

Deddf Cynllunio (Cymru) 2026

2026 dsc 6

Nodiadau Esboniadol

Planning (Wales) Act 2026

2026 asc 6

Explanatory Notes

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DEDDF CYNLLUNIO (CYMRU) 2026

NODIADAU ESBONIADOL

CYFLWYNIAD

1. Mae'r Nodiadau Esboniadol hyn ar gyfer Deddf Cynllunio (Cymru) 2026 a basiwyd gan Senedd Cymru ar 10 Mawrth 2026 ac a gafodd y Cydsyniad Brenhinol ar 27 Ebrill 2026. Fe'u lluniwyd gan Lywodraeth Cymru er mwyn cynorthwyo'r sawl sy'n darllen y Ddeddf. Mae'r Nodiadau Esboniadol yn ymwneud â'r Ddeddf fel y cafodd y Cydsyniad Brenhinol.[1] Dylid eu darllen ar y cyd â'r Ddeddf ond nid ydynt yn rhan ohoni.

2. Nid yw'r nodiadau hyn yn darparu disgrifiad cynhwysfawr o gynnwys y Ddeddf. Os ymddengys nad oes angen rhoi esboniad neu sylw ar ddarpariaeth yn y Ddeddf, nis rhoddir.

3. Yn y Nodiadau Esboniadol hyn, mae nifer o dermau a byrfoddau wedi eu mabwysiadu, gan cynnwys:

CBC	Cyd-bwyllgor corfforedig
CNC	Cyfoeth Naturiol Cymru
Deddf 1961	Deddf Digolledia Tir 1961 (p. 33)
Deddf 1965	Deddf Prynu Gorfodol 1965 (p. 56)
Deddf 1980	Deddf Priffyrdd 1980 (p. 66)
Deddf 1990	Deddf Cynllunio Gwlad a Thref 1990 (p. 8)
Deddf 1991	Deddf Cynllunio a Digolledu 1991 (p. 34)
Deddf 1995	Deddf yr Amgylchedd 1995 (p. 25)
Deddf 2023	Deddf yr Amgylchedd Hanesyddol (Cymru) 2023 (dsc 3)
y Ddeddf Darpariaethau Canlyniadol	Deddf Cynllunio (Darpariaethau Canlyniadol) (Cymru) 2026 (dsc 7)
FfDC	Fframwaith Datblygu Cenedlaethol Cymru
Gorchymyn 2012	Gorchymyn Cynllunio Gwlad a Thref (Gweithdrefn Rheoli Datblygu) (Cymru) 2012 (O.S. 2012/801 (Cy. 110))
PEDW	Penderfyniadau Cynllunio ac Amgylchedd Cymru
TAN	Nodyn Cyngor Technegol

[1] Gellir gweld y newidiadau sydd wedi eu gwneud i'r Ddeddf ers iddi gael y Cydsyniad Brenhinol gan ddefnyddio'r cyfleuster "Newidiadau i Ddeddfwriaeth" ar www.legislation.gov.uk/cy/changes

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. Mae cyfeiriadau at awdurdodau lleol ac awdurdodau cynllunio yn gyfeiriadau at y rhai yng Nghymru oni nodir yn wahanol. Mae cyfeiriadau at gosbau troseddol ar y "graddfa safonol" yn gyfeiriadau at lefelau'r cosbau uchaf a ddiffinnir yn adran 122 o Ddeddf Dedfrydu 2020 (p. 17) (gweler Atodlen 1 i Ddeddf Deddfwriaeth (Cymru) 2019 (dccc 4)).

5. Cyfeirir at is-ddeddfwriaeth a wnaed o dan Ddeddf 1990 a deddfwriaeth arall sydd wedi ei hailddatgan yn y Ddeddf. Mae Adran 35 o Ddeddf Deddfwriaeth (Cymru) 2019 yn ymdrin â'r sefyllfa pan fo deddfwriaeth bresennol yn cael ei diddymu ac yn cael ei ailddeddfu mewn Deddf gan Senedd Cymru. Mae Adran 35(3) yn darparu, os oes is-ddeddfwriaeth a wnaed o dan y ddeddfwriaeth sydd wedi ei diddymu, y gellid ei gwneud hefyd o dan y Ddeddf newydd gan Senedd Cymru, ei bod yn parhau i gael effaith fel pe bai wedi ei gwneud o dan y Ddeddf newydd. Felly, bydd is-ddeddfwriaeth a wnaed o dan ddeddfwriaeth sydd wedi ei hailddatgan yn Neddf Cynllunio (Cymru) 2026 yn parhau i gael effaith o ran Cymru fel pe bai wedi ei gwneud o dan y Ddeddf honno.

CRYNODEB A CHEFNDIR

6. Mae'r Ddeddf yn dwyn ynghyd y brif ddeddfwriaeth sy'n ymwneud â chynllunio gwlad a thref yng Nghymru. Fe'i trefnir yn 15 o Rannau.

   a. Yn Rhan 1 rhoddir cyflwyniad a throsolwg ac eglurir rhai cysyniadau penodol – yn enwedig "datblygiad" a'r "awdurdod cynllunio" – sy'n hanfodol er mwyn deall y Ddeddf.

   b. Mae Rhan 2 yn nodi'r gyfraith sy'n ymwneud â'r cynllun datblygu, sef sail polisi'r system fodern o reolaeth gynllunio.

   c. Mae Rhan 3 yn darparu bod caniatâd cynllunio yn ofynnol ar gyfer datblygiad, ac yn gwneud darpariaeth ynghylch sut y caniateir rhoi'r caniatâd hwnnw (gan gynnwys drwy orchymyn datblygu neu yn dilyn cais i'r awdurdod cynllunio). Mae hyn yn cynnwys gweithdrefnau ar gyfer apelio yn erbyn penderfyniadau ac addasu a dirymu caniatâd.

   d. Yn Rhan 4 eir ati i ddisgrifio'r camau y caniateir eu cymryd pan fo datblygiad yn cael ei gynnal heb ganiatâd. Pan nad yw cyflwyno hysbysiad yn datrys y broblem, caiff yr awdurdod gymryd camau neu erlyn y rhai sy'n gyfrifol ei hun.

   e. Mae Rhan 5 yn darparu system pan ellir cael tystysgrif cyfreithlondeb, gan ddatgan yn bendant nad oes angen caniatâd ar gyfer datblygiad sydd wedi digwydd neu sy'n cael ei ystyried.

   f. Mae Pennod 1 o Ran 6 yn ymdrin â rhwymedigaethau y caniateir eu creu – naill ai'n unochrog neu drwy gytundeb – i gyfyngu ar ddatblygiad tir neu ei reoleiddio, fel arfer ochr yn ochr â rhoi caniatâd, neu ei gwneud yn ofynnol i ddatblygwyr ddarparu cyllid ar gyfer seilwaith a gwelliannau eraill. Mae Pennod 2 o Ran 6 yn amlinellu'r system ar gyfer codi'r ardoll seilwaith cymunedol gan awdurdod cynllunio er mwyn ei alluogi i gael cyllid o'r fath.

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. Mae Rhan 7 yn cynnwys pwerau eraill sy'n ymwneud â defnydd o dir neu gyflwr tir. Mae Pennod 1 yn galluogi awdurdod cynllunio neu Weinidogion Cymru i wneud gorchmynion datbarhau sy'n ei gwneud yn ofynnol i berchnogion tir orffen defnydd cyfreithlon, presennol o dir, neu symud ymaith adeiladau neu waith. Pan fo'r tir yn cael ei ddefnyddio, neu wedi ei ddefnyddio, ar gyfer gweithrediadau mwyngloddio, cânt wneud gorchymyn gwahardd neu orchymyn diogelu sy'n ei gwneud yn ofynnol i'r defnydd ddod i ben ac i'r tir gael ei adfer. Mae Pennod 2 o Ran 7 yn galluogi awdurdod i ddyroddi hysbysiad cynnal a chadw tir sy'n ei gwneud yn ofynnol i berchnogion ar dir gymryd camau unioni pan fo ei gyflwr yn niweidio amwynder yr ardal gyfagos. Yma hefyd, yn y naill sefyllfa neu'r llall, pan nad yw dyroddi gorchymyn neu hysbysiad yn datrys y broblem, caiff yr awdurdod gymryd camau neu erlyn y rhai sy'n gyfrifol ei hun.

h. Mae Rhan 8 yn ei gwneud yn ofynnol cael caniatâd i arddangos hysbysebion. Mae Rhan 9 yn ei gwneud yn ofynnol i'r rhai sy'n gwneud gwaith i goeden gael cydsyniad pan fo wedi ei diogelu gan orchymyn diogelu coed neu orchymyn diogelu coetir, neu hysbysu'r awdurdod cynllunio os yw mewn ardal gadwraeth. Yn y ddau achos, mae manylion y gyfundrefn gydsynio i'w darparu mewn rheoliadau. Mae torri'r gofynion hyn yn drosedd.

i. Mae Rhan 10 yn grymuso awdurdodau lleol ac adrannau'r llywodraeth (sy'n cynnwys Gweinidogion Cymru ac un o Weinidogion y Goron) i gaffael neu i gyfeddu tir at ddibenion cynllunio.

j. Mae Rhan 11 yn galluogi datrys problemau pan fo datblygiad sydd wedi ei awdurdodi o dan Ran 3 neu waith y mae tir wedi ei gaffael ar ei gyfer o dan Ran 10 yn effeithio ar briffyrdd.

k. Mae Rhan 12 yn adlewyrchu amgylchiadau penodol ymgymerwyr statudol ac yn galluogi ystyried eu hanghenion gweithredol wrth wneud penderfyniadau cynllunio. Mae hefyd yn diogelu hawliau ymgymerwyr statudol a gweithredwyr rhwydwaith o dan y cod cyfathrebiadau electronig (y cyfeirir atynt yn gyffredinol yn y Nodiadau hyn fel "gweithredwyr rhwydwaith") pan fo caffael tir yn effeithio arnynt ac yn eu galluogi i wasanaethu datblygiad newydd.

l. Mae Rhan 13 yn galluogi'r rhai y mae cynigion cynllunio neu gynigion eraill (sef tir o dan falltod) yn effeithio ar eu tir i'w gwneud yn ofynnol i'r awdurdod cynllunio ei brynu.

m. Mae Rhan 14 yn cynnwys darpariaethau cyffredinol o ran arfer swyddogaethau cynllunio gan awdurdodau cynllunio, Gweinidogion Cymru, ac arolygwyr sy'n gweithredu ar eu rhan, gan gynnwys codi ffioedd. Mae hefyd yn galluogi herio cyfreithlondeb penderfyniadau o dan y Ddeddf yn yr Uchel Lys.

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. Mae Rhan 15 yn gwneud darpariaeth gyffredinol bellach at ddibenion y Ddeddf, gan gynnwys darpariaeth sy'n rhoi pwerau i wneud gwybodaeth yn ofynnol a darpariaeth sy'n ymwneud â chyflwyno dogfennau. Mae hefyd yn diffinio termau technegol a ddefnyddir drwy'r Ddeddf ac yn cyfeirio darllenwyr at ble y gellir dod o hyd i ddiffiniadau mwy arbenigol yn y Ddeddf.

7. Y brif Ddeddf sydd wedi ei hailddatgan yn y Ddeddf hon yw Deddf Cynllunio Gwlad a Thref 1990 (p. 8) ('Deddf 1990'). Fodd bynnag, mae'r Ddeddf hefyd yn cynnwys darpariaethau perthnasol o ddeddfiadau eraill, gan gynnwys:

a. Deddf Iechyd y Cyhoedd 1936 (p. 49);

b. Deddf Llywodraeth Leol 1972 (p. 70);

c. Deddf Priffyrdd 1980 (c. 66);

d. Deddf Cynllunio a Digolledu 1991 (p. 34) ('Deddf 1991');

e. Deddf yr Amgylchedd 1995 (p. 25) ('Deddf 1995');

f. Deddf Cynllunio a Phrynu Gorfodol 2004 (p. 5) ('Deddf 2004');

g. Deddf Cynllunio 2008 (p. 29) ('Deddf 2008'); ac

h. Deddf Cynllunio (Cymru) 2015 (dccc 4) ('Deddf 2015').

8. Mae'r broses gydgrynhoi wedi bod yn gyfle i gynnwys darpariaethau perthnasol o is-ddeddfwriaeth yn y Ddeddf pan fo'n briodol. Fel rheol gwnaed hyn pan fo'r is-ddeddfwriaeth wedi ennill ei phlwyf ac nad yw'n debygol o fod angen ei diwygio'n aml.

9. Yn ogystal â chael ei hategu gan is-ddeddfwriaeth berthnasol, mae'r ddeddfwriaeth sylfaenol hefyd wedi ei hategu gan gyfres o ddogfennau polisi, Nodiadau Cyngor Technegol (TANs) sy'n ganllawiau manwl ar bynciau penodol, a chanllawiau eraill. Y prif ganllaw yw *Polisi Cynllunio Cymru* (Rhifyn 12, a gyhoeddwyd ym mis Chwefror 2024).

SYLWADAU AR YR ADRANNAU
RHAN 1—DARPARIAETHAU RHAGARWEINIOL
Pennod 1 – Cyflwyniad a throsolwg
Adran 1 – Cyflwyniad i'r Ddeddf hon

10. Mae'r adran hon yn cyflwyno Deddf Cynllunio (Cymru) 2026. Mae is-adran (1) yn ddatganiad am statws y Ddeddf fel rhan o god cyfraith Cymru. Mae'r datganiad hwn wedi ei gynnwys i wella hygyrchedd y gyfraith yng Nghymru ac fe'i cynhwysir mewn Deddfau cydgrynhoi yn y dyfodol ac mewn unrhyw Ddeddfau diwygio sy'n cynnwys datganiad cynhwysfawr o'r ddeddfwriaeth sylfaenol ar bwnc.

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. Bwriedir i'r datganiad o statws hwn helpu personau a chanddynt diddordeb yn y gyfraith ar bwnc penodol — cynllunio gwlad a thref yn yr achos hwn — i ddod o hyd iddi a'i dosbarthu'n haws. Mae'r cyfeiriad at statws y Ddeddf wedi ei gynnwys gyda'r nod y bydd is-ddeddfwriaeth a wneir o dan y Ddeddf yn gwneud darpariaeth sy'n union yr un fath. Bwriad Llywodraeth Cymru yw y bydd deddfwriaeth sylfaenol, is-ddeddfwriaeth a deddfwriaeth drydyddol (canllawiau yn bennaf) yn cael eu categoreiddio a'u cyhoeddi fel codau cyfraith cydlynol yn y dyfodol.

12. Mae dosbarthu Deddfau yn y ffordd hon yn gyson ag argymhelliad Comisiwn y Gyfraith yn ei adroddiad *Ffurf a Hygyrchedd y Gyfraith sy'n Gymwys yng Nghymru* (Com Gyf Rhif 366, 2016). Yn yr adroddiad hwnnw cydnabuwyd pwysigrwydd sicrhau bod y gyfraith yn hygyrch er mwyn cynnal uniondeb y gyfraith. Bwriad rhoi statws cod i Ddeddf yw annog symud oddi wrth sefyllfa lle y mae'r gyfraith ar bwnc penodol wedi ei gwasgaru dros nifer o wahanol ddarnau o ddeddfwriaeth sylfaenol. Yn hytrach, y bwriad yw y bydd Biliau'r Senedd yn y dyfodol yn cael eu deddfu a'u cynnal mewn ffordd sy'n caniatáu i'r sawl sy'n defnyddio'r ddeddfwriaeth ddod o hyd i gymaint â phosibl o'r gyfraith sy'n effeithio ar bwnc penodol drwy ddarllen un Ddeddf gan y Senedd neu is-ddeddfwriaeth a wneir odani.

13. Cyflwynwyd y system gynllunio fwy neu lai ar ei ffurf bresennol yn Neddf Cynllunio Gwlad a Thref 1947 (p. 51); diwygiwyd honno gan wahanol Ddeddfau ac fe'i disodlwyd gan Ddeddf Cynllunio Gwlad a Thref 1962 (p. 38). Diwygiwyd honno hefyd gan wahanol Ddeddfau, gan gynnwys Deddf Cynllunio Gwlad a Thref 1968 (p. 72) ac yna fe'i disodlwyd gan Ddeddf Cynllunio Gwlad a Thref 1971 (p. 78). Disodlwyd Deddf 1971 a'r Deddfau a wnaeth ei diwygio wedi hynny gan bedair Deddf:

    a. Deddf 1990;

    b. Deddf Cynllunio (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) 1990 (p. 9);

    c. Deddf Cynllunio (Sylweddau Peryglus) 1990 (p. 10) ('Deddf Sylweddau Peryglus 1990'); a

    d. Deddf Cynllunio (Darpariaethau Canlyniadol) 1990 (p. 11).

14. Pan gafodd ei deddfu gyntaf, roedd Deddf 1990 yn unffurf gymwys o ran Cymru a Lloegr. Ers hynny, mae wedi ei diwygio sawl gwaith. Roedd rhai o'r diwygiadau hyn yn gymwys yng Nghymru a Lloegr – gan gynnwys y rhai a wnaed gan Ddeddf 1991, Deddf 1995, Deddf 2004, Deddf 2008 a Deddf Cyfiawnder Troseddol a'r Llysoedd 2015. O dan Ddeddf Llywodraeth Cymru 2006 (p. 32), y Senedd sy'n gyfrifol am ddeddfwriaeth gynllunio yng Nghymru; ac mae'r rhan fwyaf o'r system cynllunio gwlad a thref yng Nghymru wedi ei datganoli. Mae'r diwygiadau a wnaed i Ddeddf 1990 ers 2006 wedi bod yn gymwys i Loegr yn unig ar y cyfan. Ond dim ond yng Nghymru y mae rhai wedi bod yn gymwys – yn arbennig y rhai a wnaed gan Ddeddf Llywodraeth Leol (Cymru) 1994 a Deddf 2015. O ganlyniad i'r broses hon, mae Deddf 1990 bellach yn gymwys mewn ffordd sylweddol wahanol yng Nghymru a Lloegr.

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. Mae Deddf Cynllunio (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) 1990 a Deddf Henebion Hynafol ac Ardaloedd Archaeolegol 1979 (p. 46), ynghyd â Deddf yr Amgylchedd Hanesyddol (Cymru) 2016 (dccc 4), wedi eu cydgrynhoi o ran Cymru gan Ddeddf yr Amgylchedd Hanesyddol (Cymru) 2023 (dsc 3) ('Deddf 2023'). Mae Deddf 2023 yn cyd-fynd â'r Ddeddf bresennol.

16. Nid yw'r Ddeddf yn effeithio bron dim ar Ddeddf Sylweddau Peryglus 1990.

17. Mae Deddf Cynllunio (Darpariaethau Canlyniadol) (Cymru) 2026 (dsc 7) ("y Ddeddf Darpariaethau Canlyniadol") yn mynd gyda'r Ddeddf hon, ac mae'n cynnwys diwygiadau i wahanol ddeddfiadau sy'n angenrheidiol i sicrhau eu bod yn parhau i weithredu'n gywir yng Nghymru ac yn Lloegr yn sgil y Ddeddf hon.

Adran 2 – Trosolwg o'r Ddeddf hon

18. Mae'r adran hon yn rhoi trosolwg o'r Ddeddf. Mae is-adran (2) yn egluro bod Pennod 2 yn ymwneud â dehongli'r cysyniad allweddol o "datblygiad", a thermau cysylltiedig. Ac mae Pennod 3 yn ymwneud ag ystyr "awdurdod cynllunio".

19. Mae'r is-adrannau sy'n weddill yn nodi cynnwys pob Rhan o'r Ddeddf.

Pennod 2 – "Datblygiad" a diffiniadau cysylltiedig

Adran 3 – Ystyr "datblygiad"

20. Mae is-adran (2) yn diffinio "datblygiad" mewn termau eang, i gynnwys:

    a. cynnal gweithrediadau ar dir; a

    b. gwneud newid sylweddol yn y defnydd o dir.

21. Mae'r diffiniad hwn yn gymwys at bob diben yn y Ddeddf (ac eithrio Pennod 2 o Ran 6 sy'n ymwneud ag ardoll seilwaith cymunedol) (is-adran (1)).

22. Diffinnir "tir" gan adran 408 i gynnwys adeiladau a mwynau.

23. Diffinnir y term "gweithrediadau" yn adran 4 i gynnwys gweithrediadau adeiladu, peirianneg a mwyngloddio; a cheir diffiniad pellach o bob math o weithrediad yn adran 4. Mae rhai mathau o weithrediadau wedi eu heithrio o gwmpas datblygiad gan adran 6(2) i (4). Diffinnir yr ymadrodd "ar dir" (gan adran 408) i olygu "yn y tir, ar y tir, dros y tir neu o dan y tir" – mae gweithrediadau adeiladu a gweithrediadau eraill yn aml yn cynnwys gwaith islaw ac uwchlaw lefel y ddaear a gall arwain at newid wyneb y ddaear. Yn aml, cyfeirir at ddatblygiad o fewn cwmpas is-adran (2)(a) fel "datblygiad gweithredol".

24. Mae'r term "newid sylweddol yn y defnydd o dir" yn cynnwys newid sylweddol yn y defnydd o adeilad neu ran o adeilad. Ystyrir y term ymhellach yn adran 5 ac mae adran 6(5) i (7) yn eithrio rhai newidiadau mewn defnydd o gwmpas datblygiad.

25. Mae is-adran (4) yn golygu, yn y Bennod hon, pan fo darn o dir i'w ddefnyddio at ddiben cynnal gweithrediadau, y trinnir hynny fel datblygiad gweithredol o dan is-adran (2)(a), yn hytrach nag fel newid sylweddol yn y defnydd (o ddefnydd blaenorol i'w ddefnyddio fel safle adeiladu) sy'n ddatblygiad o dan is-adran (2)(b).

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).

Adran 4 – Gweithrediadau adeiladu, peirianneg a mwyngloddio

26. Mae'r adran hon yn ehangu ar ran gyntaf y diffiniad o ddatblygiad yn adran 3(2) – cynnal gweithrediadau adeiladu, peirianneg, mwyngloddio neu weithrediadau eraill (is-adran (1)).

27. Mae "gweithrediadau adeiladu" yn cynnwys adeiladu adeilad newydd, ond mae is-adran (2) yn egluro ei fod hefyd yn cynnwys dymchwel adeilad, ailadeiladu adeilad a gwneud unrhyw addasiad strwythurol neu ychwanegiad i adeilad. Ac mae adran 408 yn egluro bod "adeilad" yn cynnwys unrhyw strwythur, ac unrhyw ran o adeilad neu strwythur, ond nad yw'n cynnwys cyfarpar na pheiriannau sy'n ffurfio rhan o adeilad neu strwythur. Fel y mae is-adran (2)(d) yn nodi, mae "gweithrediadau adeiladu" yn cynnwys unrhyw weithrediadau o fath a fyddai fel arfer yn cael eu cynnal gan adeiladwr – ond nid oes ots gan bwy y'u cynhelir mewn gwirionedd.

28. Mae dymchwel wedi ei gynnwys yn y gweithrediadau adeiladu sy'n ffurfio datblygiad. Fodd bynnag, bydd Rhan 31 o Atodlen 2 i Orchymyn Cynllunio Gwlad a Thref (Datblygu Cyffredinol a Ganiateir) 1995 (O.S. 1995/418) ('Gorchymyn 1995') yn cael ei diwygio fel y caniateir dymchwel yn gyffredinol, yn ddarostyngedig i amodau yn achos dymchwel adeilad sy'n fwy na 50 metr ciwbig. Mae hyn yn disodli'r ddarpariaeth yn adran 55(2)(g) o Ddeddf 1990 drwy'r hon yr oedd gan Weinidogion Cymru bŵer i gyfarwyddo nad oedd rhai categorïau o ddymchwel yn ddatblygiad.

29. Nid yw'r term "gweithrediadau peirianneg" wedi ei ddiffinio, ac eithrio bod is-adran (3) yn nodi ei fod yn cynnwys ffurfio neu osod allan "mynedfa" i briffordd – term a ddiffinnir yn is-adran (6). Ac mae is-adran (4) yn darparu y cymerir bod rhoi neu gydosod tanc mewn dyfroedd mewndirol at ddibenion ffermio pysgod yn golygu cynnal gweithrediadau peirianneg; diffinnir "tanc", "ffermio pysgod" a "dyfroedd mewndirol" at y dibenion hyn yn is-adran (7).

30. Mae'r term "gweithrediadau mwyngloddio" yn cael ei ddiffinio gan is-adran (5) fel ennill a gweithio mwynau mewn tir, ar dir, dros dir neu o dan dir, pa un ai drwy weithio ar wyneb y ddaear neu o dan y ddaear. Mae'r is-adran hefyd yn darparu ei fod yn cynnwys symud ymaith unrhyw ddeunydd o ddyddodyn o wastraff mwynau, lludw tanwydd wedi ei falurio, lludw ffwrnais, clincer, slag haearn, slag dur neu slagiau metelaidd eraill ac echdynnu mwynau o arglawdd rheilffordd segur.

Adran 5 – Defnyddiau o dir sy'n golygu newid sylweddol

31. Nid y defnydd o dir ei hun sy'n ei gwneud yn ofynnol cael caniatâd cynllunio, ond yn hytrach newid defnydd, os yw'n sylweddol. Nid yw'r term "sylweddol" wedi ei ddiffinio ond mae'r adran hon yn egluro bod defnyddio tir mewn ffyrdd penodol yn cael ei drin fel pe bai'n golygu newid sylweddol mewn defnydd ac felly'n ddatblygiad.

32. Mae is-adran (2) yn egluro, pan fo cynnydd yn nifer yr anheddau o fewn adeilad (neu ran o adeilad) mewn defnydd preswyl, fod hynny'n ffurfio newid sylweddol yn y defnydd o'r adeilad yn ei gyfanrwydd ac o bob rhan o'r adeilad o dan sylw, at ddibenion y Ddeddf. Byddai hyn yn gymwys pan fo, er enghraifft, annedd sengl yn cael ei rhannu'n ddau fflat, neu pan fo'r rhan o adeilad a oedd yn cael ei defnyddio fel tri fflat yn cael ei throsi'n bedwar fflat.

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. Mae is-adran (3) yn egluro bod dyddodi gwastraff ar dir – hyd yn oed os yw'r tir hwnnw eisoes yn cael ei ddefnyddio at y diben hwnnw – i'w drin fel newid sylweddol yn y defnydd o'r tir:

    a. os cynyddir arwynebedd y dyddodyn; neu

    b. os cynyddir uchder y dyddodyn, fel bod ei bwynt uchaf uwchlaw'r tir sy'n cyffinio â'r safle.

34. Ac mae is-adran (4) yn darparu bod defnyddio er mwyn arddangos hysbysebion ran allanol o adeilad nas defnyddir fel arfer at y diben hwnnw – megis talcen tŷ teras ar ben rhes o dai – i'w drin fel newid sylweddol yn y defnydd o'r rhan honno. Fodd bynnag, mae adran 229 yn darparu y bernir bod arddangos hysbysebion, i'r graddau y bo'n ffurfio datblygiad, yn cael caniatâd cynllunio os oes iddo fudd cydsyniad o dan reoliadau a wnaed o dan Ran 8.

Adran 6 – Gweithrediadau a newidiadau mewn defnydd nad ydynt yn ddatblygiad

35. Mae'r adran hon yn darparu nad yw gweithrediadau a newidiadau penodol yn y defnydd o dir yn golygu datblygiad at ddibenion y Ddeddf.

36. Mae is-adran (2) yn darparu nad yw gwaith adeiladu sy'n effeithio ar y tu mewn i adeilad yn unig, neu nad yw'n cael effaith sylweddol ar ei olwg allanol, yn golygu datblygiad at ei gilydd. Mae hyn yn golygu nad oes angen caniatâd cynllunio ar addasiadau a gwelliannau arferol i'r tu mewn i adeilad (a allai gynnwys, er enghraifft, ailaddurno, gwaith trydanol a gweithrediadau eraill a gynhelir gan adeiladwr fel arfer).

37. Fodd bynnag, nid yw is-adran (2) yn gymwys pan fo gwaith o'r fath yn cynyddu arwynebedd gros llawr mewnol yr adeilad o dan sylw (is-adran (2)(b)(i)). Felly, bydd gwaith o'r fath yn ddatblygiad at ddibenion y Ddeddf. Fodd bynnag, bydd Rhan 2 o Atodlen 2 i Orchymyn 1995 yn cael ei diwygio fel ei bod yn caniatáu gwaith o'r fath, ac eithrio yn achos gwaith i greu mwy na 200m^2 ychwanegol o fewn adeilad manwerthu presennol. Byddai hyn yn golygu, er enghraifft, y byddai mewnosod oriel gysgu mewn ystafell fyw â nenfwd uchel yn ddatblygiad ond byddai fel arfer yn cael ei ganiatáu; ond byddai angen gwneud cais cynllunio mewn perthynas â gosod llawr mesanîn mawr mewn archfarchnad.

38. Nid yw is-adran (2) yn gymwys ychwaith pan fo'r gwaith yn cynyddu cyfaint y gofod tanddaearol mewn adeilad, megis creu neu ddyfnhau islawr tŷ (is-adran (2)(b)(ii)). Mae gwaith o'r fath yn ddatblygiad ac mae'n ofynnol cael caniatâd cynllunio ar ei gyfer.

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. Wedi ei eithrio hefyd o'r diffiniad o ddatblygiad mae gwaith arferol neu fân waith gan wahanol awdurdodau cyhoeddus a chyrff tebyg. Mae is-adran (3)(a)(i) yn eithrio gwaith gan awdurdodau priffyrdd sy'n ofynnol yn unig er mwyn cynnal a chadw ffordd. Ac mae is-adran (3)(a)(ii) yn eithrio gwaith arall o fewn ffiniau ffordd – gan gynnwys gwaith gwella – ond nid yw'n gymwys pan allai'r gwaith gael effeithiau andwyol sylweddol ar yr amgylchedd. Fodd bynnag, nid yw'r naill ran na'r llall o is-adran (3)(a) yn ymwneud â gwaith y tu hwnt i ffin ffordd, er enghraifft i'w lledu neu i'w gwyro, nac i waith i greu priffordd newydd – a fydd felly'n ddatblygiad ac a fydd fel rheol yn gwneud cael caniatâd cynllunio yn ofynnol.

40. Mae is-adran (3)(b) yn eithrio o'r diffiniad o ddatblygiad gynnal gwaith gan awdurdodau lleol ac ymgymerwyr statudol at ddiben arolygu, atgyweirio neu adnewyddu carthffosydd, prif bibellau, pibellau a cheblau a chyfarpar arall – ond nid gwaith o'r fath pan y'i cynhelir gan awdurdodau parciau cenedlaethol neu ddarparwyr post cyffredinol (is-adran (8)). Mae is-adran (4) yn tynnu sylw at adran 5(2) o Ddeddf Piblinellau 1962 (p. 58), sy'n gwneud darpariaeth debyg mewn perthynas â gwaith i arolygu, cynnal a chadw, addasu, atgyweirio, newid ac adnewyddu piblinell. Yn y ddau achos, mae'r esemptiad yn cynnwys torri ac agor stryd neu dir arall at ddiben cynnal y gwaith.

41. Mae is-adran (5)(a) yn eithrio o'r diffiniad o ddatblygiad newid yn y defnydd o adeilad neu dir arall o fewn cwrtil annedd i unrhyw ddefnydd sy'n ddeilliadol i fwynhad o'r annedd.

42. Mae'r defnydd o dir ar gyfer amaethyddiaeth a choedwigaeth bob amser wedi bod y tu hwnt i gwmpas rheolaeth gynllunio i raddau helaeth. Mae'r term "amaethyddiaeth" wedi ei ddiffinio'n eang, yn adran 408, i gynnwys garddwriaeth, tyfu ffrwythau, tyfu hadau, ffermio llaeth, bridio a chadw da byw, y defnydd o dir fel tir pori, gweirglodd, tir helyg gwiail, gerddi marchnad a phlanhigfeydd a defnyddio tir ar gyfer coetiroedd sy'n ategol i ffermio. Diffinnir coedwigaeth i gynnwys coedwigo.

43. Mae is-adran (5)(b) yn eithrio o'r diffiniad o ddatblygiad:

    a. newid y defnydd o dir i unrhyw ddefnydd ar gyfer amaethyddiaeth neu goedwigaeth; a

    b. newid y defnydd o unrhyw adeilad a feddiannir gyda thir a ddefnyddir ar gyfer amaethyddiaeth neu goedwigaeth i unrhyw ddefnydd at y naill neu'r llall o'r dibenion hynny.

44. Caiff rheoliadau o dan is-adran (6) ddarparu ar gyfer yr hyn y cyfeirir ato fel "dosbarthiadau defnydd" a chânt ddarparu nad yw newid yn y defnydd o adeilad (neu ran o adeilad) neu dir arall o un defnydd mewn dosbarth penodol i ddefnydd arall yn yr un dosbarth i'w gymryd i gynnwys datblygiad o'r adeilad neu'r tir hwnnw.

45. Y dosbarthiadau defnydd sydd ar waith ar hyn o bryd yw'r rhai y darperir ar eu cyfer yng Ngorchymyn Cynllunio Gwlad a Thref (Dosbarthiadau Defnydd) 1987 (O.S. 1987/764).

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).

Pennod 3 – Awdurdodau cynllunio

46. Yn gyffredinol, caiff swyddogaethau o dan y Ddeddf eu haseinio i Weinidogion Cymru neu i'r awdurdod cynllunio.

47. Nid yw Gweinidogion Cymru eu hunain yn awdurdod cynllunio ond maent yn arfer rôl oruchwylio gyffredinol, yn enwedig drwy eu rôl yn penderfynu apelau yn erbyn penderfyniadau awdurdodau cynllunio. Mewn rhai achosion, maent hefyd yn gallu arfer swyddogaethau o dan y Ddeddf yn lle'r awdurdod cynllunio perthnasol. Ond yn y mwyafrif helaeth o sefyllfaoedd caiff y system gynllunio ei gweinyddu gan yr awdurdod cynllunio.

