tank", "fish farming" and "inland waters" are defined for these purposes in subsection (7).

30. "Mining operations" is defined by subsection (5), as the winning and working of minerals in, on, over or under land, whether by surface or underground working. The subsection also provides that it includes the removal of any material from a deposit of mineral waste, pulverised fuel ash, furnace ash, clinker, iron, steel or other metallic slags and the extraction of minerals from a disused railway embankment.

Section 5 – Uses of land that involve a material change

31. It is not the use of land that of itself requires planning permission, but rather a change of use, if it is material. The term "material" is not defined; but this section explains that to use land in certain ways is treated as involving a material change of use and, as such, development.

32. Subsection (2) explains that where there is an increase in the number of dwellings within a building (or part of a building) in residential use, that constitutes for the purposes of the Act a material change of use of the building as a whole and of each part of the building involved. This would apply where, for example, a single dwelling is split into two flats, or where the part of a building that was being used as three flats is converted to four flats.

33. Subsection (3) explains that the depositing of waste on land – even if that land is already used for that purpose – is to be treated as a material change in the use of the land, if:

    a. the surface area of the deposit is increased; or

    b. the height of the deposit is increased, so that its highest point is higher than the land adjoining the site.

34. And subsection (4) provides that the use for the display of advertisements of an external part of a building not normally used for that purpose – such as the gable end wall of an end-of-terrace house – is to be treated as a material change in the use of that part. However, section 229 provides that the display of advertisements, insofar as it constitutes development, is deemed to be granted planning permission if it has the benefit of consent under regulations made under Part 8.

Section 6 – Operations and changes in use that are not development

35. This section provides that certain operations and changes of use do not involve development for the purposes of the Act.

36. Subsection (2) provides that building works that affect only the interior of a building, or that do not materially affect its external appearance, generally do not involve development. This means that routine alterations and improvements to the interior of a building (which might include, for example, redecoration, electrical works and other operations normally undertaken by a builder) do not require planning permission.

37. However, subsection (2) does not apply where such works increase the gross internal floor area of the building in question (subsection (2)(b)(i)). Such works will therefore be development for the purposes of the Act. However, Part 2 of Schedule 2 to the 1995 Order will be amended so that it permits such works, except in the case of works to create more than an extra 200m^2 within an existing retail building. This would mean that, for example, the insertion of a sleeping gallery into a high-ceilinged living room would be development but would normally be permitted; but the introduction of a large mezzanine floor into a food superstore would need to be the subject of a planning application.

38. Nor does subsection (2) apply where the works increase the volume of underground space in a building – such as the creation or deepening of a basement beneath a house (subsection (2)(b)(ii)). Such works are development and require planning permission.

39. Also excluded from the definition of development are routine or minor works by various public authorities and similar bodies. Subsection (3)(a)(i) excludes works by highway authorities exclusively for the maintenance of a road. And subsection (3)(a)(ii) excludes other works within the boundaries of a road – including improvement works – but it does not apply where the works may have significant adverse effects on the environment. However, neither part of subsection (3)(a) relates to works outside the boundary of a road, for example to widen or divert it, or to works to create a new highway – that will therefore be development and will normally require planning permission.

40. Subsection (3)(b) excludes from the definition of development the carrying out by local authorities and statutory undertakers of works for the purpose of inspecting, repairing or renewing their sewers, mains, pipes and cables and other apparatus – but not such works when carried out by national park authorities or universal postal service providers (subsection (8)). Subsection (4) draws attention to section 5(2) of the Pipe-lines Act 1962 (c. 58), which makes similar provision in relation to works to inspect, maintain, adjust, repair, alter and renew a pipeline. In both cases, the exemption includes breaking open a street or other land for the purpose of carrying out the works.

41. Subsection (5)(a) excludes from the definition of development a change in the use of a building or other land within the curtilage of a dwelling to any use that is incidental to the enjoyment of the dwelling.

42. The use of land for agriculture and forestry has always been largely outside the scope of planning control. "Agriculture" is defined widely, in section 408, to include horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds and the use of land for woodlands ancillary to farming. Forestry is defined to include afforestation.

43. Subsection (5)(b) excludes from the definition of development:

    a. the change of use of land to any use for agriculture or forestry; and

    b. the change of use of any building occupied with land used for agriculture or forestry to any use for either of those purposes.

44. Regulations under subsection (6) may provide for what are referred to as "use classes"; and may provide that a change in the use of a building (or part of a building) or other land from one use in a particular class to another use in the same class is not to be taken to involve the development of that building or land.

45. The use classes currently in operation are those provided for in the Town and Country Planning (Use Classes) Order 1987 (S.I. 1987/764).

Chapter 3 – Planning authorities

46. Functions under the Act are generally assigned to the Welsh Ministers or the planning authority.

47. The Welsh Ministers are not themselves a planning authority but exercise an overall supervisory role, particularly by means of their role in determining appeals against the decisions of planning authorities. They are also able in some instances to exercise functions under the Act in place of the relevant planning authority. But in the great majority of situations the planning system is administered by the planning authority.

48. This Chapter contains the legislative framework providing for the different types of planning authorities that administer the planning system in Wales alongside the Welsh Ministers, and the way those authorities discharge their functions. It largely replaces Part 1 of the 1990 Act, which has been amended by several statutes, including the Local Government (Wales) Act 1994, over the thirty years since it was first enacted.

49. The planning authority used to be known as "the local planning authority" in previous planning Acts, but this Act adopts the simpler term "planning authority", recognising that Wales now has a unitary system of local government.

50. It used to be possible for the Welsh Ministers to designate other types of public bodies – including urban development corporations – as a local planning authority. But those powers have never been exercised in Wales and are not being restated.

Section 7 – The planning authority for an area

51. Many powers and duties under this Act are assigned to the planning authority. The general rule is that the planning authority is the local authority, established under the Local Government Act 1972 (c. 70) ('the 1972 Act'). In Wales, that is the county council or county borough council for the area containing the relevant land. There are at present 22 local authorities in Wales.

52. There are three national parks in Wales, first established in the 1950s under the National Parks and Access to the Countryside Act 1949 (c. 97) – Brecon Beacons (Bannau Brycheiniog), Pembrokeshire Coast (Arfordir Penfro) and Snowdonia (Eryri). Between them they contain 20% of the land area of Wales. Each park now has a national park authority, created in 1997 under Part 3 of the 1995 Act. A national park authority exercises all of the functions of a planning authority in place of the local authority or authorities whose area or areas include part or all of the national park (subsection (2)(a)).

53. If a further national park were to be established under the 1995 Act, with a national park authority, that authority would be the planning authority.

54. Where a joint planning board is established under section 8, it will exercise the functions of a planning authority in place of the constituent local authorities (subsection (2)(b)).

Section 8 – Power to designate joint planning area and establish joint planning board

55. This section provides the mechanism to establish a joint planning board, under regulations to be made by the Welsh Ministers.

56. A joint planning board is the planning authority for a joint planning area that will contain all or part of the areas of two or more local authorities. Such an area is to be established by the Welsh Ministers, who must first hold an inquiry unless all the constituent local authorities agree to the setting up of the board (subsection (2)).

57. A joint planning board consists of elected members of the constituent authorities (subsection (4)). The regulations designating a joint planning area and establishing the board will determine the number of its members and provide for the exercise of its functions (subsections (5) to (7)).

Section 9 – Joint planning areas and National Parks

58. Generally, a joint planning area must not include the area of a national park authority. But this rule may be overridden by regulations made under this section. Such regulations may make provision as to the discharge of:

    a. functions under this Act (other than making development plans); and

    b. functions under the 2023 Act and the 1990 Hazardous Substances Act.

59. They may also make consequential modifications to those Acts, to the Acts relating to national park authorities and to other relevant primary and secondary legislation.

PART 2 – THE DEVELOPMENT PLAN

60. The development plan is the foundation of the planning system. The Act requires a planning authority or the Welsh Ministers, in exercising various functions, "to have regard to the development plan for an area and any other relevant considerations" – and to make their decision in accordance with the development plan unless any of those other considerations indicate otherwise.

61. This Part of the Act sets out the different types of development plans in Wales at national, regional and local levels. It explains what they are, how they are produced and kept under review and what the functions are of those involved in their production and review. It largely replaces Part 6 of the 2004 Act.

Chapter 1 – Introductory

62. This Chapter explains what is meant by "the development plan" and sets out its constituent elements. It also sets out the sustainable development duty for the production of each type of plan.

Section 10 – Meaning of "the development plan" for an area

63. This section defines which documents make up the development plan in Wales. The development plan provides the foundation for the plan-led system of development management in Wales.

64. The development plan for an area in Wales comprises:

    a. the National Development Framework for Wales (NDF), setting out the Welsh Government's land use policies at a national scale;

    b. any strategic development plan for the area, containing policies applying at a regional and sub-regional scale; and

    c. the local development plan for the area, containing policies applying at a local level.

65. This section clarifies that, if there is any conflict between policies in the plans making up the development plan for an area, it is to be resolved in favour of the policy contained in the latest plan that has been adopted, approved or published (subsection (2)).

Section 11 – Sustainable development

66. This section applies to any public body carrying out any function in relation to development plans under this Part. Such a body must exercise the functions as part of carrying out sustainable development in accordance with the Well-being of Future Generations Act (Wales) Act 2015 (anaw 2) ('the 2015 Future Generations Act'), so that the development and use of land contribute to improving the well-being of Wales. The body must take into account any relevant guidance issued by the Welsh Ministers (subsection (3)).

67. The term "public body" has the same meaning in this section as in section 6 of the 2015 Future Generations Act, which defines it to include planning authorities (both local authorities and national park authorities), corporate joint committees and the Welsh Ministers.

Chapter 2 – National Development Framework for Wales

Section 12 – Duty to prepare and publish National Development Framework

68. Section 12 requires the Welsh Ministers to prepare and publish a "National Development Framework for Wales" that must set out their policies in relation to the development and use of land in Wales (subsections (1) and (2)). It must also give reasons for those policies (subsection (4)).

69. The NDF may specify what is to be a "significant infrastructure project" (for the purposes of the Infrastructure (Wales) Act 2024 (asc 3) ('the 2024 Act')). It must give reasons for the inclusion of particular projects or categories of project.

70. It must also set out how it has taken into account other relevant national policies set out in:

    a. the national natural resources policy, prepared by the Welsh Ministers under section 9 of the Environment (Wales) Act 2016 (anaw 3), setting out key priorities, risks and opportunities for the sustainable management of natural resources, including action in relation to climate change and biodiversity (the most recent is the *Natural Resources Policy* published in August 2017);

    b. the marine plans published by them under Part 3 of the Marine and Coastal Access Act 2009 (c. 23), setting out their policies for the sustainable development of the area in conformity with the Marine Policy Statement (the most recent is *The Welsh National Marine Plan*, published in November 2019); and

    c. the Wales transport strategy, published under section 2 of the Transport (Wales) Act 2006 (c. 5), setting out their policies for the promotion and encouragement of safe, integrated and economic transport facilities and services (the most recent is *Llwybr Newydd: The Wales Transport Strategy 2021*, published in March 2021) (subsection (5)).

71. The NDF has effect for the period that it specifies (subsections (5) and (6). The first NDF (known as *Future Wales: The National Plan 2040*) was published on 24 February 2021 and expires at the end of 2040.

Section 13 – Preparation of Framework: statement of public participation

72. Section 13 requires the Welsh Ministers to prepare a statement setting out when and how they will consult with and involve members the public in preparing the NDF. As part of this consultation, a draft of the NDF must be published and there must then be a period of 12 weeks within which anyone can comment (subsection (3)).

73. The Welsh Ministers may at any time review and revise the statement of public participation (subsection (4)).

Section 14 – Procedure for preparation and publication of Framework

74. Section 14 requires the Welsh Ministers to prepare a draft of the NDF for consultation, having carried out a sustainability appraisal of the policies in it (subsection (1)). That appraisal must include an assessment of the likely effects of the policies on the use of the Welsh language (subsection (3)).

75. In addition to the three policy documents referred to above (see the Notes above relating to section 12 of the Act), they must also have regard to the most recent sustainable land management report, prepared under section 6 of the Agriculture (Wales) Act 2023 (asc 4), setting out the progress made towards achieving the objectives set out in section 1 of that Act (subsection (2)).

76. The Welsh Ministers must carry out consultation in line with the Statement of Public Participation prepared under section 13. They must then lay the draft NDF before the Senedd, together with a report summarising the representations made during the consultation exercise and explaining how they have been considered (subsection (4)).

77. The Senedd has a period in which to scrutinise the draft, lasting 60 days from the date it is laid (disregarding any days the Senedd is dissolved and any periods of recess longer than four days) (subsection (8)). The Welsh Ministers must have regard to any resolution about the draft NDF passed by the Senedd during the scrutiny period, and any recommendation made by a Senedd committee about the draft NDF during that period (subsection (5)).

78. After the 60-day scrutiny period, the Welsh Ministers may publish the NDF. However, if they propose changes to the NDF, they may lay before the Senedd an amended draft and publish that version (subsection (6)). The Welsh Ministers must also, on or before publishing the final form of the NDF, lay before the Senedd a statement explaining how they have taken account of any resolution passed by the Senedd or any recommendation by a Senedd committee made during the scrutiny period (subsection (7)).

Section 15 – Review and revision of Framework

79. Section 15 requires the Welsh Ministers to keep the NDF under review; and they may publish a revised NDF at any time. If the NDF is to be revised, the same procedures for consultation and scrutiny apply as described above in relation to the original NDF (subsection (3)).

80. If a revised NDF is published in draft, and the Welsh Ministers decide not to proceed with it following public participation, they must publish a notice of their decision. If a draft of the revised version has been laid before the Senedd, a copy of that notice must also be laid (subsections (4) and (5)).

81. If five years elapse without a revised NDF having been published or a draft revision having been laid before the Senedd, the Welsh Ministers must publish a statement stating whether they think the NDF should be revised and give reasons. They must lay a copy of the statement before the Senedd. If they think it should be revised, then they must set out a timetable for this (subsection (7)).

Chapter 3 – Strategic and local planning: main functions of authorities

82. This Chapter sets out the general functions of corporate joint committees (CJCs) and planning authorities in producing strategic and local development plans for their areas. It also makes provision about:

    a. the survey work that must be carried out;

    b. what is to be included in a plan; and

    c. the period for which a plan is to have effect.

83. This Chapter and Chapters 4 and 5 together restate sections 60L to 77 of the 2004 Act, which introduced the system whereby local planning authorities and strategic planning panels were to produce development plans for their areas.

84. The Local Government and Elections (Wales) Act 2021 (asc 1) abolished strategic planning panels and introduced CJCs in their place. CJCs have been established for Mid Wales, North Wales, South East Wales and South West Wales.

Section 16 – Survey of corporate joint committee's area

85. Section 16 requires a CJC to keep under review matters that are expected to affect the development and use of land in its area or the planning of such development and use of land. Those matters include:

    a. the principal characteristics of the area (including the extent to which the Welsh language is used);

    b. the pattern of land use, population and communications networks in the area;

    c. any considerations that may affect those matters; and

    d. any other matters specified in regulations or directions made by the Welsh Ministers (subsection (2)).

86. A CJC may also keep under review those matters in relation to the areas of neighbouring CJCs, and in doing so must consult them (subsections (3) and (4)).

Section 17 – Duty to prepare strategic development plan

87. Section 17 requires a CJC to prepare and adopt a strategic development plan for its area. A strategic development plan is to set out the CJC's objectives in relation to the use and development of land in its area, and its policies for the implementation of those objectives (subsections (1) and (2)).

88. The strategic development plan must be in general conformity with the NDF (subsection (3)). The meaning of the expression "in general conformity" was considered by the Court of Appeal in *Persimmon Homes (Thames Valley) Limited v Stevenage Borough Council* [2005] EWCA Civ 1365, in the context of the duty to achieve conformity between structure plans and local plans. Laws LJ held that, in view of the long lead-times over which plans are implemented, a flexible approach should be taken to the phrase, to accommodate the various and changing contingencies that could arise. Whether there was general conformity between plans was a matter of planning judgment for the authorities concerned.

89. When preparing a strategic development plan, a CJC is to have regard to:

a. the NDF and other national policies;

b. the strategic development plans for neighbouring areas;

c. the local development plans for areas within its area;

d. the resources likely to be available for implementing the plan; and

e. any other matters specified in regulations (subsection (6)).

90. The relevant regulations currently in force are the Town and Country Planning (Strategic Development Plan) (Wales) Regulations 2021 (S.I. 2021/360 (W. 109)). Regulation 15 requires the CJC to have regard to the following specific matters:

a. policies under section 108 of the Transport Act 2000 (c. 38), with relation to safe, integrated, efficient and economic transport, implementing the policies in the Wales transport strategy under the Transport (Wales) Act 2006;

b. the objectives of preventing major accidents and limiting their consequences;

c. the need to ensure the safety of installations where dangerous substances are present (effectively implementing Directive 2012/18/EU);

d. the national waste management plan prepared by the Welsh Ministers under the Waste (England and Wales) Regulations 2011 (S.I. 2011/988); and

e. any marine plan adopted and published by the Welsh Ministers under the Marine and Coastal Access Act 2009.

91. A strategic development plan only comes into force once it has been adopted by a CJC or approved by the Welsh Ministers (subsection (7)). It then has effect for the period specified in the plan (subsections (4) and (8)). The Welsh Ministers may make provision about the plan period in regulations (subsection (5)).

92. Regulations can also be made under sections 17, 21, 22, 23, 32, 37, 38 and 41 in this Part about various other matters relating to strategic development plans – including consultation and public participation, the form and content of the plan, relevant procedures and monitoring. The relevant regulations currently in force are the Town and Country Planning (Strategic Development Plan) (Wales) Regulations 2021. Further guidance on the production of strategic development plans can be found in the Welsh Government's *Development Plans Manual*.

93. Strategic development plans are also to be subject to a sustainability appraisal, under section 22, that must include an assessment of the likely effects of the plan on the use of the Welsh language in the area.

Section 18 – Survey of planning authority's area

94. This section requires every planning authority to keep under review matters that are expected to affect the development and use of land in its area or the planning of such development and use of land. Those matters include:

a. the principal characteristics of the area (including the extent to which the Welsh language is used);

b. the pattern of land use, population and communications networks in the area;

c. any considerations that may affect those matters; and

d. any other matters specified in regulations or directions made by the Welsh Ministers (subsection (2)).

95. An authority may also keep under review those matters in relation to neighbouring areas and, in doing so, must consult neighbouring planning authorities (subsections (3) and (4)).

Section 19 – Duty to prepare local development plan

96. Section 19 requires a planning authority to prepare and adopt a local development plan for its area. A local development plan is to set out the authority's objectives in relation to the use and development of land in its area, and its general policies for the implementation of those objectives.

97. The local development plan must be in general conformity with the NDF and any strategic development plan for an area included in the authority's area (subsection (4)). As to the meaning of the expression "general conformity", this has been explained above, in connection with section 17 of the Act.

98. When preparing a local development plan, a planning authority is to have regard to:

a. the NDF and other national policies;

b. the strategic development plans for its area and neighbouring areas;

c. every relevant area statement published by Natural Resources Wales (NRW) (under the Environment (Wales) Act 2016) as to natural resources;

d. every relevant local well-being plan published by a public services board (under the 2015 Future Generations Act);

e. the resources likely to be available for implementing the plan; and

f. any other matters specified in regulations (subsection (7)).

99. The relevant regulations currently in force are the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 (S.I. 2005/2839 (W. 203)). Regulation 13 requires the planning authority to have regard to the following specific matters:

a. any local transport plan or other policies developed under section 108 of the Transport Act 2000, affecting the authority's area;

b. the objectives of preventing major accidents and limiting their consequences;

c. the need to ensure the safety of installations where dangerous substances are present;

d. the *Waste Strategy for Wales*;

e. any marine plan adopted and published by the Welsh Ministers under the Marine and Coastal Access Act 2009; and

f. any local housing strategy affecting the authority's area.

100. A local development plan only comes into force once it has been adopted by the planning authority or approved by the Welsh Ministers (subsection (8)). It then has effect for the period specified in the plan (subsection (5)); the Welsh Ministers may make provision about that period in regulations (subsection (6)). At the end of the period, a plan ceases to have effect as a local development plan (subsection (9)). Subsections (5), (6) and (9) do not apply to plans that were adopted before 4 January 2016 (see paragraph 11(1) of Schedule 5 to the Consequential Provisions Act).

101. Regulations may also be made under several sections in this Part (see sections 19, 21, 22, 23, 32, 37, 38 and 41) about various matters relating to local development plans – including consultation and public participation, the form and content of the plan, relevant procedures, and monitoring. The relevant regulations currently in force are the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005.

102. Guidance on the production of local development plans can be found in the Welsh Government's *Development Plans Manual*.

Chapter 4 – Strategic and local development plans: procedure

103. This Chapter sets out the procedure by which the plan-making authority – that is, the CJC or the planning authority (see section 20) – produces a strategic or local development plan. It also enables the creation of joint local development plans by two or more planning authorities.

104. The Chapter also provides for the Welsh Ministers' powers to intervene in the plan-making process. As set out in the Welsh Government's *Development Plans Manual*, the Welsh Ministers will only consider using those powers as a last resort, when dialogue has failed and where a plan raises issues of national importance or could have wide effects beyond the area of the plan-making authority.

Section 21 – Preparation of plan: procedure and delivery agreement

105. Section 21 sets out how strategic and local development plans are to be produced. The plans must be prepared by the plan-making authority in accordance with a delivery agreement and any requirements specified in regulations. The delivery agreement contains:

    a. the timetable for the production and adoption of the plan; and

    b. the authority's community involvement scheme.

106. The community involvement scheme sets out the authority's policies as to how and when stakeholders and the community can become involved in the plan-making process. It must include the bodies set out in the regulations, such as NRW and the local health board. It may also include other bodies (such as community groups and other key stakeholders) and people that the authority considers have an interest in the development and use of land in the area (subsections (3) and (4)).

107. The plan-making authority and the Welsh Ministers must attempt to agree the terms of the delivery agreement. However, where agreement is not possible, the Welsh Ministers may issue a direction to the authority setting out the terms of the delivery agreement (subsections (5) and (6)).

108. Regulations may set out the procedure to be followed by a plan-making authority in preparing a delivery agreement, and the circumstances in which the requirements of a delivery agreement do not need to be complied with. Details of preparing a delivery agreement are currently set out in the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 and the Town and Country Planning (Strategic Development Plan) (Wales) Regulations 2021.

Section 22 – Sustainability appraisal

109. Section 22 requires a plan-making authority, in preparing a strategic or local development plan, to carry out a sustainability appraisal of the plan and to prepare a report of the findings of the appraisal. Regulations may specify the procedure for carrying out such an appraisal. There are currently no regulations; but guidance is provided in the Welsh Government's *Development Plans Manual*.

110. The appraisal must include an assessment of the likely effects of the plan on the use of the Welsh language.

Section 23 – Independent examination

Section 24 – Adoption of plan

111. Once a plan-making authority has complied with all the relevant statutory requirements as to making a strategic or local development plan and considers that its plan is ready for independent examination, section 23 requires it to submit the plan to the Welsh Ministers for examination by an inspector appointed by them. It must also submit, along with the plan, other documents and information, as may be specified in regulations (section 23(3)).

112. The purpose of such an examination is to examine whether a plan meets the statutory requirements and whether it is sound. The inspector carrying out the examination must give people who want to change the plan a chance to be heard (section 23(6)). The inspector must then make recommendations, and give reasons for them; and the plan-making authority must publish these (section 23(7) and (8)).

113. Regulations may set out the procedure for an examination, and details of the remuneration and allowances for the inspector undertaking the examination (section 23(9)). There are currently no regulations; but guidance on this has been issued by Planning and Environment Decisions Wales (PEDW).

114. Following the completion of the independent examination, section 24 provides for a strategic or local development plan to be adopted by the relevant plan-making authority (by resolution) – either as originally prepared, or with modifications to implement any recommendation by the inspector who carried out the examination.

115. The Welsh Ministers may direct the authority not to adopt a plan (section 314(3)).

Section 25 – Power to direct authority to modify plan

116. Prior to the adoption of a strategic or local development plan, section 25 allows the Welsh Ministers to intervene if they believe the plan is unsatisfactory.

117. Where this occurs, the Welsh Ministers may issue a direction to the plan-making authority directing it to modify the plan in accordance with the direction. In determining whether to issue a direction, the Welsh Ministers must have regard to the delivery agreement for the plan (see section 21). If they do issue a direction, they must explain why.

118. Where the plan-making authority has received such a direction, it must comply with it and must not adopt its plan until the Welsh Ministers agree that it has complied.

Section 26 – Power to direct authority to submit plan for approval

119. Before a plan is adopted, the Welsh Ministers may by direction call in the plan for their approval under section 26(1). Here too, they must have regard to the delivery agreement for the plan (see section 21).

120. If a direction is issued, the plan-making authority must not take any more steps and the plan will not have any effect until it has been approved by the Welsh Ministers (subsection (2)(a) and (d)). Where the plan being called in has not yet been submitted by the plan-making authority for examination, the Welsh Ministers are required to hold an independent examination of it in accordance with section 23. Where a plan has already been submitted and is already the subject of an independent examination, the inspector appointed to carry out that examination is required to make recommendations to the Welsh Ministers (rather than to the authority) (subsection (2)(b) and (c)). In both instances the Welsh Ministers must publish the inspector's recommendations and the reasons for them (subsection (3)).

121. In considering the inspector's recommendations, the Welsh Ministers must take into account any matter they think is relevant, even if the plan-making authority did not take it into account (subsection (4)). They may then approve the plan, with or without modifications, or reject it; and must give a reason for their decision (subsections (5) and (6)).

Section 27 – Power to direct authority to withdraw plan
Section 28 – Withdrawal of plan in absence of direction

122. Section 27 enables the Welsh Ministers to direct a plan-making authority to withdraw its strategic or local development plan before it has been adopted. They must give their reasons for doing so. Where such a direction has been given, the authority must comply.

123. Section 28 sets out how a plan-making authority may withdraw its own strategic or local development plan in other circumstances.

124. An authority may not withdraw its plan if:

a. the Welsh Ministers have directed it to submit the plan to them for approval in accordance with section 26; or

b. they have exercised their default powers in relation to the plan under section 29.

125. A plan-making authority may withdraw a plan that has reached a stage specified in regulations (for example, publication of pre-deposit proposals or deposit plan), but that has not been submitted for examination (section 28(6)). But it may only do so if it has given notice of its intention to withdraw the plan to the Welsh Ministers and the notice period specified in regulations has expired (section 28(5)).

126. When the Welsh Ministers have been informed by a plan-making authority of its intention to withdraw a plan, they may direct the authority to provide further information and may extend the notice period (section 28(7)).

127. Once a plan has been submitted for independent examination by an inspector, it can be withdrawn only on the recommendation of the inspector and if the Welsh Ministers have not overruled that recommendation (section 28(4)).

Section 29 – Default powers of the Welsh Ministers

128. Section 29 applies if the Welsh Ministers think that a plan-making authority is failing or omitting to do anything that is necessary in connection with the preparation or adoption of its plan.

129. In those circumstances, the Welsh Ministers may prepare a plan. In doing so, they must hold an independent examination of the plan in accordance with section 23(4) to (7), and must publish the resulting recommendations, and approve the resulting plan as a strategic or local development plan. They must give reasons for their decisions.

130. The plan-making authority must reimburse the Welsh Ministers for any expenditure they incur in exercising these powers.

Section 30 – Exclusion of certain representations relating to highways and new towns

131. Section 30 allows a plan-making authority or the Welsh Ministers to disregard a representation made in relation to a strategic or local development plan if, in substance, it relates to:

a. anything that has been done, or that it is proposed to do, under certain orders and schemes relating to trunk roads, classified roads, special roads or other highways, under sections 10, 14, 16, 18, 106 or 108 of the Highways Act 1980 (c. 66) ('the 1980 Act'); or

b. anything that has been done, or that it is proposed to do, under an order designating the site for a proposed new town under the New Towns Act 1981 (c. 64).

132. Those Acts contain specific procedures for considering such representations, and this provision avoids the need for such representations to be considered twice.

Section 31 – Duty to consider whether to review plan
Section 32 – Review of plan
Section 33 – Revision of plan

133. Plans will need to be periodically reviewed and updated, to take account of changing circumstances and priorities. Section 31 therefore provides that, following the publication or revision of the NDF, every CJC and planning authority must consider whether to review its strategic or local development plan (section 31(1)). Similarly, when a CJC has adopted or approved a strategic development plan, every planning authority in the area covered by that plan must consider whether to carry out a review of its local development plan (section 31(2)).

134. Following such consideration, section 32 requires an authority to review its plan, if it considers that to be appropriate.

135. In addition, every planning authority must also review its local development plan at regular intervals, as specified in regulations – currently every four years. Every CJC must review its strategic development plan every six years (section 32(1)).

136. After reviewing its plan, a planning authority must publish and send to the Welsh Ministers a report of its findings (section 32(2)). If the authority considers that the plan should be revised, it should do so (by virtue of section 33). The provisions of this Part apply to such a revision as they apply to the initial preparation of a plan (section 33(3)).

137. Section 33 also empowers a plan-making authority to revise a strategic or local development plan at any other time. It must also do so if directed by the Welsh Ministers (section 33(1) and (2)). Here too, the procedures relating to the initial preparation of a plan will apply.

Section 34 – Revocation of plan

138. Section 34 enables the Welsh Ministers to revoke a strategic or local development plan at any time following its adoption, at the request of a plan-making authority.

Section 35 – Annual monitoring report

139. Section 35 requires every plan-making authority to report annually to the Welsh Ministers on the extent to which the objectives set in its plan are being achieved. Powers under section 41 enable the Welsh Ministers to make regulations setting out the form and content of the annual monitoring report and other matters relating to the report.

Section 36 – Joint exercise of functions by planning authorities
Section 37 – End of joint arrangements between planning authorities

140. Section 36 enables the Welsh Ministers to direct two or more planning authorities to prepare a joint local development plan, and they must give their reason for this direction. But such a direction cannot be given to a national park authority (section 36(1) and (2)).

141. Two or more planning authorities may agree to prepare a joint local development plan without the need for a direction (section 36(5)).

142. Where a joint local development plan is to be prepared, the arrangements for producing a local development plan in this Part of the Act apply as they do to the production of a plan by a single authority (section 36(6)).

143. The Welsh Ministers may withdraw or vary a direction under section 36 so that it no longer applies to a planning authority, or an authority may withdraw from an agreement to prepare a joint local development plan (section 37(1)). In those situations, section 37 enables the remaining authority or authorities to continue with the preparation of the plan. Any steps already taken will count towards the preparation of that plan, if it satisfies the conditions required by regulations under section 37(6) for it to be treated as a corresponding local development plan or corresponding joint local development plan (see section 37(2)). The conditions specified in the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 are that the plan does not relate to any part of the area of the authority that has withdrawn and has substantially the same effect as the original joint plan.

144. Where an independent examination is under way, it must be suspended (section 37(3)). However, if the plan satisfies the conditions for it to be treated as a corresponding plan the Welsh Ministers may give a direction, on the request of any of the planning authorities involved, requiring the examination to be resumed (sections 37(4) and (5)).

Section 38 – Power to require plan-making authority to pay costs of independent examination

145. This section sets out the details around the costs of an independent examination under Chapter 4 of this Part. It enables the Welsh Ministers to require the plan-making authority to pay for the cost of an examination – including any abortive costs incurred when one does not take place. These costs include standard daily costs, travelling or subsistence, administrative and staff costs and the costs of any assessor appointed to help the inspector appointed to carry out the examination. These may be recoverable as a civil debt. (See subsections (2) to (4) and (6).)

146. Regulations may specify a standard daily amount for the person undertaking an examination (subsection (5)). The current daily amounts for local development plans are specified in the Local Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2017 (S.I. 2017/476 (W. 99)) and published on the PEDW website.

Chapter 5 – General

147. This Chapter deals with miscellaneous matters relating to strategic and local development plans. This includes regulation making powers, financial provisions, guidance and definitions of key terms.

Section 39 – Urban development corporations

148. This section allows the Welsh Ministers to direct that Chapters 3 and 4 of this Part do not apply to the area of an urban development corporation. If such a direction is made, the relevant CJC or planning authority will not be required to prepare a strategic or local development plan in respect of that area.

Section 40 – Guidance

149. When exercising any of their functions under Chapters 3 and 4 of this Part or under regulations under section 41, CJCs and planning authorities are required by this section to have regard to any guidance issued by the Welsh Ministers. Such guidance can be found in the Welsh Government's *Development Plans Manual*, on its website.

Section 41 – Regulations about exercise of functions relating to plans

150. This section provides the Welsh Ministers with powers to make regulations in connection with the exercise by any person of functions under Chapters 2 to 4 of this Part of the Act. It specifies the type of provision the regulations may make, such as details as to the form and content of plans, when and how documents are published, monitoring etc. The regulations currently in force are the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 and the Town and Country Planning (Strategic Development Plan) (Wales) Regulations 2021.

PART 3 – PLANNING PERMISSION

Chapter 1 – Introductory

Section 42 – Overview of this Part

151. This section provides an overview of this Part. Subsection (2) draws attention to section 43 that sets out the basic principle underlying much of the Act, namely that planning permission is required to carry out development. As previously set out in these Notes (in relation to Chapter 2 of Part 1 of the Act), "development" is defined in wide terms, to include:

a. the carrying out of building, engineering and mining operations; and

b. the making of a material change in the use of land.

152. Subsection (3) explains that planning permission for development can be obtained in three principal ways:

a. it may be granted by the Welsh Ministers in a development order or by the planning authority in a local development order;

b. it may be granted by the planning authority in response to an application or, in certain circumstances, by the Welsh Ministers, such as on an appeal; or

c. it may be granted by a government department when they authorise certain activities under powers in other legislation.

153. Chapter 2 of this Part deals with the grant of permission by the Welsh Ministers in a development order and the grant of permission by a planning authority in a local development order.

154. Where an operation or change of use is development but is not permitted by a development order or a local development order, planning permission will normally be sought by way of an application to the planning authority or an appeal to the Welsh Ministers. Chapters 3 to 7 of this Part deal with the grant of permission by the authority or the Welsh Ministers in response to an application.

155. Chapter 8 deals with the grant of permission by a government department (which includes the Welsh Ministers or a Minister of the Crown) where they grant an authorisation under powers in other legislation.

156. Subsection (4) notes that permission may also be granted in various other ways. These include the following:

a. the Welsh Ministers in considering whether to confirm a purchase notice served under section 110 following the refusal or conditional grant of planning permission for development, may grant permission for that development under paragraph 6(3) of Schedule 12 instead of confirming the notice;

b. the Welsh Ministers, in determining an appeal against an enforcement notice, under section 133, may grant planning permission for some or all of the development to which the notice relates; and if an enforcement notice is complied with, planning permission is treated by section 142 as having been granted insofar as it is required;

c. when an operation or use is discontinued by an order under section 207, permission may be granted by that order for another operation or use; and

d. where an advertisement is displayed in accordance with regulations made under section 221, planning permission is treated as having been granted under section 229 for the display insofar as it involves the carrying out of development.

157. Chapter 7 explains the effect and duration a planning permission, and how it is to be implemented. It also provides that a permission notice may be terminated where it appears that the development permitted is unlikely to be completed within a reasonable period.

158. Chapter 10 explains how a planning permission may be changed by the planning authority or the Welsh Ministers:

a. they may make a non-material modification to the permission under section 100, on the application of a person with an interest in the land; or

b. they may make an order under section 102 modifying or revoking it.

159. Chapter 11 provides that compensation may be payable where loss or damage arises as a result of planning permission being modified or revoked. And where land is left with no beneficial use following permission being refused, modified or revoked, the owners may be able to require the planning authority to purchase it.

160. Subsection (6) notes that the nature of minerals operations means that there are special rules as to the conditions that may be imposed when planning permission is granted, and as to the periodic review of permissions (under Schedules 3, 5 and 11).

Section 43 – Planning permission required for development

161. Subsection (1) contains the basic principle that planning permission is generally required to carry out development (as defined in this Act). However, this is subject to a number of exceptions, set out in subsections (2) to (6).

162. Subsection (2)(a) provides that planning permission is not required for the carrying out of development that requires infrastructure consent under the 2024 Act. Section 19 of the 2024 Act provides that infrastructure consent is required where development (as defined in that Act) is or forms part of a significant infrastructure project; and section 20 explains that, as a result, there is no need to obtain either planning permission or various other forms of authorisation. "Development" is defined in section 133 of that Act to include everything that is defined as development in this Act, plus certain other matters. The purpose of this subsection is to avoid duplication, recognising that a grant of infrastructure consent effectively operates as a grant of planning permission.

163. Subsection (2)(b) similarly provides that planning permission is not required for the carrying out of development that requires development consent under the 2008 Act. Section 31 of the 2008 Act provides that development consent is required where development (as defined in that Act) is or forms part of a nationally significant infrastructure project. Again, "development" is defined in section 32 of that Act to include everything that is defined as development in this Act, plus certain other matters – similar to but not quite the same as those referred to in the corresponding provision in the 2024 Act. This subsection recognises that a grant of development consent effectively operates as a grant of planning permission.

164. When the use of land changes from A to B, and then from B back to A, where the change of use is material, it constitutes development and planning permission would in principle be required for both changes. However, in certain situations, described in subsections (3) to (6), permission is not required for the change from use B back to the previous use A. Use of land in this context does not include use for the carrying out of building or other operations (subsection (7)).

165. Subsection (3) relates to the situation where land is being lawfully used for purpose A and is then used for a while for a different use B, with the change from A to B being permitted by a development order or a local development order subject to limitations. Subsection (4) applies where the change of use from A to B is permitted by a specific permission in response to an application, but only for a limited period.

166. In each case, little purpose would be served by requiring permission to be obtained for the further change from use B back to the normal lawful use A. The one exception is where, prior to the first change of use, the land was being used for purpose A in breach of planning control or in breach of a discontinuance order, prohibition order or planning obligation (subsection (6)); in that situation, permission would be required for the change from use B back to use A.

167. Subsection (5) applies where land is used for purpose B in breach of planning control (see section 112), and an enforcement notice is issued requiring that use to cease. In that case, permission is not required to resume using the land for purpose A, for which it was being used before the unlawful change to use for purpose B. Nor would permission be required to change the use from purpose B to purpose C, if a change from use A to use C would have been lawful. For example, if a shop unit is changed without permission from a bookshop to a restaurant, and an enforcement notice requires the restaurant use to cease, the unit could then be used without permission as a shop, since that would not count as development by virtue of the Town and Country Planning (Use Classes) Order 1987. Or it could be used as a bank, since that would be development for which permission was granted by the 1995 Order.

Chapter 2 – Planning permission granted by order

168. While planning permission is almost always required for development, it is in some cases granted automatically by a development order, made by the Welsh Ministers, or by a local development order made by the planning authority.

169. This enables development to be carried out without the need for it to be approved in response to an application to the planning authority – although the authority may still have power to approve the details in some cases.

Section 44 – Power of the Welsh Ministers to grant permission by development order

170. The Welsh Ministers may make a development order that grants planning permission either for specific development or for development in a specified category (subsection (1)). An order may apply to all land throughout Wales, or to land of a particular description, or to a specific site or sites, and it may apply differently in relation to different types of land or in different areas (subsections (2) and (8)(a)). It may also contain incidental, supplementary, consequential, transitional or saving provision (subsection (8)(b)). Such an order is commonly referred to as 'a general development order' if it applies to most or all land in Wales, or 'a special development order' if it relates only to a specific site or group of sites.

171. The permission granted by a development order may be subject to conditions or limitations – for example, requiring the approval of the planning authority to be obtained for the design or external appearance of a building that is to be erected (subsections (3) and (4)). The categories of development authorised by such an order are commonly referred to as 'permitted development'.

172. Where permission is granted by a development order for the use of land for a limited number of days in a specified period, that is to be treated as being a permission subject to a limitation; this may have consequences for enforcement where land is used for the permitted purpose for more than the specified number of days (see subsections (6) and (7)).

173. A development order must be made by a Welsh statutory instrument under the Senedd annulment procedure (subsection (9)). The principal order currently in force is the 1995 Order. It grants permission for categories of development, specified in 75 classes that are grouped into the 33 Parts of Schedule 2 to the Order.

174. Under subsection (5), a development order may enable the Welsh Ministers or a planning authority to direct that the permission for a particular category of development does not apply to development in a particular area or to a particular development. For example, the permission to extend dwellings might be restricted so that it does not permit side extensions within a particular conservation area. The power to make such directions has been contained in article 4 of each of the general development orders since 1948; they are therefore commonly known as 'article 4 directions'.

175. An article 4 direction does not prevent such development being carried out but requires it to be permitted in response to a specific application. That enables the planning authority to exercise greater control as to the details or to withhold permission altogether. Where an authority exercises such powers, it may be required to pay compensation under section 105.

176. Subsection (10) makes clear that further provision about planning permission being granted by development order can be found in:

a. section 148 of the Local Government, Planning and Land Act 1980 (c. 65) in relation to development proposed by an urban development corporation on land within its area, where the proposals are approved by the Welsh Ministers; and

b. section 7 of the New Towns Act 1981 in relation to development proposed by a new town development corporation on land within its area, where the proposals are approved by the Welsh Ministers.

Section 45 – Power of planning authority to grant permission by local development order

Schedule 1 – Local development orders

177. The planning authority may make a local development order that grants planning permission either for specific development or for development in a specified category (subsection (1)). An order may apply to all land throughout the authority's area, or to land of a particular description, or to a specific site or sites, and it may apply differently in relation to different types of land or in different areas (subsections (2) and (5)). The permission granted by a local development order may be subject to conditions or limitations (subsection (3)).

178. Regulations under subsection (6) may specify categories of development that may not be the subject of a local development order. Article 27(13) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (S.I. 2012/801 (W. 110)) ('the 2012 Order') currently provides that an order may not be made in respect of development affecting a listed building or major development specified in Schedule 1 to the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (S.I. 2017/567 (W. 136)).

179. Under subsection (4), a development order may enable the planning authority to direct that the permission for a particular category of development does not apply to development in a particular area or to a particular development. The effect of such a direction is identical to that of an article 4 direction made under powers in a development order.

180. The procedure as to the preparation of a local development order is currently set out in article 27 of the 2012 Order, made by the Welsh Ministers under their powers to make provision about procedure now restated in paragraph 1 of Schedule 1. That Schedule makes further provision about the preparation, revision and revocation of a local development order.

181. If the Welsh Ministers consider that a draft local development order is unsatisfactory, they may at any time before the order is adopted direct the planning authority to modify the draft, under paragraph 2 of Schedule 1, giving their reasons for so directing. Further, they may at any time before the order is adopted direct the authority to send the draft to them for approval, under paragraph 3. If a direction is made under paragraph 2 or 3, the authority may not adopt the order until the Welsh Ministers have confirmed compliance with a direction under paragraph 2 or approved the order under paragraph 3.

182. An order has effect only so far as it is adopted by the authority (subsection (7)).

183. A planning authority that has made a local development order may at any time revise it, or the Welsh Ministers may direct it to do so, under paragraph 4 of the Schedule. The procedure for revising an order is the same as for making one initially. The authority may revoke an order it has made, under paragraph 5. The Welsh Ministers may also revoke a local development order, but not without first giving the authority an opportunity to make representations, if requested, before an inspector.

184. By virtue of paragraph 6, the authority in its annual monitoring report under section 35 must report on the extent to which the local development orders it has made are achieving their purposes.

Section 46 – Completion of development after withdrawal of permission granted by order

185. Where development has been permitted by a local development order, and has been started, that permission may be withdrawn. In this situation, a local development order may provide that the development may be completed. Subsection (2) sets out what constitutes withdrawal of permission for the purpose of this section. This includes where a direction is given under section 44(5) or 45(4), or where the order itself is amended so that it ceases to grant the permission or to materially vary the terms on which it is granted, or where the order is revoked.

Chapter 3 – Planning permission granted on application: introductory

Section 47 – Grant of planning permission on application

186. The carrying out of development requires planning permission (see Chapter 1 of this Part). Permission is granted by a development order (or, less frequently, by a local development order) for many categories of development – subject in most cases to limitations and conditions (see Chapter 2). Where any of those limitations and conditions are not complied with, or where development is not in any of the categories permitted by an order, it will need to be authorised in some other way.

187. The normal form of authorisation is planning permission granted in response to an application (commonly referred to as a 'planning application'). Such an application is normally made to the planning authority under Chapters 3 to 6 of this Part (subsection (1)). Permission may also be granted in response to an appeal to the Welsh Ministers under Chapter 6.

188. Applications for planning permission and related approvals in certain special cases are the subject of Chapter 7.

189. Such permission will usually be in the form of detailed permission, subject to conditions; but in some instances it will be outline permission, under section 48, reserving certain matters for subsequent approval. Development carried out without permission will be in breach of planning control (and as such at risk of enforcement action: see Part 4), but it may be subsequently authorised by permission under section 49.

190. Regulations may provide for the detailed procedure for submitting and determining applications for permission under this Part. Such details have until now been provided in a development order – the most recent being the 2012 Order. That Order provides a procedural code covering almost all aspects of application procedure, including pre-application consultation, the submission of an application, consultation on applications, the determination of an application and appeals.

Section 48 – Outline planning permission

191. This section enables regulations under section 47 to provide that planning permission may be granted for operational development – that is, for building, engineering, mining or other operations – with certain matters reserved for subsequent approval by either the relevant planning authority or, in certain limited circumstances, the Welsh Ministers (subsections (1) to (3)). Such a permission is referred to as 'outline planning permission'. It enables the principle of a proposed development to be approved, before time and money are spent on the fine details.

192. The matters reserved for subsequent approval, which will not be set out in the application for permission, are referred to as 'reserved matters'. Article 2(1) of the 2012 Order provides that reserved matters may include: access, appearance, landscaping, layout and scale. Section 94 (see below) provides for the time limits within which to apply for the approval of reserved matters (subsection (5)).

Section 49 – Planning permission for development already carried out

193. Development is sometimes carried out without planning permission, or without complying with one or more conditions subject to which permission has been granted; and where permission has been granted for development but only for a limited period, the development may continue after the end of that period. That will constitute a breach of planning control (see section 112); and where that is considered to be unsatisfactory, it may lead to enforcement action under Part 4. However, in other cases it may be more appropriate for the position to be regularised by the grant of planning permission under this section.

194. Such permission may have effect from the date on which it is granted. Alternatively, it may be granted, under subsection (3), to have effect from the time when the development was carried out – or, in the case of development previously permitted by a limited permission, from the date when that permission expired. The permission may be subject to appropriate conditions to regulate the development in the future.

Section 50 – Planning permission for development without complying with previous conditions

195. Planning permission for development is usually granted subject to conditions. There may subsequently be a desire to vary those conditions, or to omit them altogether. For example, a person may purchase land that has the benefit of planning permission for a new building, subject to a condition as to the drawings to be implemented, and may wish to substitute revised drawings; or a person operating a restaurant that has been permitted may wish to change a condition as to the hours of opening.

196. This section enables an applicant to seek the review of conditions that have been imposed, under section 68, without the permission itself being at risk.

197. However, the procedure under that section cannot be used to extend the period within which development must start, if that period has ended without the development having been started (section 68(4)). In that case a new permission must be sought under the usual procedure that will enable the planning authority to review the principle of the proposed development, not just the conditions to which any permission should be subject.

198. Where a proposed change to the conditions is small or insignificant in its planning impacts, it may be suitable to seek to vary them under the procedure for making non-material changes, under section 100.

Section 51 – Sustainable development duty

199. This section applies to the exercise by a public body of a function under or by virtue of this Act in relation to an application (or a proposed application) for planning permission or for the approval of reserved matters. It requires that the body must exercise that function in such a way as to ensure that the development and use of land contributes to improving the economic, social, environmental and cultural well-being of Wales (subsection (2)), as part of its duty under the 2015 Future Generations Act to carry out sustainable development.

200. A "public body" for this purpose has the same meaning as in the 2015 Future Generations Act – that is, it would include the Welsh Ministers, local authorities, national park authorities, CJCs and NRW. The duty under this section and under that Act apply to planning authorities and to the Welsh Ministers in considering and determining planning applications; and to NRW when responding to them. By virtue of paragraph 1 of Schedule 20 to this Act, it would also apply to inspectors determining appeals under Chapter 6.

201. In complying with the sustainable development duty under this section, the public body must take account of any relevant guidance issued by the Welsh Ministers under the 2015 Future Generations Act. This includes the statutory guidance, *Shared Purpose: Shared Future*, issued by them under section 14 of that Act.

Chapter 4 – Pre-application procedure

202. Before an application for planning permission is formally submitted, the applicant may require information from the planning authority as to the possibility of success and what will be needed to be supplied by way of supporting information. Once a proposal has been formulated, certain development will need to be the subject of publicity and consultation prior to the submission of the formal planning application, to ensure that, so far as possible, likely problems can be anticipated and minimised or eliminated.

203. The provisions of this Chapter deal with both matters.

Section 52 – Requirement for applicant to carry out pre-application consultation and publicity

204. A person who is proposing to make an application for planning permission to carry out development that is in a category specified by regulations must publicise and consult on the proposed application (subsections (1) and (2)). Article 2B(1) of the 2012 Order currently provides that this requirement applies only to major development (as defined in article 2(1)) – that is:

a. development relating to mining operations or the depositing of waste;

b. the provision of 10 or more dwellings, or any residential development on a site of more than 0.5 hectares;

c. the provision of a building or buildings of more than 1,000m^2 of floorspace; or

d. any development on a site of more than 1 hectare.

205. However, by virtue of subsection (6), the requirement does not apply to applications for urgent Crown development (under section 85) or in cases specified in regulations. Article 2B of the 2012 Order currently exempts applications for development already carried out (under section 49) and applications for permission to carry out development without complying with conditions (under section 50).

206. Under subsections (3) and (4), the prospective applicant must publicise the application to bring it to the attention of most of those owning or occupying land in the vicinity of the site. Such publicity must enable the applicant to be consulted by those wishing to comment on the proposed development and must provide enough time for that to take place. Further details are to be provided by regulations under subsection (7) and (8).

207. The applicant must (under subsection (5)) consult all those in any of the categories specified by regulations. Article 2D of the 2012 Order currently specifies community consultees (local councillors and community councils) and specialist consultees (those who must be consulted by the planning authority before it can grant permission for development of the relevant category). Specialist consultees must respond within 28 days. The applicant must then supply with the actual application a report (under section 57(2)) as to the consultation that has been carried out under this provision and how the consultation responses received have been taken into account.

Section 53 – Pre-application services provided by planning authority or the Welsh Ministers

Section 54 – Pre-application services: records and statement of services

208. It is possible for those contemplating submitting a planning application to consult with the planning authority prior to making the submission. They may make a written request to the authority under section 53 and the authority must then provide assistance as set out in regulations under section 53(1) to (3). The current regulations are the Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016 (S.I. 2016/61 (W. 31)). However, this does not currently apply in relation to applications for development already carried out by virtue of regulation 4 (made under the power restated in section 53(4)).

209. Currently, under regulation 7, in relation to any application, the authority is to provide on request:

a. information as to the planning history of the land in question, the relevant provisions of the development plan, and any supplementary planning guidance, so far as relevant to the application;

b. information as to any other relevant considerations; and

c. an initial assessment of the proposed development on the basis of those matters.

210. Currently, under regulation 8, in relation to any application other than a householder application, the authority is also to provide:

a. information as to any planning obligations that might be required (under Chapter 1 of Part 6), and any liability to pay a community infrastructure levy that might arise (under Chapter 2 of that Part); and

b. details of what drawings, documents or other material would be required to support a subsequent application.

211. A fee (under section 360) is payable for the provision by an authority of such pre-application services. Under regulation 2A and Schedule 4 of the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 (S.I. 2015/1522 (W. 179)) ("the 2015 Regulations"), the fee payable is as set out in the *Planning application fees* document, prepared by the Welsh Ministers under regulation 2ZA and published on the Welsh Government's website.

212. Currently, under regulation 9 of the Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016, each planning authority must maintain a record of the requests made to it for the provision of pre-application services and the services provided in response to such requests. And it must provide on its website the details of those services and the fees payable in respect of such requests.

Chapter 5 – Applying for planning permission and related approvals

213. There are various procedures, in addition to the grant of permission by a development order, by which planning permission may be obtained. Of these, the most frequently encountered is the grant of permission by the planning authority in response to a planning application. The provisions relating to the making of such an application are the subject of this Chapter.

214. Guidance on the submission, validation and registration of applications is provided in the *Development Management Manual*, the current edition of which is available on the Welsh Government's website.

Section 55 – Application for planning permission to be made to planning authority

215. An application for planning permission is normally to be made to the planning authority whose area contains the land on which the development is to be carried out (subsection (1)).

216. However, this is subject to the following exceptions:

a. where an authority has been designated under section 79 for the purposes of section 78, an application may be made either to the planning authority or to the Welsh Ministers;

b. where an application is made by or on behalf of the Crown, it will be made to the authority, but the normal procedures may be varied by regulations under section 84;

c. certain applications for urgent Crown development may be made to the Welsh Ministers instead of to the authority, under section 85;

d. regulations under section 86 may enable a single application to be made to the authority for planning permission and one or more other types of authorisation (subsection (2)(a) to (d)); and

e. regulations under section 405 may provide that certain applications can be made to the Welsh Ministers for development of land in the area of a planning authority when the planning authority or the Welsh Ministers act as developers or have an interest in the land.

Section 56 – Application for planning permission, approval of reserved matters etc.: general requirements

217. The requirements as to making applications are generally provided in regulations rather than on the face of the Act. Subsections (1) and (2) enable the Welsh Ministers to make such regulations, providing for the procedural details of applications to planning authorities for:

a. planning permission;

b. the approval of reserved matters; or

c. any other consent, agreement or approval required by a condition or limitation of a permission that has been granted.

218. Such details have until now been provided by a development order – the most recent being the 2012 Order.

219. Regulations under this section may make provision as to how an application is to be made, the content of applications, the forms to be used and the documents and other materials to be included (subsection (3)). The current position is set out in Part 2 of the 2012 Order.

220. Under subsection (4), a planning authority may require that a particular application must include information that the authority considers necessary, along with appropriate evidence to support any matter contained in the application. For example, the authority may require more detailed drawings of proposed building operations, more information as to the materials that are to be used or require evidence as to the past and present use of a piece of land. An authority may publish such requirements in relation to all applications in a particular category.

221. But such requirements, whether in relation to a particular application or more generally, must not be inconsistent with the provisions of any regulations that have been made under subsection (3) and must be reasonable regarding the nature and scale of the proposed development. They also must not require the production of material relating to a matter unless it is reasonable to believe that the matter will be relevant to the consideration of the application (subsection (5)).

Section 57 – Application for planning permission: design and access statement and pre-application consultation report

222. One requirement that must be imposed by regulations is that an applicant will in certain cases have to include, with an application for planning permission, a statement as to the design principles that have been applied in relation to the development, and the manner in which issues relating to access to the completed development have been dealt with (subsection (1)). Regulations may also provide for the form and content of such a statement.

223. Under article 7 of the 2012 Order, such a statement is currently required to accompany any application for permission for major development and any application for development in a conservation area or a world heritage site involving the creation of at least one new dwelling or one new building of at least 100m² floor area. However, it is not required with an application for mining operations or the depositing of waste or for a change of use.

224. Where a person is required under section 52 to publicise and consult on a proposed application and then makes an application for the development (whether or not in the same terms as the initial proposal), the application must contain a pre-application consultation report. That is, a report on the publicity and consultation that was in fact carried out, what responses arose as a result and how account has been taken of them (subsections (2) and (3)). Here too, regulations may provide for the form and content of such a report.

Section 58 – Notice of application for planning permission or approval of reserved matters

225. An application for planning permission (or for the approval of a reserved matter) can be made by anyone, regardless of whether they own the land in question. This enables an application to be made by, for example, a prospective purchaser of the land. However, where an application is made by someone other than the owner, the planning authority is likely to want to know the views of those who are the owners. This section accordingly enables the authority to know that those owners have at least been notified and as such have a chance to express their views – or that they cannot be found.

226. Regulations under subsection (1) must therefore require every applicant to give notice of an application to anyone other than the applicant who is an owner of any of the land to which the application relates ('the application site'), or an agricultural tenant of any of it. By virtue of the definition of "owner" in subsection (7), this means that the normal rule is that notice must be given to any owner of the freehold of all or any of the site, or a tenant under a lease that has at least seven years to run.

227. In the case of agricultural land, the definition of "agricultural tenant" in subsection (7) means that notice must be given to:

a. any tenant of an agricultural holding (as defined by the Agricultural Holdings Act 1986 (c. 5)) that is wholly or partly included in the application site, under a tenancy to which that Act applies; and

b. any tenant of any of the application site under a farm business tenancy, as defined by the Agricultural Tenancies Act 1995 (c. 8).

228. By virtue of regulations made under subsection (3), a notice in the prescribed form must be served on every such owner or tenant.

229. In the case of minerals applications, by virtue of the regulations made under subsection (7)(c), notice must also be given to any person entitled to an interest in the minerals in the application site. Article 10 of the 2012 Order currently provides that an interest in minerals excludes oil, gas, coal, gold or silver. Article 10(2) to (5) also provides where an application relates to underground mining, a notice must be served on owners and tenants, where known, and inserted in the local press. And a notice must be displayed for at least seven days in each community that contains any part of the application site, explaining where details of the application can be found.

230. Regulations under subsection (2) may require that an applicant must make a declaration that the requirements of this section have been complied with (see article 11 of the 2012 Order which currently requires every applicant to certify this in a form published by the Welsh Ministers). Where a person knowingly or recklessly makes a declaration that is false or misleading, that is an offence under subsection (4) that attracts on conviction a fine. The offence is triable summarily (in the magistrates' courts) but is not subject to the normal six-month time limit for instituting proceedings for summary offences (subsection (6)).

Section 59 – Planning authority not to consider invalid application

231. This section provides the mechanism to enforce the various procedural requirements imposed by or under the preceding sections.

232. Under subsection (1)(a) and (b), an authority must not consider an application for planning permission or the approval of reserved matters if it fails to comply with:

a. general requirements imposed by regulations under section 56;

b. where relevant, requirements as to a design and access statement and a pre-application consultation report imposed under section 57; and

c. requirements as to notification and publicity imposed under section 58.

233. Under subsection (1)(c) and (2), an authority must not consider an application for a consent, agreement or approval required by a condition or limitation subject to which planning permission has been granted, if it fails to comply with:

a. general requirements imposed by regulations under section 56;

b. requirements imposed by a development order as to the form of such an application or of any material included with it, or how it is to be made.

Section 60 – Planning authority to give notice that application is not valid

234. Where an authority considers that the requirements referred to in section 59 have not been complied with, it must notify the applicant under section 60(2)(a).

235. An authority must also notify the applicant, under section 60(2)(b), where the period within which it must deal with the application (that is, the period imposed by regulations under section 63(2)(f) or such longer period as may be agreed under section 73(4)(b)) has not yet begun because information required by the authority under section 56(4) has not been provided. Provision to that effect is currently made in article 22 of the 2012 Order.

236. Subsection 60(3) deals with applications for the approval of a matter reserved by an outline permission, or for a consent, agreement or approval required by a condition or limitation subject to which a permission has been granted. In any such case, the authority must notify the applicant if it considers that the application does not comply with a term of the permission as to the form or content of the application or of any materials to be included with it.

237. A notice under this section (referred to below as 'an invalidity notice') must identify the requirement that the authority considers has not been complied with, and the reason why the authority considers that it has not been complied with (subsection (4)). Regulations under subsection (5) may make provision as to such notices (see article 8(3A) of the 2012 Order which currently requires that a notice must inform the applicant of the right to appeal against it).

Section 61 – Right to appeal against notice of invalidity

238. If a planning authority gives an applicant an invalidity notice, the applicant may appeal to the Welsh Ministers against it by serving a notice of appeal on them (subsections (1) and (4)).

239. An appeal may be made under subsection (2) on the grounds that the application complies with the procedural requirement identified in the notice; or that the application is not one to which that requirement applies.

240. Where a notice alleges that an application is invalid because of a failure to supply sufficient information or supporting evidence (as required under section 56(4)), the appeal may also be made (under subsection (3)) on the grounds that:

    a. the period specified under section 63(2)(f) or 73(4) for dealing with the application should begin irrespective of whether the requirement is complied with; or

    b. that the requirement to supply that information is not justified, in the light of subsection 56(5).

241. This enables an applicant to argue that, for example, the determination of a large application should not be held up because of a failure to supply some relatively minor supporting material.

242. Regulations under subsection (5) may provide more detailed requirements as to bringing such appeals.

Section 62 – Determination of appeal against notice
Schedule 2 – Appeals under section 61: determination by inspectors

243. Where an appeal is made to the Welsh Ministers against an invalidity notice, they will either dismiss the appeal or quash or vary the notice (section 62(1)). The appeal will be determined on the basis of written representations, normally by an inspector (whose decision will be treated as that of the Welsh Ministers). The Welsh Ministers may exceptionally direct that they will determine it themselves. The decision of the inspector or the Welsh Ministers is final – subject to any challenge in the High Court (section 62(2)).

244. Further details as to such appeals are provided by Schedule 2. The inspector has the same powers as the Welsh Ministers to determine the appeal, direct procedure and make orders as to costs (paragraph 1). At any point prior to the inspector's determination of the appeal, the Welsh Ministers may appoint a replacement (paragraph 2). The validity of an inspector's decision may not be challenged in legal proceedings on the ground that the appeal should have been determined by the Welsh Ministers, unless such a challenge is brought before the decision is given (paragraph 5).

245. Under paragraph 3, where the Welsh Ministers decide to determine it themselves, they must notify the appellant and the planning authority – and the inspector, if one has been appointed. They may also take account of any report made to them by that inspector. Having recovered jurisdiction, the Welsh Ministers can reverse that decision, by issuing a further direction under paragraph 4 appointing a new inspector – again notifying the appellant, the planning authority and the previous inspector.

Chapter 6 – Dealing with applications

246. Chapter 6 described how an application for planning permission is made to a planning authority. This Chapter describes how such an application is dealt with.

247. Guidance on publicity and consultation is provided in the *Development Management Manual*, available on the Welsh Government's website.

Section 63 – Procedure for dealing with applications: general

248. The details of the procedure for dealing with an application are generally provided in regulations rather than on the face of the Act. This section enables the Welsh Ministers to make such regulations, providing for the procedural details of dealing with applications for:

    a. planning permission;

    b. the approval of reserved matters; or

    c. any other consent, agreement or approval required by a condition or limitation of a permission that has been granted (subsection (1)).

249. Such details have until now been provided by a development order – these are currently set out in the 2012 Order.

250. Subsection (2) sets out some of the provisions that can be made by these regulations. By virtue of subsection (2)(a) and (b), regulations may provide for applications to be publicised generally and to be the subject of notification (including to specified persons or bodies) or consultation. The current requirements are in Part 3 of the 2012 Order; and Schedule 4 to that Order lists 25 types of development that must be notified to specified bodies. Under subsection (2)(d), regulations may also specify particular categories of representations that must be taken into account. Regulations under subsection (2)(c) may also require authorities to delay determining applications, to enable those notified or consulted to have time to respond.

251. It will sometimes be necessary or desirable to vary an application after it has been submitted. Subsection (2)(e) enables regulations to provide for that.

252. Regulations may provide for the authority to notify the applicant within a specified period of the outcome of an application and specify how that notification is to be given (subsection (2)(f)). Under article 22 of the 2012 Order, the time period for the decision is currently eight weeks from receipt of a valid application, but that may be varied in certain circumstances. Section 69 makes further provision about notices of decisions.

253. Where an application raises planning issues of more than local importance, the Welsh Ministers may wish to consider whether to call-in an application for their own decision under section 72. The regulations under section 63 may facilitate this by enabling the Welsh Ministers to direct a planning authority to delay granting planning permission in response to a particular application, or any application in a particular category, for a specified period or indefinitely (subsection (3)).

Section 64 – Requirement to respond to consultation

254. This section applies where a body that carries out functions under any enactment (such as the local highway authority or NRW) is consulted on an application by virtue of regulations under section 63. It also applies where the body was consulted on an application for planning permission and is now being consulted on an application for the approval of reserved matters, or for any other consent, agreement or approval required by a condition or limitation of a permission (subsections (1) to (3)).

255. In either case, the body must make a substantive response to the consultation within the period specified in regulations, or any other period agreed between it and the planning authority (subsection (4)). The period is specified in article 15A(2) of the 2012 Order; it is currently 21 days, but 30 days in the case of an "EIA application". Regulations under subsection (5) may provide for the nature of a substantive response for this purpose and may require each body that is consulted to prepare a report to the Welsh Ministers as to way in which it is responding (see article 15A(3) and article 15B).

256. This section applies to an application that has been called-in by the Welsh Ministers for their own determination just as it does to one being determined by the authority (section 72(5)).

Section 65 – Notifying community councils of applications

257. Each community council is able to request the relevant planning authority to send to it all planning applications (or applications for the approval of reserved matters) relating to its area, or all specified applications (subsections (1) and (2)).

258. Where such a request has been made, and the planning authority receives an application that falls within its terms, the authority must notify the community council of the application. It must do so by sending a copy of the application or indicating in writing the nature of the development and the land to which it relates (subsections (3)(a) and (4)). The authority must also notify the community council of any subsequent variation to such an application (other than one that it considers to be trivial), by sending a copy of the variation or informing the council of its general effect (subsections (3)(b) and (5)).

259. Regulations may provide that the planning authority must give the council an opportunity to make representations as to how the application should be determined, take account of those representations and let the council know the outcome (subsection (6)).

Section 66 – General considerations relevant to determination of applications

260. This section describes the matters that must be taken into account by planning authorities when determining planning applications. It also applies to decisions taken by the Welsh Ministers (and inspectors on their behalf) when determining applications they have called-in for their decision (see section 72(5)), those taken by them when deciding appeals (see section 77(5)) and applications they determine relating to urgent Crown development (see section 85(11)).

261. Subsection (1) lays down one of the fundamental principles of planning law, namely that, in determining an application for planning permission or an application for the approval of a reserved matter:

a. the decision-maker must have regard to the development plan and to any other relevant consideration; and

b. it must make its decision in accordance with the development plan unless other relevant considerations indicate otherwise.

262. This subsection ensures that the development plan will be a major factor in planning decisions. What constitutes the development plan is the subject of section 10 – it consists of the NDF, any strategic development plan for the area including the land in question and the local development plan for the area. And in the event of conflict between two development plan policies, that must be resolved in favour of the policy in the most recent document.

263. The term "relevant consideration" replaces the term "material consideration" used in previous planning Acts but has the same meaning; see the decision of the Supreme Court in *R (Health & Safety Executive) v Wolverhampton CC* [2012] UKSC 34 at [26]. That court considered the meaning of the term more recently, in *R (Wright) v Resilient Energy Severndale Ltd and Forest of Dean District Council* [2019] UKSC 53, holding that considerations must serve a planning purpose (that is, one that relates to the character of the use of the land) and must fairly and reasonably relate to the development that is proposed.

264. By virtue of sections 408(3) and (4), the considerations to which the decision-maker must have regard under this provision include the following, so far as they are relevant to the making of the decision:

a. national policies relating to the development and use of land issued by the Welsh Ministers; and

b. considerations relating to the use of the Welsh language.

But that does not mean that either of those matters is necessarily relevant to any particular determination; nor does it affect the weight that should be given to either of them, or to any other relevant consideration.

265. National policies include *Planning Policy Wales* (Edition 12, published February 2024) and the range of TANs on specific topics. Considerations relating to the use of the Welsh language are explored in TAN 20 on *Planning and the Welsh Language*.

266. In addition, by virtue of section 51, the determination of an application for planning permission or the approval of a reserved matter must be exercised as part of the decision-maker's duty in accordance with the 2015 Future Generations Act, to carry out sustainable development, for the purpose of ensuring that the development and use of land contribute to improving the economic, social, environmental and cultural well-being of Wales. However, this does not mean that regard must be had to any particular consideration when making a determination; nor does it affect the weight that should be given to either any such consideration (see section 51(5)).

267. Subsection (2) applies where a person has entered into a planning obligation under section 165. This may be taken into account, as a reason for granting permission, where:

a. the obligation is directly related to the development to which the application relates;

b. it is necessary to make the development acceptable in planning terms; and

c. it is fairly and reasonably related in scale and kind to the development.