48. Mae'r Bennod hon yn cynnwys y fframwaith deddfwriaethol sy'n darparu ar gyfer y gwahanol fathau o awdurdodau cynllunio sy'n gweinyddu'r system gynllunio yng Nghymru, ochr yn ochr â Gweinidogion Cymru, a'r ffordd y mae'r awdurdodau hynny yn cyflawni eu swyddogaethau. Mae'n disodli, i raddau helaeth, Ran 1 o Ddeddf 1990, sydd wedi ei diwygio gan sawl statud, gan gynnwys Deddf Llywodraeth Leol (Cymru) 1994, dros y 30 o flynyddoedd ers ei deddfu gyntaf.

49. Arferai'r awdurdod cynllunio gael ei alw "yr awdurdod cynllunio lleol" neu "the local planning authority" mewn Deddfau cynllunio blaenorol, ond mae'r Ddeddf hon yn mabwysiadu'r term symlach "awdurdod cynllunio", gan gydnabod mai system unedol o lywodraeth leol sydd gan Gymru erbyn hyn.

50. Arferai fod yn bosibl i Weinidogion Cymru ddynodi mathau eraill o gyrff cyhoeddus – gan gynnwys corfforaethau datblygu trefol – yn awdurdod cynllunio lleol. Ond nid yw'r pwerau hynny erioed wedi eu harfer yng Nghymru ac nid ydynt yn cael eu hailddatgan.

Adran 7 – Yr awdurdod cynllunio ar gyfer ardal

51. Mae llawer o bwerau a dyletswyddau o dan y Ddeddf hon wedi eu haseinio i'r awdurdod cynllunio. Y rheol gyffredinol yw mai'r awdurdod cynllunio yw'r awdurdod lleol, a sefydlwyd o dan Ddeddf Llywodraeth Leol 1972 (p. 70) ('Deddf 1972'). Yng Nghymru, y cyngor sir neu'r cyngor bwrdeistref sirol ar gyfer yr ardal sy'n cynnwys y tir perthnasol yw hwnnw. Ar hyn o bryd mae 22 o awdurdodau lleol yng Nghymru.

52. Mae tri pharc cenedlaethol yng Nghymru, a sefydlwyd gyntaf yn y 1950au o dan Ddeddf Parciau Cenedlaethol a Mynediad i Gefn Gwlad 1949 (p. 97) – Arfordir Penfro (Pembrokeshire Coast), Bannau Brycheiniog (Brecon Beacons) ac Eryri (Snowdonia). Rhyngddynt maent yn cynnwys 20% o arwynebedd tir Cymru. Mae gan bob un o'r parciau awdurdod parc cenedlaethol erbyn hyn, a grëwyd yn 1997 o dan Ran 3 o Ddeddf 1995. Mae awdurdod parc cenedlaethol yn arfer holl swyddogaethau awdurdod cynllunio yn lle'r awdurdod neu'r awdurdodau lleol y mae ei ardal neu eu hardaloedd yn cynnwys rhan o'r parc cenedlaethol neu'r cyfan ohono (is-adran (2)(a)).

53. Pe bai parc cenedlaethol pellach yn cael ei sefydlu o dan Ddeddf 1995, gydag awdurdod parc cenedlaethol, yr awdurdod hwnnw fyddai'r awdurdod cynllunio.

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. Pan fo bwrdd cydgynllunio yn cael ei sefydlu o dan adran 8, bydd yn arfer swyddogaethau awdurdod cynllunio yn lle'r awdurdodau lleol cyfansoddol (is-adran (2)(b)).

Adran 8 – Pŵer i ddynodi ardal gydgynllunio a sefydlu bwrdd cydgynllunio

55. Mae'r adran hon yn darparu'r mecanwaith i sefydlu bwrdd cydgynllunio, o dan reoliadau sydd i'w gwneud gan Weinidogion Cymru.

56. Bwrdd cydgynllunio yw'r awdurdod cynllunio ar gyfer ardal gydgynllunio a fydd yn cynnwys ardaloedd cyfan dau awdurdod lleol neu ragor, neu ran o'r ardaloedd hynny. Mae ardal o'r fath i'w sefydlu gan Weinidogion Cymru, y mae rhaid iddynt yn gyntaf gynnal ymchwiliad oni bai bod yr holl awdurdodau lleol cyfansoddol yn cytuno â sefydlu'r bwrdd (is-adran (2)).

57. Mae bwrdd cydgynllunio yn cynnwys aelodau etholedig o'r awdurdodau cyfansoddol (is-adran (4)). Bydd y rheoliadau sy'n dynodi ardal gydgynllunio ac sy'n sefydlu'r bwrdd yn pennu nifer ei aelodau ac yn darparu ar gyfer arfer ei swyddogaethau (is-adrannau (5) i (7)).

Adran 9 – Ardaloedd cydgynllunio a Pharciau Cenedlaethol

58. Yn gyffredinol, ni chaiff ardal gydgynllunio gynnwys ardal awdurdod parc cenedlaethol. Ond caniateir i'r rheol hon gael ei threchu gan reoliadau a wneir o dan yr adran hon. Caiff rheoliadau o'r fath wneud darpariaeth ynghylch cyflawni:

    a. swyddogaethau o dan y Ddeddf hon (heblaw gwneud cynlluniau datblygu); a

    b. swyddogaethau o dan Ddeddf 2023 a Deddf Sylweddau Peryglus 1990.

59. Caniateir iddynt hefyd wneud addasiadau canlyniadol i'r Deddfau hynny, i'r Deddfau sy'n ymwneud ag awdurdodau parciau cenedlaethol ac i ddeddfwriaeth sylfaenol ac is-ddeddfwriaeth berthnasol arall.

RHAN 2 – Y CYNLLUN DATBLYGU

60. Y cynllun datblygu yw sylfaen y system gynllunio. Mae'r Ddeddf yn ei gwneud yn ofynnol i awdurdod cynllunio neu Weinidogion Cymru, wrth arfer swyddogaethau amrywiol, "rhoi sylw i'r cynllun datblygu ar gyfer ardal ac unrhyw ystyriaethau perthnasol eraill" – a gwneud eu penderfyniad yn unol â'r cynllun datblygu oni bai bod unrhyw un neu ragor o'r ystyriaethau eraill hynny yn dangos fel arall.

61. Mae'r Rhan hon o'r Ddeddf yn nodi'r gwahanol fathau o gynlluniau datblygu yng Nghymru ar lefelau cenedlaethol, rhanbarthol a lleol. Mae'n egluro beth ydynt, sut y maent yn cael eu llunio a'u hadolygu yn barhaus a beth yw swyddogaethau'r rhai sy'n ymwneud â'u llunio a'u hadolygu yn barhaus. Mae'n disodli, i raddau helaeth, Ran 6 o Ddeddf 2004.

Pennod 1 – Rhagarweiniol

62. Mae'r Bennod hon yn egluro beth yw ystyr "y cynllun datblygu" ac yn nodi ei elfennau cyfansoddol. Mae hefyd yn nodi'r ddyletswydd datblygu cynaliadwy ar gyfer llunio pob math o gynllun.

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.

Adran 10 – Ystyr "y cynllun datblygu" ar gyfer ardal

63. Mae'r adran hon yn diffinio pa ddogfennau sy'n ffurfio'r cynllun datblygu yng Nghymru. Mae'r cynllun datblygu yn darparu'r sylfaen ar gyfer y system rheoli datblygu sy'n cael ei harwain gan gynlluniau datblygu yng Nghymru.

64. Cynnwys y cynllun datblygu ar gyfer ardal yng Nghymru yw:

    a. Fframwaith Datblygu Cenedlaethol Cymru (FfDC), sy'n nodi polisïau defnydd tir Llywodraeth Cymru ar raddfa genedlaethol;

    b. unrhyw gynllun datblygu strategol ar gyfer yr ardal, sy'n cynnwys polisïau sy'n gymwys ar raddfa ranbarthol ac is-ranbarthol; ac

    c. y cynllun datblygu lleol ar gyfer yr ardal, sy'n cynnwys polisïau sy'n gymwys ar lefel leol.

65. Mae'r adran hon yn egluro, os oes unrhyw wrthdaro rhwng polisïau yn y cynlluniau sy'n ffurfio'r cynllun datblygu ar gyfer ardal, y dylid datrys y gwrthdaro o blaid y polisi sydd wedi ei gynnwys yn y cynllun diweddaraf sydd wedi ei fabwysiadu, ei gymeradwyo neu ei gyhoeddi (is-adran (2)).

Adran 11 – Datblygu cynaliadwy

66. Mae'r adran hon yn gymwys i unrhyw gorff cyhoeddus sy'n cyflawni unrhyw swyddogaeth mewn perthynas â chynlluniau datblygu o dan y Rhan hon. Rhaid i gorff o'r fath arfer y swyddogaethau fel rhan o gynnal datblygu cynaliadwy yn unol â Deddf Llesiant Cenedlaethau'r Dyfodol (Cymru) 2015 (dccc 2) ('Deddf Cenedlaethau'r Dyfodol 2015'), fel bod datblygiad a defnydd o dir yn cyfrannu at wella llesiant Cymru. Rhaid i'r corff ystyried unrhyw ganllawiau perthnasol a ddyroddir gan Weinidogion Cymru (is-adran (3)).

67. Yn yr adran hon, mae i'r term "corff cyhoeddus" yr un ystyr ag a roddir yn adran 6 o Ddeddf Cenedlaethau'r Dyfodol 2015, sy'n ei ddiffinio i gynnwys awdurdodau cynllunio (awdurdodau lleol ac awdurdodau parciau cenedlaethol), cyd-bwyllgorau corfforedig a Gweinidogion Cymru.

Pennod 2 – Fframwaith Datblygu Cenedlaethol Cymru

Adran 12 – Dyletswydd i lunio a chyhoeddi Fframwaith Datblygu Cenedlaethol

68. Mae adran 12 yn ei gwneud yn ofynnol i Weinidogion Cymru lunio a chyhoeddi "Fframwaith Datblygu Cenedlaethol Cymru" y mae rhaid iddo nodi eu polisïau mewn perthynas â datblygiad a defnydd o dir yng Nghymru (is-adrannau (1) a (2)). Rhaid iddo hefyd roi rhesymau dros y polisïau hynny (is-adran (4)).

69. Caiff yr FfDC bennu'r hyn sydd i fod yn "prosiect seilwaith arwyddocaol" (at ddibenion Deddf Seilwaith (Cymru) 2024 (dsc 3) ('Deddf 2024')). Rhaid iddo roi rhesymau dros gynnwys prosiectau penodol neu gategorïau penodol o brosiect.

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. Rhaid iddo hefyd nodi sut y mae wedi ystyried polisïau cenedlaethol perthnasol eraill a nodir yn:

    a. y polisi adnoddau naturiol cenedlaethol, a luniwyd gan Weinidogion Cymru o dan adran 9 o Ddeddf yr Amgylchedd (Cymru) 2016 (dccc 3), sy'n nodi blaenoriaethau, risgiau a chyfleoedd allweddol ar gyfer rheoli adnoddau naturiol yn gynaliadwy, gan gynnwys gweithredu mewn perthynas â newid hinsawdd a bioamrywiaeth (y diweddaraf yw'r *Polisi Adnoddau Naturiol* a gyhoeddwyd ym mis Awst 2017);

    b. y cynlluniau morol a gyhoeddir ganddynt o dan Ran 3 o Ddeddf y Môr a Mynediad i'r Arfordir 2009 (p. 23), sy'n nodi eu polisïau ar gyfer datblygu'r ardal yn gynaliadwy yn unol â'r Datganiad Polisi Morol (y diweddaraf yw *Cynllun Morol Cenedlaethol Cymru*, a gyhoeddwyd ym mis Tachwedd 2019); ac

    c. strategaeth trafnidiaeth Cymru, a gyhoeddir o dan adran 2 o Ddeddf Trafnidiaeth (Cymru) 2006 (p. 5), sy'n nodi eu polisïau ar gyfer hyrwyddo ac annog cyfleusterau a gwasanaethau trafnidiaeth diogel, integredig a darbodus (y diweddaraf yw *Llwybr Newydd: Strategaeth Drafnidiaeth Cymru 2021*, a gyhoeddwyd ym mis Mawrth 2021) (is-adran (5)).

71. Mae'r FfDC yn cael effaith ar gyfer y cyfnod y mae'n ei bennu (is-adrannau (5) a (6)). Cyhoeddwyd yr FfDC cyntaf (a elwir *Cymru'r Dyfodol: Y Cynllun Cenedlaethol 2040*) ar 24 Chwefror 2021 ac mae'n dod i ben ar ddiwedd 2040.

Adran 13 – Llunio'r Fframwaith: datganiad o gyfranogiad y cyhoedd

72. Mae adran 13 yn ei gwneud yn ofynnol i Weinidogion Cymru lunio datganiad sy'n nodi pryd a sut y byddant yn ymgynghori ag aelodau o'r cyhoedd, ac yn eu cynnwys, wrth lunio'r FfDC. Fel rhan o'r ymgynghoriad hwn, rhaid cyhoeddi drafft o'r FfDC ac yna rhaid cael cyfnod o 12 wythnos pan gaiff unrhyw berson wneud sylw (is-adran (3)).

73. Caiff Gweinidogion Cymru adolygu a diwygio'r datganiad o gyfranogiad y cyhoedd ar unrhyw adeg (is-adran (4)).

Adran 14 – Y weithdrefn ar gyfer llunio a chyhoeddi'r Fframwaith

74. Mae adran 14 yn ei gwneud yn ofynnol i Weinidogion Cymru lunio drafft o'r FfDC er mwyn ymgynghori arno, ar ôl cynnal arfarniad o gynaliadwyedd y polisïau a nodir ynddo (is-adran (1)). Rhaid i'r arfarniad hwnnw gynnwys asesiad o effeithiau tebygol y polisïau ar y defnydd o'r Gymraeg (is-adran (3)).

75. Yn ogystal â'r tair dogfen bolisi y cyfeirir atynt uchod (gweler y Nodiadau uchod sy'n ymwneud ag adran 12 o'r Ddeddf), rhaid iddynt hefyd roi sylw i'r adroddiad rheoli tir yn gynaliadwy diweddaraf, a luniwyd o dan adran 6 o Ddeddf Amaethyddiaeth (Cymru) 2023 (dsc 4), sy'n nodi'r cynnydd a wnaed tuag at gyflawni'r amcanion a nodir yn adran 1 o'r Ddeddf honno (is-adran (2)).

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. Rhaid i Weinidogion Cymru gynnal ymgynghoriad yn unol â'r Datganiad o Gyfranogiad y Cyhoedd a luniwyd o dan adran 13. Yna, rhaid iddynt osod yr FfDC drafft gerbron y Senedd, ynghyd ag adroddiad sy'n crynhoi'r sylwadau a gyflwynwyd yn ystod yr ymgynghoriad ac sy'n egluro sut y cawsant eu hystyried (is-adran (4)).

77. Mae gan y Senedd gyfnod i graffu ar y drafft, sy'n para 60 niwrnod o'r dyddiad y'i gosodwyd (gan ddiystyru unrhyw ddyddiau pan fo'r Senedd wedi ei diddymu ac unrhyw gyfnodau o doriad sy'n fwy na phedwar diwrnod) (is-adran (8)). Rhaid i Weinidogion Cymru roi sylw i unrhyw benderfyniad ynghylch yr FfDC drafft a basiwyd gan y Senedd yn ystod y cyfnod craffu, ac unrhyw argymhelliad a wnaed gan unrhyw bwyllgor o'r Senedd ynghylch yr FfDC drafft yn ystod y cyfnod hwnnw (is-adran (5)).

78. Ar ôl y cyfnod craffu o 60 niwrnod, caiff Gweinidogion Cymru gyhoeddi'r FfDC. Fodd bynnag, os ydynt yn cynnig newidiadau i'r FfDC, cânt osod drafft diwygiedig gerbron y Senedd a chyhoeddi'r fersiwn honno (is-adran (6)). Rhaid i Weinidogion Cymru hefyd, wrth gyhoeddi'r FfDC ar ei ffurf derfynol neu cyn hynny, osod datganiad gerbron y Senedd yn egluro sut y maent wedi ystyried unrhyw benderfyniad a basiwyd gan y Senedd neu unrhyw argymhelliad gan bwyllgor o'r Senedd a wnaed yn ystod y cyfnod craffu (is-adran (7)).

Adran 15 – Adolygu a diwygio'r Fframwaith

79. Mae adran 15 yn ei gwneud yn ofynnol i Weinidogion Cymru adolygu'r FfDC yn barhaus; a chânt gyhoeddi FfDC diwygiedig ar unrhyw adeg. Os yw'r FfDC i'w ddiwygio, mae'r un gweithdrefnau ar gyfer ymgynghori a chraffu yn gymwys fel y'u disgrifir uchod mewn perthynas â'r FfDC gwreiddiol (is-adran (3)).

80. Os cyhoeddir FfDC diwygiedig ar ffurf ddrafft, a bod Gweinidogion Cymru yn penderfynu peidio â bwrw ymlaen ag ef yn dilyn cyfranogiad y cyhoedd, rhaid iddynt gyhoeddi hysbysiad o'u penderfyniad. Os oes drafft o'r fersiwn ddiwygiedig wedi ei osod gerbron y Senedd, rhaid i gopi o'r hysbysiad hwnnw gael ei osod hefyd (is-adrannau (4) a (5)).

81. Os bydd pum mlynedd yn mynd heibio ac nad oes FfDC diwygiedig wedi ei gyhoeddi na diwygiad drafft wedi ei osod gerbron y Senedd, rhaid i Weinidogion Cymru gyhoeddi datganiad sy'n datgan eu barn o ran a ddylid diwygio'r FfDC a rhaid iddynt roi rhesymau. Rhaid iddynt osod copi o'r datganiad gerbron y Senedd. Os ydynt o'r farn y dylid ei ddiwygio, yna rhaid iddynt nodi amserlen ar gyfer hyn (is-adran (7)).

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)).

Pennod 3 – Cynllunio strategol a lleol: prif swyddogaethau awdurdodau

82. Mae'r Bennod hon yn nodi swyddogaethau cyffredinol cyd-bwyllgorau corfforedig (CBCau) ac awdurdodau cynllunio wrth lunio cynlluniau datblygu strategol a chynlluniau datblygu lleol ar gyfer eu hardaloedd. Mae hefyd yn gwneud darpariaeth ynghylch:

    a. gwaith yr arolwg y mae rhaid ei gynnal;

    b. beth y dylid ei gynnwys mewn cynllun; ac

    c. y cyfnod y mae cynllun i gael effaith ynddo.

83. Mae'r Bennod hon a Phenodau 4 a 5 gyda'i gilydd yn ailddatgan adrannau 60L i 77 o Ddeddf 2004, a gyflwynodd y system lle'r oedd awdurdodau cynllunio lleol a phaneli cynllunio strategol i lunio cynlluniau datblygu ar gyfer eu hardaloedd.

84. Diddymodd Deddf Llywodraeth Leol ac Etholiadau (Cymru) 2021 (dsc 1) baneli cynllunio strategol a chyflwynodd CBCau yn eu lle. Mae CBCau wedi eu sefydlu ar gyfer y Canolbarth, y Gogledd, y De-ddwyrain a'r De-orllewin.

Adran 16 - Arolwg o ardal cyd-bwyllgor corfforedig

85. Mae adran 16 yn ei gwneud yn ofynnol i CBC adolygu'n barhaus y materion y gellir disgwyl iddynt effeithio ar ddatblygiad a defnydd, neu ar gynllunio datblygiad a defnydd, o dir yn ei ardal. Mae'r materion hynny'n cynnwys:

    a. prif nodweddion yr ardal (gan gynnwys y graddau y defnyddir y Gymraeg yn yr ardal);

    b. patrwm y defnydd tir, y boblogaeth a rhwydweithiau cyfathrebu yn yr ardal;

    c. unrhyw ystyriaethau a allai effeithio ar y materion hynny; a

    d. unrhyw faterion eraill a bennir mewn rheoliadau neu mewn cyfarwyddydau a wneir gan Weinidogion Cymru (is-adran (2)).

86. Caiff CBC hefyd adolygu'n barhaus y materion hynny mewn perthynas ag ardaloedd CBCau cyfagos, ac wrth wneud hynny rhaid iddo ymgynghori â hwy (is-adrannau (3) a (4)).

Adran 17 – Dyletswydd i lunio cynllun datblygu strategol

87. Mae adran 17 yn ei gwneud yn ofynnol i CBC lunio a mabwysiadu cynllun datblygu strategol ar gyfer ei ardal. Bydd cynllun datblygu strategol yn nodi amcanion yr CBC mewn perthynas â defnydd a datblygiad o dir yn ei ardal, a'i bolisïau ar gyfer gweithredu'r amcanion hynny (is-adrannau (1) a (2)).

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. Rhaid i'r cynllun datblygu strategol gydymffurfio'n gyffredinol â'r FfDC (is-adran (3)). Ystyriodd y Llys Apêl ystyr yr ymadrodd "cydymffurfio'n gyffredinol" ("in general conformity") yn *Persimmon Homes (Thames Valley) Limited v Stevenage Borough Council* [2005] EWCA Civ 1365, yng nghyd-destun y ddyletswydd i sicrhau cydymffurfiaeth rhwng cynlluniau strwythur a chynlluniau lleol. Roedd yr Arglwydd Ustus Laws o'r farn, oherwydd y cyfnodau arweiniol maith ar gyfer gweithredu cynlluniau, y dylid ymdrin yn hyblyg â'r ymadrodd er mwyn adlewyrchu'r amrywiol faterion annisgwyl a newidiol a allai godi. Mater o farn gynllunio i'r awdurdodau o dan sylw oedd pa un a yw cynlluniau yn cydymffurfio'n gyffredinol.

89. Wrth lunio cynllun datblygu strategol, rhaid i CBC roi sylw i:

a. yr FfDC a pholisïau cenedlaethol eraill;

b. y cynlluniau datblygu strategol ar gyfer ardaloedd cyfagos;

c. y cynlluniau datblygu lleol ar gyfer ardaloedd yn ei ardal;

d. yr adnoddau sy'n debygol o fod ar gael i weithredu'r cynllun; ac

e. unrhyw faterion eraill a bennir mewn rheoliadau (is-adran (6)).

90. Y rheoliadau perthnasol sydd mewn grym ar hyn o bryd yw Rheoliadau Cynllunio Gwlad a Thref (Cynllun Datblygu Strategol) (Cymru) 2021 (O.S. 2021/360 (Cy. 109)). Mae rheoliad 15 yn ei gwneud yn ofynnol i'r CBC roi sylw i'r materion penodol a ganlyn:

a. polisïau o dan adran 108 o Ddeddf Trafnidiaeth 2000 (p. 38), mewn perthynas â thrafnidiaeth ddiogel, integredig, effeithlon a darbodus, a gweithredu'r polisïau yn strategaeth drafnidiaeth Cymru o dan Ddeddf Trafnidiaeth (Cymru) 2006;

b. amcanion atal damweiniau mawr a chyfyngu ar eu canlyniadau;

c. yr angen i sicrhau diogelwch gosodiadau lle y mae sylweddau peryglus yn bresennol (gweithredu Cyfarwyddeb 2012/18/EU i bob pwrpas);

d. y cynllun rheoli gwastraff cenedlaethol a luniwyd gan Weinidogion Cymru o dan Reoliadau Gwastraff (Cymru a Lloegr) 2011 (O.S. 2011/988); ac

e. unrhyw gynllun morol a fabwysiedir ac a gyhoeddir gan Weinidogion Cymru o dan Ddeddf y Môr a Mynediad i'r Arfordir 2009.

91. Nid yw cynllun datblygu strategol ond yn dod i rym ar ôl iddo gael ei fabwysiadu gan CBC neu ei gymeradwyo gan Weinidogion Cymru (is-adran (7)). Yna mae'n cael effaith am y cyfnod a bennir yn y cynllun (is-adrannau (4) ac (8)). Caiff Gweinidogion Cymru wneud darpariaeth ynghylch cyfnod y cynllun mewn rheoliadau (is-adran (5)).

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. Caniateir gwneud rheoliadau hefyd o dan adrannau 17, 21, 22, 23, 32, 37, 38 ac 41 yn y Rhan hon ynghylch gwahanol faterion eraill yn ymwneud â chynlluniau datblygu strategol – gan gynnwys ymgynghori a chyfranogiad y cyhoedd, ffurf a chynnwys y cynllun, gweithdrefnau perthnasol a monitro. Y rheoliadau perthnasol sydd mewn grym ar hyn o bryd yw Rheoliadau Cynllunio Gwlad a Thref (Cynllun Datblygu Strategol) (Cymru) 2021. Mae canllawiau pellach ar lunio cynlluniau datblygu strategol ar gael yn *Llawlyfr Cynlluniau Datblygu* Llywodraeth Cymru.

93. Bydd cynlluniau datblygu strategol hefyd yn destun arfarniad o gynaliadwyedd, o dan adran 22, y mae rhaid iddo gynnwys asesiad o effeithiau tebygol y cynllun ar y defnydd o'r Gymraeg yn yr ardal.

Adran 18 – Arolwg o ardal awdurdod cynllunio

94. Mae'r adran hon yn ei gwneud yn ofynnol i bob awdurdod cynllunio adolygu'n barhaus y materion y gellir disgwyl iddynt effeithio ar ddatblygiad a defnydd, neu ar gynllunio datblygiad a defnydd, o dir yn ei ardal. Mae'r materion hynny'n cynnwys:

    a. prif nodweddion yr ardal (gan gynnwys y graddau y defnyddir y Gymraeg yn yr ardal);

    b. patrwm y defnydd tir, y boblogaeth a rhwydweithiau cyfathrebu yn yr ardal;

    c. unrhyw ystyriaethau a allai effeithio ar y materion hynny; a

    d. unrhyw faterion eraill a bennir mewn rheoliadau neu mewn cyfarwyddydau a wneir gan Weinidogion Cymru (is-adran (2)).

95. Caiff awdurdod hefyd adolygu'n barhaus y materion hynny mewn perthynas ag ardaloedd cyfagos ac, wrth wneud hynny, rhaid iddo ymgynghori â'r awdurdodau cynllunio cyfagos (is-adrannau (3) a (4)).

Adran 19 – Dyletswydd i lunio cynllun datblygu lleol

96. Mae adran 19 yn ei gwneud yn ofynnol i awdurdod cynllunio lunio a mabwysiadu cynllun datblygu lleol ar gyfer ei ardal. Bydd cynllun datblygu lleol yn nodi amcanion yr awdurdod mewn perthynas â defnydd a datblygiad o dir yn ei ardal, a'i bolisïau cyffredinol ar gyfer gweithredu'r amcanion hynny.

97. Rhaid i'r cynllun datblygu lleol gydymffurfio'n gyffredinol â'r FfDC ac unrhyw gynllun datblygu strategol ar gyfer ardal sydd wedi ei chynnwys yn ardal yr awdurdod (is-adran (4)). O ran ystyr yr ymadrodd "cydymffurfio'n gyffredinol", esboniwyd hyn uchod mewn cysylltiad ag adran 17 o'r Ddeddf.

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. Wrth lunio cynllun datblygu lleol, rhaid i awdurdod cynllunio roi sylw i:

    a. yr FfDC a pholisïau cenedlaethol eraill;

    b. y cynlluniau datblygu strategol ar gyfer ei ardal a'i ardaloedd cyfagos;

    c. pob un o'r datganiadau ardal perthnasol a gyhoeddir gan Gyfoeth Naturiol Cymru (CNC) (o dan Ddeddf yr Amgylchedd (Cymru) 2016) o ran adnoddau naturiol;

    d. pob un o'r cynlluniau llesiant lleol perthnasol a gyhoeddwyd gan fwrdd gwasanaethau cyhoeddus (o dan Ddeddf Cenedlaethau'r Dyfodol 2015);

    e. yr adnoddau sy'n debygol o fod ar gael i weithredu'r cynllun; ac

    f. unrhyw faterion eraill a bennir mewn rheoliadau (is-adran (7)).

99. Y rheoliadau perthnasol sydd mewn grym ar hyn o bryd yw Rheoliadau Cynllunio Gwlad a Thref (Cynlluniau Datblygu Lleol) (Cymru) 2005 (O.S. 2005/2839 (Cy. 203)). Mae rheoliad 13 yn ei gwneud yn ofynnol i awdurdod cynllunio roi sylw i'r materion penodol a ganlyn:

    a. unrhyw gynllun trafnidiaeth lleol neu bolisïau eraill a ddatblygwyd o dan adran 108 o Ddeddf Trafnidiaeth 2000, sy'n effeithio ar ardal yr awdurdod;

    b. amcanion atal damweiniau mawr a chyfyngu ar eu canlyniadau;

    c. yr angen i sicrhau diogelwch gosodiadau lle y mae sylweddau peryglus yn bresennol;

    d. *Strategaeth Wastraff Cymru*;

    e. unrhyw gynllun morol a fabwysiedir ac a gyhoeddir gan Weinidogion Cymru o dan Ddeddf y Môr a Mynediad i'r Arfordir 2009 (gweler paragraff 11 uchod); ac

    f. unrhyw strategaeth dai leol sy'n effeithio ar ardal yr awdurdod.

100. Nid yw cynllun datblygu lleol ond yn dod i rym ar ôl iddo gael ei fabwysiadu gan yr awdurdod cynllunio neu ei gymeradwyo gan Weinidogion Cymru (is-adran (8)). Yna mae'n cael effaith am y cyfnod a bennir yn y cynllun (is-adran (5)); caiff Gweinidogion Cymru wneud darpariaeth ynghylch y cyfnod hwnnw mewn rheoliadau (is-adran (6)). Ar ddiwedd y cyfnod, mae cynllun yn peidio â chael effaith fel cynllun datblygu lleol (is-adran (9)). Nid yw is-adrannau (5), (6) a (9) yn gymwys i gynlluniau a fabwysiadwyd cyn 4 Ionawr 2016 (gweler paragraff 11(1) o Atodlen 5 i'r Ddeddf Darpariaethau Canlyniadol).

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. Caniateir gwneud rheoliadau hefyd o dan sawl adran yn y Rhan hon (gweler adrannau 19, 21, 22, 23, 32, 37, 38 ac 41) ynghylch gwahanol faterion yn ymwneud â chynlluniau datblygu lleol – gan gynnwys ymgynghori a chyfranogiad y cyhoedd, ffurf a chynnwys y cynllun, gweithdrefnau perthnasol a monitro. Y rheoliadau perthnasol sydd mewn grym ar hyn o bryd yw Rheoliadau Cynllunio Gwlad a Thref (Cynlluniau Datblygu Lleol) (Cymru) 2005.

102. Mae canllawiau ar lunio cynlluniau datblygu lleol ar gael yn *Llawlyfr Cynlluniau Datblygu* Llywodraeth Cymru.

Pennod 4 – Cynlluniau datblygu strategol a lleol: y weithdrefn

103. Mae'r Bennod hon yn nodi'r weithdrefn y mae'r awdurdod sy'n gwneud cynllun - hynny yw, yr CBC neu'r awdurdod cynllunio (gweler adran 20) - yn llunio cynllun datblygu strategol neu gynllun datblygu lleol odani. Mae hefyd yn galluogi dau neu ragor o awdurdodau cynllunio i lunio cynlluniau datblygu lleol ar y cyd.

104. Mae'r Bennod hefyd yn darparu pwerau i Weinidogion Cymru ymyrryd yn y broses o wneud cynllun. Fel y nodir yn y *Llawlyfr Cynlluniau Datblygu* Llywodraeth Cymru, ni fydd Gweinidogion Cymru ond yn ystyried defnyddio'r pwerau hynny fel dewis olaf, pan fo deialog wedi methu a phan fo cynllun yn codi materion o bwysigrwydd cenedlaethol neu y gallai gael effeithiau eang y tu hwnt i ardal yr awdurdod sy'n gwneud cynllun.

Adran 21 – Llunio cynllun: y weithdrefn a'r cytundeb cyflawni

105. Mae adran 21 yn nodi sut y dylid llunio cynlluniau datblygu strategol a chynlluniau datblygu lleol. Rhaid i'r cynlluniau gael eu llunio gan yr awdurdod sy'n gwneud cynllun yn unol â chytundeb cyflawni ac unrhyw ofynion a bennir mewn rheoliadau. Mae'r cytundeb cyflawni yn cynnwys:

    a. yr amserlen ar gyfer llunio a mabwysiadu'r cynllun; a

    b. cynllun cynnwys cymunedau'r awdurdod.

106. Mae'r cynllun cynnwys cymunedau yn nodi polisïau'r awdurdod o ran sut a phryd y caiff rhanddeiliaid a'r gymuned gymryd rhan yn y broses o wneud cynllun. Rhaid iddo gynnwys y cyrff a nodir yn y rheoliadau, megis CNC a'r bwrdd iechyd lleol. Caiff hefyd gynnwys cyrff eraill (megis grwpiau cymunedol a rhanddeiliaid allweddol eraill) a phobl y mae'r awdurdod o'r farn bod ganddynt fuddiant yn y datblygiad a defnydd o dir yn yr ardal (is-adrannau (3) a (4)).

107. Rhaid i'r awdurdod sy'n gwneud cynllun a Gweinidogion Cymru geisio cytuno ar delerau'r cytundeb cyflawni. Fodd bynnag, pan nad yw cytundeb yn bosibl, caiff Gweinidogion Cymru ddyroddi cyfarwyddyd i'r awdurdod sy'n nodi telerau'r cytundeb cyflawni (is-adrannau (5) a (6)).