268. Subsection (3)(a) draws attention to section 404, which applies where the proposed development affects a listed building or its setting. In considering whether to grant planning permission, the decision-maker is to have special regard to the desirability of preserving the listed building, its setting and any features of special interest that it possesses. Subsection (3)(b) also refers to section 160 of the 2023 Act, which applies where the proposed development affects a conservation area and requires the decision-maker to have special regard to the desirability of preserving or enhancing the character or appearance of the area.

Section 67 – Grant or refusal of planning permission and imposition of conditions

269. On receipt of an application for planning permission, a planning authority may grant permission, subject to the conditions required by this Part and to any other conditions it considers appropriate (subsection (1)(a)). Or it may refuse permission (subsection (1)(b)). The same applies where the Welsh Ministers determine an application that has been referred to them for their decision (section 72(5)) or where they determine an appeal (section 77(5)).

270. The conditions that must be imposed are:

a. those required by section 69, as to specifying plans or other documents in accordance with which the development must be carried out;

b. those required by Chapter 9 of this Part, as to the date by when the development must be started;

c. in the case of a development consisting of mining operations or that includes the depositing of mineral waste, those required by Schedule 5 as to the date by when the development must cease;

d. those required by section 233, as to the preservation or planting of trees.

271. Other conditions that may be appropriate will be determined by the planning authority on a case-by-case basis. The general test for the lawfulness of a condition is as laid down by the House of Lords in *Newbury DC v Secretary of State* [1981] AC 578 at pp 607 to 608, namely:

a. it must be imposed for a planning purpose and not for an ulterior one;

b. it must fairly and reasonably relate to the development permitted; and

c. it must not be so unreasonable that no reasonable authority could have imposed it.

272. In addition to those legal requirements, Welsh Government Circular 016/2014: *The Use of Planning Conditions for Development Management* emphasises that conditions should also be necessary, precise and enforceable, ensuring that they are effective and do not make unjustifiable demands of applicants. Conditions should only be imposed where they satisfy all of these tests.

273. In particular conditions may regulate the development or use of the land that is subject to the application. But they may also (under subsection (2)) regulate the development or use of other land controlled by the applicant – for example, requiring the removal of a structure on such land where it obstructs the visibility of vehicles exiting a development site.

274. The normal rule is that planning permission has effect indefinitely, provided that the permitted development starts within the period specified by any condition attached to it. However, a permission may authorise the development only for a limited period. In such a case, it may be subject to both of the following conditions:

a. requiring the removal of buildings or works authorised by the permission or the discontinuance of the use authorised by the permission at the end of that period. "Use" in this context includes use for mining operations, but not use for any buildings, engineering or other operations;

b. the carrying out at that time of any works necessary to restore the land to its previous condition.

275. Slightly different issues arise in connection with planning permission granted by the planning authority for development that consists of mining operations or includes the depositing of waste. These are the subject of Schedule 3, which is introduced by subsection (6).

Schedule 3 – Conditions relating to mining operations and depositing of waste

276. The carrying out of mining operations or the depositing of waste (either mineral waste or any other type of waste) will significantly affect the character and appearance of the land involved. Once such operations have ceased, the land should be brought to a condition such that it is restored or can be used for a new use in the future.

277. As a result, a permission for the carrying out of mining operations or the depositing of waste will normally be subject to one or more restoration conditions, requiring that the land affected must be restored by using subsoil, topsoil or similar material (paragraph 1(2)(a)). Where such a condition is imposed, the permission may also be subject to one or more aftercare conditions requiring that the land is treated in order to be suitable for agriculture, growing timber or amenity purposes (paragraph 1(1), (2)(b) and (3)).

278. Either by reference to a scheme or otherwise, such an aftercare condition may specify the steps to be taken – for example, planting, watering or draining – to bring the land to the required standard, during the period of five years from the end of the restoration works (paragraph 1(4) to (8)). That period may be varied by regulations made under paragraph 1(9). Where the condition refers to a scheme, that scheme must be approved by the planning authority (paragraph 1(5)).

279. Paragraph 2(1) to (3) applies where the aftercare conditions specify that the land is to be used for agriculture following the conclusion of the mining or depositing of waste. Where the land was being used for agriculture at the time when permission was granted for the mining or depositing of waste (or where it had last been used for agriculture prior to a period when it had no other lawful use), and where the Welsh Ministers have notified the authority of its characteristics at that time, the conditions are to require that the land is to be restored to its state as it was when last used for agriculture. In any other case where the aftercare conditions specify that the land is to be used for agriculture, the conditions are to require that it is to be made reasonably fit for that use.

280. Where aftercare conditions specify that the land is to be used for growing timber, the conditions are to require that it is to be made reasonably fit for that use. And where the conditions specify that the land is to be used for amenity purposes, they are to require that it is to be made suitable for sustaining trees, shrubs and other plants (paragraph 2(4) and (5)).

281. Before imposing an aftercare condition specifying that the land is to be used for agriculture, the planning authority must consult the Welsh Ministers (paragraph 3(1) to (3) and (5)(a)) as to:

a. whether such a condition is appropriate;

b. whether the steps required to achieve that use should be specified in a condition or in a scheme;

c. if the steps are to be specified in a condition, what the steps should be;

d. if the steps are to be specified in a scheme, whether the authority should approve any scheme submitted to it.

282. Similarly, before imposing an aftercare condition specifying that the land is to be used for growing timber, the authority should consult NRW as to those matters (paragraph 3(1) to (3) and (5)(b)).

283. The authority must also from time to time consult the Welsh Ministers or NRW, as appropriate, as to whether the steps specified in an aftercare condition or scheme are being taken (paragraph 3(4)). If it is satisfied that the condition has been complied with, it must issue a certificate to that effect if asked to do so by anyone with an interest in the land (paragraph 4).

284. Paragraph 5 provides that, where the steps required by an aftercare condition or scheme are carried out by someone (A) other than the person who carried out the mining operations or depositing of waste, the cost of taking the steps may normally be recovered by A from the last person who did carry out mining operations or depositing waste (B). However, that does not apply if a contract between persons A and B provides otherwise.

285. The provisions of this Schedule apply in relation to an appeal as they apply in relation to an application for permission (section 77(5)).

Section 68 – Determining applications to develop without compliance with previous conditions

286. Where planning permission has been granted for development, an application may be submitted for permission to carry out the development without complying one or more of the conditions that were attached to the previous permission (see section 50). By virtue of subsection (1), the authority determining such an application must consider only the question of the conditions subject to which permission should now be granted – that is, it cannot go back and consider again the acceptability of the development in principle.

287. If the authority decides that permission should only be granted subject to the same conditions as were attached to the permission as originally granted, it must refuse the application. However, if it decides that permission should be granted subject to different conditions, it must grant a new permission with the different conditions accordingly (subsections (2) and (3)).

288. The same applies where the Welsh Ministers are determining such an application after they have called it in for their decision (see section 72(5)) or where they are determining an appeal relating to such an application (section 77(5)).

289. Such an application must otherwise be considered in accordance with the general principles set out in sections 66 and 67.

290. Where the previous permission was subject to a condition as to the period within which the development must start, and that period has ended without the development having started, the permission will have lapsed. In that case, a new application for permission to carry out the development must be considered from first principles, not just as to the conditions that should be attached (subsection (4)). "Start" in this context has the meaning given by section 99.

Section 69 – Decision notices

291. It is important that there is a clear record of decisions that have been made on applications for planning permission.

292. Once an authority has determined an application for planning permission, it must issue a notice of its decision in accordance with requirements imposed under section 63(2)(f). Where the decision is to grant permission, the notice must specify the plans or other documents that describe the development that has been permitted; and the permission is subject to a condition that the development is to be carried out in accordance with them. However, this does not apply where the permission authorises development that has already been carried out (subsections (1) to (4)).

293. The same applies where the Welsh Ministers determine such an application after they have called it in for their decision (see section 72(5)).

294. An authority must issue a revised decision notice where:

a. the authority or the Welsh Ministers approve a reserved matter following a grant of outline planning permission;

b. the authority or the Welsh Ministers give any consent, agreement or approval required by a condition of the original permission; or

c. the authority changes the permission under section 100 (non-material changes) by varying or removing a condition or imposing a new one.

295. It must send a copy of the revised notice to those specified in the regulations. And those regulations may specify information that the notice must include in relation to the consent, agreement or approval or (as the case may be) the variation, removal or imposition of the condition (subsections (5) and (6)). The current requirements are in article 24A of the 2012 Order.

Section 70 – Power to refuse to consider similar applications

296. It may be appropriate for an applicant who has failed to obtain permission for proposed development to revise the proposal and submit a new application. However, where permission has been refused by the planning authority and the Welsh Ministers, the submission of a further application seeking permission for the same or similar development simply wastes the time of the planning authority and others involved.

297. A planning authority may therefore choose to refuse to consider an application for planning permission where:

a. the Welsh Ministers have during the two previous years called-in for their own decision a similar application and refused it, or have dismissed an appeal relating to a similar application; and

b. the authority considers that during that period there has been no significant change in the development plan or in any other relevant considerations (subsections (1) to (3)).

298. For these purposes, two applications are similar if the authority considers that they relate to the same or substantially the same site and the same or substantially the same development (subsection (4)).

Section 71 – Power to refuse to consider application made after issue of enforcement notice

299. A planning authority may also refuse to consider an application for planning permission if the application seeks to authorise matters that are specified as constituting a breach of planning control in an enforcement notice that has already been issued.

300. This ensures that such authorisation can only be sought by way of an appeal against the notice under ground (a) (permission should be granted); see section 131(2)(a).

Section 72 – Reference of application to the Welsh Ministers

301. An application for planning permission or for the approval of a reserved matter (or an approval required under a development order) will normally be made to the relevant planning authority and determined by that authority. However, in some case the Welsh Ministers may decide that an application should more appropriately be determined by them. This generally occurs only where a proposal raises planning issues of more than local importance (see *Planning Policy Wales*, Edition 12, paragraph 1.35).

302. To enable this to occur, the authority must refer an application to the Welsh Ministers if it is in a category specified in regulations made by them, or if it is the subject of a specific direction given to the authority by them. A direction may relate to a particular application or to all applications in a particular category (subsections (2) and (3)).

303. Regulations under subsection (4) may require the Welsh Ministers to notify the applicant, within a specified period, when an application has been referred to them. The regulations may also apply any of the routine requirements (under section 58 or 63) for applications dealt with by a planning authority to an application called-in by the Welsh Ministers.

304. The provisions as to responding to consultation (section 64), determining applications (sections 66 to 68 and Schedules 3 and 5) and issuing a decision notice (section 69) apply equally in relation to applications that have been called-in (subsection (5)). And subsection (6) applies to such cases the provisions of Chapter 2 of Part 14, including those relating to:

a. fees and charges for the determination of applications and related functions (section 364);

b. choice of procedure by which applications are to be considered (section 366); and

c. general procedural requirements (section 367).

305. The decision of the Welsh Ministers on a called-in application is final – subject to any challenge in the High Court under Chapter 3 of Part 14 (subsection (7)).

Appeals to the Welsh Ministers

306. Sections 73 to 77 provide for a right to appeal to the Welsh Ministers against an unfavourable decision by the planning authority on an application and against the failure of an authority to make any decision within the relevant period. Such appeals are handled on behalf of the Welsh Ministers by PEDW, and guidance on the operation of the appeals system in Wales is available on PEDW's website.

Section 73 – Right to appeal against planning authority decision or failure to make decision

307. An applicant may appeal to the Welsh Ministers under subsection (2)(a) if a planning authority refuses an application for planning permission, or for the approval of a reserved matter or any other consent, agreement or approval required by a condition or limitation of a permission that has been granted.

308. An appeal is also possible, under subsection (2)(b), if the application is granted subject to conditions that are adverse to the applicant.

309. Under subsection (3), an appeal may be made if by the end of the determination period the authority has made no decision – that is, it has:

a. not notified the applicant of its decision on the application;

b. not notified the applicant under section 70 or 71 that it is refusing to consider the application; and

c. not notified the applicant under section 72 that it has referred the application to the Welsh Ministers.

310. The "determination period" means the period specified in regulations, or such longer period as may have been agreed in writing between the applicant and the authority (subsection (4)). That period is specified in article 22 of the 2012 Order, made under the power restated in section 63(2)(f); it is currently eight weeks but may be varied in certain circumstances.

311. An appeal may not be made under this section if it seeks to authorise matters that have been specified as constituting a breach of planning control in an enforcement notice, where that notice has itself been the subject of an appeal not resulting in the grant of planning permission. Nor may an appeal be made under this section against a condition, if that condition has been the subject of an unsuccessful appeal against an enforcement notice on the ground that it should be discharged (subsections (5) and (6)).

Section 74 – Procedure for making appeal

312. Subsection (1) provides that an appeal under section 73 is made by serving a notice of appeal on the Welsh Ministers, in accordance with regulations under subsection (2). Such regulations are to govern the form of the notice to be used, the information that must be included, the way the appeal is to be submitted and the period within which it is to be submitted. That period must be at least 28 days after the appellant receives notice of the authority's decision – or where no decision has been made, at least 28 days after the end of the determination period (as defined in section 73(4)).

313. The relevant requirements are currently in article 26 of the 2012 Order. This provides that the appeal must be made on a form obtained from the Welsh Ministers and must be served on them within the prescribed period, which is generally twelve weeks from the date of the determination in the case of a householder appeal or a minor commercial appeal, and six months in other cases. In practice, the relevant form will be obtained from the PEDW website and returned (usually electronically) to PEDW once completed – along with a full statement of case and the documents set out in article 26(3) – with a copy served on the planning authority.

Section 75 – Restriction on varying application after service of notice of appeal

314. Once an appeal has been made, the application to which it relates may not be varied except in circumstances prescribed by regulations. At present, article 26C of the 2012 Order provides that an application may only be varied in order to ensure consistency in the information contained in the application and the supporting documents.

315. Where an application is varied in such circumstances, the regulations may require further consultation to take place, as seems appropriate (subsection (2)).

Section 76 – Decision on application after service of notice of appeal

316. Where an appeal is made under section 73(3) against the failure of a planning authority to make a decision within the determination period, the authority may continue to consider the application and may make a formal decision at any time until the end of the period prescribed in regulations – currently four weeks after the date of the appeal (see article 26A of the 2012 Order). The Welsh Ministers must not begin to determine the appeal until after the end of that period (subsections (1) to (3)).

317. If during that period the authority decides to refuse the application, the appeal may proceed as an appeal against that refusal (subsection (4)). If the authority decides to grant the application subject to conditions, the appeal may proceed as an appeal against the conditions (subsection (5)). In either case, the appellant must be given an opportunity to revise the grounds of appeal in the light of the reasons given by the authority for the refusal or the conditions.

318. Where an appeal is made under section 73(3), and an authority does not decide the application within that period, the appeal will be determined by the Welsh Ministers on the basis that the authority had decided to refuse the application (section 77(2)).

Section 77 – Determination of appeal

319. Where an appeal to the Welsh Ministers is made under section 73, they may allow or dismiss it; or they may allow or vary any part of the authority's decision on the application, whether or not the appeal relates to that part (subsection (1)). For example, they may allow part of the proposed development and refuse the remainder; or they may amend a condition.

320. Under subsection (3), where the planning authority has imposed requirements as to what information must be included as part of an application (see section 56), and those requirements have not already been the subject of a decided appeal against an invalidity notice (see section 61), the Welsh Ministers (or an inspector) may decide whether those requirements complied with section 56(5) – that is, whether they were consistent with the regulations currently in force and whether they were reasonable in the light of the nature of the proposed development.

321. Regulations under subsection (4) may apply to the determination of appeals:

a. the requirements as to the notification of owners and tenants of the land in question (under section 58); and

b. other requirements as to processing of application (under section 63).

322. Appeals under section 73 are normally determined by inspectors; see section 365. However, that does not apply if the Welsh Ministers determine otherwise by regulations or by a direction under that section.

323. The provisions as to determining applications (in sections 66 to 68 and Schedules 3 and 5) apply equally in relation to the determination of appeals (subsection (5)). And subsection (8) applies the provisions of Chapter 2 of Part 14, including those relating to fees and charges for applications, the choice of procedure and general procedural requirements.

324. Under subsection (7), if the Welsh Ministers or an inspector consider that the appellant is responsible for undue delay in the progress of the appeal – for example, by failing to provide information that has been requested – they may require the appellant to take appropriate action to expedite the appeal and, if that action is not taken within the time specified, they may dismiss the appeal.

325. The decision of an inspector or of the Welsh Ministers on an appeal is final – subject to any challenge in the High Court under Chapter 3 of Part 14 (subsection (6)).

Chapter 7 – Applications for planning permission and related approvals: special cases

326. The normal means of obtaining planning permission is to apply to the relevant planning authority, in accordance with the procedures described in Chapters 3 to 6. However, there are certain situations in which other procedures will be appropriate, as described in this Chapter:

a. where an authority has been designated for the purposes of section 78, an application may be made either to the planning authority or directly to the Welsh Ministers (at the choice of the applicant);

b. where an application is made by or on behalf of the Crown, it will be made to the authority, but the normal procedures may be varied by regulations under section 84;

c. certain applications for urgent Crown development may be made to the Welsh Ministers instead of to the authority, under section 85; and

d. regulations under section 86 may enable a single application to be made for planning permission and one or more other types of authorisation.

327. Where an application is made by a person who wishes to carry out development on land owned by a planning authority, or where the authority wishes to carry out development itself, the authorisation procedure will be in accordance with section 405.

Section 78 – Option to make application to the Welsh Ministers
Section 79 – Designation of planning authority for the purposes of section 78

328. Sections 78 to 83 and Schedule 4 are a restatement of provisions introduced into the 1990 Act by the 2015 Act. Those provisions have not yet been brought into force (as at the date this Act received Royal Assent).

329. The intention behind the sections is to enable developers to by-pass a planning authority that is considered by the Welsh Ministers to be performing poorly. The Welsh Ministers can designate such authorities with the consequence that developers can choose to submit applications for significant development in their areas direct to the Welsh Ministers.

330. Under section 79, the Welsh Ministers may designate a planning authority for the purposes of section 78. Such a designation must be by a written notice; and a designation may be revoked by a further notice (section 79(1) and (2)). In making or revoking a designation, the Welsh Ministers must apply criteria that have been the subject of consultation with every planning authority in Wales, and set out in a document that:

a. has been laid before the Senedd for at least 21 days without any resolution not to approve it; and

b. has been published (before, during or after that 21-day period) (section 79(3) to (8)).

331. Where an authority has been designated under section 79, or where such a designation has been revoked, that must be published (section 79(9)).

332. For as long as a designation under section 79 remains in force, an application for permission to carry out development in the area of the relevant authority – or for the approval of reserved matters following a grant of outline permission – may be made either to the authority or to the Welsh Ministers (as the applicant chooses), if the development falls within any of the categories prescribed in regulations (section 78(1) to (3)). In the case of an application for planning permission without complying with conditions subject to which a previous permission has already been granted, the application itself must also fall within a category specified in regulations (section 78(4)).

333. As noted in the Explanatory Notes to the 2015 Act, it was initially expected that this option would only be made available in the case of "major development", as defined in the 2012 Order. But regulations, once they are made, will be able to prescribe any category of development.

334. An application to the Welsh Ministers under section 78 or 80 is referred to in these Notes as an 'optional direct application'.

Section 80 – Option to make application to the Welsh Ministers: connected applications

335. Where an application for planning permission or an application for the approval of reserved matters ("the principal application") is made to the Welsh Ministers under section 78, the applicant may also make a connected application to the Welsh Ministers. However, this only applies if it is made on the same day as the principal application (subsections (1) and (2)).

336. A connected application is one that is of a category described in regulations and is considered by the applicant to be connected (subsection (3)). This is to enable applications for other consents required to authorise a project as well as planning permission – for example, listed building consent or hazardous substances consent – to be considered alongside the principal application.

337. Where an application for such authorisation is made to the Welsh Ministers under this section, the Welsh Ministers may refer it to the planning authority where they consider either:

a. that it is not connected to the principal application; or

b. that, although it is a connected application, it should nevertheless be determined by the planning authority (subsections (4) and (5)).

338. Where this occurs, the authority must then determine the application as if it had been made to it on the day it is referred; and regulations may provide for the details of such a referral (subsections (6) and (7)).

Section 81 – Powers to impose requirements in relation to applications to the Welsh Ministers

339. Where an optional direct application is made to the Welsh Ministers, they may direct the relevant planning authority to do things in relation to that application (subsection (1)). Such a direction may relate to a specific application, to any application in a specified category or to applications generally (subsection (2)).

340. Regulations under subsection (3) may apply (with or without modifications) or disapply the normal rules applying to applications made to a planning authority, in relation to optional direct applications.

Section 82 – Procedure for dealing with planning applications made to the Welsh Ministers

341. Regulations under subsection (1) may make provision as to how the Welsh Ministers are to deal with optional direct applications. Such regulations may deal with the publicity, notification or consultation that must be carried out in relation to such applications; whether and how applications can be varied; and how notice is to be given of the eventual decision (subsection (2)).

342. Where a community council has made request under section 65 for applications in particular categories to be notified to it, and where an optional direct application has been made that falls within one of those categories, the Welsh Ministers must notify the community council of the application (subsection (3)). The planning authority, if asked to do so, must let the Welsh Ministers know which community councils have asked to be notified (subsection (4)).

Section 83 – Pre-application services and determination of applications: functions of inspectors

343. An optional direct application is normally to be determined by an inspector; but the Welsh Ministers may direct that in a particular case they will determine such an application themselves (subsections (2) and (3)(b)).

344. Regulations under section 53 may make provision for the Welsh Ministers to provide pre-application services – that is, services to assist a person in making an application for planning permission. Where an optional direct application is made to them, such services are normally to be provided by an inspector (in practice, by PEDW); but, here too, they may direct that they will provide such services themselves (subsections (1) and (3)(a)).

345. The decision of an inspector on an optional direct application is to be treated as being that of the Welsh Ministers. And the decision of an inspector or of the Welsh Ministers is final – subject to any challenge in the High Court (subsections (4) and (5)).

346. The exercise by inspectors of their functions in relation to optional direct applications is the subject of Schedule 4, introduced by subsection (6).

347. Further details as to the determination of such applications by inspectors and the Welsh Ministers are contained in Chapter 2 of Part 14 of this Act. These include provisions as to fees and charges for applications, the choice of procedure and general procedural requirements.

Schedule 4 – Applications to the Welsh Ministers: exercise of functions by inspectors

Part 1 – Provision of pre-application services by inspector

348. Where an inspector has been appointed to provide pre-application service in relation to an optional direct application, the Welsh Ministers may at any time revoke the inspector's appointment and appoint a replacement (paragraph 1).

349. Where the Welsh Ministers decide to provide pre-application services themselves, in relation to such an application and issue a direction to that effect under section 83(3)(a), they must notify the applicant and the authority to which the application would otherwise have been made (paragraph 2). Where they have issued such a direction, they may then undo that by issuing a further direction under paragraph 3 – in which case, they must notify the applicant and the authority and appoint a new inspector to provide the services.

Part 2 – Determination of application by inspector

350. An inspector determining an optional direct application has, so far as the context permits, the same powers as the Welsh Ministers have by virtue of regulations under section 81. Where any enactment (other than section 83 or this Schedule) refers to applications to the Welsh Ministers, in such a way that it relates, or could relate to an application under section 78 or 80, that is also to be read as applying to such an application being determined by an inspector (paragraph 4).

351. Where it has been determined under section 366 that an optional direct application is to be determined by an inspector and is to be considered at a local inquiry or a hearing, the inspector may hold such an inquiry or hearing at the expense of the Welsh Ministers. The Welsh Ministers or the inspector may appoint an assessor to advise the inspector on any matters that arise, on whatever basis the application is being considered (paragraph 5).

352. At any time before an inspector has determined an optional direct application, the Welsh Ministers may revoke the inspector's appointment and appoint a replacement (paragraph 6).

353. Where the Welsh Ministers decide to determine an optional direct application themselves and issue a direction to that effect under section 83(3)(b), they must notify the applicant and the authority to which the application would otherwise have been made. Where an inspector has been appointed to determine the application, the Welsh Ministers must notify that inspector and in determining the application they must take account of any report to them made by the inspector – but must otherwise reach their decision as if no inspector had ever been appointed (paragraph 7).

354. Where the Welsh Ministers have decided to determine an application themselves and issued a direction to that effect under section 83(3)(b), they may then reverse that decision by issuing a further direction, under paragraph 8. In that case, they must notify the applicant and the authority and appoint a new inspector to determine the application; anything done by them is to be treated as having been done by the new inspector, unless the new inspector directs otherwise – but otherwise the application is to be determined as if no direction had ever been given.

355. Paragraph 9 provides that, once an inspector has determined an optional direct application, it is not possible to challenge that decision in the High Court on the ground that it should have been made by the Welsh Ministers.

Section 84 – Applications by the Crown

356. Since 2006, planning control has in principle applied in relation to Crown development – that is development by the Crown or on Crown land – just as in any other case. In general, the provisions of this Part of the Act apply to applications for planning permission for such development and to applications for the approval of matters reserved by a grant of outline permission for such development.

357. However, this principle is subject to modifications that may be made by regulations under this section and that may modify any of those provisions so that they do not apply, or so that they apply with modifications, in relation to Crown development.

Section 85 – Applications relating to urgent Crown development

358. Whilst planning control now generally applies in relation to Crown development just as in any other case, different considerations may arise where such development is of national importance and must be carried out as a matter of urgency. Where the appropriate Crown authority certifies that this is the case, it may apply to the Welsh Ministers under this section, rather than to the planning authority that would otherwise deal with the matter (subsection (2)). The appropriate Crown authority for this purpose is defined in section 401(6).

359. Before making an application under this section, the applicant must publish a notice in the local press describing the proposed development and stating that it proposes to make the application (subsection (3)).

360. When it makes the application, the applicant must give to the Welsh Ministers a statement explaining why it is doing so and must supply any further information that the Welsh Ministers consider is necessary to enable them to determine the application (subsection (4)).

361. The Welsh Ministers must then make publicly available a copy of any material they have received, either as part of the application or in response to a subsequent request and must publicise the application and state that documents and other material are available for inspection (subsections (5) and (6)). However, this does not apply where they (or the Secretary of State) have made a direction, under section 370(2), that information should not be disclosed on grounds of national security (subsection (9)).

362. Under subsection (7), the Welsh Ministers must consult the planning authority in whose area the proposed development is to be carried out, the CJC covering that area where one exists and anyone else specified in regulations. The current requirement, in article 15(2) of the 2012 Order, is to consult any of the persons or organisations that are mentioned in Schedule 4 to that Order in relation to the relevant category of development.

363. Regulations under subsection (8) may apply the normal procedural rules as to planning applications, with or without modifications, to applications under this section for urgent Crown development. The 2012 Order imposes a requirement for the Welsh Ministers to publicise applications and to take into account representations made.

364. Further details as to the determination by the Welsh Ministers of applications for urgent Crown development under this section are contained in Chapter 2 of Part 14 (subsection (9)). These include provisions as to fees and charges for applications, the choice of procedure and general procedural requirements.

365. Subsection (11) applies to applications for urgent Crown development the normal provisions as to the determination of applications, under sections 66 to 69 and Schedules 3 and 5 – that is, those relating to:

a. the considerations that are to be taken into account when determining an application (section 66);

b. the grant or refusal of permission (sections 67 and 68);

c. the imposition of conditions (section 67 and Schedules 3 and 5); and

d. the issue of a decision notice (section 69).

366. The decision of the Welsh Ministers on an application under this section is final – subject to any challenge in the High Court (subsection (12)).

Section 86 – Combination of applications for planning permission with other applications

367. Regulations under subsections (1) and (8) may provide for the combining in a single application of:

a. an application for planning permission for development; and

b. an application for any other type of consent or authorisation, or any notification that needs to be given in respect of the same development, under provision in this Act or any other legislation, as specified in the regulations.

368. This would enable, for example, such regulations to allow for a single application to be made for planning permission under this Act and listed building consent under the 2023 Act, where both are required for the alteration of a listed building. Or an application for planning permission for building works in a conservation area could also serve as a notification of the removal of a tree necessary to carry out those works.

369. Regulations under this section may provide for the procedural requirements of the combined application and may make different provision for areas where different enactments (such as local Acts or byelaws) apply (subsections (2) and (4)).

370. Before making such regulations, the Welsh Ministers must consult local authorities or associations of local authorities as they consider appropriate (subsection (3)).

371. Where such regulations have been made, an application under other legislation may be made either in accordance with the regulations or in accordance with that legislation (subsections (5) and (6)); and authorities must not accept applications made under the regulations that do not comply with them (subsection (7)).

Chapter 8 – Planning permission for development with Government authorisation

372. This Chapter relates to certain situations where planning permission is granted not by the planning authority or the Welsh Ministers in response to a planning application, but directly by a government department (which includes the Welsh Ministers or the Secretary of State) under various pieces of primary and secondary legislation. This avoids the need for planning permission to be granted under this Act in addition to the authorisation granted under another piece of legislation.

Section 87 – Authorisation for development by local authorities and statutory undertakers

373. This section applies where development is carried out by a local authority or a statutory undertaker in circumstances such that it needs to be the subject of authorisation, approval or consent by a government department, to fulfil a statutory requirement. It also applies where a department effectively authorises such development, by:

a. authorising the acquisition of land for the purpose of the development – whether by agreement, appropriation, or compulsory purchase; or

b. approving the finance for the development – by authorising the borrowing of money, applying money that would otherwise be unavailable, or undertaking to pay a grant.

374. Where the department authorises development in any of these ways, it may direct that planning permission is granted for it, subject to any conditions that are specified in the direction.

375. However, this section does not apply to development by an electricity licensee, which is in certain circumstances the subject of section 88.

376. Subsection (5)(a) draws attention to the Pipe-lines Act 1962. Section 1 of that Act provides that works for the construction of a cross-country pipe-line may not be carried out without a pipe-line construction authorisation. Section 5(1) of the 1962 Act (as modified by the Consequential Provisions Act) then provides that where, as will normally be the case, such works constitute "development" (as defined in this Act) the Secretary of State may direct that planning permission is granted, subject to any conditions specified in the direction. Section 43 of the 1962 Act requires that, in authorising works, the Secretary of State is to have regard to the desirability of preserving natural beauty and protecting buildings of special interest, and special regard to the desirability of ensuring that the proposed works are underground as far as possible.

377. Subsection (5)(b) draws attention to the Gas Act 1965 (c. 36). Section 4(1) of that Act provides that the Secretary of State may by order authorise the storage by a public gas transporter of gas in suitable natural porous strata underground. Where that involves development, section 4(6) of that Act (as amended by the Consequential Provisions Act) provides that the order will be taken to authorise the development.

Section 88 – Consent for electricity generating stations and electric lines

378. This section applies where consent is given or varied for the construction or extension of an electricity generating station (under section 36 of the Electricity Act 1989 (c. 29)), or for the installation of an overhead line (under section 37 of that Act). In such a case, the Welsh Ministers or the Secretary of State may direct under section 88(1)(a) that planning permission is granted for the works, so far as they constitute development in Wales. The permission granted by such a direction may be subject to conditions specified in it.

379. The permission granted by such a direction may also grant planning permission for any ancillary development, under subsection (1)(b). However, where the permission is for the extension of a generating station, that only applies where the ancillary development is directly related to the generation of electricity by that station (subsection (3)).

380. Where such consent is varied, the Welsh Ministers or the Secretary of State may give one or more of the following directions, under subsection (2):

a. a direction varying permission granted by an earlier direction under this provision ('the earlier permission');

b. a direction varying the conditions attached to the earlier permission; or

c. where a consent, approval or agreement was given under a condition attached to the earlier permission, a direction that the consent, approval or agreement is to be treated as having been given under the corresponding condition attached to the new permission.

381. A direction under subsection (2) may be in addition to or in substitution for a direction under subsection (1).

Section 89 – Orders under the Transport and Works Act 1992

382. The construction and operation of railways, tramways and similar transport systems is normally authorised by the making of an order under the Transport and Works Act 1992 (c. 42). Such an order may also authorise the construction and operation of an inland waterway and certain types of works that interfere with rights of navigation in such waterways. Orders under the Act are generally made by the Welsh Ministers, but where the proposed scheme crosses the border between England and Wales, it will need to be authorised by the relevant Secretary of State.

383. Where the Welsh Ministers or the Secretary of State make such an order to authorise a scheme that includes development in Wales, they may also direct under subsection (2) that planning permission is granted for that development, subject to such conditions as may be specified in the direction.

Section 90 – Application of this Act to planning permission granted under this Chapter

384. The planning permission that may be granted by a direction under this Chapter is any permission that could be granted on an application under this Part (see section 47).

385. By virtue of subsection (2), where permission is granted by a direction under this Chapter, this Act will generally apply as if the permission had been granted by the Welsh Ministers on an application called-in by them under section 72. However, that will not apply to Chapters 3 and 4 of Part 14; so a direction under this Chapter cannot be challenged by making an application for statutory review in the High Court.

Chapter 9 – Effect, duration and implementation of planning permission

386. This Chapter explains the effect of a planning permission, and by whom and within what period it may be implemented. It also describes how a permission may be ended where it has been implemented but where the approved development has not been completed.

Section 91 – Benefit of planning permission

387. Planning permission is granted for the development of land and may be implemented by anyone interested in the land – subject to the terms in which it is granted.

388. For example, a permission may generally be implemented by the freeholder of the land, or leaseholder, sub-leaseholder or licensee, according to the terms of the relevant lease or licence.

389. This provision does not prevent permission being sought by, and granted to, someone other than the owners such as a prospective purchaser; but it may only be implemented by the actual owners (or on their behalf). Nor does it prevent several permissions being granted, possibly for more than one types of development, in respect of a single piece of land.

390. In some cases a personal permission may be granted subject to a condition restricting who may carry it out. Such a permission may be appropriate where the particular circumstances of an applicant justify the grant of permission for development (such as a change of use) that might not otherwise be appropriate.

Section 92 – Permission to erect a building: purposes for which building may be used

391. The general rule is that a grant of planning permission for the erection of a building is to be interpreted as being permission both:

a. for the building operations required to construct it; and

b. once those operations are complete, for the use of the building for the purpose for which it is designed.

392. However, a planning permission for the erection of a building may specify the purpose for which it is to be used. For example, permission might be granted for a building in a generally residential street, similar in appearance to its neighbours, but specifying that it is to be used as a house in multiple occupation rather than as a single house, or that all or part of it is to be used for a particular non-residential purpose.

Section 93 – Condition about period within which development must start

393. Every planning permission is subject to a condition as to the time by which the approved development must be started. This is partly to prevent an accumulation of unimplemented permissions for a particular site. It also enables the acceptability of a development proposal to be reassessed periodically, in the light of changing circumstances.

394. Subsection (1) sets out the general rule that every planning permission must be subject to a condition that the development to which it relates must start before the end of a period specified in the condition, beginning with the date on which the permission is granted. The meaning of "start" is explained in section 99.

395. And if, notwithstanding subsection (1), a permission is granted without such a condition, subsection (2) provides that it is normally to be treated as though it had been granted subject to a condition that the development must start within five years of the date on which it was granted.

396. However, subsection (2) does not apply if:

a. permission is granted to carry out development subject to a condition as to the period within which the development must be started; and

b. permission is subsequently granted to carry out the development without complying with other conditions subject to which the previous permission was granted; but

c. the new permission is not subject to a condition as to the time within which the development must be started.

In that situation, subsection (3) provides that the new permission is to be treated as though it had been granted subject to a condition that the development must start within the period specified by the previous permission.

397. Subsection (5) confirms that the fact that a permission is granted subject to a time-limit condition by virtue of subsection (1), or is treated to have been granted to such a condition by subsection (2) or (3), does not prevent either:

a. an application to carry out the development without complying with the condition being made under section 68; or

b. an appeal against the condition being made under section 73.

398. The breach of a condition under this section is dealt with in section 95.

399. This section does not apply to planning permission granted by a development order or a local development order. Nor does it apply to a grant of outline planning permission for operations; slightly different rules apply that are set out in the following section.

400. By virtue of subsection (4)(c) and (d), this section does not apply to planning permission granted to authorise development carried out before the grant of the permission. Nor does it apply to permission granted for a limited period – that is, permission subject to a condition that the buildings or works authorised by the permission must be removed at the end of a specified period or that the use authorised must then be discontinued (see section 67(3) and (4)).

401. This section also does not apply to a minerals permission subject to a condition that minerals development must start within a specified period after the completion of mining operations (or the cessation of waste depositing) already being carried out (subsection (4)(e)).

Section 94 – Conditions of outline planning permission

402. As a grant of outline planning permission (under section 48) effectively operates as a two-stage permission, the normal rules as to time-limit conditions under section 93 do not apply; instead, slightly different rules apply under this section.

403. Subsection (1) provides that every outline planning permission must be subject to a condition that:

a. an application must be submitted for the approval of each reserved matter before the end of a period specified in the condition, beginning with the date on which the permission is granted; and

b. the development must be started before:
   i. the end of a period specified in the condition; or
   ii. if later, the end of a specified period after the final approval of all the reserved matters.

404. The meaning of "start" is explained in section 99. And for the purpose of this section a reserved matter is finally approved when the planning authority grants approval or, where the matter proceeds to an appeal to the Welsh Ministers, when the appeal is determined (subsection (8)).

405. Where a condition imposes a single period within which to apply for the approval of the reserved matters, several such applications can be made in respect of different reserved matters, but the last of them must be made before the end of the specified period.

406. Where development is to be carried out in phases – for example, in the case of a large housing scheme to be built over a number of years – the time-limit condition may state that applications may be made by different dates for the approval of the reserved matters relating to each phase (subsection (2)). If it does so, the period within which the development must start must be framed by reference to the various phases rather than the development as a whole.

407. If an outline permission is granted without a condition (under subsection (1)(a)) as to the period within which applications must be made for the approval of reserved matters, subsection (3) provides that it is normally to be treated as though it had been granted subject to a condition that applications for the approval of all of the reserved matters must be made within three years of the date on which the permission was granted.

408. However, subsection (3) does not apply if:

a. outline permission is granted to carry out development subject to a condition as to the period within which applications for the approval of reserved matters must be made; and

b. permission is subsequently granted to carry out the development without complying with other conditions subject to which the previous permission was granted; but

c. the new permission is not subject to a condition under subsection (1)(a) as to the time within which applications for the approval of reserved matters must be made.

In that situation, subsection (4) provides that the new permission is to be treated as though it had been granted subject to a condition that an application for approval of each reserved matter must be made before the period specified by the previous permission.

409. If an outline permission is granted without a condition (under subsection (1)(b)) as to the period within which the development must be started, subsection (5) provides that it is normally to be treated as though it had been granted subject to a condition that the development must start within five years of the grant of permission or, if later, within two years of all of the reserved matters being approved.

410. Subsection (5) does not apply if:

a. outline permission is granted to carry out development subject to a condition as to the period within which development must be started; and

b. permission is subsequently granted to carry out the development without complying with other conditions subject to which the previous permission was granted; but

c. the new permission is not subject to a condition under subsection (1)(b) as to the time within which development must be started.

In that situation, subsection (6) provides that the new permission is to be treated as though it had been granted subject to a condition that the development must start within the period specified by the previous permission.

411. Subsection (7) confirms that the fact that a permission is granted subject to a time-limit condition by virtue of subsection (1), or is treated to have been granted to such a condition by subsection (3) to (6), does not prevent either:

a. an application to carry out the development without complying with the condition being made under section 68; or

b. an appeal against the condition being made under section 73.

412. The breach of a condition under this section is dealt with in section 95.

Section 95 – Breach of condition about period within which development must start etc.

413. Where planning permission is subject to a condition as to the period within which development must start, development that starts after the end of that period is not development authorised by the permission (subsection (1)).

414. Where outline permission is subject to a condition as to the period within which application for the approval of reserved matters must be made, an application made after the end of that period is not an application in accordance with the terms of the permission (subsection (2)).

415. These provisions may become relevant in the context of enforcement proceedings.

Section 96 – Duration of minerals permission

416. This section introduces Schedule 5, which provides for conditions as to the duration of minerals permissions. A "minerals permission" is defined to be a planning permission for minerals development, but it excludes permission granted by a development order; and "minerals development" means development consisting of mining operations or involving the depositing of mineral waste (section 408(1)).

417. And because the development authorised by a minerals permission may continue to be carried out over many years, or even decades, the conditions subject to which it is granted must be periodically reviewed, to ensure that they are appropriate in the current climate. This is achieved by the review mechanisms introduced by sections 103 and 104.

Schedule 5 – Condition limiting duration of minerals permission

418. Minerals operations, unlike a building or engineering operations, may last for many years or even decades; and the Court of Appeal has held that each shovelful constitutes a separate act of development (*Thomas David (Porthcawl) Ltd v Penybont RDC* [1972] 1 W.L.R. 1526). The grant of minerals permission therefore operates to permit a series of operations over an extended period, during which the character of the surrounding land and other factors may change significantly.

419. As a result, every minerals permission is subject to a condition, under paragraph 1 of this Schedule, limiting the period within which the development can continue. The operator may apply to extend the permission (normally towards the end of that period), but such an application would then be subject to a fresh consideration, including as to the conditions that would be appropriate.

420. A condition limiting the duration of a minerals permission under this Schedule is to be distinguished from a condition under section 93 providing that a permission will lapse if the development in question is not started within a specified period.

421. Every minerals permission granted since 22 February 1982, must be granted subject to a condition (under paragraph 1(1) of this Schedule) providing that the operations must stop at the end of a specified period, starting on the date the permission is granted (paragraph 1(2)). If no such period is specified, every such permission is deemed to have been granted subject to a condition (under paragraph 1(3)) that the development must stop after 60 years, starting on the date the permission is granted. The period of 60 years may be varied by regulations under paragraph 1(4).

422. Every permission for such development granted before 22 February 1982 is subject to a condition that the development must stop on or before 21 February 2042 (paragraph 2).

423. Paragraph 3(1) provides that although a minerals permission is always subject to such a condition, that does not make it a "planning permission granted for a limited period" under section 67(3). As a result:

a. section 43(4) does not apply, so that planning permission is required to resume the previous use of the land at the end of the period for which the time-limited minerals permission has been granted;

b. section 49(2)(c) does not apply, so that permission may not be granted under that provision to authorise development already carried out in accordance with a time-limited minerals permission after the expiry of that permission;

c. section 93(4)(d) does not apply, so that the general condition under that section as to the period within which development must start does apply to a time-limited minerals permission; and

d. section 207(4)(b) does not apply, so that the minerals permission cannot be extended by a discontinuance order.

424. By virtue of paragraph 3(2), it is possible to appeal against a condition limiting the duration of a minerals permission imposed under this Schedule, as with any other planning condition. It is also possible to apply under section 68 to implement development without complying with such a condition.

Section 97 – Notice of starting and carrying out development

425. Section 97 places a requirement on developers in certain cases to notify the planning authority before starting to implement a planning permission. The developer must also display on or near the development site a notice that the development is being carried out in accordance with the permission. The notice must be displayed throughout the development period.

426. This requirement only applies in cases specified by the Welsh Ministers in regulations (subsection (1)). Currently article 24B(1) of the 2012 Order provides that it applies where planning permission is granted for major development.

427. Before starting to carry out the development, those responsible must give notice to the planning authority – currently in the form set out in Schedule 5A to the 2012 Order. And for as long as the development is under way, a notice must be displayed at or near the site – currently in the form set out in Schedule 5B to the 2012 Order, which requires the notice to specify the permission, describe the development and state where further information can be obtained.

428. The notice to the applicant stating that permission has been granted for such development must refer to the duties under this section (subsection (6)). And the permission will be treated as having been granted subject to a condition that those duties must be complied with (subsection (7)).

Section 98 – Power to make termination order
Schedule 6 – Termination orders

429. Once a permission has been implemented – that is, once the development approved by it has been started (see section 99) – the development can be continued at any time. This usually leads to it being completed in due course. However, in some cases a development may be started, but not completed – for example, where the developer runs into financial trouble or the ownership of the land changes – resulting in the land remaining in an unsightly condition for an extended period. To improve the chances of a development being completed in such a situation, the planning authority may issue a termination order under this section. Such an order used to be called a 'completion notice'.

430. A termination order may be made by the planning authority (under subsections (1) and (2)) where:

a. permission is granted subject to a condition that the development must start within a specified period;

b. the development has started within that period but has not yet been completed by the end of that period; and

c. the planning authority considers that the development will not be completed within a reasonable period.

431. The Welsh Ministers may also make a termination order if they consider the development will not be completed within a reasonable period (subsections (1) and (3)).

432. The order will state that the permission will cease to have effect at the end of the period specified within it, which must be at least 12 months after the order takes effect (subsections (4) and (5)).

433. The procedure for the issue of a termination order by the planning authority is set out in Part 1 of Schedule 6. This provides that an order will only take effect once it has been confirmed by the Welsh Ministers. The planning authority must serve notice of the submission of the order to the Welsh Ministers on every owner and occupier of the land to which the order relates and any other person it thinks will be affected by the order. The notice must contain a statement as to the right of the recipient to make representations to them, and to require within a specified period of at least 28 days an opportunity to be heard by an inspector.

434. Where an authority has issued a termination order, and it comes into effect, the planning permission ceases to have effect at the end of the period specified within the order (which may be extended by the Welsh Ministers when they confirm it (paragraph 1(6), Schedule 6)). But that does not affect the lawfulness of any development carried out in reliance on the permission during that period (subsection (8)).

435. The authority (or the Welsh Ministers) may amend or revoke an earlier termination order they have issued, through a new order, at any time before the end of the period specified in the earlier order. The procedural requirements in Schedule 6 do not apply where an order is made only for the purpose of revoking an earlier order (subsections (9) and (10)).

436. When revoking a termination order, the planning authority or the Welsh Ministers must notify everyone who was served with notice under Schedule 6 in relation to the making of the original order (subsection (10)).

437. The procedure for an order issued by the Welsh Ministers is set out in Part 2 of Schedule 6.

Section 99 – Time when development starts

438. This section explains when development starts for the purposes of Chapter 9; it is also applied for the purposes of section 68(4).

439. In the case of mining operations, development is taken to start when mining operations first start to be carried out (subsection (1)(a)).

440. In the case of development consisting of any other kind of operation, it is taken to start when a relevant operation forming part of the development starts to be carried out (subsection (1)(b)(i)). For this purpose, a relevant operation means construction works involved in erecting a building, works to demolish a building, digging a foundation trench, laying pipes and cables to the foundations of a building or to a trench that will contain foundations for a building, operations involved in the course of laying out or constructing a road (subsection (2)). The principal significance of this in practice is that once at least one such operation has been carried out, the remainder of the development can be completed some while later, possibly after the date on which the permission would otherwise have expired.

441. In the case of development consisting of a material change of use, it is taken to start when a relevant change of use forming part of the development occurs (subsection (1)(b)(ii)). By virtue of subsection (3), a relevant change of use for this purpose generally means any change that constitutes development. However, it does not include a change for which permission is granted by a general or local development order and that is carried out to comply with a condition or limitation of the permission. Nor does it include a change of use in a category prescribed by the Welsh Ministers in regulations.

442. Where development comprises both the carrying out of operations and a change of use, it is taken to start where either a relevant operation or a relevant change of use first occurs.

Chapter 10 – Changes to planning permission

443. Once planning permission has been granted, a person who has an interest in the land may request the planning authority to make a non-material change to it, under section 100. Or the authority or the Welsh Ministers may modify the permission or revoke it, under section 102; but that may lead to a claim for compensation under section 106.

Section 100 – Power of planning authority to make non-material change to planning permission

444. Those who have the benefit of planning permission to carry out development (granted in response to an application, not by a development order) may wish to make minor changes to the details of the proposed development.

445. A person who has an interest in land that is the subject of a grant of permission may therefore request the planning authority to make a non-material change to the permission (subsections (1) and (2)). An application can also be made on that person's behalf, for example, by an agent or consultant. Such a change may include varying or removing existing conditions attached to the planning permission or imposing new ones (subsection (5)). This allows for the substitution of revised drawings.

446. Under subsection (7), such a request may only be made by:

a. the freeholder of the land;

b. the owner of a lease for a fixed-term that has at least two years left to run;

c. the mortgagee of an interest or estate in the land; or

d. a party to an estate contract as defined in section 2(4) of the Land Charges Act 1972 (c. 61) – that is, a contract for the sale or creation of a legal estate in the land (including an agreement to mortgage the land and an option to purchase it).

447. A person who has such an interest in only part of the land to which the permission relates may only make a request under this section in respect of the permission as it relates to that part (subsection (6)).

448. In deciding whether a proposed change is non-material, the planning authority must have regard to the effect of the change (taken together with any changes previously made under this provision) on the planning permission as originally granted (subsections (3) and (4)).

Section 101 – Further provision about applications for non-material changes

449. Regulations may impose detailed requirements as to the making of a request under section 100 for a change to a planning permission, including as to the form to be used and the material to be supplied; and the planning authority must not consider such an application if those requirements are not complied with (subsections (1) and (2)). Such regulations may also make provision as to publicity and consultation in connection with such an application and how those consulted are to respond (subsections (3) and (5) to (8)).

450. The current requirements are in article 28A of the 2012 Order, which requires that the application must be publicised by a site notice and notified to the owners and occupiers of neighbouring land and to those who were consulted in relation to the original application. Responses to such notification must be taken into account if made within 14 days; and the decision on the application must be notified to the applicant within 28 days, unless that period is extended.

451. Where an authority, in response to a request under section 100, varies or removes the conditions attached to a planning permission or imposes new ones, it must issue a revised decision notice and send it to the applicant (section 69(5) and (6)).

Section 102 – Power to make order modifying or revoking planning permission

452. Where planning permission has been granted but has not yet been fully implemented, the planning authority or the Welsh Ministers may modify or revoke it (unless it was granted by a development order or local development order). This might occur where permission has been granted for other development now seen to be more appropriate, in which case there may be no opposition to the modification or revocation. Or it might be the result of changed circumstances, in which case the modification or revocation might be opposed. Where the making of an order causes financial loss, compensation may be payable under section 106.

453. An order modifying or revoking a permission to carry out building or other operations may be made at any time before those operations are complete, but it does not affect the lawfulness of what has already been done (subsection (3)). For example, where permission has been granted for 50 houses and 30 have been built, an order may revoke permission for the remaining 20; but that does not affect the lawfulness of the 30 that have been finished. An order modifying or revoking a permission to make a material change in the use of a building or other land may be made at any time before the change has occurred (subsection (4)).

454. In considering whether to modify or revoke a permission, the authority or the Welsh Ministers must have regard to the development plan for the area and to any other relevant considerations, including land-use policies of the Welsh Ministers and considerations relating to the use of the Welsh language (subsection (2)(a) and section 408(3)). They must make the decision in accordance with the development plan unless other considerations indicate otherwise (subsection (2)(b)). This is the same approach that applies in relation to the original determination of the application (see section 66(1)).

455. The procedure for making an order is set out in Schedule 7, introduced by subsection (5). Part 1 of that Schedule deals with orders made by the planning authority; Part 2 with those made by the Welsh Ministers. Part 3 sets out adjustments to the procedure that apply where the permission being modified or revoked relates to mining operations or the depositing of waste.

Schedule 7 – Orders modifying or revoking planning permission

Part 1 – Procedures for orders made by planning authorities

456. Where a planning authority makes an order under section 102, the order will normally take effect only once it has been confirmed by the Welsh Ministers, under paragraph 2. Such confirmation will always be required where an authority makes an order that:

a. modifies a time-limit condition imposed by section 93 or 94; or

b. modifies or revokes a permission granted by the Welsh Ministers.

457. Subject to those exceptions, where those likely to be affected by an order have indicated to the authority that they have no objection to it, it may take effect in accordance with the expedited procedure under paragraph 3.

458. The normal procedure, under paragraph 2, is that the authority submits a draft order to the Welsh Ministers. At the same time the authority notifies the owner and occupier of the land to which the order relates and anyone else it considers will be affected by it, that the authority has submitted a draft order. Every copy of the draft order must contain a statement as to the right of the recipient to make representations to the Welsh Ministers and to require (within a specified period, of at least 28 days) an opportunity to be heard by an inspector.

459. The Welsh Ministers may then proceed to confirm the order with or without modifications (paragraph 2(5)).

460. Paragraph 3 applies where an authority has made a draft order under section 102, and all the owners and occupiers of the land affected and everyone else the authority considers will be affected by the order, have indicated in writing that they have no objection to it. In that case, the authority must publish (in the way specified by regulations) a notice that it has made the order, to provide an opportunity for any affected person who may have been overlooked by the authority to become aware of the order. It must send a copy of that notice to the owners and occupiers of the land and other likely to be affected, so that they have a further chance to make representations. It must also send a copy to the Welsh Ministers so that they can, if they wish, require that the order be submitted to them for confirmation.

461. Under paragraph 3(3) to (5), the notice must specify that anyone affected by the order may require that the notice be submitted for confirmation by the Welsh Ministers, under the procedure in paragraph 2. However, if no such request is received within a specified period (of at least 28 days) and the Welsh Ministers have not required it to be submitted to them within a further specified period of at least 14 days, the order will simply take effect automatically at the end of that further period.

Part 2 – Procedure for orders made by the Welsh Ministers

462. Under paragraph 4, where the Welsh Ministers propose to issue an order modifying or revoking a planning permission, they must consult the planning authority for the area. If they then proceed, they must serve notice of the draft order on the authority, and on every owner and occupier of the land involved, and anyone else who is likely to be affected by it. Each copy of the notice must contain a statement as to the right of the recipient to make representations to the Welsh Ministers about the order, and to require (within a specified period, of at least 28 days) an opportunity to be heard by an inspector.

463. The Welsh Ministers may then proceed to confirm the order.

Part 3 – Modification or revocation of planning permission for mining operations or depositing of waste

464. Paragraph 5 of the Schedule deals with cases where the planning authority or the Welsh Ministers wish to make an order modifying or revoking a permission for development that consists of mining operations or includes the depositing of waste, and either:

a. the order imposes one or more restoration conditions (as defined in paragraph 1(2)(a) of Schedule 3) in relation to the land to which the order relates; or

b. one or more restoration conditions have been imposed under this Act (or under predecessor legislation) in relation to that land – either in connection with the permission now being modified or revoked or in connection with any other permission relating to the land.

465. In such a case, the order may also impose aftercare conditions (as defined in paragraph 1(2)(b) of Schedule 3).

466. Paragraphs 1(3) to (9) and 2 to 5 of Schedule 3 apply in relation to an aftercare condition imposed by an order under section 102 as they apply in relation to an aftercare condition imposed to the grant of planning permission.

Section 103 – Giving effect to minerals permissions relating to dormant sites

467. This section introduces Schedule 8, which relates to land that has the benefit of a minerals permission that is not currently being implemented.

468. As noted above, in the context of Schedules 3 and 5, mining operations may last for many years or even decades. A minerals permission operates to permit a series of operations over an extended period, during which the character of the surrounding land and other factors may change significantly; however, once a development that has been authorised by the grant of planning permission has started (see section 99), it can be completed at any time thereafter. Similar considerations apply in relation to the depositing of minerals waste. This has resulted in minerals permissions continuing to be implemented, perfectly lawfully, many decades after they were first granted. In some cases, those older permissions were originally granted subject to conditions that were different from those that would be attached to a similar permission if it were to be granted today. This problem has led to a series of changes in the law over the last forty years.

Pre-1948 minerals permission

469. Minerals development that was authorised by an interim development order between 22 July 1943 and 30 June 1948 was deemed to have been granted planning permission under Part 3 of the Town and Country Planning Act 1947 by virtue of section 77 of that Act. Such a deemed permission is referred to in this Act as a "pre-1948 minerals permission" (subsection (6)).

470. Under the 1991 Act, a pre-1948 minerals permission had to be registered with the mineral planning authority by 25 March 1992 (that is 6 months after section 22 of that Act came into force) if it was to continue to be effective – otherwise it would simply lapse. Where such a permission related to land on which minerals development was being carried out during the period of two years ending with 1 May 1991 ('the relevant two-year period'), it was to be registered subject to new conditions – determined under the procedure in Schedule 2 to that Act – and had effect thereafter on that basis.

471. Section 87 of the 2004 Act modified these provisions in relation to Crown land, so that pre-1948 minerals permissions relating to Crown land had to be registered by 6 December 2006 and the relevant two-year period was the period of two years ending with 7 June 2006.

472. Where a pre-1948 minerals permission was registered but related to land on which no minerals development had been carried out during the relevant two-year period, it was allowed to lie dormant. Such a permission could not be relied on to authorise new minerals development; but at any time, an application could be made under paragraph 2 of Schedule 2 to the 1991 Act to determine the conditions to which it would be subject and that would govern such development in the future.

Post-1948 minerals permission

473. Planning permission for minerals development granted on or after 1 July 1948 is referred to in this Act as a "post-1948 minerals permission" (subsection (6)). Under paragraph 3 of Schedule 13 to the 1995 Act, each mineral planning authority had to prepare a list of all of the sites in its area where all or most of the permissions relating to that site were granted between 1 July 1948 and 21 February 1982. Such sites were to be listed in two categories:

    a. active Phase I or Phase II sites (the distinction between Phase I sites and Phase II sites is no longer relevant); and

    b. dormant sites (see paragraphs 2 to 4 of Schedule 13 to the 1995 Act).

474. In relation to each active site, the list was to specify a date by which an application was to be made for the approval of the conditions that should govern each permission relating to that site. If no such application was made by that date, or if no conditions were approved, the permission would lapse. But once such conditions had been determined, under the procedure in Schedule 13 to the 1995 Act, the permission then had effect on that basis.

475. A dormant site was a Phase I or Phase II site where no minerals development had been carried out between 22 February 1982 and 6 June 1995 (other than in reliance on a pre-1948 permission or a permission granted by a development order). Where a post-1948 minerals permission related to a site that had been listed as a dormant site, it could at any time be the subject of an application under paragraph 9 of that Schedule to determine the conditions by which it would in future be governed.

Conditions

476. The provisions in Schedule 2 to the 1991 Act relating to the registration of pre-1948 permissions, and those in Schedule 13 to the 1995 Act relating to the listing of post-1948 permissions, required action to be taken by dates now long past. They are therefore no longer relevant and have not been restated in this Act.

477. Similarly, no further action can now be taken under the provisions in Schedule 2 to the 1991 Act and Schedule 13 to the 1995 Act about determining the conditions of minerals permissions relating to non-dormant sites, so this Act does not make provision about determining the conditions of those permissions.

478. Schedule 2 to the 1991 Act and Schedule 13 to the 1995 Act, and the sections introducing them, are repealed in relation to Wales by Schedule 2 to the Consequential Provisions Act. However, by virtue of paragraph 8 of Schedule 5 to the Consequential Provisions Act, this does not affect the validity or effect of the permissions to which those provisions applied or of any determinations made under them.

479. It is still possible to apply to determine the conditions that should apply to:

a. a pre-1948 minerals permission that was registered under Schedule 2 to the 1991 Act, but relates to land where no minerals development had been carried out in the relevant two-year period;

b. a post-1948 minerals permission that relates to a site that was shown as being a dormant site in a list prepared under paragraph 3 of Schedule 13 to the 1995 Act.

480. Schedule 8 governs the submission and processing of such applications that enable these older permissions to be brought up to date to be suitable to regulate the carrying out of minerals development in the future. This Schedule restates those provisions of Schedule 2 to the 1991 Act and Schedule 13 to the 1995 Act that are still relevant.

Schedule 8 – Minerals permissions relating to dormant sites

481. Where a pre-1948 minerals permission was registered under Schedule 2 to the 1991 Act, and relates to land where no minerals development had been carried out in the relevant two-year period, an application to determine the conditions that should apply to it may be made under this Schedule:

a. by an owner of any of the land to which the permission relates; or

b. by a person who has an interest in a mineral to which it relates (paragraph 1(1)(a) and (4)).

482. Where a post-1948 minerals permission relates to a site that was shown as being a dormant site in a list under Schedule 13 to the 1995 Act, an application to determine the conditions that should apply to it may be made under this Schedule:

a. by an owner of any of the land to which the permission relates (or, if there is more than one permission, to which any of them relate); or

b. by a person who has an interest in a mineral to which the permission or any one of the permissions relate (paragraph 1(1)(b) and (4)).

483. In either case, the "owner" means the freeholder of the land or a tenant under a lease that has at least seven years to run (paragraph 1(4)).

484. An application under this Schedule must be in writing and must identify the land or site to which it relates, all the minerals permissions relating to it and the land in which the applicant has an interest. It must also set out the conditions that the applicant considers should be applied to each of those permissions (paragraph 1(2)(a) to (c) and (e)). Regulations under paragraph 6 may provide for making an online application.

485. The application must also identify anyone else, and provide their address, who would currently be entitled to make such an application (paragraph 1(2)(d)). Further, where regulations under section 58 require applicants for planning permission to notify other owners of the land concerned and to inform the planning authority that those requirements have been complied with, those requirements apply equally to an application under this Schedule (paragraph 1(3)). These provisions enable all such persons to have a chance to make an application themselves. That in turn enables the authority to consider, at one time, the interests of all concerned and any submissions that may be made by any of them in relation to applications made by any of the others (see also paragraph 7).

486. On receipt of an application, the authority must acknowledge it (paragraph 2(1)(a)). And it must publicise the application if required to do so by regulations, (paragraph 2(9)). Where the authority considers that it requires more information, it must request that within one month (paragraph 2(4) and (5)).

487. The authority must then determine the conditions to which the permissions are to be subject – these can be additional to, or in place of, those to which they are currently subject (paragraph 2(1)(b), (2)(a) and (b)). The authority must have regard to any relevant guidance issued by the Welsh Ministers (paragraph 2(3)).

488. Where the application relates to a pre-1948 permission, a condition must be imposed requiring that the minerals development must stop on or before 21 February 2042 (paragraph 2(1)(b) and (2)(c)). Where this applies, that does not mean that the permission is to be regarded as "planning permission granted for a limited period" under section 67(3) (see paragraph 2(10)).

489. Where the authority has failed to notify the applicant of its decision before the end of the period of three months from receiving the application, or from receiving the further information it requires – or within such longer period as may be agreed in writing between them – it is assumed to have agreed to the conditions proposed by the applicant (paragraph 2(6) to (8)). The permission will, from that moment, have effect subject to those conditions (paragraph 5(1) and (2)(a)).

490. Paragraph 3 provides that, as with planning applications (see section 72), the Welsh Ministers may direct that an authority is to send them a particular application under this Schedule, or any such application in a particular category, so that they may determine it themselves. They must notify the applicant where this occurs and they must then process the application just as an authority would; Chapter 2 of Part 14 makes further provision as to this.

491. Paragraph 4 provides for a right of appeal to the Welsh Ministers against a decision by the planning authority to impose conditions different from those proposed in the application. Such an appeal must be made within six months beginning with the day after the day on which the planning authority makes it decision on the application, on a form published or provided by or on behalf of the Welsh Ministers (paragraph 4(2) and (3)). They may allow or dismiss the appeal and may reverse or vary the authority's decision; this enables them to impose different conditions. If they consider that the appellant is delaying the process of an appeal, they may issue a warning that the appeal will be dismissed unless matters are expedited; if the appellant fails to take the required action, they may then dismiss the appeal (paragraph 4(4) and (5)).

492. Paragraph 7 is designed to ensure that all the possible applications that could be made in relation to any one site are determined at the same time. It provides that, where a person (A) has made an application under this Schedule in respect of a pre-1948 minerals permission, A may not make another such application that relates to the same permission. Where A has made an application in respect of a post-1948 permission, A may not make another application that relates to the same site. Another person (B) may make an application relating to the same permission or, as the case may be, the same site – but only if A's application has not yet been determined. If B does indeed make such an application (or if B, C and D all make such applications) before A's application has been determined, then all the applications are to be determined together, as if they had all been made on the date on which the latest of the applications was actually made. That ensures that the authority – or the Welsh Ministers – can determine the conditions that should apply to all the permissions involved.

493. Under paragraph 5(1), where an application has been made under this Schedule, the conditions determined in response to the application will take effect as soon as the application has been finally determined. Other than as noted above in relation to paragraph 2(6) to (8), paragraph 5(2) the application will be finally determined once the authority has determined the conditions of the permissions and no further appeal or court challenge is possible.

494. Once the conditions of a minerals permission have been determined under this Schedule, it will then fall to be periodically reviewed in accordance with Schedule 9, along with all other minerals permissions.

Section 104 – Periodic review of minerals permissions

495. Given the long-term character of minerals development, and as a result the special characteristics of minerals permissions, every minerals permission needs to be reviewed from time to time. This section introduces Schedule 9, which provides for the periodic review of all outstanding minerals permissions.

Schedule 9 – Periodic review of minerals permissions

Paragraph 1 – Duty to carry out periodic reviews of minerals permissions

496. This Schedule requires every planning authority to carry out periodic reviews of all the minerals permissions relating to every mining site in its area (paragraph 1(1)).

497. A mining site is defined for this purpose as the land to which a particular minerals permission relates. However, some minerals permissions relate to parcels of land that adjoin or overlap; accordingly, where the authority considers (in the light of any relevant guidance by the Welsh Ministers) that two or more sites should be treated as a single site for the purposes of reviewing the permissions that relate to them, a site is to be considered to be all of the land to which any of those permissions relate. References to a minerals permission relating to a mining site are then to any of the permissions relating to any of the land within such a site or group of sites. These provisions, in paragraph 1(2) and (3), enable the authority to take a holistic view of groups of sites.

Paragraph 2 – First review date

498. The broad principle, in paragraph 2, is that the first review of the permissions relating to a mining site will normally be carried out 15 years after the date on which the permissions were granted or updated. The basis on which to calculate that first review date is the subject of a table in paragraph 2(2), by reference to various categories of sites. Where a site falls into more than one category, resulting in two or more dates by which to calculate the first review date, the review date will be calculated by reference to the latest of them (paragraph 2(6)).

499. The timing of the first review may be postponed under the procedure in paragraph 6.

500. The first category of sites contains those where the permissions relating to the site include one or more minerals permissions granted before 1 July 1948. In this case the date by which to calculate the timing of the first review will be the date on which the new conditions of that permission were finally determined under Schedule 2 to the 1991 Act (or under paragraph 1(1)(a) of Schedule 8 to this Act). By virtue of paragraph 2(8) of this Schedule to the Act, the date on which conditions are finally determined is to be ascertained in accordance with paragraph 10(2) of the Schedule to the 1991 Act (or paragraph 5(2) of Schedule 8 to this Act). Where there are two or more pre-1948 permissions relating to a site, whose conditions were finally determined on different dates, the table in paragraph 2(2) states that it will be the latest of those dates.

501. The second category of sites contains those that were shown in a list prepared under Schedule 13 to the 1995 Act. These will be mining sites where all or most of the minerals permissions relating to them were granted between 1 July 1948 and 21 February 1982. In this case the date by which to calculate the timing of the review will be the date on which the new conditions of the permissions relating to it were finally determined under Schedule 13 to the 1995 Act (or under Schedule 8 to this Act). The date on which conditions are finally determined is to be ascertained in accordance with paragraph 1(7) of Schedule 13 to the 1995 Act (or paragraph 5(2) of Schedule 8 to this Act).

502. The third category of sites contains those that have no pre-1948 permissions relating to them, and that were not shown in a list prepared under Schedule 13 to the 1995 Act. This will therefore include mining sites where all or most of the minerals permissions were granted more recently than 21 February 1982. In this case, the date by which to calculate the timing of the review of the permissions relating to a site will generally be the date on which the most recent such permission was granted. However, where the most recent permission or permissions between them relates to only part of the site, the authority may consider (in the light of any relevant guidance by the Welsh Ministers) that the date by which to calculate the timing of the review should be when the last of the other permissions relating to the site was granted. In that case the more recent permission or permissions are to be treated as having been granted on that date (paragraph 2(3) to (5)).

503. The fourth category is where an order has been made under section 102 modifying or revoking one or more of the minerals permissions relating to all or part of the site. And the fifth category is where a discontinuance order has been made under section 206 in respect of the use of all or part of the site for carrying out mining operations or depositing waste. In either case this may result effectively in a new permission for minerals development; and the timing of the review will therefore be determined by reference to the date of the relevant order.

504. A site may fall into more than one of these categories, leading to more than one date for calculating the review date. In that case the date to be used will be the latest of those dates (paragraph 2(6)).

505. In relation to sites in the first and second categories, regulations may set a review date that is different from those calculated by reference to the table. They may also specify a review date where no date can be determined by reference to the table (paragraph 2(7)).

Paragraph 3 – Later review dates

506. Following the first review of the permissions relating to a mining site, the timing of the second and subsequent reviews will be determined by paragraph 3. The date of the second review of the site will normally be 15 years after the first review leads to the conditions of the permissions being finally determined, in accordance with paragraph 12. Each subsequent review will then be carried out 15 years after the final determination of the previous one.

507. However, the timing of the second and subsequent reviews may be postponed under the procedure in paragraph 6.

508. The first review of the permissions relating to a mining site (and in a few cases the second review) may have been carried out under Schedule 14 to the 1995 Act before this Act comes into force. Once this Act comes into force, such a review will be treated as if it had been carried out under Schedule 9 to this Act, by virtue of section 35 of the Legislation (Wales) Act 2019. The next review required by Schedule 9 will therefore be a second or subsequent review of the permissions, and the date of that review will normally be 15 years after the previous review led to their conditions being finally determined.

Paragraphs 5 and 6 – Notice of periodic review; Application to postpone review date

509. Once a review date for the mining site has been calculated in accordance with paragraphs 2 and 3, paragraph 5(1) requires that a notice of review must be served by the planning authority at least a year before that date on everyone whom the authority considers to be an interested person. For this purpose, an "interested person" is:

a. the freeholder of any land included in the site;

b. any holder of a lease in such land that has at least seven years to run; and

c. anyone with an interest in any mineral in the site (see paragraph 15).

510. That notice must specify the site, identify the minerals permissions relating to it and indicate the basis on which the person is being sent a notice (paragraph 5(2)(a) to (c)). It must also state the review date, explain that an application to determine the conditions of the permissions must be made by that date and, that if no such application is made, the permission will lapse (paragraphs 5(2)(d), (e) and 8). The notice must also draw attention to the right to apply under paragraph 6 to postpone the review date and state the date by which an application to postpose must be made (paragraph 5(2)(f)).

511. Under paragraph 5(3) to (5), if the authority has served a notice under paragraph 5(1) on an interested person, but has not received any application from that person eight weeks before the review date, it must serve on the person a reminder, setting out the same details that are required to be included in the original notice (except those relating to the right to apply to postpone the review date), not later than four weeks before the review date.

512. Regulations under paragraph 5(6) may provide for the service of a notice or reminder under this paragraph where the name or address of an interested person cannot be discovered after making reasonable inquiries. Paragraph 5(7) of this Schedule makes clear that where such regulations are made, they would apply in place of the rules under section 399 as to the service of notices in such circumstances.

513. An interested person who receives a notice of review, under paragraph 5(1), may consider that the conditions that currently apply to all the permissions are satisfactory and do not need to be amended. In that case, the person may – within three months of receiving the notice – make an application to postpone the review (paragraph 6(1) and (2)). Such an application must set out those conditions, explain why the applicant considers that they are satisfactory and propose a new date by when they should be reviewed (paragraph 6(3)).

514. If the authority, on receipt of such an application, agrees that the existing conditions are satisfactory, it must agree to the postponement and determine a new review date. Otherwise, it must refuse the application (paragraph 6(4) and (5)). Either way, it must inform the applicant of its decision (paragraph 6(6)). Where it has not notified the applicant of its decision within three months of receiving the application, it is deemed to have allowed the application – so that the existing conditions remain in place and the next review date will be as proposed in the application (paragraph 6(7) and (8)).

Paragraphs 7 to 14 – Applications for review

515. After being notified of a periodic review, an interested person may apply to the planning authority under this Schedule to determine the conditions to which the minerals permissions relating to a site should be subject (paragraph 7(1)). Such an application must be in writing; regulations under paragraph 13 may provide for making an online application.

516. The application must identify:

a. the land or site to which it relates;

b. the periodic review in connection with which the application is made (for example, the first review or the second review relating to the site);

c. the minerals permissions relating to it; and

d. the land in which the applicant has an interest (paragraph 7(2)(a) to (c)).

517. The application must also identify anyone else, and their address, who would currently be entitled to make such an application (paragraph 7(2)(d)). Further, where regulations under section 58 require applicants for planning permission to notify other owners of the land concerned and to inform the planning authority that those requirements have been complied with, those requirements apply equally to an application under this Schedule (paragraph 7(3)). These provisions enable all such persons to have a chance to make an application themselves. That in turn enables the authority to consider at one time the interests of all concerned and any submissions that may be made by any of them in relation to applications made by any of the others (see also paragraph 14).

518. The application must also set out the conditions that the applicant considers should be applied to each of the permissions relating to the site specified in the notice under paragraph 5 (paragraph 7(2)(e)).

519. If the authority has served a notice under paragraph 5 stating its intention to carry out a review of the permissions applying to a particular mining site by a specified date, and if by that date (or such later date as may have been agreed under paragraph 6) no application under paragraph 7 has been made to the authority to review the conditions attached to those permissions, the permissions will cease to have effect to authorise any further minerals development. Any restoration or aftercare conditions would however continue to have effect (paragraph 8).

520. Where an application is made under paragraph 7, the authority must acknowledge receipt of it (paragraph 9(1)(a)). It must also publicise the application if required to do so by regulations (paragraph 9(9)). Where the authority considers that it requires more information, it must request that within one month (paragraph 9(4) and (5)).

521. The authority must then determine the conditions to which the permission is to be subject – these can be additional to, or in place of, those to which the permission is currently subject (paragraph 9(1)(b) and (2)). See also Schedule 5 as to the imposition of conditions requiring that the minerals development must stop on or before 21 February 2042.

522. Where the authority fails to notify the applicant of its decision before the end of the period of three months from receiving the application, or of receiving the further information it requires – or within such longer period as may be agreed in writing between them – it is assumed to have agreed to the conditions proposed by the applicant (paragraph 9(6) to (8)). In that case, the permission will, from that moment, have effect subject to those conditions (paragraph 12(1) and (2)(a)).

523. Paragraph 10 provides that the Welsh Ministers may direct that an authority is to send them a particular application under this Schedule, or any such application in a particular category, so that they may determine it themselves. They must notify the applicant where this occurs, if regulations require them to do so, and they must then determine the application just as an authority would; Chapter 2 of Part 14 makes further provision about the applicable procedure.

524. Paragraph 11 provides for a right of appeal to the Welsh Ministers against a decision by the planning authority to impose conditions different from those proposed in the application. Such an appeal must be made within six months after the day on which the planning authority makes its decision on the application, on a form published or provided by the Welsh Ministers or on their authority.

525. The Welsh Ministers may allow or dismiss the appeal and may reverse or vary the authority's decision; this enables them to impose different conditions. If they consider that the appellant is delaying the process of an appeal they may issue a warning that the appeal will be dismissed unless matters are expedited; if the appellant fails to take the required action, they may then dismiss the appeal.

526. Paragraph 14 is designed to ensure that all the possible applications that could be made in relation to any one site are determined at the same time. It provides that, where a person (A) has made an application under this Schedule in respect of a site, A may not make another application that relates to the same site. Another person (B) may make an application relating to the same site – but only if A's application has not yet been determined. If B does indeed make such an application (or if B, C and D all make such applications) before A's application has been determined, then all the applications are to be determined together, as if they had all been made on the date on which the latest of the applications was actually made. That ensures that the authority – or the Welsh Ministers – can determine the conditions that should apply to each of the permissions involved.

527. Under paragraph 12(1), once an application has been made under paragraph 7, the conditions determined in response to the application will take effect as soon as the application has been finally determined. Other than as noted above in relation to paragraph 9(6) to (8), that will be once the authority has determined the conditions of the permissions and no further appeal or court challenge is possible.

Chapter 11 – Compensation and purchase of interests in land

528. The principal course of action available to those adversely affected by planning decisions made by planning authorities is to appeal to the Welsh Ministers. This Chapter deals with two others that may be available in certain situations where planning decisions adversely affect those with an interest in land.

529. First, compensation may be available where the owners of land incur loss or damage as a result of a planning permission being, in effect, taken away. This can occur in two situations:

a. where planning permission for development that had previously been permitted by a development order (or local development order) is refused, or granted subject to conditions differing from those imposed by the order, (section 105); or

b. where a permission that has been granted is modified or revoked (section 106).

530. Those provisions apply slightly differently where the permission being withdrawn, modified or revoked is for minerals development (under Part 1 of Schedule 11). There is also a right to compensation (under Part 2 of that Schedule) where rights to work minerals are restricted on a review of minerals permissions under Schedule 9.

531. Secondly, although compensation may be an appropriate route where land is reduced in value as a result of certain decisions, in some cases such decisions may make the land almost worthless, at least to the current owners. Landowners may therefore be able to serve on the planning authority a notice requiring the authority to purchase their interest in land where it has been rendered effectively useless in that it is unusable as a result of:

a. planning permission being refused, or granted subject to conditions; or

b. a permission that has been granted being modified or revoked (section 110).

Section 105 – Compensation for refusal or conditional grant of planning permission previously granted by order

532. Where planning permission is required for development that was previously permitted by a development order or local development order and is refused or granted subject to conditions different from those imposed by the order, a right to compensation may arise.

533. The first scenario is where planning permission that is generally granted by an order for development within a specific category is withdrawn by a direction under the order (generally referred to as an article 4 direction in the case of a development order) applying to a particular property. Such a direction does not prevent such development occurring but means that permission for it must be sought by submitting an application.

534. If such an application is submitted, it may result in permission being either refused or granted subject to conditions that are different from those that were imposed by the order. If the application is made within 12 months of the direction having been made, and the decision results in a person interested in the land suffering loss or damage – either because expenditure has been incurred on carrying out works (see section 107) that become abortive, or for any other reason – that person is entitled to claim compensation from the planning authority (subsections (1), (2) and (4)).

535. The second scenario is where planning permission that was previously granted by an order for development within a specific category is withdrawn because the order itself has been amended, revised or revoked. Such changes do occur from time to time and do not prevent such development occurring, but mean that permission for it must be sought by submitting an application.

536. Here too, if such an application is submitted, permission may be either refused or granted subject to conditions that are different from those that had previously been imposed by the order. If the application is made within 12 months of the change being made to the order, and the decision results in a person interested in the land suffering loss or damage – again, either because expenditure that has been incurred on carrying out works (see section 107) that become abortive, or for any other reason – that person is entitled to claim compensation from the planning authority (subsections (1), (2) and (5)).

537. In either scenario, the claim for compensation must be made within 12 months of the decision that gives rise to it (subsection (3)). Further provision about claiming and determining compensation under this section is provided in sections 107 to 109 and 391 to 393.

538. However, by virtue of subsections (6)(a) and (7), the right to compensation under this section does not apply where:

a. permission is granted by a development order for development within a category specified in regulations;

b. that permission is withdrawn in a way specified in regulations;

c. at least 12 months' notice of the withdrawal has been published in accordance with regulations; and

d. the development had not started before the notice was published, or the order allows development to be completed after the withdrawal of the permission.

539. The regulations that apply for these purposes are currently the Town and Country Planning (Compensation) (Wales) (No. 2) Regulations 2014 (S.I. 2014/2693 (W. 268)), regulations 2 to 4.

540. By virtue of subsections (6)(b) and (7), the right to compensation under this section does not apply where:

a. permission is granted by a local development order, and withdrawn by a direction under that order, or by the revision or revocation of that order;

b. at least 12 months' notice of the withdrawal has been published in accordance with regulations (currently the Town and Country Planning (Compensation) (Wales) (No. 2) Regulations 2014, regulation 5); and

c. the development had not started before the notice was published, or the order allows development to be completed after the withdrawal of the permission.

541. The result of these provisions is that the liability of the planning authority to pay compensation only arises for a limited period after the making of the direction or the amending of the order.

542. The entitlement to compensation under this section does not apply in the case of development on the operational land of a statutory undertaker (but see sections 319 and 321, which confer similar entitlements to compensation in that case).

Section 106 – Compensation where planning permission is modified or revoked

543. Where planning permission is granted in response to an application, it can normally be implemented at any time, subject to any time-limit condition that may have been imposed or implied. However, if the permission is modified or revoked before it has been fully implemented, by the making of an order under section 102, that may result in a person interested in the land suffering loss or damage – either because expenditure has been incurred on carrying out works (see section 107 below) that become abortive or for any other reason attributable to the modification or revocation.

544. Where that occurs, that person is entitled to claim compensation from the planning authority (subsections (1) and (2)). Such a claim must be made within 12 months of the modification or revocation taking effect (subsection (3)). Further provision about claiming and determining compensation under this section is provided in sections 107 to 109 and 391 to 393.

545. The entitlement to compensation under this section only applies in limited circumstances where the permission that is modified or revoked is for minerals development (see section 109 and paragraph 2 of Schedule 11). It also does not apply at all in the case of development on the operational land of a statutory undertaker (but see sections 319 and 321).

Section 107 – Compensation for changes to planning permission: supplementary provision

546. Sections 105 and 106 both refer to compensation being payable in respect of expenditure incurred in carrying out works that have become abortive because of the decision. Subsection (2) provides that works, for these purposes, include not just the carrying out of the works themselves but also the production of plans and other similar preparatory matters.

547. However, no compensation is payable under either section in respect of works carried out before the grant of planning permission that has been withdrawn, modified or revoked, or anything else done or omitted to be done before the grant of that permission (subsection (3)). This means that compensation is not payable for work done before that on a speculative basis.

Section 108 – Apportionment and recovery of compensation for depreciation
Schedule 10 – Apportionment and recovery of compensation for depreciation

548. Schedule 10 imposes additional requirements on a planning authority where compensation becomes payable in respect of depreciation in the value of land.

549. In that situation, the planning authority must apportion the compensation for depreciation between the various parts of the land to which the claim relates (if it considers that it is practicable to do so) and notify the claimant and everyone else with an interest affected by the apportionment. Disputes as to such an apportionment are to be dealt with by the Upper Tribunal – where appropriate, in accordance with any previous determination relating to the same matter (paragraph 2).

550. The authority must then notify the Welsh Ministers that compensation for depreciation has become payable. The Welsh Ministers must in turn serve a compensation notice on the relevant local authority and, where different, the planning authority. That notice must specify the decision or order giving rise to the compensation, the land to which it relates, the amount of compensation for depreciation in the value of that land and any apportionment of that amount under paragraph 2. The notice is to be registered as a local land charge (paragraph 3).

551. By virtue of paragraph 4, once a compensation notice has been registered in relation to a piece of land, no development of substance (that is development to construct residential, commercial or industrial buildings, mining operations or other high value development identified by the Welsh Ministers) must be carried out on that land until the amount of compensation ascertained in accordance with paragraph 5 has been paid to the Welsh Ministers under paragraph 6.

552. Under paragraph 5, the amount that is recoverable is, in principle, the total amount of compensation actually paid – or the portion of that amount attributable to the part of the land on which the development is to be carried out. However, this may be deferred in whole or in part where full recovery is likely to prevent any proper development. And apart from any amount that has been deferred, no further amount is recoverable in the event of a subsequent development.

553. The compensation that is recoverable by virtue of paragraph 5 is payable to the Welsh Ministers either as a single capital payment, or as a series of payments (including interest) as they may direct, secured as appropriate. If development of the land is carried out without recovery of the compensation that has been paid, the Welsh Ministers may serve a notice on those responsible demanding them to pay the amount they consider to be recoverable within a period specified in the notice (paragraph 6).

554. Paragraph 7 applies where an interest in land is compulsorily acquired (other than for open space) or where it is sold by agreement to an authority with compulsory purchase powers, and a compensation notice is registered in respect of that land as a result of a planning decision made before the acquisition. In such a situation, the Welsh Ministers may recover from the acquiring authority the compensation attributable to the land being acquired or sold.

555. Once the Welsh Ministers have recovered some or all of the compensation under paragraph 6 or 7, they must then pay that amount to the planning authority that originally paid the compensation, less any amount already paid by them by way of a grant under section 395.

Section 109 – Compensation for changes to planning permission for minerals development

556. A grant of planning permission may authorise the carrying out of minerals development – that is, the carrying out of mining operations or the depositing of minerals waste – over many years or even decades. As a result, such permissions may need to be modified or revoked; and they are now periodically reviewed, under the procedure in Schedule 9. Such action may result in loss or damage to those with interests in the land concerned.

557. This section introduces Schedule 11 that provides a slightly different compensation regime applicable in such cases. Part 1 modifies the entitlement to compensation under section 105 or 106; Part 2 deals with the entitlement to compensation because of changes made following a periodic review.

Schedule 11 – Compensation for changes to planning permission for minerals development

Part 1 – Compensation where planning permission is withdrawn, modified or revoked

558. In principle, the entitlement to claim compensation under section 105 (for adverse decision following the withdrawal of permission granted by development order) or section 106 (for a decision to modify or revoke permission) applies to permissions for minerals development as in other cases. However, the normal rules are modified by the provisions of this Schedule to deal with the circumstances of minerals development. Regulations made under section 394(1)(a) may make further modifications.

559. Under paragraph 1 of this Schedule, where a claim under either section 105 or section 106 includes an element relating to buildings, plant or machinery being rendered redundant as a result of the decision, compensation will only be payable where it can be shown that they have no other beneficial use or that they can only be used for another purpose resulting in a financial loss. That element of the claim may be dealt with separately by the Upper Tribunal.

560. However, where the permission relates to the extraction of minerals to be used for agricultural purposes on the same land, the normal rules (relating to compensation for non-minerals decisions) apply (paragraph 1(4)).

561. Secondly, where permission for minerals development is modified by an order under section 102, compensation (under section 106) is only available in certain situations. The first is where the modification results in a restriction on working rights or modifies an existing restriction (other than one imposed by a restoration or aftercare condition) (paragraph 2(1) and (2)). The meaning of "restriction on working rights" is a change that restricts or reduces the size of the area used for mining operations or the depositing mineral waste, or the depth of mining or the height any waste deposit, or the rate of working, or the date by which operations must cease, or the total quantity of minerals that may be extracted or of waste deposited (paragraph 4).

562. Compensation is also available:

a. where the permission that is now being modified was granted less than five years earlier (paragraph 2(1) and (3)); or

b. where, in relation to the land to which the order relates, any of the following occurred in the 5 years before the modification of the permission:
   i. an earlier modification order was made under section 102;
   ii. an application to review the conditions attached to a permission was determined under Schedule 8;
   iii. an application to determine the conditions of minerals permissions was finally determined under paragraph 7 of Schedule 9;
   iv. a discontinuance order was made (under section 206) in relation to a use for mining operations or depositing mineral waste; or
   v. a prohibition order was made (under Part 1 of Schedule 15).

   In each of those five cases, this will have resulted in the permission being reviewed.

563. This means that a planning authority can modify a minerals permission to bring it into line with current standards without having to pay compensation, but only where the modification does not amount to a restriction on working rights and where at least five years has passed since the permission was granted or reviewed in one way or another.

Part 2 – Compensation following periodic review of minerals permissions

564. All the minerals permissions relating to each site will be periodically reviewed, under the procedure in Schedule 9. This may result in a change in the conditions attached to the permissions that has the effect of imposing a restriction on working rights (as defined in paragraph 4). Where this results in a person interested in the land suffering loss or damage – either because of expenditure that has been incurred on carrying out works that become abortive, or for any other reason – that person is entitled to claim compensation from the planning authority (paragraph 3(1) and (2)).

565. Such a claim must be made within 12 months of the end of the review that gives rise to it (paragraph 3(3)).

566. "Works" include the preparation of plans and other similar preparatory matters. However, no compensation is payable in respect of works carried out before the grant of the earliest permission relating to the site that has been modified during the review, or anything else done or omitted to be done before the grant of that permission. The provisions of Schedule 10 – dealing with apportionment and recovery of compensation – also apply here (paragraph 3(4) to (6)).

Section 110 – Service of purchase notice where planning permission is refused, revoked or made conditional

567. Where:

a. planning permission is refused by a planning authority or by the Welsh Ministers on appeal, or granted but subject to conditions; or

b. where a permission is revoked or modified by the imposition of conditions,

it may be possible to continue to use the land in question for its existing purpose, or to obtain planning permission for some other form of development.

568. However, it may be that:

a. the land is unusable in its existing state;

b. where permission has been granted subject to conditions, or where a permission has been modified by the imposition of new conditions, the land cannot be made usable by carrying out the development to which the permission relates subject to those conditions; and

c. the land cannot be made usable by carrying out any other development for which permission has been granted, or for which the planning authority or the Welsh Ministers have undertaken to grant permission.

This could occur where, for example, a small patch of urban land is currently vacant and because of its size, topography and condition, there is no realistic possibility of it being developed for any purpose at all.

569. Where an owner of an interest in land claims that the land has become unusable following the determination of a planning application or the making of an order modifying or revoking a permission, the owner may serve a purchase notice on the planning authority. That is, a notice requiring the authority to purchase the owner's interest in the land (subsection (2)). This is in effect a process of compulsory acquisition in reverse: the landowner is seeking to force the authority to purchase the land.

570. Land is "unusable" for these purposes if it is incapable of reasonably beneficial use. Iin determining that, no account is to be taken of development for which permission has not been granted and for which neither the planning authority nor the Welsh Ministers have undertaken to grant permission. Land is not unusable if its existing state was caused by a breach of planning control and could be remedied by the carrying out of steps that have been or could be required by an enforcement notice (Schedule 12, paragraph 1).

571. There is no right to serve a purchase notice on the ground that land has become unusable due to permission being granted subject to time-limit conditions – that is, conditions under section 93 (as to when development must be started), under section 94 (as to when reserved matters must be submitted for approval) or under Schedule 5 (as to when minerals development must cease) (subsection (4)).

572. Where land is unusable only because of a discontinuance notice has been made in relation to it, a purchase notice may be served under section 211 rather than under this section (subsection (5)).

573. Where a listed building is in poor condition, the planning authority may serve on the owners of the building a repairs notice under section 138 of the 2023 Act, informing them that the planning authority will compulsorily acquire the building unless specified repairs are carried out. Where such a notice has been served, an owner of the building is not entitled to serve a purchase notice under this section in respect of it until at least three months have passed since the service of the repairs notice. That enables the position as to the usability of the land to be determined in the light of any works that have been carried out to the building in response to the repairs notice (subsection (6)(a)).

574. Nor may a purchase notice be served in respect of a listed building if the compulsory acquisition of the building has started during that three-month period, under section 137 of the 2023 Act, unless the acquisition process has subsequently been abandoned (subsections (6)(b) and (7)).

575. The detailed requirements as to the service of a purchase notice on the planning authority are set out in Part 2 of Schedule 12. The action to be taken by the authority and by the Welsh Ministers following service is the subject of Part 3 of that Schedule. Special provisions as to purchase notices affecting agricultural land are in Part 4.

Schedule 12 – Purchase notices

576. This Schedule sets out the detailed requirements and procedures as to the service of a purchase notice and the action to be taken following the service of a notice, and the special rules to be applied in the case of a notice relating to agricultural land.

577. The Schedule applies equally to the service of a purchase notice following the making a discontinuance order (see section 213).

Part 2 – Service of purchase notice

578. Under paragraph 3(1), the owner of a private interest in Crown land may only serve a purchase notice in respect of that interest if:

a. the interest has first been offered to the appropriate Crown authority at the price that would be obtainable if a purchase notice were to be served in the normal way; and

b. that offer has been refused.

"Crown land" and "the appropriate Crown authority" are defined in section 401.

579. Only the appropriate Crown authority may serve a purchase notice in relation to a Crown interest or Duchy interest in land that forms part of the Crown Estate, belongs to His Majesty in right of His private estates or the Duchy of Lancaster or belongs to the Duchy of Cornwall. A notice may not be served by anyone in respect of a Crown interest or Duchy interest in any other land (paragraph 3(2) and (3)).

580. A purchase notice must relate to all the land that is the subject of the planning decision or order in question. It must not include any other land (paragraph 4(1)).

581. Where the notice is served following a decision on a planning application, it must be served within 12 months of the date the decision is made by the planning authority – or within 12 months of the date of the decision of the Welsh Ministers or an inspector in the case of an appeal. Where the notice arises because an order modifies or revokes a permission, it must be served within 12 months of the date of the order taking effect. Where the notice arises because of a discontinuance order, it must be served within 12 months of the date of the order taking effect. The Welsh Ministers may extend these time limits in a particular case if there is a good reason for doing so (paragraph 4(2) to (4)). Regulations may provide for the details of service.

582. A purchase notice may not be amended once it has been served. However, that does not prevent the person who served it serving a further notice in respect of the same decision; in such a case the earlier notice is treated as having been withdrawn, unless the person states otherwise (paragraph 4(6) and (7)).

Part 3 – Action following service of purchase notice and effect of notice

583. Where a person has served a purchase notice on a planning authority, the authority must serve on the person within three months either an acceptance notice or a rejection notice (paragraph 5(1) and (4)).

584. Where the authority serves an acceptance notice on a person, stating that the authority (or another specified local authority) is willing to purchase the person's interest in the land, the authority is treated as having been authorised to acquire the person's interest compulsorily under section 263, and to have served a notice to treat in respect of that interest.

585. Where the authority serves an acceptance notice stating that a statutory undertaker has agreed to purchase it, the undertaker is treated as having been authorised to acquire the person's interest compulsorily under the enactment enabling it to acquire land in other circumstances, and to have served a notice to treat (paragraph 5(2) and (5)).

586. Where the authority serves a rejection notice on a person, stating that it is not willing to purchase the person's interest, and has not been able to find another authority or a statutory undertaker that is willing to purchase it, it must first send a copy of the purchase notice and the rejection notice to the Welsh Ministers (paragraph 5(3) and (6)).

587. If the Welsh Ministers consider that the land is indeed unusable, they must in principle confirm the purchase notice – although they may substitute another local authority or a statutory undertaker in place of the planning authority on which the notice was served (paragraph 6(2) and (10)).

588. However, as an alternative to confirming the purchase notice, the Welsh Ministers may effectively vary or reverse the decision that gave rise to the service of the notice, to ensure that the land is no longer unusable. That is, they may grant permission for development refused by the authority, reinstate the permission that had been revoked by the authority, vary or remove the conditions, or revoke or amend a discontinuance order (paragraph 6(3) and (7)). Or they may decide that permission should be granted for some other development that would make the land usable, in which case they may direct accordingly (paragraph 6(4) and (5)). In considering whether to grant any planning permission, they must have regard to the development plan and any other relevant considerations (paragraph 6(6)).

589. It sometimes occurs that planning permission is granted for development on a larger site, such that part of the site is to remain unbuilt-on and has a restricted use. For example, a strip of open land to ensure separation between a new housing development and an adjacent railway, or an open area landscaped to provide amenity space either for the development or for the surrounding area. If planning permission is subsequently refused to build on that part, resulting in the service of a purchase notice, the authority may reject it and the Welsh Ministers may refuse to confirm it if they consider that the part should remain unbuilt-on (paragraph 7).

590. Before taking any action in relation to a purchase notice sent to them, the Welsh Ministers must first explain what they propose to do with it to all the interested parties – the person who served the notice, the planning authority and any other local authority or statutory undertaker they propose to substitute for the planning authority. They must also specify a period (of at least 28 days) within which any of those parties may request an opportunity to be heard by an inspector. They may then continue with the action they were originally proposing or take other action as they consider appropriate (paragraph 8).

591. Where the Welsh Ministers decide to confirm the purchase notice, the planning authority (or, where appropriate, the other local authority or statutory undertaker substituted by them) is treated as having been authorised to acquire compulsorily the interest of the person who served the notice under the relevant acquisition provisions, and to have served a notice to treat in respect of that interest – as with a notice that was accepted at the outset (paragraph 9(1) and (2)).

592. Where the Welsh Ministers take no action within six months of the purchase notice being sent to them (or within nine months of the notice being originally served, if sooner):

a. the notice is treated as having been confirmed; and

b. the planning authority is treated as having been authorised to acquire the person's interest compulsorily, under section 263, and to have served a notice to treat in respect of that interest (paragraph 9(3) and (4)).

593. However, that period of six (or nine) months does not include any period after the notice was sent to the Welsh Ministers during which they have before them an appeal either under this Act or under the 2023 Act or the 1990 Hazardous Substances Act. This enables such an appeal to be determined first, before they come to consider what action to take in relation to the purchase notice or whether to let it be confirmed by default (paragraph 9(5)).

594. If the decision of the Welsh Ministers in relation to a purchase notice is quashed in proceedings in the High Court under section 376, the notice is treated as cancelled. If that occurs, the person who served it may serve another one, within 12 months of the decision relating to the first notice being quashed (paragraph 10).

595. Once a purchase notice has been accepted or confirmed, and a notice to treat is deemed to have been served, the purchase of the land will then proceed just as if it had been compulsorily acquired. A notice to treat is a formal request (under section 5 of the Compulsory Purchase Act 1965 (c. 56) ('the 1965 Act')) stating that an authority has been given powers to acquire a piece of land and is now willing to treat for the purchase of the land and inviting the recipient to agree the compensation payable. If the amount of compensation cannot be determined by agreement, it will be determined by the Upper Tribunal (under section 6 of the 1965 Act).

596. Where a notice to treat is served during compulsory purchase, it can be withdrawn by the acquiring authority, under section 31 of the Land Compensation Act 1961 (c. 33) ('the 1961 Act'). But where a notice to treat is treated as having been served, because of a purchase notice having been accepted or confirmed under paragraph 5(5) or 9(1) or 9(3)(b), it cannot be withdrawn by the authority or statutory undertaker that is to purchase the land. However, where a purchase notice is itself withdrawn, or is treated as having been cancelled under paragraph 10, the notice to treat is then deemed to have been withdrawn (paragraph 11).

597. Where compensation is paid for the cost of works that have been rendered abortive by the withdrawal, revocation etc. of planning permission (under section 105 or 106) and a purchase notice is subsequently accepted or confirmed, the price paid for the acquisition of the land will be reduced by the amount of that compensation (paragraph 12). This avoids double counting.

Part 4 – Severance of agricultural land: right to require purchase of remainder

598. A purchase notice can only relate to a piece of land that is the subject of a planning decision or order modifying or revoking planning permission. However, where it is part of a larger area of land in the same ownership and if a purchase notice is accepted or confirmed in relation to that part so it is duly purchased, the result will be that the person who served the notice will still own the remaining part of the larger area, which might not be usable on its own.

599. This is a particular problem in relation to farmland. Part 4 of this Schedule therefore provides a procedure to deal with the situation arising where:

a. a person owning an interest (of more than an annual lease) in an agricultural unit serves a purchase notice in relation to part of it that is accepted or confirmed; and

b. then claims that the remaining unaffected area of the unit is not reasonably capable of being farmed – either on its own or in conjunction with other land in the same unit or in another unit occupied by the claimant (paragraph 13(1) and (2)(a)).

600. In such a case, the claimant may serve a counter-notice on the authority proposing to acquire the land, requiring the authority to purchase the remaining unaffected area of the agricultural unit. However, the counter-notice cannot be served in respect of land that is already subject to a notice to treat for any reason (paragraph 13(2)(b) and (6)). And paragraph 13(7) expressly preserves the rights of the acquiring authority and the landowner in relation to the purchase of small additional areas of land, under section 8(2) and (3) of the 1965 Act.

601. The counter-notice must be served within two months of the notice to treat being treated as having been served in response to the purchase notice. Copies of the counter-notice must be served on all who have an interest in the remainder of the unit (paragraph 13(3) and (4)).

602. Once a counter-notice has been served, if the acquiring authority does not accept it within two months, either the authority or the claimant may refer the matter to the Upper Tribunal. The Tribunal must then determine whether that land is capable of being farmed as a separate unit by itself or in conjunction with other relevant land and may either reject or confirm the counter-notice. If the counter-notice is accepted or confirmed, the authority is treated as having been authorised to acquire the interest in the additional land compulsorily and to have served a notice to treat in respect of that interest (paragraph 14(1) to (4)).

603. Where a notice to treat is treated as having been served, as a result of a counter-notice having been accepted or confirmed under paragraph 14, it cannot be withdrawn by the acquiring authority (paragraph 14(7)). However, where a counter-notice is itself withdrawn, the notice to treat is then treated as having been withdrawn (paragraph 14(6)).

604. Any dispute as to the compensation payable for the acquisition is to be determined by the Tribunal – and the claimant may withdraw the counter-notice within six weeks from the date of that determination, but not later (paragraph 14(5)). In determining the compensation, the value of the interest being acquired is to be assessed on the assumption that no planning permission would be granted for any development of the land and ignoring any permission already granted insofar as it has not yet been implemented (paragraph 14(8)).

605. Where the acquiring authority acquires a lease of agricultural land by virtue of a counter-notice served under paragraph 13, but does not acquire the interest of the lessor (i.e. the landlord), it must offer to surrender the lease to the lessor on terms it considers reasonable (or as determined by the Upper Tribunal in the event of disagreement). Where this results in the authority paying an amount to the lessor for the surrender of the lease, and the lessor refuses to accept it, the authority may pay the money into court according to the procedure set out in section 9 of the 1965 Act (paragraph 15(1) to (8)). While the acquiring authority remains in possession of the lease, it may farm the land, even if its statutory powers do not otherwise allow for that (paragraph 15(9)).

Chapter 12 – Register

Section 111 – Register of local development orders, planning applications etc.

606. It is important that planning decisions and related information is publicly available. It ensures those who own and occupy land and prospective purchasers can order their affairs correctly and that all those affected by the planning system, including members of the public, may be able to discover how it is being administered.

607. To that end, each planning authority is required to maintain a register containing information, as specified in regulations, relating to various applications and certain enforcement appeal decisions (subsection (1)(b) to (g)). It must be kept as required by regulations, which may also require that different categories of information are kept in separate parts (subsections (3)(a) and (5)).

608. In relation to applications of various kinds, those regulations must require that the register includes information as to how each application has been dealt with (subsection (2)). They may also require that part of the register includes a copy of each application and of material submitted with it and that each entry relating to the application be removed from that part once the application (and any related appeal) has been finally disposed of (subsection (3)(b) and (c)).

609. The current requirements are in article 29 of the 2012 Order. They specify that each planning authority must keep a register in three parts:

a. Part One is to contain details of each application made to the authority for planning permission or for the approval of reserved matters that has not been finally disposed of.

b. Part Two is to contain full details of applications in the following categories and how they were dealt with (including any related decision by the Welsh Ministers):
   i. applications made to the authority for planning permission, approvals of reserved matters and non-material changes approved under section 100;
   ii. applications for approval of urgent Crown development under section 85;
   iii. applications to determine conditions of mineral permissions or to postpone review dates, under Schedules 8 and 9; and
   iv. applications for certificates of lawfulness, under Part 5.

   It is also to contain permissions and certificates granted in response to an enforcement appeal, including details of associated planning obligations under section 165 and agreements under section 278 of the 1980 Act.

c. Part Three is to contain details of all local development orders proposed or made by the authority, including reasons for them.

610. The register is to be available for public inspection at all reasonable times (subsection (6)); although a charge may made (under section 360) to inspect it, or to copy items within it. Article 29 of the 2012 Order provides that the whole register may be kept at the authority's principal office; or parts of it may be kept separately made conveniently available to the area of the authority to which it relates. The authority may also make the register available for public inspection on a website maintained for that purpose.

PART 4 – ENFORCEMENT

611. Any system of regulation requires an enforcement mechanism if it is to be effective. Planning is no different; and all planning Acts since 1947 have included such a mechanism. This Part of the Act replaces the existing provisions and should be read in conjunction with the relevant guidance in the Welsh Government's *Development Management Manual* and Circular 24/97 *(Enforcing planning control: legislative provisions and procedural requirements).*

Section 112 – Expressions used in connection with enforcement

612. This section explains the meaning of certain key expressions used in this Part of the Act.

613. Subsection (1) deals with "a breach of planning control" which is where:

a. development is carried out for which planning permission is required, but without planning permission having been granted; or

b. development is carried out for which permission has been granted but without complying with one or more conditions attached to that permission.

614. A breach of planning control is not of itself a criminal offence. However, a breach may lead to enforcement action, if that is appropriate. It is then the failure to comply with, for example, a breach of condition notice or an enforcement notice that may constitute a criminal offence.

615. "Taking enforcement action" is defined, in subsection (2), as issuing an enforcement warning notice, serving a breach of condition notice or issuing an enforcement notice. These are the three types of substantive action that are the subject of this Part of the Act. Each deal with a different kind of breach:

a. an enforcement warning notice, where the unauthorised development is such that it would probably be granted permission if an application for permission were to be made; and

b. a breach of condition notice or an enforcement notice, where the breach is such that it needs to be remedied.

616. The other types of action dealt with in this Part - issuing a temporary stop notice or a stop notice and seeking an injunction – are designed to deal with emergency situations that may arise and are usually followed with substantive enforcement action.

617. Subsection (3)(a) explains that, in this Part of the Act, a condition of planning permission includes a limitation. This removes the potential for unprofitable disputes as to whether a particular restriction is a condition or a limitation.

618. Subsection (3)(b) explains that, in this Part of the Act, a reference to a use of land generally does not include a reference to the use of land for the carrying out of operations (that is, building, engineering, mining or other operations).

619. However, references to discontinuing a use of land in sections 128(6)(a)(ii) and 143(2) include discontinuing a use for carrying out mining operations.

Section 113 – Time limits for taking enforcement action

620. This section provides that enforcement may not be taken more than a certain length of time after a breach of planning control has occurred. These time limits, set out in a table forming part of subsection (1), are designed to strike a balance between giving an authority time to investigate properly what has occurred – and what should be done about it – and giving landowners, occupiers or prospective purchasers reassurance that they will not be forever under a threat of enforcement action being taken.

621. In the case of operations on land (that is, building, engineering, mining or other operations in, on, over or under land), the time limit is four years.

622. The four-year time limit also applies where the use of a building is changed, either:

a. from a non-residential use to use as one or more dwellings; or

b. from use as one or more dwellings to use as a different number of dwellings (for example, from use as two maisonettes to use as five flats).

623. Such changes of use may be undesirable in some cases and therefore justify the taking of enforcement action. However, a shorter time limit for the taking of enforcement action provides some security for occupiers of dwellings and their families, particularly where they were not responsible for the change.

624. A ten-year time limit applies in relation to any other beach of planning control – in particular, any other change of use and any breach of condition.

625. Each of these time limits normally starts from the date of the relevant breach of planning control. However, where enforcement action has already been taken the time starts to run from the date of that action. For example, if an unauthorised operation takes place in 2020 and an authority issues an enforcement notice in 2022, it may issue a revised notice until 2026 (subsection (2)(b)).

626. Further, where an enforcement notice has been issued in relation to a failure to comply with a condition, that does not prevent the service of a breach of condition notice (subsection (2)(a)).

Section 114 – Power of planning authority to serve enforcement investigation notice

627. When it appears that there may have been a breach of planning control, the planning authority first needs to obtain accurate information as to what has occurred. To this end, it may serve an "enforcement investigation notice" under section 114 on any owners or occupiers of the land in question and on anyone else who is carrying out operations on the land or using it, under subsection (2). Such a notice was referred to as a "planning contravention notice" in the 1990 Act.

628. The notice must specify what the authority considers to be a breach of planning control and require the recipients to provide such information as they can regarding what is happening on the land. For example, it may ask how long any operations have been going on there, when a use of the land began and whether any planning conditions are being complied with. It may also require information as to the names and contact details of all those associated with the land and the activities taking place on it (subsections (3) to (5)).

629. Under subsections (6) and (7), the notice may also specify a time and place at which the authority will consider any offer by the recipients of the notice to desist from the operations or activities that are currently taking place, to apply for planning permission to authorise them or to undertake remedial works. This provides them with an opportunity to put their side of the story and put forward an offer to remedy the breach of planning control and any harm that may have been caused, without the need for the authority to take further enforcement action.

630. Under subsection (8), the notice must inform the recipients of the possible consequences of a failure to provide a satisfactory response. In particular an offence under section 115 may be committed and enforcement action may subsequently be taken. It must also explain the effect of sections 124(6) and 152(7): whilst compensation may sometimes be payable following the issue of a temporary stop notice or a stop notice, the right to such compensation for loss or damage will not apply if the loss or damage could have been avoided by providing information in response to an enforcement investigation notice.

631. Subsection (9) requires the recipient of an enforcement investigation notice to respond to the authority by supplying information in writing.

632. Subsection (10) provides that the service of the notice does not prevent the planning authority from taking any other action in respect of the breach of control, such as the service of a temporary stop notice.

Section 115 – Offence of failing to comply with enforcement investigation notice

633. Failure to comply with a requirement of an enforcement investigation notice within 21 days is a criminal offence under subsection (1). It is a defence (under subsection (3)) for a person on whom a notice has been served to prove that the person had a reasonable excuse for failing to comply with the requirement.

634. An offence under this section may be charged by reference to a day or a longer period, and a person may be convicted of more than one offence by reference to different periods (subsection (2)).

635. Under subsection (4), the maximum penalty on summary conviction (in the magistrates' court) for an offence under subsection (1) is a fine of up to Level 3 on the standard scale.

636. However, if a person knowingly or recklessly responds to a notice by providing information that is false or misleading, that is a more serious offence, under subsection (5). Subsection (6) provides that on summary conviction for an offence under subsection (5), a person is liable to pay a fine (and there is no limit on the amount of the fine that the court may impose). The higher penalty arises because the authority may proceed to make decisions on the basis of what it wrongly considers to be accurate information. In addition, unauthorised development may in some cases result in substantial financial rewards for those responsible, who may therefore be tempted to supply false information in an attempt to avoid having to cease their activities.

Section 116 – Powers to enter land for enforcement purposes

637. An authority contemplating enforcement action may wish to obtain more information as to what is taking place on a particular piece of land. However, the owners and occupiers of the land may wish to resist excessive intrusion. Sections 116 to 118 provide a right of entry onto land but also safeguards to avoid misuse.

638. Subsection (1) empowers any person authorised in writing by a planning authority to enter any land to assess whether there has been a breach of planning control either on that land or on any other land, or to determine whether or how the authority should exercise its enforcement powers under this Part of the Act. Once any of those powers has been exercised to require action to be taken, an authorised person may enter any land to see whether the necessary action has in fact occurred.

639. The Welsh Ministers have a power under subsection (2) to authorise a person to enter any land for the purpose of enabling them to decide whether an enforcement notice or a stop notice should be issued in relation to that land or elsewhere, either by them in the exercise of their powers under sections 144 and 150 or by the authority. But they must not authorise a person to enter land without first consulting the authority in whose area the land to which the notice would relate is situated.

640. Those exercising a power to enter land under subsection (1) or (2) may take with them any other persons that are necessary for their investigations (subsection (6)(b)).

641. However, the power of entry may only be exercised at any reasonable time and if there are reasonable grounds for doing so (subsection (4)). In either case, what is reasonable will depend on the circumstances. Anyone exercising either power may only require entry into a building used as a dwelling if they have given at least 24 hours' notice to every occupier of the building (subsection (5)).

642. To ensure that these powers are not misused, subsection (6) provides that those entering any land in reliance on them, if challenged by the owners or the occupiers of the land or anyone acting their behalf, must be able to produce evidence of their authorisation and explain why they are there. If they enter land when the owners and occupiers are absent, they must ensure that the land is as secure when they leave as it was when they arrived.

Section 117 – Warrant to enter land

643. The owners and occupiers of land may be willing to allow those authorised by a planning authority or the Welsh Ministers to enter land under section 116. However, in some cases it may be necessary for the authority or the Welsh Ministers to seek a warrant from the magistrates' courts, under subsections (1) and (3). Namely, where there are reasonable grounds for entering land and either:

a. entry to the land has been refused (a request is treated as being refused if no reply to a request to allow entry has been received in a reasonable time); or

b. the surrounding circumstances suggest that a refusal may be expected.

644. The fact that an authority can seek such a warrant may persuade owners and occupiers to allow entry so that it will not be necessary to trouble the court.

645. A warrant will allow entry to the land by a person authorised by the planning authority or the Welsh Ministers, on one occasion only and only at a reasonable time. It also allows the authorised person to be accompanied (subsections (4) and (5)(b)).

646. A warrant may also be sought where action is needed urgently. In this case, entry to the land may be at any time (subsections (1)(b)(ii) and (4)(b)).

647. Subsection (5) provides safeguards to ensure these powers are not misused that are the same as those where entry to the land is made under section 116. The warrant may only be relied upon to secure entry for up to a month after it is issued (subsection (6)).

Section 118 – Supplementary provision about powers of entry

648. To ensure that the right to enter land is effective, subsection (2) provides that it is an offence to deliberately obstruct a person exercising such a right – either under section 116 or under a warrant obtained under section 117 – from gaining entry or carrying out the necessary investigation. The offence is punishable on summary conviction (in the magistrates' court) by a fine of up to Level 3 on the standard scale (subsection (3)).

649. However, subsections (4) to (6) provide safeguards to ensure that the right of entry under these provisions is not abused. If damage is caused to the land or to items on the land during the exercise a right of entry, those suffering the damage may recover compensation from the planning authority or where relevant the Welsh Ministers. If those exercising the right of entry discover information which relates to a manufacturing process or trade secret and then disclose it for purposes unrelated to the enforcement action, they are committing an offence. Such an offence is punishable on summary conviction by a fine (and there is no limit on the amount of the fine that the court may impose); and punishable on conviction on indictment (in the Crown Court) by a fine, again without limit on the amount that may be imposed, or a prison sentence of up to two years, or both.

Section 119 – Power of planning authority to issue enforcement warning notice

650. In some cases, development may have been carried out that does not have the benefit of planning permission and so constitutes a breach of planning control, but appears to be acceptable or could be made acceptable through planning conditions. This can lead to the issue of an "enforcement warning notice", under subsection (1).

651. A planning authority may issue an enforcement warning notice where it considers that there has been a breach of planning control but also considers that there is a reasonable prospect of planning permission being granted for the development concerned. In considering whether there is a reasonable prospect of planning permission being granted, the authority must have regard to the development plan, alongside any other relevant considerations, including their own land-use policies and considerations relating to the use of the Welsh language; and they must make their decision in accordance with the plan, unless those other considerations indicate otherwise (subsection (2); and section 408(3)).

652. The notice must specify what the authority considers to constitute a breach of planning control, and state that enforcement action may be taken if a planning application is not received within a specified period (subsection (3)). Once it has been issued, a copy must then be served on all the owners and occupiers of the land concerned and on anyone else who would be materially affected if enforcement action were to be taken (subsection (4)).

653. It is not possible to issue more than one enforcement warning notice in relation to the same breach (subsection (5)).

654. The issue of such a notice does not limit the powers of a planning authority to take further enforcement action (subsection (6)); nor does it fetter the discretion of the authority in determining any planning application that may be submitted. It enables those responsible for an apparent breach of control to seek to regularise the position.

Section 120 – Power of planning authority to issue temporary stop notice

655. Where an activity is taking place that appears to be a breach of planning control, the planning authority may sometimes consider it appropriate to bring it to an immediate halt. This could, for example, allow investigations to be carried out. The planning authority in such a situation can issue a "temporary stop notice", under subsections (1) and (2), which will specify the activity that seems to be a breach of planning control and prohibit the carrying out of that activity. The notice must also highlight the possible consequences of flouting the prohibition – namely, prosecution under section 123. It will also set out the authority's reasons for issuing it.

656. Under subsections (3) and (4), a copy of the notice must be displayed on the land or as near to the land as is possible, to bring it to the attention of those, such as contractors, who are carrying out the activity.

657. Once a copy of the notice has been displayed on the land, the planning authority may also serve a copy on anyone who appears to the authority to be the owner or occupier of the land or to be carrying out the activity in question (subsection (5)). This means the authority does not have to delay issuing and displaying the notice whilst it resolves questions as to ownership. It also does not have to serve a copy of the notice on those carrying out the activity, who may be unwilling to cooperate.

Section 121 – Restrictions on power to issue temporary stop notice

658. Under subsection (1), a temporary stop notice may not prohibit the use of a building as a dwelling or other activities specified in regulations.

659. Generally, an authority may not use a temporary stop notice to prohibit an activity or use of land that has been carried out for more than four years (continuously or otherwise) without planning permission (subsections (2) and (3)). However, a temporary stop notice may prohibit the carrying out of operations on land and the depositing of waste, even where they have been carried out for more than four years (subsection (4)).

Section 122 – Duration etc. of temporary stop notice

660. A temporary stop notice takes effect by virtue of subsection (1) as soon as a copy of it is first displayed on or near the land to which it relates. It will then remain in force for 28 days, or until the end of the period stated in it (if less than 28 days) or until the authority withdraws it (subsections (2) and (3)).

661. The authority may not issue another temporary stop notice in relation to the same breach of control, unless it first takes such enforcement action or seeks an injunction from the court (subsections (4) and (5)). This ensures that the owners and occupiers of land, and those carrying out activities on land, cannot be issued with a sequence of temporary stop notices against which there is no right of appeal.

Section 123 – Offence of breaching temporary stop notice

662. For as long as a temporary stop notice has effect (see section 122), it is an offence under section 123(1) to carry out the activity prohibited by the notice or to cause or permit anyone else to carry out the activity.

663. An offence under this section may be charged by reference to a day or a longer period, and a person may be convicted of more than one offence by reference to different periods (subsection (2)).

664. Under subsection (3), it is a defence for a person prosecuted to prove both:

a. that they were not served with a copy of the notice; and

b. that they did not know (and could not have reasonably been expected to know) of its existence.

665. Subsection (4) provides that the penalty on summary conviction (in the magistrates' court) or conviction on indictment (in the Crown Court) for an offence under this section is a fine. There is no limit on the amount of the fine that the court may impose. In determining the amount of the fine, the court must have regard to the gain accruing (or likely to accrue) to the person convicted because of the offence.

Section 124 – Compensation for loss or damage caused by temporary stop notice

666. The issue of a temporary stop notice is designed to be a short-term remedy where urgent action is required, and for example, if the planning authority may have incomplete information as to what is happening on the land. The notice will come into effect as soon as a copy is displayed on or near the site and there is no right of appeal.

667. Therefore, there is a right under subsections (1), (3) and (4) to claim compensation (for loss and damage suffered because of the notice) from the planning authority that issued the notice where:

a. a notice is issued in relation to an activity taking place that, at the time the notice takes effect, is authorised by planning permission granted before the day the notice takes effect;

b. a certificate of lawfulness (see section 156) is issued in relation to the activity specified in the notice; or

c. a notice is displayed, but the planning authority decides not to pursue enforcement action and withdraws it.

668. However, no entitlement to compensation arises where planning permission is granted to authorise the activity on or after the day the temporary stop notice is displayed (subsection (2)). Nor is compensation payable where the claimant could have avoided suffering the loss or damage by providing information they were required to provide or co-operating with the planning authority in any other way (subsection (6)).

669. Where a claim for compensation is made in relation to a case within subsection (1)(a) or (b), it must be made in writing within 12 months of the date the temporary stop notice takes effect. Where it is made in relation to a case within subsection (1)(c), the claim must be made within 12 months of the date the notice is withdrawn (subsection (7)).

Section 125 – Power of planning authority to serve breach of condition notice

670. Where development is carried out that is not in accordance with one or more of the conditions attached to a planning permission, that may result in the service of a "breach of condition notice" on those responsible, under subsection (1). This may be instead of or in addition to the issue of an enforcement notice in relation to a breach of conditions.

671. There is no right of appeal against a breach of condition notice – as there is against an enforcement notice – and failure to comply with it may result in immediate prosecution.

672. Under subsections (2) and (3) a breach of condition notice may be served, by the planning authority, on those carrying out (or who carried out) the development in question, causing or permitting it to be carried out or on anyone who has control of the land. That would include freehold or leasehold owners. But also, for example, contractors carrying out building operations on the land without complying with conditions as to the operating methods or using the wrong materials; or the manager of a restaurant operating in breach of conditions as to opening hours.

673. Under subsection (4), the notice must:

a. specify the conditions to which it relates;

b. require the person on whom it is served to secure compliance with those conditions; and

c. specify the steps to be taken to secure compliance.

674. The notice must specify the period within which compliance with the specified conditions must be secured. That period must be at least 28 days, and the authority may allow more time for compliance by serving a further notice (subsections (6) to (8)).

675. As a result of section 113(2)(a), a breach of condition notice may be served in relation to a breach of condition at any time when an enforcement notice has effect in relation to that breach.

676. Under subsections (9) and (10), after an authority has served a breach of condition notice on a person, it may withdraw it by serving a further notice. However, that does not prevent it from serving another breach of condition notice, for example to correct a defect in the original notice or in relation to a subsequent breach of the condition.

Section 126 – Offence of failing to comply with breach of condition notice

677. Under subsections (1) and (5), anyone on whom a breach of condition notice has been served is guilty of an offence if, after the time stated within it for compliance (or adjusted by any further notice that may have been served), any of the conditions in the notice have not been complied with, any of the required steps have not been undertaken or any specified activity has not been stopped.

678. An offence under this section may be charged by reference to a day or a longer period, and a person may be convicted of more than one offence by reference to different periods (subsection (2)).

679. It may happen that a breach of condition notice is served on someone who is not responsible (or no longer responsible) for the breach of condition identified in it. It is accordingly a defence under subsection (3) for those accused of non-compliance to prove either:

a. that they have taken all reasonable steps to secure compliance with the conditions; or

b. that they no longer had control of the land at the time of the alleged offence.

680. The maximum penalty on summary conviction (in the magistrates' court) is a fine of up to Level 3 on the standard scale (subsection (4)).

Section 127 – Effect of grant of planning permission or removal of condition on breach of condition notice

681. Under subsections (1) and (2), if a breach of condition notice has been served relating to a breach of a condition attached to a previous grant of permission (A), and a second planning permission (B) is then granted in respect of the development that has already been carried out, the notice ceases to have effect so far as it is inconsistent with permission B.

682. Under subsections (1) and (3), if a breach of condition notice has been served relating to a breach of a condition attached to a previous grant of permission, and that condition is then removed or replaced with another condition, the notice ceases to have effect so far as it requires the old condition to be complied with.

683. For example, if permission is granted in 2020 for the change of use of a building to a restaurant, subject to a condition that it must not operate after midnight, a notice could be served on the restaurateur in March 2022 if the restaurant is regularly open until 12:30am, requiring compliance by May 2022. If the condition is, at some point after the notice is served, removed and replaced with one requiring it to close at 1:00am, the breach of condition notice ceases to have effect. However, it would still be open to the authority to serve another notice if the restaurant were then to stay open until 1:30am.

684. Subsection (4) provides that a person is still liable to be prosecuted under section 126 for any previous failure to comply with a breach of condition notice even if that notice has wholly or partly ceased to have effect by virtue of this section.

685. If a notice has not been complied with by the specified date, that will constitute an offence under section 126. The fact that the notice has subsequently ceased to have effect by virtue of this section does not affect the liability of the recipient to be prosecuted for failure to comply with it up to the date the notice ceased to have effect.

Section 128 – Power of planning authority to issue enforcement notice

686. It is the responsibility of the planning authority to investigate potential breaches of planning control and determine the appropriate course of action. Of all the forms of enforcement action available to an authority to deal with unauthorised development, the most frequently employed is the issue of an enforcement notice.

687. Under subsection (1), an authority may issue an enforcement notice if it considers that there has been a breach of planning control in its area (see section 112(1) for what constitutes a "breach of planning control").

688. Some breaches of control are relatively minor and particular factual or personal circumstances may suggest that formal action is not appropriate. The decision as to whether to issue a notice is therefore discretionary. In considering whether to take action the authority must have regard to the development plan, alongside any other relevant considerations, including their own land-use policies and considerations relating to the use of the Welsh language; and they must make their decision in accordance with the plan, unless those other considerations indicate otherwise (subsection (2); and section 408(3)).

689. Subsections (3) and (4) provide that an enforcement notice must explain what appears to constitute a breach of control and within which of the two categories in section 112(1) the breach falls.

690. Under subsections (5) and (6), a notice must explain what the planning authority requires to be done to remedy (in whole or in part) the breach, or any injury to amenity caused by it, or both. As to remedying the breach, this may be achieved by:

a. making the unauthorised development comply with the terms of any permission that has been granted;

b. ceasing (wholly or partly) the current use of the land – and, by virtue of section 112(3)(b), this could include use for mining operations; or

c. restoring the land to its condition before the breach took place.

691. Subsection (7) explains that an enforcement notice may require buildings to be altered or removed, or operations to be carried out. For example, a notice might require the complete removal of a bungalow that has been erected without any permission having been granted and the restoration of the land to its former condition. Or it might require the bungalow to be altered to bring it into line with what has been permitted. Where the breach of control concerns the tipping of waste without permission, or not in accordance with a permission that has been granted, the notice may require the contours of the resulting deposit of waste to be modified.

692. Where a building has been demolished in breach of planning control, an enforcement notice (under subsections (9) and (10)) may require the erection of a replacement building. That replacement building must generally be as similar as possible to the one that was demolished, but it must comply with building regulations and any regulations under subsection (10), and it may incorporate changes that would not have constituted a breach of planning control if they had been made to the original building.

Section 129 – Service, taking effect etc. of enforcement notice

693. Under subsections (1)(a) and (2), an enforcement notice is to specify the date that it comes into effect; it will then normally come into effect at the beginning of that day. That day must be at least 28 days after the service of each of the copies of the notice (section (5)(b)) and the copies may be served on different dates. As such, the date on which the notice will come into effect can be calculated to be more than 28 days after the last date on which any of the copies is likely to be served.

694. Under subsections (1)(b) and (3), an enforcement notice must also specify the period within which the steps specified in it must be taken or the activities specified in it must be stopped; different periods may be specified for different steps or activities. Those periods will normally be specified by reference to the date on which the notice comes into effect.

695. Once the authority has issued an enforcement notice, the authority must within 28 days serve a copy of it on every owner and occupier of the land to which it relates and on any other person who has an interest in the land that the authority thinks might be materially affected (subsections (4) and (5)(a)). If an appeal is made against an enforcement notice, the Welsh Ministers (or an inspector on their behalf) in determining it may ignore the fact that a copy of the notice has not been correctly served on a person as required by this section, if neither that person nor the appellant has been prejudiced by the failure (section 132(3)).

696. Regulations under subsection (6) may specify additional matters that must be included in an enforcement notice, and in particular may require that every notice must be accompanied by a note explaining the right to appeal against it. The current regulations are the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017 (S.I. 2017/530 (W. 113)) ('the 2017 Enforcement Regulations'). Regulation 6 requires the notice to state the reasons why the authority has issued the notice, including the relevant provisions in the development plan, and to specify the precise boundaries of the land affected by the notice (this will almost always be by reference to a plan). While regulation 7 sets out what must be included in the explanatory note as to the right of appeal and how it can be exercised.

Section 130 – Variation and withdrawal of enforcement notice

697. Under subsections (1)(b) and (2), once a planning authority has issued a notice, it may at any time vary or relax any of its requirements; in particular, it may vary the notice to allow more time for compliance. The authority, under subsection (1)(a), can also completely withdraw the notice; it may go on to issue another one under subsection (3).

698. Where a notice is varied or withdrawn after copies of it have been served under section 129(4), the authority must give notice of the variation or withdrawal to anyone who was served with a copy of the original notice and also to anyone who would have to be served with a copy of a notice if one were to be issued now (subsections (4) and (5)). The latter provision recognises that circumstances (including the ownership of the land) may have changed since the original notice was issued.

Section 131 – Right to appeal against enforcement notice

699. This section provides a right to appeal against an enforcement notice to the Welsh Ministers. Chapter 2 of Part 14 makes further provision about the determination of appeals against enforcement notices, in particular the powers and duties of inspectors.

700. Subsection (1) provides that an appeal may be made by anyone who has an interest in the land to which the notice relates (for example a freeholder or leaseholder, or the holder of any other legal or equitable interest such as a mortgage). It may also be made by a person who was the occupier of the land by virtue of a licence when the notice was issued and is still in occupation. It does not matter whether a copy of the notice was served on that person.

701. Subsection (2) sets out the only grounds on which an appeal may be made against an enforcement notice.

702. An appeal on the ground in paragraph (a) is made on the basis that planning permission should be given to authorise one or more of the matters specified in the notice as being a breach of control. This will effectively raise the same issues as would have arisen if permission had been sought for those matters prior to them occurring (that is, as to their acceptability in planning policy terms).

703. However, by virtue of subsections (3) and (5), an appeal may not be made on this ground if, before the issue of the notice, the Welsh Ministers on an appeal under section 73 refused to grant permission for development that would have resulted in the authorisation of the matter or matters concerned – or dismissed such an appeal under section 77(7) on the basis of undue delay by the appellant. This avoids time being wasted by the same matter being raised twice.

704. Where an enforcement notice relates to a breach of a condition of planning permission, an appeal on the ground in paragraph (a) is made on the basis that the condition should be removed. However, by virtue of subsections (4) and (5), an appeal may not be made on this ground if, before the issue of the notice, the Welsh Ministers on an appeal under section 73 made a decision that resulted in the condition being upheld (or they dismissed the appeal for undue delay under section 77).

705. Regulations under section 364(4) may require the payment of a fee for making an appeal).

706. An appeal on the ground in paragraph (b) is made on the basis that the matters specified in the notice as being a breach of planning control did not occur.

707. An appeal on the ground in paragraph (c) is made on the basis that the matters specified in the notice, if they did occur, do not constitute a breach of planning control – because, for example, they were not development, or had been granted planning permission either by a development order or in response to an application.

708. An appeal on the ground in paragraph (d) is made on the basis that, on the day the enforcement notice was issued, no enforcement action could be taken in respect of any such breach, because of the relevant time limits in section 113.

709. An appeal on the ground in paragraph (e) is made on the basis that the copies of the notice were not served correctly, as required by section 129.

710. An appeal on the ground in paragraph (f) is made on the basis that the requirements of the notice – either the steps it requires to be take, or the activities it requires to cease – exceed what is necessary to remedy the breach of control or any injury to amenity caused by it.

711. An appeal on the ground in paragraph (g) is made on the basis that the time allowed for compliance with those requirements is unreasonable short.

712. Subsections (6) to (10) then provide for the procedure to make an appeal. Firstly, under subsection (6), the appeal must be made before the date specified in the notice as the date on which it is to take effect. This can be done by sending a notice in the post or electronically at a time such that, in the ordinary course of events, it would arrive before that date. This deadline cannot be extended.

713. Where an appeal is made, the enforcement notice will not come into effect until the appeal has been finally determined (unless the High Court or Court of Appeal otherwise orders under section 378(6)) (subsection (7)(a)).

714. Where an appeal has been made, neither the appellant nor anyone else can claim in any other proceedings that the enforcement notice was not served on the appellant in accordance with section 129 (see subsection (7)(b)).

715. Under subsections (8) and (9), a person appealing against an enforcement notice must submit a statement of case setting out the information required by regulations. Under regulation 8(1) of the 2017 Enforcement Regulations, the statement is to set out the grounds of appeal relied upon, the relevant facts and the case that is being advanced. It is to be accompanied by copies all supporting documents that the appellant is referring to or relying upon. The statement is to be submitted with the appeal itself, or within the following seven days, or within such longer period as may have been allowed in writing by the Welsh Ministers (in practice, by PEDW) before the date on which the notice was due to take effect; a copy must be sent to the planning authority as soon as practicable.

716. If the information required by the regulations is not submitted within relevant time limit in relation to one or more of the grounds of appeal being relied upon, the Welsh Ministers or the inspector may determine the appeal without considering those grounds (subsection (10)).

717. An appeal under this section will be determined in accordance with regulations made under section 367 (currently the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 (S.I. 2017/544 (W. 121)) ('the 2017 Referred Applications Regulations')). On receipt of the appeal, PEDW (on behalf of the Welsh Ministers) will notify the appellant and the planning authority of the starting date. The authority must submit a full statement of its case and supporting material – including a copy of the notice and a list of those on whom copies were served – within four weeks of that date.

Section 132 – Determination of appeal: general

718. In dealing with an appeal against an enforcement notice, the Welsh Ministers or the inspector may correct any defect, error or misdescription or vary its terms, if they are satisfied that to do so will not cause injustice either to the appellant or the planning authority (subsection (1)). This power confers broad discretion on decision-makers to correct misrecitals of fact or a misdescription of the breach of planning control; it enables them to alter the requirements of the notice or the time within which those requirements are to be complied with.

719. In determining the appeal, the Welsh Ministers or the inspector may allow the appeal, in which case they may quash the notice (subsection (2)(a)).

720. Where an appeal is made on the ground in section 131(2)(e), alleging defective service, the decision-maker is allowed to ignore the fact that a copy of the notice has not been correctly served on a person, as required by section 129, if satisfied that neither that person nor the appellant has been prejudiced by the failure (subsection (3)).

721. The Welsh Ministers or the inspector must give any directions necessary to give effect to their decision (subsection (2)(b)).

722. Under subsection (4), where the appellant fails to submit the required information within the required time, under section 131(9), the Welsh Ministers or the inspector may dismiss the appeal. Equally, where the authority fails to submit the material required by regulations made under section 367 (currently the 2017 Referred Applications Regulations), they may allow the appeal.

Section 133 – Grant of planning permission etc. on determination of appeal

723. Where an appeal against an enforcement notice is made on grounds that permission should be granted or that the condition in question should be removed (including made on ground (a)), one response open to the Welsh Ministers or the inspector on determining the appeal is to grant permission or, as the case may be, to remove the condition (subsection (1) and (2)).

724. In considering whether to grant planning permission, they are to have regard to the development plan, alongside any other relevant considerations, including land-use policies of the Welsh Ministers and considerations relating to the use of the Welsh language; they must make their decision in accordance with the plan, unless those other considerations indicate otherwise (subsection (3); section 408(3)). This results in an appeal on the ground in section 131(2)(a) being determined on precisely the same basis as would have applied if a planning application had been submitted at the outset.

725. Under subsection (4), permission may be granted under this section for all or any of the matters that are specified in the notice as constituting the breach of control; and in relation to all or any of the land involved. For example, where an enforcement notice relates to the unauthorised construction of a rear extension to a house and an additional storey, permission may be granted in response to the appeal for one or the other or for both; where the notice relates to the use of a large field as a camping site, permission may be granted for the use of all or any part of it.

726. The permission that may be granted under this section is any planning permission that could be granted in response to an application under Part 3 (subsection (5)).

727. Where the Welsh Ministers, or the inspector, decide in response to an appeal on the ground in section 131(2)(a) to remove a condition under this section, they may impose one or more other conditions, whether more or less onerous (subsection (6)).

728. The decision of the Welsh Ministers to grant planning permission or to remove a condition under this section is final – subject to any challenge in the High Court (subsection (9)).

Section 134 – Issue of certificate of lawfulness on determination of appeal

729. In many enforcement appeals, the question arises as to whether the activity that is stated in the enforcement notice to be a breach of planning control is in fact lawful. In response to such an appeal, the Welsh Ministers or the inspector may therefore determine under subsection (1) whether an existing use of the land in question was lawful on the day on which the appeal was made, whether operations had been carried out before that day were lawful or whether a failure to comply with a condition on a planning permission was lawful.

730. If they decide that any of those things was lawful, they may issue a certificate of lawfulness (subsection (2)). By virtue of subsection (3), provisions of the Act relating to the content and effect of a certificate (in Part 5) are modified in their application to a certificate issued on the determination of an appeal against an enforcement notice.

731. A certificate issued by virtue of this section may be revoked if it emerges that it was issued in reliance on a statement or a document that was false or in the absence of relevant information that was withheld – see section 163 as modified by subsection (4). It is an offence under subsection (5) to try to influence a decision as to lawfulness under this section by knowingly or recklessly making a statement that is false or misleading in a material respect, or relying on a false or misleading document or withholding information with intent to deceive. Such an offence is triable either way (triable either in the magistrates' courts or the Crown Court) and that may be punished on conviction by a fine (and there is no limit on the amount of the fine that the court may impose).

732. The decision of the Welsh Ministers as to the lawfulness of an activity under this section is final – subject to any challenge in the High Court (subsection (7)).

Section 135 – Order to permit steps required by enforcement notice

733. Once an enforcement notice has come into effect, it must be complied with. If the notice requires steps to be taken – for example, buildings or works to be altered or removed or operations to be carried out (see section 128(7)) – they must be taken within the specified period. It is the owners of land who are primarily responsible for ensuring compliance and it is they who are liable to be prosecuted under section 138(1) for failing to comply with the notice.

734. Where the owners are served with a copy of a notice that requires such steps to be taken on the land, or otherwise become aware of the notice, they may be able to take those steps, so that the notice is complied with.

735. However, if the land is under the control of someone else (for example, a leaseholder or tenant), who is preventing the owners taking those steps, they may apply to the magistrates' court (by way of a complaint) for an order under this section, permitting them to enter the land and take those steps.