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. Caiff rheoliadau bennu'r weithdrefn i'w dilyn gan awdurdod sy'n gwneud cynllun wrth lunio cytundeb cyflawni, a'r amgylchiadau pan nad oes angen cydymffurfio â gofynion cytundeb cyflawni. Mae manylion llunio cytundeb cyflawni wedi eu nodi ar hyn o bryd yn Rheoliadau Cynllunio Gwlad a Thref (Cynlluniau Datblygu Lleol) (Cymru) 2005 a Rheoliadau Cynllunio Gwlad a Thref (Cynllun Datblygu Strategol) (Cymru) 2021.

Adran 22 – Arfarniad o gynaliadwyedd

109. Mae adran 22 yn ei gwneud yn ofynnol i awdurdod sy'n gwneud cynllun, wrth lunio cynllun datblygu strategol neu gynllun datblygu lleol, gynnal arfarniad o gynaliadwyedd y cynllun a llunio adroddiad ar ganfyddiadau'r arfarniad. Caiff rheoliadau bennu'r weithdrefn i'w dilyn wrth gynnal arfarniad o'r fath. Nid oes rheoliadau ar hyn o bryd; ond darperir canllawiau yn *Llawlyfr Cynlluniau Datblygu* Llywodraeth Cymru.

110. Rhaid i'r arfarniad gynnwys asesiad o effeithiau tebygol y cynllun ar y defnydd o'r Gymraeg.

Adran 23 – Archwiliad annibynnol

Adran 24 – Mabwysiadu cynllun

111. Unwaith y bydd awdurdod sy'n gwneud cynllun wedi cydymffurfio â'r holl ofynion statudol perthnasol o ran gwneud cynllun datblygu strategol neu gynllun datblygu lleol ac yn ystyried bod ei gynllun yn barod i'w archwilio'n annibynnol, mae adran 23 yn ei gwneud yn ofynnol iddo gyflwyno'r cynllun i Weinidogion Cymru i'w archwilio gan arolygydd a benodir ganddynt. Rhaid iddo hefyd gyflwyno, ynghyd â'r cynllun, ddogfennau eraill a gwybodaeth arall, fel y'u pennir mewn rheoliadau (adran 23(3)).

112. Diben archwiliad o'r fath yw archwilio a yw cynllun yn bodloni'r gofynion statudol ac a yw'n gadarn. Rhaid i'r arolygydd sy'n cynnal yr archwiliad roi cyfle i bobl sydd am newid y cynllun gael gwrandawiad (adran 23(6)). Yna rhaid i'r arolygydd wneud argymhellion, a rhoi rhesymau drostynt; a rhaid i'r awdurdod sy'n gwneud cynllun gyhoeddi'r rhain (adran 23(7) ac (8)).

113. Caiff rheoliadau nodi'r weithdrefn ar gyfer archwiliad, a manylion y gydnabyddiaeth ariannol a'r lwfansau ar gyfer yr arolygydd sy'n cynnal yr archwiliad (adran 23(9)). Ar hyn o bryd nid oes unrhyw reoliadau; ond cyhoeddwyd canllawiau ar hyn gan Benderfyniadau Cynllunio ac Amgylchedd Cymru (PEDW).

114. Ar ôl cwblhau'r archwiliad annibynnol, mae adran 24 yn darparu bod cynllun datblygu strategol neu gynllun datblygu lleol yn cael ei fabwysiadu gan yr awdurdod sy'n gwneud cynllun perthnasol (drwy benderfyniad) – naill ai fel y'i lluniwyd yn wreiddiol, neu gydag addasiadau i weithredu unrhyw argymhelliad gan yr arolygydd a gynhaliodd yr archwiliad.

115. Caiff Gweinidogion Cymru gyfarwyddo'r awdurdod i beidio â mabwysiadu cynllun (adran 24(3)).

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)).

Adran 25 – Pŵer i gyfarwyddo awdurdod i addasu cynllun

116. Cyn mabwysiadu cynllun datblygu strategol neu gynllun datblygu lleol, mae adran 25 yn caniatáu i Weinidogion Cymru ymyrryd os ydynt o'r farn bod y cynllun yn anfoddhaol.

117. Pan fo hyn yn digwydd, caniateir i Weinidogion Cymru ddyroddi cyfarwyddyd i'r awdurdod sy'n gwneud cynllun i addasu'r cynllun yn unol â'r cyfarwyddyd. Wrth benderfynu a ddylid rhoi cyfarwyddyd, rhaid i Weinidogion Cymru roi sylw i'r cytundeb cyflawni ar gyfer y cynllun (gweler adran 21). Os yw Gweinidogion Cymru yn rhoi cyfarwyddyd, rhaid iddynt egluro pam.

118. Pan fo'r awdurdod sy'n gwneud cynllun wedi cael cyfarwyddyd o'r fath, rhaid iddo gydymffurfio ag ef ac ni chaiff fabwysiadu ei gynllun nes bod Gweinidogion Cymru yn cytuno ei fod wedi cydymffurfio.

Adran 26 – Pŵer i gyfarwyddo awdurdod i gyflwyno cynllun i'w gymeradwyo

119. Cyn i gynllun gael ei fabwysiadu, caiff Gweinidogion Cymru drwy gyfarwyddyd alw'r cynllun i mewn i'w gymeradwyo ganddynt o dan adran 26(1). Yma hefyd, rhaid iddynt roi sylw i'r cytundeb cyflawni ar gyfer y cynllun (gweler adran 21).

120. Os dyroddir cyfarwyddyd, ni chaiff yr awdurdod sy'n gwneud cynllun gymryd unrhyw gamau pellach ac ni fydd y cynllun yn cael unrhyw effaith nes iddo gael ei gymeradwyo gan Weinidogion Cymru (is-adran (2)(a) a (d)). Os nad yw'r cynllun sy'n cael ei alw i mewn wedi ei gyflwyno eto gan yr awdurdod sy'n gwneud cynllun i'w archwilio, mae'n ofynnol i Weinidogion Cymru gynnal archwiliad annibynnol ohono yn unol ag adran 23. Pan fo cynllun eisoes wedi ei gyflwyno a'i fod eisoes yn ddarostyngedig i archwiliad annibynnol, mae'n ofynnol i'r arolygydd a benodwyd i gynnal yr archwiliad hwnnw wneud argymhellion i Weinidogion Cymru (yn hytrach nag i'r awdurdod) (is-adran (2)(b) ac (c)). Yn y ddau achos rhaid i Weinidogion Cymru gyhoeddi argymhellion yr arolygydd a'r rhesymau drostynt (is-adran (3)).

121. Wrth ystyried argymhellion yr arolygydd, rhaid i Weinidogion Cymru ystyried unrhyw fater y maent o'r farn ei fod yn berthnasol, hyd yn oed os nad oedd yr awdurdod sy'n gwneud cynllun wedi ei ystyried (is-adran (4)). Yna, caiff Gweinidogion Cymru gymeradwyo'r cynllun, gydag addasiadau neu hebddynt, neu ei wrthod. Rhaid iddynt roi rheswm dros eu penderfyniad (is-adrannau (5) a (6)).

Adran 27 – Pŵer i gyfarwyddo awdurdod i dynnu cynllun yn ôl
Adran 28 – Tynnu cynllun yn ôl pan nad oes cyfarwyddyd

122. Mae adran 27 yn galluogi Gweinidogion Cymru i gyfarwyddo awdurdod sy'n gwneud cynllun i dynnu ei gynllun datblygu strategol neu ei gynllun datblygu lleol yn ôl cyn iddo gael ei fabwysiadu. Rhaid iddynt roi eu rhesymau dros wneud hynny. Pan fo cyfarwyddyd o'r fath wedi ei roi, rhaid i'r awdurdod gydymffurfio.

123. Mae adran 28 yn nodi sut y caiff awdurdod sy'n gwneud cynllun dynnu ei gynllun datblygu strategol neu ei gynllun datblygu lleol ei hun yn ôl mewn amgylchiadau eraill.

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. Ni chaiff awdurdod dynnu ei gynllun yn ôl os yw Gweinidogion Cymru wedi:

a. cyfarwyddo'r awdurdod i gyflwyno'r cynllun iddynt i'w gymeradwyo yn unol ag adran 26; neu

b. arfer eu pwerau diofyn mewn perthynas â'r cynllun o dan adran 29.

125. Caiff awdurdod sy'n gwneud cynllun dynnu'n ôl gynllun sydd wedi cyrraedd cam a bennir mewn rheoliadau (er enghraifft, cyhoeddi cynigion cyn adneuo, neu gynllun adnau), ond nad yw wedi ei gyflwyno i'w archwilio (adran 28(6)). Ond, ni chaiff ond gwneud hynny os yw wedi rhoi hysbysiad i Weinidogion Cymru o'i fwriad i dynnu'r cynllun yn ôl a bod y cyfnod hysbysu a bennir mewn rheoliadau wedi dod i ben (adran 28(5)).

126. Pan fydd Gweinidogion Cymru wedi cael hysbysiad gan awdurdod sy'n gwneud cynllun o'i fwriad i dynnu cynllun yn ôl, cânt gyfarwyddo'r awdurdod i ddarparu gwybodaeth bellach a chânt estyn y cyfnod hysbysu (adran 28(7)).

127. Unwaith y bydd cynllun wedi ei gyflwyno i'w archwilio'n annibynnol gan arolygydd, ni chaniateir ei dynnu'n ôl ond ar argymhelliad yr arolygydd ac os nad yw Gweinidogion Cymru wedi trechu'r argymhelliad hwnnw (adran 28(4)).

Adran 29 – Pwerau diofyn Gweinidogion Cymru

128. Mae adran 29 yn gymwys os yw Gweinidogion Cymru o'r farn bod awdurdod sy'n gwneud cynllun yn methu â gwneud neu'n hepgor gwneud unrhyw beth sy'n angenrheidiol mewn cysylltiad â llunio neu fabwysiadu ei gynllun.

129. O dan yr amgylchiadau hynny, caiff Gweinidogion Cymru lunio cynllun. Wrth wneud hynny, rhaid iddynt gynnal archwiliad annibynnol o'r cynllun yn unol ag adran 23(4) i (7), a rhaid iddynt gyhoeddi'r argymhellion sy'n deillio o hynny, a chymeradwyo'r cynllun sy'n deillio o hynny fel cynllun datblygu strategol neu gynllun datblygu lleol. Rhaid iddynt roi rhesymau dros eu penderfyniadau.

130. Rhaid i'r awdurdod sy'n gwneud cynllun ad-dalu i Weinidogion Cymru unrhyw gostau y maent yn mynd iddynt wrth arfer y pwerau hyn.

Adran 30 – Eithrio sylwadau penodol sy'n ymwneud â phriffyrdd a threfi newydd

131. Mae adran 30 yn caniatáu i awdurdod sy'n gwneud cynllun neu Weinidogion Cymru ddiystyru sylw a wnaed mewn perthynas â chynllun datblygu strategol neu gynllun datblygu lleol os yw, yn ei hanfod, yn ymwneud ag:

a. unrhyw beth a wnaed, neu y bwriedir ei wneud, o dan orchmynion a chynlluniau penodol sy'n ymwneud â chefnffyrdd, ffyrdd dosbarthiadol, ffyrdd arbennig neu briffyrdd eraill, o dan adrannau 10, 14, 16, 18, 106 neu 108 o Ddeddf Priffyrdd 1980 (p. 66) ('Deddf 1980'); neu

b. unrhyw beth a wnaed, neu y bwriedir ei wneud, o dan orchymyn sy'n dynodi safle tref newydd arfaethedig o dan Ddeddf Trefi Newydd 1981 (p. 64).

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. Mae'r Deddfau hynny'n cynnwys gweithdrefnau penodol ar gyfer ystyried sylwadau o'r fath, ac mae'r ddarpariaeth hon yn osgoi'r angen i sylwadau o'r fath gael eu hystyried ddwywaith.

Adran 31 – Dyletswydd i ystyried pa un ai i adolygu cynllun
Adran 32 – Adolygu cynllun
Adran 33 – Diwygio cynllun

133. Bydd angen adolygu a diweddaru cynlluniau o bryd i'w gilydd, er mwyn ystyried amgylchiadau a blaenoriaethau sy'n newid. Mae adran 31 felly'n darparu, ar ôl cyhoeddi neu ddiwygio'r FfDC, fod rhaid i bob CBC ac awdurdod cynllunio ystyried ai i adolygu ei gynllun datblygu strategol neu ei gynllun datblygu lleol (adran 31(1)). Yn yr un modd, pan fydd CBC wedi mabwysiadu neu gymeradwyo cynllun datblygu strategol, rhaid i bob awdurdod cynllunio yn yr ardal a gwmpesir gan y cynllun hwnnw ystyried ai i gynnal adolygiad o'i gynllun datblygu lleol (adran 31(2)).

134. Ar ôl ystyriaeth o'r fath, mae adran 32 yn ei gwneud yn ofynnol i awdurdod adolygu ei gynllun, os yw'n ystyried bod hynny'n briodol.

135. Yn ogystal, rhaid i bob awdurdod cynllunio adolygu ei gynllun datblygu lleol yn rheolaidd hefyd, fel y pennir mewn rheoliadau – sef, ar hyn o bryd, bob pedair blynedd. Rhaid i bob CBC adolygu ei gynllun datblygu strategol bob chwe blynedd (adran 32(1)).

136. Ar ôl adolygu ei gynllun, rhaid i awdurdod cynllunio gyhoeddi ac anfon adroddiad o'i ganfyddiadau at Weinidogion Cymru (adran 32(2)). Os yw'r awdurdod o'r farn y dylid diwygio'r cynllun, dylai wneud hynny (yn rhinwedd adran 33). Mae darpariaethau'r Rhan hon yn gymwys i ddiwygio o'r fath fel y maent yn gymwys i lunio'r cynllun gwreiddiol (adran 33(3)).

137. Mae adran 33 hefyd yn rhoi pwerau i awdurdod sy'n gwneud cynllun i ddiwygio cynllun datblygu strategol neu gynllun datblygu lleol ar unrhyw adeg arall. Rhaid iddo hefyd wneud hynny os caiff ei gyfarwyddo gan Weinidogion Cymru (adran 33(1) a (2)). Yma hefyd, bydd y gweithdrefnau sy'n ymwneud â llunio'r cynllun gwreiddiol yn gymwys.

Adran 34 – Dirymu cynllun

138. Mae adran 34 yn galluogi Gweinidogion Cymru i ddirymu cynllun datblygu strategol neu gynllun datblygu lleol ar unrhyw adeg ar ôl ei fabwysiadu, ar gais awdurdod sy'n gwneud cynllun.

Adran 35 – Adroddiad monitro blynyddol

139. Mae adran 35 yn ei gwneud yn ofynnol i bob awdurdod sy'n gwneud cynllun adrodd yn flynyddol i Weinidogion Cymru ynghylch y graddau y mae'r amcanion a nodir yn ei gynllun yn cael eu cyflawni. Mae'r pwerau o dan adran 41 yn galluogi Gweinidogion Cymru i wneud rheoliadau sy'n nodi ffurf a chynnwys yr adroddiad monitro blynyddol a materion eraill sy'n ymwneud â'r adroddiad.

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.

Adran 36 – Arfer swyddogaethau ar y cyd gan awdurdodau cynllunio
Adran 37 – Trefniadau ar y cyd rhwng awdurdodau cynllunio yn dod i ben

140. Mae adran 36 yn galluogi Gweinidogion Cymru i gyfarwyddo dau awdurdod cynllunio neu ragor i lunio cynllun datblygu lleol ar y cyd, a rhaid iddynt roi eu rheswm dros y cyfarwyddyd hwn. Ond ni chaniateir rhoi cyfarwyddyd o'r fath i awdurdod parc cenedlaethol (adran 36(1) a (2)).

141. Caiff dau awdurdod cynllunio neu ragor gytuno i lunio cynllun datblygu lleol ar y cyd heb fod angen cyfarwyddyd (adran 36(5)).

142. Pan fo cynllun datblygu lleol ar y cyd yn cael ei lunio, mae'r trefniadau ar gyfer llunio cynllun datblygu lleol yn y Rhan hon o'r Ddeddf yn gymwys fel y maent yn gymwys i lunio cynllun gan un awdurdod (adran 36(6)).

143. Caiff Gweinidogion Cymru dynnu'n ôl neu amrywio cyfarwyddyd o dan adran 36 fel nad yw'n gymwys bellach i awdurdod cynllunio, neu caiff awdurdod dynnu'n ôl o gytundeb i lunio cynllun datblygu lleol ar y cyd (adran 37(1)). Yn y sefyllfaoedd hynny, mae adran 37 yn galluogi'r awdurdod neu'r awdurdodau sy'n weddill i barhau i lunio'r cynllun. Bydd unrhyw gamau a gymerwyd eisoes yn cyfrif tuag at lunio'r cynllun hwnnw, os yw'n bodloni'r amodau sy'n ofynnol gan reoliadau o dan adran 37(6) er mwyn iddo gael ei drin fel cynllun datblygu lleol cyfatebol neu gynllun datblygu lleol ar y cyd cyfatebol (gweler adran 37(2)). Yr amodau a bennir yn Rheoliadau Cynllunio Gwlad a Thref (Cynlluniau Datblygu Lleol) (Cymru) 2005 yw nad yw'r cynllun yn ymwneud ag unrhyw ran o ardal yr awdurdod sydd wedi tynnu'n ôl a bod ei effaith yn sylweddol yr un fath ag effaith y cydgynllun gwreiddiol.

144. Pan fo archwiliad annibynnol ar y gweill, rhaid ei atal (adran 37(3)). Fodd bynnag, os yw'r cynllun yn bodloni'r amodau iddo gael ei drin fel cynllun cyfatebol, caiff Gweinidogion Cymru roi cyfarwyddyd, ar archiad gan unrhyw un o'r awdurdodau cynllunio o dan sylw, yn ei gwneud yn ofynnol i'r archwiliad ailddechrau (adrannau 37(4) a (5)).

Adran 38 - Pŵer i'w gwneud yn ofynnol i awdurdod sy'n gwneud cynllun dalu costau archwiliad annibynnol

145. Mae'r adran hon yn nodi'r manylion ynghylch costau archwiliad annibynnol o dan Bennod 4 o'r Rhan hon. Mae'n galluogi Gweinidogion Cymru i'w gwneud yn ofynnol i'r awdurdod sy'n gwneud cynllun dalu'r costau am archwiliad – gan gynnwys unrhyw gostau ofer yr eir iddynt pan na fo un yn digwydd. Mae'r costau hyn yn cynnwys costau dyddiol safonol, lwfansau teithio neu gynhaliaeth, costau gweinyddol a chostau staff a chostau unrhyw asesydd a benodir i gynorthwyo'r arolygydd a benodwyd i gynnal yr archwiliad. Caiff y rhain fod yn adenilladwy fel dyled sifil. (Gweler is-adrannau (2) i (4) a (6).)

146. Caiff rheoliadau bennu swm dyddiol safonol ar gyfer y person sy'n ymgymryd ag archwiliad (is-adran (5)). Mae'r symiau dyddiol presennol ar gyfer cynlluniau datblygu lleol wedi eu nodi yn Rheoliadau Ymchwiliadau Lleol a Gweithdrefnau Cymwys (Swm Dyddiol Safonol) (Cymru) 2017 (O.S. 2017/476 (Cy. 99)) ac fe'u cyhoeddir ar wefan PEDW.

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.

Pennod 5 – Cyffredinol

147. Mae'r Bennod hon yn ymdrin â materion amrywiol sy'n ymwneud â chynlluniau datblygu strategol a chynlluniau datblygu lleol. Mae hyn yn cynnwys pwerau i wneud rheoliadau, darpariaethau ariannol, canllawiau a diffiniadau o dermau allweddol.

Adran 39 – Corfforaethau datblygu trefol

148. Mae'r adran hon yn caniatáu i Weinidogion Cymru gyfarwyddo nad yw Penodau 3 a 4 o'r Rhan hon yn gymwys i ardal corfforaeth datblygu trefol. Os gwneir cyfarwyddyd o'r fath, ni fydd yn ofynnol i'r CBC neu'r awdurdod cynllunio perthnasol lunio cynllun datblygu strategol neu gynllun datblygu lleol mewn cysylltiad â'r ardal honno.

Adran 40 – Canllawiau

149. Wrth arfer unrhyw un neu ragor o'u swyddogaethau o dan Benodau 3 a 4 o'r Rhan hon neu o dan reoliadau o dan adran 41, mae'n ofynnol gan yr adran hon i CBCau ac awdurdodau cynllunio roi sylw i unrhyw ganllawiau a ddyroddir gan Weinidogion Cymru. Gellir dod o hyd i ganllawiau o'r fath yn *Llawlyfr Cynlluniau Datblygu* Llywodraeth Cymru, ar ei gwefan.

Adran 41 – Rheoliadau ynghylch arfer swyddogaethau mewn perthynas â chynlluniau

150. Mae'r adran hon yn rhoi pwerau i Weinidogion Cymru i wneud rheoliadau mewn cysylltiad ag arfer swyddogaethau o dan Benodau 2 i 4 o'r Rhan hon o'r Ddeddf gan unrhyw berson. Mae'n pennu'r math o ddarpariaeth y caiff y rheoliadau ei gwneud, megis manylion ynghylch ffurf a chynnwys cynlluniau, pryd a sut y caiff dogfennau eu cyhoeddi, eu monitro etc. Y rheoliadau sydd mewn grym ar hyn o bryd yw Rheoliadau Cynllunio Gwlad a Thref (Cynlluniau Datblygu Lleol) (Cymru) 2005 a Rheoliadau Cynllunio Gwlad a Thref (Cynllun Datblygu Strategol) (Cymru) 2021.

RHAN 3 – CANIATÂD CYNLLUNIO

Pennod 1 – Rhagarweiniol

Adran 42 – Trosolwg o'r Rhan hon

151. Mae'r adran hon yn rhoi trosolwg o'r Rhan hon. Mae is-adran (2) yn tynnu sylw at adran 43 sy'n nodi'r egwyddor sylfaenol sy'n sail i lawer o'r Ddeddf, sef bod angen caniatâd cynllunio i gynnal datblygiad. Fel y'i nodwyd yn flaenorol yn y Nodiadau hyn (mewn perthynas â Phennod 2 o Ran 1 o'r Ddeddf), mae "datblygiad" yn cael ei ddiffinio mewn termau eang, i gynnwys:

a. cynnal gweithrediadau adeiladu, peirianneg a mwyngloddio; a

b. gwneud newid sylweddol yn y defnydd o dir.

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. Mae is-adran (3) yn egluro y gellir cael caniatâd cynllunio ar gyfer datblygiad mewn tair prif ffordd:

a. caniateir iddo gael ei roi gan Weinidogion Cymru mewn gorchymyn datblygu neu gan yr awdurdod cynllunio mewn gorchymyn datblygu lleol;

b. caniateir iddo gael ei roi gan yr awdurdod cynllunio mewn ymateb i gais neu, o dan rai amgylchiadau, gan Weinidogion Cymru, megis ar apêl; neu

c. caniateir iddo gael ei roi gan adran o'r llywodraeth pan fydd yn awdurdodi gweithgareddau penodol o dan bwerau mewn deddfwriaeth arall.

153. Mae Pennod 2 o'r Rhan hon yn ymdrin â rhoi caniatâd gan Weinidogion Cymru mewn gorchymyn datblygu a rhoi caniatâd gan awdurdod cynllunio mewn gorchymyn datblygu lleol.

154. Pan fo gweithrediad neu newid defnydd yn ddatblygiad ond nad yw'n cael ei ganiatáu gan orchymyn datblygu neu orchymyn datblygu lleol, fel arfer gofynnir am ganiatâd cynllunio drwy gais i'r awdurdod cynllunio neu apêl i Weinidogion Cymru. Mae Penodau 3 i 7 o'r Rhan hon yn ymdrin â rhoi caniatâd gan yr awdurdod neu Weinidogion Cymru mewn ymateb i gais.

155. Mae Pennod 8 yn ymdrin â rhoi caniatâd gan adran o'r llywodraeth (sy'n cynnwys Gweinidogion Cymru neu un o Weinidogion y Goron) pan fo'n rhoi awdurdodiad o dan bwerau mewn deddfwriaeth arall.

156. Mae is-adran (4) yn nodi y caniateir rhoi caniatâd hefyd mewn gwahanol ffyrdd eraill. Mae'r ffydd hyn yn cynnwys y canlynol:

a. caiff Gweinidogion Cymru, wrth ystyried a ddylid cadarnhau hysbysiad prynu a gyflwynir o dan adran 110 yn dilyn gwrthod caniatâd cynllunio neu roi caniatâd cynllunio amodol ar gyfer datblygiad, roi caniatâd ar gyfer y datblygiad hwnnw o dan baragraff 6(3) o Atodlen 12 yn hytrach na chadarnhau'r hysbysiad;

b. caiff Gweinidogion Cymru, wrth benderfynu apêl yn erbyn hysbysiad gorfodi, o dan adran 133, roi caniatâd cynllunio ar gyfer rhywfaint neu'r cyfan o'r datblygiad y mae'r hysbysiad yn ymwneud ag ef; ac os cydymffurfir â hysbysiad gorfodi, trinnir caniatâd cynllunio gan adran 142 fel pe bai wedi ei roi i'r graddau y mae'n ofynnol;

c. pan fo gweithrediad neu ddefnydd yn cael ei ddatbarhau gan orchymyn o dan adran 207, caniateir rhoi caniatâd drwy'r gorchymyn hwnnw ar gyfer gweithrediad neu ddefnydd arall; a

d. pan fo hysbyseb yn cael ei harddangos yn unol â rheoliadau a wnaed o dan adran 221, trinnir caniatâd cynllunio fel pe bai wedi ei roi o dan adran 229 ar gyfer arddangos yr hysbyseb i'r graddau y mae'n golygu cynnal datblygiad.

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. Mae Pennod 7 yn egluro effaith a hyd caniatâd cynllunio, a sut y mae i'w weithredu. Mae hefyd yn darparu y caniateir terfynu hysbysiad caniatâd pan fo'n ymddangos nad yw'r datblygiad a ganiatawyd yn debygol o gael ei gwblhau o fewn cyfnod rhesymol.

158. Mae Pennod 10 yn egluro sut y caiff yr awdurdod cynllunio neu Weinidogion Cymru newid caniatâd cynllunio:

a. cânt wneud addasiad ansylweddol i'r caniatâd o dan adran 100, ar gais person â buddiant yn y tir; neu

b. cânt wneud gorchymyn o dan adran 102 sy'n ei addasu neu'n ei ddirymu.

159. Mae Pennod 11 yn darparu y gall digolledi fod yn daladwy pan fo colled neu ddifrod yn codi o ganlyniad i addasu neu ddirymu caniatâd cynllunio. A phan fo tir yn cael ei adael fel na ellir gwneud unrhyw ddefnydd buddiol ohono ar ôl i ganiatâd gael ei wrthod, ei addasu neu ei ddirymu, efallai y bydd y perchnogion yn gallu ei gwneud yn ofynnol i'r awdurdod cynllunio ei brynu.

160. Mae is-adran (6) yn nodi bod natur gweithrediadau mwynau yn golygu bod rheolau arbennig ynghylch yr amodau y caniateir eu gosod pan roddir caniatâd cynllunio, ac o ran yr adolygiad cyfnodol o ganiatadau (o dan Atodlenni 3, 5 ac 11).

Adran 43 – Caniatâd cynllunio yn ofynnol ar gyfer datblygiad

161. Mae is-adran (1) yn cynnwys yr egwyddor sylfaenol ei bod yn gyffredinol ofynnol cael caniatâd cynllunio er mwyn cynnal datblygiad (fel y'i diffinnir yn y Ddeddf hon). Fodd bynnag, mae hyn yn ddarostyngedig i nifer o eithriadau, a nodir yn is-adrannau (2) i (6).

162. Mae is-adran (2)(a) yn darparu nad yw caniatâd cynllunio yn ofynnol ar gyfer cynnal datblygiad sy'n gwneud cydsyniad seilwaith yn ofynnol o dan Ddeddf 2024. Mae adran 19 o Ddeddf 2024 yn darparu bod cydsyniad seilwaith yn ofynnol pan fo datblygiad (fel y'i diffinnir yn y Ddeddf honno) yn brosiect seilwaith arwyddocaol neu'n ffurfio rhan o brosiect o'r fath; ac mae adran 20 yn egluro, o ganlyniad, nad oes angen cael caniatâd cynllunio na gwahanol fathau eraill o awdurdodiad. Diffinnir "datblygiad" yn adran 133 o'r Ddeddf honno i gynnwys popeth a ddiffinnir fel datblygiad yn y Ddeddf hon, ynghyd â materion penodol eraill. Diben yr is-adran hon yw osgoi dyblygiad, gan gydnabod bod rhoi cydsyniad seilwaith yn gweithredu fel rhoi caniatâd cynllunio i bob pwrpas.

163. Yn yr un modd, mae is-adran (2)(b) yn darparu nad oes angen caniatâd cynllunio ar gyfer cynnal datblygiad sy'n gwneud cydsyniad datblygu yn ofynnol o dan Ddeddf 2008 ar gyfer y datblygiad hwnnw. Mae adran 31 o Ddeddf 2008 yn darparu bod cydsyniad datblygu yn ofynnol pan fo datblygiad (fel y'i diffinnir yn y Ddeddf honno) yn brosiect seilwaith o arwyddocâd cenedlaethol, neu'n ffurfio rhan o brosiect o'r fath. Unwaith eto, diffinnir "development" yn adran 32 o'r Ddeddf honno i gynnwys popeth a ddiffinnir fel datblygiad yn y Ddeddf hon, ynghyd â materion penodol eraill – sy'n debyg i'r rhai y cyfeirir atynt yn y ddarpariaeth gyfatebol yn Neddf 2024, ond nid ydynt yn hollol yr un fath â hwy. Mae'r is-adran hon yn cydnabod bod rhoi cydsyniad datblygu yn gweithredu fel rhoi caniatâd cynllunio i bob pwrpas.

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. Pan fydd y defnydd o dir yn newid o A i B, ac yna o B yn ôl i A, pan fo'r newid defnydd yn sylweddol, mae'n ffurfio datblygiad a byddai angen caniatâd cynllunio mewn egwyddor ar gyfer y ddau newid. Fodd bynnag, mewn sefyllfaoedd penodol, a ddisgrifir yn is-adrannau (3) i (6), nid oes angen caniatâd ar gyfer y newid o ddefnydd B yn ôl i'r defnydd blaenorol A. Nid yw defnydd o dir yn y cyd-destun hwn yn cynnwys defnydd ar gyfer cynnal gweithrediadau adeiladu neu weithrediadau eraill (is-adran (7)).

165. Mae is-adran (3) yn ymwneud â'r sefyllfa pan fo tir yn cael ei ddefnyddio'n gyfreithlon at ddiben A ac yna'n cael ei ddefnyddio am gyfnod at ddefnydd gwahanol B, gyda'r newid o A i B yn cael ei ganiatáu gan orchymyn datblygu neu orchymyn datblygu lleol yn ddarostyngedig i gyfyngiadau. Mae is-adran (4) yn gymwys pan ganiateir y newid defnydd o A i B drwy ganiatâd penodol mewn ymateb i gais, ond dim ond am gyfnod cyfyngedig.

166. Ym mhob achos, ni fyddai llawer o ddiben ei gwneud yn ofynnol cael caniatâd ar gyfer y newid pellach o ddefnydd B yn ôl i'r defnydd cyfreithlon arferol A. Yr unig eithriad yw pan oedd y tir, cyn y newid defnydd cyntaf, yn cael ei ddefnyddio at ddiben A yn groes i reolaeth gynllunio neu'n groes i orchymyn datbarhau, gorchymyn gwahardd neu rwymedigaeth gynllunio (is-adran (6)); yn y sefyllfa honno, byddai caniatâd yn ofynnol ar gyfer y newid o ddefnydd B yn ôl i ddefnydd A.

167. Mae is-adran (5) yn gymwys pan ddefnyddir tir at ddiben B yn groes i reolaeth gynllunio (gweler adran 112), a phan ddyroddir hysbysiad gorfodi sy'n ei gwneud yn ofynnol i'r defnydd hwnnw ddod i ben. Yn yr achos hwnnw, nid oes angen caniatâd i ailddechrau defnyddio'r tir at ddiben A, sef y diben yr oedd yn cael ei ddefnyddio ar ei gyfer cyn y newid anghyfreithlon i'w ddefnyddio at ddiben B. Ni fyddai angen caniatâd ychwaith i newid y defnydd o ddiben B i ddiben C, pe bai newid o ddefnydd A i ddefnydd C wedi bod yn gyfreithlon. Er enghraifft, os bydd uned siop yn cael ei newid heb ganiatâd o siop lyfrau i fwyty, a bod hysbysiad gorfodi yn ei gwneud yn ofynnol i'r defnydd fel bwyty ddod i ben, yna gellid defnyddio'r uned heb ganiatâd fel siop, gan na fyddai hynny'n cael ei ystyried yn ddatblygiad yn rhinwedd Gorchymyn Cynllunio Gwlad a Thref (Dosbarthiadau Defnydd) 1987. Neu gellid ei defnyddio fel banc, gan y byddai hynny'n ddatblygiad y rhoddwyd caniatâd ar ei gyfer gan Orchymyn 1995.

Pennod 2 – Caniatâd cynllunio a roddir drwy orchymyn

168. Er bod angen caniatâd cynllunio bron bob amser ar gyfer datblygiad, mewn rhai achosion caiff ei roi yn awtomatig gan orchymyn datblygu, a wneir gan Weinidogion Cymru, neu gan orchymyn datblygu lleol a wneir gan yr awdurdod cynllunio.