Section 136 – Power to enter land and take steps required by enforcement notice

736. Where an enforcement notice has come into effect requiring steps to be taken and has not been complied with, it may lead to the prosecution of those responsible for the failure to comply. However, such a prosecution – whether successful or not – will not result in the required steps actually being taken. This section enables a planning authority to enter the land when steps have not been taken within the time specified in the notice and take the necessary action itself (subsection (1)).

737. If anyone obstructs such action, they will be guilty of an offence under subsection (2) that may result in a fine on summary conviction (in the magistrates' court) of up to Level 3 on the standard scale.

Section 137 – Recovery of costs of compliance with enforcement notice

738. This section enables a planning authority to recover any costs it has reasonably incurred in exercising its powers under section 136. It also incorporates provisions in the Public Health Act 1936 (c. 49) that were applied to the recovery of costs in this situation.

739. Subsection (1) enables the authority to recover these costs from the current owners of the land – that is, the freeholders or those who are entitled to receive the rent.

740. However, if the owners are only entitled to receive the rent as agent for someone else ("the principal") and have not received enough money by way of rent to enable them to reimburse the authority's costs in full, then their liability is limited by subsection (2) to the amount of money that they have had on behalf of the principal since the day on which the authority demanded payment. In that situation, the authority is entitled to recover the whole or the balance of its costs from the principal (subsection (3)).

741. Where a copy of an enforcement notice has been served as a result of a breach of planning control having occurred, and

a. the owners or occupiers of the land have had to take action to ensure that the notice is complied with; or

b. the authority has had to take action in default,

any costs incurred by the owners or occupiers (including costs paid to the authority under subsection (1)) are treated as having been incurred or paid on behalf of the person who committed the original breach (subsection (4)). That enables those costs to be recovered from the person who committed the original breach, either by negotiation or court action.

742. Under subsection (5), if costs are incurred by the authority under section 136, they will be a charge on the land until they have been recovered in full under subsection (1). The charge takes effect as a local land charge at the beginning of the day after the authority completes the steps to which the costs relate.

743. In some cases, where an enforcement notice is served and a planning authority takes action under section 136 in default of compliance, that may result in building materials, stock or other items having to be removed from the land. Where this occurs, subsections (7) and (8) require that those items must be offered to their owners. If they are not claimed and taken away within three days, the authority may sell them and pay the proceeds to the owners of the building materials, stock or other items – after deducting any expenses recoverable by the authority.

Section 138 – Offences of failing to comply with enforcement notice

744. Carrying out development without planning permission is not of itself a criminal offence. However, once a planning authority has issued an enforcement notice, the notice will come into effect and will require action to be taken. At that point, failure to comply with the notice is a criminal offence under this section.

745. The first offence, under subsection (1), applies to the owner of the land to which the enforcement notice relates.

746. The second, under subsection (4) applies to anyone other than the owner who nevertheless has a significant involvement in the land – that is, a person who at any time has control of the land or who has some other interest in it (such as a leaseholder) (subsection (3)).

747. Between them, the two categories include all those who can do whatever is necessary to ensure that the enforcement notice is complied with.

748. The first offence, under subsection (1), is committed by the owners of the land where:

a. an enforcement notice requires a step to be taken or an activity to be stopped by a particular date; and

b. the step has not been taken, or the activity has not stopped, by that date.

749. Owners have a defence to a prosecution under subsection (1) if they can show that they did everything that they could be expected to do to secure that the notice was being complied with (subsection (2)).

750. The second offence, under subsection (4), applies to a person other than the owner who has control of or an interest in the land to which an enforcement notice relates, where the notice requires that an activity to cease after a specified date. It is committed if that person carries out that activity at any time after that date or causes or permits someone else to carry it out. If an activity ceases but is then resumed in contravention of the notice, that may result in those responsible being prosecuted.

751. Under subsection (6), those charged with either of the offences under this section will have a defence if they are able to show that:

a. they were not served with a copy of the notice, under section 129;

b. the notice was not contained in the register kept by the planning authority under section 154; and

c. they did not know of the existence of the notice.

752. A prosecution for an offence under this section must be brought in the magistrates' court, and in practice will normally be instigated by the planning authority. Under subsections (7) and (8), a person convicted of either offence is liable to pay a fine (and there is no limit on the amount of the fine that the court may impose). In determining the size of any fine, the court must have regard to the financial benefit that has accrued (or that seems likely to accrue) in consequence of the offence.

753. An offence under this section may be charged by reference to a day or a longer period, and a person may be convicted of more than one offence by reference to different periods (subsection (5)).

Section 139 – Assurance that person is not at risk of prosecution for offence under section 138

754. Where an authority issues an enforcement notice, a copy must be served on the owners of the land and on others with significant involvement in the management of it, under section 129. If the notice is not complied with, this will generally result in those persons being liable to prosecution under section 138. But this may lead to unfortunate results in some cases – for example, where tenants or licensees of parts of the land have had no responsibility for the activity that has led to the authority's action or have no ability to bring it to an end.

755. An authority may therefore serve on a person a "non-prosecution notice" under this section either at the same time it serves on the person a copy of an enforcement notice or at any time after that (subsection (2)).

756. It may also serve a non-prosecution notice on a person who was not served with a copy of the enforcement notice, but who would be served with a copy if it were to be reissued, if such a person requests that (subsection (3)).

757. A non-prosecution notice under subsection (4)(a) gives the persons on whom it is served an assurance that they will not be prosecuted in connection with the enforcement notice. A notice under subsection (4)(b) assures them that they will not be prosecuted in relation to some of the matters that are the subject of the enforcement notice (and the notice must explain that they are still at risk of being prosecuted for the other matters raised in the enforcement notice) (also subsection (5)).

758. Where a non-prosecution notice has been served on a person, the authority may withdraw the assurance (in whole or part) by serving a further notice on that person, under subsection (7), specifying a time after which the assurance will cease to operate. The time specified in that further notice must give the person on whom it is served with a reasonable opportunity to comply with the original enforcement notice, so far as that may be relevant. However, the further notice cannot affect the liability of the person to being prosecuted for any failure to comply that may have occurred prior to the specified time (subsections (8) and (9)). Under subsection (6), a non-prosecution notice must explain that it may be withdrawn by a further notice under subsection (7).

759. A non-prosecution notice – so far as it is not withdrawn – binds anyone who would otherwise have power to prosecute for an offence under section 138. In particular, it binds the authority itself (subsection (10)).

Section 140 – Grounds for appeal not to be raised in other proceedings

760. Section 131(2) sets out the grounds on which an appeal may be made to the Welsh Ministers against an enforcement notice. This section provides that those grounds may not generally be raised in any other legal proceedings.

761. The only exception to that is where a person who held an interest in the land at the time an enforcement notice was issued was not served with a copy of the notice in accordance with section 129(4) and knew nothing about its existence.

762. For example, if those who are prosecuted under section 138 for non-compliance with the notice can prove that they did not know of the notice (and could not reasonably have been expected to know) and were prejudiced by not being served a copy of the notice, they can raise those grounds during the criminal proceedings.

Section 141 – Effect of grant of planning permission on enforcement notice

763. Where an enforcement notice has been issued in relation to the carrying out of development that constitutes a breach of planning control, planning permission may subsequently be granted for some or all of that development – possibly due to a change of circumstances. In that situation, insofar as the notice is inconsistent with the permission, it will cease to have effect or, if it has not yet come into effect, it will not take effect (subsection (1)).

764. For example, if a field is used without planning permission as a site for the stationing of 70 caravans, an enforcement notice may be issued requiring them to be removed. If planning permission is then granted to authorise the use of the upper part of the field for 40 caravans, the notice will cease to have affect in relation to the part of the field that can lawfully be used for up to 40 caravans. However, it will remain in effect in relation to the lower part of the field and any use of that area for caravans will be a breach of the notice, which may result in prosecution for non-compliance.

765. However, the grant of the subsequent permission does not alter fact that the development was a breach of planning control at the time it was carried out. Any failure to comply with the notice, before the grant of the permission, will have been an offence under 138; and anyone responsible for that failure will still be liable to prosecuted as a result (subsection (2)). In the above example, if the permission for the 40 caravans is granted five years after the issue of the enforcement notice, but prior to the permission the caravans were not removed from the upper part of the field during this period, that would constitute a failure to comply with the notice, which could result in a prosecution of those responsible.

Section 142 – Deemed planning permission where enforcement notice is complied with

766. Subsections (1) and (2) deal with the practice sometimes known as under-enforcement. That is, where a notice states that a breach of planning control has occurred, consisting of more than one matter, but requires that only some of those matters are remedied. This section provides that, in that situation, planning permission is treated as having been granted under section 49 for the other items mentioned in the notice that did not need to be remedied by it.

767. For example, a notice might recite that a breach of planning control has occurred consisting of the layout of a concrete hardstanding, the erection of storage building and the parking on the hardstanding of lorries; but only require that the building is removed and that the land is not used as a lorry-park. Planning permission is therefore treated as being granted for the hardstanding.

768. Subsections (3) and (4) applies where an enforcement notice relates to a breach of planning control consisting of the demolition of a building. Where such a notice requires the breach to be remedied by the construction of a replacement building, and is complied with, permission is treated as having been granted for the construction of the replacement building.

Section 143 – Continuing effect of enforcement notice in relation to later development

769. Where an enforcement notice has been issued in respect of a particular breach of control, and has been complied with, the notice does not cease to have effect (subsection (1)). If the breach recurs, the planning authority does not have to start all over again and issue a new notice which might result in a further appeal and more delay. As a result of this section, the authority can rely on the existing notice and take appropriate action to ensure that it is still complied with.

770. Subsection (2) provides that, where a notice requires a use of land to be discontinued and that use is discontinued, that requirement operates as a prohibition on the use ever being resumed (unless planning permission is granted at some point in the future). And by virtue of section 112(2)(b), this also applies to the use of land for the carrying out of mining operations.

771. Subsections (4) to (6) apply where a notice requires the alteration or removal of buildings (that for this purpose includes "works"), and that requirement is complied with. If they are then restored or reinstated in breach of planning control, the original notice can be relied on to require the alteration or removal of the new buildings, just as it applied to the original buildings. The planning authority may carry out the necessary works itself (under section 136) if necessary – although it must give at least 28 days' notice to owners and occupiers of the land of its intention to so.

772. Where buildings are restored or reinstated in such circumstances, those responsible commit an offence under subsection (8). The penalty on summary conviction (in the magistrates' court) is a fine (and there is no limit on the amount of the fine that the court may impose).

773. However, although the enforcement notice generally applies to the restored or reinstated building just as it applies to the original building, failure to alter the restored or reinstated building cannot result in a prosecution of the owner of the land under section 138(1) for non-compliance with the notice.

Section 144 – Power of the Welsh Ministers to issue enforcement notice

774. Enforcement notices are almost always issued by planning authorities. Exceptionally, however, an enforcement notice may be issued by the Welsh Ministers under this section.

775. As with a notice issued by an authority, the Welsh Ministers in considering whether to take such action must have regard to the development plan, alongside any other relevant considerations, including their own land-use policies and considerations relating to the use of the Welsh language; and they must make their decision in accordance with the plan, unless those other considerations indicate otherwise (subsection (2); and section 408(3)). They must also consult the planning authority for the area containing the land to which it relates (subsection (3)).

776. An enforcement notice issued by the Welsh Ministers has the same effect as one issued by a planning authority (subsection (4)).

777. The provisions relating to enforcement notices issued by planning authorities applies equally to notices issued by the Welsh Ministers – and any reference to action taken by or relation to the planning authority should be generally understood to be reference to action by or in relation to the Welsh Ministers. However where a notice is issued by the Welsh Ministers under this section, the power to serve a non-prosecution notice under section 139 is exercisable by the Counsel General (subsection (5)).

Section 145 – Power of planning authority to issue stop notice

778. An enforcement notice does not come into effect as soon as it is issued. And if the issue of such a notice leads to an appeal, and possibly to a further appeal to the High Court, it may not come into effect for some months. Even when it comes into effect, a notice will usually allow a period for compliance. Where an activity is taking place which for example is giving rise to significant harm to the physical environment and adverse consequences for those living and working nearby, this delay may be undesirable.

779. Where the authority issues an enforcement notice that requires an activity to cease, and it considers that the activity should cease before the notice comes into effect, it may therefore also issue a "stop notice", under subsection (1). This will require the activity to stop, as well as any activity associated with that activity; those are together referred to as the "relevant activity" (subsection (2)).

780. A stop notice must refer to the enforcement notice to which it relates, prohibit the relevant activity on the land (or on a specified part of it) and state the date on which the notice is to come into effect (subsection (3)).

Section 146 – Restrictions on power to issue stop notice

781. An authority must not issue a stop notice after the related enforcement notice comes into effect (subsection (1)).

782. A stop notice may not prohibit the use of a building as a dwelling (subsection (2)).

783. In addition, the notice may not prohibit the carrying out of an activity that has been carried out on the land for at least four years (either continuously or otherwise) without planning permission (subsection (3)).

784. However, that does not prevent a stop notice being issued to bring to an immediate end the use of land for the carrying out of building, mining or engineering operations on land, or any activity incidental to such operations or the depositing of waste – even where such activities have been carried out for more than four years (subsection (4)).

Section 147 – Service and display of stop notice

785. Where an authority issues a stop notice, it must serve copies as it sees appropriate on those who have an interest in the land to which it relates or those who are carrying out the activity that the notice is seeking to end (subsections (1) and (2)). However, it does not have to serve a copy on all of those in either category – since a large site may be subject to many legal interests and the purpose of the notice is to achieve immediate action. There may be many contractors and sub-contractors involved in the offending activity, so careful consideration will need to be given to who should be served.

786. A copy of a stop notice may be, and in practice often is, served at the same time as a copy of the enforcement notice with which it is associated; or it may be served later; and each copy of the stop notice is to be accompanied by a copy of that enforcement notice (subsections (3) and (4)).

787. The stop notice will normally come into effect at least three days after the copies are served, or no later than 28 days after the date of service (subsection (5)). However, it may come into effect sooner if the authority considers that there are special reasons why that is appropriate; in such a case each copy of the notice must contain a statement of those reasons.

788. The authority may display a site notice on the relevant land or, where that is not practical, as close to the land as may be. That notice must state that a stop notice has been issued, specifying the date on which it takes effect and what activity it is prohibiting, and point out that a failure to comply with it is a criminal offence under section 151.

Section 148 – Withdrawal of stop notice

789. A planning authority may withdraw a stop notice at any time after it has issued one – whether or not it has come into effect. If it does so, it must serve a notice of withdrawal on everyone who was served with a copy of the original notice. And if it displayed a site notice, that must be replaced with a notice stating that the stop notice has been withdrawn (subsections (1) and (2)).

790. The withdrawal of a stop notice does not prevent the authority from issuing another one (subsection (3)) – although only up until the associated enforcement notice comes into effect.

Section 149 – Duration and effect of stop notice

791. Once a stop notice has been issued, it comes into effect at the beginning of the day specified in the notice as the day on which it comes into effect. It then remains in effect until the end of the period within which the associated enforcement notice requires the prohibited activity to be stopped (subsections (1) and (2)).

792. However, if before the date on which the enforcement notice has to be complied with that notice is withdrawn by the authority, or is quashed as the result of an appeal, the stop notice falls with it. If the stop notice is itself withdrawn before that date, it also ceases to have effect (subsection (3)).

793. If the enforcement notice is varied so that it no longer requires a particular activity to cease, the associated stop notice will also cease to have effect in relation to that activity (subsection (4)).

794. Where a copy of an enforcement notice is not served on someone as required by section 129, that will not invalidate an associated stop notice if it can be shown that the authority took all reasonable steps to ensure that the enforcement notice was served on that person (subsection (5)).

Section 150 – Power of the Welsh Ministers to issue stop notice

795. Where an enforcement notice is issued, either by a planning authority or the Welsh Ministers, requiring an activity to be stopped and the Welsh Ministers consider that it should be stopped within a shorter period than that specified in the enforcement notice, they may issue a stop notice – after consulting the relevant planning authority.

796. A stop notice issued by the Welsh Ministers has the same effect as one issued by a planning authority. And sections 145(2) to 149 – as to the contents of a notice, its service and display, duration, effect and its withdrawal – apply to such a notice just as they do to one issued by an authority.

Section 151 – Offence of breaching stop notice

797. Under subsection (1), once a stop notice has come into effect, requiring an activity to stop, a person who carries out that activity, or causes or permits someone else to carry out that activity, commits an offence – but only if the planning authority (or the Welsh Ministers):

a. served a copy of the notice on that person; or

b. displayed a site notice relating to it.

798. An offence under this section may be charged by reference to a day or a longer period, and a person may be convicted of more than one offence by reference to different periods (subsection (2)).

799. Under subsection (3), where the authority is relying on having displayed a site notice relating to the stop notice, those who are charged with an offence under this section will have a defence if they are able to show:

a. that they were not served with a copy of the notice, under section 147; and

b. that they did not know (and could not reasonably have been expected to know) of its existence.

800. An offence under this section is triable either way (either in the magistrates' courts or Crown Court). Under subsections (4) and (5), a person found guilty is liable to pay a fine (and there is no limit on the amount of the fine that the court may impose). As with a prosecution for non-compliance with an enforcement notice, there is an explicit duty laid upon the court, in determining the size of any fine, to have regard to the financial benefit that has accrued (or that seems likely to accrue) in consequence of the offence.

Section 152 – Compensation for loss or damage caused by stop notice

801. A right to claim compensation arises under subsections (1) and (2) where, after a stop notice has been issued, one of the following occurs:

a. the associated enforcement notice is quashed, or is varied so that it no longer requires the activity prohibited by the stop notice to cease (other than on the basis that planning permission is granted in response to an appeal on the ground in section 131(2)(a)) (see section 131(2)(a));

b. the enforcement notice is withdrawn (other than because, after it was issued, planning permission has been granted authorising that activity); or

c. the stop notice itself is withdrawn.

802. Under subsections (3) and (4) a person who has an interest in the land to which the stop notice relates at the time the notice was first served, or who occupies that land, is entitled to compensation for loss or damage that is directly attributable to:

a. the prohibition contained in the stop notice; or

b. where the enforcement notice is varied, the prohibition by the stop notice of the activities that are no longer prohibited by the enforcement notice.

803. That loss or damage includes any loss due to a breach of contract arising as a result of being forced to take action to comply with the stop notice.

804. Compensation is normally payable by the planning authority that issued the enforcement notice associated with the stop notice. However, where the enforcement notice was issued by the Welsh Ministers, the compensation is payable by them (subsection (5)).

805. Compensation is not payable for having to cease an activity that was, at the time, a breach of planning control (subsection (6)). Nor is it payable where a claimant could have avoided suffering the loss or damage by providing information that was requested by the planning authority, or by co-operating with the authority or the Welsh Ministers in any other way when responding to such a request (subsection (7)).

806. A claim for compensation under this section must be made in writing. It must also be submitted within twelve months of the enforcement notice being quashed, varied or withdrawn, or the stop notice being withdrawn (subsection (8)).

Section 153 – Injunctions restraining breaches of planning control

807. Under this section a planning authority may apply for an injunction from the High Court or the county court, restraining an actual or expected breach of planning control – whether or not it has exercised or is considering exercising its other powers under this Part of the Act (subsections (1) and (2)).

808. Under subsection (3), the court may then grant an injunction on any terms it considers appropriate.

809. Subsection (4) enables rules of the court to make provision for an injunction to be issued even where the authority does not know the identity of those committing, or expected to commit, the breach of planning control.

Section 154 – Register of enforcement notices, other enforcement action and stop notices

810. The planning authority must maintain a register containing information about enforcement warning notices, breach of condition notices, enforcement notices and stop notices issued or served by the authority, and notices issued or served by the Welsh Ministers in relation to land in its area. Under subsection (4), the register must be available for public inspection at all times.

811. Regulations may specify precisely what is to be included, in what way and when entries in it are to be removed (subsections (1) to (3)). The relevant requirements are currently to be found in the 2012 Order.

812. The fact that information as to an enforcement notice has been properly recorded in the register may be important in establishing the liability of a person to be convicted for failing to comply with it, under section 138(6)(b)).

PART 5 – CERTIFICATES OF LAWFULNESS

813. The 1991 Act introduced a system whereby a planning authority can issue a certificate that any specified use or operation (whether it has already started or not) can be carried out without the need for a planning application.

814. This Part of the Act first explains (in section 155) what is meant by "lawful". It then provides a procedure by which anyone can obtain a conclusive certificate as to the lawfulness of any uses or operations that are currently taking place, or that are proposed, on a piece of land.

815. It describes two types of certificate that can be sought:

a. a certificate of lawfulness of existing use or development (sometimes referred to as a 'CLEUD'), in cases where the use or operation in question has already started (section 156); and

b. a certificate of lawfulness of proposed use or development (a 'CLOPUD'), where the use or operation has not yet been started (section 157).

816. Sections 156 to 164 set out:

a. how an application may be made to obtain either type of certificate;

b. what such a certificate must contain;

c. how, if such an application is not successful, an appeal may be made and determined; and

d. when and how a certificate may be revoked.

817. This Part largely replaces sections 191 to 196 of the 1990 Act, which were introduced in their present form by the 1991 Act.

Section 155 – Expressions relating to lawfulness

818. This section explains the circumstances in which uses of land or operations are lawful.

819. The section is drafted by reference to taking enforcement action, as defined in section 112(2); however, merely because enforcement action may be taken in relation to certain uses or operations, this does not mean that such action must or will necessarily be taken to regularise them. The decision to take such action is a matter of discretion for the planning authority, in the light of the development plan and all other relevant considerations (sections 119(2) and 128(2)). But the provisions of this section do enable owners of land, prospective purchasers and the authority to ascertain the planning status of land, to determine what action, if any, is appropriate.

820. Where no enforcement notice is currently in effect in respect of the land in question, a change in the use of the land or the carrying out of an operation on it is lawful if no enforcement action can be taken in respect of it (for the reasons in subsection (2)).

821. First, a use of land will be immune from enforcement action, and as such lawful, if it is not "development" (subsection (2)(a)) – that is, if it did not arise as the result of a change of use that constituted development at the time that it occurred; or, in the case of a proposed use, if it will not come into existence as the result of a change that will amount to development. Section 3(2)(b) provides that a material change in the use of land will normally involve development; and section 5 explains that certain specific uses involve a material change, even if they would not otherwise do so. However, section 6(5) to (7) provides that certain changes of use do not involve development (notably a change to use for agriculture or forestry and a change from one use within a use classes order to another use in the same class).

822. An operation will be immune from enforcement action, and as such lawful, if it is not development (subsection (2)(a)). Section 3(2)(a) provides that carrying out operations on land (that is, in, on, over or under land: see section 408(2)) is normally development. Section 4 then provides that operations include building, engineering and mining operations and explains each of those terms in more detail. Section 6(2) to (4) provides that certain relatively minor operations do not involve development (notably alterations to the interior of a building and road works by statutory undertakers and similar bodies).

823. Secondly, a use of land will be immune from enforcement action, and as such lawful, if a change to that use would be development, but would not require an application for planning permission (subsection (2)(b)). This would occur, in particular, where such a change would be granted permission by a development order or local development order. The 1995 Order grants permission for a number of relatively minor changes of use. It would also occur in certain cases where the use of the land is changed back to a previous use, as specified in section 43(3) to (6).

824. Similarly, an operation will be immune from enforcement action, and as such lawful, if it would be development, but would not require an application for planning permission (subsection (2)(b)). This would occur, in particular, where such an operation would be granted permission by a development order or local development order. The 1995 Order grants permission for a large number of operations (notably those that are relatively minor or are permitted under other legislation).

825. Thirdly, a use of land may be the result of a change of use that was development at the time it occurred and was not granted permission by a development order or local development order; or an operation may have taken place that was development and was not permitted by any order at that time. In either case, therefore, the use or operation could have then been the subject of enforcement action. However, as noted in section 113, such action can only be taken within a specified period – generally four or ten years depending on the nature of the breach. If that time has expired without enforcement action having been taken, or if action was taken but did not result in an enforcement notice that is now in force, the use or operation is now lawful (subsection (2)(c)).

826. Finally, as noted in subsection (1)(b), there may be an enforcement notice that is currently in effect in respect of the relevant land, but the use or operation now in question does not constitute a breach of that notice. In that situation, the lawfulness of the use or operation depends on whether further enforcement action may be taken in respect of it, as outlined in subsection (2). For example, there may be an enforcement notice in effect that prohibits the occupation of a dwelling other than by an agricultural worker; that will not prevent the construction of alterations to the interior of the dwelling, or the construction of a small extension, being lawful.

827. A failure to comply with a condition or limitation attached to a planning permission is a breach of planning control (see section 112(1)(b)). However, by virtue of subsection (3), the situation arising as the result of a such a failure will be "lawful" if:

a. the period for taking enforcement action on the failure has ended; and

b. the matter is not part of the failure to comply with any requirements of the breach of condition notice or enforcement notice that is in force – bearing in mind the period for taking such action in respect of a past breach (normally ten years: see section 113(1)).

828. In this Part, the term "use of land" does not include use for carrying out operations on land (subsection (5)(a)). This means that where, for example, a sports field becomes a development site and planning permission is granted for the construction of new houses, its use remains as a sports field until the construction of the houses starts. And once that start has occurred the use of the land is for housing. But the lawfulness of what is taking place is determined by considering whether planning permission has been granted for the construction of the houses, and whether enforcement action could occur if it has not, rather than by whether permission has been granted for a change of use from sports field to building site.

Section 156 – Certificate of lawfulness of existing use or development

829. Under subsection (1), any person may apply to a planning authority for a certificate confirming that:

a. an existing use of land in the authority's area is lawful; or

b. operations that have been carried out on such land are lawful; or

c. a matter that constitutes a failure to comply with a condition attached to a planning permission that has been granted in relation to such land is lawful.

830. An application is usually made by the owners or occupiers of land, prospective purchasers or interested third parties.

831. Where the authority is provided with information satisfying it as to the lawfulness of the use, operation or other matter on the day the application was made, it must issue a certificate of lawfulness (subsection (2)). The certificate may describe the use, operation or other matter either in the terms set out in the application or in other terms that it considers to be more appropriate. In the latter case, the authority may modify the terms set out in the application or substitute its own. For example, an application may allege that the lawful use of a piece of land is for *"parking heavy lorries"*; a certificate may then be issued stating that the lawful use of the land is *"parking of up to ten lorries of [specified size or weight]"*.

832. The issue of a certificate is not dependent on the desirability or otherwise in policy terms of the use or operation in question. It depends solely on the planning history of the land and the circumstances at the date of the application – both of which are matters of fact – and an analysis of the legal consequences of those matters.

833. Where a certificate is issued, it is conclusive evidence as to the lawfulness – as at the date of the application – of the use, operations or other matters to which it relates (subsection (4)).

834. But where the authority has not been supplied with sufficient information to enable it to determine what, if any, is the lawful use of a piece of land or the lawfulness of all or any operations that may have been carried out on the land, it must refuse the application (subsection (3)).

835. Subsection (5)(a) draws attention to the Mobile Homes (Wales) Act 2013 (anaw 6). Section 7(1) of that Act provides that a local authority in Wales may issue a site licence under that Act in respect of land if it is subject to the benefit of planning permission for the use of that land as a mobile home site otherwise than by a development order. Section 39(5) of that Act then provides that a certificate of lawfulness granted under this section is treated as if it were a grant of planning permission otherwise than by a development order. This means that where land that is being used as a mobile home site has become immune from enforcement action – for example, because it has been so used for more than ten years – an authority must issue a certificate of lawfulness if invited to do so. That certificate then operates as if it were a grant of planning permission; and the local authority may then issue a site licence.

836. Subsection (5)(b) similarly draws attention to the Caravan Sites and Control of Development Act 1960 (c. 62). Section 3(3) of that Act provides that a local authority in Wales may issue a site licence in respect of land – other than a site regulated under the Mobile Homes (Wales) Act 2013 – if it benefits from planning permission for use as a caravan site. Section 29(4B) of that Act then provides that a certificate granted under this section is treated as if it were a grant of planning permission.

Section 157 – Certificate of lawfulness of proposed use or development

837. Under subsection (1), any person may apply to a planning authority for a certificate confirming that a proposed use of land in the authority's area would be lawful, or that operations proposed to be carried out on such land would be lawful. Here too an application is usually made by the owners or occupiers of land, prospective purchasers or interested third parties.

838. Where the authority is provided with information satisfying it as to the lawfulness of the use, operation or other matter on the day the application was made, in the terms set out in the application, it must issue a certificate of lawfulness (subsection (2)).

839. Here too, the issue of a certificate is not dependent on the desirability or otherwise in policy terms of the proposed use or operation. It depends solely on the planning history of the land and the circumstances at the date of the application – both of which are matters of fact – and an analysis of the legal consequences of those matters.

840. Where a certificate is issued, it is generally conclusive evidence as to the lawfulness – as at the date of the application – of the use or operations to which it relates (subsection (4)). But this would not apply if there is a change relevant to the lawfulness of those matters between the date of the application and the date on which they start. For example, if the general permitted development order were to be amended to withdraw permission for the proposed change of use or operations, that would effectively override a certificate that had been granted on the basis of the unamended order.

841. Where the authority has not been supplied with sufficient information to enable it to determine whether the proposed use or operations would be lawful, it must refuse the application (subsection (3)).

Section 158 – Further provision about applications for certificates of lawfulness

842. An application for a certificate under this Part must specify the land to which it relates, and describe the use, operations or other matter to which it relates (subsection (1)). Further, regulations under subsection (2) may provide for the form and content of an application, how an application must be made and what documents or other materials must accompany it. The current requirements are in article 28(1), (2) and (4) to (6) of the 2012 Order.

843. In addition, a planning authority may require that an application for a certificate of lawfulness must include any information it considers necessary, and any further evidence it considers necessary to support anything in or relating to the application (subsection (3)). This might include, for example, sales particulars, receipts or other documentary evidence, photographs and statements from neighbouring owners.

844. By virtue of subsection (4), the authority must not consider an application if it fails to comply with the requirements of subsection (1) or of any regulations under subsection (2), or any specific requirements for further information it has made under subsection (3).

845. Regulations under subsections (5) and (6) may provide how an authority is to deal with an application for a certificate, may require that it is to notify the applicant of the outcome within a specified period and to inform the Welsh Ministers or others as to applications that it has determined; the current requirements are in article 28(7) to (13) of the 2012 Order that states an application must be acknowledged and must be dealt with within eight weeks, or such longer period as may be agreed by the authority and the applicant.

846. A fee is usually payable for an application for a certificate, under regulation 11 of the 2015 Regulations (made under powers restated in section 360).

847. Regulations under subsection (7) may modify the procedure in the case of applications made by or on behalf of the Crown. Currently article 28(3) of the 2012 Order merely provides that such an application must be accompanied by a statement that it is made in respect of Crown land and, where relevant, the authorisation that has been given for the application to be made.

Section 159 – Further provision about certificates of lawfulness

848. Where the authority issues a certificate of lawfulness, it must specify the land to which it relates, that may be the whole of the land specified in the application for the certificate or any part of the land (subsections (1)(a) and (3)(a)).

849. The certificate must describe the use, operations or other matters to which it relates, that may be all or any of the uses etc. specified in the application (subsections (1)(b) and (3)(b)). Where the use specified in the certificate is within one of the classes of uses specified in regulations made under section 6(6), the certificate must also specify that class (currently in the Town and Country Planning (Use Classes) Order 1987).

850. The certificate must also state the authority's reasons for deciding those uses, operations or other matters to be lawful and the date on which the application was made (subsection (1)(c) and (d)). The latter is significant as the authority's decision will be based on the facts and the law as at the application date.

851. A certificate has effect in relation to a failure to comply with a condition of a planning permission only if it explicitly describes the non-compliance (subsection (4)).

852. Regulations may prescribe the form of certificate of lawfulness; the current form is at Schedule 7 to the 2012 Order.

Section 160 – Right to appeal against refusal of application or failure to make decision

853. A person who has applied for a certificate of lawfulness may appeal to the Welsh Ministers if:

a. the authority refuses the application in whole or in part, or grants a certificate with a description of the lawful use or operation that is different from the description in the application (subsections (1)(a) and (6)); or

b. the authority fails to notify its decision within the time specified in the regulations or such extended time as may have been agreed (subsections (1)(b) and (2)).

854. Such an appeal must be made by serving a notice of appeal on the Welsh Ministers, in the form prescribed by regulations (subsections (3) and (4)). The current requirements are in article 26B of the 2012 Order that state the appellant must supply a full statement of their case, along with all relevant documents. Such appeals are normally made online, via the PEDW website.

855. The appeal must be made within the prescribed period by regulations, which must be at least 28 days after the appellant receives notice of the authority's decision or after the end of the time within which it should have made a decision (subsections (4)(c) and (5)).

Section 161 – Restriction on varying application after service of notice of appeal

856. Once an appeal has been made under section 160, the application that gave rise to it may not be altered, save in circumstances specified in regulations (subsection (1)). Currently article 26C of the 2012 Order, made under the power restated in this provision, provides for very limited circumstances in which an alteration may be made. These are only to correct an inconsistency where that can be done without altering the substance of the application.

857. Where such an alteration is made, further consultation must be carried out if the Welsh Ministers direct (subsection (2)).

Section 162 – Determination of appeal

858. In determining an appeal under section 162, the Welsh Ministers must allow the appeal if they consider that the refusal to issue a certificate was not well-founded, or, in the case of a non-determination appeal, a refusal to issue a certificate would not have been well-founded. In either case, they must issue a certificate (or, where appropriate, vary any certificate that was issued by the authority) (subsections (1) and (3)).

859. In any other case, they must dismiss the appeal (subsection (2)).

860. Chapter 2 of Part 14 (proceedings before the Welsh Ministers) applies to the determination of appeals under this section by the Welsh Ministers or, more commonly, by inspectors on their behalf. Their decision on such an appeal is final, subject to review by the courts (subsections (5) and (6)).

861. Sections 156(4), 157(4) and 159 apply to a certificate issued (or varied) by the Welsh Ministers on an appeal under section 160 but must be read as if the reference to planning authority in section 159(1)(c) is a reference to the Welsh Ministers (subsection (4)).

Section 163 – Revocation of certificate of lawfulness
Section 164 – Offence of making false statement etc. to influence outcome of application or appeal

862. The issue of a certificate of lawfulness relies heavily on the accuracy and completeness of the information supplied by the applicant to the authority and by others contacted by it. Where that information proves to be false or where information was withheld, the authority is able to revoke any certificate that now appears to be incorrect or misleading (section 163(1)).

863. The same applies where the Welsh Ministers issue or vary a certificate on an appeal (section 163(2)).

864. Regulations under section 163(3) and (4) may provide for the procedure to be followed in such an event; the current requirements are in article 28(15) to (17) of the 2012 Order that states before revoking a certificate, an authority must notify the owners and occupiers of the land and anyone else affected.

865. For the same reason, it is an offence under section 164 to try to influence the outcome of an application or an appeal by knowingly or recklessly making a statement that is false or misleading in a material respect or relying on a false or misleading document or withholding information with intent to deceive. The offence is triable either way (in other words, either in the magistrates' court or the Crown Court); and a person who is convicted is liable to pay a fine (and there is no limit on the amount of the fine that the court may impose).

PART 6 – OBLIGATIONS RELATING TO DEVELOPMENT AND USE OF LAND
Chapter 1 – Planning obligations

866. A planning obligation is an arrangement entered into by persons interested in a piece of land (referred to here as 'the landowners'), to ensure it is or is not used or developed in a particular way, or that funding is provided to the planning authority to ensure that certain matters are carried out on or near the land or elsewhere. It may be used to achieve certain outcomes that cannot form the subject of a condition on a planning permission.

867. An obligation under Chapter 1 of this Part may take the form of either an agreement between the landowners and the planning authority or joint planning board. Or it may be a unilateral undertaking by the landowners. In either case, it can be enforced by the authority in accordance with section 166.

868. Such an obligation is normally used in association with a particular development proposal either as part of the initial planning application or introduced in the light of subsequent discussions between the parties. It may be employed to make development acceptable in planning terms – to ensure the improvement or introduction of infrastructure necessary to support it, to mitigate harm that may be caused by it or to achieve related benefits. It may be used to bring about, for example, the provision of affordable housing (either as part of the development or otherwise), education facilities, open space or other public benefits.

869. Section 66(2) notes that the fact that a person is entering into a planning obligation may constitute a reason for granting planning permission, but only if the obligation is:

a. directly related to the development;

b. necessary to make it acceptable in planning terms; and

c. fairly and reasonably related in scale and kind to the development.

870. This Chapter largely replaces section 106 to 106D of the 1990 Act – obligations under those sections were commonly referred to as 'section 106 agreements'.

Section 165 – Planning obligations

871. Subsection (1) provides that a planning obligation may be entered into by any owner of the land to which it relates – that is, anyone with an interest in the land, such as a freeholder or leaseholder or the holder of any other legal or equitable interest such as a mortgage or the benefit of a covenant.

872. An obligation may take the form of an agreement between the owner of the land, who will be bound by its terms, and the authority that will be able to enforce those terms ('the enforcing authority'). The enforcing authority will normally be the planning authority for the area including the land in question. However, where the land is in an area of a joint planning board under section 8, the obligation may state that it is to be enforceable by the relevant local authority (county or county borough council) (subsections (7) and (8)).

873. Alternatively, an obligation may be in the form of a unilateral undertaking by the owner of the land concerned.

874. By subsection (2), an obligation may do one or more of the following:

a. it may restrict the development that may be carried out on the land, or the use of the land;

b. it may require that particular operations or activities are carried out on the land, or that the land is used in a particular way; or

c. it may require one or more payments to be made to the planning authority for the area where the land is situated.

875. As to the first of these, "development" normally has the meaning given in section 3 – that is, the carrying out of operations or the making of a change in the use of land. These include any works that would normally require listed building consent, conservation area consent or scheduled monument consent, and various other types of proposals. However, by virtue of subsection (3), in relation to an infrastructure consent obligation "development" is defined in section 133 of the 2024 Act and for a development consent obligation "development" is defined in section 32 of the 2008 Act.

876. A planning obligation may be subject to conditions, under subsection (4). Any restriction or requirement imposed by an obligation (other than one requiring payment) may be stated to apply either indefinitely or for a specific period.

877. Where an obligation requires a payment to be made, that may be on one occasion or several specific occasions, or regularly for a specific period or indefinitely. The amount of the payment or payments may also be specified in the obligation or calculated according to a formula in it (subsection (5)).

878. Under subsection (6), a planning obligation is to be entered into as a deed, and must:

a. state that it is a planning obligation for the purposes of the section;

b. state that it is a development consent or infrastructure consent obligation, where appropriate;

c. identify the land to which it relates;

d. list all those entering into the obligation, and state their interest in the land; and

e. specify the authority that is responsible for enforcing the obligation.

879. If the enforcing authority is not a party to the planning obligation, then it must be sent a copy (subsection (8)). This would occur, for example, where the obligation is in the form of a unilateral undertaking or, where the enforcing authority is a county or county borough council, in the case of an obligation involving a joint planning board.

Section 166 – Enforcement of planning obligations

880. If a planning obligation is to be effective, there must be a mechanism to ensure that its terms are enforceable. Subsections (1) and (11) accordingly provides that the enforcing authority will generally be able to enforce the obligation against:

a. the persons who initially entered into it; and

b. those who derive title to the land from such persons, and their successors in title.

881. The latter is significant in that a planning obligation will often contain undertakings by the landowners to do certain things (such as to carry out certain works, to use land in a particular way or to pay money); and it may be entered into in circumstances where the land will be passed on to new owners once it has been developed. Such an obligation is therefore different from a restrictive covenant that may only be enforced against subsequent owners insofar as it contains undertakings of a negative character (such as to refrain from using land for certain purposes).

882. However, by virtue of subsection (2), a planning obligation may provide that a person is only bound by it for as long as that person has an interest in the relevant land.

883. Under subsection (3), an enforcing authority may obtain an injunction in the courts requiring that the restrictions or requirements in the obligation are complied with. Following the issue of such an injunction, a continuing failure to comply then becomes a contempt of court, which may attract serious penalties.

884. If an obligation requires certain operations to be carried out on the land, and those responsible for carrying them out fail to do so, the enforcing authority may also:

a. enter the land and carry out the operations, after giving at least 21 days' notice of its intention to all those persons against whom the obligation is enforceable; and

b. reclaim its costs of doing so from any of those persons (subsections (4) and (5)).

885. It is an offence under subsection (6) to obstruct intentionally a person exercising the power of the authority to carry out such works. On summary conviction (in the magistrates' court) for such an offence, a person can be fined up to Level 3 on the standard scale.

886. By virtue of subsection (8), a planning obligation is a local land charge. This will bring the existence of the obligation to the attention of subsequent owners of the land, who will be bound by it, possibly long after it was initially entered into. For the purposes of the Local Land Charges Act 1975 (c. 76), the enforcing authority will be the originating authority for this charge.

887. Regulations under subsection (9) can provide for the charging on the land of:

a. any payments required to be made under the obligation; and

b. any costs that have been incurred by the authority in carrying out works under subsection (4)(a) that would be recoverable under subsection (4)(b).

888. A charge imposed by such regulations applies regardless of:

a. any provision in the obligation under subsection (2) relieving those who are not owners of the land from liabilities under it; and

b. any modification or discharge of the obligation under section 167 or 168.

Section 167 – Modification and discharge of planning obligations

889. Under subsection (1), a planning obligation can only be modified or discharged (that is, cancelled) in accordance with this section and section 168, or if an agreement to that effect is reached by:

a. the appropriate authority; and

b. everyone bound by the obligation.

Such an agreement must be entered into by an instrument executed as a deed (subsection (2)).

890. "The appropriate authority" will normally be the authority by whom the obligation is enforceable. But in the case of an infrastructure consent obligation, it is the Welsh Ministers; and in the case of a development consent obligation, it is the Secretary of State (subsection (11)).

891. Alternatively, anyone bound by a planning obligation can apply to the appropriate authority under subsection (3), at any time more than five years after it has been entered into, for the obligation to be modified or discharged. A different time limit can be set in regulations.

892. An application under subsection (3) may not propose a modification that imposes a restriction or requirement on someone else bound by the obligation (subsection (5)).

893. In response to an application for the modification or discharge of a planning obligation, the authority can determine:

a. that the original obligation should be retained as it is;

b. that it no longer serves a useful purpose and should be discharged;

c. that it continues to serve a useful purpose, and so should be retained, but that it would serve that purpose equally well if it were to be modified as proposed and should be modified – and enforced – accordingly (subsections (6) and (8)).

894. The appropriate authority must notify the applicant of its decision within a period specified in regulations – currently, eight weeks or as agreed between the applicant and the authority (regulation 6(2) of the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (S.I. 1992/2832) ('the 1992 Planning Obligations Regulations'). Such regulations may also make other detailed provisions as to applications – in particular, as to their form and content, how they are to be publicised, how representations are to be considered and how applicants are to be notified of decisions (subsection (9)). The current regulations under the powers restated in these provisions are the 1992 Planning Obligations Regulations. Where an application is made to the enforcing authority, it must not be considered if it fails to meet any requirements in the regulations (subsection (12)).

895. Section 84 of the Law of Property Act 1925 (c. 20) enables the Upper Tribunal to modify or discharge restrictions on the use of land in certain circumstances and would in principle apply where restrictions are imposed by a planning obligation. However, subsection (10) disapplies that section in such a case, in view of the alternative procedure provided by this section and section 168.

896. Where the appropriate authority agrees to modify the obligation as proposed in the application, the obligation is enforceable in its modified form from the day the applicant is notified of the authority's decision (subsection (8)).

Section 168 – Appeals relating to applications to modify or discharge planning obligations

897. Where an application to modify or discharge a planning obligation has been made to an enforcing authority under section 167, the appellant may appeal to the Welsh Ministers under subsection (1) if either:

a. the authority decides to retain the planning obligation as it is; or

b. the authority fails to notify the applicant of its decision within the specified timeframe, in which case it is to be assumed that the authority has decided to retain the obligation as it is (subsection (2)).

898. An appeal under this section must be made by serving a notice of appeal on the Welsh Ministers, under subsection (3). Regulations under subsection (4) may provide for the form that is to be used for the appeal, what information must accompany it and the way in which it is to be served. They may also provide for the period within which any appeal must be made and whether that period may be extended. That period is currently six months from the authority's decision, or from the end of the eight-week period specified under section 167(7), extended where relevant. The current provisions are in regulation 7 of the 1992 Planning Obligations Regulations.

899. The provisions provided in section 167(6) to (8) equally apply to the Welsh Ministers' determination of this appeal, this means they can make any of the decisions that were open to the authority on determining the initial application. Where they agree to modify the obligation as proposed in the application, the obligation is enforceable in its modified form from the day the appellant is notified of their decision (subsection (5)).

900. By virtue of subsection (6), the decision of the Welsh Ministers on an appeal is final – subject to any challenge in the High Court.

Section 169 – Legal challenges relating to applications made to the Welsh Ministers or Secretary of State

901. This section applies where:

a. an application to modify or discharge an infrastructure consent obligation has been made to the Welsh Ministers; or

b. an application to modify or discharge a development consent obligation has been made to the Secretary of State.

902. In either case, where they decide that the obligation should continue to have effect as it is, their decision may be challenged in the High Court, by way of a claim for judicial review made under subsection (2). Such a claim must be made within six weeks of the decision being notified to the applicant under section 167(7).

903. Similarly, where the applicant has not been notified of a decision within the period prescribed under section 167(7) – currently, eight weeks or any extended period that may have been agreed – the failure by the Welsh Ministers or the Secretary of State to notify their decision may be challenged in the High Court, by way of a claim for judicial review made under subsection (3). In this case, a claim must be made within six weeks of the end of that prescribed period.

Chapter 2 – Community infrastructure levy

904. The community infrastructure levy ('CIL') was introduced in 2010, by Part 11 of the 2008 Act, and is restated in this Chapter of the Act (as it applies in Wales). CIL is a charge that can be levied by planning authorities in connection with the carrying out of development in their area. It is a means by which an authority may obtain funding to help it to deliver infrastructure needed to support development in its area.

905. Liability to pay CIL only arises in an area where the authority has consulted on and approved a charging schedule and published it. The schedule will set out the rate at which the levy will be charged in connection with different types of development and in different parts of the authority's area.

Section 171 – CIL regulations

906. The details of the CIL charging regime are to be provided in regulations under subsection (1). This Chapter of the Act generally provides only the enabling powers under which the Welsh Ministers may make such regulations and sets out the matters that the regulations must or may deal with.

907. Subsection (2) provides that, in making the regulations, the Welsh Ministers are to try to ensure that they result in costs incurred in supporting new development in an area being funded partly or wholly by landowners and developers, in a way that does not make the development economically unviable.

908. Section 204 provides that the regulations may make different provision for different areas, may apply other legislation (with or without modifications), provide exceptions and confer discretionary powers on the Welsh Ministers, local authorities and others.

909. The current regulations are the Community Infrastructure Levy Regulations 2010 (S.I. 2010/948) ('the 2010 Regulations').

Section 172 – Charging for development

910. CIL regulations must provide that a charging authority may charge CIL in respect of chargeable development in its area. A planning authority is normally the charging authority for its area (subsections (1) and (4)).

911. However, regulations may provide that the county council or county borough council is the charging authority for an area where the planning authority is a national park authority or a joint planning board (subsection (5)). To date, no such provision has been made in the 2010 Regulations, so the charging authority in a national park would be the national park authority.

912. "Chargeable development" means anything done to create a new building or to alter an existing building, or any change in the use of an existing building (or part of a building). However, regulations may provide that certain works and changes of use are not to be treated as chargeable development, and that works to create or alter structures of other kinds may be so treated (subsection (3)).

Section 173 – Use of CIL: funding infrastructure

913. Where an authority chooses to charge CIL, the resulting funds must be applied to supporting development by funding infrastructure (subsection (1); and see also sections 195 to 199).

914. "Infrastructure" for these purposes is defined to include roads and other transport facilities, flood defences, schools and other educational facilities, medical facilities, sporting and recreational facilities and open spaces (subsection (2)). That list may be amended by the regulations (subsection (3)).

Section 174 – Terms relating to liability

915. The regulations must include provision for determining when a chargeable development is treated as starting. That may include the point at which some specified activity is undertaken or when some specified event occurs, related to the development in question, even if the activity or event is not in itself a chargeable development. The regulations must also define CIL planning permission for the purposes of this Chapter; this is currently defined in the 2010 Regulations to include various types of permission or consent, both specific and general.

Section 175 – Assuming liability

Section 176 – Default liability for CIL

916. Provision is made about who is liable to pay for CIL. The general rule is that the landowner or developer is ultimately liable to pay CIL. However, section 175 expressly provides for an opportunity for any person to assume liability for CIL before the start of the chargeable development that gives rise to the liability, which must be done in accordance with the procedural requirements of the regulations.

917. In default of liability not being assumed before the chargeable development has started, section 176(1) provides that CIL regulations must provide for an owner or developer of land to be liable for CIL. For the purposes of this section an "owner" means the owner of a material interest in the land – that is, the freehold estate or a leasehold interest the term of which expires more than seven years after the CIL planning permission first permits the chargeable development. A "developer" means a person who is partly or wholly responsible for carrying out a development (section 176(3)).

918. The regulations may make further provision as to the liability to CIL in certain cases – such as the insolvency of someone that has assumed liability (section 176(2)). They may also provide for a person to be treated or not to be treated as an owner or developer to enable certain types of interests to be included or excluded from default liability (section 176(4)).

Section 177 – Time when liability arises

Section 178 – Liability in other cases

919. The amount of any liability is to be calculated by reference to the charging schedule that has effect for the area in which the chargeable development is taking place, at the time when the CIL planning permission first permits that development (section 177(1)). The regulations are to make provision as to how that time is to be determined and may in particular include provision about where development is authorised by an outline permission or a general consent (section 177(2) and (3)).

920. Regulations may also provide for liability to CIL to arise in respect of a chargeable development that was previously subject to an exemption or reduction (under sections 180 to 182) where the description or purpose of the development changes (section 178(1)).

921. The regulations may also impose a liability to CIL where a chargeable development that requires CIL planning permission starts without it. This is to ensure that where development is unlawfully commenced, that does not avoid the payment of CIL (section 178(2)).

Section 179 – Further provision about liability for CIL

922. CIL regulations may make other provisions as to liability for CIL, including:

a. joint liability, and liability of partnerships;

b. assumption of partial liability;

c. apportionment of liability (including a procedure to resolve disputes as to liability);

d. withdrawal and cancellation of assumed liability; and

e. transfer of liability (before or after the start of chargeable development and whether or not liability has been assumed).

923. If regulations make provision about assumption of partial liability or withdrawal or cancellation of assumed liability, they must also make provision about the default liability of the owner or developer (subsection (2)).

Section 180 – Exemptions and reductions: general
Section 181 – Charities: exemption from liability
Section 182 – Exemptions and reductions: procedure

924. CIL regulations may provide for exemptions from liability for CIL, and reductions in liability. They may also impose conditions that must be met for an exemption or reduction to apply; and they may require an authority to allow exemptions and reductions in specified circumstances (section 180).

925. In particular section 181 requires that the regulations must provide that a relevant charity is exempt from liability to CIL if the building or structure in respect of which the liability would otherwise arise is to be used wholly or mainly for charitable purpose (as defined in section 2 of the Charities Act 2011 (c. 25)). Under that Act a "relevant charity" is an institution that is a charity (under section 1) that is either registered (under section 29) or is not required to be registered. The regulations may provide that the exemption does not apply in certain circumstances.

926. Under section 182, regulations may also provide for the procedure to be followed to claim an exemption or reduction – in particular, as to determining whether any conditions as to an exemption or reduction are met, notifying exemptions and reductions and keeping records of them.

927. The 2010 Regulations currently allow for exemptions and reductions as follows:

a. minor development (regulation 42);

b. residential annexes or extensions (regulation 42A);

c. charities (regulation 43) (see also section 181);

d. social housing (regulation 49);

e. self-build housing (regulation 54A); and

f. exceptional circumstances (regulation 55).

Section 183 – Charging schedule

928. An authority that proposes to charge CIL must publish a charging schedule, setting out rates or other criteria that will determine the amount of CIL that will be charged in respect of chargeable development in specified categories (subsection (1)). Such a schedule may provide for exceptions, and may confer discretionary powers on the Welsh Ministers, local authorities and others in accordance with provisions made in the regulations (section 204).

929. In practice, each authority that charges CIL specifies the charge payable by reference to the scale of the development (in terms of the amount of floorspace or the number of dwellings involved), and the rate varies according to:

a. the type of development (for example, residential or non-residential; different categories of residential or non-residential (shops, offices, etc.); and the type of shop); and

b. the location of the site where the development is taking place.

930. Provision about the preparation, approval and publication of a charging schedule are set out in Schedule 13. Further details are provided in the 2010 Regulations.

931. The current Welsh Government guidance on the preparation of a charging schedule is provided in *Community Infrastructure Levy (CIL): Preparation of a Charging Schedule* (2011), available on its website.

Schedule 13 – Community Infrastructure Levy: charging schedules

932. Paragraph 1 requires an authority, in drawing up a charging schedule setting rates of CIL and specifying the criteria governing how they will be applied, to have regard to the actual and expected costs of infrastructure (as defined in section 173), the economic viability of development and other sources of funding for infrastructure. Regulations may make provisions as to this in more detail. They may, in particular, permit or require an authority to take into account the costs of administering the CIL system, the costs of things other than infrastructure that help to address the impact of development on an area and the other sources of funding for those things. They may also allow for differential rates of charge.

933. Regulations may permit or require a charging schedule to be prepared on a particular method of calculation (paragraph 2) – for example, by reference to the nature and location of the chargeable development, an index with respect to the rate of inflation, and values or other matters produced for other statutory purposes (for example, non-domestic rating lists). And the charging schedule is to apply in relation to any periods specified in regulations (paragraph 3).

934. Under paragraph 4, regulations may require charging authorities to carry out consultation in preparing a draft charging schedule.

935. The charging authority must appoint a person to examine its draft charging schedule (paragraph 6(3)), who must have the appropriate qualifications and experience and be independent of the charging authority. The role of such an examiner is to consider whether all the relevant requirements of this Schedule and the regulations have been complied with in the preparation of the draft. The charging authority may, with the examiner's agreement, appoint one or more persons to assist with the examination – for example, on valuation issues. The regulations must require the charging authority to allow those who have made representations on the draft to be heard by the examiner (paragraph 7).

936. If it appears that the relevant requirements of this Schedule and the regulations have not been fully complied with, and that the effect of such non-compliance cannot be cured simply by modifying the draft charging schedule, the examiner must not recommend that the draft be approved (paragraph 8(2)).

937. If it appears that those requirements have not been fully complied with, but that such non-compliance can be dealt with by modifying the draft charging schedule, the examiner must recommend that the draft be approved, subject to appropriate modifications, and possibly other modifications (paragraph 8(4) and (5)). In that case, the charging authority may approve the charging schedule, subject to suitable modifications to deal with the identified non-compliance and possibly incorporating some or all the other modifications recommended by the examiner (paragraph 9(2) to (4) and (7)).

938. If it appears that the relevant requirements of the Schedule and the regulations have been fully complied with, the examiner must recommend that the draft charging schedule be approved and may recommend further modifications if it is approved (paragraph 8(6)). The charging authority may then approve the charging schedule, possibly incorporating some or all the other modifications recommended by the examiner (paragraph 9(3), (4) and (7)).

939. The charging authority may only approve the charging schedule if the examiner has recommended that it be approved; and only if it has had regard to the examiner's recommendations (paragraph 9(1)).

940. The charging authority must publish the examiner's recommendations and the reasons for them (paragraph 8(7)). If it makes modifications to deal with non-compliance issues raised by the examiner, it must publish a report explaining how they will be dealt with by the modifications it is proposing (paragraph 9(5)).

941. The regulations may provide for the corrections of errors in a charging schedule once it has been approved (paragraph 9(8)). The 2010 Regulations make provision about correcting errors that do not affect the amount of CIL chargeable for a particular category of development, or that are necessary to give effect to the modifications recommended by the examiner.

942. CIL regulations may make provision about the publication of a charging schedule once it has been approved and the schedule will not have effect before the date on which it has been published (paragraph 10).

943. An authority may at any time revise a charging schedule and it must follow the same procedure as for the initial preparation (paragraph 11). It may also decide that a charging schedule is to cease to have effect and, if regulations so provide, only in circumstances specified in them (paragraph 12).

Section 184 – Estimate of amount

944. CIL regulations may require an authority to provide an estimate as to the amount of CIL that will be chargeable for a chargeable development, in specified circumstances.

Section 185 – Appeals relating to calculation of CIL

945. The regulations must provide for a right to appeal can be made against an authority's assessment of the amount of CIL payable. Such an appeal is to be made either to a valuation officer, appointed under section 61 of the Local Government Finance Act 1988 (c. 41), or to a district valuer as defined in section 622 of the Housing Act 1985 (c. 68) (subsections (1) and (2)). The regulations may make provision as to the period within which such an appeal must be made, the procedure to be followed, the payment of fees and the award of costs (subsection (3)).

946. If a person aggrieved by the decision on such an appeal challenges it by way of an application for judicial review, HM Revenue & Customs is the defendant (subsection (4)).

Section 186 – Collection and payment of CIL

947. The provisions as to the payment and collection of CIL are to be in regulations, which may mirror those in other legislation governing the collection of local taxes to provide for local authority expenditure (such as council tax and non-domestic rates). Such regulations may allow for payment on account or by instalments, payment in forms other than money (such as by making land available or providing services) and for repayment where CIL has been overpaid (subsections (1) to (4) and (6)).

948. By virtue of subsection (5), such regulations may also permit or require a charging authority or other public authority to collect CIL charged by another authority.

949. The 2010 Regulations contain many references to the powers and duties of a "collecting authority", a term that does not appear in the Act. However, those regulations provides that the charging authority is the collecting authority for CIL charged in its area.

950. CIL regulations may also make provision as to the payment of CIL in cases involving development by the Crown or on Crown land (subsection (7)).

Section 187 – Enforcement: general

951. CIL regulations must provide for the enforcement of the CIL system, and to that end may include provisions:

a. requiring information to be supplied;

b. enabling action to be taken to recover any amount owing;

c. allowing a court to grant injunctive or other relief; and

d. providing for action to be taken in the event of the death or insolvency of a person liable for CIL (subsection (2)(b) to (e)).

952. Such provisions may mirror those in other legislation governing the enforcement of local taxes to provide for local authority expenditure (such as council tax and non-domestic rates) (subsection (2)(a)).

Section 188 – Consequences of failure to comply
Section 189 – Interest and penalties

953. CIL regulations must include provisions as to the consequences of failure to pay CIL on time or at all. They may also provide for the consequences of failures to assume liability, to give notice or to comply with procedural requirements.

954. Enforcement provisions in CIL regulations may impose a requirement to pay interest on CIL outstanding, or a penalty or surcharge – and such interest, penalty or surcharge is to be treated as if it were CIL for the purposes of sections 186 to 201 (collection, enforcement, use of CIL etc.) and section 173 (purposes for which CIL may be used). Any penalty or surcharge imposed must not exceed 30% of the amount of CIL owing (or £20,000 if greater), although more than one penalty or surcharge may be imposed if the regulations provide (section 189).

Section 190 – Power to stop development

955. CIL regulations may include provisions suspending or cancelling a decision to authorise development in relation to which a liability to pay CIL is outstanding or stopping development altogether, until someone assumes liability for the payment of CIL or until someone pays the amount still owing. The 2010 Regulations provide for this to be achieved by the issue of a CIL stop notice.

Section 191 – Powers of entry

956. CIL regulations may confer a power to enter onto land, as part of the process of enforcement. However, they may not authorise entry into a dwelling without a warrant.

Section 192 – Offences

957. The enforcement provisions in the regulations may create criminal offences and confer prosecution powers, as part of the mechanisms to enforce the requirements of the regulations (subsection (1)).

958. Subsection (2) limits the scope of the penalty to be set in regulations. Specifically, where the regulations allow for the possibility of imprisonment on conviction for an offence and it is triable summarily only (in the magistrates' court), the maximum term must not exceed 6 months – or 51 weeks once section 281(5) of the Criminal Justice Act 2003 (c. 44) has come into force.

959. Furthermore, on summary conviction for a triable either way offence (in either the magistrates' courts or the Crown Court), the maximum term of imprisonment must not exceed the term specified in section 224(1A)(b) of the Sentencing Code imposed by the Sentencing Act 2020 – currently six months. On conviction on indictment (in the Crown Court), the term must not exceed two years.

960. The types of offences that may be included can be found in the 2010 Regulations, for example:

a. contravening a CIL stop notice, and a person who is convicted is liable to pay a fine (and there is no limit on the amount of the fine that the court may impose "an unlimited fine") (regulation 93);

b. obstructing a person exercising a power of entry, punishable on summary conviction by a fine of up to Level 3 on the standard scale (regulation 109); and

c. supplying false information, punishable on summary conviction by an unlimited fine or on conviction on indictment to imprisonment for up to two years or an unlimited fine or both (regulation 110).

961. The power to prosecute for any of these offences is given to the authority collecting the CIL in regulation 111 of the 2010 Regulations.

Section 193 – Registration or notification of liability

962. The enforcement provisions in the regulations may provide for the registration or notification of actual or potential liability to CIL. They may provide for the creation, registration and enforcement of local land charges – including enforcement against successive owners or by way of sale under a court order – and the making of entries in other statutory registers. They may also make provision for the cancellation of such charges.

Section 194 – Compensation: loss or damage as a result of enforcement action

963. Where enforcement action is taken under regulations made under sections 187 to 193, it may lead to loss or damage being suffered – for example, due to the exercise of powers of entry onto land. Regulations may provide for compensation to be payable where this occurs – although not to a person who has failed to pay CIL owing (and possibly in other circumstances) (subsections (2) to (4)). They may also provide for the making of a claim for compensation, the sum payable and the extent to which CIL may be used to pay that sum (subsections (5) and (6)).

Section 195 – Funding by CIL
Section 196 – CIL funding: lists

964. Section 195(1)(a) and (b) provides that CIL regulations may specify what may be, must be or must not be, funded by CIL – that is, works, installations, other facilities, maintenance, promotional activity and other operational activities. Under subsection (1)(c) and (d) those regulations may also specify what is, or is not, to be treated as funding and the criteria for determining the areas that may benefit from such funding.

965. The regulations may permit CIL:

a. to be used to reimburse costs already incurred;

b. to be reserved for costs that may be incurred in the future;

c. to be applied to administrative costs in connection with infrastructure; and

d. to be applied to administrative costs in connection with CIL (including its enforcement) (section 195(2)(a) to (c) and (3)).

966. They may also provide for the giving of loans, guarantees or indemnities. And they may provide for the application of CIL where it was to be applied to something that now no longer requires funding (section 195(2)(d) and (e)).

967. Under section 196, the regulations may require the charging authority to produce a list of what is to be or may be partly or wholly funded by CIL and may provide for the procedure to be followed in producing such a list. They may also specify circumstances in which the charging authority may and may not apply CIL to fund items not on the list.

Section 197 – Duty to pass CIL to other persons
Section 198 – Duty to pass on CIL: further provision

968. The infrastructure that is to be funded by CIL will not necessarily all be implemented by the charging authority itself. Regulations may therefore require that some or all of the CIL collected by the charging authority is passed to another person, specified in the regulations, to enable that person to support development in all or part of the relevant area – that is, all or part of the charging authority's area or the combined area of two or more authorities (section 197(1), (3), (4) and (5)).

969. The person to whom money is passed under section 197(1) may use it, in accordance with the regulations, to fund:

a. the provision, improvement, replacement, operation or maintenance of infrastructure (see section 173(2) for the meaning of infrastructure); or

b. anything else that is concerned with addressing the demands placed on the area by development (section 197(2)).

970. Under section 198(1) and (2), regulations may provide for the timing of payments made under section 197; and may specify things that may, must or may not be funded out of such payments including administrative costs. Under section 198(3) they may, for example, require that the payments, and the use made of them, be accounted for, monitored and reported; and they may make provision for the repayment of sums not spent or sums misapplied.

971. For example, this provision could enable an authority to pass money to an NHS trust, to assist in the enlargement of a local health centre required as a result of new development nearby. But the regulations could require both the charging authority and the trust to monitor the spending.

Section 199 – Use of CIL in area to which duty to pass on CIL does not apply

972. In some cases, regulations may impose a duty on an authority to pass on CIL (in accordance with section 197) for part of its area, but not for the remainder (referred to as the "uncovered area"). Where this occurs, the regulations may allow the charging authority to use the CIL received for chargeable development in the uncovered area (or in part of it) to support development of that area – by funding infrastructure there and anything else addressing the demands imposed by development (subsections (1) to (4)).

973. Under subsection (5), regulations may specify things that may, must or may not be funded in this way in relation to the uncovered area including administrative costs.

Section 200 – Reviews and appeals

974. The regulations may provide for reviews and appeals – including as to the period within which a right to review or appeal may be exercised, the procedure to be followed, the payment of fees and the award of costs.

Section 201 – Power to make further provision about procedures

975. This section enables regulations to make provision as to a whole range of procedural matters in relation to authorities proposing to begin charging CIL, those charging CIL and those proposing to stop charging CIL.

Section 202 – Guidance

976. Charging authorities, other public authorities and examiners appointed to consider charging schedules must have regard to guidance issued by the Welsh Ministers in relation to any matter connected with CIL.

Section 203 – Relationship with other powers

977. There are other pieces of legislation that, to some extent, overlap with the CIL regime that is the subject of this Chapter. CIL regulations may accordingly make provision, under subsections (1) and (2), as to the exercise of:

a. powers under Chapter 1 of this Part, relating to planning obligations;

b. powers under section 278 of the 1980 Act, relating to agreements as to highway works; and

c. other statutory powers relating to planning and development.

Such provision may only be made for one or more of the purposes set out in subsection (4).

978. Guidance may also be given by the Welsh Ministers, but again only for one or more of the purposes in subsection (4). If such guidance is given, charging authorities and other public authorities must have regard to it. Regulations under subsection (5) may provide that guidance and directions must not be given in relation to certain matters.

PART 7 – OTHER POWERS RELATING TO USE OR CONDITION OF LAND
Chapter 1 – Powers to require discontinuance of use of land etc.
Section 206 – Power to make discontinuance order

979. Once a permission to change the use of land has been implemented, it cannot be revoked; and the resulting use cannot normally be stopped. Similarly, where a permission for the carrying out of operational development on land has been partially implemented, it can be modified to prevent the development being completed, or to require that it be completed in a different manner; but once the works have been completed, the permission cannot be modified or revoked, and any buildings or structures that have been erected in reliance on it cannot normally be removed. Also, where development has occurred in the past that is now immune from enforcement action, the authority cannot normally undo the results of that development.

980. However, exceptionally, planning authorities and the Welsh Ministers may choose to become involved where land is being used lawfully (see section 155) but in such a way as to cause problems – for example, where the character of the area surrounding a piece of land has changed since permission was granted many years ago for the use of the land for a purpose that now seems inappropriate. Or they may wish to end the use of land for mining operations that may have been permitted many years or even decades earlier. Or they may wish to bring about the alteration or removal of a building or structure that was lawfully erected some while ago or whose erection is now exempt from enforcement action.

981. This section enables a planning authority to make a discontinuance order in such circumstances in relation to any land in its area, and the Welsh Ministers to make such an order in relation to any land in Wales (subsections (1) and (2)). A "discontinuance order" is an order that:

a. requires a use of the land to be discontinued;

b. allows the use to continue, but imposes conditions on such continuing use;

c. requires steps to be taken to alter or remove a building or works currently on the land; or

d. requires steps to be taken to alter or remove plant or machinery used for mining operations or the depositing of waste on the land (subsections (5) and (8)).

982. The use of land that can be subject to a discontinuance order could include use for mining operations, but it could not include use for building, engineering or other operations (subsection (6)).

983. A discontinuance order may also grant planning permission for the development of the land (section 207). This enables the planning authority or the Welsh Ministers to bring about, for example, a change from a use of the land that is undesirable to one that it considers to be more appropriate. Or an order may require the removal of a building or structure that is unsatisfactory and facilitate its replacement with something else considered to be preferable.

984. A discontinuance order may only be made if the planning authority considers (or, as appropriate, if the Welsh Ministers consider) that it is appropriate to do so in the interest of proper planning of the area (subsection (3)). They must also have regard to the development plan, alongside any other relevant considerations, including land-use policies of the Welsh Ministers and considerations relating to the use of the Welsh language; and must make their decision in accordance with the plan for the area unless such other considerations suggest otherwise (section 206(4); section 408(3)).

985. Where the requirements of an order will result in people being displaced from their homes, the planning authority in whose area the premises are situated must, if there is no suitable accommodation available, ensure that they are rehoused in suitable accommodation before the requirements of the order are carried into effect (subsection (7)).

986. The making of a discontinuance order may lead to a claim for compensation (under section 211 or 212) where it causes damage, or the service of a purchase notice (under section 213) where it results in land being unusable.

987. Further provision is made in Schedule 14 as to the procedure for making a discontinuance order.

Schedule 14 – Discontinuance orders

988. Part 1 of Schedule 14 sets out the procedure for the making of a discontinuance order by a planning authority. Under paragraph 1(1) to (3) and (5), the authority must submit an order to the Welsh Ministers; the authority must also serve notice of that submission on the owners and occupiers of the land involved and on anyone else the authority considers likely to be affected by it. The notice must state that they may, within a period (specified in the notice) of at least 28 days, request an opportunity to make representations before an inspector.

989. If any of the recipients of the notice makes such a request, an opportunity must be given to them and to the planning authority to be heard by an inspector (paragraph 1(4)).

990. The Welsh Ministers may then confirm the order, with or without modifications. They may add, remove or vary a provision granting planning permission. Where the order is confirmed by the Welsh Ministers, the planning authority must notify all those who were served with a copy of the notice of the submission of the order and anyone else who has since then become an owner or occupier of the land (paragraph 1(6) to (8)).

991. Part 2 of Schedule 14 sets out the procedure for the making of a discontinuance order by the Welsh Ministers. Under paragraph 2(1) to (3) and (5), they must first consult the planning authority and, before making the order, they must serve notice of the proposed order on the planning authority, on the owners and occupiers of the land involved and anyone else they think will be affected by it. The notice must state that they may, within a period (specified in the notice) of at least 28 days, request to make representations before an inspector.

992. If any of the recipients of the notice makes such a request, an opportunity must be given to that person and to the planning authority to be heard by an inspector (paragraph 2(4)).

993. The Welsh Ministers may then make the order, with or without modifications. Where they make the order, they must notify, all those who were served with a notice of the proposed order and anyone else who has since then become an owner or occupier of the land (paragraph 2(6)).

994. Under Part 3 of this Schedule, additional considerations apply where the planning authority wishes to take discontinuance action in relation to development consisting of the carrying out of mining operations or the depositing of waste. "Mining operations" means winning and working minerals on land, whether by underground or surface working (see section 4(5)). This arises because the nature of such development means that when it ceases – either temporarily or permanently – the land affected may require restoration or special treatment.

995. In principle, a discontinuance order may be made by the planning authority or the Welsh Ministers in relation to such development, under Part 1 or Part 2 of Schedule 14, just as in any other case. However, if an order were to require merely that the use for land for mining operations or depositing waste should cease, that might result in the land being left in an unsatisfactory condition – just as where the use of land for such purposes naturally comes to an end. To avoid that, a discontinuance order may impose one or more restoration conditions (paragraph 3(1)). Such a condition is defined (by paragraph 1(2)(a) of Schedule 3) as one requiring that the land affected by the operations or the depositing be restored by the use of sub-soil, top-soil or soil-making material.

996. Where such a discontinuance order imposes a restoration condition, it may also impose one or more aftercare conditions – that is, conditions specifying that the land is brought to the required standard for agriculture, growing timber or amenity purposes, and requiring that steps be taken to bring the land to a condition where it is suitable for that use (paragraph 1(2)(b) of Schedule 3). Such conditions may also be imposed where an order requires the use of land to be discontinued, and there are already one or more restoration conditions in place attached to a grant of planning permission.

997. Paragraphs 1(3) to (9) and 2 to 5 of Schedule 3 apply to aftercare conditions imposed by a discontinuance order just as they apply where such conditions are attached to planning permission for mining operations or the depositing of waste, granted in response to an application. Those provisions deal with the uses that may be specified in aftercare conditions, the standard of restoration and improvement that may be required in relation to each such use and the procedure to ensure that such conditions are complied with. They also apply to discontinuance orders made by the Welsh Ministers with any necessary modifications (paragraph 3(3)(b)).

Section 207 – Planning permission granted by discontinuance order

998. Under subsection (1), a discontinuance order may grant planning permission. This might be significant in assessing the amount of compensation payable regarding the service of the order.

999. Planning permission may be granted by the order for any development (subsection (2)) – and the permission granted by the order may be full or outline. This enables an order to end an existing use of land that is considered unsatisfactory, but to indicate one or more alternative uses or operations that would be preferable.

1000. The order may also, for example, grant permission for development that was carried out before the order was submitted by the planning authority to the Welsh Ministers for approval (in the case of an order made by a planning authority) or before the Welsh Ministers gave notice of the proposed order to the planning authority (in the case of an order to be made by the Welsh Ministers). In that case, the permission granted by the order may authorise the carrying out of the development from when it first started. Or, if permission has already been granted for the development but only for a limited period, the permission now granted by the order may authorise the continuing of the development from the end of that period (subsection (4)).

1001. This enables an order to authorise, for example, an existing use of land that has started without permission, or the retention of a building that has already been erected unlawfully, in place of a use of land that was permitted in the past but is now considered inappropriate.

1002. Where a discontinuance order grants permission, that permission will be subject to any condition that would be required if the permission were to be granted in response to an application (subsections (1) and (7)(a)). This would include, for example, a condition as to the time within which the development must be started (under section 93); and, in the case of a permission for minerals development, a condition as to the time by which it must be completed (under Schedule 3). The permission may also include conditions as to the preservation and planting of trees (subsection (7)(b)).

Section 208 – Power to make prohibition order or protection order
Schedule 15 – Prohibition orders and protection orders

1003. Once mining or the depositing of mineral waste has ceased, there is a danger that the land may be left in an unsatisfactory state, possibly for many years. "Mineral waste" means material remaining after minerals have been extracted from land or otherwise derived from the carrying out of mining operations; and "depositing of mineral waste" means any process whereby a deposit of such material is created or enlarged (see section 408). Schedule 15, introduced by section 208, provides powers for a planning authority (or the Welsh Ministers) to ensure that this does not occur.

1004. Part 1 of this Schedule enables them to make a "prohibition order" where land has been used in the past for mining operations or the depositing of mineral waste, but that use has permanently ceased. Such an order ensures that the use does not start up again. An order may also impose further requirements, including by means of restoration conditions. Part 2 enables them to make a "protection order" where land was being used in such a way, but that use has been temporarily suspended, to ensure that the environment is properly protected until the use starts up again.

Part 1 – Prohibition orders

1005. Part 1 applies where land in a planning authority's area has been used in the past for development consisting of mining operations or the depositing of mineral waste. Where the authority takes the view that no such activity has occurred on the land in the last two years and that (on the evidence available to it) such activity is unlikely to be resumed to any substantial extent, it may make a prohibition order, prohibiting the resumption of the mining operations or the depositing of mineral waste (paragraph 1(1) and (3) to (5)).

1006. Similarly, the Welsh Ministers may make such an order where land in Wales has been used in the past for such development but no such activity has occurred on the land in the last two years, and where the Welsh Ministers consider that such activity is unlikely to be resumed to any substantial extent (paragraph 1(2) to (5)).

1007. Under paragraph 1(6), such an order may also impose requirements designed to ensure that the land is not left in an unsatisfactory condition:

a. that plant or machinery used for the mining operations or the depositing of mineral waste (or for some ancillary purpose) be altered or removed;

b. that any injury to amenity caused by the operations or depositing be alleviated or removed – this could require, for example, the recontouring of spoil heaps or the planting of screen hedges;

c. that a condition on the original permission be complied with;

d. that a restoration condition is imposed.

1008. However, an order may not require the remediation of harm arising from subsidence caused by underground mining (paragraph 1(6)(b)).

1009. If a prohibition order – or the original permission – imposes one or more restoration conditions, the order may also impose aftercare conditions (defined in Schedule 3, paragraph 1(2)). In that case, the provisions of paragraph 1(3) to (5) of Schedule 3 apply to aftercare conditions imposed by a prohibition order just as they apply where such conditions are attached to planning permission for mining operations or the depositing of mineral waste (paragraph 1(7) and (8)).

1010. Paragraph 4 provides that a prohibition order, once it takes effect, automatically brings to an end any planning permission for mining operations or depositing of mineral waste to which the order relates – although that does not affect the lawfulness of any such operations or depositing that have already occurred. The making of an order does not prevent the planning authority or the Welsh Ministers from granting a further permission for such development in the future.

1011. A prohibition order made by a planning authority under this Schedule must be confirmed by the Welsh Ministers; the procedure for doing so (under paragraph 2) is broadly the same as for a discontinuance order made by a planning authority under paragraph 1 of Schedule 14. And an order proposed to be made by the Welsh Ministers must be notified to the authority; the procedure for doing so (under paragraph 3) is the same as for a discontinuance order made by them under paragraph 2 of Schedule 14.

Part 2 – Protection orders

1012. Part 2 applies where land in a planning authority's area has been used in the past for development consisting of mining operations or the depositing of mineral waste. Where the authority takes the view that no such activity has occurred on the land in the last twelve months and that (on the evidence available to it) such activity is likely to be resumed to a substantial extent in future, it may make a protection order, requiring steps to be taken to protect the environment in the meanwhile (paragraph 5(1) and (3) to (5)).

1013. Similarly, the Welsh Ministers may make such an order where land has been used in the past for such development but no such activity has occurred in the last twelve months, and they consider that such activity is likely to be resumed to a substantial extent in due course (paragraph 5(2) to (5)).

1014. Under paragraph 5(6) and (7), a protection order may require any one or more of the following steps to be taken for the protection of the environment, within a period specified in the order (and different periods may be specified for different steps):

a. steps to preserve the amenity of the land to which the order relates and the surrounding area, pending the resumption of mining etc.;

b. steps to protect the area from damage during that period; or

c. steps to prevent any deterioration in the condition of the land during that period.

1015. A protection order made by a planning authority under this Schedule must generally be confirmed by the Welsh Ministers; the procedure (under paragraph 6) is broadly the same as for a discontinuance order made by a planning authority under paragraph 1 of Schedule 14. And an order proposed to be made by the Welsh Ministers must be notified to the authority; again, the procedure (under paragraph 7) is broadly the same as for a discontinuance order made by them under paragraph 2 of Schedule 14.

1016. Paragraph 8 provides that a protection order is a local land charge and this ensures that it comes to the attention of future owners if the land changes hands.

1017. After a protection order has come into effect, on the basis that the mining operations or depositing of mineral waste has been suspended temporarily, circumstances may change. The planning authority is therefore under a duty under paragraph 9(1) to review all of the protection orders that have been made in its area, either by the authority itself or by the Welsh Ministers. Such a review may lead to it revoking all or part of any of those orders or making a new order, in place of or additional to an existing order. Or, if it considers that the mining operation or depositing of mineral waste is, after all, not going to resume, the authority may choose to make a prohibition order.

1018. Under paragraph 6(2), where a new protection order revokes a previous order, and does not require any fresh steps to be taken, it does not need to be confirmed by the Welsh Ministers.

1019. Every protection order must be reviewed under paragraph 9 within five years of first being made; and again within five years after that (paragraph 9(2) and (3)). Where two or more orders affect the same land, they must be reviewed together (paragraph 9(4)).

1020. Once a protection order has come into effect, that does not negate the permission that originally authorised the mining operations or depositing of mineral waste that had temporarily ceased. And that permission will still be effective, to authorise any future operations etc. However, before resuming such operations etc., notice of the resumption must be given to the planning authority that must specify the date on which it is intended to resume such operations etc.; and the authority must then revoke the protection order within two months of the date specified as the one on which the operations etc. are to be resumed (paragraph 10(1) to (4)).

1021. If the authority does not revoke the protection order within the two-month period, the person who notified it of the resumption of activity on the land may apply to the Welsh Ministers for them to revoke the order, giving notice of that to the authority. And if either that person or the authority request to make representations before an inspector, that must be arranged. If the Welsh Ministers are satisfied that mining operations or the depositing of mineral waste have resumed to a substantial extent on the land, they must revoke the protection order – and notify the applicant, the authority, every owner and occupier of the land and any other person the Welsh Ministers think will be affected by the revocation, that they have done so (paragraph 10(5) to (9)).

Section 209 – Powers to enter land, take steps required by order and recover costs

1022. A discontinuance order made under section 206 may impose a requirement for steps to be taken within a specified period for the alteration or removal of any buildings or works or of any plant or machinery. A prohibition order made under Part 1 of Schedule 15 may also impose a requirement for steps to be taken for the alteration or removal of plant or machinery, or the removal or alleviation of any injury to amenity. A protection order made under Part 2 of Schedule 15 will impose a requirement for steps to be taken for the protection of the environment.

1023. In any of these situations, where the steps required by the order are not taken within the specified period, or within any longer period that may be allowed by the planning authority for the area in which the land is situated, the authority may at any reasonable time enter the land, and take the necessary action itself (subsections (1), (2) and (6)).

1024. Where it does so, the authority may recover its reasonable costs from one or more of the current owners of the land (subsection (3)). If the authority removes any materials – such as soil or other materials – from the land while taking the steps required by the order, it must allow the owner of those materials a period of at least three days within which to claim them. If they are not claimed within that period, it may sell the materials, and pay the proceeds to their owner, after deducting its costs (subsections (4) and (5)).

Section 210 – Offence of failing to comply with order

1025. Where a discontinuance order requires a use of land to cease, it is an offence under subsection (1)(a)(i) to continue to use or to cause or permit the land to be used for that purpose. And where an order allows a use to continue, but imposes a condition on such continuing use, it is an offence (under subsection (1)(a)(ii)) to fail to comply with that condition. Either offence may be tried summarily (in the magistrates' court) or on indictment (in the Crown Court). In either case, a person who is convicted is liable to pay a fine (and there is no limit on the amount of the fine that the court may impose).

1026. Where a prohibition order prohibits resuming the use of land for mining operations or depositing of mineral waste, and a person fails to comply, that is an offence under section 210(1)(b). Where a prohibition order requires action to be taken (or imposes conditions on the resumption of such use) and a person fails to comply, that is an offence under section 210(1)(c). And where a protection order requires action to be taken, and a person fails to comply, that is an offence under section 210(2). Section 210(3) applies to such offences as it does to the offence of failing to comply with a discontinuance order under section 210(1)(a).

1027. Where a person is charged with such an offence, it is a defence (under subsection (4)) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

1028. Where such a defence is relied on, and involves the person being charged (A) alleging that the failure to comply with the order was the fault of a third party (B), or that A was relying on information supplied by B, then A must give to the prosecution – at least seven days before the date of the hearing – all the information in A's possession that will assist the prosecution to be able to identify B. (subsections (5) and (6)).

Section 211 – Compensation for damage caused by discontinuance order

1029. The making of a discontinuance order will end the existing lawful use of a piece of land or require the removal of a building or works lawfully on the land. Where this results in a decrease in the value of the freehold, leasehold or any other interest in the land concerned, the holder of that interest is entitled to claim compensation (subsection (2)(a)). Compensation is also payable to anyone occupying the land for being disturbed in their enjoyment of the land (subsection (2)(b)).

1030. In addition, compensation is payable to anyone incurring expenditure in carrying out works to comply with the order (subsection (3)). This would include, for example, the removal of a building, or plant and machinery.

1031. However, compensation in any of those instances is reduced by an amount equal to the value to the claimant of any timber, apparatus or other materials removed from the land (subsections (5)).

1032. For example, if the use of land as a scrapyard is brought to an end by a discontinuance order, and planning permission granted for an alternative, less valuable use, compensation is payable to the owner for the loss in the value of the land and for the cost of removing the plant and material. But that compensation will be reduced by the value of items removed.

1033. A claim for compensation under this section is to be made within 12 months from the order taking effect (subsection (4)). The procedure for making a claim is provided in sections 391 to 393.

1034. If a discontinuance order results in a purchase notice being served under section 213 and accepted or confirmed under the procedure in Schedule 12, no compensation is payable under this section (subsection (6)).

Section 212 – Compensation for effects of orders relating to minerals

1035. The amount of compensation that may be claimed under section 211 is limited in cases where a discontinuance order relates to mining operations or depositing mineral waste. The details are set out in Part 1 of Schedule 16. And Part 2 of that Schedule deals with the payment of compensation where a prohibition order or a protection order is made.

1036. Regulations under section 394 may further modify the normal rules as to the entitlement to compensation in their application to such cases.

Schedule 16 – Compensation for effects of orders relating to minerals

Part 1 – Compensation following making of discontinuance order

1037. Where a discontinuance order relates to the use of land for carrying out mining operations or depositing mineral waste, compensation under section 211 is available only in four situations.

1038. First, compensation is available where the order imposes a restriction on working rights or modifies or replaces an existing restriction (other than one imposed by a restoration or aftercare condition). A restriction on working rights is a change that restricts or reduces the size of the area used for mining operations or the depositing mineral waste, or the depth of mining or the height any waste deposit, or the rate of working, or the date by which operations must cease, or the total quantity of minerals that may be extracted or of waste deposited (paragraph 1(2) and (6)).

1039. Second, compensation is payable where the order does not impose a condition on the continuance of the use of the land for mining operations or depositing of mineral waste, or require the removal or alteration of buildings, works, plant or machinery (paragraph 1(3)). Such condition could be imposed, for example, where an order imposes restrictions on the way operations are carried out, to bring them into line with current working practices.

1040. Third, compensation is payable where the order relates to operations or depositing that have been taking place for less than five years (paragraph 1(4)).

1041. Fourth, compensation is payable under paragraph 1(5) where, during the five years before the making of the order, one or more of the following occurred:

a. another discontinuance order was made relating to a use of the land for carrying out mining operations or depositing mineral waste;

b. the permission was brought to an end by a prohibition order (under Part 1 of Schedule 15);

c. an order was made modifying the minerals permissions relating to the site;

d. the site had been a dormant site, and an application was made under Schedule 8 to determine the conditions attached to the permission; or

e. the permissions relating to the site were determined under paragraph 7 of Schedule 9 for the purposes of a periodic review.

In each case, this will have resulted in the mining activity at the site being reviewed.

1042. This means that a planning authority can modify a minerals permission by serving a discontinuance order to bring it into line with current standards without having to pay compensation, but only where:

a. the order
   i. does not amount to a restriction, modification or replacement of working rights,
   ii. it does not impose conditions on the continuing use of the land for carrying out mining operations or depositing mineral waste,
   iii. does not require the alteration or removal of any buildings, works, plant or machinery used in connection with the operations or the depositing of mineral waste; or

b. at least five years has passed since the mining activity started;

c. the activity has been reviewed in one way or another.

Part 2 – Compensation following making of prohibition order or protection order

1043. Paragraph 2 provides that compensation is payable for the making of a prohibition order where the order relates to operations or depositing that have been taking place for less than five years, or where one of the following occurred during the five years before the making of the order:

a. the permission had been brought to an end by another prohibition order; or

b. a discontinuance order was made relating to a use of the land for carrying out mining operations or depositing mineral waste or a modification order was made under section 102 (meaning that, in both instances, the permission would have been reviewed in the previous 5 years).

1044. In such cases, paragraph 2(1) applies the provisions in section 211(2) to (5). Compensation can be claimed by a person suffering damage because of the making of a prohibition order, either by a decrease in the value of any interest in the land in question, or for disturbance in the enjoyment of the land, or the incurring of expenditure in carrying out works to comply with the order. However, such compensation will be reduced by an amount equal to the value to the claimant of materials removed from the land.

1045. For example, if land has been used as a minerals site for less than five years, that use comes to an end, and a prohibition order is made preventing it resuming, subject to restoration and aftercare conditions, compensation is payable to the owner for any decrease in the value of the land, and for the cost of complying with the conditions, but reduced by the value of items removed (possibly for sale, or to be transferred to other sites owned by the claimant).

1046. Where a prohibition order is made in other circumstances (i.e. where neither of the conditions in paragraph 2 are met), or where a protection order is made, paragraph 3 provides that compensation is payable to any person interested in the land for:

a. any expenditure that has been carried out on works (including preparatory items such as preparing plans etc.) that are rendered abortive because of the order; and

b. any other loss or damage directly attributable to the making of the order (including the costs of carrying out works to alleviate or remove the harm caused to amenity by the operations, unless that is included in another claim for compensation) (paragraph 3(2) and (4)).

1047. The amount of loss or damage for which compensation is payable under paragraph 3 is to be calculated without taking into account:

a. the value of any mineral that can no longer be won or worked, any mineral waste that can no longer be deposited, and any void that can no longer be filled, as a result of the order; or

b. in the case of a prohibition order, the cost of complying with restoration or aftercare conditions imposed in consequence of the order.

And the compensation is to be reduced by the value of materials taken from the site (paragraph 3(5) and (6)).

1048. The planning authority, in calculating the amount of compensation payable under paragraph 3, must deduct the amount determined in accordance with paragraph 4. If the authority is satisfied that the clamant is the only person entitled to claim in consequence of the order, it must deduct the amount specified in regulations (see regulation 7(1) of the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997 (S.I. 1997/1111); and if it considers that there are or may be others entitled to claim, it must deduct the appropriate fraction of that amount multiplied by the appropriate fraction. That fraction may be expressed as CI ÷ AV, where CI is the authority's assessment of the value of the claimant's interest in the land and AV is its assessment of the total value of all interests in the land. That ensures that the total amount deducted from the total compensation payable regarding a particular order is always the same, whether paid to a single claimant at one time or to various claimants at different times.

1049. A claim for compensation under paragraph 2 or 3 is to be made within 12 months from the order taking effect. The procedure for making a claim is provided in sections 391 to 393.

Section 213 – Service of purchase notice following making of discontinuance order

1050. Where a discontinuance order is made in relation to a piece of land, it may mean that:

a. the land is unusable in its existing state; and

b. the land cannot be made usable by carrying out any other development for which permission has been granted – either by the order itself or otherwise – or for which the planning authority or the Welsh Ministers have undertaken to grant permission (subsections (1) and (3)).

1051. Land is unusable for these purposes if it is incapable of reasonably beneficial use – and in determining that, no account is to be taken of development for which permission has not been granted, and for which neither the planning authority nor the Welsh Ministers have undertaken to grant permission. However, land is not unusable if its existing state was caused by a breach of planning control and could be remedied by the carrying out of steps that have been or could be required by an enforcement notice (paragraph 1 of Schedule 12).

1052. Where a person who has an interest in land claims that the land has become unusable following the service of a discontinuance order, the owner may serve a "purchase notice" on the planning authority. That is, a notice requiring the authority to purchase the owner's interest in the land (subsection (2)). This is in effect a process of compulsory acquisition in reverse: the landowner is seeking to force the authority to purchase the land.

1053. The purchase notice must relate to all the land that is the subject of the order; it must not include any other land. It must be served within 12 months of the order taking effect, unless the Welsh Ministers extend this time limit (paragraph 4(1) to (4) of Schedule 12).

1054. The planning authority may accept or reject the notice. If the notice is rejected, it is sent to the Welsh Ministers. They may confirm it, or they may revoke the discontinuance order, or amend it to avoid it making the land in question unusable (paragraph 6(3)(e) of Schedule 12).

1055. The detailed requirements and procedures relating to the service, acceptance, rejection and confirmation of a purchase notice following the making of a discontinuance order are otherwise the same as those relating to a notice following other planning decisions, set out in Schedule 12 – already considered in the context of purchase notices following the refusal or revocation of permission under section 110. The detailed requirements as to the service of the notice on the planning authority are set out in Part 2 of that Schedule. The action to be taken by the authority and by the Welsh Ministers following service is the subject of Part 3. And special provisions as to purchase notices affecting agricultural land are in Part 4.

Chapter 2 – Land adversely affecting amenity of neighbourhood
Section 214 – Power of planning authority to issue maintenance of land notice

1056. Where land is in poor condition, that may be due to it being used for a purpose that is in breach of planning control and in such a case the authority may be able to remedy it by taking enforcement action. Where the use of land is not in breach of planning control, the authority may choose to modify or revoke the relevant planning permission or serve a discontinuance order.

1057. In some situations, it is not the use of the land in principle that is the problem, but the way that use is being implemented. For example, a householder may completely neglect the outside of a house and the associated garden, so that it becomes an eyesore and attracts vermin. Or a factory may be operated in such a way that the surrounding land is used for dumping surplus equipment and attracts general fly-tipping.

1058. The planning authority may therefore serve a "maintenance of land notice" under Chapter 2 of this Part where the condition of a piece of land is affecting the amenity of part of the surrounding area (subsection (1)). Such a notice is referred to in some contexts as an 'untidy land notice' or a 'section 215 notice' – it has until now been served under powers in section 215 of the 1990 Act.

1059. However, such a notice may not be issued where the condition of the land results from an authorised use of land, or the carrying out of operations, that normally lead to a loss of amenity (subsection (2)) – provided that that use is not in breach of any discontinuance order (under section 206), or prohibition order or protection order (under section 208) or planning obligation (under section 165). For instance, a scrap metal dealer's yard will often be unsightly, but the way to deal with that would be to take discontinuance action and not to issue a notice under this Part.

1060. Subsection (3) requires that a maintenance of land notice must:

a. specify what action is to be taken to remedy the condition of the land in question;

b. state the date the notice is to take effect; and

c. specify the period in which that action is to be taken.

1061. The notice comes into effect at the beginning of the day specified in it (subsection (4)), but the date the notice is due to take effect will be postponed where an appeal is made to the Welsh Ministers under section 215 or to the High Court under section 379(4).

1062. Under subsection (5) and (6), once the authority has issued a notice, it must within 28 days serve a copy on every owner and occupier of the land to which the notice relates. The notice must be framed so that it comes into effect at least 28 days after the date on which the last such copy is served. Regulations may require that each copy of the notice is accompanied by an explanatory note as to the right to appeal against it under section 215.

Section 215 – Right to appeal against maintenance of land notice

1063. Any person who has received a copy of a maintenance of land notice may appeal against it to the Welsh Ministers, under subsection (1). And anyone who has an interest in the land to which it relates may appeal against it, even if they have not received a copy of the notice.

1064. Under subsection (2), the grounds on which an appeal under this section may be made are:

a. that the condition of the land is not harming the amenity of the surrounding area;

b. that the use of the land is not in breach of planning control – and is not in breach of any discontinuance order, prohibition order, protection order or planning obligation – and that the condition of the land results in the ordinary course of events from that use;

c. that the steps required by the notice to be taken exceed what is necessary to prevent the condition of the land harming the amenity of the surrounding area; and

d. that the period allowed for taking those steps is unreasonably short.

1065. Such an appeal must be made by serving a notice of appeal on the Welsh Ministers (in practice, PEDW) at any time before the date specified in the maintenance of land notice as the date on which it comes into effect. This provides a period of at least 28 days from which copies of the notice are served to make an appeal.

1066. Once an appeal has been made under this section, the notice will be of no effect until the appeal has been finally determined (or withdrawn). If, following such an appeal, the decision of the Welsh Ministers is successfully challenged in the High Court under section 379(4), the appeal will be sent back to them for redetermination, and the notice will only come into effect once that re-hearing (and any consequential further court challenge) has concluded (subsection (4)(a)).

1067. Where an appeal is made, neither the appellant, nor any other person, is entitled to argue in any subsequent proceedings that a copy of the notice was not served on the appellant (subsection (4)(b)).

1068. Regulations under subsection (5) may make further provision as to making an appeal – the form of a notice of appeal; what information must be supplied; and who must be sent a copy. See (currently) regulation 10 of the 2017 Enforcement Regulations.

Section 216 – Determination of appeal

1069. In dealing with an appeal against a maintenance of land notice, the Welsh Ministers (or an inspector on their behalf) may correct any defect, error or misdescription, or vary its terms. They may only do this if they are satisfied that doing so will not cause injustice either to the appellant or the planning authority (subsection (1)). This power confers broad discretion on the Welsh Ministers (or the inspector) to correct any errors of fact, or a misdescription of the land or its condition; and it enables them to alter the requirements of the notice, or the time within which those requirements are to be complied with.

1070. In determining the appeal, the Welsh Ministers (or the inspector) may allow the appeal and if they do so may quash the notice (subsection (2)(a)). They must also, whether or not their determination is to allow the appeal, give any directions to give effect to their determination (subsection (2)(b)).

1071. Chapter 2 of Part 14 makes further provision as to the determination of appeals to the Welsh Ministers against maintenance of land notices, in particular the powers and duties of inspectors. The current provisions as to the determination of such appeals are in the 2017 Enforcement Regulations (see regulation 2(2)(f)).

Section 217 – Grounds of appeal not to be raised in other proceedings

1072. Where a person wishes to challenge the validity of a notice on grounds (a) and (b) in section 215 – that is, that the condition of the land is not harming the amenity of the surrounding area, or that it results from a use of the land that is not in breach of planning control or any order or obligation – the general rule is that that can only be done by way of an appeal to the Welsh Ministers under that section. Those grounds cannot be used in any other proceedings, such as by way of judicial review or in a criminal prosecution under section 220. This restriction only applies where the notices has been served on all owners and occupiers.

Section 218 – Order to permit steps required by maintenance of land notice

1073. Once a maintenance of land notice has come into effect, it must be complied with, and steps required by the notice (see section 214(3)(a)) must be taken within the specified period by those who were served with copies of it.

1074. Where the owners are served with a copy of a notice that requires such steps to be taken on the land, or otherwise become aware of the notice, they may be able to take those steps, so that the notice is complied with. However, if the land is under the control of someone else, who is preventing the owners from taking those steps, they may apply to the magistrates' courts (by way of a complaint) for an order under this section, permitting them to enter the land and take those steps.

Section 219 – Powers to enter land, take steps required by maintenance of land notice and recover costs

1075. Where a maintenance of land notice has come into effect, requiring steps to be taken, it may still not be complied with – either within the period stated in the notice, or within such longer period as may be allowed by the authority. That may lead to the prosecution of those responsible for the failure to comply, under section 220; but such a prosecution – whether or not it is successful – will not result in the required steps actually being taken. Subsection (1)(a) therefore enables a planning authority to enter the land in such a situation and take the necessary action itself.

1076. Subsection (1)(b) enables an authority to recover any costs it has reasonably incurred in exercising its powers to take action under this section from the current owners of the land – that is, the freeholders or those who are entitled to receive the rent. This helps to ensure that they carry out the necessary action themselves, or arrange for it to be carried out, to avoid the authority having to become involved.

1077. However, if the owners are only entitled to receive the rent as agent for someone else (the "principal"), and have not received enough money by way of rent to enable them to reimburse the authority's costs in full, then their liability is limited (by subsection (2)) to the amount of money that they have had on behalf of the principal since the day on which the authority demanded payment. And in that situation, the authority is entitled to recover the balance of its costs from the principal (subsection (3)).

1078. Where a copy of a maintenance of land notice has been served, and

a. the owners or occupiers of the land have had to take action to ensure that the notice is complied with; or

b. the authority has had to take action in default,

any costs incurred by the owners or occupiers (including costs paid to the authority under subsection (1)(b)) are treated as having been incurred or paid on behalf of the person who caused or allowed the land to be in the condition it was at the time the authority first issued the notice – since that is what will have resulted in the authority taking action (subsection (4)). This enables those costs to be recovered from the person who committed the original breach – either by negotiation or court action.

1079. Under subsection (5), if costs are incurred by the authority in taking action under subsection (1)(a), they will be a charge on the land until they have been recovered in full under subsection (1)(b). The charge takes effect as a local land charge at the beginning of the day after the authority completes the steps relating to the costs (i.e. the action specified in the notice) (subsection (6)).

1080. In some cases, where a maintenance of land notice is served and a planning authority acts under subsection (1)(a) in default of compliance, that may result in building materials, stock, or other items being removed from the land. If they are not claimed and taken away within three days, the authority may sell them and pay the proceeds to the owners of the building materials, stock or other items – after deducting any expenses recoverable by the authority from the owners (subsections (7) and (8).

Section 220 – Offence of failing to comply with maintenance of land notice

1081. Allowing land to become in poor condition is not of itself a criminal offence. However, once a planning authority has issued a maintenance of land notice, if it has not been quashed on appeal, it will come into effect and will require action to be taken. An offence under subsection (1) is committed by a person on whom a copy of a maintenance of land notice has been served if that person fails to take the steps required in the notice by the end of the period allowed for compliance – that is, either the period specified in the notice, or such longer period as has been allowed by the authority that issued it (see subsection (10)).

1082. However, subsections (2) to (6) enable a person (A), against whom criminal proceedings have been brought under subsection (1), to have a subsequent owner or occupier brought before the Court where A has ceased to be the owner or occupier of the land at some point before the end of the period for compliance with the notice. "Subsequent owner or occupier" is defined in subsection (11), as follows:

a. where the notice was served on A as an owner of the land, it is the person (B) who succeeded A as owner;

b. where the notice was served on A as an occupier of the land, and someone else then took over from A as occupier, it is the person (B) who succeeded A as occupier;

c. where the notice was served on A as an occupier of the land, and no one else took over from A as occupier, it is a person (C) on whom a copy of the notice was served as owner.

In such a case, A must lay an information to that effect that they ceased to be the owner or occupier of the land before the relevant date and must give at least three days' notice of their intention.

1083. Under subsection (5), where a subsequent owner or occupier ((B) or (C)) is made a party to the proceedings under subsection (3), and the original owner (A) proves that any failure to comply with the notice is partly or wholly their fault, then B or C may be convicted of an offence under subsection (1). Under subsection (6), if A proves that any failure to take steps required by the maintenance of land notice was due, in whole or in part, to the failure of B or C and that A took all reasonable steps to ensure that the notice was complied with that will be a defence for A.

1084. Under subsection (7), the offence under subsection (1) is triable only summarily (in the magistrates' court). A person found guilty is liable to a fine of up to Level 3 on the standard scale. Once a person has been convicted, if that person does not then do everything possible to secure compliance with the notice, that is a further offence, under subsection (8), punishable on summary conviction by a fine of up to one-tenth of Level 3 for each day the steps required by the notice are not taken (subsection (9)).

PART 8 – CONTROL OF ADVERTISEMENTS

1085. The display of advertisements may or may not involve development, but it is normally regulated not by the legislation described in the preceding Parts of the Act, but by a separate code contained almost entirely in regulations made under powers in sections 221 to 228. Section 230 provides that it is an offence to display an advertisement in breach of such regulations; section 231 provides a power for a planning authority to remove unauthorised posters and placards while section 232 makes provision for compensation for damage caused in the exercise of that power.

Section 221 – Control of advertisements regulations

1086. The Welsh Ministers must make regulations under subsection (1) restricting or regulating the use of land for the display of advertisements as they consider appropriate in the interests of amenity or public safety.

1087. "Advertisement" is defined in subsection (5)(a). It means:

a. any word, letter, model, sign, placard, board, notice, awning, blind, symbol, or representation, whether illuminated or not, in the nature of, and used to any extent for the purposes of announcement, publicity or direction;

b. any hoarding or similar structure used, designed or adapted for use for any of those purposes; or

c. anything else principally used, or designed or adapted principally for use, for any of those purposes.

1088. The first of those categories includes items – words, letters, symbols or representations – that constitute elements of the message that the advertiser is seeking to convey to the onlooker. It also includes items – signs, placards, boards, notices, awnings and blinds – that are the physical means to enable that message to be conveyed. A conventional poster advertising a chocolate bar, for example, will usually contain both a picture of the product and some supporting text, printed on a piece of paper; the picture, the words and the paper, when used in combination for publicity purposes, will all be "advertisements". A 3-dimensional model may be both the message itself and the means used to convey it.

1089. The second and third categories are the structures used to assist in the display of an advertisement. Roadside advertising hoardings are the most obvious example, but advertisements are also displayed on a wide variety of other structures.

1090. All these items are included in the definition of "advertisement".

1091. This provides a wide-ranging definition of "advertisement", including many types of display from a small brass plate outside a doctor's surgery to a large digital screen or a projection onto a building. And new types of advertising display – such as illuminated drone displays – are being introduced all the time. The control regime has accordingly evolved over the years to accommodate a wide range of factual circumstances.

1092. Note that the definition explicitly excludes anything used wholly as a memorial or a railway signal.

1093. The regulations currently in force in Wales made under the powers restated in these provisions are the Town and Country Planning (Control of Advertisements) Regulations 1992 (S.I. 1992/666) ('the 1992 Advertisements Regulations').

1094. Regulation 4(1) of the 1992 Advertisements Regulations provides that planning authorities must exercise their powers only in the interests of amenity and public safety, taking into account any relevant factors. In particular:

a. in relation to amenity, the general characteristics of the locality (including features of special interest), and disregarding where appropriate any advertisement already being displayed there;

b. in relation to public safety, the safety of those using roads, railways, waterways, docks, harbours and aerodromes, and the effect of advertisements on the visibility of road signs, railway signals, and aids to navigation by water or air.

1095. The control of advertisements under the 1992 Advertisements Regulations may therefore only be used to regulate the content of advertisements where that is necessary in the interests of amenity or public safety.

1096. By contrast, regulations may make provision about the dimensions, appearance and position of advertisements that may be displayed, the land on or from which they may be displayed, and how they may be attached to the land (subsection (2)); sections 222 to 228 give examples of other matters that may be dealt with in the regulations.

1097. Under subsection (4), regulations may make provision for the control of advertisements being displayed, and land being used for advertising, at the time they come into force. This enables regulations to provide that, for example, consent will in future be required for advertisements of a kind that were previously able to be displayed without consent, or with consent deemed to have been given.

Section 222 – Consent for the display of advertisements

1098. Regulations may provide that advertisements, or advertisements of particular descriptions, may only be displayed with consent and may also specify who can give such consent (subsections (1) and (2)(a)).

1099. They may make provision under subsections (2)(b), (3) and (4) as to the procedure for the submission and determination of applications for such consent – including as to the form of applications and documents to be included with applications, and the publicity, notification and consultation to be carried out. In addition, they may provide for the consequences of an application failing to comply with such requirements, the circumstances in which a person (currently the planning authority) may decline to determine an application, and when it may be called-in by the Welsh Ministers for their decision.

1100. Regulations may also provide for the grant of consent subject to conditions, including as to the need for approval to be obtained from others, the duration of consent, the removal of advertisements at the end of a period specified in regulations, and works to be carried out on the land concerned (subsections (2)(c) and (5)). Currently Schedule 1 to the 1992 Advertisements Regulations specifies five "standard conditions" that apply to every consent.

1101. Regulations 9 to 14 of the 1992 Advertisements Regulations deal with the submission and determination of applications for "express consent" to the planning authority.

1102. Express consent may be given either for the use of a site for advertising generally (such as for a roadside hoarding) – so that further consent is not needed when one poster is replaced with another – or it may authorise only a specific advertisement. Express consent lasts for the period specified by the planning authority (normally five years), after which the site may continue to be used, or the advertisement to be displayed, with consent treated as having been granted, unless the authority requires the display to cease.

Section 223 – Restricting the display of advertisements where express consent is not ordinarily required

1103. The definition of "advertisement" is sufficiently wide as to include many instances that are minor in their effect, or otherwise inappropriate for detailed control. Advertisements regulations may therefore provide that:

a. if an advertisement in certain categories is displayed in accordance with specified conditions, consent is to be treated as having been granted for the display – so that no application for consent is required (subsection (1)(a)); and

b. certain advertisements may be displayed without consent (subsection (1)(b)).

1104. In reliance upon the powers restated in subsection (1)(a), regulation 6 of and Schedule 3 to the 1992 Advertisements Regulations currently grant "deemed consent" for advertisements in 23 categories, grouped in 14 Classes. In each case, advertisements only fall within the relevant category if they comply with conditions, including as to the number that may be displayed at a single location, their size, and whether or how they may be illuminated. They must also be displayed in accordance with the standard conditions currently in Schedule 1.

1105. Regulations may enable the Welsh Ministers to direct that advertisements in one or more of those categories may only be displayed with express consent (subsection (2)(a)). The current provision as to the making of such a direction is at regulation 7 of the 1992 Advertisements Regulations and such directions have been made, for example, in relation to some residential letting boards in the Cathays and Plasnewydd wards in Cardiff.

1106. Where consent is treated as having been granted for the use of a site for advertising, or for the display of a particular advertisement, regulations may nevertheless enable either the Welsh Ministers or the planning authority to issue a notice requiring the display to be discontinued (subsection (2)(b)). The current provision as to the service of such a notice is at regulation 8 of the 1992 Advertisements Regulations.

1107. In reliance upon the powers restated in subsection (1)(b), regulation 3 of and Schedule 2 to the 1992 Advertisements Regulations currently lists ten categories of advertisements that may be displayed without any consent, if they comply with specified conditions and provided that they are displayed in accordance with the standard conditions currently in Schedule 1.

Section 224 – Appeals

1108. Regulations may provide for a right to appeal to the Welsh Ministers:

a. where an application for consent to display an advertisement, or to use a site for such a display, is not determined; or

b. where it is refused, or granted subject to conditions; or

c. where an order is made requiring discontinuance of an existing display, or the use of a site, for which consent is treated as having been granted (subsections (1) and (2)).

1109. They may include time limits for appealing (that may include provision enabling them to be extended) and other procedural requirements and may make provision as to the duties and powers of the Welsh Ministers determining the appeals (subsection (3)). Such provisions are currently found in regulation 15 of and Parts 3 and 5 of Schedule 4 to the 1992 Advertisements Regulations.

Section 225 – Changing or revoking consent

1110. Regulations may also provide for the changing or revocation of consent to display an advertisement or use a site for such a display. Regulation 16 of the 1992 Advertisements Regulations currently provides a procedure similar to that relating to the modification and revocation of planning permission, and provides that a consent cannot be changed or revoked once the display has started. An order changing or revoking consent must be approved by the Welsh Ministers, following a hearing if objections are raised by those affected.

Section 226 – Compensation

1111. Advertisements regulations may make provision for the payment of compensation, including:

a. where consent is refused for the display of an advertisement, or for the use of a site for such a display, or is granted subject to conditions (subsection (2)(a));

b. where the planning authority or the Welsh Ministers require the discontinuance of an existing display, or use of a site, for which consent is normally treated as having been granted (subsection (2)(b)); or

c. where consent is changed or revoked (subsection (2)(c)).

1112. They may make provision about the circumstances in which compensation is payable, who is entitled to claim and for what, who is to pay and how much, and the procedure to be followed in relation to claims and disputes (subsections (3) to (6)).

1113. Currently regulation 17 of the 1992 Advertisements Regulations allows a claim for compensation to be made in the event that consent is changed or revoked, but not in the other situations referred to in subsection (2).

Section 227 – Control of advertisements regulations: supplementary

1114. Regulations may require the keeping of registers of applications for consent, and the decisions made on those applications. Planning authorities may also be required to provide information to the Welsh Ministers to assist with the exercise of their functions under the regulations. Such provision is currently set out in regulations 21 and 22 of the 1992 Advertisements Regulations.

Section 228 – Power to make different provision for different areas, including areas of special control

1115. Some areas are more sensitive than others to inappropriate advertising. This section accordingly enables regulations to make different provision for different areas (subsection (1)).

1116. The most significant of these are "areas of special control". Currently, such an area may be designated by planning authorities and approved by the Welsh Ministers or may be designated by the Welsh Ministers. Where advertisements regulations make provision about areas of special control, they must include the procedure to be followed before designating such areas, including to ensure that proposals are publicised, and representations can be heard at an inquiry or hearing (subsections (2) and (5)).

1117. Regulations must provide that the Welsh Ministers may not make or approve an order designating an area of special control unless it is either in a rural area or in an area that requires special protection due to its amenity value, such as a historic town centre (subsection (4)). Once an area of special control has been designated, the regulations may prohibit all displays of advertisements in it or may allow displays only if they are in specified categories (subsection (3)).

1118. The designation of areas of special control is currently the subject of regulation 18 of the 1992 Advertisements Regulations, which requires every authority to consider from time to time whether such an area should be designated; and to review existing designations at least every five years. The designation procedure is in Schedule 5 to those Regulations.

Section 229 – Deemed planning permission for advertisements displayed in accordance with regulations

1119. The display of advertisements will sometimes amount to "development". This could occur where, for example, the erection or alteration of an advertising billboard or a shop fascia sign amounts to a building operation, since a "building" includes a structure (see section 408(1)). Where advertisements are displayed on an external part of a building, this involves a material change in the use of that part of the building (see section 5(4)).

1120. The carrying out of development must normally be authorised by the grant of planning permission (see section 43). However, it would be burdensome to insist on the submission of an application for planning permission as well as an application for consent under the advertisements regulations in relation to the same development, since the two applications would be considered by the same authority, on the basis of the same or very similar considerations. The same would apply where an advertisement is displayed without any need for consent to be sought. This section therefore provides that where a display of advertisements involves development, and complies with the regulations, planning permission is to be treated as having been granted.

1121. However, where a display does not comply with the regulations, but involves development, planning permission is required under Part 3 of the Act. If development is undertaken without the required planning permission, it may be the subject of enforcement action under Part 4 of the Act.

Section 230 – Offence of displaying advertisement in breach of regulations

1122. If an advertisement is displayed in breach of the advertisements regulations, a person is guilty of an offence. This applies to a person if:

a. the person carries out or maintains the display of the advertisement;

b. the person is the owner or occupier of the land on which or from which the advertisement is displayed; or

c. the advertisement gives publicity to the person's goods, services or other concerns (subsections (1) and (2)).

1123. This is distinct from a breach of mainstream planning control, in that criminal liability arises as soon as a non-compliant advertisement is displayed; there is no need for an enforcement notice to be issued first. The effect of this is that if, for example, a company that creates advertisements erects a roadside hoarding on land owned by a person and a non-compliant poster is displayed on that land promoting another business, an offence is committed by the advertisement company, the person, and the other business. Any or all of them may be prosecuted.

1124. However (as provided in subsections (6) and (7)), it is a defence for a person who falls within the second or third of the three categories set out in subsection (2) (and not the first) to prove that:

i. the advertisement was displayed without their knowledge; or
ii. the person had taken all reasonable steps to prevent its display or secure its removal.

In the above example, the business being promoted in the advertisement will have a defence if it is able to show that it asked the advertisement company to take down the poster; but the landowner might not have a defence if they are shown to be receiving rent for the use of their land to display the hoarding.

1125. A person found guilty of an offence under subsection (1) is liable on summary conviction (in the magistrates' court) to a fine not exceeding the amount specified in regulations, which must be not greater than Level 4 on the standard scale (subsections (4) and (5)(a)).

1126. If a person is convicted of an offence under subsection (1) and the advertisement then continues to be displayed in breach of the regulations, the person (if still in one or more of the three categories set out in subsection (2)) is guilty of a further offence under subsection (3). The same defence is available, under subsections (6) and (7). A person guilty of this offence is liable on summary conviction to a fine not exceeding the specified amount, which must be not greater than one tenth of Level 4 on the standard scale for each day the offence continues (subsections (4) and (5)(b)).

1127. Subsection (8) draws attention to the possibility of giving fixed penalty notices in relation to such offences under sections 43 and 47 of the Anti-social Behaviour Act 2003 (c. 38).

Section 231 – Power to remove or obliterate placard and poster

1128. Where a planning authority considers that a poster or placard is being displayed in its area in breach of the advertisements regulations, in a way that causes harm to amenity or public safety, the planning authority may simply remove or obliterate it provided that it is not displayed inside a building to which there is no public right of access (subsections (1) and (2)).

1129. However, where the poster or placard identifies who displayed it (or caused it to be displayed) or publicises the goods or services of a person that it identifies, the authority must first notify that person that the poster or placard appears to be in breach of the regulations and that it intends to remove it after the end of a specified period of at least two days. If that does not lead to the poster or placard being removed within that period, the authority can proceed to take action (subsections (3) to (5)).

1130. If the notice also warns the recipient that the authority intends to recover the costs it incurs in taking such action, the authority is entitled to recover those costs (subsection (7)).

1131. However, no such prior notification is required where:

a. the poster or placard does not give the address of the person who displayed it or caused it to be displayed (or, as the case may be, the person whose goods, services or other concerns are publicised); and

b. the planning authority does not know the address of those persons and is unable to find it out after reasonable inquiry (subsections (3) and (6)).

Section 232 – Compensation for damage caused in removing or obliterating placard or poster

1132. If the planning authority enters land and obliterates or removes a poster or placard in reliance upon section 231, and in doing so causes damage to the land or property, a person who has suffered such damage may claim compensation from the authority under section 232.

1133. No compensation is payable to the person who displayed the poster or placard or caused it to be displaced.

PART 9 – PRESERVATION OF TREES AND WOODLANDS

1134. This Part of the Act promotes the planting of new trees and details the systems in place to protect existing trees and woodlands – both those subject to preservation orders and those in conservation areas.

Chapter 1 – Tree preservation orders and woodland preservation orders etc.
Section 233 – Planning permission to include provision for preservation and planting of trees

1135. Where a planning authority grants permission for any development, it must impose conditions in appropriate cases to make adequate provision for the preservation or planting of trees. These are likely to take the form of conditions:

a. requiring existing trees – either individual trees or groups of trees or woodlands – to be protected during the course of building works; or

b. requiring new trees to be planted as part of the landscaping works to be carried out on the completion of building or other operations.

In relation to mining and waste disposal operations, such a condition might require trees to be retained, or new trees to be planted, to screen the site from neighbouring land.

1136. Where an authority grants permission for any development, it must exercise its general powers under sections 234 and 235 to make tree preservation orders or woodland preservation orders, it considers necessary to protect existing trees on or near the site of the development, or to ensure that those newly planted trees are not lost.

1137. Where applications and appeals are determined by the Welsh Ministers, or by inspectors on their behalf, they have a general power to impose conditions when granting permission (section 67, applied by sections 72(5) and 77(5)), and they too may therefore choose to impose similar conditions relating to the preservation or planting of trees.

Section 234 – Power of planning authority to make tree preservation order

1138. A planning authority may make a "tree preservation order" to protect trees in its area, where it considers that it is appropriate to do so in the interests of amenity (subsection (1)). The factors that must be taken into account in determining whether it is in the interests of amenity to do so may be specified in regulations made under section 238.

1139. A tree preservation order is an order for the preservation of individual trees, groups of trees, or trees specified by reference to an area of land (subsection (2)). A group order might be used where a group of trees are growing close together that can be specified as such, for example *"two oaks and three chestnuts"*. An area order might be used in relation to a larger area of land – for an example, an area of parkland or an extensive development site – that contains many trees, possibly of various species, such that it is impractical to specify them individually. An order may not be used to protect hedges, bushes or shrubs.

1140. The principal effect of a tree preservation order is to protect the tree or trees from actions and activities specified in regulations, which may include prohibitions on felling, topping, lopping, uprooting, damaging or destroying without consent, subject to exceptions that may be specified by regulations (see section 240).

1141. A tree preservation order normally applies to protect trees that already exist at the date it is made. It may also protect trees that are required to be planted under a condition attached to a planning permission (under section 233); but otherwise it will not protect trees planted (except for replacement trees) or self-seeded after the date of the order (subsection (3)).

1142. Where consent is granted for the carrying out of works to trees protected by an order, it may be subject to a condition requiring replacement trees to be planted; the regulations may provide for the order to be applied to trees planted in accordance with a replacement condition (see section 241(5)). Where a protected tree is required to be replaced under section 245, the order will automatically protect the newly planted tree (see section 245(5)).

Section 235 – Power of planning authority to make woodland preservation order

1143. A planning authority may also make a "woodland preservation order" to protect a woodland in its area, where it considers that it is appropriate to do so in the interests of amenity (subsections (1) and (2)). Here too, the factors that must be considered in determining whether it is in the interests of amenity to do so may be specified in regulations made under section 238.

1144. A tree preservation order made before the coming into effect of this Act, insofar as it relates to a woodland, now has effect as a woodland preservation order (see paragraph 19(3) of Schedule 5 to the Consequential Provisions Act).

1145. A woodland preservation order, unlike a tree preservation order, applies to protect all the trees growing within the specified area of woodland, whether they were in existence at the date it was made or were planted or self-seeded subsequently (subsection (3)).

1146. The principal effect of a woodland preservation order is to protect the trees within the woodland from actions and activities specified in regulations, which may include prohibitions on felling, topping, lopping, uprooting, damaging or destroying without consent– subject to exceptions that may be specified by regulations (see section 240).

1147. Where consent is granted to carry out works to trees protected by a woodland preservation order, it may be subject to a condition requiring new trees to be planted; the regulations may provide for the order to be applied to trees planted in accordance with a replacement condition (see section 241(5)). And where trees protected by a woodland preservation order are required to be replaced under section 246, the order will automatically protect the newly planted trees (see section 246(6)).

Section 236 – Power of the Welsh Ministers to make tree preservation orders and woodland preservation orders

1148. The Welsh Ministers also have power to make tree preservation orders and woodland preservation orders if they consider it expedient to do so in the interests of amenity (under subsections (1) and (2)). And they may make an order, if they consider it appropriate to do so in the interests of amenity under subsection (3) varying or revoking a preservation order made by a planning authority.

1149. Before taking any action under subsection (1) or (2), the Welsh Ministers must consult the planning authority for the area containing the trees or woodlands to be protected (subsection (4)).

1150. The effect of a tree preservation order or woodland preservation order made by the Welsh Ministers is the same as that of an order made by the planning authority.

Section 237 – Tree preservation regulations: general

1151. The details of the system of protection provided by preservation orders are generally to be found in regulations. Prior to this Act coming into force, such regulations in Wales have dealt with the making of orders; but the need for consent to be sought to carry out works has been contained either in the primary legislation or in the relevant order itself. This Act incorporates the changes to the 1990 Act made by the 2008 Act that have not previously been brought into force in Wales. For these reasons, the orders made under this Act are much shorter and simpler than their predecessors, with all the procedural details as to the consent system and prohibitions provided by regulations.

1152. Sections 238 to 243 outline the matters that may, in particular, be covered by the regulations. They also extend to orders made by the Welsh Ministers under section 236(3), varying or revoking orders made by planning authorities.

Section 238 – Interests of amenity: factors to be taken into account

1153. Regulations made under section 237 may specify the matters that must be taken into account by planning authorities and the Welsh Ministers when considering whether to make tree preservation orders and woodland preservation orders under sections 234 to 236, and by the Welsh Ministers in considering whether to vary or revoke such an order.

Section 239 – Making, varying or revoking tree preservation orders and woodland preservation orders

1154. The regulations under section 237 may provide for:

a. the form and content of orders;

b. the procedure to be followed in connection with making, varying and revoking them;

c. when orders take effect; and

d. how orders are to be published and made available for inspection (subsection (1)).

1155. The regulations may also provide for orders not to take effect unless confirmed. Subsection (2) provides that in such cases, the regulations may also make provision about orders taking effect provisionally, as well as who is to confirm the order and the procedure for doing so.

Section 240 – Activities that may be prohibited

1156. Under subsection (1), the regulations may prohibit the following matters in relation to which a tree preservation order or a woodland preservation order is in force:

a. cutting down or uprooting trees;

b. topping or lopping trees;

c. intentionally or recklessly damaging or destroying trees; and

d. causing or permitting any of the above activities.

1157. The regulations may also provide exceptions to this prohibition and may in particular provide for a system whereby consent may be granted to authorise such activities (subsections (2) and (3)).

Section 241 – Consent for prohibited activities and appeals

1158. Where regulations provide that consent is required for works to protect trees or woodlands, the regulations may also make provision about who is to give such consent, and the procedure to be followed in connection with applications, the form to be used and the supporting material to be supplied (subsections (2) and (6)). They may also provide for the grant of consent subject to conditions, including as to approvals to be obtained for details of works, as to the duration of consent, and as to planting new trees (subsections (3) and (4)). In addition, they may provide for appeals against adverse decisions or against a failure to make any decision (subsections (7) and (8)).

1159. Where a condition attached to a grant of consent for works to a tree requires a new tree to be planted, regulations may provide that the preservation order will apply to protect the new tree once it has been planted or may provide that the order will apply to new trees unless the person granting the consent specifies otherwise (subsection (5)).

Section 242 – Compensation

1160. Regulations may provide for compensation to be payable where consent is refused for tree works, or granted subject to conditions, or where any approval required by a condition of consent is refused (subsection (1)). They may make provision as to who is to pay the compensation, in what circumstances, and on what basis (subsections (2) and (3)). They may also provide for the procedure to be followed in connection with a claim, and for the resolution of disputes by the Upper Tribunal (subsections (4) and (5)).

1161. This is significantly different from the position relating to refusal of an application for planning permission under Part 3 that generally attracts no compensation.

Section 243 – Registers of information relating to tree preservation orders and woodland preservation orders

1162. Regulations may provide for publicly accessible registers to be kept containing information relating to tree and woodland preservation orders.

Section 244 – Tree preservation regulations: restriction relating to felling licences under the Forestry Act 1967

1163. This section draws attention to section 15 of the Forestry Act 1967 (c. 10) ('the 1967 Act') which provides a mechanism to avoid unnecessary overlap between the felling licence regime under Part 2 of that Act and the consent regime under this Part of the Act.

1164. Subject to a number of exceptions (including trees in gardens and public open spaces), the felling of any trees-(but not the lopping or topping of such trees) requires a felling licence from NRW under section 9 of the 1967 Act. This is the case whether or not the trees are subject to a preservation order.

1165. Where a licence is required for the felling of trees that are subject to a preservation order, and consent is required for the felling of the tree, an application for consent under the tree preservation regulations made under this Part of the Act may not be entertained by the planning authority (see section 15(5) of the 1967 Act); instead, an application for a felling licence must be submitted to NRW. If NRW refuses the application for a licence, the question of consent under the tree preservation regulations does not arise. If NRW proposes to grant the application for a licence, it must notify the planning authority; if the authority objects, it must be referred to the Welsh Ministers for determination who can then determine it as if it were an application under the regulations, and a felling licence will not be required (see section 15(1)(a) and (2) of the 1967 Act). If NRW is content to allow the authority to make the decision, it will send the application to the authority, which can then determine it as if it were an application under the regulations, and a felling licence will not be required (see section 15(1)(b) and (3) of the 1967 Act).

Section 245 – Replacement of trees: tree preservation orders

1166. Where a tree that is protected by a tree preservation order is removed, uprooted or destroyed in circumstances where there is a breach of tree regulations (e.g. where the regulations require consent for removal etc., but the consent has not been obtained) the owners of the land must plant a replacement tree. The replacement must be planted at or near the place where the original tree was situated; and the planting must be carried out as soon as reasonably practicable. The order will continue to have effect in relation to the replacement tree.

1167. The same duty applies where a tree protected by an order is removed, uprooted or destroyed in other circumstances specified in the regulations (subsection (1)(a)(ii)). In practice, this might occur, for example, where a replacement tree has to be planted where the original tree has been removed without consent because it has become dangerous. The duty will also apply where a protected tree is removed because it is dead, but only in circumstances specified in regulations (subsection (1)(b)).

1168. Subsection (6) provides that the duty under this section to plant a replacement tree falls on each successive owner of the land until it has been complied with. But that duty does not apply if the authority in whose area the land is situated agrees to dispense with it, in response to an application by an owner (subsection (4)).

1169. The duty to plant a replacement tree may only be enforced by the issue of a tree replacement notice under section 252.

Section 246 – Replacement of trees: woodland preservation orders

1170. Where trees that are protected by a woodland preservation order (as opposed to a tree preservation order) are removed, uprooted or destroyed in circumstances where there is a breach of tree regulations (e.g. where the regulations require consent for removal etc., but the consent has not been obtained) the owners of the land must plant replacement trees of appropriate size and species (subsections (1) and (2)).

1171. The number of trees planted must be the same as the number of trees that were removed, uprooted or destroyed, where that is known. Where it is not known, the number must be the best estimate that can be reasonably be made of the number that were lost (subsection (3)). The replacement trees must be planted at or near the places where the original trees were situated, or at another place designated by the planning authority in whose area the land is situated, which must be on the same land or on land elsewhere agreed by the authority and the owner of that other land (subsection (4)). The woodland preservation order will continue to have effect, in relation to the replacement trees (subsection (6)).

1172. Subsection (7) provides that the duty under this section to plant replacement trees falls on each successive owner of the land until it has been complied with. But that duty does not apply if the authority, in whose area the land is situated, agrees to dispense with it, in response to an application by an owner (subsection (5)).

1173. The duty to plant replacement trees may only be enforced by the issue of a tree replacement notice under section 252.

Chapter 2 – Trees in conservation areas

Section 247 – Preservation of trees in conservation areas

1174. A conservation area is an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve and enhance, designated under Part 4 of the 2023 Act. In many conservation areas, trees are a significant part of that character.

1175. Where an individual tree or a group of trees in a conservation area are protected by a tree preservation order or a woodland preservation order, works to them will be subject to the need for consent under the trees regulations, as with works to such trees elsewhere. However, where trees in a conservation area are not protected by such an order, the following works are prohibited:

a. cutting down, uprooting, topping or lopping a tree; and

b. intentionally or recklessly damaging or destroying trees (subsections (1) and (2)).

1176. However, works to trees in a conservation area authorised by an infrastructure consent order, under the 2024 Act, or by an order granting development consent under the 2008 Act are not prohibited under this section (subsection (3)(a)).

1177. Such works are also not prohibited if the conditions in subsections (4) to (7) are satisfied. The intention to carry out the works must be notified to the planning authority, providing enough information for the tree or trees involved to be identified. The authority then has six weeks to grant consent. If it grants consent or makes no response to the notification within the six-week period, the works may then take place at any time within the two years after the date the authority was notified. If an order is imposed at any point, consent under the regulations will be required as in any other case.

1178. Regulations may provide exceptions to this requirement, in particular as to specified categories of works, works carried out in specified circumstances or subject to specified conditions, works in specified conservation areas, works to trees of specified size or species, and works to trees belonging to particular categories of owners (subsections (8) and (9)).

Section 248 – Replacement of trees in conservation areas

1179. Where a tree in a conservation area is not protected by a tree preservation order or a woodland preservation order and removed, uprooted or destroyed in breach of section 247(1), the owners of the land must plant a replacement tree of a suitable size and species unless the planning authority has dispensed with the requirements(subsections (1)(a)(i) and (2)). The replacement must be planted at or near the place where the original tree was situated; and the planting must be carried out as soon as reasonably practicable (subsections (2) and (3)).

1180. The same duty applies where a tree in a conservation area is not protected by a preservation order is removed, uprooted or destroyed in other circumstances specified in the regulations (subsection (1)(a)(ii)). In practice, this might occur, for example, where the original tree has been removed without notice having been given because it has become dangerous. The duty will also apply where such a tree is removed because it is dead, but only in circumstances specified in regulations (subsection (1)(b)).

1181. Subsection (5) provides that the duty under this section to plant a replacement tree falls on each successive owner of the land until it has been complied with. But that duty does not apply if the planning authority, in whose area the land is situated, agrees to dispense with it, in response to an application by an owner (subsection (4)).

1182. The duty to plant a replacement tree may only be enforced by the issue of a tree replacement notice under section 252.

Section 249 – Register of notices of intention to carry out works

1183. The planning authority must keep a record of notifications it receives in relation to an intention to carry out works to a tree in a conservation area under section 247. The register is to be available for public inspection at all reasonable times. Regulations may specify what information is to be contained in such a register, and how it is to be maintained.

Chapter 3 – Enforcement

Section 250 – Offences of breaching tree preservation provisions

1184. To carry out development without planning permission is not a criminal offence; but to carry out works to a tree protected by an order in breach of the regulations under this Part is a criminal offence. This reflects the fact that in many cases it may be possible to undo or at least to alleviate the effects of unauthorised development, but it is not possible to replant a tree that has been felled; and even lopping, topping or damaging a tree may leave it diseased or disfigured for many years.

1185. This section accordingly creates two offences. The first, under subsection (1), is committed where a person unlawfully carries out activities that lead to, or are likely to lead to, the loss of a tree that is protected under this Part. This offence applies to:

a. cutting down or uprooting a protected tree;

b. intentionally or recklessly destroying a protected tree;

c. intentionally or recklessly topping, lopping or damaging a protected tree in a way that is likely to destroy it; and

d. causing or permitting any of those activities.

1186. This offence may be committed where a person carries out such activities to a tree that is subject to a tree preservation order or a woodland preservation order, in breach of tree preservation regulations.

1187. The offence may also be committed where a person carries out such activities to a tree that is not subject to either type of order, but is in a conservation area, in breach of section 247. That section requires that works must not be carried out to such trees unless the planning authority has been given six weeks' notice of the works and has either granted consent for them or has failed to respond before the end of that period.

1188. An offence under subsection (1) is punishable, on summary conviction (in the magistrates' court) or on conviction on indictment (in the Crown Court), by a fine. There is no limit on the amount of the fine that the court may impose.

1189. In sentencing a person who has been convicted of an offence under subsection (1), the court must have regard to any financial benefit that has accrued or appears likely to accrue to the person in consequence of the offence (subsection (3)). This means that where, for example, the felling of a group of protected trees unlocks a valuable development site, that can be taken into account by the court in determining the appropriate fine.

1190. The second offence, under subsection (4), is committed where a person carries out other, less serious, unlawful works to a tree that is protected by a tree preservation order or a woodland preservation order – that is, topping or lopping it, or intentionally or recklessly damaging it without consent under the regulations, where the works are not likely to lead to the loss of the tree. Or it may be committed where such works are carried out in breach of section 247(1) where a tree that is not protected by an order but is in a conservation area.

1191. An offence under subsection (4) is punishable on summary conviction by a fine not exceeding Level 4 on the standard scale (subsection (5)).

Section 251 – Injunction restraining breach of tree preservation provisions

1192. A tree can be felled or damaged relatively quickly. It is therefore important for a planning authority to be able to take preventative action equally quickly.

1193. Subsection (1) empowers a planning authority to apply to the High Court or the county court for an injunction restraining an actual or expected offence under section 250; and the court may grant such an injunction on whatever terms it considers appropriate (subsection (3)).

1194. The rules of court may also allow for an injunction to be granted, where appropriate, against a person whose identity is unknown (subsection (4)). This is to deal with cases such as where works are carried out by contractors who conceal their identity or operate under false names.

1195. If an authority obtains an injunction under this section, that does not prevent it from taking other action under this Part – notably instituting a prosecution under section 250 or serving a tree replacement notice under section 252.

Section 252 – Power of planning authority to issue tree replacement notice

1196. Where trees protected by a tree preservation order or woodland preservation order have been removed or destroyed in accordance with a consent granted under the regulations, that consent may be subject to a condition (under section 241(3)(c) and (4)) requiring one or more new trees to be planted. Where trees subject to a preservation order are removed or destroyed in other circumstances, they may have to be replaced in accordance with section 245 or 246; and where other trees in conservation areas are removed, they may have to be replaced in accordance with section 248. In these circumstances, the main requirement will be to plant a tree of appropriate size and species, as soon as reasonably practicable, at or near the site of the original tree (or in some cases elsewhere, as agreed with the planning authority).

1197. Where such a requirement has not been complied with, a planning authority may issue a "tree replacement notice" under this section. The notice must require a tree or trees of a specified size and species to be planted and specify the date the notice is to take effect and the period within which the tree or trees must be planted (subsections (1), (2) and (7)).

1198. A tree replacement notice may not be issued more than four years after the failure to comply with the planting requirement (subsection (3)).

1199. Where an authority issues a tree replacement notice, it must serve a copy on every owner of the land to which the requirement applies – that is, the land on which the original tree was situated, and (where different) the land on which the replacement is to be planted. Each copy must be served within 28 days after the date the notice was issued; and the date specified in the notice as the date on which it will take effect must be at least 28 days after the last copy is served (subsections (4) and (5)).

1200. Regulations may require each copy of the notice to be accompanied by an explanatory note informing the recipient of the right to appeal against it (subsection (6)).

Section 253 – Variation of tree replacement notice

1201. Where a tree replacement notice has been issued, the planning authority may waive or relax any of its requirements – whether or not it has taken effect. Where it does so after copies of the tree replacement notice have been served, it must give notice of the waiver or relaxation to everyone who was served with a copy.

Section 254 – Right to appeal against tree replacement notice

1202. A person on whom a copy of a tree replacement notice is served may appeal against it to the Welsh Ministers, on one or more of the following grounds:

a. that the requirement to plant replacement trees is not applicable or has already been complied with;

b. that the requirement to plant a replacement under a tree preservation order, a woodland preservation order, or in a conservation area should be dispensed with in relation to one or more of the trees;

c. that the requirement is unreasonable, in relation to the size or species of trees to be planted, or the period within they are to be planted;

d. that the planting required by the notice is not required in the interests of amenity, or would be contrary to the practice of good forestry;

e. that the place proposed for the planting is unsuitable (subsections (1) and (2)).