169. Mae hyn yn galluogi i ddatblygiad gael ei gynnal heb fod angen iddo gael ei gymeradwyo mewn ymateb i gais i'r awdurdod cynllunio - er efallai y bydd gan yr awdurdod bŵer o hyd i gymeradwyo'r manylion mewn rhai achosion.

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.

Adran 44 – Pŵer Gweinidogion Cymru i roi caniatâd drwy orchymyn datblygu

170. Caiff Gweinidogion Cymru wneud gorchymyn datblygu sy'n rhoi caniatâd cynllunio naill ai ar gyfer datblygiad penodol neu ar gyfer datblygiad mewn categori penodedig (is-adran (1)). Caiff gorchymyn fod yn gymwys i bob tir ledled Cymru, neu i dir o ddisgrifiad penodol, neu i safle neu safleoedd penodol, a gall fod yn gymwys yn wahanol mewn perthynas â gwahanol fathau o dir neu mewn ardaloedd gwahanol (is-adrannau (2) ac (8)(a)). Caiff hefyd gynnwys darpariaeth ddeilliadol, darpariaeth atodol, darpariaeth ganlyniadol, darpariaeth drosiannol neu ddarpariaeth arbed (is-adran (8)(b)). Cyfeirir at orchymyn o'r fath yn gyffredin fel 'gorchymyn datblygu cyffredinol' os yw'n berthnasol i'r rhan fwyaf neu'r cyfan o dir yng Nghymru, neu 'orchymyn datblygu arbennig' os yw'n ymwneud â safle penodol neu grŵp penodol o safleoedd yn unig.

171. Caiff y caniatâd a roddir drwy orchymyn datblygu fod yn ddarostyngedig i amodau neu gyfyngiadau - er enghraifft, yn ei gwneud yn ofynnol cael cymeradwyaeth yr awdurdod cynllunio ar gyfer dyluniad neu olwg allanol adeilad sydd i'w godi (is-adrannau (3) a (4)). Cyfeirir yn gyffredin at y categorïau o ddatblygiad a awdurdodir gan orchymyn o'r fath fel 'datblygu a ganiateir'.

172. Pan roddir caniatâd drwy orchymyn datblygu ar gyfer defnydd o dir am nifer cyfyngedig o ddiwrnodau mewn cyfnod penodedig, mae hynny i'w drin fel caniatâd yn ddarostyngedig i gyfyngiad; gall hyn arwain at ganlyniadau ar gyfer gorfodi pan ddefnyddir tir at y diben a ganiateir am fwy na'r nifer penodedig o ddiwrnodau (gweler is-adrannau (6) a (7)).

173. Rhaid i orchymyn datblygu gael ei wneud drwy offeryn statudol Cymreig o dan weithdrefn annilysu'r Senedd (is-adran (9)). Y prif orchymyn sydd mewn grym ar hyn o bryd yw Gorchymyn 1995. Mae'n rhoi caniatâd ar gyfer categorïau o ddatblygiad, a bennir mewn 75 o ddosbarthiadau sydd wedi eu grwpio yn 33 o Rannau o Atodlen 2 i'r Gorchymyn.

174. O dan is-adran (5), caiff gorchymyn datblygu alluogi Gweinidogion Cymru neu awdurdod cynllunio i gyfarwyddo nad yw'r caniatâd ar gyfer categori penodol o ddatblygiad yn gymwys i ddatblygiad mewn ardal benodol neu i ddatblygiad penodol. Er enghraifft, gallai'r caniatâd i estyn anheddau gael ei gyfyngu fel nad yw'n caniatáu estyniadau ochr o fewn ardal gadwraeth benodol. Mae'r pŵer i wneud cyfarwyddydau o'r fath wedi ei gynnwys yn erthygl 4 o bob un o'r gorchmynion datblygu cyffredinol ers 1948; fe'u gelwir yn gyffredin felly yn 'gyfarwyddydau erthygl 4'.

175. Nid yw cyfarwyddyd erthygl 4 yn atal datblygiad o'r fath rhag digwydd, ond mae'n ei gwneud yn ofynnol iddo gael ei ganiatáu mewn ymateb i gais penodol. Mae hynny'n galluogi'r awdurdod cynllunio i arfer mwy o reolaeth o ran y manylion, neu i atal caniatâd yn gyfan gwbl. Pan fo awdurdod yn arfer pwerau o'r fath, efallai y bydd yn ofynnol iddo dalu digollediad o dan adran 105.

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. Mae is-adran (10) yn ei gwneud yn glir y gellir dod o hyd i ddarpariaeth bellach ynghylch caniatâd cynllunio yn cael ei roi drwy orchymyn datblygu yn:

a. adran 148 o Ddeddf Llywodraeth Leol, Cynllunio a Thir 1980 (p. 65) mewn perthynas â datblygiad a gynigir gan gorfforaeth datblygu trefol ar dir o fewn ei hardal, pan fo'r cynigion wedi eu cymeradwyo gan Weinidogion Cymru; a

b. adran 7 o Ddeddf Trefi Newydd 1981 mewn perthynas â datblygiad a gynigir gan gorfforaeth datblygu tref newydd ar dir o fewn ei hardal, pan fo'r cynigion wedi eu cymeradwyo gan Weinidogion Cymru.

Adran 45 – Pŵer awdurdod cynllunio i roi caniatâd drwy orchymyn datblygu lleol
Atodlen 1 – Gorchmynion datblygu lleol

177. Caiff yr awdurdod cynllunio wneud gorchymyn datblygu lleol sy'n rhoi caniatâd cynllunio naill ai ar gyfer datblygiad penodol neu ar gyfer datblygiad mewn categori penodedig (is-adran (1)). Caiff gorchymyn fod yn gymwys i'r holl dir ledled ardal yr awdurdod, neu i dir o ddisgrifiad penodol, neu i safle neu safleoedd penodol, a gall fod yn gymwys yn wahanol mewn perthynas â gwahanol fathau o dir neu mewn ardaloedd gwahanol (is-adrannau (2) a (5)). Caiff y caniatâd a roddir gan orchymyn datblygu lleol fod yn ddarostyngedig i amodau neu gyfyngiadau (is-adran (3)).

178. Caiff rheoliadau o dan is-adran (6) bennu categorïau o ddatblygiad na chaniateir iddynt fod yn destun gorchymyn datblygu lleol. Mae Erthygl 27(13) o Orchymyn Cynllunio Gwlad a Thref (Gweithdrefn Rheoli Datblygu) (Cymru) 2012 (O.S. 2012/801 (Cy. 110) ('Gorchymyn 2012') yn darparu ar hyn o bryd na chaniateir gwneud gorchymyn mewn cysylltiad â datblygiad sy'n effeithio ar adeilad rhestredig neu ddatblygiad mawr a bennir yn Atodlen 1 i Reoliadau Cynllunio Gwlad a Thref (Asesu Effeithiau Amgylcheddol) (Cymru) 2017 (O.S. 2017/567 (Cy. 136)).

179. O dan is-adran (4), caiff gorchymyn datblygu alluogi'r awdurdod cynllunio i gyfarwyddo nad yw'r caniatâd ar gyfer categori penodol o ddatblygiad yn gymwys i ddatblygiad mewn ardal benodol neu i ddatblygiad penodol. Mae effaith cyfarwyddyd o'r fath yn union yr un fath ag effaith cyfarwyddyd erthygl 4 a wneir o dan bwerau mewn gorchymyn datblygu.

180. Mae'r weithdrefn o ran llunio gorchymyn datblygu lleol wedi ei nodi ar hyn o bryd yn erthygl 27 o Orchymyn 2012, a wnaed gan Weinidogion Cymru o dan eu pwerau i wneud darpariaeth ynghylch y weithdrefn a ailddatgenir bellach ym mharagraff 1 o Atodlen 1. Mae'r Atodlen honno'n gwneud darpariaeth bellach ynghylch llunio, diwygio a dirymu gorchymyn datblygu lleol.

181. Os yw Gweinidogion Cymru yn ystyried bod gorchymyn datblygu lleol drafft yn anfoddhaol, cânt, ar unrhyw adeg cyn i'r gorchymyn gael ei fabwysiadu, gyfarwyddo'r awdurdod cynllunio i addasu'r drafft, o dan baragraff 2 o Atodlen 1, gan roi eu rhesymau dros roi cyfarwyddyd i'r perwyl hwnnw. Yn ychwanegol at hynny, cânt, ar unrhyw adeg cyn i'r gorchymyn gael ei fabwysiadu, gyfarwyddo'r awdurdod i anfon y drafft atynt i'w gymeradwyo, o dan baragraff 3. Os gwneir cyfarwyddyd o dan baragraff 2 neu 3, ni chaiff yr awdurdod fabwysiadu'r gorchymyn hyd nes bod Gweinidogion Cymru wedi cadarnhau cydymffurfedd â chyfarwyddyd o dan baragraff 2 neu wedi cymeradwyo'r gorchymyn o dan baragraff 3.

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. Nid yw gorchymyn ond yn cael effaith i'r graddau y mae'n cael ei fabwysiadu gan yr awdurdod (is-adran (7)).

183. Caiff awdurdod cynllunio sydd wedi gwneud gorchymyn datblygu lleol ei ddiwygio ar unrhyw adeg, neu caiff Gweinidogion Cymru ei gyfarwyddo i wneud hynny, o dan baragraff 4 o'r Atodlen. Mae'r weithdrefn ar gyfer diwygio gorchymyn yr un fath ag ar gyfer gwneud gorchymyn yn y lle cyntaf. Caiff yr awdurdod hefyd ddirymu gorchymyn y mae wedi ei wneud, o dan baragraff 5. Caiff Gweinidogion Cymru hefyd ddirymu gorchymyn datblygu lleol, ond nid heb roi cyfle yn gyntaf i'r awdurdod i gyflwyno sylwadau, os gofynnir am hynny, gerbron arolygydd.

184. Yn rhinwedd paragraff 6, rhaid i'r awdurdod yn ei adroddiad monitro blynyddol o dan adran 35 adrodd ar y graddau y mae'r gorchmynion datblygu lleol a wnaed ganddo yn cyflawni eu dibenion.

Adran 46 – Cwblhau datblygiad ar ôl tynnu caniatâd a roddir drwy orchymyn yn ôl

185. Pan fo datblygiad wedi ei ganiatáu gan orchymyn datblygu lleol, ac wedi ei ddechrau, caniateir tynnu'r caniatâd hwnnw yn ôl. Yn y sefyllfa hon, caiff gorchymyn datblygu lleol ddarparu y gellir cwblhau'r datblygiad. Mae is-adran (2) yn nodi beth yw tynnu caniatâd yn ôl at ddiben yr adran hon. Mae hyn yn cynnwys pan roddir cyfarwyddyd o dan adran 44(5) neu 45(4), neu pan fo'r gorchymyn ei hun yn cael ei ddiwygio fel ei fod yn peidio â rhoi'r caniatâd neu er mwyn amrywio'n sylweddol y telerau y rhoddir y caniatâd arnynt, neu pan ddirymir y gorchymyn.

Pennod 3 – Caniatâd cynllunio a roddir ar gais: rhagarweiniol

Adran 47 – Rhoi caniatâd cynllunio ar gais

186. Mae caniatâd cynllunio yn ofynnol i gynnal datblygiad (gweler Pennod 1 o'r Rhan hon). Rhoddir caniatâd drwy orchymyn datblygu (neu, yn llai aml, drwy orchymyn datblygu lleol) ar gyfer llawer o gategorïau o ddatblygiad – yn ddarostyngedig yn y rhan fwyaf o achosion i gyfyngiadau ac amodau (gweler Pennod 2). Pan na chydymffurfir ag unrhyw un neu ragor o'r cyfyngiadau ac amodau hynny, neu pan na fo datblygiad yn unrhyw un neu ragor o'r categorïau a ganiateir drwy orchymyn, bydd angen ei awdurdodi mewn rhyw ffordd arall.

187. Y ffurf arferol o awdurdodi yw caniatâd cynllunio a roddir mewn ymateb i gais (y cyfeirir ato'n gyffredin fel 'cais cynllunio'). Fel arfer, gwneir cais o'r fath i'r awdurdod cynllunio o dan Benodau 3 i 6 o'r Rhan hon (is-adran (1)). Caniateir rhoi caniatâd hefyd mewn ymateb i apêl i Weinidogion Cymru o dan Bennod 6.

188. Ceisiadau am ganiatâd cynllunio a chymeradwyaethau cysylltiedig mewn achosion arbennig penodol yw testun Pennod 7.

189. Bydd caniatâd o'r fath fel arfer ar ffurf caniatâd manwl, yn ddarostyngedig i amodau; ond mewn rhai achosion bydd yn ganiatâd amlinellol, o dan adran 48, gan gadw materion penodol yn ôl i'w cymeradwyo wedi hynny. Bydd datblygiad a gynhelir heb ganiatâd yn groes i reolaeth gynllunio (ac felly mewn perygl o gamau gorfodi: gweler Rhan 4), ond gellir ei awdurdodi wedi hynny drwy ganiatâd o dan adran 49.

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. Caiff rheoliadau ddarparu ar gyfer y weithdrefn fanwl ar gyfer cyflwyno a phenderfynu ceisiadau am ganiatâd o dan y Rhan hon. Mae manylion o'r fath wedi eu darparu mewn gorchymyn datblygu hyd yn hyn – y mwyaf diweddar yw Gorchymyn 2012. Mae'r Gorchymyn hwnnw'n darparu cod gweithdrefnol sy'n cwmpasu bron pob agwedd ar y weithdrefn ar gyfer gwneud cais, gan gynnwys ymgynghori cyn gwneud cais, cyflwyno cais, ymgynghori ar geisiadau, penderfynu cais ac apelau.

Adran 48 – Caniatâd cynllunio amlinellol

191. Mae'r adran hon yn galluogi rheoliadau o dan adran 47 i ddarparu y caniateir rhoi caniatâd cynllunio ar gyfer datblygiad gweithredol – hynny yw, ar gyfer gweithrediadau adeiladu, peirianneg, mwyngloddio neu weithrediadau eraill – gan gadw materion penodol yn ôl i'w cymeradwyo wedi hynny naill ai gan yr awdurdod cynllunio perthnasol neu, mewn rhai amgylchiadau cyfyngedig, gan Weinidogion Cymru (is-adrannau (1) i (3)). Cyfeirir at ganiatâd o'r fath fel 'caniatâd cynllunio amlinellol'. Mae'n galluogi cymeradwyo egwyddor datblygiad arfaethedig, cyn i amser gael ei dreulio ac i arian gael ei wario ar y manylion.

192. Cyfeirir at y materion a gadwyd yn ôl ar gyfer cymeradwyaeth ddilynol, na fyddant yn cael eu nodi yn y cais am ganiatâd, fel 'materion a gadwyd yn ôl'. Mae erthygl 2(1) o Orchymyn 2012 yn darparu y caiff materion a gadwyd yn ôl gynnwys: mynediad, golwg, tirlunio, llunwedd a graddfa. Mae adran 94 (gweler isod) yn darparu ar gyfer y terfynau amser ar gyfer gwneud cais am gymeradwyaeth ar gyfer materion a gadwyd yn ôl (is-adran (5)).

Adran 49 – Caniatâd cynllunio ar gyfer datblygiad a gynhaliwyd eisoes

193. Weithiau cynhelir datblygiad heb ganiatâd cynllunio, neu heb gydymffurfio ag un neu ragor o amodau y rhoddwyd caniatâd yn ddarostyngedig iddynt; a phan fo caniatâd wedi ei roi ar gyfer datblygiad am gyfnod cyfyngedig yn unig, efallai y bydd y datblygiad yn parhau ar ôl diwedd y cyfnod hwnnw. Bydd hynny'n dor rheolaeth gynllunio (gweler adran 112); a phan ystyrir bod hynny'n anfoddhaol, gall arwain at gamau gorfodi o dan Ran 4. Fodd bynnag, mewn achosion eraill, gall fod yn fwy priodol i'r sefyllfa gael ei hunioni drwy roi caniatâd cynllunio o dan yr adran hon.

194. Caiff caniatâd o'r fath gael effaith o'r dyddiad y'i rhoddir. Fel arall, caniateir ei roi, o dan is-adran (3), i gael effaith o'r adeg y cynhaliwyd y datblygiad – neu, yn achos datblygiad a ganiatawyd yn flaenorol gan ganiatâd cyfyngedig, o'r dyddiad y daeth y caniatâd hwnnw i ben. Caiff y caniatâd fod yn ddarostyngedig i amodau priodol i reoleiddio'r datblygiad yn y dyfodol.

Adran 50 – Caniatâd cynllunio ar gyfer datblygiad heb gydymffurfio ag amodau blaenorol

195. Fel arfer, rhoddir caniatâd cynllunio ar gyfer datblygiad yn ddarostyngedig i amodau. Efallai y bydd dymuniad wedi hynny i amrywio'r amodau hynny, neu i'w hepgor yn llwyr. Er enghraifft, gall person brynu tir sydd â'r budd o ganiatâd cynllunio ar gyfer adeilad newydd, yn ddarostyngedig i amod o ran y lluniadau sydd i'w gweithredu, a gall ddymuno amnewid lluniadau diwygiedig; neu gall person sy'n gweithredu bwyty a ganiatawyd ddymuno newid amod ynghylch yr oriau agor.

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. Mae'r adran hon yn galluogi ceisydd i geisio adolygiad o'r amodau a osodwyd, o dan adran 68, heb i'r caniatâd ei hun fod mewn perygl.

197. Fodd bynnag, ni ellir defnyddio'r weithdrefn o dan yr adran honno i estyn y cyfnod y mae rhaid i ddatblygiad ddechrau ynddo, os yw'r cyfnod hwnnw wedi dod i ben heb i'r datblygiad fod wedi ei ddechrau (adran 68(4)). Yn yr achos hwnnw rhaid ceisio caniatâd newydd o dan y weithdrefn arferol a fydd yn galluogi'r awdurdod cynllunio i adolygu egwyddor y datblygiad arfaethedig, nid dim ond adolygu'r amodau y dylai unrhyw ganiatâd fod yn ddarostyngedig iddynt.

198. Pan fo newid arfaethedig i'r amodau yn fân newid neu'n newid nad yw'n arwyddocaol o ran ei effeithiau cynllunio, gall fod yn addas ceisio eu hamrywio o dan y weithdrefn ar gyfer gwneud newidiadau ansylweddol, o dan adran 100.

Adran 51 – Dyletswydd datblygu cynaliadwy

199. Mae'r adran hon yn gymwys i arfer gan gorff cyhoeddus swyddogaeth o dan neu yn rhinwedd y Ddeddf hon mewn perthynas â chais (neu gais arfaethedig) am ganiatâd cynllunio neu gais i gymeradwyo materion a gadwyd yn ôl. Mae'n ei gwneud yn ofynnol i'r corff arfer y swyddogaeth honno mewn modd sy'n sicrhau bod datblygiad tir a defnydd o dir yn cyfrannu at wella llesiant economaidd, cymdeithasol, amgylcheddol a diwylliannol Cymru (is-adran (2)), fel rhan o'i ddyletswydd o dan Ddeddf Cenedlaethau'r Dyfodol 2015 i gynnal datblygu cynaliadwy.

200. Mae i "corff cyhoeddus" at y diben hwn yr un ystyr ag yn Neddf Cenedlaethau'r Dyfodol 2015 – hynny yw, byddai'n cynnwys Gweinidogion Cymru, awdurdodau lleol, awdurdodau parciau cenedlaethol, CBCau ac CNC. Mae'r ddyletswydd o dan yr adran hon ac o dan y Ddeddf honno yn gymwys i awdurdodau cynllunio ac i Weinidogion Cymru wrth ystyried a phenderfynu ceisiadau cynllunio; ac i CNC wrth ymateb iddynt. Yn rhinwedd paragraff 1 o Atodlen 20 i'r Ddeddf hon, byddai hefyd yn gymwys i arolygwyr sy'n penderfynu apelau o dan Bennod 6.

201. Wrth gydymffurfio â'r ddyletswydd datblygu cynaliadwy o dan yr adran hon, rhaid i'r corff cyhoeddus ystyried unrhyw ganllawiau perthnasol a ddyroddir gan Weinidogion Cymru o dan Ddeddf Cenedlaethau'r Dyfodol 2015. Mae hyn yn cynnwys y canllawiau statudol, *Rhannu Pwrpas: Rhannu Dyfodol*, a ddyroddwyd ganddynt o dan adran 14 o'r Ddeddf honno.

Pennod 4 – Y weithdrefn cyn gwneud cais

202. Cyn cyflwyno cais am ganiatâd cynllunio yn ffurfiol, efallai y bydd y ceisydd angen gwybodaeth gan yr awdurdod cynllunio ynghylch y posibilrwydd o lwyddo a'r hyn y bydd angen ei ddarparu o ran gwybodaeth ategol. Unwaith y bydd cynnig wedi ei lunio, bydd angen i ddatblygiadau penodol fod yn destun cyhoeddusrwydd ac ymgynghori cyn cyflwyno'r cais cynllunio ffurfiol, er mwyn sicrhau, cyn belled ag y bo modd, y gellir rhagweld problemau tebygol a'u lleihau neu eu goresgyn.

203. Mae darpariaethau'r Bennod hon yn ymdrin â'r ddau fater.

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.

Adran 52 – Gofyniad i geisydd ymgynghori a rhoi cyhoeddusrwydd cyn gwneud cais

204. Rhaid i berson sy'n cynnig gwneud cais am ganiatâd cynllunio i gynnal datblygiad sydd mewn categori a bennir gan reoliadau roi cyhoeddusrwydd i'r cais arfaethedig ac ymgynghori arno (is-adrannau (1) a (2)). Mae erthygl 2B(1) o Orchymyn 2012 yn darparu ar hyn o bryd nad yw'r gofyniad hwn ond yn gymwys i ddatblygiad mawr (fel y'i diffinnir yn erthygl 2(1)) – hynny yw:

a. datblygiad sy'n ymwneud â gweithrediadau mwyngloddio neu ddyddodi gwastraff;

b. darparu 10 annedd neu ragor, neu unrhyw ddatblygiad preswyl ar safle o fwy na 0.5 hectar;

c. darparu adeilad neu adeiladau sydd â mwy na 1,000m2 o arwynebedd llawr; neu

d. unrhyw ddatblygiad ar safle sy'n fwy nag 1 hectar.

205. Fodd bynnag, yn rhinwedd is-adran (6), nid yw'r gofyniad yn gymwys i geisiadau am ddatblygiad brys y Goron (o dan adran 85) neu mewn achosion a bennir mewn rheoliadau. Ar hyn o bryd mae erthygl 2B o Orchymyn 2012 yn esemptio ceisiadau am ddatblygiad a gynhaliwyd eisoes (o dan adran 49) a cheisiadau am ganiatâd i gynnal datblygiad heb gydymffurfio ag amodau (o dan adran 50).

206. O dan is-adrannau (3) a (4), rhaid i'r darpar geisydd roi cyhoeddusrwydd i'r cais er mwyn ei ddwyn i sylw'r rhan fwyaf o'r rhai sy'n berchen ar dir neu'n meddiannu tir yng nghyffiniau'r safle. Rhaid i gyhoeddusrwydd o'r fath alluogi'r rhai sy'n dymuno gwneud sylwadau ar y datblygiad arfaethedig i ymgynghori â'r ceisydd a rhaid iddo roi digon o amser i hynny ddigwydd. Mae rhagor o fanylion i'w darparu drwy reoliadau o dan is-adran (7) ac (8).

207. Rhaid i'r ceisydd (o dan is-adran (5)) ymgynghori â phawb mewn unrhyw un neu ragor o'r categorïau a bennir gan reoliadau. Mae erthygl 2D o Orchymyn 2012 ar hyn o bryd yn pennu ymgyngoreion cymunedol (cynghorwyr lleol a chynghorau cymuned) ac ymgyngoreion arbenigol (y rhai y mae rhaid i'r awdurdod cynllunio ymgynghori â hwy cyn y gall roi caniatâd ar gyfer datblygiad o'r categori perthnasol). Rhaid i ymgyngoreion arbenigol ymateb o fewn 28 o ddiwrnodau. Yna rhaid i'r ceisydd ddarparu adroddiad gyda'r cais gwirioneddol (o dan adran 57(2)) ynghylch yr ymgynghoriad a gynhaliwyd o dan y ddarpariaeth hon a sut y mae'r ymatebion i'r ymgynghoriad a ddaeth i law wedi eu hystyried.

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.

Adran 53 – Gwasanaethau cyn gwneud cais a ddarperir gan awdurdod cynllunio neu Weinidogion Cymru

Adran 54 – Gwasanaethau cyn gwneud cais: cofnodion a datganiad o wasanaethau

208. Mae'n bosibl i'r rhai sy'n ystyried cyflwyno cais cynllunio ymgynghori â'r awdurdod cynllunio cyn cyflwyno'r cais. Cânt wneud archiad ysgrifenedig i'r awdurdod o dan adran 53 ac yna rhaid i'r awdurdod ddarparu cymorth fel y nodir mewn rheoliadau o dan adran 53(1) i (3). Y rheoliadau cyfredol yw Rheoliadau Cynllunio Gwlad a Thref (Gwasanaethau Cyn-ymgeisio) (Cymru) 2016 (O.S. 2016/61 (Cy. 31)). Fodd bynnag, nid yw hyn yn gymwys ar hyn o bryd mewn perthynas â cheisiadau am ddatblygiadau a gynhaliwyd eisoes yn rhinwedd rheoliad 4 (a wneir o dan y pŵer a ailddatgenir yn adran 53(4)).

209. Ar hyn o bryd, o dan reoliad 7, mewn perthynas ag unrhyw gais, mae'r awdurdod i ddarparu ar gais:

a. gwybodaeth am hanes cynllunio'r tir o dan sylw, darpariaethau perthnasol y cynllun datblygu, ac unrhyw ganllawiau cynllunio atodol, i'r graddau y bo'n berthnasol i'r cais;

b. gwybodaeth am unrhyw ystyriaethau perthnasol eraill; ac

c. asesiad cychwynnol o'r datblygiad arfaethedig ar sail y materion hynny.

210. Ar hyn o bryd, o dan reoliad 8, mewn perthynas ag unrhyw gais heblaw cais deiliad tŷ, mae'r awdurdod hefyd i ddarparu:

a. gwybodaeth am unrhyw rwymedigaethau cynllunio a allai fod yn ofynnol (o dan Bennod 1 o Ran 6), ac unrhyw atebolrwydd i dalu ardoll seilwaith cymunedol a allai godi (o dan Bennod 2 o'r Rhan honno); a

b. manylion pa luniadau, dogfennau neu ddeunydd arall fyddai eu hangen i ategu cais dilynol.

211. Mae ffi (o dan adran 360) yn daladwy am ddarparu gwasanaethau cyn gwneud cais o'r fath gan awdurdod. O dan reoliad 2A ac Atodlen 4 o Reoliadau Cynllunio Gwlad a Thref (Ffioedd am Geisiadau, Ceisiadau Tybiedig ac Ymweliadau Safle) (Cymru) 2015 (O.S. 2015/1522 (Cy. 179)) ("Rheoliadau 2015"), mae'r ffi sy'n daladwy fel y mae wedi ei nodi yn y ddogfen *Ffioedd ceisiadau cynllunio*, a luniwyd gan Weinidogion Cymru o dan reoliad 2ZA ac a gyhoeddwyd ar wefan Llywodraeth Cymru.

212. Ar hyn o bryd, o dan reoliad 9 o Reoliadau Cynllunio Gwlad a Thref (Gwasanaethau Cyn-ymgeisio) (Cymru) 2016, rhaid i bob awdurdod cynllunio gadw cofnod o'r archiadau a wneir iddo ar gyfer darparu gwasanaethau cyn gwneud cais a'r gwasanaethau a ddarperir mewn ymateb i archiadau o'r fath. A rhaid iddo ddarparu manylion y gwasanaethau hynny ar ei wefan, a'r ffioedd sy'n daladwy mewn cysylltiad ag archiadau o'r fath.

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.

Pennod 5 – Gwneud cais am ganiatâd cynllunio a chymeradwyaethau cysylltiedig

213. Yn ogystal â rhoi caniatâd drwy orchymyn datblygu, gellir cael caniatâd cynllunio drwy amryw o weithdrefnau. O'r rhain, yr un mwyaf cyffredin y deuir ar ei draws yw rhoi caniatâd gan yr awdurdod cynllunio mewn ymateb i gais cynllunio. Y darpariaethau sy'n ymwneud â gwneud cais o'r fath yw testun y Bennod hon.

214. Darperir canllawiau ar gyflwyno, dilysu a chofrestru ceisiadau yn y *Llawlyfr Rheoli Datblygu*, y mae'r rhifyn cyfredol ohono ar gael ar wefan Llywodraeth Cymru.

Adran 55 – Cais am ganiatâd cynllunio i gael ei wneud i awdurdod cynllunio

215. Fel arfer, mae cais am ganiatâd cynllunio i'w wneud i'r awdurdod cynllunio y mae ei ardal yn cynnwys y tir y mae'r datblygiad i'w gynnal arno (is-adran (1)).

216. Fodd bynnag, mae hyn yn ddarostyngedig i'r eithriadau a ganlyn:

a. pan fo awdurdod wedi ei ddynodi o dan adran 79 at ddibenion adran 78, caniateir gwneud cais naill ai i'r awdurdod cynllunio neu i Weinidogion Cymru;

b. pan wneir cais gan y Goron neu ar ran y Goron, bydd yn cael ei wneud i'r awdurdod, ond caniateir amrywio'r gweithdrefnau arferol drwy reoliadau o dan adran 84;

c. caniateir gwneud ceisiadau penodol ar gyfer datblygiad brys y Goron i Weinidogion Cymru yn hytrach nag i'r awdurdod, o dan adran 85;

d. caiff rheoliadau o dan adran 86 alluogi gwneud un cais i'r awdurdod am ganiatâd cynllunio ac un neu ragor o fathau eraill o awdurdodiad (is-adran (2)(a) i (d)); ac

e. caiff rheoliadau o dan adran 405 ddarparu y gellir gwneud ceisiadau penodol i Weinidogion Cymru am ddatblygiad tir yn ardal awdurdod cynllunio pan fo'r awdurdod cynllunio neu Weinidogion Cymru yn gweithredu fel datblygwyr neu fod ganddynt fuddiant yn y tir.

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.

Adran 56 – Cais am ganiatâd cynllunio, cymeradwyaeth ar gyfer materion a gadwyd yn ôl etc.: gofynion cyffredinol

217. Yn gyffredinol, darperir y gofynion o ran gwneud ceisiadau mewn rheoliadau yn hytrach nag ar wyneb y Ddeddf. Mae is-adrannau (1) a (2) yn galluogi Gweinidogion Cymru i wneud rheoliadau o'r fath, gan ddarparu ar gyfer manylion gweithdrefnol ceisiadau i awdurdodau cynllunio am:

a. caniatâd cynllunio;

b. cymeradwyaeth ar gyfer materion a gadwyd yn ôl; neu

c. unrhyw gydsyniad arall, unrhyw gytundeb arall neu unrhyw gymeradwyaeth arall sy'n ofynnol gan amod neu gyfyngiad caniatâd cynllunio a roddwyd.

218. Mae manylion o'r fath wedi eu darparu gan orchymyn datblygu hyd yn hyn – y mwyaf diweddar yw Gorchymyn 2012.

219. Caiff rheoliadau o dan yr adran hon wneud darpariaeth o ran sut y mae cais i'w wneud, cynnwys ceisiadau, y ffurflenni i'w defnyddio a'r dogfennau a'r deunyddiau eraill sydd i'w cynnwys (is-adran (3)). Nodir y sefyllfa ar hyn o bryd yn Rhan 2 o Orchymyn 2012.

220. O dan is-adran (4), caiff awdurdod cynllunio ei gwneud yn ofynnol i gais penodol gynnwys gwybodaeth y mae'r awdurdod yn ystyried ei bod yn angenrheidiol, ynghyd â thystiolaeth briodol i ategu unrhyw fater sydd wedi ei gynnwys yn y cais. Er enghraifft, efallai y bydd yr awdurdod yn ei gwneud yn ofynnol cael lluniadau manylach o weithrediadau adeiladu arfaethedig neu ragor o wybodaeth am y deunyddiau sydd i'w defnyddio, neu efallai y bydd angen tystiolaeth ynghylch defnydd o ddarn o dir yn y gorffennol a'r presennol. Caiff awdurdod gyhoeddi'r cyfryw ofynion mewn perthynas â'r holl geisiadau mewn categori penodol.

221. Ond ni chaniateir i ofynion o'r fath, pa un ai mewn perthynas â chais penodol neu'n fwy cyffredinol, fod yn anghyson â darpariaethau unrhyw reoliadau a wnaed o dan is-adran (3) a rhaid iddynt fod yn rhesymol ynghylch natur a graddfa'r datblygiad arfaethedig. Hefyd, ni chânt ei gwneud yn ofynnol dangos deunydd sy'n ymwneud â mater oni bai ei bod yn rhesymol credu y bydd y mater yn berthnasol i ystyried y cais (is-adran (5)).

Adran 57 – Cais am ganiatâd cynllunio: datganiad dylunio a mynediad ac adroddiad ymgynghoriad cyn gwneud cais

222. Un gofyniad y mae rhaid ei osod drwy reoliadau yw y bydd rhaid i geisydd mewn achosion penodol gynnwys, gyda chais am ganiatâd cynllunio, ddatganiad ynghylch yr egwyddorion dylunio sydd wedi eu cymhwyso mewn perthynas â'r datblygiad, a'r modd yr ymdriniwyd â materion sy'n ymwneud â mynediad i'r datblygiad a gwblhawyd (is-adran (1)). Caiff rheoliadau ddarparu hefyd ar gyfer ffurf a chynnwys datganiad o'r fath.