1203. An appeal must be made by serving a notice on the Welsh Ministers (in practice, by sending it to PEDW) before the date the tree replacement notice is to come into effect – or by sending the appeal notice in the post or by email so that it should reach them before that date (subsection (3)). The appeal notice must indicate the grounds of appeal, and the facts on which it is based, and must be accompanied by other material specified in regulations (subsections (4) and (5)). The current requirements are in regulation 9 of the 2017 Enforcement Regulations, which require an appeal to be accompanied by a full statement of case with any supporting documents.

1204. Where an appeal under this section has been made, the replacement notice has no effect until the appeal has been finally determined – or withdrawn. And no one can claim that the notice was not properly served on the appellant (subsection (6)).

Section 255 – Determination of appeal

1205. On an appeal under section 254, the Welsh Ministers or the inspector determining the appeal on their behalf may correct any defect, error or misdescription in the tree replacement notice, and may vary any of its requirements – for example, by varying the number, size and species of trees to be planted, or the time within which or the location at which they must be planted. Such adjustments may be particularly relevant where an appeal has been made on grounds (c) or (e) of section 254(2). However, they may only be made if the Welsh Ministers are satisfied they would cause no injustice either to the appellant or to the planning authority.

1206. Chapter 2 of Part 14 provides for the determination of such appeals – in particular as to the powers and duties of inspectors, who in practice determine the great majority of them.

1207. Where they allow an appeal, the Welsh Ministers or the inspector may quash the notice and must give directions to give effect to their determination, whether or not their determination is to allow the appeal(subsection (2)).

Section 256 – Order to permit trees to be planted

1208. Where a replacement notice requires trees to be planted on a particular piece of land, one or more of the owners of that land might be prevented from complying with it by someone else who has an interest in the land – where, for example, a freeholder of the land obstructs a leaseholder, or vice versa. In that situation, the owner who wishes to comply with the notice may apply to the magistrates' court, by way of complaint, for an order requiring the other interested party to permit the owner to take the required action.

Section 257 – Power to enter land and plant trees

Section 258 – Recovery of costs of planting trees

1209. After the end of the period specified in a replacement notice for planting trees – or such longer period as may have been allowed by the planning authority – if the notice has not been fully complied with, the authority may at any reasonable time enter the land and carry out any planting still required to ensure compliance (section 257(1)).

1210. It is an offence under section 257(2) to obstruct anyone carrying out such planting on behalf of the authority. A person found guilty of such an offence on summary conviction (in the magistrates' court) is liable to pay a fine of up to Level 3 on the standard scale.

1211. Section 258 enables a planning authority to recover any costs it has reasonably incurred in exercising its powers under section 257. It also incorporates provisions previously in the Public Health Act 1936 applied to the recovery of costs in this situation.

1212. Section 258(1) enables the authority to recover the costs from a current owner of the land – that is, a freeholder or a person who is entitled to receive the rent.

1213. However, if the owner is only entitled to receive the rent as agent for someone else (the "principal"), and have not received enough money by way of rent to enable them to reimburse the authority's costs in full, then their liability is limited (section 258(2)) to the amount of money that they have had on behalf of the principal since the day the authority demanded payment. In that situation, the authority is entitled to recover the balance of its costs from the principal (section 258(3)).

1214. Where a tree replacement notice has been served and

a. the owners of the land have had to take action to ensure that the notice is complied with; or

b. the authority has had to take action in default,

any costs incurred by the owners (including costs paid to the authority under subsection (1)) are treated as having been incurred or paid on behalf of any person responsible for the removal, uprooting or destruction of the original tree or trees (section 258(4)). That enables those costs to be recovered from the person whose actions led to the notice being issued – either by negotiation or court action.

1215. Under section 258(5), if costs are incurred by the authority under section 258, they will be a charge on the land until they have been recovered in full under subsection (1). The charge takes effect as a local land charge at the beginning of the day after the authority completes the steps to which the costs relate (section 258(6)).

1216. In some cases, where a tree replacement notice is served and a planning authority takes action under section 257 in default of compliance, that may result in materials having to be removed from the land. If they are not claimed and taken away within three days, the authority may sell them and pay the proceeds to the owners of materials – after deducting any costs recoverable by the authority.

Section 259 – Powers to enter land without warrant

1217. A planning authority exercising the functions given to it under this Part may sometimes require more information than is available simply by inspecting the land (or trees) in question from the public highway or from other land where there is a general right of access. By virtue of subsection (1), therefore, any person authorised in writing by the authority – that could include either an employee or a consultant – may enter any land:

a. to survey the land in connection with making a tree preservation order or woodland preservation order to protect trees on the land;

b. to assess whether an offence under section 250 has been committed;

c. to determine whether a tree replacement notice should be issued in relation to the land; or

d. in connection with any of its functions under this Part, including determining whether or not to allow an application for consent under tree regulations or whether or not to grant consent in response to a notification of proposed works to trees in a conservation area.

1218. By virtue of subsections (2) and (3), a person authorised in writing by the Welsh Ministers (after they have consulted the relevant planning authority) may enter any land:

a. to survey the land in connection with making, varying or revoking a tree preservation order or woodland preservation order in relation to the land; or

b. in connection with any of their functions under this Part, including determining whether or not to allow an appeal arising from an application for consent under tree regulations or an appeal against a tree replacement notice.

1219. Where tree preservation regulations make provision for the payment of compensation under section 242, an officer of the Valuation Office of HM Revenue & Customs may enter the land to survey it or estimate its value, in connection with a claim for such compensation (subsection (4)).

1220. Those exercising a power to enter land under subsections (1), (2) or (4) may take with them any other persons necessary for their investigation; and they may take samples from any tree or soil (subsection (7)(b) and (c)).

1221. However, the power of entry may only be exercised at any reasonable time, and only if there are reasonable grounds for doing so (subsection (5)).

1222. A person authorised by a planning authority with a power under section 259(1)(a) to (c) to enter land that is occupied or gain access to a building used as a dwelling may not exercise that power without giving at least 24 hours' notice to every occupier of the land or building (subsection (6)(a)). The same applies to a person authorised by the Welsh Ministers with a power conferred by section 259(2)(a).

1223. More generally, a person authorised by a planning authority or by the Welsh Ministers, or an officer of HM Revenue & Customs, proposing to enter any land for any other purpose must give at least 24 hours' notice to every occupier of the land (subsection (6)(b)).

1224. Subsections (7)(a) and (d) provide that those entering any land in reliance on powers under this section, if challenged by the owners or the occupiers of the land or anyone acting their behalf, must produce evidence of their authorisation, and explain why they are there. If they enter land when the owners and occupiers are absent, they must ensure that the land is as secure when they leave as it was when they arrived.

Section 260 – Warrant to enter land

1225. The owners and occupiers of land may be willing to allow those authorised by a planning authority or the Welsh Ministers to enter land under section 259. However, in some cases it may be necessary for the authority or the Welsh Ministers to seek a warrant from the magistrates' court. The Justice of the Peace may issue the warrant where there are reasonable grounds for entering land, and

a. entry to the land has been refused (a request is treated as being refused if no reply to a request to allow entry has been received in a reasonable time); or

b. the surrounding circumstances suggest that a refusal may be reasonably expected.

1226. A warrant will allow entry to the land by a person authorised by the planning authority or the Welsh Ministers (subsection (2)). A warrant authorises entry to land on one occasion only, and only at a reasonable time (subsection (4)). It also allows the taking of samples from any tree or soil and allows the authorised person to be accompanied (subsection (5)(b) and (c).

1227. A warrant may also be issued where action is needed urgently, and it is not known whether entry on to the land will be allowed. In this case, entry to the land may be at any time (subsections (1)(b)(ii) and (4)(b)).

1228. Subsection (5)(a) and (d) provide safeguards to ensure these powers are not misused. The safeguards are the same as those where entry to land is made under section 259. The warrant may only be relied upon to secure entry for up to a month after it is issued (subsection (6)).

Section 261 – Supplementary provisions about powers of entry

1229. To ensure that the power to enter land is effective, subsection (2) provides that it is an offence to intentionally obstruct a person exercising such a power – either under section 259 or under a warrant obtained under section 260. The offence is punishable on summary conviction (in the magistrates' court) by a fine of up to Level 3 on the standard scale (subsection (3)).

1230. However, subsection (4) provide safeguards to ensure that if damage is caused to the land or to items on the land in the course of exercising a right of entry, those suffering the damage may recover compensation from the planning authority or, where relevant, the Welsh Ministers.

PART 10 – ACQUISITION AND APPROPRIATION OF LAND FOR PLANNING PURPOSES ETC.

1231. Many statutes relating to land contain powers enabling public authorities to acquire land for specific purposes (for example, airports, forestry or sewerage). This Part restates Part 9 of the 1990 Act and provides more general powers for certain public bodies to acquire or appropriate land for a variety of purposes. It enables local authorities (including national park authorities and joint planning boards) to acquire, either by agreement or compulsorily, any land required for the proper planning of their area or to appropriate land for various purposes. It also enables the Welsh Ministers to acquire land compulsorily for public services and for the proper planning of the area.

1232. As with most statutes conferring powers to acquire land, this Act does not provide for the mechanics of acquisition that are dealt with largely by the 1965 Act and the Acquisition of Land Act 1981 (c. 67) ('the 1981 Act'). The assessment of compensation for the land acquired is the subject of the 1961 Act.

1233. In this Part of the Act:

a. "land" includes any interest in or right over land (section 408(1));

b. "common" includes:
   i. a common or town or village green (registered under the Commons Registration Act 1965 (c. 64) or the Commons Act 2006 (c. 26)); and
   ii. land subject to be enclosed under the Inclosure Acts (see section 279(2));

c. "allotment" means an allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act (see section 279(2)); and

d. "open space" means:
   i. land laid out as a garden;
   ii. land used for public recreation; and
   iii. disused burial grounds (section 408(1)).

Section 262 – Acquisition of land by agreement for planning purposes

1234. In most cases, public authorities acquire land by agreement, although they hold the ability to exercise compulsory purchase powers if necessary. Subsection (1) enables a relevant local authority (that is, a county council, county borough council, national park authority or joint planning board: see subsection (8)) to acquire any land by agreement, provided certain conditions are met.

1235. Under subsections (2) and (3), an authority may only acquire land (primary land) if it considers that:

a. to do so would facilitate development or improvement – either on or in relation to the primary land, and carried out either by the authority itself or by someone else – that is likely to contribute to improving the economic, social, environmental or cultural well-being of its area; or

b. the land is required for a purpose (whether achieved by the authority itself or by someone else) that is necessary for the proper planning of its area.

1236. Under subsection (4)(a), the authority may also acquire by agreement other adjoining land that is required to facilitate the development of that primary land – again, either by the authority itself or by someone else. This would enable, for example, the acquisition a strip of a property adjacent to the primary land, needed to enable the construction of a party wall or an access road.

1237. Subsection (4)(b) applies where the primary land is a common, open space or allotment. In such a case, the authority may acquire other land that may be used in exchange for the primary land. And under subsection (6), where an authority is appropriating for some other purpose (under section 264) land that is a common or an allotment, it may acquire land to be given in exchange for the land being appropriated.

1238. Subsection (7) applies (so far as relevant) Part 1 of the 1965 Act (except sections 4 to 8, 10 and 31) to the acquisition of land under this section. That provides for the details of the acquisition process. It enables land to be acquired from – amongst others – freehold owners (including corporations), life tenants, and charitable trusts; and it deals with the acquisition of land subject to a mortgage or a rentcharge. It provides a procedure to enable the authority to enter onto the land it has acquired. It also enables land to be transferred where an owner fails to co-operate following the payment of the agreed price.

Section 263 – Compulsory acquisition of land for planning purposes

1239. A relevant local authority (as defined in section 262(8)) may acquire any land in its area using compulsory powers under this section if it has the power to acquire the land by agreement under section 262. However, the compulsory purchase order (CPO) to achieve such an acquisition will need to be authorised by the Welsh Ministers; and that will only be possible if they are satisfied that there is a compelling case in the public interest for the use of compulsory powers (subsections (1)(b) and (2)).

1240. An authority may acquire compulsorily an interest in Crown land but only if the interest is held by someone other than the Crown, and only if the appropriate Crown authority gives its consent (subsection (3)). For the definitions of "Crown land" and "appropriate Crown authority" see section 401.

1241. Under section 13 of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57), a local authority that can be authorised to acquire land under this section can also be authorised to acquire new rights over the land (that is, rights coming into existence after the date of the relevant CPO). Subsection (4) applies the same principle to cases where land is acquired under this section by a joint planning board. Subsection (5) draws attention to paragraph 1(2) of Schedule 8 to the 1995 Act, which applies the same principle to the acquisition of land by a national park authority.

1242. Where a CPO is made by an authority under this section, it must be submitted for approval by the Welsh Ministers. After consulting all the relevant authorities for the area containing the land being acquired, the Welsh Ministers may substitute another authority to acquire the land (subsections (6) and (7)). For example, where a draft CPO is made by a national park authority, they may substitute a county council as the acquiring authority, provided they have consulted both the park authority and the county council.

1243. Subsection (8) applies the 1981 Act to the acquisition of land under this section. That Act provides that the acquisition will be authorised by the making of a CPO that must be publicised by the authority and confirmed by the Welsh Ministers, if necessary following an inquiry. Where the CPO relates to land that is an open space, allotment or common, or is owned by the National Trust, the approval may have to be by special Senedd procedure set out in Senedd standing orders or special parliamentary procedure. A CPO may be challenged in the High Court. Compensation for acquisition will be assessed in accordance with the 1961 Act (including in appropriate cases section 14A of that Act, which disapplies certain planning permissions).

1244. Where a CPO is submitted to the Welsh Ministers for their approval under Part 2 of the 1981 Act, there will be an opportunity for objections to be made to it; but under subsection (9) they may disregard an objection where it is in effect an objection to the development plan that relates specifically to the development of the land being acquired.

1245. Following the approval of a CPO by the Welsh Ministers, the acquisition will be carried out under the 1965 Act.

Section 264 – Appropriation of land forming part of common or allotment for another purpose

1246. Where a local authority (as defined in section 408(1)) holds land that is or forms part of a common or an allotment (as defined in section 279(2)), the authority may make an order, if confirmed by the Welsh Ministers, appropriating that land for any other purpose for which the authority may acquire land (either under this Act or any other Act). For example, an authority could resolve to appropriate part of a registered common for the purpose of building housing – or to lay out a road to enable access to housing to be built on a neighbouring plot.

1247. By virtue of subsection (3), an order relating to any land that is a common, allotment or open space may have to be subject to special Senedd procedure under section 19 of the 1981 Act in certain circumstances.

1248. Subsection (4) applies where land was originally acquired by the authority under an enactment incorporating the Land Clauses Acts (that is, the Land Clauses Consolidation Act 1845 (c. 18) and the Land Clauses Consolidation Acts Amendment Act 1860 (c. 106), and any Acts amending those Acts (subsection (7)). Once such land has been appropriated under this section, and works have been carried out on it, they are treated as having been authorised by the Act that authorised the acquisition. This may enable a claim for compensation for injurious affection to be made and settled, under section 68 of the Land Clauses Consolidation Act 1845 or section 10 of the 1965 Act.

1249. Where land is appropriated by a local authority under this section, this may need to be reflected by the making of an adjustment to the authority's accounts.

1250. Subsection (5)(a) applies where:

a. the appropriation is by an authority to which Part 2 of the Town and Country Planning Act 1959 (c. 53) ('the 1959 Act') does not apply; and

b. the land was held immediately before the appropriation for the exercise of a grant-aided function or will be used for such a function in the future.

In such a case, the adjustment will be as directed by the Welsh Ministers (subsections (5)(a) and (6)).

1251. In any other case, the adjustment will be made as appropriate in all the circumstances, as required by 1959 Act, section 24(1) (subsection (5)(b)).

Section 265 – Land to which sections 266 to 268 apply

1252. Where an authority has acquired or appropriated land to be used for planning purposes, and still holds it for those purposes, it may then:

a. appropriate the land for some other, more specific purpose authorised by legislation (under section 266);

b. dispose of it to a third party to ensure that it is best used for the proper planning of the authority's area (under section 267); or

c. develop or use the land itself (under section 268).

1253. Subsection (2) provides that those provisions have effect in place of section 122 of the 1972 Act, which would otherwise govern the appropriation of land by a local authority, and section 123 of that Act, which would otherwise govern the disposal of land by an authority.

Section 266 – Appropriation of land held for planning purposes

1254. Under this section, where an authority has acquired or appropriated land to be used for planning purposes, and still holds it for those purposes, it may then appropriate the land for any other, more specific purpose, for which it would be entitled to acquire land under any legislation – for example, for the construction of housing or the laying out of open space (subsection (1)).

1255. However, the authority may not appropriate land under this section for any purpose for which it could acquire land under this Part. Similarly, the authority may not appropriate under this section a listed building or associated land to ensure its preservation, control or management, or to facilitate access to it. That has to be achieved by acquiring the building and associated land either by agreement, under section 136 of the 2023 Act, or compulsorily under section 137 of that Act following the service of a repairs notice under section 138 of that Act.

1256. Where the land in question is or forms, or at some time has been or formed, part of a common and the authority is managing it in accordance with a local Act, the authority may not appropriate it without the consent of the Welsh Ministers. The Welsh Ministers may grant such consent either in relation to a specific case or in relation to any appropriation in a specific category, and with or without conditions (subsections (2) and (3)).

1257. Where the land to be appropriated is part of any open space, the authority must first publicise the proposal in a newspaper circulating in the locality and must consider any objections that arise (subsection (4)).

1258. Subsection (5) applies section 264(4) to land appropriated under this section (treating as authorised works carried out on the land after appropriation). Where land is appropriated under this section, this may need to be reflected by the making of an adjustment to the authority's accounts, just as with an appropriation under section 264 – see section 264(5) and (6)applied by subsection (5).

Section 267 – Disposal of land held for planning purposes

1259. The second option available where a local authority has acquired or appropriated land to be used for planning purposes, and still holds it for those purposes, is for it to dispose of the land under this section to a third party (such as a developer), to secure:

a. the best use of that land or other land (and associated buildings or works); or

b. the erection on such land of buildings and works needed for the proper planning of the area.

1260. The disposal of land for this purpose includes disposing of it by way of sale or exchange, or granting a lease of it, or creating a right over it such as an easement. But it does not include disposing of it by appropriation, gift or mortgage (see definition of "disposal" in section 408(1)). This enables, for example, an authority to assemble land for a town centre regeneration scheme using its powers under this Act and then pass it to a developer to carry out the necessary works.

1261. The authority may not dispose of land without the consent of the Welsh Ministers where:

a. the land is or forms, or at some time has been or has formed part of a common and the authority is managing it in accordance with a local Act (subsections (2) and (3)); or

b. the disposal is to be at a price less than full market value, except where the disposal is the grant of a lease for a term of seven years or less, or the assignment of a lease with less than seven years to run (subsections (2) and (4)).

1262. Where the land to be disposed of is part of any open space, the authority must first publicise the proposal in a local newspaper circulating in the locality and must consider any objections that arise (subsection (5)).

1263. Subsection (6) applies where land was acquired or appropriated:

a. in order to facilitate development or improvement – either on or in relation to the land itself (the primary land) or on adjoining land – that is likely to contribute to improving the economic, social, environmental or cultural well-being of its area; or

b. to be given in exchange for the primary land.

1264. In disposing of such land under this section, the authority must, so far as practicable, make provision for those who were living or carrying on a business on such land, who wish to remain there and who are willing to comply with the authority's proposals as to the future of the land. Such persons must be provided with an opportunity to secure accommodation on the land that is suitable for their reasonable requirements, while having regard to the price for which their land was acquired from them.

Section 268 – Development and use of land held for planning purposes

1265. The third option available where an authority has acquired or appropriated land to be used for planning purposes, is for it to develop or use the land itself. Under this section, it may repair, maintain and insure the buildings or works on the land and may erect new ones or carry out other works on the land – subject to complying with any other legal requirements (subsections (1) and (2)(b)).

1266. A local authority cannot rely on the powers in this section if powers under other legislation could be relied upon. This ensures that conditions imposed on the exercise of those other powers are not overridden (subsection (2)(a)). However, an authority may use this section to enable it to provide off-street parking, to develop land in assisted areas, and to deal with listed buildings – that could also be done under other legislation – or to carry out works authorised under this Part of the Act (subsection (3)).

Section 269 – Power of local authority to obtain possession of dwellings let under certain tenancies

1267. Where an authority has acquired or appropriated for planning purposes a dwelling that is subject to a tenancy under the Rent Act 1977 (c. 42) or Part 1 the Housing Act 1988 (c. 50), the restrictions normally applying under those Acts might prevent it from obtaining possession. However, if the Welsh Ministers certify that possession of the dwelling is needed immediately, in order for the authority to carry out the proposals for which it was acquired, this section enables such restrictions to be set aside.

Section 270 – Power of the Welsh Ministers to establish joint body to hold land acquired for planning purposes

1268. Where land has been acquired for planning purposes by a relevant local authority (as defined in section 262), whether by agreement or under compulsory powers, regulations may provide for it to be transferred to a joint body consisting of that authority and any other local authority (subsection (1)).

1269. Such regulations may be made by the Welsh Ministers, but only after all the authorities concerned have been consulted (subsection (2)). The regulations may provide for the joint body to be a body corporate, and may make other provisions as to its constitution and functions. They may also provide for the body to have the powers that the relevant local authority would have under this Part or under the 2023 Act – including as to the use and disposal of land (subsection (3)).

Section 271 – Compulsory acquisition of land by the Welsh Ministers

1270. The Welsh Ministers may acquire any land in Wales using compulsory powers under subsection (1)(a), if the land is required for the public service. This includes the service of the government of the UK, the service of another State, or the service of an international organisation, office or agency (such as the World Health Organisation). They may also acquire land under subsection (1)(b) if it is to be used for the public service and for the proper planning of the area or to optimise its development or use.

1271. Where the Welsh Ministers have acquired land under subsection (1), referred to as "the primary land", they may also acquire other land that is required:

a. for the proper planning of the area concerned; or

b. to ensure the best or most economic use and development of that primary land (subsection (3)(a) and (b)).

By virtue of the Consequential Provisions Act, this also applies where they still hold land that was acquired under equivalent powers in earlier planning legislation.

1272. Under subsection (3)(c), where the primary land forms part of a common, open space or allotment they may acquire other land that may be used for that purpose, in exchange for the primary land.

1273. The Welsh Ministers may acquire compulsorily an interest in Crown land, under subsection (2), but only if the interest is held by someone other than the Crown, and only if the appropriate Crown authority gives its consent. For the definition of "Crown land" and "appropriate Crown authority" see section 401.

1274. Under subsection (4) they may acquire new rights over the land being acquired (that is, rights coming into existence after the date of the relevant CPO).

1275. Subsection (5) applies the 1981 Act to the acquisition of land under this section, as with the acquisition of land by a local authority under section 263. Where the Welsh Ministers prepare a draft CPO under this section, under Schedule 1 to the 1981 Act, there will be an opportunity for objections to be made; but under subsection (6) they may disregard an objection where it amounts to an objection to the development plan that relates specifically to the development of the land being acquired.

1276. The 1965 Act will also apply to the acquisition of land under this section – and subsection (7) provides that references to the execution of the works in that Act (for example, in sections 5 and 6 of the 1965 Act) include the erection of buildings on the land, or the construction or carrying out of works on it, on behalf of the Welsh Ministers for the purposes for which the land is being acquired.

Section 272 – Disposal of land acquired under section 271

1277. Under subsection (1) the Welsh Ministers may dispose of any land that they have acquired under section 271. As a result of the Consequential Provisions Act that includes any land they acquired under earlier planning legislation and still hold. The land may be disposed of to any person they see fit and may be either to secure that it is used for the purposes for which it was acquired or otherwise (subsections (2) and (3)).

Section 273 – Ending of rights relating to land acquired compulsorily under this Part

1278. Following the compulsory acquisition of land by a local authority under section 263 or by the Welsh Ministers under section 271, the general rule is that all private rights of way over the land are automatically extinguished, by virtue of subsection (1)(a). For example, if an authority acquires the freehold over a piece of land, any private rights of way across that land cease to have effect. But this does not apply if the acquiring authority agrees with the person in whom the right is vested that the right should remain in place, or should be varied (subsection (3)).

1279. Subsection (1) should be read alongside the provisions in Chapter 2 of Part 11, as to the ending of public rights of way over land acquired or appropriated under this Part.

1280. Similarly, under subsections (1)(b) and (c), the compulsory acquisition of land under section 263 or 271 will generally override any rights to install, keep or maintain apparatus on the land; and the acquiring authority becomes entitled to any apparatus on the land. This too is subject to any agreement between the acquiring authority and the person in whom the right is vested.

1281. However, the general provisions of subsections (1) do not apply to any rights of statutory undertakers or network operators over the land being acquired for the purpose of carrying out their undertaking, nor to any of their apparatus on the land (subsection (2)(a) and (b)). They will be dealt with in accordance with sections 314 and 315, in Part 12. The acquiring authority (either the local authority or the Welsh Ministers) may also direct that the provisions of subsection (1) do not apply to such other rights and apparatus as may be specified (subsection (2)(c)).

1282. Where any person suffers loss as a result of a right being extinguished under the section, or apparatus being transferred, the acquiring authority must pay compensation – to be determined (if not agreed) by the Upper Tribunal under the 1961 Act (subsections (4) and (5), and section 392).

Section 274 – Meaning of "relevant acquisition" and "relevant appropriation"

1283. Sections 275 to 277 apply where land in certain categories – commons, open spaces and allotments (as defined in sections 279(2) and 408(1)); burial grounds; and land associated with buildings used for public worship – is the subject of a relevant acquisition or a relevant appropriation. This section explains what is meant by those two terms. It also applies with modifications to section 314 (rights of statutory undertakers and network operators over land that has been the subject of relevant acquisition and a relevant appropriation - see section 314(7)).

1284. By virtue of subsection (1), a relevant acquisition is where:

a. land is acquired by the Welsh Ministers or a local authority:
    i. under this Part or Part 11 of the Act;
    ii. under Chapter 5 of Part 3 of the 2023 Act; or
    iii. compulsorily under any other enactment and is land in Wales;

b. land in Wales is acquired compulsorily under any enactment – other than Part 9 or 10 of the 1990 Act or Chapter 5 of Part 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 – by an English local authority (for which, see subsection (5)) or a government department (other than the Welsh Ministers); or

c. land in Wales is acquired compulsorily under any enactment by a statutory undertaker.

1285. By virtue of subsection (2), a relevant appropriation is where the land in question is appropriated by a local authority for planning purposes.

1286. Subsection (3) notes that sections 275 to 277 are applied by the other enactments listed in the subsection, where land in some of the categories is the subject of certain other types of acquisition, or is held for the purposes of the NHS.

Section 275 – Development and use of commons, open spaces and allotments
Section 276 – Development and use of burial grounds

1287. Section 275 applies where there has been a relevant acquisition or a relevant appropriation of land that is a common, open space, or allotment (defined in sections 279(2) and 408(1)), or forms part of such land. Section 276 applies where there has been a relevant acquisition or a relevant appropriation of land that is or forms part of a burial ground.

1288. The general rule (in sections 275(1) and 276(1)), is that, where such land has been acquired by the government, it may then be used for the purpose for which the land was acquired. Where it was acquired by any other authority, it may be used in any way, provided that such a use does not constitute a breach of planning control under Part 4 (sections 275(3)(a) and 276(4)(a)).

1289. By virtue of sections 275(2) and 276(2), this applies despite statutory restrictions that would otherwise apply to limit the use or development of that category of land. It overrides, for example, the restrictions against the use of village greens under section 12 of the Inclosure Act 1857 (c. 31) or section 29 of the Commons Act 1876 (c. 56). It also overrides obligations or restrictions that would otherwise apply (either under ecclesiastical law or otherwise) in relation to burial grounds, and specific restrictions relating just to the land in question.

1290. However, this does not authorise any use or development of the land that would be in breach of the law for any other reason – such as an activity that would constitute a nuisance at common law. Nor does it authorise any corporate body to act in a way that would constitute a breach of is constitution (sections 275(3) and 276(4)).

1291. Where the land in question is a burial ground, its reuse in accordance with section 276(1) may only be carried out once the requirements of regulations as to the removal and reinterment of human remains and the disposal of monuments have been complied with, to ensure that such matters are dealt with appropriately and sensitively (section 276(3)). Such regulations are the subject of section 278.

Section 277 – Development and use of land connected to religious worship other than burial grounds

1292. This section applies where there has been a relevant acquisition or a relevant appropriation of other land connected to religious worship – that is:

a. land that has been consecrated for religious worship, in accordance with the rites of the Church in Wales or the Church of England; or

b. other land containing a building used (or previously used) for religious worship, by any denomination or religion, or the site of such a church or building.

However, it does not apply to a burial ground (but see section 276).

1293. Under subsection (1) where such land has been acquired by the government it may then be used for the purpose for which the land was acquired. Where it was acquired by any other authority, it may be used in any way. But, in either case, it does not authorise any use or development of land that would constitute a breach of planning control under Part 4 or constitute a breach of the law for any other reason. Nor does it authorise any corporate body to act in a way that would constitute a breach of its constitution (subsection (6)).

1294. By virtue of subsection (3), the development and use of the land under subsection (1) can be undertaken despite any obligations or restrictions that would otherwise apply (either under ecclesiastical law or otherwise) in relation to disused burial grounds, and specific restrictions relating just to the land in question.

1295. However, the development or use of such land must comply with regulations under subsection (4) as to the removal and reinterment of human remains, on the disposal of monuments, fixtures and furnishings, to ensure that those matters are dealt with appropriately and sensitively. Such regulations may also prohibit or restrict the future use or development of the land for as long as there remains on it a church or other building used (or previously used) for religious worship, or any part of such a building, and they may in particular enable consent to be obtained for such use or development (subsection (5)).

Section 278 – Further provision about regulations under sections 276 and 277

1296. Regulations under section 277(4)(a) may make provision as to the removal and reinterment of human remains and the disposal of monuments, fixtures and fittings from land (other than disused burial grounds) connected to religious worship. Regulations under section 277(4)(b) may also prohibit or restrict the development and use of land on which there is a place of worship.

1297. Such regulations are the subject of subsections (1) and (2) of this section. These include a requirement to provide similar controls over the future use and development of the land as would be imposed under other legislation in the absence of the acquisition or appropriation.

1298. They may also provide for the closing of registers, as these are likely to contain valuable historical information.

1299. Regulations under section 276(3) and 277(4)(a) may make provision as to the removal and reinterment of human remains and the disposal of monuments from disused burial grounds and other land connected to religious worship. These are the subject of subsections (4) to (6) of this section. Such regulations must require that any proposal to take such action is publicised by the person entitled to the land. The regulations must enable the personal representatives or relatives of the deceased to take the action themselves, at the expense of the person entitled to the land. They must also require those taking the action to comply with any conditions imposed by the bishop, in the case of consecrated land, or by the Welsh Ministers.

1300. Provided that the removal and reinterment of human remains and the disposal of monuments is carried out in accordance with the regulations under this section, there is no need to obtain either:

a. in the case of consecrated land, a faculty from the diocese (unless the regulations provide otherwise) (subsection (7)); or

b. in any other case, a licence from the Ministry of Justice under the Burial Act 1857 (c. 81) (subsection (8)).

1301. The current regulations made under the powers restated in this provision are the Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950 (S.I. 1950/792).

PART 11 – HIGHWAYS

1302. This Part provides for orders to be made:

a. by the Welsh Ministers or planning authorities, to stop up (close) or divert highways to enable development that has been approved to take place;

b. by the Welsh Ministers, to enable highways (other than trunk roads and principal roads) to be pedestrianised;

c. by the Welsh Ministers and local authorities, to close or divert highways where they run over land that has been acquired or appropriated for planning purposes; and

d. in each case, to create or improve existing highways where required as a result of the closure, diversion or pedestrianisation.

1303. "Highway", in this context, is a technical term meaning not just a road or street but also any area of land over which members of the public at large have an absolute right to pass or repass without being hindered, to get from one point to another. It includes the whole or part of a highway other than a ferry or a waterway; it includes any bridge over which, and any tunnel through which, it passes (see section 328 of the 1980 Act, applied by section 408 of this Act).

1304. The powers of planning authorities and other local authorities to make orders under this Part are only exercisable in relation to highways that are public paths (see sections 293 and 300). A "public path" for this purpose is a footway, a bridleway or a restricted byway. A "footpath" is a highway (including a towpath along a river or canal) over which members of the public have a right of way on foot, but no other rights of way; a "bridleway" is one over which they have a right of way on foot or on horseback (or leading a horse) (section 329 of the 1980 Act). A "restricted byway" is a highway over which they also have a right of way on a bicycle or in any vehicle other than a mechanically propelled one (see section 48 of the Countryside and Rights of Way Act 2000 (c. 37), applied by section 302 of this Act).

1305. The procedure for making and revoking such orders is described in Schedule 17. Part 1 of the Schedule deals with orders made by the Welsh Ministers. Part 2 deals with orders made by planning authorities or other local authorities that generally require the approval of the Welsh Ministers unless they are unopposed.

Chapter 1 – Highways affected by development

Section 280 – Stopping up or diversion of highway to enable development

1306. Where planning permission has been granted for the development of a site, the Welsh Ministers may make an order under section 280 closing or diverting it where that is necessary to enable the development to take place. This power may also be used to enable the closing or diversion of a highway that has been temporarily closed or diverted under any other enactment.

1307. Part 1 of Schedule 17 sets out the procedure for making an order under this section.

Section 281 – Stopping up or diversion of highway crossing or entering route of new highway

1308. Where the development for which permission has been granted is itself the construction or improvement of a highway (referred to in this section as "the main highway") and another highway already in existence crosses or enters the route of the main highway or will otherwise be affected by its construction or improvement, the Welsh Ministers may make an order under this section closing or diverting that existing highway to ensure the safety of those using the main highway or to facilitate the free flow of traffic on that highway. This power may also be used to enable the closing or diversion of a highway that has been temporarily closed or diverted under any other enactment.

1309. The procedure for making an order under this section is set out in Part 1 of Schedule 17.

Section 282 – Procedure before grant of planning permission

1310. In certain circumstances, where planning permission has been sought – as explained in subsections (4) and (5) – it is not necessary to wait until permission has been granted to start proceedings to close or divert a highway. In such a case, where it would be possible for the Welsh Ministers to make an order under section 280 or 281 once permission has been granted, subsection (2) enables them to publish a notice under Part 1 of Schedule 17 stating that they propose to make such an order. Neither this section nor Part 1 of the Schedule allow the Welsh Ministers to make the order until planning permission is granted for the development (subsection (3)).

1311. Under subsection (4), this procedure can be used where:

a. an application for planning permission for the relevant development has been made by a government department, local authority, statutory undertaker (see Part 11) or a strategic highways company;

b. an application for permission has been made to a planning authority, and has been called-in by the Welsh Ministers for their decision under section 72;

c. an application has been the subject of an appeal to them under section 73; or

d. an application for permission has been made direct to the Welsh Ministers under section 78 or 80.

1312. Under subsection (5), this procedure also applies where:

a. the development is to be carried out by a local authority (as defined in section 408) or by a statutory undertaker;

b. by virtue of an enactment the development is required to be authorised by a government department; and

c. that authorisation has been applied for, along with a direction under section 87 granting planning permission.

Section 283 – Further provision about orders under sections 280 and 281

1313. An order closing or diverting a highway under section 280 or 281 may also provide for the creation or improvement of another highway (subsection (1)).

1314. Where the order is under section 280 – following the grant of permission for development other than a highway – it may provide for the highway that is being created or improved to be maintainable at public expense. It may also specify which authority is to be the highway authority in relation to it and it may provide for the highway to become a trunk road (subsections (2) and (4)). An order under section 281 – following the grant of permission for a new or improved main highway – may make similar provision either for the main highway itself or any other highway that is to be created or improved under the order (subsections (3) and (4)).

1315. Under subsection (5), an order under either section 280 or 281 may also contain any incidental provisions that may be necessary. It may provide for the costs of complying with it to be borne wholly or partly by the Welsh Ministers or by the Secretary of State, or by any other person. It may also preserve the rights of statutory undertakers in relation to their apparatus on or under the relevant highways (such as pipes and cables).

1316. Subsection (6) provides that the powers of the Welsh Ministers under sections 280 and 281 are in addition to their powers under any other enactment to close or divert highways, their powers under section 297 to extinguish rights of way, and their powers under Part 6 of the 1981 Act to extinguish non-vehicular rights of way.

Section 284 – Orders under section 281: stopping up of private means of access
Section 285 – Compensation where private means of access is stopped up

1317. Where permission is granted for the construction or improvement of a highway ("the main highway"), and an order is made under section 281 to close or divert another highway, that order may stop up any access to land that either adjoins or is adjacent to the main highway itself or forms the site of the highway works (for example, for site huts or the storage of materials) (section 284(1)(a) and (b)).

1318. An order may authorise an access to be stopped up where the Welsh Ministers are satisfied that either another reasonably convenient access is available, or a new access to the land will be provided, or no access to the land is reasonably required (subsection (2)). In deciding what is convenient, they are to consider the need (if any) for access to different parts of the land, and how that can be achieved via existing roads and paths (subsection (3)).

1319. Where a highway authority is authorised by an order to stop up an access, it may do so in any way that it considers appropriate. Once that has occurred, anyone who uses that access, unless exercising a public right of way, commits an offence – punishable by a fine of up to Level 3 on the standard scale on summary conviction (in the magistrates' court) (section 284(4) to (6)).

1320. Where stopping up an access by an order under section 284 reduces the value of a person's interest in the land, or causes harm to a person's enjoyment of the land, the person is entitled to be compensated by the highway authority under section 285. A claim for such compensation must be made within 12 months of the order coming into force, and the amount of compensation payable will be determined in the light of any new access to the land that has been provided.

Section 286 – Pedestrianisation of highway to improve amenity
Section 287 – Revocation of order for pedestrianisation of highway

1321. These sections apply where a planning authority adopts a proposal to improve the amenity of part of its area and the proposal involves the ending of rights of vehicular access over a highway. This might occur where, for example, the authority is proposing to pedestrianise a shopping area. But they cannot be used where the highway is a trunk road or a principal road (that is, in practice, an A road).

1322. After it has consulted the highway authority (if it is not itself the highway authority), the planning authority may apply to the Welsh Ministers under subsection (2) for an order under section 286 extinguishing all rights to use vehicles over the highway in question.

1323. Such an order may (under subsections (4) to (6)) contain a provision allowing the use of the highway by certain vehicles or in certain circumstances – for example, to enable access by emergency vehicles or refuse collection vehicles, or for deliveries and local residents. An order that contains such a provision may only be made after the Welsh Ministers have consulted the planning authority and (where different) the highway authority for the highway (section 286(4) to (6)). Where vehicular use of a highway is allowed under such a provision, that overrides any prohibition or restriction under any other legislation (section 286(7)).

1324. Section 286(8) draws attention to Part 7A of the 1980 Act, which enables authorities and others to carry out works on a highway that has been closed to vehicles by a pedestrian planning order, and to place objects or structures on it to give effect to the order – to enhance the amenity of the highway and its immediate surroundings, and to provide recreation and refreshment facilities and services for the public.

1325. The planning authority, after consulting the highway authority where appropriate, may apply to the Welsh Ministers for a further order, under section 287, revoking an order under section 286. The effect of such a revocation order is to reinstate all the rights that were extinguished by the original order. And any obstructions that were introduced under Part 7A of the 1980 Act (such as bollards or flower beds) may have to be removed.

Section 288 – Further provision about orders under sections 286 and 287
Section 289 – Compensation where highway is pedestrianised

1326. Under section 288(1) an order under section 286 or a revocation order under section 287 may provide for the creation or improvement of another highway. This would enable, for example, the side streets of a town centre to be adjusted to accommodate traffic displaced from the pedestrianised main street. Where the order makes such provision, it may also:

a. provide for that highway to be maintainable at the public expense;

b. specify which authority is to be the highway authority in relation to the highway being created or altered; and

c. it may provide for the highway to become a trunk road (section 288(2)).

1327. Under section 288(3), an order under either section 286 or 287 may also contain any incidental provisions that may be necessary. In particular, it may provide for the costs of complying with it to be borne wholly or partly by the Welsh Ministers or by the Secretary of State or by any other person. It may also preserve the rights of statutory undertakers in relation to their apparatus on or under the relevant highways.

1328. The procedure for making an order under section 286 or a revocation order under section 287 is set out in Part 1 of Schedule 17.

1329. Section 288(5) provides that the powers of the Welsh Ministers under sections 286 and 287 are in addition to their powers under any other enactment to close or divert highways, their powers under section 297 to extinguish rights of way, and their powers under Part 6 of the 1981 Act to extinguish non-vehicular rights of way.

1330. Where the making of an order under section 286 reduces the value of a person's interest in land that has access to that highway or causes other loss or damage to such a person, that person is entitled to be compensated by the planning authority under section 289. A claim for such compensation must be made within 12 months of the order coming into force.

Section 290 – Compulsory acquisition of land in connection with order

1331. Where the Welsh Ministers make an order under section 280, 281, 286 or 287 and land is required to create or improve a highway or for any other purpose connected to the order, they may acquire land compulsorily or they may authorise a local highway authority or strategic highways company to acquire the land compulsorily (subsections (1) and (2)).

1332. By virtue of subsection (3), the normal acquisition procedure under the 1981 Act applies to an acquisition under this section. Regulations under subsection (4) may enable such an acquisition to be considered in the same proceedings as the order itself; current provision made under the power restated in subsection (4) is set out in regulation 15 of the Town and Country Planning General Regulations 1992 (S.I. 1992/1492) ('the 1992 General Regulations').

Section 291 – Ending of rights of statutory undertakers and network operators

1333. Where a highway is closed or diverted by an order under section 280 or 281 (a "highway order"), subsection (1) provides that the provisions of sections 314 and 315 and Part 1 of Schedule 18 apply with modifications in relation to the highway that is closed or diverted. Those provisions relate to the rights of statutory undertakers being ended by a removal notice where land is acquired or appropriated under Part 10.

1334. As a result, where a statutory undertaker is entitled to a right of way over the land over which the highway subsists, or a right to install, keep or maintain its apparatus on such land, or where there is on the land apparatus (such as pipes or cables) belonging to the undertaker, the person entitled to possession of the land may serve on the undertaker a removal notice. A "removal notice" is a notice stating that some or all of those rights will be extinguished at the end of a specified period, or requiring the apparatus to be removed before the end of the specified period (section 314(1), (3) and (4), applied by section 291(1)). The period specified in the notice must be at least 28 days (section 314(5) and (6)).

1335. Similarly, the person entitled to possession of the land may serve a removal notice on the network operator where the operator has a right of way over such land, or a right to install, keep or maintain apparatus on it, or where there is on the land apparatus installed for the purpose of the network (section 314(2) to (4)).

1336. A removal notice may only be served if it is necessary for the right to be extinguished or the apparatus to be removed for the purpose of complying with the highway order.

1337. Where a removal notice is served under section 314, as applied by this section, a counter-notice may be served under section 315. The effect of a counter-notice, and the consequences of no counter-notice being served, are set out in section 315 and Part 1 of Schedule 18 that apply equally in the context of highway orders.

1338. By virtue of subsection (2), this section does not apply where the closing or diversion of a highway is required to enable the carrying out of opencast mining, for which permission has been given under section 51 of the Opencast Coal Act 1958 (c. 69).

Section 292 – Electronic communications apparatus affected by order

1339. Subsections (1) to (3) deal with the situation where a highway is closed or diverted by a highway order under section 280 or 281, or where the right to use vehicles on a highway is extinguished by an order under section 286, and there is (immediately before the time the order comes into force) electronic communications apparatus on or in the highway.

1340. In that scenario, the network operator continues to have the same powers in relation to the apparatus as if the order had not come into force; but anyone with an interest in the relevant land is entitled to require it to be altered, moved, or removed.

1341. Under subsections (4) to (6), where an order under section 280, 281, 286 or 287 provides for the improvement of a highway, and there is in place electronic communications apparatus on or in the highway, the highway authority (if it is not the Welsh Ministers or the Secretary of State) is entitled to require the apparatus to be altered, moved, replaced or removed. However, that does not entitle the authority to require the apparatus to be altered etc. for major works (as defined in sections 86(3), 88(2) and 91(2) of the New Roads and Street Works Act 1991 (c. 22)).

1342. Where apparatus has to be removed under subsection (3) or (5), subsection (8) applies Part 6 of the Electronic Communications Code (in Schedule 3A to the Communications Act 2003). Paragraphs 40 to 44 of that Code enable a person authorised to require the removal of apparatus to enforce such a requirement, if necessary through the courts.

Section 293 – Stopping up or diversion of public path to enable development

1343. A planning authority may make an order authorising the closure or diversion of a public path (that is, a footpath, a bridleway or a restricted byway):

a. where planning permission has been granted for development that can only be carried out once the public path has been closed or diverted (under subsection (1));

b. where planning permission has been sought for development and if granted it would be necessary to authorise the stopping up or diversion to enable the development (under subsection (2)).

1344. An order under this section may authorise the stopping up or diversion of a public path that is temporarily stopped up or diverted under any other enactment (subsection (3)).

1345. Under subsection (4), an order under this section may also authorise or require works to be carried out in relation to the public path that is to be closed or diverted and may provide for the creation of a new highway, or the improvement of an existing one, as a replacement for it. It may preserve the rights of a statutory undertaker in relation to its apparatus on the public path. In addition, it may require any person to pay or contribute towards the costs of carrying out the works for which the order provides.

Section 294 – Confirmation of order made by planning authority

1346. The procedure for confirming an order under section 293, closing or diverting a public path, is set out in Part 2 of Schedule 17. This requires the order to be publicised and provides an opportunity for objections to be made.

1347. Where no representations are made within the relevant period, the authority may then simply confirm it (subsection (1)(b)). In any other case, the Welsh Ministers may confirm it once they have considered any representations that have been made – but they must not do so unless they are satisfied that planning permission has been granted for the development in question (not merely sought) and that the public path does indeed need to be closed or diverted to enable that permission to be implemented (subsections (1)(a), (2) and (3)).

1348. The order will specify the date the public path will be closed or diverted, which must not be before the date on which the order has been confirmed (subsection (4)).

Section 295 – Electronic communications apparatus affected by order

1349. Where a planning authority makes an order under section 293 closing or diverting a public path, and there is at the time the order is publicised apparatus (cables etc.) on the land for the purposes of an electronic communications code network, the authority must notify the notify the network operator as soon as practicable.

1350. Under subsection (3), the network operator may continue to exercise its power to remove the apparatus at any time up to the end of the removal period – that is, the period of three months starting with the day after the public path is authorised to be closed or diverted (subsection (9)).

1351. Subsection (4) provides that if the operator gives notice to the planning authority before the end of the removal period that it intends to remove the apparatus, it can exercise that right after the end of the removal period.

1352. Alternatively, it may notify the authority that it intends to abandon all or some of its apparatus. It will be treated as having abandoned all of its apparatus at the end of that period if it has failed either to remove it or give notice of its intentions (subsections (5) and (6)).

1353. Where the network operator either removes or abandons its apparatus under this section and then provides new apparatus elsewhere in substitution for that (or in substitution for associated apparatus that has become useless), it may claim from the authority the cost of doing so (subsection (7)).

1354. The authority is entitled to the ownership of any apparatus that been abandoned and may deal with it as it sees fit (subsection (8)).

Section 296 – Temporary stopping up or diversion for surface working of minerals

1355. Where planning permission has been granted for the surface working of minerals, it may be necessary to close or divert a highway to enable the works to take place, but only for a limited period – until the minerals operations have ceased and the land has been restored. In those circumstances, subsection (2) enables the Welsh Ministers to make an order under section 280 requiring a highway to be closed or diverted for a specified period, and then to be restored.

1356. Under subsection (4), the planning authority may similarly make an order under section 293 requiring a public path to be closed or diverted on a temporary basis, and then restored.

1357. An order made under this section may require a person who would otherwise have been subject to any liability for the repair of the original highway being closed or diverted, to take on a similar liability for any highway to be provided for the temporary period in accordance with the order (subsection (5)(a)). It may also require that temporary highway to be removed at the end of that period, and the original highway then to be restored and maintained (subsection (5)(b)). The order may also require a capital sum to be paid up-front, to ensure that funds will be available for that restoration (subsection (6)).

Chapter 2 – Ending rights of way over land held for planning purposes
Section 297 – Power of the Welsh Ministers to end right of way over land held for planning purposes
Section 298 – Compulsory acquisition of land to provide alternative right of way
Section 299 – Concurrent proceedings relating to orders and acquisitions

1358. These sections apply where land has been acquired or appropriated by a local authority for planning purposes and the land is still being held for the purposes for which it was acquired or appropriated. Land is acquired or appropriated for a planning purpose where the acquisition or appropriation is for the purpose of:

a. developing or improving the land to improve the well-being of the area – under section 262 or 263; or

b. ensuring the preservation of a listed building or to facilitate access to or management of such a building, under section 136 of the 2023 Act.

1359. The Welsh Ministers may make an order under section 297 extinguishing any public right of way across it, if they are satisfied that there exists or will be provided a suitable alternative right of way or that alternative right of way is not required. The procedure for making such an order is set out in Part 1 of Schedule 17.

1360. Where additional land is needed to provide an alternative right of way in those circumstances, the Welsh Ministers may acquire land compulsorily or may authorise a local highway authority or strategic highways company to do so, under section 298. The usual procedure under the 1981 Act applies to an acquisition under that section.

1361. Regulations under section 299 may enable a single set of proceedings to deal with:

a. the initial acquisition of the land under Part 10;

b. the extinguishing of any right of way under section 297; and

c. the purchase of additional land under section 298.

The current provision is in regulation 15 of the 1992 General Regulations.

Section 300 – Power of local authority to end right of way over public path on land held for planning purposes

1362. This section applies where land has been acquired or appropriated by a local authority for planning purposes and is still held by the authority for the purposes for which it was acquired or appropriated. The authority may make an order under subsection (2) extinguishing any public right over a public path on such land, if it is satisfied that there exists or will be provided a suitable alternative right of way or that an alternative right of way is not required.

1363. The procedure for confirming an order under this section is set out in Part 2 of Schedule 17. This requires the order to be publicised and provides an opportunity for representations to be made. Where no representations to the order are made within the relevant period, the authority may then simply confirm it (subsection (3)(b)). In any other case, the Welsh Ministers may confirm it once they have considered any representations that have been made – but they must not do so unless they are satisfied that a suitable alternative right of way exists, will be provided, or is not required (subsections (2)(a) and (4)).

1364. The order will specify the date the right of way over the public path will be extinguished, which must not be before the date on which the order has been confirmed (subsection (5)).

Section 301 – Electronic communications apparatus affected by order

1365. Where the Welsh Ministers make an order under section 297 extinguishing a public right of way over land that has been acquired or appropriated, and there is (at the time the order is publicised) apparatus on the land for the purposes of an electronic communications code network, they must notify the notify the network operator as soon as practicable (subsections (1) and (3)). Similarly, a local authority must notify the operator where it makes an order under section 300 extinguishing a public right of way over a public path over such land (subsections (2) and (3)).

1366. In either case, the operator may then continue to exercise its power to remove the apparatus at any time up to the end of the removal period (subsection (4)) – that is, the period of three months starting with the day after the right of way is extinguished (subsection (10)). Subsection (5) provides that if the operator gives notice to the local authority before the end of the removal period that it intends to remove the apparatus, it can exercise that right after the end of the removal period. Alternatively, it may notify the authority that it intends to abandon all or some of its apparatus; it will be treated as having abandoned its apparatus at the end of that period if it has failed either to remove it or give notice of its intentions (subsections (6) and (7)).

1367. Where the network operator either removes or abandons its apparatus under this procedure and then provides new apparatus elsewhere in substitution for that (or in substitution for associated apparatus that has become useless), it may claim from the local authority the cost of doing so (subsection (8)). The authority is entitled to the ownership of any apparatus that been abandoned and may deal with it as it sees fit (subsection (9)).

Schedule 17 – Orders relating to highways

Part 1 – Procedure for orders made by the Welsh Ministers

1368. Part 1 of the Schedule applies to an order made by the Welsh Ministers under Part 11 of this Act – that is:

a. an order under section 280 closing or diverting a highway to enable development to take place;

b. an order under section 281 closing or diverting a highway crossing or entering the route of a new highway;

c. an order under section 286 to extinguish vehicular rights of way on a highway or an order under section 287 revoking such an order; or

d. an order under section 297 extinguishing a right of way over land that has been acquired or appropriated for planning purposes.

1369. Before making the order, the Welsh Ministers must publish a notice of their intention in a newspaper circulating in the local area and in the London Gazette, stating the general effect of the proposed order, where a draft can be seen in the local area without charge at all reasonable times, how objections can be made within the objection period of at least 28 days beginning with the day after the day the notice is published (paragraph 2).

1370. On or before the day they publish that notice, they must serve a copy of the notice, and of the draft order itself, on every relevant local authority in the area (as defined in section 408), any relevant statutory undertaker, and the owners and occupiers of any land that is to be subject to a restriction of access under section 284. In addition, they must display the notice in a prominent position at either end of any highway or right of way that is to be closed, diverted or extinguished (paragraph 3).

1371. If an objection to the order is made by someone whom the Welsh Ministers must notify under paragraph 3, they must hold a local inquiry. If an objection is made by anyone else they consider to be affected by the order, the Welsh Ministers must hold a local inquiry unless they are satisfied that in the special circumstances of the case it is unnecessary to do so. Before making an order, the Welsh Ministers must consider all objections, and where a local inquiry is held, the report of the inspector. The final order may contain modifications (paragraph 4).

1372. Paragraph 5 provides that an order under section 280, 281, 286 or 287 must be subject to special Senedd procedure if it requires a person to make payments, and that person objects.

1373. Once the final order has been made, a notice must be published in a newspaper circulating in the local area and in the London Gazette, stating that it has been made, and where a copy can be seen without charge at all reasonable times. A copy of that notice, and of the order itself, must also be sent to every relevant local authority and statutory undertaker, and the owners and occupiers of land subject to a restriction of access (paragraph 6).

Part 2 – Procedure for orders made by planning authorities and other local authorities

1374. Part 2 of the Schedule applies to:

a. an order made by a planning authority under section 293 closing or diverting a public path (footpath, bridleway or restricted byway; see above) to enable development to take place; and

b. an order made by a local authority under section 300 extinguishing a right of way over a public path on land that has been acquired or appropriated for planning purposes.

1375. These orders are together currently referred to as "public path orders" in the Town and Country Planning (Public Path Orders) Regulations 1993 (S.I. 1993/10) made under the power now restated in paragraph 19 of this Schedule. Those Regulations provide more detail as to the procedures to be followed and the forms to be used.

1376. Once the authority makes an order, it must publish notice of its making in a newspaper circulating in the local area, stating the general effect of the proposed order, where a draft can be seen in the local area without charge at all reasonable times, where copies of the order may be obtained for a reasonable charge, and how objections can be made and within what period (that must be of at least 28 days) (paragraph 10).

1377. At least 28 days before the end of the period specified as the period for making objections, the authority must serve a copy of it, and of the draft order itself, on every other relevant local authority in the area, any relevant statutory undertaker, and the owners and occupiers and tenants of any land to which the order relates. It must also serve copies on any persons specified in regulations - Schedule 3 to the Town and Country Planning (Public Path Orders) Regulations 1993 currently specifies various open spaces organisations, and specialist bodies such as the Welsh Trail Riders Association. It must also serve them on anyone else it considers appropriate. In addition, it must display a notice in a prominent place at either end of any public path or right of way that is to be closed, diverted or extinguished, including a plan of the proposal (paragraph 11). Copies of the order must also be displayed at local government offices in the area and in any other places the authority considers appropriate.

1378. If no representations are made in response to the publicity, or if all such representations are withdrawn, the authority may confirm the order without modifications, under paragraph 12.

1379. If a representation or objection is made in relation to the order by a local authority, the Welsh Ministers (or an inspector appointed by them) must hold a local inquiry; and if an objection is made by anyone else, there must either be a local inquiry or an opportunity provided for the person who made the objection or representation to be heard by an inspector. The Welsh Ministers must then consider the report of the inspector holding the inquiry or considering the representations, before confirming the order. If they propose to confirm the order subject to modifications, they must publicise their proposal and provide an opportunity for objections to be made and dealt with (paragraph 13).

1380. The decision, as to whether an order made by an authority under Part 11 is to be confirmed by the Welsh Ministers, will be made by an inspector on their behalf unless it is in a category specified in regulations to be decided by them, or unless they direct that the decision in a particular case is to be made by them. Where necessary, the Welsh Ministers may revoke the appointment of one inspector and appoint a substitute (paragraph 14).

1381. Paragraph 15 makes special provision as to orders made by planning authorities under section 293 in cases involving statutory undertakers. An order may not be confirmed by the Welsh Ministers if it extinguishes a right of way over land on which there is apparatus owned or used by an undertaker, unless the undertaker consents. Such consent must not be unreasonably withheld and may be granted on reasonable terms proposed by the undertaker to protect its interest. Questions about the reasonableness of a decision to withhold consent, or of the terms subject to which consent is given, are to be determined by the appropriate Minister (see section 308 as to the meaning of "appropriate Minister"). An order under section 293 is subject to special Senedd procedure if an undertaker objects to it (or objects to a modification to it proposed by the Welsh Ministers) on the grounds that the order proposes to create a new public right of way over land covered by works used by the undertaker.

1382. Once an order has been confirmed, a notice of that fact must be published in a newspaper circulating in the local area, stating the effect of the order and where a copy of the order can be seen without charge at all reasonable times, and must be displayed on site. The authority must serve a copy of the notice on every person who was entitled to be served with a copy of the initial notice under paragraph 11 and who has requested notice of the order being ultimately confirmed. Where that means serving a copy of the notice on owners and occupiers, relevant local authorities or statutory undertakers, the notice must include a copy of the order as confirmed. Where the order has been modified, and the authority is required to give notice of its being confirmed to persons specified in regulations under paragraph 11(2)(d) or to other persons the authority considers appropriate, the authority must again include a copy of the order as confirmed with the notice (paragraph 16). However, where the Welsh Ministers decide not to confirm an order, the authority that initially made the order has to notify all those who were to be notified of its making (paragraph 17).

1383. Normally an order will come into force on the day it is confirmed or at the end of a period starting on that day. If it is to come into force on any other date, the coming into force of the order must be publicised in the local press, under paragraph 18.

PART 12 – STATUTORY UNDERTAKERS ETC.

1384. The term "statutory undertaker" covers a wide range of bodies, carrying out functions such as providing transport, power, communications, water and sewerage, under various pieces of legislation. The precise meaning of the term has varied over time; the current definition is set out in section 303. Some of the legislation refers to the "operational land" of a statutory undertaker, and the "appropriate Minister"; these are defined in sections 304 to 308.

1385. In addition, the Electronic Communications Code set out in Schedule 3A to the Communications Act 2003 has effect in relation to bodies to whom it is applied by a direction given by the Office of Communications (Ofcom) under section 106 of that Act. The operator of an electronic communications network under that Code is generally referred to in these Notes as a "network operator".

1386. Statutory undertakers and network operators have a special place in the planning system:

a. some of their routine operations are excluded from the definition of "development" (section 6(3)), others may be permitted by a development order (see the 1995 Order);

b. in other cases, the normal rules as to the determination of a planning application, the modification or revocation of planning permission, and the making of discontinuance orders and orders relating to minerals development are adjusted to take account of the particular circumstances of statutory undertakers (sections 309 to 313);

c. there are special provisions as to their functions in relation to land acquired or appropriated under this Act or under other legislation (sections 314 to 318);

d. they have special rights in relation to compensation for certain decisions affecting them (sections 319 to 322); and

e. statutory undertakers may agree to acquire land that is the subject of a purchase notice, or be required to do so (Part 3 of Schedule 12).

Section 303 – Meaning of "statutory undertaker" and "statutory undertaking"

1387. Subsection (1) defines the term statutory undertaker, by reference to an exclusive list of bodies providing various services. And subsection (2) provides that a statutory undertaking means the undertaking of a statutory undertaker, save as noted in paragraphs (a) to (c) of that subsection. In each case, the key factor in determining whether a body is a statutory undertaker is not the size or legal status of the body concerned, but the nature of its activity.

1388. Under subsection (1)(a), a statutory undertaker includes a body that is authorised by or under an enactment to carry on one or more of the following activities:

a. a railway, light railway, tramway or road transport undertaking;

b. a water transport, canal or inland navigation undertaking; or

c. a dock, harbour, pier or lighthouse undertaking.

1389. Subsection (1)(b) to (d) provides that a statutory undertaker includes each of the following bodies:

a. the operator of a relevant airport, granted a certificate under section 57A of the Airports Act 1986 (its statutory undertaking being the airport to which Part 5 of the Act applies);

b. the Civil Aviation Authority (CAA); and

c. a body holding a licence under Chapter 1 of Part 1 of the Transport Act 2000 (air traffic services) (its statutory undertaking being the undertaking that is the subject of the licence).

The meaning of "operational land" in relation to the CAA and air traffic licensees is the subject of section 305.

1390. Under subsection (1)(e), a universal postal service provider is a statutory undertaker. Such a provider is any postal operator for the time being designated under section 35 of the Postal Services Act 2011 (c. 5) and operating under the Postal Services (Universal Postal Service) Order 2012 (S.I. 2012/936). The UK's current provider is the Royal Mail Group. Subsection (2)(c) provides that the statutory undertaking of such a body is its undertaking insofar as that consists of the provision of a postal service. The meaning of "operational land" in relation to a universal postal service provider is the subject of section 306.

1391. Subsection (1)(f) to (h) provides that a statutory undertaker includes each of the following bodies:

a. an electricity licensee – that is, the holder of a licence under section 6 of the Electricity Act 1989 (generation, transmission, distribution, supply etc. of electricity);

b. a gas transporter – that is, the holder of a licence under section 7 of the Gas Act 1986 (c. 44) (conveying gas through pipes); and

c. any person authorised by or under an Act to supply hydraulic power.

1392. Under subsection (1)(i), water undertakers and sewerage undertakers, appointed under section 6 of the Water Industry Act 1991 (c. 56), are statutory undertakers.

1393. Natural Resources Wales established under the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903 (W. 230)), is a statutory undertaker, under subsection (1)(j). The Environment Agency, although since 2013 predominantly operating in England, is a statutory undertaker for the purposes of this Act insofar as its activities extend to Wales (see subsection (1)(k)).

Section 304 – Meaning of "operational land": statutory undertakers generally

1394. Some of the provisions relating to statutory undertakers apply only in relation to activities carried out on their operational land. This section provides the general rule as to what is meant by operational land. It applies to:

a. bodies whose activities relate to transport, docks and harbours;

b. relevant airport operators;

c. providers and distributors of electricity, gas and hydraulic power;

d. water undertakers and sewerage undertakers; and

e. NRW and the Environment Agency.

Slightly different rules apply in relation to CAA and air traffic licensees (see section 305) and universal postal service providers (see section 306).

1395. The general rule is that "operational land" means:

a. any land that is currently being used by a statutory undertaker for the purposes of its undertaking (subsection (2)(a)); and

b. any land currently held by the undertaker with the intention that it should one day be used in the future for that purpose (subsection (2)(b)).

1396. Under the first heading, operational land would, for example, include a piece of highway being dug up by a water company (for as long as the works continue), a piece of land on which is a railway and land where there is sited an electricity sub-station.

1397. Under the second heading, land held for future use, subsections (4) to (6) identify three different scenarios. The first is where land held by the undertaker with the intention that it should one day be used in the future for the purposes of its undertaking, provided that specific planning permission has at some point been granted for the development of the land for the purposes of the undertaking (for example, for the construction of a sewage plant at some point in the future) (subsections (2)(b), (3) and (4)). "Specific planning permission" for this purpose means a permission that relates specifically to the land in question: see section 307.

1398. The second scenario is where land is currently held by the undertaker with the intention that it should be used in the future for the purposes of its undertaking, but without specific planning permission having been granted at any point, provided that the undertaker has held the land since before 6 December 1968, and it was at that date operational land for the purposes of the Town and Country Planning Act 1962 (subsections (2)(b), (3) and (5)).

1399. The third scenario is where land is held by the undertaker for future use for the purpose of its undertaking, but without specific planning permission having been granted at any point – provided that it acquired the land from a predecessor body, and that the land was operational land prior to the date of the transfer. This applies to the following:

a. a transfer to an airport operator from a local authority, under Part 2 of the Airports Act 1986;

b. a transfer to a gas transporter from the British Gas Corporation, under Part 2 of the Gas Act 1986;

c. a transfer to a water undertaker or sewerage undertaker from a water authority under section 4 of the Water Act 1989 (c. 15) or from a previous undertaker under Schedule 8 to that Act or under section 10 of the Water Industry Act 1991; or

d. a transfer to the Canal & River Trust from the British Waterways Board, under Part 1 of the Public Bodies Act 2011 (c. 24) (subsections (2)(b), (3) and (6)).

1400. However, operational land does not include land which, by its nature and situation, is comparable with land in general as opposed to land that is used by statutory undertakers (or in which they hold interests) for the purpose of carrying out their undertakings. For example, shops, offices, showrooms and dwellings. Nor would it include land held as an investment or by a pension fund (subsection (2)).

1401. If there is a question as to whether land of a statutory undertaker constitutes operational land, the question is to be determined by the appropriate Minister, as defined in section 308.

Section 305 – Meaning of "operational land": Civil Aviation Authority and air traffic licensees

1402. In relation to the CAA, operational land means:

a. land it uses the purpose of operating an aerodrome or for associated purposes; and

b. land it uses for the purpose of providing facilities for controlling air traffic or assisting the navigation of aircraft; and

c. land in which it holds an interest for any of those purposes (subsection (1)).

1403. Regulations under subsection (2) of this section may add to, modify or remove from that definition any specified type of land. The current regulations are the Civil Aviation Authority (Operational Land) Regulations 1984 (S.I. 1984/575).

1404. In relation to an air traffic licensee, operational land means:

a. land used by the licensee, or a company associated with it, for the purpose of carrying out activities, authorised by its licence; or

b. land in which an interest is held by the licensee, or a company associated with it, for that purpose.

1405. If there is a question as to whether land of an air traffic licensee constitutes operational land, the question is to be determined by the Secretary of State (subsection (5)).

Section 306 – Meaning of "operational land": universal postal service providers

1406. In relation to a universal postal service provider, operational land means any land:

a. used by it for the purpose of operating a sorting office or delivery office in connection with the postal service it is providing; or

b. in which it holds an interest for that purpose (subsection (1)).

1407. In addition, regulations under subsection (3) to (5) may add, modify or remove any specified type of land to that definition provided that the provider uses the land or holds an interest in it for some purpose connected with that postal service. The current regulations are the Post Office Operational Land Regulations 1973 (S.I. 1973/310).

1408. However, land in which the provider holds an interest for the purpose of operating a sorting office or delivery office, but not used for that purpose, is not operational land unless:

a. specific planning permission (see section 307) has at some point been granted for the development of the land for that purpose (subsections (1)(b) and (2)(a)); or

b. the interest in the land was transferred from the Post Office to the provider under the Postal Services Act 2000 (c. 26) and was operational land under the 1990 Act immediately before that transfer (subsections (1)(b) and(2)(b)).

Section 307 – Meaning of "operational land": supplementary provision

1409. For the purpose of sections 304, 305 and 306, "specific planning permission" means a permission that relates specifically to the land in question – rather than, for example, permission granted by a general development order such as the 1995 Order. That is, the specific permission must have been granted:

a. by a development order where the development is described in the order or has been approved by an Act or instrument of Senedd Cymru or the UK Parliament;

b. by a local development order;

c. in response to an application under Part 3;

d. by a direction under section 87 following authorisation by a government department); or

e. on the determination of an appeal against an enforcement notice under section 133.

Section 308 – Meaning of "appropriate Minister" etc.

1410. Various provisions in this Act can result in action being taken or proposed that may affect the operational requirements of a statutory undertaker. Such provisions may lead to the involvement of the minister or ministers responsible for the undertaking in question – referred to as "the appropriate Minister" – so as to enable the operational requirements of the undertaker to be taken into account alongside normal planning considerations. This section determines which is the appropriate Minister in relation to each category of undertaker.