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. O dan erthygl 7 o Orchymyn 2012, mae'n ofynnol ar hyn o bryd i ddatganiad o'r fath gael ei gynnwys gydag unrhyw gais am ganiatâd ar gyfer datblygiad mawr ac unrhyw gais am ddatblygiad mewn ardal gadwraeth neu safle treftadaeth y byd sy'n golygu creu o leiaf un annedd newydd neu un adeilad newydd ag arwynebedd llawr o 100m² o leiaf. Fodd bynnag, nid yw'n ofynnol gyda chais am weithrediadau mwyngloddio neu ddyddodi gwastraff nac ar gyfer newid defnydd.

224. Pan fo'n ofynnol i berson o dan adran 52 roi cyhoeddusrwydd i gais arfaethedig ac ymgynghori arno, a'i fod yna'n gwneud cais am y datblygiad (pa un ai ar yr un telerau â'r cynnig cychwynnol ai peidio), rhaid i'r cais gynnwys adroddiad ymgynghoriad cyn gwneud cais, hynny yw, adroddiad ar y cyhoeddusrwydd a roddwyd a'r ymgynghoriad a gynhaliwyd mewn gwirionedd, pa ymatebion a gafwyd o ganlyniad, a sut y rhoddwyd ystyriaeth i'r ymatebion hynny (is-adrannau (2) a (3)). Yma hefyd, caiff rheoliadau ddarparu ar gyfer ffurf a chynnwys adroddiad o'r fath.

Adran 58 – Hysbysiad o gais am ganiatâd cynllunio neu gymeradwyaeth ar gyfer materion a gadwyd yn ôl

225. Caiff unrhyw un wneud cais am ganiatâd cynllunio (neu am gymeradwyaeth ar gyfer mater a gadwyd yn ôl), ni waeth a yw'n berchen ar y tir o dan sylw. Mae hyn yn galluogi cais i gael ei wneud gan, er enghraifft, ddarpar brynwr y tir. Fodd bynnag, pan wneir cais gan rywun heblaw'r perchennog, mae'n debygol y bydd yr awdurdod cynllunio am wybod barn y rhai sy'n berchnogion. Mae'r adran hon yn unol â hynny yn galluogi'r awdurdod i wybod bod y perchnogion hynny wedi eu hysbysu o leiaf ac felly yn cael cyfle i fynegi eu barn – neu na ellir dod o hyd iddynt.

226. Felly, rhaid i reoliadau o dan is-adran (1) ei gwneud yn ofynnol i bob ceisydd roi hysbysiad o gais i unrhyw un heblaw'r ceisydd sy'n berchennog ar unrhyw ran o'r tir y mae'r cais yn ymwneud ag ef ('safle'r cais'), neu sy'n denant amaethyddol ar unrhyw ran o'r tir. Yn rhinwedd y diffiniad o "perchennog" yn is-adran (7), mae hyn yn golygu mai'r rheol arferol yw bod rhaid rhoi hysbysiad i unrhyw un sy'n berchennog ar rydd-ddaliad y safle cyfan neu unrhyw ran o'r safle, neu denant o dan les sydd ag o leiaf saith mlynedd yn weddill.

227. Yn achos tir amaethyddol, mae'r diffiniad o "tenant amaethyddol" yn is-adran (7) yn golygu bod rhaid rhoi hysbysiad i:

a. unrhyw denant ar ddaliad amaethyddol (fel y'i diffinnir gan Ddeddf Daliadau Amaethyddol 1986 (p. 5)) sydd wedi ei gynnwys yn gyfan gwbl neu'n rhannol ar safle'r cais, o dan denantiaeth y mae'r Ddeddf honno'n gymwys iddi; a

b. unrhyw denant unrhyw ran o safle'r cais o dan denantiaeth busnes fferm, fel y'i diffinnir gan Ddeddf Tenantiaethau Amaethyddol 1995 (p. 8).

228. Yn rhinwedd rheoliadau a wneir o dan is-adran (3), rhaid cyflwyno hysbysiad ar y ffurf ragnodedig i bob perchennog neu denant o'r fath.

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. Yn achos ceisiadau mwynau, yn rhinwedd y rheoliadau a wneir o dan is-adran (7)(c), rhaid hefyd roi hysbysiad i unrhyw berson a chanddo hawlogaeth i fuddiant yn y mwynau yn safle'r cais. Mae erthygl 10 o Orchymyn 2012 yn darparu ar hyn o bryd nad yw buddiant mewn mwynau yn cynnwys olew, nwy, glo, aur nac arian. Mae erthygl 10(2) i (5) yn darparu hefyd, pan fo cais yn ymwneud â mwyngloddio tanddaearol, fod rhaid cyflwyno hysbysiad i berchnogion a thenantiaid, pan fônt yn hysbys, a'i osod yn y wasg leol. A rhaid arddangos hysbysiad am o leiaf saith niwrnod ym mhob cymuned sy'n cynnwys unrhyw ran o safle'r cais, gan egluro ym mha le y mae manylion y cais ar gael.

230. Caiff rheoliadau o dan is-adran (2) ei gwneud yn ofynnol i geisydd wneud declarasiwn y cydymffurfiwyd â gofynion yr adran hon (gweler erthygl 11 o Orchymyn 2012 sy'n ei gwneud yn ofynnol ar hyn o bryd i bob ceisydd ardystio hyn ar ffurf a gyhoeddir gan Weinidogion Cymru). Pan fo person yn fwriadol neu'n ddi-hid yn gwneud declarasiwn sy'n anwir neu'n gamarweiniol, mae hynny'n drosedd o dan is-adran (4) sy'n arwain at ddirwy ar euogfarn. Gellir rhoi'r drosedd ar brawf yn ddiannod (yn y llysoedd ynadon) ond nid yw'n ddarostyngedig i'r terfyn amser arferol o chwe mis ar gyfer cychwyn achos ar gyfer troseddau diannod (is-adran (6)).

Adran 59 – Awdurdod cynllunio i beidio ag ystyried cais annilys

231. Mae'r adran hon yn darparu'r mecanwaith i orfodi'r gwahanol ofynion gweithdrefnol a osodir gan yr adrannau blaenorol neu odanynt.

232. O dan is-adran (1)(a) a (b), ni chaiff awdurdod ystyried cais am ganiatâd cynllunio neu am gymeradwyaeth ar gyfer materion a gadwyd yn ôl os yw'n methu â chydymffurfio ag:

a. gofynion cyffredinol a osodir gan reoliadau o dan adran 56;

b. pan fo'n berthnasol, gofynion o ran datganiad dylunio a mynediad ac adroddiad ymgynghoriad cyn gwneud cais a osodir o dan adran 57; ac

c. gofynion o ran hysbysiad a chyhoeddusrwydd a osodir o dan adran 58.

233. O dan is-adran (1)(c) a (2), ni chaiff awdurdod ystyried cais am gydsyniad, cytundeb neu gymeradwyaeth sy'n ofynnol gan amod neu gyfyngiad y rhoddwyd caniatâd cynllunio yn ddarostyngedig iddo, os yw'n methu â chydymffurfio ag:

a. gofynion cyffredinol a osodir gan reoliadau o dan adran 56;

b. gofynion a osodir gan orchymyn datblygu ynghylch ffurf cais o'r fath neu unrhyw ddeunydd sydd wedi ei gynnwys gyda'r cais, neu sut y mae'r cais i'w wneud.

Adran 60 – Awdurdod cynllunio i roi hysbysiad nad yw cais yn ddilys

234. Pan fo awdurdod yn ystyried na chydymffurfiwyd â'r gofynion y cyfeirir atynt yn adran 59, rhaid iddo hysbysu'r ceisydd o dan adran 60(2)(a).

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. Rhaid i awdurdod hefyd hysbysu'r ceisydd, o dan adran 60(2)(b), pan nad yw'r cyfnod y mae rhaid iddo ymdrin â'r cais ynddo (hynny yw, y cyfnod a osodwyd gan reoliadau o dan adran 63(2)(f) neu unrhyw gyfnod hwy y cytunir arno o dan adran 73(4)(b)) wedi cychwyn eto am nad yw gwybodaeth sy'n ofynnol gan yr awdurdod o dan adran 56(4) wedi ei darparu. Gwneir darpariaeth i'r perwyl hwnnw ar hyn o bryd yn erthygl 22 o Orchymyn 2012.

236. Mae is-adran 60(3) yn ymdrin â cheisiadau am gymeradwyaeth ar gyfer mater a gadwyd yn ôl gan ganiatâd amlinellol, neu am gydsyniad, cytundeb neu gymeradwyaeth sy'n ofynnol gan amod neu gyfyngiad y rhoddwyd caniatâd yn ddarostyngedig iddo. Mewn unrhyw achos o'r fath, rhaid i'r awdurdod hysbysu'r ceisydd os yw'n ystyried nad yw'r cais yn cydymffurfio ag un o delerau'r caniatâd ynghylch ffurf neu gynnwys y cais neu unrhyw ddeunyddiau sydd i'w cynnwys gyda'r cais.

237. Rhaid i hysbysiad o dan yr adran hon (y cyfeirir ato isod fel 'hysbysiad o annilysrwydd') nodi'r gofyniad y mae'r awdurdod yn ystyried na chydymffurfiwyd ag ef, a'r rheswm pam y mae'r awdurdod yn ystyried na chydymffurfiwyd ag ef (is-adran (4)). Caiff rheoliadau o dan is-adran (5) wneud darpariaeth ynghylch hysbysiadau o'r fath (gweler erthygl 8(3A) o Orchymyn 2012, sy'n ei gwneud yn ofynnol ar hyn o bryd i hysbysiad hysbysu'r ceisydd am yr hawl i apelio yn ei erbyn).

Adran 61 – Yr hawl i apelio yn erbyn hysbysiad o annilysrwydd

238. Os yw awdurdod cynllunio yn rhoi hysbysiad o annilysrwydd i geisydd, caiff y ceisydd apelio i Weinidogion Cymru yn ei erbyn drwy gyflwyno hysbysiad o apêl iddynt (is-adrannau (1) a (4)).

239. Caniateir gwneud apêl o dan is-adran (2) ar y sail bod y cais yn cydymffurfio â'r gofyniad gweithdrefnol a enwir yn yr hysbysiad; neu nad yw'r cais yn gais y mae'r gofyniad hwnnw'n gymwys iddo.

240. Pan fo hysbysiad yn honni bod cais yn annilys oherwydd methiant i roi digon o wybodaeth neu dystiolaeth ategol (fel sy'n ofynnol o dan adran 56(4)), caniateir i'r apêl hefyd gael ei gwneud (o dan is-adran (3)) ar y sail:

    a. y dylai'r cyfnod a bennir o dan adran 63(2)(f) neu 73(4) ar gyfer ymdrin â'r cais ddechrau pa un a gydymffurfir â'r gofyniad ai peidio; neu

    b. nad oes cyfiawnhad dros y gofyniad i ddarparu'r wybodaeth honno, yng ngoleuni is-adran 56(5).

241. Mae hyn yn galluogi ceisydd i ddadlau, er enghraifft, na ddylid oedi penderfynu cais mawr oherwydd methiant i gyflenwi rhywfaint o ddeunydd ategol cymharol fach.

242. Caiff rheoliadau o dan is-adran (5) ddarparu gofynion manylach ynghylch dwyn apelau o'r fath.

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.

Adran 62 – Penderfynu apêl yn erbyn hysbysiad
Atodlen 2 – Apelau o dan adran 61: penderfynu gan arolygwyr

243. Pan wneir apêl i Weinidogion Cymru yn erbyn hysbysiad o annilysrwydd, byddant naill ai'n gwrthod yr apêl neu'n diddymu neu'n amrywio'r hysbysiad (adran 62(1)). Bydd yr apêl yn cael ei phenderfynu ar sail sylwadau ysgrifenedig, fel arfer gan arolygydd (y bydd ei benderfyniad yn cael ei drin fel penderfyniad Gweinidogion Cymru). Yn eithriadol gall Gweinidogion Cymru gyfarwyddo bod yr apêl i'w phenderfynu ganddynt hwy. Mae penderfyniad yr arolygydd neu Weinidogion Cymru yn derfynol – yn amodol ar unrhyw her yn yr Uchel Lys (adran 62(2)).

244. Darperir rhagor o fanylion ynghylch apelau o'r fath yn Atodlen 2. Mae gan yr arolygydd yr un pwerau â Gweinidogion Cymru i benderfynu'r apêl, cyfarwyddo'r weithdrefn a gwneud gorchmynion ynghylch costau (paragraff 1). Ar unrhyw adeg cyn i'r arolygydd benderfynu'r apêl, caiff Gweinidogion Cymru benodi arolygydd arall yn ei le (paragraff 2). Ni chaniateir herio dilysrwydd penderfyniad arolygydd mewn achos cyfreithiol ar y sail mai Gweinidogion Cymru a ddylai fod wedi penderfynu'r apêl, oni bai y dygir her o'r fath cyn i'r penderfyniad gael ei roi (paragraff 5).

245. O dan baragraff 3, pan fo Gweinidogion Cymru yn penderfynu bod yr apêl i'w phenderfynu ganddynt hwy, rhaid iddynt hysbysu'r apelydd a'r awdurdod cynllunio – a'r arolygydd, os oes arolygydd wedi ei benodi. Cânt hefyd ystyried unrhyw adroddiad a wneir iddynt gan yr arolygydd hwnnw. Ar ôl adfer awdurdodaeth, gall Gweinidogion Cymru wedyn wrthdroi'r penderfyniad hwnnw, drwy ddyroddi cyfarwyddyd pellach o dan baragraff 4 yn penodi arolygydd newydd – eto gan hysbysu'r apelydd, yr awdurdod cynllunio a'r arolygydd blaenorol.

Pennod 6 – Ymdrin â cheisiadau

246. Roedd Pennod 6 yn disgrifio sut y gwneir cais am ganiatâd cynllunio i awdurdod cynllunio. Mae'r Bennod hon yn disgrifio sut yr ymdrinnir â chais o'r fath.

247. Darperir canllawiau ar gyhoeddusrwydd ac ymgynghori yn y *Llawlyfr Rheoli Datblygu*, sydd ar gael ar wefan Llywodraeth Cymru.

Adran 63 – Y weithdrefn ar gyfer ymdrin â cheisiadau: cyffredinol

248. Yn gyffredinol, darperir manylion y weithdrefn ar gyfer ymdrin â chais mewn rheoliadau yn hytrach nag ar wyneb y Ddeddf. Mae'r adran hon yn galluogi Gweinidogion Cymru i wneud rheoliadau o'r fath, gan ddarparu ar gyfer manylion gweithdrefnol ymdrin â cheisiadau am:

    a. caniatâd cynllunio;

    b. cymeradwyaeth ar gyfer materion a gadwyd yn ôl; neu

    c. unrhyw gydsyniad arall, unrhyw gytundeb arall neu unrhyw gymeradwyaeth arall sy'n ofynnol gan amod neu gyfyngiad caniatâd cynllunio a roddwyd (is-adran (1)).

249. Mae manylion o'r fath wedi eu darparu gan orchymyn datblygu hyd yn hyn – nodir y rhain ar hyn o bryd yng Ngorchymyn 2012.

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. Mae is-adran (2) yn nodi rhai o'r darpariaethau y caniateir eu gwneud gan y rheoliadau hyn. Yn rhinwedd is-adran (2)(a) a (b), caiff rheoliadau ddarparu i geisiadau gael cyhoeddusrwydd yn gyffredinol, ac i fod yn destun hysbysiad (gan gynnwys i bersonau penodedig neu gyrff penodedig) neu ymgynghoriad. Mae'r gofynion cyfredol yn Rhan 3 o Orchymyn 2012; ac mae Atodlen 4 i'r Gorchymyn hwnnw yn rhestru 25 o fathau o ddatblygiad y mae rhaid rhoi hysbysiad i gyrff penodedig amdanynt. O dan is-adran (2)(d), caiff rheoliadau hefyd bennu categorïau penodol o sylwadau y mae rhaid eu hystyried. Caiff rheoliadau o dan is-adran (2)(c) hefyd ei gwneud yn ofynnol i awdurdodau oedi penderfynu ceisiadau, er mwyn galluogi'r rhai a hysbyswyd neu yr ymgynghorwyd â hwy i gael amser i ymateb.

251. Weithiau bydd yn angenrheidiol neu'n ddymunol amrywio cais ar ôl iddo gael ei gyflwyno. Mae is-adran (2)(e) yn galluogi rheoliadau i ddarparu ar gyfer hynny.

252. Caiff rheoliadau ddarparu i'r awdurdod hysbysu'r ceisydd o fewn cyfnod penodedig am ganlyniad cais a phennu sut y mae'r hysbysiad hwnnw i'w roi (is-adran (2)(f)). O dan erthygl 22 o Orchymyn 2012, y cyfnod amser ar gyfer y penderfyniad ar hyn o bryd yw wyth wythnos o'r adeg y daw cais dilys i law, ond caniateir amrywio hynny o dan amgylchiadau penodol. Mae adran 69 yn gwneud darpariaeth bellach ynghylch hysbysiadau o benderfyniadau.

253. Pan fo cais yn codi materion cynllunio sydd o bwysigrwydd y tu hwnt i'r ardal leol, efallai y bydd Gweinidogion Cymru yn dymuno ystyried a ddylid galw cais i mewn i'w benderfynu ganddynt hwy o dan adran 72. Caiff y rheoliadau o dan adran 63 hwyluso hyn drwy alluogi Gweinidogion Cymru i gyfarwyddo awdurdod cynllunio i oedi rhoi caniatâd cynllunio mewn ymateb i gais penodol, neu unrhyw gais mewn categori penodol, am gyfnod penodedig – neu am gyfnod amhenodol (is-adran (3)).

Adran 64 – Gofyniad i ymateb i ymgynghoriad

254. Mae'r adran hon yn gymwys pan ymgynghorir â chorff sy'n cyflawni swyddogaethau o dan unrhyw ddeddfiad (megis yr awdurdod priffyrdd lleol neu CNC) ynghylch cais yn rhinwedd rheoliadau o dan adran 63. Mae hefyd yn gymwys pan ymgynghorwyd â'r corff ynghylch cais am ganiatâd cynllunio, ac yr ymgynghorir ag ef bellach ynghylch cais am gymeradwyaeth ar gyfer materion a gadwyd yn ôl, neu ar gyfer unrhyw gydsyniad arall, unrhyw gytundeb arall neu unrhyw gymeradwyaeth arall sy'n ofynnol gan amod neu gyfyngiad ar ganiatâd (is-adrannau (1) i (3)).

255. Yn y naill achos neu'r llall, rhaid i'r corff roi ymateb o sylwedd i'r ymgynghoriad o fewn y cyfnod a bennir mewn rheoliadau, neu unrhyw gyfnod arall y cytunwyd arno rhwng y corff a'r awdurdod cynllunio (is-adran (4)). Nodir y cyfnod yn erthygl 15A(2) o Orchymyn 2012; mae'n 21 o ddiwrnodau ar hyn o bryd, ond yn 30 o ddiwrnodau yn achos "cais AEA". Caiff rheoliadau o dan is-adran (5) ddarparu ar gyfer natur ymateb o sylwedd at y diben hwn a chaiff ei gwneud yn ofynnol i bob corff yr ymgynghorir ag ef lunio adroddiad i Weinidogion Cymru ynghylch y ffordd y mae'n ymateb (gweler erthygl 15A(3) ac erthygl 15B).

256. Mae'r adran hon yn gymwys i gais sydd wedi ei alw i mewn gan Weinidogion Cymru i'w benderfynu ganddynt hwy yn union fel y mae'n gymwys i gais sy'n cael ei benderfynu gan yr awdurdod (adran 72(5)).

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)).

Adran 65 – Rhoi hysbysiad o geisiadau i gynghorau cymuned

257. Gall pob cyngor cymuned ofyn i'r awdurdod cynllunio perthnasol anfon ato bob cais cynllunio (neu bob cais am gymeradwyaeth ar gyfer materion a gadwyd yn ôl) sy'n ymwneud â'i ardal, neu bob cais penodedig (is-adrannau (1) a (2)).

258. Pan fo cyngor cymuned wedi gofyn am ddeunydd o'r fath, a bo'r awdurdod cynllunio yn cael cais sy'n dod o fewn ei delerau, rhaid i'r awdurdod hysbysu'r cyngor cymuned am y cais. Rhaid iddo wneud hynny drwy anfon copi o'r cais neu nodi yn ysgrifenedig natur y datblygiad a'r tir y mae'n ymwneud ag ef (is-adrannau (3)(a) a (4)). Rhaid i'r awdurdod hefyd hysbysu'r cyngor cymuned am unrhyw amrywiad dilynol i gais o'r fath (heblaw amrywiad y mae'n ystyried ei fod yn ddibwys), drwy anfon copi o'r amrywiad neu hysbysu'r cyngor am ei effaith gyffredinol (is-adrannau (3)(b) a (5)).

259. Caiff rheoliadau ddarparu bod rhaid i'r awdurdod cynllunio roi cyfle i'r cyngor i gyflwyno sylwadau ynghylch sut y dylid penderfynu'r cais, bod rhaid iddo ystyried y sylwadau hynny, a bod rhaid iddo roi gwybod i'r cyngor am y canlyniad (is-adran (6)).

Adran 66 – Ystyriaethau cyffredinol sy'n berthnasol i benderfynu ceisiadau

260. Mae'r adran hon yn disgrifio'r materion y mae rhaid i awdurdodau cynllunio eu hystyried wrth benderfynu ceisiadau cynllunio. Mae hefyd yn gymwys i benderfyniadau a wneir gan Weinidogion Cymru (ac arolygwyr ar eu rhan) wrth benderfynu ceisiadau y maent wedi eu galw i mewn i'w penderfynu ganddynt (gweler adran 72(5)), y penderfyniadau hynny a wneir ganddynt wrth benderfynu apelau (gweler adran 77(5)) a cheisiadau y maent yn eu penderfynu yn ymwneud â datblygiad brys y Goron (gweler adran 85(11)).

261. Mae is-adran (1) yn gosod un o egwyddorion sylfaenol cyfraith gynllunio, sef, wrth benderfynu cais am ganiatâd cynllunio neu gais am gymeradwyaeth ar gyfer mater a gadwyd yn ôl:

    a. bod rhaid i'r penderfynwr roi sylw i'r cynllun datblygu ac unrhyw ystyriaeth berthnasol arall; a

    b. bod rhaid iddo wneud ei benderfyniad yn unol â'r cynllun datblygu oni bai bod ystyriaethau perthnasol eraill yn dangos fel arall.

262. Mae'r is-adran hon yn sicrhau y bydd y cynllun datblygu yn ffactor pwysig mewn penderfyniadau cynllunio. Yr hyn sy'n ffurfio'r cynllun datblygu yw testun adran 10 – mae'n cynnwys yr FfDC, unrhyw gynllun datblygu strategol ar gyfer yr ardal sy'n cynnwys y tir o dan sylw a'r cynllun datblygu lleol ar gyfer yr ardal. Ac os bydd gwrthdaro rhwng dau bolisi mewn cynlluniau datblygu, rhaid datrys hynny o blaid y polisi yn y ddogfen ddiweddaraf.

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. Yn y Saesneg, mae'r term "relevant consideration" yn disodli'r term "material consideration" a ddefnyddiwyd mewn Deddfau cynllunio blaenorol ond mae iddo yr un ystyr; gweler penderfyniad y Goruchaf Lys yn *R (Health & Safety Executive) v Wolverhampton CC* [2012] UKSC 34 yn [26]. Ystyriodd y llys hwnnw ystyr y term yn fwy diweddar, yn *R (Wright) v Resilient Energy Severndale Ltd and Forest of Dean District Council* [2019] UKSC 53, gan ddal bod rhaid i ystyriaethau ateb diben cynllunio (sef, un sy'n ymwneud â chymeriad y defnydd o'r tir) a rhaid iddo ymwneud yn deg ac yn rhesymol â'r datblygiad a gynigir.

264. Yn rhinwedd adrannau 408(3) a (4), mae'r ystyriaethau y mae rhaid i'r penderfynwr roi sylw iddynt o dan y ddarpariaeth hon yn cynnwys yr hyn a ganlyn, i'r graddau y maent yn berthnasol i wneud y penderfyniad:

a. polisïau cenedlaethol a ddyroddir gan Weinidogion Cymru sy'n ymwneud â datblygiad tir a defnydd o dir; a

b. ystyriaethau sy'n ymwneud â'r defnydd o'r Gymraeg.

Ond nid yw hynny'n golygu bod y naill neu'r llall o'r materion hynny o reidrwydd yn berthnasol i unrhyw benderfyniad penodol; nid yw'n effeithio ychwaith ar y pwysau y dylid ei roi i'r naill neu'r llall ohonynt, neu i unrhyw ystyriaeth berthnasol arall.

265. Mae'r polisïau cenedlaethol yn cynnwys *Polisi Cynllunio Cymru* (Rhifyn 12, a gyhoeddwyd ym mis Chwefror 2024) a'r ystod o TANs ar bynciau penodol. Archwilir ystyriaethau sy'n ymwneud â'r defnydd o'r Gymraeg yn TAN 20 ar *Cynllunio a'r Iaith Gymraeg*.

266. Yn ogystal, yn rhinwedd adran 51, rhaid penderfynu cais am ganiatâd cynllunio neu gymeradwyaeth ar gyfer mater a gadwyd yn ôl fel rhan o ddyletswydd y penderfynwr yn unol â Deddf Cenedlaethau'r Dyfodol 2015, i gynnal datblygu cynaliadwy, at y diben o sicrhau bod datblygiad tir a defnydd o dir yn cyfrannu at wella llesiant economaidd, cymdeithasol, amgylcheddol a diwylliannol Cymru. Nid yw hyn, fodd bynnag, yn golygu bod rhaid rhoi sylw i unrhyw ystyriaeth benodol wrth wneud penderfyniad; nid yw'n effeithio ychwaith ar y pwysau y dylid ei roi i unrhyw ystyriaeth o'r fath (gweler adran 51(5)).

267. Mae is-adran (2) yn gymwys pan fo person wedi ymrwymo i rwymedigaeth cynllunio o dan adran 165. Caniateir ystyried hyn fel rheswm dros roi caniatâd, pan fo'r rhwymedigaeth:

a. yn gysylltiedig yn uniongyrchol â'r datblygiad y mae'r cais yn ymwneud ag ef;

b. yn angenrheidiol i wneud y datblygiad yn dderbyniol yn nhermau cynllunio; ac

c. yn gysylltiedig â'r datblygiad mewn modd teg a rhesymol o ran graddfa a math.

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. Mae is-adran (3)(a) yn tynnu sylw at adran 404 sy'n gymwys pan fo'r datblygiad arfaethedig yn effeithio ar adeilad rhestredig neu ei osodiad. Wrth ystyried a ddylid rhoi caniatâd cynllunio, mae'r penderfynwr i roi sylw arbennig i ddymunoldeb cadw'r adeilad rhestredig, ei osodiad ac unrhyw nodweddion o ddiddordeb arbennig sydd ganddo. Mae is-adran (3)(b) hefyd yn cyfeirio at adran 160 o Ddeddf 2023 sy'n gymwys pan fo'r datblygiad arfaethedig yn effeithio ar ardal gadwraeth, ac yn ei gwneud yn ofynnol i'r penderfynwr roi sylw arbennig i ddymunoldeb cadw neu wella cymeriad neu olwg yr ardal.

Adran 67 – Rhoi neu wrthod caniatâd cynllunio a gosod amodau

269. Ar ôl cael cais am ganiatâd cynllunio, caiff awdurdod cynllunio roi caniatâd, yn ddarostyngedig i'r amodau sy'n ofynnol gan y Rhan hon ac unrhyw amodau eraill y mae'n ystyried eu bod yn briodol (is-adran (1)(a)). Neu caiff wrthod caniatâd (is-adran (1)(b)). Mae'r un peth yn gymwys pan fo Gweinidogion Cymru yn penderfynu cais sydd wedi ei atgyfeirio atynt i'w benderfynu ganddynt (adran 72(5)) neu pan fyddant yn penderfynu apêl (adran 77(5)).

270. Yr amodau y mae rhaid eu gosod yw:

a. yr amodau sy'n ofynnol gan adran 69, o ran pennu planiau neu ddogfennau eraill y mae rhaid cynnal y datblygiad yn unol â hwy;

b. yr amodau sy'n ofynnol gan Bennod 9 o'r Rhan hon, o ran y dyddiad erbyn pryd y mae rhaid i'r ddatblygiad ddechrau;

c. yn achos datblygiad sy'n weithrediadau mwyngloddio neu sy'n cynnwys dyddodi gwastraff mwynau, yr amodau hynny sy'n ofynnol gan Atodlen 5 o ran y dyddiad erbyn pryd y mae rhaid i'r datblygiad ddod i ben;

d. yr amodau sy'n ofynnol gan adran 233, o ran cadw neu blannu coed.

271. Bydd amodau eraill a allai fod yn briodol yn cael eu penderfynu gan yr awdurdod cynllunio fesul achos. Mae'r prawf cyffredinol ar gyfer cyfreithlondeb amod fel y'i nodir gan Dŷ'r Arglwyddi yn *Newbury DC v Secretary of State* [1981] AC 578 yn tt 607 i 608, sef:

a. rhaid iddo gael ei osod at ddiben cynllunio ac nid at ddiben cudd;

b. rhaid iddo ymwneud yn deg ac yn rhesymol â'r datblygiad a ganiateir; ac

c. ni chaniateir iddo fod mor afresymol fel na allai unrhyw awdurdod rhesymol fod wedi ei osod.

272. Yn ogystal â'r gofynion cyfreithiol hynny, mae Cylchlythyr Llywodraeth Cymru 016/2014: *Defnyddio Amodau Cynllunio i Reoli Datblygu* yn pwysleisio y dylai amodau hefyd fod yn angenrheidiol, yn fanwl gywir ac yn orfodadwy, gan sicrhau eu bod yn effeithiol ac nad ydynt yn gosod gofynion na ellir eu cyfiawnhau ar geiswyr. Dim ond pan fyddant yn bodloni'r holl brofion hyn y dylid gosod amodau.

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. Yn benodol caiff amodau reoleiddio datblygiad y tir neu ddefnydd o'r tir sy'n ddarostyngedig i'r cais. Ond cânt hefyd (o dan is-adran (2)) reoleiddio datblygiad tir arall neu ddefnydd o dir arall a reolir gan y ceisydd – er enghraifft, ei gwneud yn ofynnol symud ymaith strwythur ar dir o'r fath pan fo'n rhwystro gweledegd cerbydau sy'n gadael safle datblygiad.

274. Y rheol arferol yw bod caniatâd cynllunio yn cael effaith am gyfnod amhenodol, ar yr amod bod y datblygiad a ganiateir yn dechrau o fewn y cyfnod a bennir gan unrhyw amod sydd ynghlwm wrtho. Fodd bynnag, caiff caniatâd awdurdodi'r datblygiad am gyfnod cyfyngedig yn unig. Yn yr achos hwnnw, caiff fod yn ddarostyngedig i'r ddau amod a ganlyn:

a. ei gwneud yn ofynnol symud ymaith adeiladau neu waith a awdurdodir gan y caniatâd neu ddatbarhau'r defnydd a awdurdodir gan y caniatâd ar ddiwedd y cyfnod hwnnw. Mae "defnydd" yn y cyd-destun hwn yn cynnwys defnydd ar gyfer gweithrediadau mwyngloddio, ond nid defnydd ar gyfer unrhyw weithrediadau adeiladau, unrhyw weithrediadau peirianneg neu unrhyw weithrediadau eraill;

b. cynnal unrhyw waith sy'n ofynnol i adfer y tir i'w gyflwr blaenorol ar yr adeg honno.

275. Mae materion ychydig yn wahanol yn codi mewn cysylltiad â chaniatâd cynllunio a roddir gan yr awdurdod cynllunio ar gyfer datblygiad sy'n weithrediadau mwyngloddio neu sy'n cynnwys dyddodi gwastraff. Mae'r rhain yn destun Atodlen 3 a gyflwynir gan is-adran (6).

Atodlen 3 – Amodau sy'n ymwneud â gweithrediadau mwyngloddio a dyddodi gwastraff

276. Bydd cynnal gweithrediadau mwyngloddio neu ddyddodi gwastraff (naill ai gwastraff mwynau neu unrhyw fath arall o wastraff) yn effeithio'n sylweddol ar gymeriad a golwg y tir o dan sylw. Unwaith y bydd gweithrediadau o'r fath wedi dod i ben, dylid dod â'r tir i gyflwr fel ei fod yn cael ei adfer neu fel bod modd ei ddefnyddio at ddefnydd newydd yn y dyfodol.

277. O ganlyniad, bydd caniatâd ar gyfer cynnal gweithrediadau mwyngloddio neu ddyddodi gwastraff fel arfer yn ddarostyngedig i un neu ragor o amodau adfer, sy'n ei gwneud yn ofynnol i'r tir yr effeithiwyd arno gael ei adfer drwy ddefnyddio isbridd, uwchbridd neu ddeunydd tebyg (paragraff 1(2)(a)). Pan fo amod o'r fath yn cael ei osod, caiff y caniatâd hefyd fod yn ddarostyngedig i un neu ragor o amodau ôl-ofal sy'n ei gwneud yn ofynnol i'r tir gael ei drin er mwyn bod yn addas ar gyfer amaethyddiaeth, tyfu pren defnyddiadwy neu ddibenion amwynder (paragraff 1(1), (2)(b) a (3)).