1411. In some cases, the responsibility for a particular statutory undertaker will be given to the Welsh Ministers. Where that is the case, they are to exercise their powers and duties alone, as in other cases (subsections (1)(a) and (2)(b)). This applies to:

a. operators of railways, light railways, tramways or road transport undertakings;

b. operators of docks, piers or lighthouses;

c. operators of harbours other than reserved trust ports and cross-border harbours;

d. relevant airport operators, the CAA or air traffic licensees;

e. water undertakers and sewerage undertakers; and

f. NRW.

1412. In other cases, the responsibility for a particular statutory undertaker will be that of a UK Government minister. Where this applies, the powers and duties that would otherwise be exercised by the Welsh Ministers alone are to be exercised jointly by them and the appropriate Minister – that is, the Minister responsible for the undertaker (subsections (1)(b) to (f) and (2)(a)). The appropriate Minister in such cases is as follows:

Activity of statutory undertaker	*Appropriate Minister*
Operating water transport, canals or inland navigation	Secretary of State for Housing, Communities and Local Government
Operating a reserved trust port (as in section 32 of Wales Act 2017 (c. 4)), or a cross-border harbour (as in section 34(5) of that Act)	Secretary of State for Transport
Operating a universal postal service	Secretary of State for Business and Trade
Supplying electricity, gas or hydraulic power	Secretary of State for Energy Security and Net Zero
The Environment Agency	the Secretary of State

1413. Subsection (2) deals with references in the Act to the Welsh Ministers and the appropriate Minister. Paragraph (a) provides that where the Welsh Ministers are not the appropriate Minister, a reference to the Welsh Ministers and the appropriate Minister is a reference to those Ministers acting jointly. Paragraph (b) provides that where the Welsh Ministers are the appropriate authority, a reference to "the Welsh Ministers and the appropriate Minister" is a reference to the Welsh Ministers acting alone.

1414. Subsection (3) deals with references in the Act to a government department and the appropriate Minister. Paragraph (a) provides that where the government department is not the appropriate Minister, a reference to the government department and the appropriate Minister is a reference to those acting jointly. Paragraph (b) provides that where the government department is the appropriate authority, a reference to the "government department and appropriate Minister" is a reference to the department acting alone.

1415. If a question arises as to who the appropriate Minister is in relation to a statutory undertaker, the matter is to be determined by the Treasury (subsection (4)); but this is not the case in relation to the CAA, an air traffic licensee or universal postal service provider.

Section 309 – Applications for planning permission by statutory undertakers

1416. An application may be made by a statutory undertaker for operational planning permission – that is, permission to carry out development:

a. on land that is already operational land of the undertaker (see sections 305 to 307); or

b. on land in which the undertaker holds or proposes to acquire an interest, with a view to carrying out its undertaking (subsections (7) and (8)).

1417. Where operational planning permission is required but not granted by a development order or a local development order, the statutory undertaker will generally need to make an application to the planning authority.

1418. If such an application is called-in by the Welsh Ministers for their decision (under section 72), or where it is the subject of an appeal to them (under section 73), either the Welsh Ministers or the appropriate Minister (where different) may give a direction under subsection (2) that the application or appeal is to be dealt by both of them (subsection (1)(a) and (b)). The application or appeal must then be dealt with by them jointly, and the Act will then apply as if it had been dealt with by the Welsh Ministers in the normal way (subsection (5)).

1419. The same applies where an appeal is made by a statutory undertaker against an enforcement notice relating to the carrying out of development that is said to require operational planning permission, but only to the extent that the appeal is made on the ground that permission ought to be granted (or, where permission has been granted, that a condition or limitation ought to be removed) (subsections (1)(c) and (3)).

1420. Where the carrying out of development by a statutory undertaker is authorised by a Government department, the department may also give a direction granting planning permission for the development, under section 87(2). However, where the department authorises the development without giving a such a direction, the development will still need to be the subject of an application for planning permission. In that case, if the application is referred to the Welsh Ministers or if it ends up in an appeal, and if a direction has been made under subsection (2), the application will then be subject to the requirements of this section as to joint authorisation by the Welsh Ministers and the appropriate Minister (subsections (4) and (6)).

1421. The determining of an application by the Welsh Ministers and the appropriate Minister under this section may lead to the undertaker being entitled to compensation under section 319(1)(a).

Section 310 – Conditional grant of planning permission

1422. Operational planning permission (see section 309(7)) must generally not be granted for a limited period – that is, subject to a condition requiring at the end of a specified period the removal of buildings or works being authorised by the permission, or the discontinuance of a use of the land so authorised. However, such permission may be granted if the undertaker agrees.

Section 311 – Modification or revocation of planning permission

1423. Where operational planning permission (see section 309) has been granted to a statutory undertaker either by the Welsh Ministers and the appropriate Minister acting jointly or by the Welsh Ministers on their own, and the planning authority makes an order modifying that permission, the order must be confirmed by the Welsh Ministers and the appropriate Minister acting jointly (Schedule 7, modified by paragraph (a)). As set out in paragraph 1413 above, section 308(2) provides that where the Welsh Ministers are the appropriate Minister in relation to an undertaker, the reference to the Welsh Ministers and the appropriate Minister is a reference to the Welsh Ministers acting alone.

1424. Otherwise, where an order is made – whether by the planning authority, or by the Welsh Ministers, or by them and the appropriate Minister acting jointly – modifying or revoking any operational planning permission (whoever the permission was granted by), the order is to be made and, where necessary, confirmed in accordance with the procedure set out in Schedule 7, save that references in that Schedule to the Welsh Ministers are to be taken as references to them and the appropriate Minister acting jointly (paragraph (b)).

1425. The making or confirming of an order by the Welsh Ministers and the appropriate Minister under this section may lead to the undertaker being entitled to compensation under section 319(1)(b).

Section 312 – Discontinuance orders, prohibition orders and protection orders

1426. A discontinuance order may be made in relation to the operational land of a statutory undertaker, either by the planning authority, or by the Welsh Ministers, or by them and the appropriate Minister acting jointly. Where this occurs, the order will be made, confirmed and enforced in accordance with the procedure set out in sections 206 and 207 and Schedules 14 and 15, save that references in those provisions to the Welsh Ministers are to be taken as references to them and the appropriate Minister acting jointly (paragraph (b)). As set out in paragraph 1413 above, section 308(2) provides that where the Welsh Ministers are the appropriate Minister in relation to an undertaker, the reference to the Welsh Ministers and the appropriate Minister is a reference to the Welsh Ministers acting alone.

1427. The same applies to the making of a prohibition order or a protection order in relation to mining operations or depositing mineral waste on operational land. Such orders will be made, confirmed and enforced in accordance with the procedure set out in sections 206 and 207 and Schedule 15, adjusted to refer to the Welsh Ministers and the appropriate Minister acting jointly (paragraphs (a) and (b)).

Section 313 – Display of advertisements on operational land

1428. Where a display of advertisements constitutes development and complies with advertisements regulations under Part 8 (that is, it has the benefit of consent under the regulations or does not need it), it will be treated as having been granted planning permission under section 229.

1429. However, where a display does not comply with the regulations it will require planning permission. In that scenario, where the display is on the operational land of a statutory undertaker, the normal planning procedures in Parts 3 and 4 apply – but by virtue of this section the appropriate Minister (where that is not the Welsh Ministers) will not need to be involved.

1430. Sections 309 to 312 (application for planning permission, conditional grant of permission, modification or revocation of permission, and discontinuance orders) do not apply to the display of advertisements on operational land.

Section 314 – Removal notices: ending rights over land etc. of statutory undertakers and network operators

1431. This section deals with the rights of statutory undertakers and network operators over land that has been the subject of a "relevant acquisition" (for which see section 274(1)). It also deals with the rights of undertakers and operators over land that has been the subject of a "relevant appropriation" (as defined in section 274(2)).

1432. The body holding the land as a result of such an acquisition or appropriation is referred to in the Notes relating to this Part of the Act as 'the acquiring authority'.

1433. Where a statutory undertaker is entitled to a right of way over such land, or a right to install, keep or maintain apparatus on it, for the purpose of carrying on its undertaking, or where there is on the land apparatus (such as pipes or cables) belonging to the undertaker for the purpose of its undertaking, the acquiring authority may serve on the undertaker a removal notice. A "removal notice" is a notice stating that some or all of those rights will be extinguished at the end of a specified period or requiring the apparatus to be removed before the end of the specified period or both (subsections (1), (3) and (4)).

1434. Similarly, the authority may serve a removal notice on a network operator:

a. where the operator has been given (by or in accordance with the Electronic Communications Code) a right of way over such land, or a right to install, keep or maintain apparatus on it; or

b. where there is on the land apparatus installed for the purpose of the network.

1435. The acquiring authority may only serve a removal notice if it considers that it is necessary for the right to be extinguished or the apparatus to be removed for the purpose of carrying out the development with a view to which the land was acquired or appropriated. And the period specified in the notice must be at least 28 days (subsections (5) and (6)).

Section 315 – Removal notices: withdrawal or taking effect
Part 1 of Schedule 18

1436. Under section 315(2) where a removal notice has been served on a statutory undertaker or network operator under section 314, and no counter-notice is served under this section, any right to which the notice relates is extinguished at the end of the period specified within the notice. If that notice requires apparatus to be removed, and that has not been done by the end of the period specified, the acquiring authority may remove the apparatus from the land and dispose of it however it considers appropriate.

1437. However, if the undertaker objects to some or all of the requirements of the notice, it may within 28 days serve on the authority a counter-notice, stating the reasons for its objection (section 315(1)).

1438. Where a counter-notice is served, the acquiring authority may withdraw the removal notice (subsections (3)(a) and (4)(a)). That does not prevent it from serving another removal notice (subsection (5)).

1439. Where the acquiring authority is a local authority or a statutory undertaker, and it does not wish to withdraw the removal notice in response to a counter-notice, it may apply to the Welsh Ministers (or to the Welsh Ministers and the appropriate Minister, where different) for an order incorporating the terms of the removal notice, with or without modifications (subsection (3)(b)). Under paragraph 1 of Schedule 18, they must give the undertaker an opportunity to object to the making of such an order; and where an objection is made, they must allow the undertaker and the acquiring authority to be heard; and they may then make the order – either as requested by the authority or otherwise. A local authority in this context includes an English local authority and a national park authority for a national park in England (see subsection (9)).

1440. Under subsection (4)(b), where the acquiring authority is the government department, they (or they and the appropriate Minister, where different) may make an order incorporating the terms of the removal notice, with or without modifications. Before doing so, they must give the statutory undertaker an opportunity to object to a draft of the order, and where an objection is made, they must allow the undertaker or operator to be heard. They may then make the order either as set out in the draft or otherwise (paragraph 2 of Schedule 18).

1441. The same procedure applies where a removal notice is served on a network operator (subsections (1) to (4); paragraphs 1 and 2 of Part 1 of Schedule 18). However, in this case references to "the appropriate Minister" is a reference to the Secretary of State for Science, Innovation and Technology.

1442. Where an order is made in response to a counter-notice, any right to which the order relates is extinguished at the end of the period specified within it. If the order requires apparatus to be removed, and that has not been complied with by the end of the period specified, the acquiring authority may remove the apparatus and dispose of it (subsection (6)).

Section 316 – Powers of statutory undertakers or network operators to enter land to remove or re-site apparatus

1443. This section applies where land has been the subject of a relevant acquisition or a relevant appropriation (see the definition of those terms in section 274), and development is to be carried out on the land that will affect apparatus belonging to a statutory undertaker or network operator (subsections (1) and (2)). This would apply where, for example, a new building is to be constructed on top of an existing cable duct.

1444. Where the undertaker or operator claims that this requires the removal or re-siting of the apparatus, for technical or other reasons connected with the carrying on of its undertaking, or the provision of its network, it may serve on the acquiring authority a notice under subsection (3), claiming the right to enter the land and remove or re-site the apparatus. Such a notice must be served on the acquiring authority not later than 21 days after the start of the development (subsection (4)).

1445. Where the acquiring authority objects to some or all of the provisions of the notice, it may serve a counter-notice under subsection (5), stating the reasons for its objection. The undertaker or operator may then withdraw the notice it served under subsection (3). Alternatively, it may apply to the Welsh Ministers (or to the Welsh Ministers and the appropriate Minister, where different) for an order incorporating the terms of the notice, with or without modifications (subsection (7)). Where a counter-notice is served on an operator, the appropriate Minister is the Secretary of State for Science, Innovation and Technology (subsection (9)).

1446. Where the undertaker or operator has served a notice under subsection (3), and no counter-notice has been served, or where an order has been made under subsection (7), it may then exercise the rights specified in the notice or the order. Or the acquiring authority may by arrangement exercise those rights under the supervision of the undertaker or the operator (subsections (6) and (8)).

Section 317 – Orders to extend or modify statutory undertakers' functions
Part 2 of Schedule 18

1447. This section applies where a statutory undertaker, a local authority or a government department makes representations to the Welsh Ministers and the appropriate Minister (see section 308) that the powers and duties the undertaker need to be modified or extended, to ensure that land that is to be acquired, appropriated or developed will be satisfactorily provided with services such as transport, water, gas and electricity. If satisfied by such representations, they may make an order under subsection (2).

1448. A statutory undertaker may make representations to the Welsh Ministers (or to them and to the appropriate Minister, where different) to modify or extend its functions, so that they are properly provided for any purpose for which a relevant acquisition may be carried out (subsection (1)(a)(i)). An undertaker may also make representations to modify or extend its functions where that is necessary following:

a. a decision on an application to grant or refuse permission relating to land that it was using for the purposes of the undertaking, or in which it had an interest for such purposes;

b. the modification or revocation of such a permission;

c. the making of a discontinuance order in relation to such land;

d. the relevant acquisition of such land; or

e. a right over such land has been lost by virtue of a notice served under section 314 or an order under section 315.

1449. In addition, a local authority or government department may make representations to the Welsh Ministers (or to them and to the appropriate Minister, where different) to modify or extend the functions of a statutory undertaker, to enable it to extend the services it provides, or to provide new ones, for any purpose for which the authority making the representations is entitled to make a relevant acquisition (subsection (1)(b)).

1450. In response to representations under either provisions, the Welsh Ministers (or the Welsh Ministers and the appropriate Minister, where different) may make an order modifying or extending the undertaker's functions (subsection (2)). Such an order may, amongst other things, confer on the undertaker power to acquire land, either compulsorily or by agreement, and to construct buildings and works (and apply relevant Acts and regulations as required) (subsections (5)(a) and (b)).

1451. If the order is providing for services to be provided or extended, it may also provide for giving effect to financial arrangements, to be agreed by the undertaker and a local authority or the Welsh Ministers – or to be determined as specified in the order (subsection (5)(c)).

1452. Where this results in the making of payment by the relevant local authority (A) to the undertaker, and where the revised service arrangement benefits another authority (B), the Welsh Ministers may direct authority B to make a contribution that they consider reasonable towards the costs incurred by authority A under the order (subsection (7)).

1453. The body making representations as to the making of an order must publish a notice of those representations and – if directed to do so by the Welsh Ministers (or by them and the appropriate Minister, where different) – must send a copy of that notice to those specified in their direction. The notice must be in the form and contain the detail specified and must state that objections to the making of an order may be made to the Welsh Ministers (or to them and the appropriate Minister, where different). An objection must be made in the manner (and within the timescale) specified in the notice and must contain a statement of the grounds on which it is made (paragraphs 3 and 4 of Schedule 18).

1454. Paragraph 5 of Schedule 18 sets out the procedure where an objection is made. The Welsh Ministers (or the Welsh Ministers and appropriate Minister, where different)may decide not to make the order, or they may modify the proposed order to deal with the objection. In deciding whether to make the order, they must consider the statement made with the original objection, and may require the objector to make a further statement.

1455. If they consider that the objection relates to a matter that can be dealt with by awarding compensation, they may disregard the objection (paragraph 5(4)). If, in the light of objector's statements, they decide that they have sufficient information to deal with the matter – or if a further statement has been requested but is not forthcoming – they may decide to make the order (paragraph 5(5)). In the case where neither paragraph 5(4) nor 5(5) applies, the Welsh Ministers (or the Welsh Ministers and appropriate Minister, where different) must offer a hearing to the objector; and if the objector takes up the offer, they must extend it to the body that made the original representations, and anyone else appropriate. They may also hold an inquiry at any point if they consider that one is required.

1456. By virtue of paragraph 6 of the Schedule, where an order has been made by the Welsh Ministers and a Minister of the Crown, adjusting the powers of the undertaker, it is subject to special Senedd procedure and special parliamentary procedure. Where such an order is made by the Welsh Ministers alone, it is subject to special Senedd procedure.

Section 318 – Orders to relieve statutory undertakers of impracticable obligations
Part 3 of Schedule 18

1457. This section applies where a statutory undertaker makes representations to the appropriate Minister (see section 308) that it is impracticable for it to meet its obligations because of an act or event set out in subsection (4). The appropriate Minister, if satisfied by such representations, may make an order under subsection (2), partly or wholly relieving the undertaker of its obligations.

1458. The undertaker if directed to do so by the appropriate Minister must publish a notice of its representations, and send a copy of that notice to those specified in their direction. The notice must be in the form and contain the details specified in the direction, and must state that objections to the making of an order may be made to the appropriate Minister, in the manner specified. Such an objection must be made in the way, and within the period, specified in the notice and must contain a statement of the grounds on which it is made (paragraphs 7 and 8 of Schedule 18).

1459. Paragraph 9 of the Schedule sets out the procedure where an objection is made. The appropriate Minister may decide not to make the order or may modify the proposed order to deal with the objection. Otherwise, the Minister must consider the statement made with the original objection and may require the objector to make a further statement.

1460. If the Minister considers that the objection relates to a matter that can be dealt with by awarding compensation, it may be disregarded. If, in the light of those objector's statements, it appears that there is sufficient information – or if a further statement has been requested but is not forthcoming – the Minister may decide whether or not to make the order. In any other case, a hearing must be offered to the objector; and if the objector takes up the offer, the same offer must be made to the undertaker concerned, and to anyone else appropriate. An inquiry may also be held at any point if that seems to be required.

1461. By virtue of paragraph 10, where an order has been made by the Welsh Ministers, relieving the undertaker of its obligations, it is subject to special Senedd procedure. Where such an order is made by a Minister of the Crown, it is subject to special parliamentary procedure unless it has previously been withdrawn.

1462. The appropriate Minister must then immediately publish a notice under paragraph 11 stating that the order has been made and naming a place where it can be inspected; and must serve a copy of the notice on anyone who has objected to the order and anyone else appropriate. Under paragraph 12, the order then takes effect on the day the notice is published – unless it is subject to special parliamentary procedure, or the subject of an interim order made in the course of a High Court challenge under section 377.

Section 319 – Right to compensation for effects of certain planning decisions and orders

1463. This section applies where the Welsh Ministers and the appropriate Minister refuse an application by a statutory undertaker (or grant it subject to conditions) for planning permission to carry out development on its operational land that:

a. would normally be permitted by a development order or local development order but for a direction under that order; and

b. has not been authorised by:
    i. an Act of Senedd Cymru or of the UK Parliament; or
    ii. an instrument approved by the Senedd or UK Parliament (or an instrument subject to special procedure in the Senedd or UK Parliament),

where the Act or instrument specifically identified both the nature of the development and the site on which it is to be carried out.

1464. Where the undertaker suffers loss or damage because of the decision as explained in more detail in section 321, it is entitled to compensation from the planning authority for the areas containing the land. A claim for such compensation must be made within 12 months of the determination of the application (subsection (2)). But compensation is not payable where the loss or damage arises only because of the imposition of time-limit conditions as to the date by when development must start or the approval of reserved matters must be sought, or as to the date by which minerals development must cease (subsection (5)(b)).

1465. This section also applies where an order modifying or revoking planning permission granted to the undertaker to carry out development on its operational land is made (and, where necessary, confirmed), in accordance with sections 102 and 311 (subsection (1)(b)). In this case, where the undertaker suffers loss or damage because of the order, it is entitled to compensation from the authority under section 321; and a claim must be made within 12 months of the coming into effect of the order (subsections (1)(b) and (2)).

1466. But the right to compensation under this section (on either count) does not apply where the undertaker has acquired the land in question since 7 January 1947, if the Welsh Ministers and the appropriate Minister included a direction to that effect under subsection (3) when they determined the application or made the order. They may only make such a direction where they consider that, having regard to the nature, situation and existing development of the land and of any neighbouring land, and to any other relevant considerations, it is unreasonable that compensation should be payable (subsection (4)).

Section 320 – Rights to compensation for ending rights over land etc.

1467. Where a removal notice is served under section 314, and comes into effect under section 315, it may extinguish the rights of a statutory undertaker over certain land, or it may require the undertaker to remove some of its apparatus from the land. Where that causes the undertaker loss or damage, as explained in more detail in section 321, it is entitled to claim compensation from the acquiring authority, under subsection (1).

1468. Similarly, a removal notice may extinguish the rights of a network operator or require the operator to remove some of its apparatus from the land. Where that causes the operator loss or damage, it is entitled to claim compensation from the acquiring authority, under subsection (2).

1469. Where land is developed following acquisition or appropriation, that may result in an undertaker having to remove or re-site its apparatus for technical or operational reasons. Where a statutory undertaker's apparatus is removed or re-sited under section 316(6) or (7) the undertaker may claim compensation from the acquiring authority under subsection (3).

Section 321 – Assessing compensation

1470. This section enables the amount of compensation payable to a statutory undertaker or a network operator in various circumstances to be quantified. First, it applies:

a. where an undertaker is entitled to compensation under section 319(1), 320(1) or 320(3); and

b. where an undertaker is entitled to compensation for loss or damage suffered as a result of a discontinuance order, a prohibition order, or a protection order, made (and, where necessary, confirmed) in relation to its operational land, in accordance with sections 206 and 211 and Schedule 15.

1471. Secondly, this section normally applies where an undertaker's land is compulsorily purchased without the appropriate Minister having issued a certificate under section 16(2) of the 1981 Act, that it is operational land that may be purchased without any harm to the carrying on of the undertaking (or a certificate under paragraph 3(2) of Schedule 3 to that Act in the case of a right over such land). However, in this case the undertaker may choose to have the compensation assessed on another basis, under section 322.

1472. Thirdly, this section applies to enable the amount of compensation payable to a network operator to be quantified, where the operator is entitled to compensation under section 320(2).

1473. Under subsection (3), the amount of compensation payable under this section is the aggregate of three amounts:

a. the amount reasonably spent in acquiring land, providing apparatus, erecting buildings, or works necessary to adjust the operation of the undertaker or operator in the light of the changed circumstances giving rise to the entitlement to compensation (this is referred to as 'a business adjustment');

b. an appropriate amount for loss of profits; and

c. where the compensation is payable (under section 320(1) or (2)) in respect of a requirement to remove apparatus, the amount reasonably incurred in complying with the requirement, reduced by the value of the apparatus after its removal.

1474. Subsection (4) explains what is meant by "an appropriate amount for loss of profits". Where a business adjustment is made, this refers to the aggregate of:

a. the estimated decrease in the net receipts resulting from the changed circumstances giving rise to the entitlement to compensation, during the period until the adjustment is made; and

b. an amount that appears to be reasonable compensation for the estimated decrease in the net receipts in the period after the adjustment is made, insofar as that decrease is directly attributable to the carrying out the adjustment.

Where no business adjustment is made, it refers to an amount that appears to be reasonable compensation for any estimated decrease in the net receipts directly resulting from those changed circumstances. 'Net receipts' is explained in subsection (8).

1475. Where a business adjustment is made, subsection (5) provides that the amount calculated in accordance with subsection (3) is reduced by an appropriate amount (if any) reflecting any gains arising as a result of those changed circumstances, so far as those gains have not already taken into account:

a. the value of any property still owned by the undertaker or code operator but no longer required for its operations;

b. any increase in net receipts arising from the adjustment; and

c. any increase in the capital value of any property retained and still used by the undertaker, and which is directly attributable to the adjustment, but also taking account of any reduction for increase in net receipts.

1476. Where land is developed following acquisition or appropriation, the acquiring authority may itself carry out the works needed to remove or re-site the apparatus of an undertaker for technical or operational reasons, relying on its powers under section 316(8). Where that occurs, any compensation payable by the acquiring authority under section 320(3) is reduced by an amount equal to the actual cost incurred by the authority in carrying out those works (subsection (7)).

Section 322 – Statutory undertakers' power to exclude section 321

1477. Where a statutory undertaker's land is compulsorily purchased, the amount of compensation payable is normally assessed under section 321. However where the compulsory acquisition is under a compulsory purchase order confirmed or made without the appropriate Minister's certificate, an undertaker may elect under subsection (1) to have the amount assessed on the normal basis that would otherwise apply – that is, primarily under the 1961 Act on the basis of the rules (other than rule (5) in section 5 of that Act, relating to equivalent reinstatement).

1478. Under subsection (3) and (4), such an election is to be made by a notice given by the undertaker to the acquiring authority within two months of the service of a notice to treat; and the election may relate to some or all of the land to be acquired. Where such an election has been made, the compensation is to be assessed accordingly (subsection (2)).

PART 13 – BLIGHTED LAND

1479. Where land is acquired by a public authority for a project, using compulsory acquisition powers or by agreement, compensation is payable on a basis that is designed to reflect what would be its current market value in the absence of the project. And where a planning decision renders land useless, the owners may require the planning authority to acquire it, and pay compensation – on a similar basis. However, in some cases land may be identified in a development plan or in some other way as being likely to be needed for a public project, but perhaps not for a while. Or it may be the subject of an order of some kind enabling the land to be acquired for such a purpose that has been made but has not yet resulted in the service of a notice to treat.

1480. In either scenario, there is little point in the owners of the land seeking planning permission for any alternative form of development, as it would probably be refused; but until the land is acquired, it will have a reduced market value, if any. And the project in question may in fact never occur.

1481. To avoid the resulting unfairness to owners, the 1959 Act introduced a procedure (modelled on the purchase notice provisions, but broader in scope) whereby owners of such land can serve a blight notice on the appropriate authority – that is, the authority by which the land might one day be acquired. That authority is entitled to object to the notice; the matter may then have to be resolved by the Upper Tribunal. If the notice is upheld, or no objection is made, the authority is deemed to have been authorised to acquire the land compulsorily – that is, generally, under the enactment that entitles it to do so – and compensation will then be payable accordingly.

1482. Those provisions have been carried forward in this Part of the Act.

1483. In this Part, there are references to a "notice to treat" being served or being deemed to have been served. In normal compulsory purchase procedure, a notice to treat is a formal request (under section 5 of the 1965 Act) stating that an authority has been given powers to acquire a piece of land, is now willing to enter negotiations for the purchase of the land and inviting the recipient to agree the compensation payable. If the amount of compensation cannot be determined by agreement, it will be determined by the Upper Tribunal (under section 6 of the 1965 Act).

Section 323 – Key terms

1484. By virtue of subsection (1), the term "blighted land" is used in the Act to refer to land falling within one or more of the 29 categories of land that are specified in Part 1 of Schedule 19. Each refers to land that has been identified in a particular type of plan, order, resolution or policy statement, or that has been earmarked in some other way for future acquisition.

1485. Subsection (2) explains that, where a hereditament or an agricultural unit is land in one of those categories:

a. a person who has a qualifying interest in the land may be able to serve a blight notice on the appropriate authority, under section 324;

b. the personal representatives of a person who before their death had a qualifying interest in it may be able to serve a blight notice on the appropriate authority under section 346; and

c. a mortgagee entitled to possession of the land may be able to serve a blight notice on the appropriate authority under section 348.

1486. In each case, it is not enough for land to be in one or more of the 29 categories; certain other conditions must also be satisfied before a notice may be served (see sections 324(3), 346(3) and 348(3)).

1487. A "hereditament" is defined (by section 359) as being a "relevant hereditament" for the purposes of the Local Government Finance Act 1988. In simple terms, a hereditament is a unit of property, that is or is capable of being, separately occupied and that is or may become liable to pay a rate.

1488. A "qualifying interest" in a hereditament, for this purpose, is defined in subsections (3)(a), (4) and (5) as:

a. the interest of a resident owner-occupier of a hereditament; or

b. the interest of a non-resident owner-occupier of the hereditament whose annual value is less than an amount specified in regulations (currently £36,000; see article 2 of the Town and Country Planning (Blight Provisions) (Wales) Order 2019 (S.I. 2019/1018 (W. 178)).

1489. The terms "owner-occupier" and "resident owner-occupier" of a hereditament are defined in paragraphs 31, 32, and 34 of Schedule 19; and the term "annual value" in paragraph 35 (subsection (6)).

1490. An "agricultural unit" is defined in section 408, to include associated dwellings. A "qualifying interest" in an agricultural unit, for this Part, is the interest of an owner-occupier of an agricultural unit or a part of such a unit (subsection (3)(b)). The "owner-occupier" of an agricultural unit is defined in paragraphs 33 and 34 of Schedule 19.

1491. Section 335 provides further details as to the service of a blight notice seeking the acquisition of all or part of an agricultural unit where only part of the land to be acquired is one of the categories in Part 1 of Schedule 19.

Schedule 19 – Blighted land

Part 1 – Categories of blighted land

1492. This Schedule sets out 29 categories of land that may give rise to an entitlement to serve a blight notice.

1493. Categories 1 to 4 relate to land that has been highlighted in various plans as being suitable for public functions – that is, for the functions of a government department, local authority or statutory undertaker, or for the provision of an electronic communications code network or a public electronic communications service:

a. Category 1 is land identified by a strategic or local development plan (under Part 2 of the Act) that is in the course of being examined or that has been adopted or approved; and land identified by a revision to such a plan that is being examined or has been adopted or approved (paragraph 1);

b. Category 2 is land identified by the NDF (under Part 2) or by a revision to the NDF that has been laid before the Senedd or published (paragraph 2);

c. Category 3 is land identified by any other plan approved by a planning authority for the purpose of exercising its powers under Part 3 (planning permission) or Chapter 1 of Part 6 (planning obligations) (paragraph 3); and

d. Category 4 is land that a planning authority has resolved to safeguard for development for public functions, or land that it has been directed by the Welsh Ministers or Secretary of State to safeguard for such development (paragraph 4).

1494. If land is within Categories 1 or 2, then Category 12 does not apply (paragraph 12(2)).

1495. Categories 5 to 7 contain land that is within an area earmarked as a new town or an urban development area:

a. Category 5 is land within an area described as the site of a new town in an order that has been publicised under Schedule 1 to the New Towns Act 1981 (paragraph 5);

b. Category 6 is land within an area designated as the site of a new town by an order that has come into effect under section 1 of that Act (paragraph 6); and

c. Category 7 is land within an area designated as an urban development area, whether or not it has come into effect, under section 134 of the Local Government, Planning and Land Act 1980 (paragraph 7).

1496. Categories 8 to 11 relate to land in various types of renewal area, designated under housing legislation:

a. Category 8 is land within an area declared to be a clearance area under section 289 of the Housing Act 1985 (paragraph 8); and Category 9 is adjacent land that a local housing authority has determined to purchase under section 290 of that Act (paragraph 9);

b. Category 10 is land that a housing authority is proposing to acquire using its powers under Part 7 of the Local Government and Housing Act 1989 (c. 42) (renewal areas) (paragraph 10); and

c. Category 11 is land that is identified in information published under section 257 of the Housing Act 1985 that a housing authority is proposing to acquire (general improvement areas) (paragraph 11).

1497. Categories 12 to 17 relate to land needed for various highways purposes:

a. Category 12 is land identified in a development plan that is land set aside for the construction of a new highway, or for the improvement of an existing one (paragraph 12). This does not apply to land within Categories 1 to 4;

b. Category 13 is land on or adjacent to the line of a new or improved highway as indicated in an order or draft order under Part 2 of the 1980 Act, or land required for the purpose of the new or improved highway, including mitigating its effects (paragraph 13);

c. Category 14 is land forming part of a highway proposed to be constructed, altered or improved by a local highway authority, identified on a plan approved by that authority (paragraph 14); and Category 15 is land forming part of a highway a highway proposed to be constructed, improved or altered by the Welsh Ministers, the Secretary of State or a strategic highways company as notified to the planning authority (paragraph 15);

d. Category 16 is land that the highway authority proposes to acquire under section 246 of the 1980 Act (paragraph 16); and Category 17 is land that the Welsh Ministers, the Secretary of State, or a strategic highways company propose to acquire under section 246 of that Act (paragraph 17).

1498. Categories 18 to 27 relate to land that has been earmarked for compulsory purchase, where the process of acquisition has not yet been completed:

a. Category 18 is land that has been authorised for compulsory purchase in a special enactment (that is, an Act of the Senedd or an Act of the UK Parliament, or an instrument that has come into operation having been subject to special procedure in the Senedd or in the UK Parliament and that specifically identifies the land and authorises its compulsory acquisition), or that is within the limits of deviation within which the powers of compulsory purchase conferred by such an enactment could be exercised (paragraph 18);

b. Category 19 is land (or a right over land) that is subject to a compulsory purchase order (CPO) that has come into force, but where a notice to treat has not yet been served (paragraph 19); and Category 20 is land that is subject to a CPO that has been prepared in draft by the Welsh Ministers or a Minister of the Crown or that has been submitted to them (for example, by a local authority) for confirmation (paragraph 20);

c. Category 21 is land that has been authorised for compulsory purchase by an order under the Transport and Works Act 1992, or that is within the limits of deviation within which the powers conferred by such an order could be exercised (paragraph 21); and Category 22 is land that has been proposed for compulsory purchase by an order under that Act, by being included within an application under that Act or a draft order (paragraph 22);

d. Category 23 is land that has been authorised for compulsory purchase by an infrastructure consent order under the 2024 Act or that is within the limits of deviation within which the powers conferred by such an order could be exercised (paragraph 23); and Category 24 is land that has been proposed for compulsory purchase under such an order, by being included within an application under that Act (paragraph 24);

e. Category 25 is land that has been authorised for compulsory purchase by a development consent order under the 2008 Act, or that is within the limits of deviation within which the powers conferred by such an order could be exercised (paragraph 25); and Category 26 is land that has been proposed for compulsory purchase under such an order, by being included within an application under that Act (paragraph 26); and

f. Category 27 is land that has been authorised for compulsory purchase under any enactment, where the acquiring authority has been authorised to take temporary possession of it under section 18(2) of the Neighbourhood Planning Act 2017 (c. 20) (paragraph 27).

1499. Category 28 is land identified for development in an infrastructure policy statement under the 2024 Act (paragraph 28). And Category 29 is land identified as being suitable for development in a national policy statement under the 2008 Act (paragraph 29).

Part 2 – Meaning of "owner-occupier", "resident owner-occupier" and "annual value"

1500. An owner-occupier of a hereditament is a person who occupies all or a substantial part of it, by virtue of a freehold interest or a fixed-term lease that has at least three years left to run on the relevant day (that is, the day a blight notice is served under section 324) – and has occupied it on that basis for at least the six months ending on that day (paragraphs 31(a) and 34).

1501. Where all or a substantial part of a hereditament is unoccupied, and has been unoccupied for a period of less than twelve months ending on the relevant day (or such longer period as may be required where there is a disagreement as to who is the appropriate authority; see paragraph 43(5)(c)), the owner-occupier is a person who occupied it on that basis for the six months ending immediately before the period when it was unoccupied (paragraphs 31(b) and 34).

1502. A resident owner-occupier of a hereditament is an individual (as opposed to a corporate body) who occupies all or a substantial part of it as a dwelling for the relevant period described in Category 31 (paragraph 32).

1503. The owner-occupier of an agricultural unit is a person who, whilst holding either a freehold interest in the unit or a fixed-term lease that has at least three years left to run on the relevant day for the whole or part of that unit:

a. occupies all of the unit, and has occupied it continuously for at least the six months ending on the relevant day (that is, the day a blight notice is served under section 324); or

b. occupied all of the unit continuously for a period of at least six months ending not more than a year before the relevant day (paragraphs 33 and 34).

1504. Where a hereditament or agricultural unit is occupied by a partnership for business purposes, it is to be assumed that the hereditament or unit is occupied by the partnership and not by any one or more of the partners individually; and the definitions of owner occupier in paragraphs 32 and 34 of Schedule 19 are to be read accordingly. Once a blight notice has been served by a partnership, it continues to have effect regardless of any subsequent change in the membership (section 351).

1505. Where a hereditament is included in a local non-domestic rating list prepared under the Local Government Finance Act 1988 and does not include any domestic property or any property exempt from non-domestic rating, its annual value is the value shown in the list as its rateable value (paragraph 35(1)(a) and (2) of this Schedule).

1506. Where a hereditament is a domestic property, it will not be included a local non-domestic rating list. In that case, its annual value, or the value attributable to the non-ratable part of it, will be equal to 5% of the compensation that would be payable if it were to be compulsorily acquired (with vacant possession) in accordance with the normal rules under Part 2 of the 1961 Act. If the hereditament is a property exempt from rating for any other reason, its annual value will be the value that it would have if it were not exempt. In either case, the value will be the value certified by the valuation officer appointed under the Local Government Finance Act 1988 for the area containing the hereditament (paragraph 35(1)(b), (4) and (5) of this Schedule).

1507. Where a hereditament is included in a rating list, but includes some property that is exempt from rating, its annual value will be the sum of:

a. the value shown in the list for that hereditament, and

b. the value of the non-rateable part of the hereditament calculated as above (paragraph 35(1)(a) and (3)).

Part 3 – Meaning of "the appropriate authority"

1508. The general rule is that the appropriate authority is the authority that is entitled to acquire an interest in the land (or a right over such land) in the relevant category, or that proposes to do so; or is authorised to take temporary possession of the land (paragraph 37). However, that is subject to specific provisions relating to land in certain categories.

1509. In relation to land falling within Categories 5 to 7 (land that is within an area earmarked as a new town or an urban development area), the appropriate authority is the Welsh Ministers, until a development corporation is established for the new town or urban development area in question (paragraphs 38 and 39).

1510. In relation to land within Category 27, the appropriate authority is the authority that is authorised to take temporary possession of the land (paragraph 37(1)(b)).

1511. In relation to Category 28 (land identified for development in an infrastructure policy statement), the appropriate authority will generally be the Welsh Ministers; and in relation to Category 29 (land identified as being suitable for development in a national policy statement), it will generally be the Secretary of State. However, in either case, where the policy statement identifies a statutory undertaker as the appropriate agency to carry out the development, the appropriate authority will be that undertaker (paragraphs 40 and 41).

1512. Paragraph 42 provides that, in relation to a blight notice under section 335 relating to an agricultural unit, including both affected and unaffected areas of the unit, the appropriate authority for the unaffected area will be determined on the assumption that the unaffected area is part of the affected area. For example, if the affected part of the unit is in Category 5 (within the site of a new town) the appropriate authority for the whole unit will be the Welsh Ministers, as if the unaffected area was also within the site of the new town.

1513. Under paragraph 43(1) and (2), the Welsh Ministers are to deal with questions as to:

a. whether the appropriate authority is the Welsh Ministers, the Secretary of State, a strategic highway authority or a local highway authority;

b. which of two or more local authorities is the appropriate authority;

c. whether the appropriate authority, in relation to land in Category 28 (land identified in an infrastructure policy statement), is the Welsh Ministers or a statutory undertaker, or which of two or more undertakers.

1514. Under paragraph 43(3) and (4), the Secretary of State is to deal with questions as to whether the appropriate authority, in relation to land in Category 29 (land identified in a national policy statement), is the Secretary of State or a statutory undertaker, or which of two or more undertakers is the appropriate authority.

1515. Where a question has been referred to the Welsh Ministers or the Secretary of State, under paragraph 43, for a decision under these provisions, any resulting delay will be taken into account in determining certain time periods (under section 325(3) or 348(3)(d)(ii) or paragraph 31(b) or 33(b) of this Schedule).

Part 4 – Meaning of "the appropriate enactment"

1516. Under paragraph 45, the appropriate enactment is, generally, the enactment providing for the compulsory acquisition of land in the relevant category in Part 1 of this Schedule. However, that is subject to the provisions in paragraphs 46 to 59 of this Schedule that apply in particular cases.

1517. For land to be within Categories 1 to 3 in Part 1 of this Schedule, it will have been allocated in a relevant development plan, the NDF or some other approved plan for the carrying out of public functions – that is, the functions of a government department, local authority, statutory undertaker, or network provider. Land in Category 4 will have been safeguarded for such functions (by a resolution of the planning authority or a direction to an authority by the Welsh Ministers). Paragraph 46 provides that, in any of these cases, the appropriate enactment will be the enactment that provides for the compulsory acquisition of land for the carrying out of the function identified in the plan, resolution or direction.

1518. Where land is in Categories 5 to 9, 19, 20, or 23 to 29, paragraphs 47 to 55 provide that the appropriate enactment will be as follows:

Category in Part 1 of Schedule 19	*Appropriate enactment*
Categories 5 and 6 (land in area of new town)	section 353(1) (until a development corporation is established)
Category 7 (land in urban development area)	section 354(1) (until a development corporation is established)
Categories 8 and 9 (land in clearance area)	section 290 of Housing Act 1985
Categories 19 and 20 (land identified in compulsory purchase order)	the enactment that authorises the compulsory purchase (or that would authorise it if the order is confirmed)
Categories 23 and 24 (land identified in infrastructure consent order)	the infrastructure consent order (or the order being applied for)
Categories 25 and 26 (land identified in development consent order)	the development consent order (or the order being applied for)
Category 27 (land identified for temporary possession)	the instrument under section 19 of the Neighbourhood Planning Act 2017 authorising the temporary possession
Category 28 (land identified in infrastructure policy statement)	section 355
Category 29 (land identified in national policy statement)	section 356

1519. Where land is identified as to be acquired for highway purposes, the appropriate enactment is the enactment that enables the highway authority to acquire the land in question, or that would enable it to do so once the relevant order or scheme under the 1980 Act has come into operation or the necessary plans have been made and approved (paragraph 56).

1520. Paragraph 57 provides that, in relation to a blight notice under section 335(2) relating to an agricultural unit, including both affected and unaffected areas of the unit, the appropriate enactment for the unaffected area will be determined on the assumption that the unaffected area is part of the affected area. For example, if part of the unit is in Category 5 – as being within the site of a new town – the appropriate enactment for the whole unit will be section 353(1).

1521. Where, in accordance with the other provisions of Part 4 of this Schedule, there would be two or more appropriate enactments in relation to a piece of land, the appropriate enactment is the one under which, in all the circumstances, it is most likely that the land would be acquired (paragraph 58).

1522. If a question arises as to the appropriate enactment in a particular case, paragraph 59 provides that it is to be resolved as follows:

a. if the appropriate authority is a government department other than the Welsh Ministers, the question is to be referred to the relevant Minister of the Crown;

b. if the appropriate authority is a statutory undertaker, it is to be referred to the appropriate Minister (see definition in section 308);

c. in all other case, it is to be referred to the Welsh Ministers.

Section 324 – Notice requiring purchase of blighted land

1523. Under subsections (1) to (3), a person who has a qualifying interest in a hereditament or an agricultural unit may serve a blight notice on an appropriate authority, in the form prescribed in regulations, if:

a. all or part of the hereditament or agricultural unit consists of land in one or more of the categories in Part 1 of Schedule 1; and

b. one of the following conditions in subsection (3)(c) applies:
   i. the person has attempted to sell that interest, and was unable to do so (except, possibly at a reduced price) because the land was in one or more of those categories;
   ii. the land is within Category 18, 19, 21, 23, 25 or 27 in Part 1 of Schedule 1 – that is, land that has been identified for compulsory purchase in a special enactment, a compulsory purchase order, an order under the Transport and Works Act 1992, an infrastructure consent order, or a development consent order, or that has been authorised for temporary possession under the Neighbourhood Planning Act 2017 – where the powers of compulsory acquisition remain exercisable; or
   iii. the land is within Category 24 or 26 – that is, land that has been identified for acquisition in an application for infrastructure consent or a development consent order.

1524. Note that the identity of the "appropriate authority" is set out in Part 3 of Schedule 19. And section 323 sets out the definitions of the terms "hereditament" and "agricultural unit".

1525. By virtue of subsection (5), the blight notice must be served concerning the full extent of the person's interest in the hereditament or the unit, even if that interest only relates to part of the hereditament or unit. For example, if a person owns fields A and B, and a compulsory purchase order has identified fields A, B and C for compulsory purchase, that person must serve a notice for both field A and field B.

1526. The form of a blight notice is currently prescribed in Schedule 2 to the 1992 General Regulations.

Section 325 – Counter-notice objecting to blight notice

1527. Where a person has served on the appropriate authority a blight notice under section 324, the authority may serve on that person (referred to in this Part as "the claimant") a counter-notice under this section. A counter-notice must be served within two months of the day the blight notice was served (subsection (3)); although that two-month period may be extended until any disagreement as to the identity of the appropriate authority has been resolved (see paragraph 43(5)(a) of Schedule 19).

1528. Where a claimant dies following the service of a blight notice, the counter-notice must be served on the claimant's personal representatives (section 345).

1529. A counter-notice must set out the grounds on which the authority objects to the blight notice which must be one or more of those specified in section 326 or, if relevant, section 336(3), 347(1) or 349(1). The form of a counter-notice is currently prescribed in Schedule 2 to the 1992 General Regulations.

Section 326 – Grounds of objection to a blight notice
Section 327 – Grounds of objection: further provision

1530. Section 326 sets out seven grounds on which an appropriate authority may object to a blight notice. They are referred to in this Part as Grounds 1 to 7. An additional Ground 8 that concerns agricultural land is dealt with in section 336.

1531. Ground 1 is that no part of the hereditament or agricultural unit to which the notice relates is in any of the categories of blighted land described in Part 1 of Schedule 19.

1532. Ground 2 is that the authority does not propose, in the exercise of its powers to acquire land, to do any of the following:

a. to acquire an interest in any part of the hereditament, or any area of an agricultural unit that is within one of those categories of land ("the affected area" as defined in section 359);

b. in the case of land within Category 27, to take temporary possession of any of the hereditament or affected area;

c. where the appropriate enactment confers power to acquire rights over land, to acquire an interest in any part of the hereditament or area; or to acquire any right over any part of the hereditament or area.

1533. By virtue of section 327(2), an objection may not be made on Ground 2 where the land is within category 28 or 29 (land identified for development in an infrastructure policy statement under the 2024 Act or a national policy statement under the 2008 Act).

1534. Ground 3 is that the appropriate authority proposes to acquire an interest in a part of the hereditament, or part of the affected area of an agricultural unit, as specified in the counter-notice; but it does not propose:

a. to acquire an interest in any other part of the hereditament, or of the affected area of the unit;

b. where the appropriate enactment confers power to acquire rights over land, to acquire an interest in any other part of the hereditament or area; or to acquire any right over any other part of the hereditament or area.

1535. Ground 4 is that the authority does not propose within the relevant period – that is, from the day the counter-notice was served including the period within which the plan has effect, or such longer period as may be specified in the counter-notice – to do any of the following:

a. to acquire an interest in any part of the hereditament, or any part of the affected area of an agricultural unit;

b. where the appropriate enactment confers power to acquire rights over land, to acquire an interest in any part of the hereditament or area; or

c. to acquire any right over any part of the hereditament or area.

1536. The period within which a plan has effect will be the period specified under section 19(5), unless the plan was adopted before 4 January 2016, in which case it will be 15 years from the date of the counter-notice (see paragraph 11(2) of Schedule 5 to the Consequential Provisions Act).

1537. Ground 4 can be relied on in relation to land that falls within Category 1, 2 or 12 (land identified in a relevant development plan or in the NDF, or in a revision of one of them, including land identified in a development plan for highways purposes). However, it cannot be relied on if the land is also in Category 13, 14 or 15 (land required for a highway project, as indicated in an order or draft order under Part 2 of the 1980 Act, or identified on a plan approved by the local highway authority, or notified to the planning authority) (section 326(4) and (5)). Nor may Ground 4 be relied on if Ground 2 (no intention to acquire the land or rights over it at any time) is being raised (see section 327(1)).

1538. Ground 5 is that, on the day the blight notice was served, the claimant was not entitled to an interest in any of the land to which it related. Ground 6 is that, for reasons stated in the counter-notice, the claimant's interest in the land was not a qualifying interest. And Ground 7 is that none of the conditions in section 324(3)(c) are met (section 326(6) to (8)).

Section 328 – Further counter-notice where certain proposals come into force

1539. Categories 1, 2 and 13 in Part 1 of Schedule 19 refer (amongst other things) to land that is identified as the subject of an emerging proposal in a development plan or other document. Where a blight notice is served in such a case, and the relevant document then comes into effect, this section allows the appropriate authority to revisit the matter, and if appropriate serve on the claimant (or, where relevant, the claimant's personal representatives) a further counter-notice, under subsection (2).

1540. This applies:

a. where a blight notice was served in relation to land in Category 1, identified for public functions in a development plan (or a revision to such a plan) that is undergoing examination – and the plan (or revision) is now adopted or approved;

b. where a notice was served in relation to land in Category 2 identified for public functions in the NDF (or a revision to the NDF) that has been laid in draft before the Senedd– and a final version of the NDF (or revision) is now published; or

c. where a blight notice was served in relation to land identified for a proposed highway in an order or scheme that has been submitted to the Welsh Ministers for confirmation, or has been prepared by them – and the order or scheme now comes into operation (subsection (1)).

1541. Under subsections (2) and (3), the further counter-notice may specify different grounds of objection and will be a substitute for the original counter-notice. It must be served within two months of the relevant development plan being adopted or approved, the NDF being published, or the order or scheme coming into operation.

1542. By virtue of subsection (4), the right to serve a further counter-notice does not apply where an earlier counter-notice has been withdrawn, or where the Upper Tribunal has determined under section 329 whether or not to uphold it.

Section 329 – Reference of objection to Upper Tribunal: general

1543. Where a claimant serves a blight notice under section 324, and the appropriate authority objects to it by serving a counter-notice under section 325, the claimant may refer the objection to the Upper Tribunal (subsection (1)).

1544. Where a further counter-notice is served under section 328, that too may be referred to the Upper Tribunal by the claimant – whether or not the original counter-notice was referred (subsection (2)). The Upper Tribunal must consider the matters in the blight notice and the grounds of objection within the counter-notice (subsection (3)).

1545. Where the objection is made on Ground 2, 3 or 4 (in short, that the appropriate authority is not proposing to acquire any or all of the land in question or a right over it, or not to do so within a specified period), subsection (4) requires the Tribunal to reject the objection unless the authority can show that it is well-founded – that is, the claimant does not have to show that it is unfounded.

1546. Where the objection is on Ground 3 (that the authority only proposes to acquire a specified part of the land), subsection (5) requires the Tribunal to reject it unless the Tribunal is satisfied:

a. in a case involving a house, building or factory, that the specified part can be acquired without material harm to the house, building or factory;

b. in a case involving a domestic park or garden, that the specified part can be acquired without seriously affecting the amenity or convenience of the house.

1547. Subsection (6) applies where an objection is made on any other ground: that the land in question does not fall in any of the categories of land described in Part 1 of Schedule 19 (Ground 1); that the claimant was not entitled to an interest in any of the land to which it related (Ground 5); that the claimant's interest in the land was not a qualifying interest (Ground 6); that none of the conditions in section 324(3)(c) is met (Ground 7); or that, in relation to an agricultural unit, the unaffected area is reasonably capable of being farmed separately, either on its own or with other relevant land (Ground 8 – see section 336). The Tribunal must uphold an objection on any of these grounds, unless the claimant is able to show that it is not well-founded.

1548. Where the Tribunal rejects the objection to a blight notice, it must uphold the notice. And where it upholds the objection, but only on Ground 3 (that the authority only proposes to acquire a specified part of the land), it must uphold the notice in relation to the specified part of the hereditament or affected area, but not otherwise. In either case, the Tribunal must give directions as to the date a notice to treat will be deemed to have been served under section 331 or 332.

Section 330 – Effect of objection where no reference is made to Upper Tribunal

1549. Where an objection is made to a blight notice, and no reference has been made to the Upper Tribunal within the two-month time limit, the claimant is to be treated as having withdrawn the blight notice.

Section 331 – Effect of blight notice

Section 332 – Blight notice in respect of part of hereditament or unit

1550. Section 331 applies where a blight notice has been served, and no counter-notice has been served. It also applies where a counter-notice has been served but has been withdrawn or rejected by the Upper Tribunal.

1551. Where this occurs, section 331(2) provides that the appropriate authority is treated as having been authorised to acquire the claimant's interest in the hereditament or, in the case of an agricultural unit, to acquire the claimant's interest in the affected area (that is, the part of the unit that is blighted land within one of the categories in Part 1 of Schedule 1). The authority will also be deemed to have served a notice to treat on the claimant in respect of that interest, two months after the date the blight notice was served or, where an objection to the notice has been made but rejected, on the date specified by the Upper Tribunal under section 329(9) (section 331(3) and (4)).

1552. Section 332(1) to (3) applies where a blight notice is served by the claimant, and an objection is made to it on Ground 3 (that the appropriate authority only proposes to acquire an interest in a specified part of the land), and either:

a. the claimant accepts the authority's proposal to acquire an interest in the part of the hereditament or affected area specified in the counter-notice, and withdraws the blight notice in relation to the rest of the land; or

b. the Tribunal upholds the blight notice in relation to that part of the hereditament or affected area.

1553. Where this occurs, section 332(4) provides that the appropriate authority is treated as having been authorised to acquire the claimant's interest in the specified part of the hereditament or affected area. The authority will also be deemed to have served a notice to treat (explained in paragraph 1483 above) on the claimant in respect of that interest or, where an objection to the blight notice has been made by the authority but rejected by the claimant and referred to the Upper Tribunal, on the date specified by the Tribunal under section 329(9).

Section 333 – Effect on powers of compulsory acquisition where no intention to acquire

Section 334 – Effect on powers of compulsory acquisition where intention to acquire part

1554. Where a blight notice is served, it may result in the appropriate authority objecting to it on the ground that it does not propose to acquire the claimant's interest in the land in question (Ground 2) or that it does not propose to acquire the claimant's interest in the relevant period (Ground 4).

1555. Accordingly, where this occurs, and the objection is referred to the Upper Tribunal and upheld, or the objection is not referred to the Tribunal, section 333 provides that the authority's power to acquire the interest in question (or, where appropriate, to take temporary possession of the land) is of no effect in relation to the land specified in the counter-notice.

1556. Similarly, where a blight notice is served, and the appropriate authority objects to it on the ground that it only proposes to acquire the claimant's interest in part of land in question (Ground 3), and such an objection is upheld by the Upper Tribunal or not referred to it, section 334 provides that the authority's power to acquire the claimant's interest in the remainder of the land is of no effect.

Section 335 – Requirement to purchase parts of agricultural units unaffected by blight

1557. Where a claimant owns an interest in all or part of an agricultural unit, a blight notice may only be served in respect of the whole of that interest (section 324(5)). But it may be that part of the land in which the claimant has an interest is in one or more of the categories of blighted land in Part 1 of Schedule 1 ("the affected area"), and part of that land is not ("the unaffected area").

1558. In that case, under subsection (2), the claimant may include in the blight notice a claim that the unaffected area is not reasonably capable of being farmed either on its own or in conjunction with other relevant land – that is, either the rest of that agricultural unit or any other land owned or occupied by the claimant. The notice will then require that the appropriate authority purchases the claimant's interest in the whole of the unit, or the whole of that part of the unit to which the notice relates.

1559. Paragraphs 42 and 57 of Schedule 19 provide that, in relation to a blight notice under this section relating to all or part of an agricultural unit, including both affected and unaffected areas of the unit, the appropriate authority and the appropriate enactment for the unaffected area will be determined on the assumption that the unaffected area is part of the affected area.

Section 336 – Additional ground of objection to blight notice including requirement to purchase unaffected area

1560. Where a claimant serves a blight notice under section 335 that relates to both the affected area of the claimant's land and the unaffected area, the appropriate authority may object to the notice on Ground 8: that the unaffected area is reasonably capable of being farmed either on its own or in conjunction with other relevant land (subsections (1) to (3)).

1561. If an objection is made to such a notice on Ground 3 (that the authority is proposing to purchase part of the land in which the claimant has an interest), an objection must also be made on Ground 8 (subsection (4)).

1562. Section 336(5) applies Ground 8 to sections 337 to 340, 347 and 349.

Section 337 – Upper Tribunal: objection to blight notice including requirement to purchase unaffected area

1563. An objection to a blight notice on Ground 8 may be referred to the Upper Tribunal, as with any other objection. If the Tribunal upholds an objection to a notice only on Ground 8, that amounts to finding that the unaffected area is reasonably capable of being farmed either on its own or in conjunction with other relevant land. In that case, it must uphold the blight notice in respect of the affected area but not in respect of the unaffected area (subsection (1)).

1564. If the appropriate authority objects to a blight notice served in respect of an agricultural unit under section 335 on Ground 3, that will be on the basis it is proposing to acquire part of the land in which the claimant has an interest, but not any other part. By virtue of section 336(4), it must also object on Ground 8 (that the remainder of that land is reasonably capable of being farmed either on its own or in conjunction with other relevant land). In that case:

a. the Tribunal must treat the part of the affected area that is not specified in the authority's counter-notice as being "other relevant land" for the purposes of section 335(3) (see subsection (3));

b. the Tribunal must not uphold the objection on Ground 3 unless it also upholds the objection on Ground 8 (subsection (4)); and

c. if the Tribunal upholds the objection on both Ground 3 and on Ground 8, but not on any other grounds, it must uphold the blight notice in relation to the part of the claimant's land in which the authority is proposing to acquire an interest, but not in relation to any other part of the affected area or in relation to the unaffected area (subsection (5)).

1565. Where the Tribunal upholds a blight notice in relation to the affected area (under subsection (1)) or in relation to part of the affected area (under subsection (5)), it must specify the date a notice to treat (explained in paragraph 5) is to be treated as having been served.

Section 338 – Effect of blight notice including requirement to purchase unaffected area

1566. Where a blight notice contains a requirement to purchase the unaffected area of an agricultural unit, and no counter-notice has been served – or any counter-notice that has been served has been withdrawn, or rejected by the Upper Tribunal – the appropriate authority is treated as having been authorised to acquire the claimant's interest in the agricultural unit (that is, both the affected and the unaffected area). The authority will also be deemed to have served a notice to treat on the claimant in respect of that interest, two months after the date the blight notice was served or, where an objection to the notice has been made but rejected, on the date specified by the Upper Tribunal under section 337(6). This is the effect of section 331(2), as applied by section 338(2).

1567. In such a case, section 332 does not apply, by virtue of section 338(3).

Section 339 – Effect of blight notice where claim in respect of unaffected area withdrawn or rejected

1568. Where a blight notice contains a requirement to purchase the unaffected area of an agricultural unit, and the appropriate authority objects to it on Ground 8, the claimant may decide not to refer the objection to the Upper Tribunal within the relevant time limit but, instead, to withdraw the notice in relation to the unaffected area (subsection (1)).

1569. In that case, the authority is treated as being authorised to acquire compulsorily the claimant's interest in the affected area (but not in the unaffected area) (subsection (3)(a)), and to have served a notice to treat (explained in paragraph 1483 above) either:

a. on the date of the claimant's notice of withdrawal (subsection (4)(a)); or

b. where the Upper Tribunal upholds an objection to a blight notice only on Ground 8 under section 337(1), but upholds the blight notice in relation to the affected area, on the day specified in directions given by the Tribunal under subsection 337(6) (subsections (2), (3) and (4)(b)).

Section 340 – Effect of blight notice where claim in respect of unaffected area and part of affected area withdrawn or rejected

1570. Where a blight notice leads to an objection on Ground 3 and Ground 8, but not on any other ground, the claimant may decide not to refer the objection to the Upper Tribunal within the relevant time limit but, instead, to serve a notice on the appropriate authority:

a. accepting its proposal to acquire an interest in part of the affected area; and

b. withdrawing the notice in relation to the rest of the affected area, and the unaffected area.

1571. The authority is treated as being authorised to acquire compulsorily the claimant's interest in the part of the affected area specified in the counter-notice (but not in the remainder of the affected area, or in the unaffected area), and to have served a notice to treat on the date it served notice on the authority (subsection (3)(a) and (b)).

1572. The same applies where the Upper Tribunal upholds an objection to a blight notice on Ground 3 and Ground 8 but not on any other grounds, under section 337(5), but upholds the blight notice in relation to the part of the affected area specified in the counter-notice. In that case the notice to treat will be deemed to have been served in accordance with the direction by the Tribunal under subsection 337(6) (subsections (2), (3) and (4)(b)).

Section 341 – Withdrawal of blight notice

1573. Where a claimant serves a blight notice that is upheld in whole or part, that will result in a notice to treat (explained in paragraph 1483 above) being deemed to have been served – under section 331(2)(b), 332(4)(b), 339(3)(b) or 340(3)(b). The claimant may then submit a claim for compensation, under the 1961 Act. If the amount of compensation is not agreed, it will be determined by the Upper Tribunal.

1574. Once the Tribunal has determined the amount of compensation, the claimant will have six weeks within which to withdraw the blight notice (subsection (1)). If the claimant withdraws the notice before that point, the authority is deemed to have withdrawn the notice to treat – but is not liable to pay compensation in respect of that withdrawal (subsection (3)).

1575. However, the claimant cannot withdraw the blight notice once the right of entry has been exercised (subsection (2)).

Section 342 – Compensation: cases where prospect of planning permission to be ignored

1576. The amount of compensation payable for the compulsory acquisition of an interest in land is normally based on open market value, that will in turn contain an element of what is sometimes referred to as 'hope value' – the value arising from the prospect of planning permission being granted in the future for development. Section 14A of the 1961 Act enables an acquiring authority to include in a CPO a provision whereby such hope value is disregarded in assessing compensation.

1577. This section applies where a CPO is in force that includes such a provision, and results in the service of a blight notice that comes into effect, along with a deemed notice to treat (explained in paragraph 1483 above) under section 331 or 332. That will in turn lead to the acquisition of the interest subject to the order; and subsection (2) provides that the compensation payable for such acquisition will be assessed in accordance with section 14A, so that hope value is not to be taken into account.

Section 343 – Compensation: listed buildings in need of repair

1578. Where a listed building is in need of repair, a planning authority may serve on its owners a repairs notice under section 138 of the 2023 Act. Where the works specified in the notice are not carried out, the authority may be authorised to acquire the building compulsorily, under section 137. Where the authority considers that the building has been deliberately allowed to fall into disrepair, it may include in the CPO a direction for minimum compensation (under section 140 of that Act) that requires that any prospect of obtaining planning permission or listed building consent (other than for repair works) is to be disregarded in assessing the compensation payable.

1579. This section applies where there is in force a CPO relating to land on which there is a listed building that includes a minimum compensation direction. Where that results in the service of a blight notice that comes into effect, leading to the acquisition of an interest in the land, subsection (2) provides that the compensation payable will be assessed in accordance with section 140 of the 2023 Act.

Section 344 – Compensation: blight notice including claim in respect of unaffected area

1580. This section applies where a blight notice in relation to an agricultural unit comes into effect, resulting in:

a. the acquisition of an interest in the unaffected area of the unit; or

b. where the appropriate authority has objected to the notice on Ground 3 the acquisition of an interest in the remainder of the affected area.

1581. In that case the compensation for the resulting acquisition is to be assessed without regard to any possibility that planning permission would be granted in the future for any development of the land, and ignoring any development not yet carried out under a permission that has already been granted.

Section 345 – Powers of personal representatives in respect of blight notice served before death

Section 346 – Power of personal representative to serve blight notice

1582. Under section 345, if a person who has served a blight notice under section 324 dies, the person's representatives (that is, the executors or administrators of the person's estate) will take over the role of that person as "claimant" in relation to the processing of the notice. Depending on the stage reached in the process, any counter-notice must be served on them under section 325 or 328; they may refer the matter to the Upper Tribunal, under section 329 or decide not to do so (under section 330 or 332); and they may withdraw the notice, under section 339, 340 or 341.

1583. Where a person dies without having served a blight notice, the person's representatives may themselves serve on the appropriate authority a blight notice, under section 346, on behalf of the person's estate, in the form prescribed in regulations, if:

a. immediately before death, the person had what would have then been a qualifying interest in a hereditament or an agricultural unit, all or part of which consists of land in one or more of the categories of blighted land in Part 1 of Schedule 19;

b. there is at least one person (as opposed to a corporate entity) who is entitled to inherit that interest; and

c. one of the following conditions (in subsection (3)(d)) applies:
    i. the personal representative has attempted to sell that interest, and was unable to do so (except, possibly at a reduced price) because the land was in one or more of the Part 1 Schedule 1 categories;

ii. the land is within Category 18, 19, 21, 23, 25 or 27 in Part 1 of Schedule 19 – that is, land that has been identified for compulsory purchase in a special enactment, or one of various types of order – where the powers of compulsory acquisition remain exercisable; or
iii. the land is within Category 24 or 26 in Part 1 of Schedule 19 – that is, land that has been identified for acquisition in an application for infrastructure consent or a development consent order.

1584. By virtue of section 346(5), as with a notice under section 324, the blight notice must be served in respect of the whole of the deceased's interest in the hereditament or the unit. The form of a personal representatives' blight notice is currently prescribed in Schedule 2 to the 1992 General Regulations.

Section 347 – Grounds of objection to blight notice served by personal representative

1585. The appropriate authority may object to a blight notice served by a personal representative under section 346 on any of the following grounds:

a. Grounds 1 to 4, described above in relation to sections 326 and 327;

b. Grounds that are similar to Grounds 5 to 7, namely:
   i. that, on the day the blight notice was served, the claimant was not the personal representative of the deceased;
   ii. that the deceased was not entitled, immediately before death, to an interest in any of the land to which the notice related;
   iii. that, for reasons stated in the counter-notice, the interest of the deceased in the land was not a qualifying interest immediately before death;
   iv. that none of the conditions in section 346(3)(d) is met;
   v. there is no individual beneficially entitled to the interest in the land, and

c. Ground 8, as described in relation to section 336 (agricultural land).

Section 348 – Power of mortgagee to serve blight notice

1586. The third type of blight notice is one that may be served by a mortgagee who is entitled, by virtue of a power that has become exercisable, to sell an interest in a hereditament or an agricultural unit that would give immediate vacant possession. This enables the mortgagee to step into the shoes of the mortgagor (subsections (1) and (3)(b)).

1587. Such a mortgagee may serve on the appropriate authority a blight notice under this section, in the form prescribed in regulations, if:

a. the mortgagor could serve a blight notice under section 324 on the same date as the notice served by the mortgagee, or could have done so at any time in the previous six months (or such longer period as is necessary to enable the resolution of a disagreement as to who is the appropriate authority: see paragraph 43(5)(b) of Schedule 19);

b. all or part of the hereditament or unit consists of land in one or more of the categories of blighted land in Part 1 of Schedule 19; and

c. one of the following conditions (in subsection (3)(c)) applies:
   i. the person has attempted to sell that interest, and was unable to do so (except, possibly at a reduced price) because the land was in one or more of the Part 1 Schedule 1 categories;
   ii. the land is within Category 18, 19, 21, 23, 25 or 27 in Part 1 of Schedule 19 – that is, land that has been identified for compulsory purchase in a special enactment, or one of various types of order – where the powers of compulsory acquisition remain exercisable; or
   iii. the land is within Category 24 or 26 in Part 1 of Schedule 19 – that is, land that has been identified for acquisition in an application for infrastructure consent or a development consent order.

1588. By virtue of subsection (5), the blight notice must be served in respect of the whole of the deceased's interest in the hereditament or the unit. The form of a mortgagee's blight notice is prescribed in Schedule 2 to the 1992 General Regulations.

Section 349 – Grounds of objection to blight notice served by mortgagee

1589. The appropriate authority may object to a blight notice served by a mortgagee under section 348 on any of the following grounds:

a. Grounds 1 to 4, described above in relation to sections 326 and 327;

b. Grounds that are similar to Grounds 5 to 7, namely:
   i. that, on the day the blight notice was served, the claimant had no interest as mortgagee in any of the land to which the notice related;
   ii. that, for reasons stated in the counter-notice, the claimant as mortgagee did not have a power that had become exercisable (at the date the blight notice was served) to sell an interest in the hereditament or an agricultural unit that would give immediate vacant possession;
   iii. that the mortgagor could not have served a blight notice under section 324 on that date, or at any time in the previous six months (as extended if necessary);
   iv. that none of the conditions in section 348(3)(c) is met; and

c. Ground 8, described in relation to section 336 (agricultural land).