278. Naill ai drwy gyfeirio at gynllun neu fel arall, caiff amod ôl-ofal o'r fath bennu'r camau i'w cymryd – er enghraifft, plannu, dyfrhau neu ddraenio – i ddod â'r tir i'r safon ofynnol, yn ystod y cyfnod o bum mlynedd o ddiwedd y gwaith adfer (paragraff 1(4) i (8)). Caniateir amrywio'r cyfnod hwnnw drwy reoliadau a wneir o dan baragraff 1(9). Pan fo'r amod yn cyfeirio at gynllun, rhaid i'r cynllun hwnnw gael ei gymeradwyo gan yr awdurdod cynllunio (paragraff 1(5)).

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. Mae paragraff 2(1) i (3) yn gymwys pan fo'r amodau ôl-ofal yn pennu bod y tir i'w ddefnyddio ar gyfer amaethyddiaeth ar ôl i'r gweithrediadau mwyngloddio neu ddyddodi gwastraff ddod i ben. Pan oedd y tir yn cael ei ddefnyddio ar gyfer amaethyddiaeth ar yr adeg pan roddwyd caniatâd ar gyfer mwyngloddio neu ddyddodi gwastraff (neu pan gafodd ei ddefnyddio ar gyfer amaethyddiaeth ddiwethaf cyn cyfnod pan nad oedd ganddo ddefnydd cyfreithlon arall), a phan fo Gweinidogion Cymru wedi hysbysu'r awdurdod am ei nodweddion bryd hynny, mae'r amodau i'w gwneud yn ofynnol i'r tir gael ei adfer i'w gyflwr fel yr oedd pan gafodd ei ddefnyddio ar gyfer amaethyddiaeth ddiwethaf. Mewn unrhyw achos arall pan fo'r amodau ôl-ofal yn pennu bod y tir i'w ddefnyddio ar gyfer amaethyddiaeth, mae'r amodau i'w gwneud yn ofynnol i'r tir gael ei wneud yn rhesymol addas at y defnydd hwnnw.

280. Pan fo amodau ôl-ofal yn pennu bod y tir i'w ddefnyddio ar gyfer tyfu pren defnyddiadwy, mae'r amodau i'w gwneud yn ofynnol i'r tir gael ei wneud yn rhesymol addas at y defnydd hwnnw. A phan fo'r amodau'n pennu bod y tir i'w ddefnyddio at ddibenion amwynder, maent i'w gwneud yn ofynnol i'r tir gael ei wneud yn addas ar gyfer cynnal coed, llwyni a phlanhigion eraill (paragraff 2(4) a (5)).

281. Cyn gosod amod ôl-ofal sy'n pennu bod y tir i'w ddefnyddio ar gyfer amaethyddiaeth, rhaid i'r awdurdod cynllunio ymgynghori â Gweinidogion Cymru (paragraff 3(1) i (3) a (5)(a)) ynghylch y canlynol:

    a. a yw amod o'r fath yn briodol;

    b. a ddylid pennu'r camau sy'n ofynnol i gyflawni'r defnydd hwnnw mewn amod neu mewn cynllun;

    c. os yw'r camau i gael eu pennu mewn amod, beth y dylai'r camau hynny fod;

    d. os yw'r camau i gael eu pennu mewn cynllun, a ddylai'r awdurdod gymeradwyo unrhyw gynllun a gyflwynir iddo.

282. Yn yr un modd, cyn gosod amod ôl-ofal sy'n pennu bod y tir i'w ddefnyddio ar gyfer tyfu pren defnyddiadwy, dylai'r awdurdod ymgynghori ag CNC ynghylch y materion hynny (paragraff 3(1) i (3) a (5)(b)).

283. Rhaid i'r awdurdod hefyd ymgynghori â Gweinidogion Cymru neu CNC o bryd i'w gilydd, fel y bo'n briodol, ynghylch a yw'r camau a bennir mewn cynllun neu amod ôl-ofal yn cael eu cymryd (paragraff 3(4)). Os yw wedi ei fodloni y cydymffurfiwyd â'r amod, rhaid iddo ddyroddi tystysgrif i'r perwyl hwnnw os gofynnir iddo wneud hynny gan unrhyw un sydd â buddiant yn y tir (paragraff 4).

284. Mae paragraff 5 yn darparu, pan fo'r camau sy'n ofynnol gan gynllun neu amod ôl-ofal yn cael eu cynnal gan rywun (A) heblaw'r person a gynhaliodd y gweithrediadau mwyngloddio neu ddyddodi gwastraff, fel arfer caiff A adennill y gost o gymryd y camau gan y person diwethaf a gynhaliodd weithrediadau mwyngloddio neu a ddyddododd wastraff (B). Nid yw hynny'n gymwys, fodd bynnag, os yw contract rhwng personau A a B yn darparu fel arall.

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. Mae darpariaethau'r Atodlen hon yn gymwys mewn perthynas ag apêl fel y maent yn gymwys mewn perthynas â chais am ganiatâd (adran 77(5)).

Adran 68 – Penderfynu ceisiadau i ddatblygu heb gydymffurfedd ag amodau blaenorol

286. Pan fo caniatâd cynllunio wedi ei roi ar gyfer datblygiad, caniateir cyflwyno cais am ganiatâd i gynnal y datblygiad heb gydymffurfio ag un neu ragor o'r amodau a roddwyd ynghlwm wrth y caniatâd blaenorol (gweler adran 50). Yn rhinwedd is-adran (1), ni chaiff yr awdurdod sy'n penderfynu cais o'r fath ond ystyried cwestiwn yr amodau y dylid rhoi caniatâd cynllunio yn ddarostyngedig iddynt yn awr – hynny yw, ni all fynd yn ôl ac ailystyried derbynioldeb y datblygiad mewn egwyddor.

287. Os yw'r awdurdod yn penderfynu na ddylid rhoi caniatâd ond yn ddarostyngedig i'r un amodau ag a roddwyd ynghlwm wrth y caniatâd fel y'i rhoddwyd yn wreiddiol, rhaid iddo wrthod y cais. Os yw'n penderfynu y dylid rhoi caniatâd yn ddarostyngedig i amodau gwahanol, fodd bynnag, rhaid iddo roi caniatâd newydd â'r amodau gwahanol yn unol â hynny (is-adrannau (2) a (3)).

288. Mae'r un peth yn gymwys pan fo Gweinidogion Cymru yn penderfynu cais o'r fath ar ôl iddynt ei alw i mewn i'w benderfynu ganddynt (gweler adran 72(5)) neu pan fônt yn penderfynu apêl sy'n ymwneud â chais o'r fath (adran 77(5)).

289. Fel arall rhaid ystyried cais o'r fath yn unol â'r egwyddorion cyffredinol a nodir yn adrannau 66 a 67.

290. Pan fu'r caniatâd blaenorol yn ddarostyngedig i amod ynghylch y cyfnod y mae rhaid i'r datblygiad ddechrau ynddo, a bod y cyfnod hwnnw wedi dod i ben heb i'r datblygiad ddechrau, bydd y caniatâd wedi darfod. Yn yr achos hwnnw, rhaid ystyried cais newydd am ganiatâd i gynnal y datblygiad o'r egwyddorion cyntaf, nid yn unig o ran yr amodau y dylid eu rhoi ynghlwm wrtho (is-adran (4)). Mae i "dechrau" yn y cyd-destun hwn yr ystyr a roddir gan adran 99.

Adran 69 – Hysbysiadau penderfynu

291. Mae'n bwysig bod cofnod clir o benderfyniadau sydd wedi eu gwneud ar geisiadau am ganiatâd cynllunio.

292. Unwaith y bydd awdurdod wedi penderfynu cais am ganiatâd cynllunio, felly, rhaid iddo ddyroddi hysbysiad o'i benderfyniad yn unol â'r gofynion a osodir o dan adran 63(2)(f). Pan fo'r penderfyniad yn benderfyniad i roi caniatâd, rhaid i'r hysbysiad bennu'r planiau neu'r dogfennau eraill sy'n disgrifio'r datblygiad sydd wedi ei ganiatáu; ac mae'r caniatâd yn ddarostyngedig i amod bod y datblygiad i'w gynnal yn unol â'r planiau hynny. Nid yw hyn yn gymwys, fodd bynnag, pan fo'r caniatâd yn awdurdodi datblygiad a gynhaliwyd eisoes (is-adrannau (1) i (4)).

293. Mae'r un peth yn gymwys pan fo Gweinidogion Cymru yn penderfynu cais o'r fath ar ôl iddynt ei alw i mewn i'w benderfynu ganddynt (gweler adran 72(5)).

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. Rhaid i awdurdod ddyroddi hysbysiad penderfynu diwygiedig:

a. pan fo'r awdurdod neu Weinidogion Cymru yn cymeradwyo mater a gadwyd yn ôl yn dilyn rhoi caniatâd cynllunio amlinellol;

b. pan fo'r awdurdod neu Weinidogion Cymru yn rhoi unrhyw gydsyniad, unrhyw gytundeb neu unrhyw gymeradwyaeth sy'n ofynnol gan amod yn y caniatâd gwreiddiol; neu

c. pan fo'r awdurdod yn newid y caniatâd o dan adran 100 (newidiadau ansylweddol) drwy amrywio neu ddileu amod neu osod amod newydd.

295. Rhaid iddo anfon copi o'r hysbysiad diwygiedig at y rheini a bennir yn y rheoliadau. A chaiff y rheoliadau hynny bennu gwybodaeth y mae rhaid i'r hysbysiad ei chynnwys mewn perthynas â'r cydsyniad, y cytundeb neu'r gymeradwyaeth neu (yn ôl y digwydd) amrywio, dileu neu osod yr amod (is-adrannau (5) a (6)). Mae'r gofynion cyfredol yn erthygl 24A o Orchymyn 2012.

Adran 70 – Pŵer i wrthod ystyried ceisiadau tebyg

296. Gall fod yn briodol i geisydd sydd wedi methu â chael caniatâd ar gyfer datblygiad arfaethedig ddiwygio'r cynnig a chyflwyno cais newydd. Fodd bynnag, pan fo caniatâd wedi ei wrthod gan yr awdurdod cynllunio a chan Weinidogion Cymru, nid yw cyflwyno cais pellach sy'n ceisio caniatâd ar gyfer yr un datblygiad neu ddatblygiad tebyg ond yn gwastraffu amser yr awdurdod cynllunio a phobl eraill sy'n ymwneud â'r mater.

297. Felly, caiff awdurdod cynllunio ddewis gwrthod ystyried cais am ganiatâd cynllunio pan fo:

a. Gweinidogion Cymru, yn ystod y ddwy flynedd flaenorol, wedi galw cais tebyg i mewn i'w benderfynu ganddynt hwy ac wedi ei wrthod, neu wedi gwrthod apêl yn ymwneud â chais tebyg; a

b. yr awdurdod yn ystyried na fu unrhyw newid sylweddol yn y cynllun datblygu nac mewn unrhyw ystyriaethau perthnasol eraill yn ystod y cyfnod hwnnw (is-adrannau (1) i (3)).

298. At y dibenion hyn, mae dau gais yn debyg os yw'r awdurdod yn ystyried eu bod yn ymwneud â'r un safle neu'r un safle yn sylweddol a'r un datblygiad neu'r un datblygiad yn sylweddol (is-adran (4)).

Adran 71 – Pŵer i wrthod ystyried cais a wneir ar ôl dyroddi hysbysiad gorfodi

299. Caiff awdurdod cynllunio hefyd wrthod ystyried cais am ganiatâd cynllunio os yw'r cais yn gofyn am awdurdodi materion y pennir mewn hysbysiad gorfodi sydd eisoes wedi ei ddyroddi eu bod yn torri rheolaeth gynllunio.

300. Mae hyn yn sicrhau mai dim ond drwy apêl yn erbyn yr hysbysiad y gellir gofyn am awdurdodiad o'r fath o dan sail (a) (dylid rhoi caniatâd); gweler adran 131(2)(a).

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).

Adran 72 – Atgyfeirio cais at Weinidogion Cymru

301. Fel arfer bydd cais am ganiatâd cynllunio neu gais am gymeradwyaeth ar gyfer mater a gadwyd yn ôl (neu gymeradwyaeth sy'n ofynnol o dan orchymyn datblygu) yn cael ei wneud i'r awdurdod cynllunio perthnasol ac yn cael ei benderfynu gan yr awdurdod hwnnw. Mewn rhai achosion, fodd bynnag, caiff Gweinidogion Cymru benderfynu y byddai'n fwy priodol i gais gael ei benderfynu ganddynt hwy. Yn gyffredinol, nid yw hyn ond yn digwydd pan fo cynnig yn codi materion sydd o bwysigrwydd y tu hwnt i'r ardal leol (gweler *Polisi Cynllunio Cymru*, Rhifyn 12, paragraff 1.35).

302. Er mwyn galluogi i hyn ddigwydd, rhaid i'r awdurdod atgyfeirio cais at Weinidogion Cymru os yw mewn categori a bennir mewn rheoliadau a wneir ganddynt, neu os yw'n destun cyfarwyddyd penodol a roddir i'r awdurdod ganddynt. Caiff cyfarwyddyd ymwneud â chais penodol, neu â phob cais mewn categori penodol (is-adrannau (2) a (3)).

303. Caiff rheoliadau o dan is-adran (4) ei gwneud yn ofynnol i Weinidogion Cymru hysbysu'r ceisydd, o fewn cyfnod penodedig, pan fydd cais wedi ei atgyfeirio atynt. Caiff y rheoliadau hefyd gymhwyso unrhyw un neu ragor o'r gofynion arferol (o dan adran 58 neu 63) ar gyfer ceisiadau yr ymdrinnir â hwy gan awdurdod cynllunio i gais a elwir i mewn gan Weinidogion Cymru.

304. Mae'r darpariaethau ynghylch ymateb i ymgynghoriad (adran 64), penderfynu ceisiadau (adrannau 66 i 68 ac Atodlenni 3 a 5) a dyroddi hysbysiad penderfynu (adran 69) yn gymwys i'r un graddau mewn perthynas â cheisiadau sydd wedi eu galw i mewn (is-adran (5)). Ac mae is-adran (6) yn cymhwyso i achosion o'r fath ddarpariaethau Pennod 2 o Ran 14, gan gynnwys y rhai sy'n ymwneud ag:

a. ffioedd a thaliadau am benderfynu ceisiadau a swyddogaethau cysylltiedig (adran 364);

b. dewis y weithdrefn y mae ceisiadau i'w hystyried odani (adran 366); ac

c. gofynion gweithdrefnol cyffredinol (adran 367).

305. Mae penderfyniad Gweinidogion Cymru ar gais a alwyd i mewn yn derfynol – yn amodol ar unrhyw her yn yr Uchel Lys o dan Bennod 3 o Rhan 14 (is-adran (7)).

Apelau i Weinidogion Cymru

306. Mae adrannau 73 i 77 yn darparu ar gyfer hawl i apelio i Weinidogion Cymru yn erbyn penderfyniad anffafriol gan yr awdurdod cynllunio ar gais ac yn erbyn methiant awdurdod i wneud unrhyw benderfyniad o fewn y cyfnod perthnasol. Ymdrinnir ag apelau o'r fath ar ran Gweinidogion Cymru gan PEDW, ac mae canllaw ar weithrediad y system apelau yng Nghymru ar gael ar wefan PEDW.

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.

Adran 73 – Yr hawl i apelio yn erbyn penderfyniad awdurdod cynllunio neu fethiant awdurdod cynllunio i wneud penderfyniad

307. Caiff ceisydd apelio i Weinidogion Cymru o dan is-adran (2)(a) os yw awdurdod cynllunio yn gwrthod cais am ganiatâd cynllunio, neu gais am gymeradwyaeth ar gyfer mater a gadwyd yn ôl neu unrhyw gydsyniad arall, unrhyw gytundeb arall neu unrhyw gymeradwyaeth arall sy'n ofynnol gan amod neu gyfyngiad caniatâd a roddwyd.

308. Mae apêl hefyd yn bosibl, o dan is-adran (2)(b), os caniateir y cais yn ddarostyngedig i amodau sy'n andwyol i'r ceisydd.

309. O dan is-adran (3), caniateir gwneud apêl os nad yw'r awdurdod wedi gwneud unrhyw benderfyniad erbyn diwedd y cyfnod penderfynu – hynny yw,

a. nid yw wedi rhoi hysbysiad i'r ceisydd o'i benderfyniad ar y cais;

b. nid yw wedi hysbysu'r ceisydd o dan adran 70 neu 71 ei fod yn gwrthod ystyried y cais; ac

c. nid yw wedi hysbysu'r ceisydd o dan adran 72 ei fod wedi atgyfeirio'r cais at Weinidogion Cymru.

310. Ystyr y "cyfnod penderfynu" yw'r cyfnod a bennir mewn rheoliadau, neu unrhyw gyfnod hwy y cytunwyd arno yn ysgrifenedig rhwng y ceisydd a'r awdurdod (is-adran (4)). Pennir y cyfnod hwnnw yn erthygl 22 o Orchymyn 2012, a wnaed o dan a pŵer a ailddatgenir yn adran 63(2)(f); mae'n wyth wythnos ar hyn o bryd ond caniateir ei amrywio o dan amgylchiadau penodol.

311. Ni chaniateir gwneud apêl o dan yr adran hon os yw'n ceisio awdurdodi materion y pennir mewn hysbysiad gorfodi eu bod yn torri rheolaeth gynllunio, pan fo'r hysbysiad hwnnw ei hun wedi bod yn destun apêl nad yw'n arwain at roi caniatâd cynllunio. Ni chaniateir gwneud apêl ychwaith o dan yr adran hon yn erbyn amod, os yw'r amod hwnnw wedi bod yn destun apêl aflwyddiannus yn erbyn hysbysiad gorfodi ar y sail y dylid ei ryddhau (is-adrannau (5) a (6)).

Adran 74 – Y weithdrefn ar gyfer gwneud apêl

312. Mae is-adran (1) yn darparu bod apêl o dan adran 73 yn cael ei gwneud drwy gyflwyno hysbysiad o apêl i Weinidogion Cymru, yn unol â rheoliadau o dan is-adran (2). Mae rheoliadau o'r fath i lywodraethu ffurf yr hysbysiad sydd i'w defnyddio, yr wybodaeth y mae rhaid ei chynnwys, y ffordd y mae'r apêl i gael ei chyflwyno a'r cyfnod y mae'r apêl i'w chyflwyno ynddo. Rhaid i'r cyfnod hwnnw fod o leiaf 28 o ddiwrnodau ar ôl i'r apelydd gael hysbysiad o benderfyniad yr awdurdod – neu pan na fo penderfyniad wedi ei wneud, o leiaf 28 o ddiwrnodau ar ôl diwedd y cyfnod penderfynu (fel y'i diffinnir yn adran 73(4)).

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. Mae'r gofynion perthnasol yn erthygl 26 o Orchymyn 2012 ar hyn o bryd. Mae hyn yn darparu bod rhaid i'r apêl gael ei gwneud ar ffurflen a gafwyd oddi wrth Weinidogion Cymru a rhaid ei chyflwyno iddynt o fewn y cyfnod rhagnodedig, sydd fel arfer yn ddeuddeg o wythnosau o ddyddiad y penderfyniad yn achos apêl deiliad tŷ neu apêl fasnachol fach, a chwe mis mewn achosion eraill. Yn ymarferol, ceir y ffurflen berthnasol o wefan PEDW ac fe'i dychwelir (yn electronig fel arfer) i PEDW ar ôl ei llenwi – ynghyd â datganiad achos llawn a'r dogfennau a nodir yn erthygl 26(3) – gyda chopi yn cael ei gyflwyno i'r awdurdod cynllunio.

Adran 75 – Cyfyngiad ar amrywio cais ar ôl cyflwyno hysbysiad o apêl

314. Unwaith y bydd apêl wedi ei gwneud, ni chaniateir amrywio'r cais y mae'n ymwneud ag ef ac eithrio mewn amgylchiadau a ragnodir drwy reoliadau. Ar hyn o bryd, mae erthygl 26C o Orchymyn 2012 yn darparu na chaniateir amrywio cais ond er mwyn sicrhau cysondeb yn yr wybodaeth a gynhwysir yn y cais a'r dogfennau ategol.

315. Pan fo cais yn cael ei amrywio o dan amgylchiadau o'r fath, caiff y rheoliadau ei gwneud yn ofynnol cynnal ymgynghoriad pellach, fel yr ymddengys ei bod yn briodol (is-adran (2)).

Adran 76 – Penderfyniad ar gais ar ôl cyflwyno hysbysiad o apêl

316. Pan wneir apêl o dan adran 73(3) yn erbyn methiant awdurdod cynllunio i wneud penderfyniad o fewn y cyfnod penderfynu, caiff yr awdurdod barhau i ystyried y cais a chaiff wneud penderfyniad ffurfiol ar unrhyw adeg hyd at ddiwedd y cyfnod a ragnodir mewn rheoliadau – sef pedair wythnos ar ôl dyddiad yr apêl ar hyn o bryd (gweler erthygl 26A o Orchymyn 2012). Ni chaiff Gweinidogion Cymru ddechrau penderfynu'r apêl tan ar ôl diwedd y cyfnod hwnnw (is-adrannau (1) i (3)).

317. Os bydd yr awdurdod yn penderfynu gwrthod y cais yn ystod y cyfnod hwnnw, caiff yr apêl fynd yn ei blaen fel apêl yn erbyn y gwrthodiad hwnnw (is-adran (4)). Os yw'r awdurdod yn penderfynu caniatáu'r cais yn ddarostyngedig i amodau, caiff yr apêl fynd yn ei blaen fel apêl yn erbyn yr amodau (is-adran (5)). Yn y naill achos neu'r llall, rhaid rhoi cyfle i'r apelydd i ddiwygio'r sail dros apelio yng ngoleuni'r rhesymau a roddwyd gan yr awdurdod am y gwrthodiad neu am yr amodau.

318. Pan wneir apêl o dan adran 73(3), ac nad yw awdurdod yn penderfynu'r cais o fewn y cyfnod hwnnw, caiff yr apêl ei phenderfynu gan Weinidogion Cymru ar y sail bod yr awdurdod wedi penderfynu gwrthod y cais (adran 77(2)).

Adran 77 – Penderfynu apêl

319. Pan wneir apêl i Weinidogion Cymru o dan adran 73, cânt ei chaniatáu neu ei gwrthod; neu cânt ganiatáu neu amrywio unrhyw ran o benderfyniad yr awdurdod ar y cais, pa un a yw'r apêl yn ymwneud â'r rhan honno ai peidio (is-adran (1)). Er enghraifft, cânt ganiatáu rhan o'r datblygiad arfaethedig a gwrthod y gweddill; neu cânt ddiwygio amod.

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. O dan is-adran (3), pan fo'r awdurdod cynllunio wedi gosod gofynion ynghylch pa wybodaeth y mae rhaid ei chynnwys fel rhan o gais (gweler adran 56), ac nad yw'r gofynion hynny eisoes wedi bod yn destun apêl a benderfynwyd yn erbyn hysbysiad o annilysrwydd (gweler adran 61), caiff Gweinidogion Cymru (neu arolygydd) benderfynu pa un a oedd y gofynion hynny'n cydymffurfio ag adran 56(5) – hynny yw, a oeddent yn gyson â'r rheoliadau sydd mewn grym ar hyn o bryd ac a oeddent yn rhesymol yng ngoleuni natur y datblygiad arfaethedig.

321. Caiff rheoliadau o dan is-adran (4) fod yn gymwys i benderfynu apelau:

a. y gofynion o ran hysbysu perchnogion a thenantiaid ar y tir o dan sylw (o dan adran 58); a

b. gofynion eraill o ran prosesu cais (o dan adran 63).

322. Fel arfer, caiff apelau o dan adran 73 eu penderfynu gan arolygwyr; gweler adran 365. Nid yw hynny'n gymwys, fodd bynnag, os yw Gweinidogion Cymru yn penderfynu fel arall drwy reoliadau neu drwy gyfarwyddyd o dan yr adran honno.

323. Mae'r darpariaethau o ran penderfynu ceisiadau (yn adrannau 66 i 68 ac Atodlenni 3 a 5) yn gymwys i'r un graddau mewn perthynas â phenderfynu apelau (is-adran (5)). Ac mae is-adran (8) yn cymhwyso darpariaethau Pennod 2 o Ran 14, gan gynnwys y rheini sy'n ymwneud â ffioedd a thaliadau am geisiadau, y dewis o weithdrefn a gofynion gweithdrefnol cyffredinol.

324. O dan is-adran (7), os yw Gweinidogion Cymru neu arolygydd yn ystyried bod yr apelydd yn gyfrifol am oedi gormodol yn hynt yr apêl – er enghraifft, drwy fethu â darparu gwybodaeth y gofynnwyd amdani – cânt ei gwneud yn ofynnol i'r apelydd gymryd camau priodol i gyflymu'r apêl ac os na chymerir y camau hynny o fewn yr amser a bennwyd, cânt wrthod yr apêl.

325. Mae penderfyniad arolygydd neu Weinidogion Cymru ar apêl yn derfynol – yn amodol ar unrhyw her yn yr Uchel Lys o dan Bennod 3 o Rhan 14 (is-adran (6)).

Pennod 7 – Ceisiadau am ganiatâd cynllunio a chymeradwyaethau cysylltiedig: achosion arbennig

326. Y dull arferol o gael caniatâd cynllunio yw gwneud cais i'r awdurdod cynllunio perthnasol, yn unol â'r gweithdrefnau a ddisgrifir ym Mhenodau 3 i 6. Mae sefyllfaoedd penodol, fodd bynnag, pan fydd gweithdrefnau eraill yn briodol, fel y disgrifir yn y Bennod hon:

a. pan fo awdurdod wedi ei ddynodi at ddibenion adran 78, caniateir gwneud cais naill ai i'r awdurdod cynllunio neu'n uniongyrchol i Weinidogion Cymru (fel y dewisa'r ceisydd);

b. pan wneir cais gan y Goron neu ar ran y Goron, bydd yn cael ei wneud i'r awdurdod, ond caniateir amrywio'r gweithdrefnau arferol drwy reoliadau o dan adran 84;

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. caniateir gwneud ceisiadau penodol ar gyfer datblygiad brys y Goron i Weinidogion Cymru yn hytrach nag i'r awdurdod, o dan adran 85; a

d. caiff rheoliadau o dan adran 86 alluogi gwneud un cais am ganiatâd cynllunio ac un neu ragor o fathau eraill o awdurdodiad.

327. Pan wneir cais gan berson sy'n dymuno cynnal datblygiad ar dir sy'n eiddo i awdurdod cynllunio, neu pan fo'r awdurdod yn dymuno cynnal datblygiad ei hun, bydd y weithdrefn awdurdodi yn unol ag adran 405.

Adran 78 – Opsiwn i wneud cais i Weinidogion Cymru
Adran 79 – Dynodi awdurdod cynllunio at ddibenion adran 78

328. Mae adrannau 78 i 83 ac Atodlen 4 yn ailddatganiad o ddarpariaethau a gyflwynwyd i Ddeddf 1990 gan Ddeddf 2015. Nid yw'r darpariaethau hynny wedi eu dwyn i rym eto (ar y dyddiad y cafodd y Ddeddf hon y Cydsyniad Brenhinol).

329. Y bwriad y tu ôl i'r adrannau yw galluogi datblygwyr i osgoi awdurdod cynllunio sy'n cael ei ystyried gan Weinidogion Cymru i fod yn perfformio'n wael. Gall Gweinidogion Cymru ddynodi awdurdodau o'r fath gyda'r canlyniad y gall datblygwyr ddewis cyflwyno ceisiadau am ddatblygiadau arwyddocaol yn ardaloedd yr awdurdodau hynny yn uniongyrchol i Weinidogion Cymru.

330. O dan adran 79, caiff Gweinidogion Cymru ddynodi awdurdod cynllunio at ddibenion adran 78. Rhaid i ddynodiad o'r fath fod drwy hysbysiad ysgrifenedig; a chaniateir dirymu dynodiad drwy hysbysiad pellach (adran 79(1) a (2)). Wrth wneud neu ddirymu dynodiad, rhaid i Weinidogion Cymru gymhwyso meini prawf sydd wedi bod yn destun ymgynghoriad â phob awdurdod cynllunio yng Nghymru, ac wedi eu nodi mewn dogfen sydd:

a. wedi ei gosod gerbron y Senedd am o leiaf 21 o ddiwrnodau heb unrhyw benderfyniad i beidio â'i chymeradwyo; a

b. wedi ei chyhoeddi (cyn, yn ystod neu ar ôl y cyfnod hwnnw o 21 o ddiwrnodau) (adran 79(3) i (8)).

331. Pan fo awdurdod wedi ei ddynodi o dan adran 79, neu pan fo dynodiad o'r fath wedi ei ddirymu, rhaid cyhoeddi hynny (adran 79(9)).

332. Am ba hyd bynnag y bo dynodiad o dan adran 79 yn parhau mewn grym, caniateir gwneud cais am ganiatâd i gynnal datblygiad yn ardal yr awdurdod perthnasol – neu am gymeradwyaeth ar gyfer materion a gadwyd yn ôl yn dilyn rhoi caniatâd amlinellol – naill ai i'r awdurdod neu i Weinidogion Cymru (fel y dewisa'r ceisydd), os yw'r datblygiad yn dod o fewn unrhyw un neu ragor o'r categorïau a ragnodir mewn rheoliadau (adran 78(1) i (3)). Yn achos cais am ganiatâd cynllunio heb gydymffurfio ag amodau y rhoddwyd caniatâd blaenorol yn ddarostyngedig iddynt eisoes, rhaid i'r cais ei hun hefyd ddod o fewn categori a bennir mewn rheoliadau (adran 78(4)).

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. Fel y nodwyd yn y Nodiadau Esboniadol i Ddeddf 2015, y disgwyl i ddechrau oedd na fyddai'r opsiwn hwn ond ar gael yn achos "datblygiad mawr", fel y'i diffinnir yng Ngorchymyn 2012. Ond bydd rheoliadau, unwaith y cânt eu gwneud, yn gallu rhagnodi unrhyw gategori o ddatblygiad.

334. Cyfeirir at gais i Weinidogion Cymru o dan adran 78 neu 80 yn y Nodiadau hyn fel 'cais uniongyrchol dewisol'.

Adran 80 – Opsiwn i wneud cais i Weinidogion Cymru: ceisiadau cysylltiedig

335. Pan wneir cais am ganiatâd cynllunio neu am gymeradwyaeth ar gyfer materion a gadwyd yn ôl ("y prif gais") i Weinidogion Cymru o dan adran 78, caiff y ceisydd hefyd wneud cais cysylltiedig i Weinidogion Cymru. Nid yw hyn ond yn berthnasol, fodd bynnag, os caiff ei wneud ar yr un diwrnod â'r prif gais (is-adrannau (1) a (2)).

336. Cais cysylltiedig yw un sydd o gategori a ddisgrifir mewn rheoliadau ac y mae'r ceisydd yn ystyried ei fod yn gysylltiedig (is-adran (3)). Mae hyn i alluogi ceisiadau am gydsyniadau eraill sy'n ofynnol er mwyn awdurdodi prosiect yn ogystal â chaniatâd cynllunio – er enghraifft, cydsyniad adeilad rhestredig neu gydsyniad sylweddau peryglus – i gael eu hystyried ochr yn ochr â'r prif gais.

337. Pan wneir cais am awdurdodiad o'r fath i Weinidogion Cymru o dan yr adran hon, caiff Gweinidogion Cymru ei atgyfeirio i'r awdurdod pan fônt yn ystyried naill ai:

a. nad yw'n gysylltiedig â'r prif gais; neu

b. er ei fod yn gais cysylltiedig, y dylai serch hynny gael ei benderfynu gan yr awdurdod cynllunio (is-adrannau (4) a (5)).

338. Pan fo hyn yn digwydd, yna rhaid i'r awdurdod benderfynu'r cais fel pe bai wedi ei wneud iddo ar y diwrnod y'i hatgyfeirir; a chaiff rheoliadau ddarparu ar gyfer manylion atgyfeiriad o'r fath (is-adrannau (6) a (7)).

Adran 81 – Pwerau i osod gofynion mewn perthynas â cheisiadau i Weinidogion Cymru

339. Pan wneir cais uniongyrchol dewisol i Weinidogion Cymru, cânt gyfarwyddo'r awdurdod cynllunio perthnasol i wneud pethau mewn perthynas â'r cais hwnnw (is-adran (1)). Caiff cyfarwyddyd o'r fath ymwneud â chais penodol, unrhyw gais mewn categori penodedig neu geisiadau yn gyffredinol (is-adran (2)).

340. Caiff rheoliadau o dan is-adran (3) gymhwyso (gydag addasiadau neu hebddynt) neu ddatgymhwyso'r rheolau arferol sy'n gymwys i geisiadau a wneir i awdurdod cynllunio, mewn perthynas â cheisiadau uniongyrchol dewisol.

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.

Adran 82 – Y weithdrefn ar gyfer ymdrin â cheisiadau cynllunio a wneir i Weinidogion Cymru

341. Caiff rheoliadau o dan is-adran (1) wneud darpariaeth ynghylch sut y mae Gweinidogion Cymru i ymdrin â cheisiadau uniongyrchol dewisol. Caiff rheoliadau o'r fath ymdrin â'r cyhoeddusrwydd, yr hysbysu neu'r ymgynghori y mae rhaid eu cynnal mewn perthynas â cheisiadau o'r fath; pa un a ellir amrywio ceisiadau a sut y gellir amrywio ceisiadau; a sut y mae hysbysiad i'w roi o'r penderfyniad yn y pen draw (is-adran (2)).

342. Pan fo cyngor cymuned wedi gwneud archiad o dan adran 65 i gael hysbysiad o geisiadau mewn categorïau penodol, a phan fo cais uniongyrchol dewisol wedi ei wneud sy'n dod o fewn un o'r categorïau hynny, rhaid i Weinidogion Cymru hysbysu'r cyngor cymuned am y cais (is-adran (3)). Rhaid i'r awdurdod cynllunio, os gofynnir iddo wneud hynny, roi gwybod i Weinidogion Cymru pa gynghorau cymuned sydd wedi gofyn am gael eu hysbysu (is-adran (4)).

Adran 83 – Gwasanaethau cyn gwneud cais a phenderfynu ceisiadau: swyddogaethau arolygwyr

343. Fel arfer, mae cais uniongyrchol dewisol i'w benderfynu gan arolygydd; ond caiff Gweinidogion Cymru gyfarwyddo mewn achos penodol y byddant yn penderfynu cais o'r fath eu hunain (is-adrannau (2) a (3)(b)).

344. Caiff rheoliadau o dan adran 53 wneud darpariaeth i Weinidogion Cymru ddarparu gwasanaethau cyn gwneud cais – hynny yw, gwasanaethau i gynorthwyo person i wneud cais am ganiatâd cynllunio. Pan wneir cais uniongyrchol dewisol iddynt, mae gwasanaethau o'r fath fel arfer i'w darparu gan arolygydd (yn ymarferol, gan PEDW); ond, yma hefyd, cânt gyfarwyddo y byddant yn darparu gwasanaethau o'r fath eu hunain (is-adrannau (1) a (3)(a)).

345. Mae penderfyniad arolygydd ar gais uniongyrchol dewisol i'w drin fel penderfyniad Gweinidogion Cymru. Ac mae penderfyniad arolygydd neu Weinidogion Cymru yn derfynol – yn amodol ar unrhyw her yn yr Uchel Lys (is-adrannau (4) a (5)).

346. Mae arfer eu swyddogaethau gan arolygwyr mewn perthynas â cheisiadau uniongyrchol dewisol yn destun Atodlen 4, a gyflwynir gan is-adran (6).

347. Cynhwysir rhagor o fanylion ynghylch arolygwyr a Gweinidogion Cymru yn penderfynu ceisiadau o'r fath ym Mhennod 2 o Ran 14 o'r Ddeddf hon. Mae'r rhain yn cynnwys darpariaethau ynghylch ffioedd a thaliadau am geisiadau, y dewis o weithdrefn, a gofynion gweithdrefnol cyffredinol.

Atodlen 4 – Ceisiadau i Weinidogion Cymru: arfer swyddogaethau gan arolygwyr

Rhan 1 – Darparu gwasanaethau cyn gwneud cais gan arolygydd

348. Pan fo arolygydd wedi ei benodi i ddarparu gwasanaeth cyn gwneud cais mewn perthynas â chais uniongyrchol dewisol, caiff Gweinidogion Cymru ddirymu penodiad yr arolygydd ar unrhyw adeg a phenodi arolygydd arall yn ei le (paragraff 1).

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. Pan fo Gweinidogion Cymru yn penderfynu darparu gwasanaethau cyn gwneud cais eu hunain mewn perthynas â chais o'r fath, ac yn dyroddi cyfarwyddyd i'r perwyl hwnnw o dan adran 83(3)(a), rhaid iddynt hysbysu'r ceisydd a'r awdurdod y byddai'r cais fel arall wedi ei wneud iddo (paragraff 2). Pan fônt wedi dyroddi cyfarwyddyd o'r fath, yna cânt ddadwneud hynny drwy ddyroddi cyfarwyddyd pellach o dan baragraff 3 – ac os felly, rhaid iddynt hysbysu'r ceisydd a'r awdurdod a phenodi arolygydd newydd i ddarparu'r gwasanaethau.

Rhan 2 – Penderfynu cais gan arolygydd

350. Mae gan arolygydd sy'n penderfynu cais uniongyrchol dewisol, i'r graddau y mae'r cyd-destun yn caniatáu, yr un pwerau ag sydd gan Weinidogion Cymru yn rhinwedd rheoliadau o dan adran 81. Pan fo unrhyw ddeddfiad (heblaw adran 83 neu'r Atodlen hon) yn cyfeirio at geisiadau i Weinidogion Cymru, yn y fath fodd fel ei fod yn ymwneud â chais, neu y gallai ymwneud â chais, o dan adran 78 neu 80, mae hynny hefyd i'w ddarllen fel pe bai'n gymwys i gais o'r fath sy'n cael ei benderfynu gan arolygydd (paragraff 4).

351. Pan benderfynwyd o dan adran 366 fod cais uniongyrchol dewisol i'w benderfynu gan arolygydd a'i fod i'w ystyried mewn ymchwiliad lleol neu wrandawiad, caiff yr arolygydd gynnal ymchwiliad neu wrandawiad o'r fath ar draul Gweinidogion Cymru. Caiff Gweinidogion Cymru neu'r arolygydd benodi asesydd i gynghori'r arolygydd ar unrhyw faterion sy'n codi, ar ba sail bynnag y mae'r cais yn cael ei ystyried (paragraff 5).

352. Ar unrhyw adeg cyn i arolygydd benderfynu cais uniongyrchol dewisol, caiff Gweinidogion Cymru ddirymu penodiad yr arolygydd a phenodi arolygydd arall yn ei le (paragraff 6).

353. Pan fo Gweinidogion Cymru yn dewis penderfynu cais uniongyrchol dewisol eu hunain ac yn dyroddi cyfarwyddyd i'r perwyl hwnnw o dan adran 83(3)(b), rhaid iddynt hysbysu'r ceisydd a'r awdurdod y byddai'r cais wedi ei wneud iddo fel arall. Pan fo arolygydd wedi ei benodi i benderfynu'r cais, rhaid i Weinidogion Cymru hysbysu'r arolygydd hwnnw ac wrth benderfynu'r cais rhaid iddynt ystyried unrhyw adroddiad iddynt a wneir gan yr arolygydd – ond rhaid iddynt fel arall ddod i'w penderfyniad fel pe na bai unrhyw arolygydd erioed wedi ei benodi (paragraff 7).

354. Pan fo Gweinidogion Cymru wedi dewis penderfynu cais eu hunain, ac wedi dyroddi cyfarwyddyd i'r perwyl hwnnw o dan adran 83(3)(b), yna cânt wrthdroi'r penderfyniad hwnnw, drwy ddyroddi cyfarwyddyd pellach, o dan baragraff 8. Yn yr achos hwnnw, rhaid iddynt hysbysu'r ceisydd a'r awdurdod, a phenodi arolygydd newydd i benderfynu'r cais; mae unrhyw beth a wneir ganddynt i'w drin fel pe bai wedi ei wneud gan yr arolygydd newydd, oni bai bod yr arolygydd newydd yn cyfarwyddo fel arall – ond fel arall mae'r cais i'w benderfynu fel pe na bai unrhyw gyfarwyddyd erioed wedi ei roi.

355. Mae paragraff 9 y darparu, pan fydd arolygydd wedi penderfynu cais uniongyrchol dewisol, nad yw'n bosibl herio'r penderfyniad hwnnw yn yr Uchel Lys ar y sail y dylai'r penderfyniad fod wedi ei wneud gan Weinidogion Cymru.

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.

Adran 84 – Ceisiadau gan y Goron

356. Ers 2006, mae rheolaeth gynllunio wedi bod yn gymwys mewn egwyddor mewn perthynas â datblygiad y Goron – hynny yw, datblygiad gan y Goron neu ar dir y Goron – yn union fel mewn unrhyw achos arall. Yn gyffredinol, mae darpariaethau'r Rhan hon o'r Ddeddf yn gymwys i geisiadau am ganiatâd cynllunio ar gyfer datblygiad o'r fath, ac i geisiadau am gymeradwyaeth ar gyfer materion a gadwyd yn ôl drwy roi caniatâd amlinellol ar gyfer datblygiad o'r fath.

357. Fodd bynnag, mae'r egwyddor hon yn ddarostyngedig i addasiadau y gellir eu gwneud drwy reoliadau o dan yr adran hon ac a all addasu unrhyw un neu ragor o'r darpariaethau hynny fel nad ydynt yn gymwys, neu fel eu bod yn gymwys gydag addasiadau, mewn perthynas â datblygiad y Goron.

Adran 85 – Ceisiadau sy'n ymwneud â datblygiad brys y Goron

358. Er bod rheolaeth gynllunio bellach yn gymwys yn gyffredinol mewn perthynas â datblygiad y Goron yn union fel mewn unrhyw achos arall, gall ystyriaethau gwahanol godi pan fo datblygiad o'r fath o bwysigrwydd cenedlaethol a bo rhaid ei gynnal ar frys. Pan fo awdurdod priodol y Goron yn ardystio mai felly y mae hi, caiff wneud cais i Weinidogion Cymru o dan yr adran hon, yn hytrach nag i'r awdurdod cynllunio a fyddai fel arall yn ymdrin â'r mater (is-adran (2)). Diffinnir awdurdod priodol y Goron at y diben hwn yn adran 401(6).

359. Cyn gwneud cais o dan yr adran hon, rhaid i'r ceisydd gyhoeddi hysbysiad yn y wasg leol sy'n disgrifio'r datblygiad arfaethedig ac sy'n datgan ei fod yn cynnig gwneud y cais (is-adran (3)).

360. Pan fydd yn gwneud y cais, rhaid i'r ceisydd roi datganiad i Weinidogion Cymru sy'n egluro pam ei fod yn gwneud hynny, a rhaid iddo ddarparu unrhyw wybodaeth bellach y mae Gweinidogion Cymru yn ystyried ei bod yn angenrheidiol i'w galluogi i benderfynu'r cais (is-adran (4)).

361. Yna rhaid i Weinidogion Cymru sicrhau bod copi o unrhyw ddeunydd sydd wedi dod i law ar gael i'r cyhoedd, naill ai fel rhan o'r cais neu mewn ymateb i archiad dilynol, a rhaid iddynt roi cyhoeddusrwydd i'r cais a datgan bod dogfennau a deunydd arall ar gael i edrych arnynt (is-adrannau (5) a (6)). Nid yw hyn yn gymwys, fodd bynnag, pan fônt hwy (neu'r Ysgrifennydd Gwladol) wedi gwneud cyfarwyddyd, o dan adran 370(2), na ddylid datgelu'r wybodaeth honno ar sail diogelwch gwladol (is-adran (9)).

362. O dan is-adran (7), rhaid i Weinidogion Cymru ymgynghori â'r awdurdod cynllunio y mae'r datblygiad arfaethedig i'w gynnal yn ei ardal, yr CBC ar gyfer yr ardal honno pan fo un yn bodoli ac unrhyw un arall a bennir mewn rheoliadau. Y gofyniad cyfredol, yn erthygl 15(2) o Orchymyn 2012, yw ymgynghori ag unrhyw un o'r personau neu'r sefydliadau a grybwyllir yn Atodlen 4 i'r Gorchymyn hwnnw mewn perthynas â'r categori perthnasol o ddatblygiad.

363. Caiff rheoliadau o dan is-adran (8) gymhwyso'r rheolau gweithdrefnol arferol o ran ceisiadau cynllunio, gydag addasiadau neu hebddynt, i geisiadau o dan yr adran hon ar gyfer datblygiad brys y Goron. Mae Gorchymyn 2012 yn gosod gofyniad i Weinidogion Cymru roi cyhoeddusrwydd i geisiadau ac i ystyried sylwadau a wnaed.

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. Ceir rhagor o fanylion ynghylch penderfynu ceisiadau am ddatblygiad brys y Goron gan Weinidogion Cymru o dan yr adran hon ym Mhennod 2 o Ran 14 (is-adran (9)). Mae'r rhain yn cynnwys darpariaethau ynghylch ffioedd a thaliadau am geisiadau, y dewis o weithdrefn a gofynion gweithdrefnol cyffredinol.

365. Mae is-adran (11) yn cymhwyso'r darpariaethau arferol o ran penderfynu ceisiadau i geisiadau am ddatblygiad brys y Goron, o dan adrannau 66 i 69 ac Atodlenni 3 a 5– hynny yw, y darpariaethau sy'n ymwneud ag:

a. yr ystyriaethau sydd i'w hystyried wrth benderfynu cais (adran 66);

b. rhoi caniatâd neu ei wrthod (adrannau 67 ac 68);

c. gosod amodau (adran 67 ac Atodlenni 3 a 5); a

d. dyroddi hysbysiad penderfynu (adran 69).

366. Mae penderfyniad Gweinidogion Cymru ar gais o dan yr adran hon yn derfynol – yn amodol ar unrhyw her yn yr Uchel Lys (is-adran (12)).

Adran 86 – Cyfuno ceisiadau am ganiatâd cynllunio â cheisiadau eraill

367. Caiff rheoliadau o dan is-adrannau (1) ac (8) ddarparu ar gyfer cyfuno'r hyn a ganlyn mewn un cais:

a. cais am ganiatâd cynllunio ar gyfer datblygiad; a

b. cais am unrhyw fath arall o gydsyniad neu awdurdodiad, neu unrhyw hysbysiad y mae angen ei roi mewn cysylltiad â'r un datblygiad, o dan ddarpariaeth yn y Ddeddf hon neu unrhyw ddeddfwriaeth arall, fel y pennir yn y rheoliadau.

368. Byddai hyn yn galluogi, er enghraifft, reoliadau o'r fath i ganiatáu i un cais gael ei wneud am ganiatâd cynllunio o dan y Ddeddf hon a chydsyniad adeilad rhestredig o dan Ddeddf 2023, pan fo'r ddau yn ofynnol ar gyfer addasu adeilad rhestredig. Neu gallai cais am ganiatâd cynllunio ar gyfer gwaith adeiladu mewn ardal gadwraeth hefyd fod yn hysbysiad am dynnu ymaith goeden sy'n angenrheidiol i gynnal y gwaith hwnnw.

369. Caiff rheoliadau o dan yr adran hon ddarparu ar gyfer gofynion gweithdrefnol y cais cyfunol a chânt wneud darpariaethau gwahanol ar gyfer ardaloedd lle y mae deddfiadau gwahanol (megis Deddfau neu is-ddeddfau lleol) yn gymwys (is-adrannau (2) a (4)).

370. Cyn gwneud rheoliadau o'r fath, rhaid i Weinidogion Cymru ymgynghori â'r awdurdodau lleol neu'r cymdeithasau awdurdodau lleol y maent yn ystyried eu bod yn briodol (is-adran (3)).

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. Pan fo rheoliadau o'r fath wedi eu gwneud, caniateir gwneud cais o dan ddeddfwriaeth arall naill ai yn unol â'r rheoliadau neu yn unol â'r ddeddfwriaeth honno (is-adrannau (5) a (6)); ac ni chaiff awdurdodau dderbyn ceisiadau a wneir o dan y rheoliadau nad ydynt yn cydymffurfio â hwy (is-adran (7)).

Pennod 8 – Caniatâd cynllunio ar gyfer datblygiad ag awdurdodiad Llywodraeth

372. Mae'r Bennod hon yn ymwneud â sefyllfaoedd penodol pan roddir caniatâd cynllunio, nid gan yr awdurdod cynllunio neu Weinidogion Cymru mewn ymateb i gais cynllunio, ond yn uniongyrchol gan adran o'r llywodraeth (sy'n cynnwys Gweinidogion Cymru neu'r Ysgrifennydd Gwladol) o dan wahanol ddarnau o ddeddfwriaeth sylfaenol ac is-ddeddfwriaeth. Mae hyn yn osgoi'r angen i ganiatâd cynllunio gael ei roi o dan y Ddeddf hon yn ogystal â'r awdurdodiad a roddir o dan ddarn arall o ddeddfwriaeth.

Adran 87 – Awdurdodiad ar gyfer datblygiad gan awdurdodau lleol ac ymgymerwyr statudol

373. Mae'r adran hon yn gymwys pan fo datblygiad yn cael ei gynnal gan awdurdod lleol neu ymgymerwr statudol mewn amgylchiadau sy'n golygu bod angen iddo fod yn destun awdurdodiad, cymeradwyaeth neu gydsyniad gan adran o'r llywodraeth, er mwyn cyflawni gofyniad statudol. Mae hefyd yn gymwys pan fo adran yn awdurdodi datblygiad o'r fath i bob pwrpas, drwy:

a. awdurdodi caffael tir at ddiben y datblygiad – pa un ai drwy gytundeb, cyfeddu, neu brynu gorfodol; neu

b. cymeradwyo'r cyllid ar gyfer y datblygiad – drwy awdurdodi cael benthyg arian, cymhwyso arian na fyddai ar gael fel arall, neu roi ymrwymiad i dalu grant.

374. Pan fo'r adran yn awdurdodi datblygiad yn unrhyw un o'r ffyrdd hyn, caiff gyfarwyddo bod caniatâd cynllunio yn cael ei roi ar ei gyfer, yn ddarostyngedig i unrhyw amodau a bennir yn y cyfarwyddyd.

375. Nid yw'r adran hon yn gymwys, fodd bynnag, i ddatblygiad gan drwyddedai trydan sydd, mewn amgylchiadau penodol, yn destun adran 88.

376. Mae is-adran (5)(a) yn tynnu sylw at Ddeddf Piblinellau 1962. Mae adran 1 o'r Ddeddf honno yn darparu na ellir cynnal gwaith ar gyfer adeiladu piblinell draws-gwlad heb awdurdodiad adeiladu piblinell. Mae adran 5(1) o Ddeddf 1962 (fel y'i haddaswyd gan y Ddeddf Darpariaethau Canlyniadol) yna'n darparu pan fo gwaith o'r fath, fel y bydd fel arfer, yn ffurfio "datblygiad" (fel y'i diffinnir yn y Ddeddf hon) y caiff yr Ysgrifennydd Gwladol gyfarwyddo bod caniatâd cynllunio wedi ei roi, yn ddarostyngedig i unrhyw amodau a bennir yn y cyfarwyddyd. Mae adran 43 o Ddeddf 1962 yn ei gwneud yn ofynnol, wrth awdurdodi gwaith, i'r Ysgrifennydd Gwladol roi sylw i ddymunoldeb gwarchod harddwch naturiol a diogelu adeiladau o ddiddordeb arbennig, a rhoi sylw arbennig i ddymunoldeb sicrhau bod y gwaith arfaethedig o dan ddaear gymaint â phosibl.

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. Mae is-adran (5)(b) yn tynnu sylw at Ddeddf Nwy 1965 (p. 36). Mae adran 4(1) o'r Ddeddf honno'n darparu y caiff yr Ysgrifennydd Gwladol, drwy orchymyn, awdurdodi storio nwy gan drawsgludydd nwy cyhoeddus mewn strata mân-dyllog naturiol addas o dan y ddaear. Pan fo hynny'n ymwneud â datblygiad, mae adran 4(6) o'r Ddeddf honno (fel y'i diwygiwyd gan y Ddeddf Darpariaethau Canlyniadol) yn darparu y cymerir bod y gorchymyn yn awdurdodi'r datblygiad.

Adran 88 – Cydsyniad ar gyfer gorsafoedd cynhyrchu trydan a llinellau trydan

378. Mae'r adran hon yn gymwys pan fo cydsyniad yn cael ei roi neu ei amrywio ar gyfer adeiladu neu estyn gorsaf cynhyrchu trydan (o dan adran 36 o Ddeddf Trydan 1989 (p. 29)), neu ar gyfer gosod llinell uwchben (o dan adran 37 o'r Ddeddf honno). Mewn achos o'r fath, caiff Gweinidogion Cymru neu'r Ysgrifennydd Gwladol gyfarwyddo o dan adran 88(1)(a) fod caniatâd cynllunio yn cael ei roi ar gyfer y gwaith, i'r graddau y mae'n ffurfio datblygiad yng Nghymru. Caiff y caniatâd a roddir drwy gyfarwyddyd o'r fath fod yn ddarostyngedig i amodau a bennir ynddo.

379. Caiff y caniatâd a roddir drwy gyfarwyddyd o'r fath hefyd roi caniatâd cynllunio ar gyfer unrhyw ddatblygiad ategol, o dan is-adran (1)(b). Pan fo'r caniatâd ar gyfer estyn gorsaf gynhyrchu, fodd bynnag, nid yw hynny ond yn gymwys pan fo'r datblygiad atodol yn ymwneud yn uniongyrchol â chynhyrchu trydan gan yr orsaf honno (is-adran (3)).

380. Pan fo cydsyniad o'r fath yn cael ei amrywio, caiff Gweinidogion Cymru neu'r Ysgrifennydd Gwladol roi un neu ragor o'r cyfarwyddydau a ganlyn, o dan is-adran (2):

a. cyfarwyddyd sy'n amrywio caniatâd a roddir drwy gyfarwyddyd cynharach o dan y ddarpariaeth hon ('y caniatâd cynharach');

b. cyfarwyddyd sy'n amrywio'r amodau sydd ynghlwm wrth y caniatâd cynharach; neu

c. pan roddwyd cydsyniad, cymeradwyaeth neu gytundeb o dan amod sydd ynghlwm wrth y caniatâd cynharach, cyfarwyddyd y dylid trin y cydsyniad, y gymeradwyaeth neu'r cytundeb fel pe bai wedi ei roi o dan yr amod cyfatebol sydd ynghlwm wrth y caniatâd newydd.

381. Caniateir i gyfarwyddyd o dan is-adran (2) fod yn ychwanegol at gyfarwyddyd o dan is-adran (1) neu yn ei le.

Adran 89 – Gorchmynion o dan Ddeddf Trafnidiaeth a Gweithfeydd 1992

382. Fel arfer, awdurdodir adeiladu a gweithredu rheilffyrdd, tramffyrdd a systemau trafnidiaeth tebyg drwy wneud gorchymyn o dan Ddeddf Trafnidiaeth a Gweithfeydd 1992 (p. 42). Caiff gorchymyn o'r fath hefyd awdurdodi adeiladu a gweithredu dyfrffordd fewndirol a mathau penodol o waith sy'n ymyrryd â hawliau mordwyo mewn dyfrffyrdd o'r fath. Yn gyffredinol, caiff gorchmynion o dan y Ddeddf eu gwneud gan Weinidogion Cymru, ond pan fo'r cynllun arfaethedig yn croesi'r ffin rhwng Cymru a Lloegr, bydd angen iddo gael ei awdurdodi gan yr Ysgrifennydd Gwladol perthnasol.

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. Pan fo Gweinidogion Cymru neu'r Ysgrifennydd Gwladol yn gwneud gorchymyn o'r fath i awdurdodi cynllun sy'n cynnwys datblygiad yng Nghymru, cânt hefyd gyfarwyddo o dan is-adran (2) fod caniatâd cynllunio yn cael ei roi ar gyfer y datblygiad hwnnw, yn ddarostyngedig i'r amodau hynny a bennir yn y cyfarwyddyd.

Adran 90 – Cymhwyso'r Ddeddf hon i ganiatâd cynllunio a roddir o dan y Bennod hon

384. Y caniatâd cynllunio y caniateir ei roi gan gyfarwyddyd o dan y Bennod hon yw unrhyw ganiatâd y gellid ei roi ar gais o dan y Rhan hon (gweler adran 47).

385. Yn rhinwedd is-adran (2), pan roddir caniatâd drwy gyfarwyddyd o dan y Bennod hon, bydd y Ddeddf hon yn gyffredinol yn gymwys fel pe bai'r caniatâd wedi ei roi gan Weinidogion Cymru ar gais a alwyd i mewn ganddynt o dan adran 72. Ni fydd hynny'n gymwys, fodd bynnag, i Benodau 3 a 4 o Ran 14; felly ni ellir herio cyfarwyddyd o dan y Bennod hon drwy wneud cais am adolygiad statudol yn yr Uchel Lys.

Pennod 9 – Effaith, hyd a gweithrediad caniatâd cynllunio

386. Mae'r Bennod hon yn egluro effaith caniatâd cynllunio, a chan bwy y gellir ei weithredu ac o fewn pa gyfnod. Mae hefyd yn disgrifio sut y gellir dod â chaniatâd i ben pan fo wedi ei weithredu ond pan na fo'r datblygiad a gymerawywyd wedi ei gwblhau.

Adran 91 – Budd caniatâd cynllunio

387. Rhoddir caniatâd cynllunio ar gyfer datblygiad tir, a chaniateir ei weithredu gan unrhyw un a chanddo un neu ragor o fuddiannau yn y tir – yn amodol ar y telerau y caiff ei roi yn ddarostyngedig iddynt.

388. Er enghraifft, fel arfer caniateir i ganiatâd gael ei weithredu gan rydd-ddeiliad y tir, neu lesddeiliad, is-lesddeiliad neu drwyddedai, yn unol â thelerau'r les neu'r drwydded berthnasol.

389. Nid yw'r ddarpariaeth hon yn atal rhywun heblaw'r perchnogion megis darpar brynwr, rhag gofyn am ganiatâd, nac yn atal ei roi iddo; ond dim ond gan y perchnogion gwirioneddol (neu ar eu rhan) y gellir ei weithredu. Nid yw ychwaith yn atal nifer o ganiatadau rhag cael eu rhoi, o bosibl ar gyfer mwy nag un math o ddatblygiad, mewn cysylltiad ag un darn o dir.

390. Mewn rhai achosion, caniateir rhoi caniatâd personol yn ddarostyngedig i amod sy'n cyfyngu ar bwy all gynnal y datblygiad. Gall caniatâd o'r fath fod yn briodol pan fo amgylchiadau penodol ceisydd yn cyfiawnhau rhoi caniatâd ar gyfer datblygiad (megis newid defnydd) na fyddai efallai yn briodol fel arall.

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.

Adran 92 – Caniatâd i godi adeilad: y dibenion y caniateir defnyddio adeilad atynt

391. Y rheol gyffredinol yw bod rhoi caniatâd cynllunio ar gyfer codi adeilad i'w ddehongli fel caniatâd:

a. ar gyfer y gweithrediadau adeiladu sydd eu hangen i'w adeiladu; a

b. unwaith y bydd y gweithrediadau hynny wedi eu cwblhau, ar gyfer defnyddio'r adeilad at y diben y caiff ei ddylunio ar ei gyfer.

392. Fodd bynnag, caiff caniatâd cynllunio ar gyfer codi adeilad bennu'r dibenion y mae'r adeilad i'w ddefnyddio ar eu cyfer. Er enghraifft, gellid rhoi caniatâd ar gyfer adeilad mewn stryd breswyl yn gyffredinol, yn debyg o ran ei olwg i'w gymdogion, ond yn pennu ei fod i'w ddefnyddio fel tŷ amlfeddiannaeth yn hytrach nag fel tŷ sengl, neu fod y cyfan neu ran ohono i'w ddefnyddio at ddiben amhreswyl penodol.

Adran 93 – Amod ynghylch y cyfnod y mae rhaid i ddatblygiad ddechrau ynddo

393. Mae pob caniatâd cynllunio yn ddarostyngedig i amod o ran yr adeg erbyn pryd y mae rhaid dechrau'r datblygiad a gymeradwywyd. Mae hyn yn rhannol er mwyn atal cronni caniatadau heb eu gweithredu ar gyfer safle penodol. Mae hefyd yn galluogi derbynioldeb cynnig datblygu i gael ei ailasesu o bryd i'w gilydd, yng ngoleuni amgylchiadau sy'n newid.

394. Mae is-adran (1) yn nodi'r rheol gyffredinol bod rhaid i bob caniatâd cynllunio fod yn ddarostyngedig i amod bod rhaid i'r datblygiad y mae'n ymwneud ag ef ddechrau cyn diwedd cyfnod a bennir yn yr amod, gan ddechrau â'r dyddiad y rhoddir y caniatâd. Esbonnir ystyr "dechrau" yn adran 99.

395. Ac os, er gwaethaf is-adran (1), rhoddir caniatâd heb amod o'r fath, mae is-adran (2) yn darparu ei fod fel arfer i'w drin fel pe bai wedi ei roi yn ddarostyngedig i amod bod rhaid i'r datblygiad ddechrau o fewn pum mlynedd i'r dyddiad y rhoddwyd y caniatâd.

396. Nid yw is-adran (2) yn gymwys, fodd bynnag, os:

a. rhoddir caniatâd i gynnal datblygiad yn ddarostyngedig i amod ynghylch y cyfnod y mae rhaid dechrau'r datblygiad ynddo; a

b. rhoddir caniatâd wedi hynny i gynnal y datblygiad heb gydymffurfio ag amodau eraill y rhoddwyd y caniatâd blaenorol yn ddarostyngedig iddynt; ond

c. nid yw'r caniatâd newydd yn ddarostyngedig i amod ynghylch y cyfnod y mae rhaid dechrau'r datblygiad ynddo.

Yn y sefyllfa honno, mae is-adran (3) yn darparu bod y caniatâd newydd i'w drin fel pe bai wedi ei roi yn ddarostyngedig i amod bod rhaid i'r datblygiad ddechrau o fewn y cyfnod a bennir gan y caniatâd blaenorol.

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. Mae is-adran (5) yn cadarnhau nad yw'r ffaith bod caniatâd yn cael ei roi yn ddarostyngedig i amod terfyn amser yn rhinwedd is-adran (1), neu y'i trinnir fel pe bai wedi ei roi yn ddarostyngedig i amod o'r fath gan is-adran (2) neu (3), yn atal naill ai:

    a. cais i gynnal y datblygiad heb gydymffurfio â'r amod rhag cael ei wneud o dan adran 68; neu

    b. apêl yn erbyn yr amod rhag cael ei wneud o dan adran 73.

398. Ymdrinnir â thorri amod o dan yr adran hon yn adran 95.

399. Nid yw'r adran hon yn gymwys i ganiatâd cynllunio a roddir drwy orchymyn datblygu neu orchymyn datblygu lleol. Nid yw'n gymwys ychwaith i roi caniatâd cynllunio amlinellol ar gyfer gweithrediadau; mae rheolau ychydig yn wahanol yn gymwys a nodir yn yr adran ddilynol.

400. Yn rhinwedd is-adran (4)(c) a (d), nid yw'r adran hon yn gymwys i ganiatâd cynllunio a roddir i awdurdodi datblygiad a gynhelir cyn rhoi'r caniatâd. Nid yw'n gymwys ychwaith i ganiatâd a roddir am gyfnod cyfyngedig – hynny yw, caniatâd sy'n ddarostyngedig i amod bod rhaid symud ymaith yr adeiladau neu'r gwaith a awdurdodir gan y caniatâd ar ddiwedd cyfnod penodedig neu fod rhaid datbarhau'r defnydd a awdurdodir ar ddiwedd y cyfnod (gweler adran 67(3) a (4)).

401. Nid yw'r adran hon yn gymwys ychwaith i ganiatâd mwynau sy'n ddarostyngedig i amod bod rhaid i ddatblygiad mwynau ddechrau o fewn cyfnod penodedig ar ôl cwblhau gweithrediadau mwyngloddio (neu roi'r gorau i ddyddodi gwastraff) a gynhelir eisoes (is-adran (4)(e)).

Adran 94 – Amodau caniatâd cynllunio amlinellol

402. Gan fod rhoi caniatâd cynllunio amlinellol (o dan adran 48) yn gweithredu i bob pwrpas fel caniatâd dau gam, nid yw'r rheolau arferol o ran amodau terfyn amser o dan adran 93 yn gymwys; yn hytrach, mae rheolau ychydig yn wahanol yn gymwys o dan yr adran hon.

403. Mae is-adran (1) yn darparu bod rhaid i bob caniatâd cynllunio amlinellol fod yn ddarostyngedig i amod:

    a. bod rhaid cyflwyno cais am gymeradwyaeth ar gyfer pob mater a gadwyd yn ôl cyn diwedd cyfnod a bennir yn yr amod, gan ddechrau â'r dyddiad y rhoddir y caniatâd; a

    b. bod rhaid i'r datblygiad ddechrau cyn:
        i. diwedd cyfnod a bennir yn yr amod; neu
        ii. os yw'n hwyrach, diwedd cyfnod penodedig ar ôl i'r holl faterion a gadwyd yn ôl gael eu cymeradwyo yn derfynol.

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. Esbonnir ystyr "dechrau" yn adran 99. Ac at ddibenion yr adran hon cymeradwyir mater a gadwyd yn ôl yn derfynol pan fydd yr awdurdod cynllunio yn rhoi cymeradwyaeth neu, pan fo'r mater yn mynd yn ei flaen i apêl i Weinidogion Cymru, pan benderfynir yr apêl (is-adran (8)).

405. Pan fo amod yn gosod un cyfnod i wneud cais am gymeradwyaeth ar gyfer y materion a gadwyd yn ôl, gellir gwneud sawl cais o'r fath mewn cysylltiad â materion gwahanol a gadwyd yn ôl, ond rhaid gwneud yr olaf ohonynt cyn diwedd y cyfnod penodedig.

406. Pan fo datblygiad i'w gynnal fesul cam – er enghraifft, yn achos cynllun tai mawr sydd i'w adeiladu dros nifer o flynyddoedd – caiff yr amod terfyn amser ddatgan y gellir gwneud ceisiadau erbyn dyddiadau gwahanol ar gyfer cymeradwyo'r materion a gadwyd yn ôl sy'n ymwneud â phob cam (is-adran (2)). Os yw'n gwneud hynny, rhaid geirio'r cyfnod y mae rhaid i'r datblygiad ddechrau ynddo drwy gyfeirio at y gwahanol gamau yn hytrach na'r datblygiad yn ei gyfanrwydd.

407. Os rhoddir caniatâd amlinellol heb amod (o dan is-adran (1)(a)) ynghylch y cyfnod y mae rhaid gwneud ceisiadau am gymeradwyaeth ar gyfer materion a gadwyd yn ôl ynddo, mae is-adran (3) yn darparu ei fod fel arfer i'w drin fel pe bai wedi ei roi yn ddarostyngedig i amod bod rhaid gwneud ceisiadau am gymeradwyaeth ar gyfer yr holl faterion a gadwyd yn ôl o fewn tair blynedd i'r dyddiad y rhoddwyd y caniatâd.