Section 350 – Prohibition on service of simultaneous notices under sections 324, 346 and 348

1590. Subsection (1) provides that, where a blight notice has been served by a mortgagee in respect of all or part of a hereditament or agricultural unit, under section 348, and is still outstanding, a notice may not be served by anyone else entitled to an interest in the land (under section 324) or by their personal representatives (under section 346) (subsection (1)). Subsection (2) similarly provides that a mortgagee may not serve a notice under section 348 where a notice under section 324 or 346 is outstanding.

1591. For these purposes a notice that has been served is outstanding until:

a. it is withdrawn or treated as such (see section 330 and 341);

b. an objection has been made, and the period for referring the objection to the Upper Tribunal under section 329 has expired without any referral having been made; or

c. an objection has been made, and referred to the Upper Tribunal, and the objection has been upheld.

Section 351 – Partnerships: special provision

1592. Where a hereditament or agricultural unit is occupied by a partnership for business purposes, it is to be assumed that the hereditament or unit is occupied by the partnership and not by any one or more of the partners individually (subsection (1)); and the definitions of "owner occupier" in paragraph 31 and 33 of Part 2 of Schedule 19 are to be read accordingly (subsection (2)). Once a blight notice has been served by a partnership, it continues to have effect regardless of any subsequent change in the membership (subsection (3)).

Section 352 – Power of the Welsh Ministers to acquire land identified by National Development Framework for Wales

1593. Where a blight notice has been served in relation to an interest in land in Category 2 in Part 1 of Schedule 19 – land allocated for public functions in the NDF – the Welsh Ministers may acquire it.

Section 353 – Power of the Welsh Ministers to acquire land affected by order relating to new town
Section 354 – Power of the Welsh Ministers to acquire land affected by order relating to urban development area

1594. Where a blight notice has been served in relation to an interest in land

a. in Category 5 or 6 in Part 1 of Schedule 19 (land included within the area of a proposed new town);

b. in Category 7 (land in the area of a proposed urban development corporation),

the Welsh Ministers may acquire it until either the establishment of a development corporation for a new town, or an urban development corporation for an urban development area. Until such time as one of these events occurs, the Welsh Ministers may dispose of the interest as they see fit. However, if they still own the interest when the relevant corporation is established, they must pass it to that corporation (sections 353(1) and (2), 354(1) and (2)).

1595. Where an interest in land in Category 5 (within the area of a proposed new town) or Category 7 (within an urban development area) is acquired under a blight notice, compensation is payable on the basis that the relevant designation order has already come into effect (sections 353(3) and 354(3)).

Section 355 – Power of the Welsh Ministers to acquire land identified in infrastructure policy statement
Section 356 – Power of the Secretary of State to acquire land identified in national policy statement

1596. Where a blight notice has been served in relation to land in Category 28 in Part 1 of Schedule 19 – land identified in an infrastructure policy statement under the 2024 Act – the Welsh Ministers may acquire it (section 355).

1597. Where a blight notice has been served in relation to land in Category 29 – land identified in a national policy statement under the 2008 Act – the Secretary of State may acquire it (section 356).

Section 357 – No withdrawal of notice to treat deemed to have been served under this Part

1598. Where a notice to treat is served during compulsory purchase, it can be withdrawn by the acquiring authority under section 31 of the 1961 Act. But where a notice to treat is deemed to have been served, because of a blight notice having been accepted or confirmed under section 331, 332, 339 or 340, it cannot be withdrawn by the appropriate authority that is to purchase the land. However, where a blight notice is itself withdrawn under section 341, the notice to treat is then deemed to have been withdrawn.

Section 358 – Assistance to acquire property where objection on Ground 4

1599. Where an objection is raised to a blight notice through a counter-notice on Ground 4 – that the planning authority does not propose to acquire land identified in a relevant development plan or in the NDF, or rights over such land, within the plan period – a local authority may give financial assistance to a person to enable them to acquire the land or the rights.

1600. The power to make an advance under this section may be subject to conditions and may be limited to land that has an annual value of less than the amount specified in regulations made in relation to section 323(5)(b) – currently £36,000 (see article 2 of the Town and Country Planning (Blight Provisions) (Wales) Order 2019).

PART 14 – ADMINISTRATION AND VALIDITY

Chapter 1 – Exercise of functions of planning authorities

Section 360 – Fees and charges for exercise of functions by planning authorities

1601. Under subsection (1), the Welsh Ministers may make regulations requiring a fee to be paid to a planning authority for the exercise of any of its functions (such as determining a planning application). They may also require a fee to be paid where an authority does something that assists in the exercise of such functions (such as engaging in preliminary discussions with a prospective applicant for planning permission).

1602. Under subsection (3), regulations under this section may provide for the details of the fees regime – including when a fee must be paid, who is to pay it, the amount to be paid (and any reductions or exemptions in particular circumstances), and when a fee must be refunded.

1603. The current regulations made under the powers restated in this provision are the 2015 Regulations, which require fees to be paid in respect of various matters, including:

a. requests for pre-applications services (see section 53);

b. applications for a certificate of lawfulness (see sections 156 and 157);

c. applications for planning permission;

d. applications for the approval of details required under a development order (see section 44(4)) or under a condition of planning permission (see section 67(1)(b)); and

e. applications for consent under the advertisements regulations (see section 222).

1604. The fee payable in each case is as set out in the *Planning application fees* document, prepared by the Welsh Ministers under regulation 2ZA of the 2015 Regulations and published on the Welsh Government's website.

1605. Subsection (2) excludes a planning authority's functions under the 2023 Act (see section 167 of that Act which provides for the making of regulations in respect of fees for the performance of functions under that Act).

1606. Regulations under this section may allow for charges as well as fees.

1607. Regulations under this section could, for example, enable the Welsh Ministers to allow a local authority to establish its own costing regime for certain functions relating to a planning application or to make a charge in respect of its costs incurred in negotiating a planning obligation.

1608. The purpose of planning authorities requiring the payment of a fee or a charge is not to enable them to make a profit. Subsection (4) ensures that, where authorities are allowed by regulations to set their own charging levels, they are to ensure that, taking one year with another, the fees or charges received do not exceed the cost of performing the service in question.

1609. A fee may also be payable to a planning authority in respect of making an appeal against an enforcement notice relying on ground (a) (see section 131(2)); this is by virtue of regulations made under section 364(4).

Section 361 – Power to require functions to be exercised by committees, sub-committees or officers
Section 362 – Size and composition of committees to exercise functions

1610. The Welsh Ministers may make regulations under section 361 requiring a planning authority to delegate functions relating to applications made under or by virtue of this Act and specifying the terms of such delegation arrangements.

1611. They may also make regulations under section 362 as to the size and make-up of any committee or sub-committee of the authority to which a planning function is delegated. The section disapplies paragraph 43 of Schedule 12 to the 1972 Act, with the result that proceedings may be invalid if there is a vacancy in a committee or sub-committee. The regulations currently in force are the Size and Composition of Local Planning Authority Committees (Wales) Regulations 2017 (S.I. 2017/459 (W. 97)).

1612. Section 362 also prevents a planning authority from delegating a relevant function to a committee or sub-committee that does not satisfy the requirements about size and composition.

Section 363 – Arrangements for exercise of functions: supplementary

1613. This section modifies sections 361 and 362 in their application to a case where planning authorities are exercising their functions jointly, under section 101(5) of the 1972 Act.

Chapter 2 – Proceedings before the Welsh Ministers

1614. There are a number of provisions in the Act allocating functions to the Welsh Ministers – for example, determining applications and appeals of various kinds, confirming orders made by planning authorities and other bodies, and acting in the place of the planning authority. Such functions are exercised, normally by an inspector acting on behalf of the Welsh Ministers, after the holding of an inquiry or a hearing, or on the basis of an exchange of written representations.

1615. This Chapter contains general provisions applicable in such cases – including as to the fees payable by the parties to such proceedings, the appointment of inspectors, the choice of procedure to be adopted (inquiry, hearing, or written representations), the procedure to be followed in each case, the production of evidence, and the costs of the Welsh Ministers and the parties.

Section 364 – Fees and charges for applications and appeals to the Welsh Ministers

1616. Regulations under this section may require a fee or charge to be paid to the Welsh Ministers in respect of various functions performed by them under the Act.

1617. Under subsection (1), such regulations may require a fee or a charge to be paid to the Welsh Ministers in respect of an application for planning permission made, or proposed to be made, to them under section 78, rather than to the planning authority. Such regulations may also provide for the payment of a fee or charge where an application is made to the Welsh Ministers for the approval of reserved matters (under section 78) or a connected application is made to them under section 80 As with fees payable to planning authorities under section 360, such regulations may provide for a fee or a charge to be paid to the Welsh Ministers in respect of them doing anything incidental to determining such applications.

1618. Under subsection (2), regulations may require a fee to be paid to the Welsh Ministers in respect of an application for planning permission made to them under section 85 in respect of urgent Crown development.

1619. Under subsection (3), regulations may require a fee to be paid to the Welsh Ministers in respect of any appeal made to them under the Act.

1620. In addition to any fee payable under subsection (3), subsections (4) and (5) enable regulations to require a fee to be paid either to the Welsh Ministers or to the planning authority (or both) in respect of an appeal to them against an enforcement notice relying on the ground in section 131(2)(a) (that, in relation to the matters specified in the enforcement notice as constituting a breach of planning control, planning permission ought to be granted or a condition of planning permission ought to be removed).

1621. As with fees payable to planning authorities, regulations under this section may provide for the details of the fees regime – including when a fee or charge must be paid, who is to pay it, the amount to be paid (and any reductions or exemptions in particular circumstances), the effect of failing to pay, and when a fee must be refunded (subsection (6)). They may also provide for a fee payable to the Welsh Ministers to be transferred to another person or body in certain circumstances (subsection (6)(g)).

1622. There are other powers conferred by this Act that enable the Welsh Ministers to make provision about fees or charges in certain circumstances. This section does not limit any of those powers (subsection (7)).

Section 365 – Determination of appeal by inspector

Schedule 20, paragraphs 4 to 6

1623. When the planning system was first introduced, all appeals were determined by the Secretary of State (and later in Wales by the Welsh Ministers following devolution of the planning system); but over the succeeding decades the power to determine appeals in various categories has been gradually transferred to inspectors. This section reflects current practice, in that subsection (1) provides for almost all appeals under the Act to be determined by inspectors, instead of by the Welsh Ministers.

1624. Such persons, appointed by the Welsh Ministers, used to be referred to in primary and secondary legislation as 'persons appointed by the Welsh Ministers' or simply as 'appointed persons'; but they have for many years been referred to in practice simply as 'inspectors', and this Act adopts that term.

1625. However, the Welsh Ministers will still determine an appeal themselves if it falls in either of the following categories:

a. an appeal that is of a kind specified in regulations (subsection (3)(a)); or

b. an appeal that has been the subject of a specific direction by the Welsh Ministers that it is to be determined by them (subsection (3)(b)).

1626. Directions under subsection (3)(b) are made on a case-by-case basis. Paragraph 4(2) of Schedule 20 provides that such a direction must state the reasons why it is being made and must be served on the inspector (if any) appointed to determine the appeal (paragraph (4)(2)(a)). It must also be served on the appellant, on the relevant planning authority, and – in the case of an appeal under section 73 against an authority's decision on an application (or its failure to make such a decision) – on anyone who has made representations on the application that must be taken into account by the authority (paragraph 4(2)(b) to (d)). Persons served under paragraph 4(2)(b) to (d) must be given an opportunity to make fresh representations, where the reasons for the direction raise new matters on which those persons have not made representations. These are the only circumstances in which the Welsh Ministers have to give anyone an opportunity to make fresh representations or modify or withdraw representations already made (paragraph 4(3) and (4)).

1627. Where the Welsh Ministers recover jurisdiction to determine an appeal by giving a direction under subsection (3)(b), they may take into account any report made to them by an inspector previously appointed to determine it (paragraph 4(5) of Schedule 20).

1628. At any time before the appeal is determined, the Welsh Ministers may revoke a direction under subsection (3)(b), by making a further direction that must state the reasons why it is being made. It must be served on all those who were served the original one. That further direction must appoint an inspector to determine the appeal, and the matter will then proceed as if no direction had been given – save that anything already done by or on behalf of the Welsh Ministers (including any arrangements as to the holding of an inquiry or hearing) will be treated as though it had been done by the newly-appointed inspector (paragraph 5 of Schedule 20).

1629. As specified in subsection (2), this section does not apply to appeals against a notice that an application is not valid (under section 61). However, similar provision is made by section 62(4) to (6) in relation to such appeals that are determined by an inspector unless the Welsh Ministers have made a direction that a particular validation appeal should be decided by them.

1630. The section also does not apply to any appeal under the CIL regulations (subsection (2)).

1631. By virtue of subsection (4), the decision of an inspector on an appeal is to be treated as if it were that of the Welsh Ministers.

1632. Paragraph 6(1) of Schedule 20 provides that, once an inspector has determined an appeal, it is not possible to challenge that decision in the High Court on the ground that it should have been made by the Welsh Ministers.

1633. Paragraph 6(2) of Schedule 20 provides that the actions and decisions of an inspector are to be treated as functions of the Welsh Government for the purposes the Public Services Ombudsman (Wales) Act 2019 (anaw 3); and Schedule 3 to that Act provides that the Welsh Government is a "listed authority" for the purposes of that Act. The result is that alleged maladministration by inspectors in the discharge of their functions, or a failure by them in providing relevant services, or a failure by them to provide such services, may be the subject of a complaint to the Public Services Ombudsman (see section 11 of that Act).

Schedule 20, paragraphs 1 to 3

1634. Paragraphs 1 to 3 of this Schedule contain further detail as to the determination of appeals by inspectors, as provided for by section 365. Paragraph 1(1) provides that an inspector in such a case generally has the same powers and duties as the Welsh Ministers other than:

a. functions conferred on the Welsh Ministers by section 365 and this Schedule, such as appointing another inspector, or giving a direction that an appeal must be determined by the Welsh Ministers, or revoking such a direction; or

b. making regulations.

1635. The combined effect of paragraph 1(2) and (3) of this Schedule is that where any enactment (other than section 365 or this Schedule) relating to an appeal refers to the Welsh Ministers, and where an appeal is to be determined by an inspector, that reference is to be understood as though it were to the inspector. For example, section 366(2) is to be read as though it states: "*The [inspector] must in each case determine the procedure by which [an appeal] to which this section applies [is] to be considered*"; and section 77(6) is to be read as though it states that "*the decision of [an inspector] on an appeal is final*".

1636. Paragraph 2 provides that an inspector may hold an inquiry or a hearing, where a determination has been made that an appeal is to be determined in that way. The costs of such an inquiry or hearing are generally to be met by the Welsh Ministers, subject to section 372. Either the Welsh Ministers or the inspector may appoint an assessor to assist the inspector on particular matters, whichever procedure is being used to determine the appeal.

1637. At any time before an appeal has been determined by an inspector, the Welsh Ministers may revoke the inspector's appointment and appoint another inspector to continue the proceedings, under paragraph 3. This enables, for example, a new inspector to be appointed where an inspector is taken ill or is for any other reason unable or unwilling to continue to act. Where such a new appointment is made, the consideration of the appeal, and any inquiry or hearing relating to it, must start afresh – but those who have made representations on the appeal do not need to be given an opportunity to modify or withdraw their representations or to make fresh ones.

Section 366 – Choice of inquiry, hearing or written procedure for appeals and applications

1638. This section provides for a determination to be made by the Welsh Ministers as to the procedure governing proceedings in respect of:

a. an application made direct to the Welsh Ministers (excluding those made under Part 11 or 12);

b. an application made to a planning authority and called-in by the Welsh Ministers for their decision; and

c. any appeal under this Act other than one against a decision by an authority as to the validity of an application (which must be dealt with by written representations: see section 62(3)) or under CIL regulations.

1639. In each of the situations mentioned above, the determination must be that the proceedings relating to the application or appeal are to be considered at a local inquiry, or at a hearing, or on the basis of written representations (subsection (3)).

1640. The list of categories of proceedings to which the section applies may be varied by regulations under subsection (10).

1641. The determination must be made, under subsection (4), within the period specified in regulations – currently six weeks, as prescribed in regulation 13 of the 2017 Referred Applications Regulations. That determination may be varied at any time before the conclusion of the relevant proceedings, by the issue of a further determination (under subsection (5)).

1642. A determination (or a further determination) as to procedure must be notified to the applicant or appellant, and to the relevant planning authority (subsection (6)).

1643. Where an application is made direct to the Welsh Ministers under section 78, the determination as to procedure must also be notified to anyone considered by the Welsh Ministers to represent parties, other than the applicant and the authority, who have an interest in proceedings. The same also applies to a connected application made under section 80.

1644. The Welsh Ministers are required to publish the criteria they will apply in making decisions as to procedure under this section (subsection (9)). The current criteria are in Appendix 01 to the *Procedural Guide* published on PEDW's website.

Section 367 – Procedural requirements for appeals, applications and other proceedings

1645. Subsection (1)(a) provides for the making of regulations to govern procedure in connection with any application, appeal or reference made to the Welsh Ministers – whether decided following an inquiry or hearing or on the basis of written representations. In reliance upon the power restated in section 367, the Welsh Ministers made the 2017 Referred Applications Regulations that apply to the following provisions under this Act:

a. applications for planning permission, referred to them under section 72;

b. appeals against decisions of planning authorities on applications for planning permission, or against the failure of an authority to decide such an application, under section 73;

c. appeals against decisions of planning authorities on applications for consent, or against the failure of an authority to decide such an application, under advertisements regulations made under sections 221 and 224;

d. appeals against decisions of planning authorities on applications for consent, or against the failure of an authority to decide such an application, under trees regulations made under sections 237 and 241(7);

e. appeals against decisions of planning authorities on applications for a certificate of lawfulness, or against the failure of an authority to decide such an application, under section 160;

f. appeals against enforcement notices, under section 131;

g. appeals against tree replacement notices, under section 254; and

h. appeals against maintenance of land notices, under section 215.

1646. Regulations have also been made in relation to appeals to the Welsh Ministers against decisions of planning authorities as to the validity of a planning application: see the Town and Country Planning (Validation Appeals Procedure) (Wales) Regulations 2016 (S.I. 2016/60 (W. 30)).

1647. Regulations under subsection (1)(b) may be made to govern procedure in connection with any other inquiry or hearing held by the Welsh Ministers (or by inspectors on their behalf), such as those held under section 368.

1648. Regulations under subsection (1) may regulate the procedure at an inquiry or a hearing, or the making of written representations – and may also regulate the procedure leading up to and following such proceedings (subsection (2)).

1649. They may also deal (under subsection (3)) with the procedure to be followed where an inquiry or hearing is abandoned, or where the Welsh Ministers call-in for their determination a matter that has already been set in train by an inspector, or where it is called-in and subsequently transferred back to an inspector. In particular, they may provide for what is to be done in each case in relation to action taken before the change.

1650. Such regulations may provide time limits within which parties must submit representations and documentary evidence and may enable the Welsh Ministers or the inspector to impose such time limits in relation to a particular case. They may also enable decision-makers to not consider material submitted out-of-time (see, for example, regulation 12 of the 2017 Referred Applications Regulations); and to proceed to a decision without any representations having been submitted within the time limit where they consider they have enough material before them.

1651. The regulations may also regulate the circumstances in which directions and orders as to costs may be given (subsection (5)). The current regulations make no such provision.

1652. In addition, they may provide that a matter may not be raised after a certain point in the proceedings, unless it could not have been raised previously (subsection (6)). This is to prevent a party introducing at the last minute a matter that could have been raised at the outset, depriving other parties an opportunity to respond properly.

Section 368 – Power of the Welsh Ministers to hold local inquiry

1653. In addition to the determining of applications and appeals, there are a number of other functions under the Act allocated to the Welsh Ministers – for example, confirming various plans and orders made by planning authorities and other bodies (see section 26 and Schedules 6, 7, 14 and 15) or acting in the place of the planning authority (see sections 29, 72, 102, 206 and 208). This section enables them to cause an inquiry to be held for the purpose of carrying out any of those functions. The section does not apply to Chapter 2 of Part 6 (community infrastructure levy).

1654. In practice, such inquiries are usually held by inspectors and organised by PEDW. The procedure to be followed before, at and after such an inquiry can be provided for by regulations made under section 367(1)(b). The provisions of sections 369 to 373 will also apply.

Section 369 – Power of person holding inquiry to require evidence

1655. This section applies to all inquiries held under any provision of the Act – most commonly those relating to planning and enforcement appeals, but also other inquiries held under section 368.

1656. Subsections (1)(a) and (3) enable the person holding a local inquiry under the Act (who will normally be an inspector appointed by the Welsh Ministers) to issue a summons requiring a person to attend a forthcoming inquiry – provided that the person's necessary expenses of attending are paid or offered. Under subsection (1)(b) a summons may also be issued requiring a person to produce any specified document that relates to a matter in question at the inquiry – although not the title to land (other than in the case of land owned by a local authority) (subsection (4)).

1657. Where a summons is issued, and a person refuses or deliberately fails to comply with it, that is an offence under subsection (5)(a). Where a person deliberately alters, suppresses, conceals or destroys a document that is required at an inquiry, or that is liable to be required, that too is an offence, under subsection (5)(b).

1658. Under subsections (6) and (7), both offences under subsection (5) are triable summarily (in the magistrates' court), and punishable on conviction by a fine of up to Level 3 on the standard scale or imprisonment of the maximum term (currently 6 months). Section 281 of the Criminal Justice Act 2003 will increase the maximum term of imprisonment to 51 weeks, once it has been brought into force.

1659. Under subsection (2), the person holding an inquiry may take evidence on oath and may administer oaths. This power may be useful where there is contested factual evidence, for example in enforcement proceedings.

Section 370 – Access to evidence at inquiry
Section 371 – Payment of appointed representative where access to evidence restricted

1660. Normally, at a local inquiry under this Act, oral evidence must be heard in public, and documentary evidence must be made publicly available (section 370(1)).

1661. However, that rule may be set aside, under section 370(2) and (3), where the Welsh Ministers or the Secretary of State (the "ministerial authority") consider that making evidence public:

a. would result in the disclosure of information affecting national security, or the security of any land or property; and

b. would be against the national interest.

1662. This may apply where, for example, a planning inquiry relates to land immediately adjacent to a military base.

1663. In such cases, the ministerial authority may direct that evidence of a specified character may only be heard or inspected by a person specified in the direction (or by persons in a character so specified). Where the ministerial authority is considering giving such a direction, or at any time after it has given one, the Counsel General may appoint a person (an "appointed representative") to represent the interests of those who will be prevented from hearing or inspecting the evidence (section 370(4) and (5)).

1664. Regulations under section 370(6) may provide for the procedure in connection with the giving of such a direction, and as to the functions of an appointed representative. The Planning (National Security Directions and Appointed Representatives) (Wales) Regulations 2006 (S.I. 2006/1387 (W. 137)) were made in reliance on the power restated in this section.

1665. Where an appointed representative is appointed by the Counsel General under section 370, the ministerial authority may direct that the representative's fees and expenses be paid by a person whom it considers is (or would have been) interested in the inquiry in relation to national security, or the security of any land or property ("the responsible person") (section 371(1) to (3)). If the appointed representative and the responsible person cannot agree the amount of the fees or expenses, the amount must be determined by the ministerial authority that gave the direction (section 371(4)). The ministerial authority must certify the amount agreed or determined; the appointed representative may then recover that amount from the responsible person, if necessary as a debt (section 371(5) and (6)).

Section 372 – Payment of costs of the Welsh Ministers

1666. Where an application or appeal is made to the Welsh Ministers, or where an application is referred to them – whether it is dealt with by an inquiry, a hearing or written representations – the Welsh Ministers will incur costs. They will also incur costs where they (or an inspector) hold any other type of inquiry or a hearing under the Act or under any regulations under it. In some circumstances, the Welsh Ministers (or the inspector) may decide that one or more of the parties to the proceedings should pay the Welsh Ministers costs.

1667. Where this occurs, the Welsh Ministers (or the inspector) may direct that part or all of their costs be paid by the applicant, the appellant, the planning authority, or some other party to the inquiry (subsection (1)). The costs that may be recovered in this way include:

a. the costs of the proceedings themselves including a contribution towards the general costs (and overheads) of the Welsh Government;

b. costs incurred in relation to an inquiry or hearing that does not take place (subsection (3)).

1668. Regulations under subsection (4) may specify a standard daily amount for the costs of the Welsh Ministers or inspectors for particular categories of proceedings. Those costs include a daily amount in relation to the actual dealing with the case, associated costs (such as travel, and subsistence), the costs of a person appointed to assist, such as a specialist assessor, and associated legal costs.

1669. The section does not apply to proceedings under CIL regulations (subsection (7)).

Section 373 – Orders relating to costs of parties

1670. Where an application or appeal is made to the Welsh Ministers, or where an application is referred to them – whether it is dealt with by an inquiry, a hearing or written representations – the parties (that is, the applicant, the appellant, the planning authority, and others) will incur costs. And they will also incur costs where an inquiry or a hearing is held by the Welsh Ministers under any other provisions in or under the Act.

1671. The normal rule is that parties pay their own costs, but the Welsh Ministers (or, more often, inspectors) may make an order under subsection (2) as to the payment by one party of all or some of the costs incurred by another party. That will only occur where the party ordered to pay the costs has behaved unreasonably in relation to the proceedings, and that party's behaviour has caused the other party to incur unnecessary or wasted expenditure (subsection (3)). This encapsulates the principle that has long guided inspectors in relation to planning appeals, most recently expressed in part 2 of the Annex to Section 12 of the *Development Management Manual* (available on the Welsh Government's website).

1672. Regulations made under section 367(5)(b) may specify the circumstances in which an order for costs can be made (subsection (4)).

1673. The section does not apply to proceedings under CIL regulations (subsection (5)).

Chapter 3 – Validity of plans, decisions and orders

1674. Planning decisions by planning authorities and the Welsh Ministers can be subject to challenge in the courts. Sections 374 to 377 provide that certain plans, decisions and orders – including a decision to grant planning permission or remove a condition or limitation of a permission on determination of an appeal against an enforcement notice – may only be challenged by statutory review and may not be challenged by means of any other legal proceedings.

1675. The validity of a relevant plan, decision or order may be challenged on the grounds that:

a. it is not within the appropriate powers; or

b. there has been a failure to comply with a procedural requirement and the applicant has been substantially prejudiced by that failure.

1676. The plan, decision or order may be found to be outside the appropriate powers not only by reference to the powers and requirements set out in the Act, but also because, for example, the decision-maker has acted irrationally, or taken into account irrelevant considerations, or failed to take into account relevant ones.

1677. Such a challenge is not a further opportunity to consider the planning merits of the plan, decision or order being challenged.

1678. Sections 378 and 379 require rules of court to provide a mechanism for interested persons to challenge:

a. decisions (other than decisions to grant planning permission or remove a condition or limitation of a permission) made by the Welsh Ministers on appeals relating to enforcement notices; and

b. decisions made by them on appeals relating to maintenance of land and tree replacement notices.

1679. Certain decisions made by an inspector instead of the Welsh Ministers are treated as being decisions of the Welsh Ministers (see, for example, sections 365(4) and 83(4)). Sections 375, 376, 378 and 379 therefore apply equally to challenges to decisions made by inspectors in such cases.

1680. Proceedings under this Chapter may only be brought with the permission of the court.

1681. Where a planning decision falls outside the scope of this Chapter – for example, a decision by a planning authority to grant planning permission – it may be challenged by way of an application for judicial review under Part 54 of the Civil Procedure Rules.

Section 374 – Statutory review of development plans

1682. This section provides that the NDF, a strategic development plan and a local development plan (or any revision of such a framework or plan) may only be challenged by way of statutory review under this section and may not be challenged by means of any other legal proceedings (subsections (1) and (2)).

1683. A person who is aggrieved by the plan in question may make an application to the High Court for statutory review (subsection (3)). Depending on the circumstances of the individual case, an aggrieved person may, for example, be a party who made objections or representations as part of the procedure that preceded the plan that is subject to challenge.

1684. A relevant plan may be challenged on the grounds that:

a. it is not within the powers conferred by Part 2; or

b. a requirement relating to its publication, adoption or approval has not been complied with (subsection (4)).

1685. An application for statutory review can only be made with the permission of the High Court (subsection (5)). The application for permission must be made before the end of 6 weeks beginning with the day after the relevant date set out in subsection (6). This time limit cannot be extended by the Court.

1686. Under subsections (7) and (8), the High Court has powers to make an interim order suspending operation of the plan when considering either the application for permission or the substantive application.

1687. Subsections (9) and (10) apply where the court is satisfied:

a. that the plan is outside the appropriate powers; or

b. that there has been a failure to comply with procedural requirements and the interests of the applicant have been substantially prejudiced by the failure.

1688. In such a case, the court has power to quash the plan and to send it back to the person with a function relating to its preparation, publication, adoption or approval. If the plan is sent back, the court has the power to give directions under subsections (11) and (12).

1689. The court may exercise its powers under subsections (7) to (12) either in relation to the whole of the plan or in relation to some part of it; and either generally or just in relation to the property of the applicant (subsection (13)).

Section 375 – Validity of certain decisions and orders

1690. This section provides that certain decisions made by the Welsh Ministers and certain orders may only be challenged by statutory review under the procedure set out in section 376 and may not be challenged by means of any other legal proceedings (subsection (1)). The decisions in question are listed in subsection (2) and the orders in subsection (3).

Section 376 – Application for statutory review of decision or order

1691. Section 376 provides that a person who is aggrieved by a decision or order listed in section 375(2) or (3) may make an application to the High Court for the statutory review of the decision or order (subsection (1)). Depending on the circumstances of the individual case, aggrieved persons may include the owner or occupier, the applicant or appellant, or some other party who made objections or representations as part of the procedure that preceded the decision or order challenged. The authority directly concerned with the decision or order, as defined in subsection (9), may also make an application for statutory review.

1692. A relevant decision or order may be challenged on the grounds that:

a. it is not within the appropriate powers; or

b. there has been a failure to comply with a requirement in relation to it (subsection (2)).

1693. By virtue of subsection (3), an application for statutory review under this section can only be made with the permission of the High Court. The application for permission must be made before the end of 6 weeks beginning with the day after the relevant date set out in subsection (4). These time limits cannot be extended by the Court.

1694. Under subsections (5) and (6)(a), the High Court has powers to make an interim order suspending operation of the decision or order to which the application (or proposed application) relates. These powers do not apply where the challenge is to a tree preservation order or woodland preservation order (subsection (8)(a)).

1695. The court may quash the decision or order where it is satisfied:

a. that the decision or order is not within the appropriate powers; or

b. that there has been a failure to comply with a procedural requirement, and the interests of the applicant have been substantially prejudiced by that failure (subsection (6)(b)).

1696. Where the challenge is to an order under the control of advertisements regulations designating an area of special control, the Court may suspend or quash the order in whole or part (subsection (7)). Where the challenge is to a tree preservation order or a woodland preservation order, the Court has the power on final determination to quash the order in whole or part (subsection (8)).

Section 377 – Statutory review of orders relating to highways and statutory undertakers

1697. The following orders may only be challenged by statutory review under this section:

a. an order under Part 11 (stopping up or diverting a highway or extinguishing a public right of way);

b. an order under section 318 relieving a statutory undertaker of impracticable obligations (subsection (2)).

1698. Such orders may not otherwise be challenged in any other legal proceedings (subsection (1)).

1699. A person who is aggrieved by such an order may make an application to the High Court for the statutory review of the order (subsection (3)). An application might be made by, for example, the owners of land adjacent to a highway that is to be stopped up.

1700. An order may be challenged on the grounds that:

a. it is not within the appropriate powers; or

b. a procedural requirement has not been complied with (subsection (4)).

1701. By virtue of subsection (5), an application for statutory review under this section can only be made with the permission of the High Court. The application for permission must be made before the end of 6 weeks beginning with the day after the relevant notice (as defined in subsection (10)) is first published (subsection (6)). The time limit cannot be extended by the Court.

1702. Under subsections (7) and (8)(a), the High Court has powers to make an interim order suspending operation of the order to which the application (or proposed application) relates when considering either the application for permission or the substantive application.

1703. The Court may quash the order if it is satisfied:

a. that the order is not within the appropriate powers; or

b. that there has been a failure to comply with a procedural requirement and the interests of the applicant have been substantially prejudiced by that failure (subsection (8)(b)).

1704. The Court may exercise its powers under subsections (7) and (8) either in relation to the whole of the order or in relation to some part of it; and either generally or just in relation to the property of the applicant (subsection (9)).

Section 378 – Appeal against decision relating to enforcement notice

1705. This section requires rules of court to provide a mechanism for interested persons (see subsection (3)) to challenge decisions made by the Welsh Ministers in proceedings on appeals relating to enforcement notices. Under subsection (1), the rules must provide either that:

a. interested persons may appeal to the High Court (in practice, the appeals would be dealt with by the Planning Court, a specialist court within the High Court, and the rules are contained in Part 54 of the Civil Procedure Rules and Practice Direction 54D made by the Civil Procedure Rule Committee); or

b. the Welsh Ministers may be required to state and sign a case for the opinion of the High Court (in practice this would require the Welsh Ministers to ask the Planning Court for its judgment on whether they decided the appeal properly). Note provision about appeals by way of case stated are contained in Practice Direction 52E made by the Civil Procedure Rule Committee.

1706. This section does not apply to challenges to enforcement appeal decisions granting planning permission or removing a condition or limitation of a planning permission (subsection (2)). These decisions can only be challenged under section 376 (statutory review).

1707. Proceedings in the High Court under this section can only be made with permission from the Court (subsection (9); an application for such permission, under Practice Direction 54D, must be made within 28 days after notice of the decision has been given to the applicant). Furthermore, an appeal from the High Court to the Court of Appeal can only be made with the permission of the High Court or the Court of Appeal (subsection (10)).

1708. Under subsections (6) and (7), the High Court and the Court of Appeal have the power to order that the enforcement notice is to continue to have effect – in whole or part – until the court proceedings are finally determined, and the matter has been re-determined by the Welsh Ministers. Such an order may be made on whatever terms the Court considers appropriate – including a requirement for the planning authority to give an undertaking for damages.

1709. Subsection (8) makes provision about other matters that can be included in Rules of the Court. This includes provision about powers of the High Court or the Court of Appeal to remit the matter to the Welsh Ministers for redetermination (see Practice Direction 54D).

1710. Under subsection (4) the Welsh Ministers may refer a question of law arising in the course of enforcement proceedings under section 131 to the High Court by way of case stated, and under subsection (5) a decision of the High Court on a case stated under subsection (4) may be appealed to the Court of Appeal under section 16 of the Senior Courts Act 1981 (c. 54).

Section 379 – Appeal against decision relating to maintenance of land notice or tree replacement notice

1711. This section makes provision about challenges by interested persons (see subsection (3)) to decisions on appeals against maintenance of land notices and tree replacement notices. Such challenges are treated similarly to those under section 378 in relation to enforcement notices – except that a power like that in section 378(6) and (7) is not found in this section. Where a decision on an appeal against a maintenance of land or tree replacement notice is challenged under this section, it has no effect until the challenge is finally determined and, where appropriate, the appeal has been re-determined (subsection (4)).

Chapter 4 – Correction of decisions of the Welsh Ministers

1712. This Chapter restates the provisions in the 2004 Act enabling certain errors (referred to as correctable errors) in particular decision documents to be corrected. It defines key terms, sets out the power to correct errors and explains the effect of a decision whether or not to correct an error.

Section 380 – Meaning of "decision document" and "correctable error"

1713. This section defines key terms, with subsection (2) providing that the correction power is exercisable in relation to a decision document that records:

a. a decision by the Welsh Ministers of the type listed in section 375(2);

b. a decision by them on an appeal against an enforcement notice, a maintenance of land notice or a tree replacement notice; and

c. a decision of any other type specified in regulations. (If regulations are made specifying a description of a decision, they must also make provision for questioning the validity of a correction notice (see section 382(5).)

See the note at paragraph 1679 above in relation to decisions made by an inspector instead of the Welsh Ministers.

1714. The correction power may only be exercised in relation to correctable errors – that is, errors (including omissions) in a decision document that are not part of any reasons given for the decision (subsection (3)).

Section 381 – Power to correct correctable errors in decision documents

1715. This section sets out the procedure the Welsh Ministers must follow to correct errors in a relevant decision document.

1716. The procedure starts where, before the end of the review period, the Welsh Ministers receive a request in writing to correct an error or, on their own initiative, write to the applicant to explain that the decision document contains a mistake that the Welsh Ministers are considering correcting (subsection (2)).

1717. The review period is defined by reference to the period within which an application must be made to the court for permission to bring proceedings under sections 376, 378 or 379 – and it does not matter whether any such application is actually made. The period is:

a. six weeks in relation to a decision document recording a decision of a type listed in section 375(2) (most decisions by the Welsh Ministers in relation to various applications and appeals) (subsection (4)(a); and see section 376(4)); and

b. four weeks in relation to a decision document recording a decision on appeal against an enforcement notice (other than a decision to grant planning permission or remove a condition), a maintenance of land notice, or a tree preservation order or a woodland preservation order (subsection (4)(b) and (c); and see Civil Procedure Rules, Practice Direction 54D, paragraph 6.1).

1718. The planning authority must also be informed that a request to make a correction has been received, or that the Welsh Ministers are considering making a correction (subsection (3)).

1719. Under subsections (5) and (6), as soon as possible after the Welsh Ministers have corrected an error or decided not to correct an error, they must issue a correction notice – either setting out the correction they have made or giving notice that they are not making any correction. Subsection (7) specifies on whom the correction notice must be served.

1720. Subsection (8) provides that the functions under this section may be exercised by an inspector if the original decision was made by an inspector.

Section 382 – Effect and validity of correction notice

1721. This section sets out the status of corrected and uncorrected decisions.

1722. A corrected decision will be treated as having been made on the date the relevant correction is made, and the statutory period for challenging the corrected decision will start to run from that date (subsection (1)).

1723. Any person wishing to challenge the decision is therefore not prejudiced by the time taken to correct the decision. If the Welsh Ministers do not correct a decision, the original decision will stand and the statutory period for challenge will be unaffected (subsection (2)).

1724. By virtue of subsection (6), a correction notice may not be questioned in any legal proceedings except as provided by this section. That is, in the same way as the decision as to which the notice relates can be challenged under section 376, 378 or 379.

PART 15 – GENERAL

1725. The final Part of the Act contains provisions dealing with various matters that are needed to ensure that the remainder of the Act operate properly.

1726. The planning system relies on decision-makers having access to accurate information. The first group of sections accordingly enables them to require information about interests in land and activities taking place there (sections 383 and 385), and to enter onto land where necessary (sections 386 to 389).

1727. The Act makes provision about a number of criminal offences. Section 390 explains how these work in the case of offences committed by corporate bodies.

1728. The procedures for claiming compensation are dealt with in sections 391 to 394). And section 395 enables contributions to be made towards costs of local authorities. The Act contains a number of references to documents and forms; sections 396 to 400 provide for their form and content, and as to how they are to be served.

1729. The next group of sections explains how the Act operates in certain special cases:

a. to development by the Crown or affecting Crown land (sections 401 to 403);

b. to development affecting historic buildings (section 404); and

c. to land owned by planning authorities, the Welsh Ministers, and Church of England land, and to development carried out by planning authorities and Welsh Ministers (sections 405 and 406).

1730. The finer details of the planning system are generally contained in secondary legislation. Section 407 deals with the exercise of powers to make regulations.

1731. Section 408 contains definitions of words and expressions found in the Act – either a full definition or a signpost to where a full definition may be found – and other general provisions to assist in the interpretation of the Act.

1732. Sections 409 and 410 provide for the coming into force of the Act and its short title.

Section 383 – Power to serve information notice
Section 384 – Offences of failing to comply with information notice
Section 385 – Information about interests in Crown land

1733. This section enables local authorities and the Welsh Ministers, for the purpose of enabling them to make an order or issue or serve a notice or other document, to serve an information notice on the occupiers of any land, and on those who are receiving rent in respect of any land (section 383(1) and (5)).

1734. Such a notice may ask for details of the recipients interest in the land, what it is being used for and by whom, and when that use (or any activities on the land) started (section 383(2) and (3)).

1735. The notice may require the specified information to be given within 21 days after it is served, or within such longer period as may be specified in it or allowed by the authority (section 383(4)).

1736. Under section 384, failure to comply with such a notice without reasonable excuse is an offence, punishable on summary conviction (in the magistrates' court) by a fine of up to Level 3 on the standard scale. It is also an offence for a person to knowingly provide information that is false or misleading in a material respect. A person who is convicted is liable to pay a fine (and there is no limit on the amount of the fine that a court may impose).

1737. Where an interest in Crown land is either a Crown interest or a Duchy interest (as explained in section 401), it is not possible to serve an information notice under section 383 in respect of such an interest. Instead, under section 385, the Welsh Ministers may request the appropriate Crown authority (see section 401(6)) to supply the information that could be required by such a notice, so far as it is within the authority's knowledge and it is able to do so without causing a breach of security or national security. The request is to be made for the purpose of enabling the Welsh Ministers or a local authority to make an order or serve a notice under or by virtue of the Act (except in relation to its provisions on CIL in Chapter 2 of Part 6).

1738. The general powers under sections 383 and 385 are in addition to the specific power available to a planning authority to serve an enforcement investigation notice, under section 114, to enable it to decide whether to take enforcement action.

Section 386 – Powers to enter land

1739. Anyone authorised in writing by a CJC or by the Welsh Ministers may enter and survey any land in connection with the preparation, revision, adoption or approval of a strategic development plan; and anyone so authorised by a planning authority or by the Welsh Ministers may do so in connection with the preparation, revision, adoption or removal of a local development plan (subsections (1) and (2)).

1740. Under subsections (3) and (5), anyone authorised in writing by a planning authority or the Welsh Ministers may enter any land:

a. to survey the land in connection with a planning application or any of the other applications mentioned in subsection (4) relating to the land or any other land (such as the property adjoining the land); or

b. to survey any land in connection with a proposal to make any of the orders or issue any of the notices mentioned in subsection (6), or to assess whether any such order or notice has been complied with.

1741. Where an authority proposes to remove an unauthorised poster or placard under section 231, a person authorised by the authority may enter private land where necessary to do so if it would be impossible to exercise the power without entering the land (subsection (7)).

1742. Where a claim for compensation has been made to a planning authority, under any of the provisions listed in subsection (8), a valuation officer of HM Revenue & Customs or a person authorised in writing by the authority may enter any land in order to survey it or to estimate its value. Where the compensation would be payable by the Welsh Ministers under section 152 or 320(3), a person authorised in writing by them or a valuation officer may enter the land for that purpose.

1743. The general powers of entry under this section are in addition to the various other specific powers under this Act, such as sections 116 and 141 to enter land for enforcement purposes.

Section 387 – Powers of entry: scope and restrictions

1744. The power to enter land under section 386 may be exercised at any reasonable time. But those exercising the power of entry must, if required to do so by or on behalf of any occupier produce evidence of their right to do so and state the purpose of the entry (subsections (1) and (3)). Where the land in question is occupied, at least 24 hours' notice must be given to all of those occupying it (subsection (2)).

1745. The power under section 386 to enter land includes a power to search and bore to determine the nature of the subsoil or the presence of any minerals. Where those entering land that is occupied propose to carry out such operations, they must mention this when giving notice to the occupiers (subsections (4), (5) and (6)). Where the land is owned by a statutory undertaker, and the undertaker objects to the carrying out of such operations on the grounds that they will seriously disrupt its undertaking, the works must not proceed unless they are authorised by the appropriate minister.

Section 388 – Powers of entry: offences and compensation

1746. Where persons are exercising a power of entry onto land under section 386, it is an offence to obstruct them intentionally; and anyone found guilty of such an offence is liable on summary conviction (in the magistrates' court) to a fine not exceeding Level 3 on the standard scale (subsections (1) to (3)).

1747. Where such persons cause any damage to land or property while exercising the powers of entry or carrying out a survey of it (including searching and boring for minerals etc.), anyone suffering the damage may obtain compensation from the person who authorised the entry.

1748. If such persons obtain and disclose confidential information relating to manufacturing processes or trade secrets for purposes other than the ones for which they were authorised to enter the land, they are guilty of an offence. They would be liable on summary conviction to pay a fine (and there is no limit on the amount of the fine that the court may impose) or on conviction on indictment to up to two years' imprisonment.

Section 389 – Powers to enter Crown land

1749. Powers of entry under section 386 may not be exercised in relation to Crown land unless those seeking entry obtain the agreement of:

a. someone who appears to them to be entitled to give such agreement; or

b. the appropriate Crown authority (see section 401(6)).

1750. Where such agreement is obtained, the exercise of the powers of entry is not subject to the provisions in sections 387 and 388.

Section 390 – Offences by bodies corporate

1751. The Act contains a number of criminal offences and this section applies where such an offence is committed by a body corporate and can be proved to have been:

a. committed with the consent or connivance of a senior officer of the body (that is, a director, manager, secretary, or other person with a similar role) or someone purporting to be a senior officer; or

b. attributable to the neglect of such a person.

Where the affairs of the body are managed by its members, "director" means a member of the body.

1752. In such a case, the senior officer or person (as well as the body corporate) can be prosecuted for the offence.

Section 391 – Making claims for compensation
Section 392 – Determination of compensation claims by Upper Tribunal

1753. There are provisions in the Act that provide for the possibility of making a claim for compensation in certain circumstances:

a. where planning permission is withdrawn, modified or revoked (under sections 105 to 109);

b. where a temporary stop notice or stop notice is withdrawn or overturned (under section 124 or 152);

c. where a discontinuance order, prohibition order or protection order is made (under section 211 or 212);

d. where damage is caused by those who exercise a power of entry onto land (under section 118, 261 or 388).

e. where a private means of access is stopped-up by an highways order or where a highway is pedestrianised (under section 285 or 289);

f. where the interests of statutory undertakers are affected by planning decisions (under section 319 or 320).

1754. Details as to the making of a claim in such circumstances are provided in regulations under section 391(1)(a); currently the 1992 General Regulations provide that a claim must be made in writing and sent or delivered to the planning authority.

1755. The individual compensation provisions, listed in the paragraphs above, stipulate that the period within which a claim for compensation must be made is generally 12 months from the date of the relevant decision or order. This period may be extended by the Welsh Ministers in a particular case; such an extension of time may be granted before or after the 12-month period ends and may be granted more than once (section 391(2) and (3)). Further provision as to the time-limits may be made by regulations (section 391(1)(b)), as currently set out in the 1992 General Regulations.

1756. Under section 392, any dispute as to the compensation payable is to be referred to and dealt with by the Upper Tribunal. Currently the procedure will be as provided for by the rules in the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (S.I. 2010/2600 (L. 15)). The costs of such a reference are to be assessed in accordance with section 29 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) and section 4 of the 1961 Act, although references in section 4 to "the acquiring authority" are to be treated as being to the authority from whom compensation is being claimed (section 392(2)).

Section 393 – Compensation for depreciation of value of land

1757. When assessing compensation for the compulsory acquisition of an interest in land, the compensation claim may consist of or include an element relating to the depreciation of the value of the interest in that land. In such a case, the compensation payable will be calculated in accordance with the valuation rules applying to compensation payable for the compulsory acquisition of land, under section 5 of the 1961 Act (subsection (1)).

1758. Subsection (2) applies where an interest is subject to a mortgage. The mortgagor may make a claim for compensation, the compensation payable in respect of the depreciation of the value of the interest that is subject to the mortgage is to be assessed ignoring the existence of the mortgage. A mortgagee may also make a claim in respect of the interest that is subject to the mortgage but may not claim in respect of the mortgagee's own interest. Any compensation payable is paid to the mortgagee (where there is more than one mortgagee, the first mortgagee), who must apply it as if it were the proceeds of sale – reducing the amount of the loan outstanding.

Section 394 – Power to modify compensation provisions in relation to minerals

1759. Regulations may make special provision as to the entitlement to compensation in respect of the making of an order under section 102 modifying planning permission for minerals development, or a discontinuance order made in relation to mining operations or depositing mineral waste, or a prohibition order or a protection order is made.

1760. Such regulations may provide for sections 106, 107 and 211 (which deal with the entitlement to compensation in such cases) and sections 319, 321 and 393 to apply in relation to minerals development subject to modifications. They may, for example, specify circumstances in which compensation is not payable, or the basis on which it is to be assessed.

1761. Before making such regulations, the Welsh Ministers must consult stakeholders who represent persons carrying out mining operations, owners of and those with interests in land containing minerals and planning authorities.

Section 395 – Contributions towards costs incurred by authorities

1762. A local authority or statutory undertaker may contribute towards the costs incurred by a planning authority, local highway authority, CJC or other local authority when performing a function under or by virtue of this Act, except for the provisions relating to CIL in Chapter 2 of Part 6 of this Act (subsection (1)).

1763. Under subsection (2) a local authority may contribute towards costs incurred by a local highway authority for the improvement or construction of a road for the purpose of providing a public right of way as an alternative to one extinguished by an order under section 297 or 300.

1764. A planning authority, local highway authority or other local authority may be required to pay compensation as a consequence of anything done under or by virtue of this Act, apart from the provisions relating to CIL under Chapter 2 Part 6 of the Act. For example, modifying or revoking a planning permission (under section 102), or making a discontinuance order (under section 206) or a prohibition order or protection order (under section 208). Where this arises because the thing was done wholly or partly in the interests of a service provided by the Welsh Ministers, they may contribute towards the payment of that compensation (subsection (4)(a)). Where another local authority has benefitted as a result of the thing that was done, the Welsh Ministers may direct the authority that has benefited to make a reasonable contribution towards the compensation paid by the other authority (subsection (4)(b)).

1765. Under subsections (5) and (6) a Minister of the Crown or a department of the UK government may contribute towards the payment of compensation paid by an authority, where the liability to pay compensation arises from the making of a decision or order under Parts 3 to 9 of the Act (with the exception of one in Chapter 2 of Part 6) in the interests of a service that is:

a. provided by the Minister or the Crown or government department; and

b. funded by money provided by the UK Parliament.

1766. Subsection (7) confirms that the powers of local authorities to make financial contributions under this section do not limit their powers (under sections 274 and 275 of the 1980 Act) to contribute towards the costs of highway authorities relating to public paths.

Section 396 – Form of local authority documents

1767. There are a number of types of documents that planning authorities and other local authorities are authorised – or required – to serve, make or issue, under or by virtue of various provisions in the Act. This section enables the Welsh Ministers to prescribe by regulation the form and content of such documents.

Section 397 – Powers to make provision about forms for applications and appeals

1768. In various places, the Act contains a power for regulations or a development order to provide for the form of an application, a notice of appeal, or a document to be supplied by an applicant or an appellant. See, for example, section 56(3) (application for planning permission), section 158(2) (application for a certificate of lawfulness), and sections 74(2) and 160(4) (appeals).

1769. This section provides that such a power allows or requires the use of a form that is published or provided by the Welsh Ministers or any other person or body.

Section 398 – Service of notices and other documents: general

1770. The Act contains many provisions that require or authorise a notice or other document to be served on a person, or that enable regulations to make such a provision. For example, regulations under section 58(1) must require an applicant for planning permission to give notice of the application to owners of the land concerned; section 60(2) requires a planning authority to give notice to an applicant for permission where it considers that an application is not valid; section 120(5) permits an authority to serve a copy of a temporary stop notice on various persons; and section 129(4) requires it to serve a copy of an enforcement notice on various persons.

1771. Subsection (2) establishes the basic rule as to how a document can be validly served on a person. It applies equally where a notice is to be given to a person. This is subject to any specific provision – either in the Act or in regulations under it – that establishes a different rule (subsection (7)).

1772. Under subsection (2)(a) to (c), a document may be served by physically handing it to the person – or, in the case of a corporate body, to the secretary or clerk of the body. Or it may be left at the person's usual or last known place of residence (or at the address supplied by the person for this purpose). Or it may be sent to the person (or the secretary or clerk of a corporate body), using registered post or recorded delivery, at the person's usual or last known place of residence (or at the address supplied by the person).

1773. Under subsections (2)(d), (3) and (4), where a person has given an email address or other address for service using electronic communication, the document may be served electronically on the person at that address, provided that it can be accessed by the person (so that, for example, it does not require a password), and is legible, and can be retained for subsequent reference. Where this option is used, and the document is received outside the person's normal business hours, it will be treated as having been served on the next working day.

1774. However, electronic communications may not be used for the service of various types of notices and orders, largely those relating to enforcement action, listed in subsections (5). Those must be served in hard copy.

1775. In addition, subsection (6) draws attention to the section 233 of the 1972 Act. That makes provision similar to this section of the Act, but in addition provides for:

a. a document to be served on a partnership by being served on a partner or on the person having the control or management of the partnership business (section 233(3)(b)); and

b. a document to be served on a company or partnership carrying on business outside the United Kingdom by being served on it at its principal office within the United Kingdom (section 233(4)).

Section 399 – Service of documents on persons having an interest in land or occupying land

1776. Where a document is to be served on a person as having an interest in a piece of land, subsection (2) allows for it to be addressed to "the owner" of the land (the land must be described), when the name of the person cannot be discovered after making reasonable inquiries and served in accordance with section 398. And where it is to be served on a person as an occupier of the land, subsection (3) allows for it to be addressed to "the occupier" and served accordingly.

1777. Under subsections (4) and (5), where a document is to be served on a person as having an interest in land whose usual or last known address cannot be ascertained after reasonable enquiry, and who has not given an address for service, if the document is marked as an important communication affecting the person's property, it can be served by leaving it in the hands of a person living or working on the land, or by leaving it conspicuously fixed to a building or object on the land. Alternatively, it can be sent by registered post or recorded delivery and will be treated as having been properly served if it is not returned as undelivered.

Section 400 – Service of documents on the Crown

1778. Where a document is required or permitted to be served on the Crown, under or by virtue of the Act, sections 398 and 399 do not apply; instead, the document must be served on the appropriate Crown authority (see section 401(6)).

Section 401 – Definitions relating to the Crown

1779. Since June 2006, planning legislation has applied in principle to Crown land and to development by or on behalf of the Crown just as it applies in any other case. However, its application is subject to certain modifications that are included at appropriate points throughout this Act. This section provides definitions of certain terms used in the provisions setting out those modifications.

1780. Subsections (2) to (4) provide that "Crown land" means land in which there is either:

a. a "Crown interest" – that is, an interest that belongs to His Majesty in right of the Crown or His private estates (see the Crown Private Estates Act 1862 (c. 37)), or an interest that belongs to a government department or that is held in trust for His Majesty for the purposes of a government department; or

b. a "Duchy interest" – that is, an interest that belongs to His Majesty in right of the Duchy of Lancaster, or an interest that belongs to the Duchy of Cornwall.

1781. "The Crown" is to be treated as including the Senedd Commission (subsection (7)).

1782. A "private interest" in Crown land means an interest that is neither a Crown interest nor a Duchy interest (subsection (5)). It would include, for example, the leasehold interest of a person who occupies a house or a shop on land that happens to be owned by a government department.

1783. Subsection (6) explains who is to be considered as the "appropriate Crown authority" in relation to each of the various categories of Crown land. In particular, where land belongs to a government department (including the Senedd Commission), that department is the appropriate Crown authority. Where there is a question as to who is the appropriate Crown authority in relation to any land, the question is to be resolved by the Treasury, whose decision is final (subsection (8)).

Section 402 – Representation of Crown and Duchy interests in land
Section 403 – Enforcement steps in relation to Crown land

1784. Section 402 provides that where the Act (or regulations made under the Act) requires or authorises something to be done by or in relation to an owner of an interest in land, including an interest only as an occupier of the land, where the interest is a Crown interest or a Duchy interest, the thing must be done by or in relation to the appropriate Crown authority for the land.

1785. Section 403 deals specifically with enforcement action in relation to Crown land. However, subsection (5) provides that the requirement for the agreement of the appropriate Crown authority does not apply in relation to issuing or serving any notice or making an order (for example a planning authority may serve a temporary stop notice, issue an enforcement notice, and issue or serve any other notice or make any order). However, under subsections (1) to (4), it may not enter the land, bring legal proceedings, make an application to the court, or take any other steps in connection with the enforcement of a requirement or prohibition by or under the Act, unless it has first obtained the agreement of the appropriate Crown authority – and such agreement may be subject to conditions.

Section 404 – Listed buildings and features of special architectural or historical interest

1786. The Welsh Ministers must maintain a list of buildings of special architectural or historic interest, under section 76 of the 2023 Act. This duty also applies to listed buildings in England. Section 404(1) imposes a duty on planning authorities that applies wherever they are considering whether to grant planning permission for development that affects a listed building or its setting when they are:

a. making a local development order (under section 45);

b. determining an application for permission (under section 67); or

c. making a discontinuance order (under section 207).

1787. The duty is also imposed on the Welsh Ministers whenever they are considering whether to grant permission for such development when:

a. making a development order (under section 44);

b. determining an application for permission (under section 72), or an appeal arising from the decision of an authority on such an application (under section 76);

c. determining an appeal against an enforcement notice (under section 133);

d. confirming a purchase notice (under paragraph 6 of Schedule 12); or

e. making a discontinuance order (under section 207) or confirming an order (under Schedule 14).

1788. The duty is to have special regard to the desirability of preserving – that is, keeping safe from harm – the listed building and its setting.

1789. In exercising the powers conferred on it under sections 266 to 268 of this Act, relating to the appropriation, development and disposal of land for planning purposes, a local authority must have regard to the desirability of preserving features of special architectural or historic interest, and in particular listed buildings (subsection (3)).

1790. The duties under this section are to be exercised alongside the similar duty, imposed on the Welsh Ministers and on planning authorities by section 160 of the 2023 Act when carrying out any function under this Actin relation to a building or other land in a conservation area: to have special regard to the desirability of preserving and enhancing the character and appearance of that area.

1791. Guidance on the exercise of these duties is to be found in the Welsh Government's TAN 24: *The Historic Environment (2017)*, on its website.

Section 405 – Development by, and land of, planning authorities and the Welsh Ministers

1792. The controls under this Act are generally administered by planning authorities and the Welsh Ministers. It is therefore appropriate for there to be slightly different procedures where development is to be caried out by the planning authority or the Welsh Ministers themselves, or where planning decisions involve land in which the authority or the Welsh Ministers have an interest, to minimise the chance of any perceived conflict of interest.

1793. Regulations under this section may provide for the application of some of the provisions of the Act to be subject to appropriate adjustments so that they operate satisfactorily in such cases. The provisions in question, listed in subsection (2), are:

a. Part 3 (planning permission) (other than Chapter 8 (development with government authorisation));

b. Chapter 1 of Part 6 (planning obligations);

c. Chapter 1 of Part 7 (discontinuance orders, prohibition orders and protection orders); and

d. Part 9 (preservation of trees and woodlands).

1794. In particular, the regulations may require applications in some such cases to be dealt with by planning authorities or by the Welsh Ministers, possibly by means of different procedures (subsection (4)). They may also, in relation to an application relating to development by a planning authority or relating to land in which a planning authority has an interest, make provision equivalent to that made by regulations under sections 58 and 63, dealing with the publicity for planning applications and the procedures for dealing with them (subsection (6)). Additionally, they may just apply the provisions made under sections 58 and 63 with modifications.

Section 406 – Church of England land

1795. Land in Wales that was once subject to the jurisdiction of the Church of England was generally transferred to the Church in Wales in 1920 and has always been subject to the planning system just as any other land. But there are some churches and churchyards in Wales, close to the border with England, that are still within a diocese of the Church of England; they are referred to in this section as Church of England land. Planning law has always treated such land slightly differently, due to the administrative organisation of that Church.

1796. The freehold of Church of England land is held by the incumbent (vicar or rector) by virtue of office. However, where the Act allows or requires a notice or other document is to be served on an owner of such land, a copy must also be served on the relevant Diocesan Board of Finance (subsection (1)). Where there is no incumbent, due to a vacancy, the land is to be treated as if it were owned by the Board for the purposes of compulsory acquisition under Part 10 (subsection (2)).

1797. Where compensation is to be paid to the owner of Church of England land, the money must be paid to the Diocesan Board of Finance and applied by it as if it were the proceeds of sale (subsection (3)). Where compensation is to be recovered from the owner (under Schedule 10), the appropriate Board of finance may apply any money or securities held by it (subsection (4)).

1798. Under section 156 of the 2023 Act regulations may provide that religious buildings used for religious purposes are exempt from the need for listed building consent. However, there is no equivalent ecclesiastical exemption from planning control under this Act.

Section 407 – Regulations

1799. Many of the more detailed provisions governing the operation of the planning system are provided for in regulations made under this Act, rather than in the Act itself. The power to make such regulations is generally exercisable by the Welsh Ministers (subsection (1)). And that power may be used to make different provisions for different purposes (for example, in different areas or types of area), and to make incidental, supplementary, consequential, transitional or saving provision (subsection (3)).

1800. Regulations under this Act generally must be made by Welsh statutory instrument, except for those made under section 306 as these are to be made by statutory instrument. Regulations are generally subject to the Senedd annulment procedure (see section 37E of the Legislation (Wales) Act 2019). However, some more significant regulations, listed in subsection (7) – including those that amend any provision in primary legislation (for which see subsection (10)) – are subject to the Senedd approval procedure (see section 37C of the 2019 Act).

1801. The regulations under section 306 mentioned above relate to universal postal service providers; those regulations are to be made as a statutory instrument by the Welsh Ministers and the Secretary of State for Business and Trade acting jointly (subsections (2) and (9)(a)). Such regulations are subject to the Senedd approval procedure and must also be laid in draft before, and approved by, both Houses of Parliament (subsection (9)(b) and (c)).

1802. Provision as to the making of development orders is set out in section 44.

Section 408 – Interpretation

1803. Part 1 of the Act contains the definitions of key terms used throughout the Act – the definitions of "development", "material change in the use of land", and "operations", along with related terms, are the subject of Chapter 2 of that Part. The definition of "planning authority" is the subject of Chapter 3 of that Part. And definitions relating to the Crown are the subject of section 401, in this Part. Subsection 1 accordingly points to those provisions.

1804. In other cases, where a term is mainly (but not exclusively) used in a specific Chapter or Part of the Act, it is defined there – to maximise accessibility – and this section merely refers to that definition. Section 112 defines "breach of planning control" and "taking enforcement action", along with other expressions used in connection with enforcement, used principally in Part 4; section 155 defines "lawful", and other expressions relating to lawfulness, used principally in Part 5; and section 221(5) defines "advertisement", used principally in Part 8. The opening sections of Part 12 (sections 303 to 308) clarify the interpretation of "statutory undertaker" and "statutory undertaking", together with the related terms "appropriate Minister" and "operational land".

1805. Subsection (1) also contains definitions of general expressions, mainly relating to land, that are used at various points throughout this Act. The definition in each case may be wider, narrower, or simply more specific, than the meaning given to the term in ordinary usage.

1806. As noted above, the meaning of the term "planning authority" is explained in Part 1. Subsection (1) defines the related terms "highway authority" and "local highway authority". The more general "local authority" that is used at various points in this Act is also defined in this subsection to include bodies in a number of categories. The subsection also provides an explanation of the term "corporate joint committee" introduced by the Local Government and Elections (Wales) Act 2021.

1807. The definition of "Wales" for this Act is narrower than the generally applicable definition found in the Legislation (Wales) Act 2019, in that it includes the combined area of the counties and county boroughs, but not the sea adjacent to them.

1808. In addition to the terms defined in this section, some other expressions are only used in one specific Chapter or Part of the Act and are therefore defined there. Examples include the terms "engineering operations" and "means of access" that are only found in Chapter 2 of Part 1 and are therefore defined in sections 3 and 4. The term "conservation area" is only used in Chapter 2 of Part 9 and is accordingly defined in section 247.

1809. By virtue of subsection (2), the expression "on land" in the Act (except in Part 11) is to be interpreted as meaning "in, on, over or under land". This takes account of the fact that, for example, building operations are usually partly below ground level and partly above ground level – and may indeed change the ground level.

1810. Subsection (3) relates to the various provisions in the Act that require a planning authority or the Welsh Ministers, in exercising a function, "to have regard to the development plan for an area and any other relevant considerations" – and to make their decision in accordance with the development plan unless other relevant considerations indicate otherwise. As noted in relation to section 66 of the Act, the term "relevant consideration" has the same meaning as the term "material consideration" used in previous planning Acts.

1811. Subsection (3)(a) makes it clear that, when exercising any of those functions, the considerations to which the planning authority or the Welsh Ministers must have regard include national policies relating to the development and use of land issued by the Welsh Ministers, so far as they are relevant to the exercise of the function in question. Such policies would include *Planning Policy Wales* and the series of TANs published by the Welsh Government.

1812. When exercising any such function, the planning authority or the Welsh Ministers must also have regard to considerations relating to the use of the Welsh language, so far as they are relevant (subsection (3)(b)). Current advice on this is contained in TAN 20, *Planning and the Welsh Language* (2017).

1813. The functions to which subsection (3) relates are:

a. determining an application for planning permission or the approval of reserved matters (under section 66);

b. determining an appeal further to such an application (under section 77);

c. making an order modifying or revoking planning permission (under section 102);

d. issuing an enforcement warning notice (under section 119) or an enforcement notice (under section 128 or 144);

e. determining whether to grant planning permission in response to an appeal against an enforcement notice (under section 133) or a purchase notice (under paragraph 6 of Schedule 12); and

f. making a discontinuance order (under section 206).

1814. However, subsection (4) emphasises that subsection (3) does not affect whether the considerations that it mentions, or any other considerations, are relevant to the exercise of the function in question. Nor does it affect the weight that must be given to any consideration to which the decision-maker has regard; that must always be a matter for the decision-maker.

1815. Subsection (1) explains that a "planning decision" means a decision on an application for planning permission made under the Act. Subsections (5) and (6) explain how this applies in cases where there is an appeal.

1816. Where the authority makes a decision – to refuse permission or to grant it subject to conditions – and that is the subject of an appeal, the Welsh Ministers (or an inspector on their behalf) may decide to dismiss the appeal and uphold the authority's decision. In that case the decision is still that of the authority itself (not the decision of the Welsh Ministers to uphold it) (subsection (5)(b)). And the date of the decision is the date of the authority's decision, not the date of the subsequent decision on appeal (subsection (6)(a)).

1817. However, where the Welsh Ministers allow (or partially allow) the appeal, they may grant permission, subject to conditions – quashing the authority's decision to refuse it – or they may grant permission subject to conditions different from those imposed by the authority. In either case the decision is that of the Welsh Ministers, not that of the authority (subsection (5)(a)). However, here too, the date of the decision is the date of the authority's original decision (even though that will have been to some extent overtaken by events) (subsection (6)(a)).

1818. Where the authority makes no decision by the end of the relevant period (that is, the period prescribed in the regulations, or such extended period as may have been agreed), and there is an appeal, there will eventually be a decision by the Welsh Ministers. In that scenario, the decision will then be that of the Welsh Ministers, but the date of the decision will be the date the relevant period ended (subsection (6)(b)).

1819. Subsections (5) and (6) will be relevant where calculating:

a. the period within which the development permitted by a planning permission must be started (under section 93 or 94), and the period at the end of which minerals development must cease (under Schedule 5);

b. the review date for a mining site on which there are no pre-1948 minerals permissions and that is not shown in a list under the 1995 Act (see Schedule 9, Table 3, row 3); and

c. the period within which a purchase notice may be served, under paragraph 4 of Schedule 12. In this case they must be read alongside paragraphs 4(3) and 10(2) of that Schedule, which provide that the relevant decision is to be treated as having been made on the date the Welsh Ministers determine an appeal or, where relevant, the date their decision is quashed.

Section 409 – Coming into force

1820. The Act will generally be brought into force on dates to be appointed by the Welsh Ministers in one or more orders (made by Welsh statutory instrument). Such orders may make related transitional or saving provisions connected with the coming into force.

1821. The following provisions came into force on 28 April 2026, the day after the Act received Royal Assent:

a. this section;

b. sections 1, 2 and 42, introducing the Act and Part 3;

c. section 407, about the making of regulations;

d. section 408, the general interpretation section; and

e. section 410, the short title.

Section 410 – Short title

1822. Section 410 sets out the short title of the Act, by which it may be known and referred. Either the Welsh or the English language title of the Act may be used, including as a citation in other enactments.

RECORD OF PROCEEDINGS IN THE SENEDD

1823. The following table sets out the dates for each stage of the Bill's passage through the Senedd. The Record of Proceedings and further information on the passage of this Bill can be found on Senedd Cymru's website at: **Planning (Wales) Bill**

Stage	*Date*
Introduced	15 September 2025
Initial Consideration – Debate	16 December 2025
Detailed Committee consideration	19 January 2026
Final Stage	10 March 2026
Royal Assent	27 April 2026