408. Nid yw is-adran (3) yn gymwys, fodd bynnag, os:

a. rhoddir caniatâd amlinellol i gynnal datblygiad yn ddarostyngedig i amod ynghylch y cyfnod y mae rhaid gwneud ceisiadau am gymeradwyaeth ar gyfer materion a gadwyd yn ôl ynddo; a

b. rhoddir caniatâd wedi hynny i gynnal y datblygiad heb gydymffurfio ag amodau eraill y rhoddwyd y caniatâd blaenorol yn ddarostyngedig iddynt; ond

c. nid yw'r caniatâd newydd yn ddarostyngedig i amod o dan is-adran (1)(a) ynghylch y cyfnod y mae rhaid gwneud ceisiadau am gymeradwyaeth ar gyfer materion a gadwyd yn ôl ynddo.

Yn y sefyllfa honno, mae is-adran (4) yn darparu bod y caniatâd newydd i'w drin fel pe bai wedi ei roi yn ddarostyngedig i amod bod rhaid i gais am gymeradwyaeth ar gyfer pob mater a gadwyd yn ôl gael ei wneud cyn y cyfnod a bennir gan y caniatâd blaenorol.

409. Os rhoddir caniatâd amlinellol heb amod (o dan is-adran (1)(b)) ynghylch y cyfnod y mae rhaid dechrau'r datblygiad ynddo, mae is-adran (5) yn darparu ei fod fel arfer i'w drin fel pe bai wedi ei roi yn ddarostyngedig i amod bod rhaid i'r datblygiad ddechrau o fewn pum mlynedd i roi caniatâd neu, os yw'n ddiweddarach, o fewn dwy flynedd i gymeradwyo'r holl faterion a gadwyd yn ôl.

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. Nid yw is-adran (5) yn gymwys os:

a. rhoddir caniatâd amlinellol i gynnal datblygiad yn ddarostyngedig i amod ynghylch y cyfnod y mae rhaid dechrau datblygiad ynddo; a

b. rhoddir caniatâd wedi hynny i gynnal y datblygiad heb gydymffurfio ag amodau eraill y rhoddwyd y caniatâd blaenorol yn ddarostyngedig iddynt; ond

c. nid yw'r caniatâd newydd yn ddarostyngedig i amod o dan is-adran (1)(b) ynghylch y cyfnod y mae rhaid dechrau datblygiad ynddo.

Yn y sefyllfa honno, mae is-adran (6) yn darparu bod y caniatâd newydd i'w drin fel pe bai wedi ei roi yn ddarostyngedig i amod bod rhaid i'r datblygiad ddechrau o fewn y cyfnod a bennir gan y caniatâd blaenorol.

411. Mae is-adran (7) yn cadarnhau nad yw'r ffaith bod caniatâd yn cael ei roi yn ddarostyngedig i amod terfyn amser yn rhinwedd is-adran (1), neu y'i trinnir fel pe bai wedi ei roi yn ddarostyngedig i amod o'r fath gan is-adran (3) i (6), yn atal naill ai:

a. cais i gynnal y datblygiad heb gydymffurfio â'r amod rhag cael ei wneud o dan adran 68; neu

b. apêl yn erbyn yr amod rhag cael ei wneud o dan adran 73.

412. Ymdrinnir â thorri amod o dan yr adran hon yn adran 95.

Adran 95 – Torri amod ynghylch y cyfnod y mae rhaid i ddatblygiad ddechrau ynddo etc.

413. Pan fo caniatâd cynllunio yn ddarostyngedig i amod ynghylch y cyfnod y mae rhaid i ddatblygiad ddechrau ynddo, nid yw datblygiad sy'n dechrau ar ôl diwedd y cyfnod hwnnw yn ddatblygiad a awdurdodir gan y caniatâd (is-adran (1)).

414. Pan fo caniatâd amlinellol yn ddarostyngedig i amod ynghylch y cyfnod y mae rhaid gwneud cais am gymeradwyaeth ar gyfer materion a gadwyd yn ôl ynddo, nid yw cais a wneir ar ôl diwedd y cyfnod hwnnw yn gais yn unol â thelerau'r caniatâd (is-adran (2)).

415. Gall y darpariaethau hyn ddod yn berthnasol yng nghyd-destun achos gorfodi.

Adran 96 – Hyd caniatâd mwynau

416. Mae'r adran hon yn cyflwyno Atodlen 5, sy'n darparu ar gyfer amodau ynghylch hyd caniatadau mwynau. Diffinnir "caniatâd mwynau" fel caniatâd cynllunio ar gyfer datblygiad mwynau, ond mae'n eithrio caniatâd a roddir gan orchymyn datblygu; ac ystyr "datblygiad mwynau" yw datblygiad sy'n weithrediadau mwyngloddio neu sy'n cynnwys dyddodi gwastraff mwynau (adran 408(1)).

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. Ac oherwydd y caiff y datblygiad a awdurdodir gan ganiatâd mwynau barhau i gael ei gynnal dros nifer o flynyddoedd, neu ddegawdau hyd yn oed, rhaid adolygu'r amodau y rhoddir y caniatâd yn ddarostyngedig iddynt o bryd i'w gilydd, er mwyn sicrhau eu bod yn briodol yn y byd sydd ohoni. Cyflawnir hyn drwy'r mecanweithiau adolygu a gyflwynir gan adrannau 103 a 104.

Atodlen 5 – Amod sy'n cyfyngu ar hyd caniatâd mwynau

418. Gall gweithrediadau mwynau, yn wahanol i weithrediadau adeiladu neu weithrediadau peirianneg, bara am flynyddoedd lawer neu hyd yn oed ddegawdau; ac mae'r Llys Apêl wedi dal bod pob rhawiad yn weithred o ddatblygiad ar wahân *(Thomas David (Porthcawl) Ltd v Penybont RDC* [1972] 1 W.L.R. 1526). Mae rhoi caniatâd mwynau, felly, yn gweithredu mewn modd a fyddai'n caniatáu cyfres o weithrediadau dros gyfnod estynedig, ac efallai y bydd cymeriad y tir cyfagos a ffactorau eraill yn newid yn sylweddol yn ystod y cyfnod hwnnw.

419. O ganlyniad, mae pob caniatâd mwynau yn ddarostyngedig i amod, o dan baragraff 1 o'r Atodlen hon, sy'n cyfyngu ar y cyfnod y caiff y datblygiad barhau ynddo. Caiff y gweithredwr wneud cais i estyn y caniatâd (tua diwedd y cyfnod hwnnw fel arfer), ond byddai cais o'r fath wedyn yn destun ystyriaeth newydd, gan gynnwys o ran yr amodau a fyddai'n briodol.

420. Mae amod sy'n cyfyngu ar hyd caniatâd mwynau o dan yr Atodlen hon i'w wahaniaethu oddi wrth amod o dan adran 93 sy'n darparu y bydd caniatâd yn darfod os na fydd y datblygiad o dan sylw yn dechrau o fewn cyfnod penodedig.

421. Rhaid i bob caniatâd mwynau a roddwyd ers 22 Chwefror 1982 gael ei roi yn ddarostyngedig i amod (o dan baragraff 1(1) o'r Atodlen hon) sy'n darparu bod rhaid i'r gweithrediadau stopio ar ddiwedd cyfnod penodedig, gan ddechrau ar y dyddiad y rhoddir y caniatâd (paragraff 1(2)). Os nad oes cyfnod o'r fath wedi ei bennu, bernir bod pob caniatâd o'r fath wedi ei roi yn ddarostyngedig i amod (o dan baragraff 1(3)) fod rhaid i'r datblygiad stopio ar ôl 60 mlynedd, gan ddechrau ar y dyddiad y rhoddir y caniatâd. Caniateir amrywio'r cyfnod o 60 mlynedd gan reoliadau o dan baragraff 1(4).

422. Mae pob caniatâd ar gyfer datblygiad o'r fath a roddwyd cyn 22 Chwefror 1982 yn ddarostyngedig i amod bod rhaid i'r datblygiad stopio ar 21 Chwefror 2042 neu cyn hynny (paragraff 2).

423. Mae paragraff 3(1) yn darparu, er bod caniatâd mwynau bob amser yn ddarostyngedig i amod o'r fath, nad yw hynny'n ei wneud yn "caniatâd cynllunio a roddir am gyfnod cyfyngedig" o dan adran 67(3). O ganlyniad:

a. nid yw adran 43(4) yn gymwys, fel bod angen caniatâd cynllunio i ailddechrau'r defnydd blaenorol o'r tir ar ddiwedd y cyfnod y rhoddwyd y caniatâd mwynau â therfyn amser ar ei gyfer;

b. nid yw adran 49(2)(c) yn gymwys, fel na chaniateir rhoi caniatâd o dan y ddarpariaeth honno i awdurdodi datblygiad a gynhaliwyd eisoes yn unol â chaniatâd mwynau â therfyn amser ar ôl i'r caniatâd hwnnw ddod i ben;

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. nid yw adran 93(4)(d) yn gymwys, fel bod yr amod cyffredinol o dan yr adran honno ynghylch y cyfnod y mae rhaid i ddatblygiad ddechrau ynddo yn gymwys i ganiatâd mwynau â therfyn amser; a

d. nid yw adran 207(4)(b) yn gymwys, fel na ellir estyn y caniatâd mwynau drwy orchymyn datbarhau.

424. Yn rhinwedd paragraff 3(2), mae'n bosibl apelio yn erbyn amod sy'n cyfyngu ar hyd caniatâd mwynau a osodir o dan yr Atodlen hon, fel gydag unrhyw amod cynllunio arall. Mae hefyd yn bosibl gwneud cais o dan adran 68 i weithredu datblygiad heb gydymffurfio ag amod o'r fath.

Adran 97 – Hysbysiad o ddechrau a chynnal datblygiad

425. Mae adran 97 yn rhoi gofyniad ar ddatblygwyr mewn achosion penodol i hysbysu'r awdurdod cynllunio cyn dechrau gweithredu caniatâd cynllunio. Rhaid i'r datblygwr hefyd arddangos, ar y safle neu gerllaw iddo, hysbysiad bod y datblygiad yn cael ei gynnal yn unol â'r caniatâd. Rhaid arddangos yr hysbysiad drwy gydol y cyfnod datblygu.

426. Nid yw'r gofyniad hwn ond yn gymwys mewn achosion a bennir gan Weinidogion Cymru mewn rheoliadau (is-adran (1)). Ar hyn o bryd mae erthygl 24B(1) o Orchymyn 2012 yn darparu ei fod yn gymwys pan roddir caniatâd cynllunio ar gyfer datblygiad mawr.

427. Cyn dechrau cynnal y datblygiad, rhaid i'r rhai sy'n gyfrifol roi hysbysiad i'r awdurdod cynllunio – ar hyn o bryd ar y ffurf a nodir yn Atodlen 5A i Orchymyn 2012. Ac am ba hyd bynnag ag y mae'r datblygiad yn mynd rhagddo, rhaid arddangos hysbysiad ar y safle neu gerllaw iddo – ar hyn o bryd ar y ffurf a nodir yn Atodlen 5B i Orchymyn 2012, sy'n ei gwneud yn ofynnol i'r hysbysiad bennu'r caniatâd, disgrifio'r datblygiad a datgan ble y gellir cael rhagor o wybodaeth.

428. Rhaid i'r hysbysiad i'r ceisydd sy'n datgan bod caniatâd wedi ei roi ar gyfer datblygiad o'r fath gyfeirio at y dyletswyddau o dan yr adran hon (is-adran (6)). A bydd y caniatâd yn cael ei drin fel pe bai wedi ei roi yn ddarostyngedig i amod bod rhaid cydymffurfio â'r dyletswyddau hynny (is-adran (7)).

Adran 98 – Pŵer i wneud gorchymyn terfynu
Atodlen 6 – Gorchmynion terfynu

429. Unwaith y bydd caniatâd wedi ei weithredu – hynny yw, unwaith y bydd y datblygiad a gymeradwywyd ganddo wedi ei ddechrau (gweler adran 99) – gellir parhau â'r datblygiad ar unrhyw adeg. Mae hyn fel arfer yn arwain at ei gwblhau maes o law. Mewn rhai achosion, fodd bynnag, gall datblygiad gael ei ddechrau, ond nid ei gwblhau – er enghraifft, pan fo'r datblygwr yn mynd i drafferthion ariannol neu pan fo perchenogaeth y tir yn newid – gan arwain at y tir yn aros mewn cyflwr hyll am gyfnod estynedig. Er mwyn gwella'r siawns y bydd datblygiad yn cael ei gwblhau mewn sefyllfa o'r fath, caiff yr awdurdod cynllunio ddyroddi gorchymyn terfynu o dan yr adran hon. Arferai gorchymyn o'r fath gael ei alw'n 'hysbysiad cwblhau'.

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. Caiff yr awdurdod cynllunio wneud gorchymyn terfynu (o dan is-adrannau (1) a (2)) pan fo:

a. caniatâd yn cael ei roi yn ddarostyngedig i amod bod rhaid i'r datblygiad ddechrau o fewn cyfnod penodedig;

b. y datblygiad wedi dechrau o fewn y cyfnod hwnnw ond nid yw wedi ei gwblhau erbyn diwedd y cyfnod hwnnw; ac

c. yr awdurdod cynllunio yn ystyried na fydd y datblygiad yn cael ei gwblhau o fewn cyfnod rhesymol.

431. Caiff Gweinidogion Cymru hefyd wneud gorchymyn terfynu os ydynt yn ystyried na fydd y datblygiad yn cael ei gwblhau o fewn cyfnod rhesymol (is-adrannau (1) a (3)).

432. Bydd y gorchymyn yn datgan y bydd y caniatâd yn peidio â chael effaith ar ddiwedd y cyfnod a bennir ynddo, a rhaid i'r cyfnod hwnnw fod o leiaf 12 mis ar ôl i'r gorchymyn gymryd effaith (is-adrannau (4) a (5)).

433. Mae'r weithdrefn ar gyfer dyroddi gorchymyn terfynu gan yr awdurdod cynllunio wedi ei nodi yn Rhan 1 o Atodlen 6. Mae hyn yn darparu na fydd gorchymyn yn cymryd effaith ond pan fydd wedi ei gadarnhau gan Weinidogion Cymru. Rhaid i'r awdurdod cynllunio gyflwyno hysbysiad ei fod wedi cyflwyno'r gorchymyn i Weinidogion Cymru i bob perchennog a phob meddiannydd ar y tir y mae'r gorchymyn yn ymwneud ag ef ac i unrhyw berson arall y mae'n meddwl y bydd y gorchymyn yn effeithio arno. Rhaid i'r hysbysiad gynnwys datganiad ynghylch hawl y derbynnydd i gyflwyno sylwadau iddynt, ac i'w gwneud yn ofynnol o fewn cyfnod penodedig o 28 o ddiwrnodau o leiaf iddo gael cyfle i gael gwrandawiad gan arolygydd.

434. Pan fo awdurdod wedi dyroddi gorchymyn terfynu, a bo'r gorchymyn yn dod i rym, mae'r caniatâd cynllunio yn peidio â chael effaith ar ddiwedd y cyfnod a bennir yn y gorchymyn (y caniateir iddo gael ei estyn gan Weinidogion Cymru pan fyddant yn ei gadarnhau (paragraff 1(6), Atodlen 6)). Ond nid yw hynny'n effeithio ar gyfreithlondeb unrhyw ddatblygiad a gynhelir gan ddibynnu ar y caniatâd yn ystod y cyfnod hwnnw (is-adran (8)).

435. Caiff yr awdurdod (neu Weinidogion Cymru) ddiwygio neu ddirymu gorchymyn terfynu cynharach y maent wedi ei ddyroddi, drwy orchymyn newydd, ar unrhyw adeg cyn diwedd y cyfnod a bennir yn y gorchymyn cynharach. Nid yw'r gofynion gweithdrefnol yn Atodlen 6 yn gymwys pan fo gorchymyn wedi ei wneud at ddiben dirymu gorchymyn cynharach yn unig (is-adrannau (9) a (10)).

436. Wrth ddirymu gorchymyn terfynu, rhaid i'r awdurdod cynllunio neu Weinidogion Cymru hysbysu pawb y cyflwynwyd hysbysiad iddynt o dan Atodlen 6 mewn perthynas â gwneud y gorchymyn gwreiddiol (is-adran (10)).

437. Mae'r weithdrefn ar gyfer gorchymyn a ddyroddir gan Weinidogion Cymru wedi ei nodi yn Rhan 2 o Atodlen 6.

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.

Adran 99 – Yr adeg pan fo datblygiad yn dechrau

438. Mae'r adran hon yn egluro pryd y mae datblygiad yn dechrau at ddibenion Pennod 9; ac fe'i cymhwysir hefyd at ddibenion adran 68(4).

439. Yn achos gweithrediadau mwyngloddio, cymerir bod datblygiad yn dechrau pan fydd gweithrediadau mwyngloddio yn dechrau cael eu cynnal am y tro cyntaf (is-adran (1)(a)).

440. Yn achos datblygiad sy'n unrhyw fath arall o weithrediad, cymerir ei fod yn dechrau pan fydd gweithrediad perthnasol sy'n rhan o'r datblygiad yn dechrau cael ei gynnal (is-adran (1)(b)(i)). At y diben hwn, mae gweithrediad perthnasol yn golygu gwaith adeiladu wrth godi adeilad, gwaith i ddymchwel adeilad, cloddio ffos sylfaen, gosod pibellau a cheblau i sylfeini adeilad neu i ffos a fydd yn cynnwys sylfeini ar gyfer adeilad, gweithrediadau wrth osod allan neu adeiladu ffordd (is-adran (2)). Prif arwyddocâd hyn yn ymarferol yw, unwaith y bydd o leiaf un gweithrediad o'r fath wedi ei gynnal, y gellir cwblhau gweddill y datblygiad rywbryd yn ddiweddarach, o bosibl ar ôl y dyddiad y byddai'r caniatâd wedi dod i ben fel arall.

441. Yn achos datblygiad sy'n newid sylweddol mewn defnydd, cymerir ei fod yn dechrau pan fo newid perthnasol mewn defnydd sy'n rhan o'r datblygiad yn digwydd (is-adran (1)(b)(ii)). Yn rhinwedd is-adran (3), mae newid perthnasol mewn defnydd at y diben hwn yn gyffredinol yn golygu unrhyw newid sy'n ffurfio datblygiad. Fodd bynnag, nid yw'n cynnwys newid y rhoddir caniatâd ar ei gyfer drwy orchymyn datblygu cyffredinol neu leol ac sy'n cael ei gynnal er mwyn cydymffurfio ag amod neu gyfyngiad yn y caniatâd. Nid yw'n cynnwys ychwaith newid defnydd mewn categori a ragnodir gan Weinidogion Cymru mewn rheoliadau.

442. Pan fo datblygiad yn golygu cynnal gweithrediadau a newid defnydd, cymerir ei fod yn dechrau pan fo naill ai gweithrediad perthnasol neu newid perthnasol mewn defnydd yn digwydd am y tro cyntaf.

Pennod 10 – Newidiadau i ganiatâd cynllunio

443. Unwaith y bydd caniatâd cynllunio wedi ei roi, caiff person sydd â buddiant yn y tir wneud cais i'r awdurdod cynllunio i wneud newid ansylweddol iddo, o dan adran 100. Neu caiff yr awdurdod neu Weinidogion Cymru addasu'r caniatâd neu ei ddirymu, o dan adran 102; ond gall hynny arwain at hawliad am ddigolledia o dan adran 106.

Adran 100 – Pŵer awdurdod cynllunio i wneud newid ansylweddol i ganiatâd cynllunio

444. Efallai y bydd y rhai sydd â budd caniatâd cynllunio i gynnal datblygiad (a roddwyd mewn ymateb i gais, nid drwy orchymyn datblygu) yn dymuno gwneud mân newidiadau i fanylion y datblygiad arfaethedig.

445. Felly, caiff person sydd â buddiant mewn tir sy'n destun caniatâd a roddwyd wneud cais i'r awdurdod cynllunio i wneud newid ansylweddol i'r caniatâd (is-adrannau (1) a (2)). Gellir gwneud cais ar ran y person hwnnw hefyd, er enghraifft, gan asiant neu ymgynghorydd. Caiff newid o'r fath gynnwys amrywio neu ddileu amodau presennol sydd ynghlwm wrth y caniatâd cynllunio neu osod rhai newydd (is-adran (5)). Mae hyn yn caniatáu amnewid lluniadau diwygiedig.

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. O dan is-adran (7), ni chaniateir gwneud cais o'r fath ond gan:

a. rhydd-ddeiliad y tir;

b. perchennog ar les cyfnod penodol sydd ag o leiaf dwy flynedd yn weddill;

c. morgeisai i fuddiant neu ystad yn y tir; neu

d. parti i gontract ystad fel y'i diffinir yn adran 2(4) o Ddeddf Pridiannau Tir 1972 (p. 61) – hynny yw, contract ar gyfer gwerthu neu greu ystad gyfreithiol yn y tir (gan gynnwys cytundeb i forgeisio'r tir ac opsiwn i'w brynu).

447. Ni chaiff person sydd â buddiant o'r fath mewn rhan o'r tir yn unig y mae'r caniatâd yn ymwneud ag ef wneud cais o dan yr adran hon ond mewn cysylltiad â'r caniatâd fel y mae'n ymwneud â'r rhan honno (is-adran (6)).

448. Wrth benderfynu a yw newid arfaethedig yn ansylweddol, rhaid i'r awdurdod cynllunio roi sylw i effaith y newid (ynghyd ag unrhyw newidiadau a wnaed o'r blaen o dan y ddarpariaeth hon) ar y caniatâd cynllunio fel y'i rhoddwyd yn wreiddiol (is-adrannau (3) a (4)).

Adran 101 – Darpariaeth bellach ynghylch ceisiadau am newidiadau ansylweddol

449. Caiff rheoliadau osod gofynion manwl ynghylch gwneud cais o dan adran 100 am newid i ganiatâd cynllunio, gan gynnwys o ran y ffurf sydd i'w defnyddio, a'r deunydd sydd i'w gyflenwi; ac ni chaiff yr awdurdod cynllunio ystyried cais o'r fath oni chydymffurfir â'r gofynion hynny (is-adrannau (1) a (2)). Caiff rheoliadau o'r fath hefyd wneud darpariaeth ynghylch cyhoeddusrwydd ac ymgynghori mewn cysylltiad â chais o'r fath a sut y mae'r rhai yr ymgynghorir â hwy i ymateb (is-adrannau (3) a (5) i (8)).

450. Mae'r gofynion presennol yn erthygl 28A o Orchymyn 2012 sy'n ei gwneud yn ofynnol bod rhaid hysbysu'r cais drwy hysbysiad safle a rhoi hysbysiad amdano i berchnogion a meddianwyr tir cyfagos ac i'r rhai yr ymgynghorwyd â hwy mewn perthynas â'r cais gwreiddiol. Rhaid ystyried ymatebion i'r hysbysiad hwnnw os cânt eu gwneud o fewn 14 o ddiwrnodau; a rhaid hysbysu'r ceisydd am y penderfyniad ar y cais o fewn 28 o ddiwrnodau, oni bai bod y cyfnod hwnnw'n cael ei estyn.

451. Pan fo awdurdod, mewn ymateb i gais o dan adran 100, yn amrywio neu'n dileu'r amodau sydd ynghlwm wrth ganiatâd cynllunio neu'n gosod rhai newydd, rhaid iddo ddyroddi hysbysiad penderfynu diwygiedig a'i anfon at y ceisydd (adran 69(5) a (6)).

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)).

Adran 102 – Pŵer i wneud gorchymyn sy'n addasu neu'n dirymu caniatâd cynllunio

452. Pan fo caniatâd cynllunio wedi ei roi, ond nad yw wedi ei weithredu'n llawn eto, caiff yr awdurdod cynllunio neu Weinidogion Cymru ei addasu neu ei ddirymu (oni bai ei fod wedi ei roi drwy orchymyn datblygu neu orchymyn datblygu lleol). Gallai hyn ddigwydd pan fo caniatâd wedi ei roi ar gyfer datblygiad arall a ystyrir bellach yn fwy priodol, ac os felly efallai na fydd gwrthwynebiad i'r addasiad neu'r dirymiad. Neu gallai fod o ganlyniad i amgylchiadau sydd wedi newid, ac os felly efallai y bydd gwrthwynebiad i'r addasiad neu'r dirymiad. Pan fo gwneud gorchymyn yn achosi colled ariannol, caiff digolledi fod yn daladwy o dan adran 106.

453. Caniateir gwneud gorchymyn sy'n addasu neu'n dirymu caniatâd i gynnal gwaith adeiladu neu weithrediadau eraill ar unrhyw adeg cyn i'r gweithrediadau hynny gael eu cwblhau, ond nid yw'n effeithio ar gyfreithlondeb yr hyn sydd eisoes wedi ei wneud (is-adran (3)). Er enghraifft, pan fo caniatâd wedi ei roi ar gyfer 50 o dai a bo 30 wedi eu hadeiladu, caiff gorchymyn ddirymu caniatâd ar gyfer yr 20 sy'n weddill; ond nid yw hynny'n effeithio ar gyfreithlondeb y 30 sydd wedi eu cwblhau. Caniateir i orchymyn sy'n addasu neu'n dirymu caniatâd i wneud newid sylweddol yn y defnydd o adeilad neu dir arall gael ei wneud ar unrhyw adeg cyn i'r newid ddigwydd (is-adran (4)).

454. Wrth ystyried pa un ai i addasu neu ddirymu caniatâd, rhaid i'r awdurdod neu Weinidogion Cymru roi sylw i'r cynllun datblygu ar gyfer yr ardal ac i unrhyw ystyriaethau perthnasol eraill, gan gynnwys polisïau defnydd tir Gweinidogion Cymru ac ystyriaethau sy'n ymwneud â'r defnydd o'r Gymraeg (is-adran (2)(a) ac adran 408(3)). Rhaid iddynt wneud y penderfyniad yn unol â'r cynllun datblygu oni bai bod ystyriaethau eraill yn dangos fel arall (is-adran (2)(b)). Dyma'r un dull gweithredu ag sy'n gymwys mewn perthynas â phenderfynu'r cais yn wreiddiol (gweler adran 66(1)).

455. Mae'r weithdrefn ar gyfer gwneud gorchymyn wedi ei nodi yn Atodlen 7, a gyflwynir gan is-adran (5). Mae Rhan 1 o'r Atodlen honno'n ymdrin â gorchmynion a wneir gan yr awdurdod cynllunio; mae Rhan 2 yn ymdrin â gorchmynion a wneir gan Weinidogion Cymru. Mae Rhan 3 yn nodi addasiadau i'r weithdrefn sy'n gymwys pan fo'r caniatâd sy'n cael ei addasu neu ei ddirymu yn ymwneud â gweithrediadau mwyngloddio neu ddyddodi gwastraff.

Atodlen 7 – Gorchmynion sy'n addasu neu'n dirymu caniatâd cynllunio

Rhan 1 – Y gweithdrefnau ar gyfer gorchmynion a wneir gan awdurdodau cynllunio

456. Pan fo awdurdod cynllunio yn gwneud gorchymyn o dan adran 102, ni fydd y gorchymyn fel arfer ond yn cymryd effaith pan fydd wedi ei gadarnhau gan Weinidogion Cymru o dan baragraff 2. Bydd cadarnhad o'r fath yn ofynnol bob amser pan fo awdurdod yn gwneud gorchymyn sydd:

a. yn addasu amod terfyn amser a osodir gan adran 93 neu 94; neu

b. yn addasu neu'n dirymu caniatâd cynllunio a roddwyd gan Weinidogion Cymru.

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. Yn ddarostyngedig i'r eithriadau hynny, pan fo'r rhai y mae gorchymyn yn debygol o effeithio arnynt wedi rhoi gwybod i'r awdurdod nad oes ganddynt unrhyw wrthwynebiad iddo, caiff gymryd effaith yn unol â'r weithdrefn gyflymach o dan baragraff 3.

458. Y weithdrefn arferol, o dan baragraff 2, yw bod yr awdurdod yn cyflwyno gorchymyn drafft i Weinidogion Cymru. Ar yr un pryd mae'r awdurdod yn hysbysu perchennog a meddiannydd y tir y mae'r gorchymyn yn ymwneud ag ef ac unrhyw un arall y mae'n ystyried y bydd y gorchymyn yn effeithio arno, fod yr awdurdod wedi cyflwyno gorchymyn drafft. Rhaid i bob copi o'r gorchymyn drafft gynnwys datganiad ynghylch hawl y derbynnydd i gyflwyno sylwadau i Weinidogion Cymru ac i'w gwneud yn ofynnol (o fewn cyfnod penodedig, o 28 o ddiwrnodau o leiaf) iddo gael cyfle i gael gwrandawiad gan arolygydd.

459. Yna caiff Gweinidogion Cymru fynd ymlaen i gadarnhau'r gorchymyn gydag addasiadau neu hebddynt (paragraff 2(5)).

460. Mae paragraff 3 yn gymwys pan fo awdurdod wedi gwneud gorchymyn drafft o dan adran 102, ac mae holl berchnogion a meddianwyr y tir yr effeithir arnynt a phawb arall y mae'r awdurdod yn ystyried y bydd y gorchymyn yn effeithio arnynt, wedi nodi'n ysgrifenedig nad oes ganddynt wrthwynebiad iddo. Yn yr achos hwnnw, rhaid i'r awdurdod gyhoeddi (yn y ffordd a bennir gan reoliadau) hysbysiad ei fod wedi gwneud y gorchymyn, er mwyn rhoi cyfle i unrhyw berson yr effeithir arno a allai fod wedi ei ddiystyru gan yr awdurdod i ddod yn ymwybodol o'r gorchymyn. Rhaid iddo anfon copi o'r hysbysiad hwnnw at berchnogion a meddianwyr y tir ac eraill y mae'r gorchymyn yn debygol o effeithio arnynt, fel bod ganddynt gyfle pellach i gyflwyno sylwadau. Rhaid iddo hefyd anfon copi at Weinidogion Cymru er mwyn iddynt allu, os ydynt yn dymuno, ei gwneud yn ofynnol i'r gorchymyn gael ei gyflwyno iddynt i'w gadarnhau.

461. O dan baragraff 3(3) i (5), rhaid i'r hysbysiad bennu y caiff unrhyw un y mae'r gorchymyn yn effeithio arno ei gwneud yn ofynnol i'r hysbysiad gael ei gyflwyno i'w gadarnhau gan Weinidogion Cymru, o dan y weithdrefn ym mharagraff 2. Fodd bynnag, os na ddaw cais o'r fath i law o fewn cyfnod penodedig (o 28 o ddiwrnodau o leiaf) ac nad yw Gweinidogion Cymru wedi ei gwneud yn ofynnol iddo gael ei gyflwyno iddynt o fewn cyfnod penodedig pellach o 14 o ddiwrnodau o leiaf, bydd y gorchymyn yn cymryd effaith yn awtomatig ar ddiwedd y cyfnod pellach hwnnw.

Rhan 2 - Y weithdrefn ar gyfer gorchmynion a wneir gan Weinidogion Cymru

462. O dan baragraff 4, pan fo Gweinidogion Cymru yn bwriadu dyroddi gorchymyn sy'n addasu neu'n dirymu caniatâd cynllunio, rhaid iddynt ymgynghori â'r awdurdod cynllunio ar gyfer yr ardal. Os byddant wedyn yn bwrw ymlaen, rhaid iddynt gyflwyno hysbysiad o'r gorchymyn drafft i'r awdurdod, ac i bob perchennog a phob meddiannydd ar y tir o dan sylw, ac unrhyw un arall y mae'r hysbysiad yn debygol o effeithio arno. Rhaid i bob copi o'r hysbysiad gynnwys datganiad ynghylch hawl y derbynnydd i gyflwyno sylwadau i Weinidogion Cymru am y gorchymyn, ac i'w gwneud yn ofynnol (o fewn cyfnod penodedig, o 28 o ddiwrnodau o leiaf) iddo gael cyfle i gael gwrandawiad gan arolygydd.

463. Yna caiff Gweinidogion Cymru fwrw ymlaen i gadarnhau'r gorchymyn.

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.

Rhan 3 – Addasu neu ddirymu caniatâd cynllunio ar gyfer gweithrediadau mwyngloddio neu ddyddodi gwastraff

464. Mae paragraff 5 o'r Atodlen yn ymdrin ag achosion pan fo'r awdurdod cynllunio neu Weinidogion Cymru yn dymuno gwneud gorchymyn sy'n addasu neu'n dirymu caniatâd ar gyfer datblygiad sy'n weithrediadau mwyngloddio neu'n cynnwys dyddodi gwastraff, a naill ai:

a. mae'r gorchymyn yn gosod un neu ragor o amodau adfer (fel y'u diffinnir ym mharagraff 1(2)(a) o Atodlen 3) mewn perthynas â'r tir y mae'r gorchymyn yn ymwneud ag ef; neu

b. mae un neu ragor o amodau adfer o dan y Ddeddf hon (neu o dan ddeddfwriaeth ragflaenol) mewn perthynas â'r tir hwnnw wedi eu gosod – naill ai mewn cysylltiad â'r caniatâd sydd bellach yn cael ei addasu neu ei ddirymu neu mewn cysylltiad ag unrhyw ganiatâd arall sy'n ymwneud â'r tir.

465. Mewn achos o'r fath, caiff y gorchymyn hefyd osod amodau ôl-ofal (fel y'u diffinnir ym mharagraff 1(2)(b) o Atodlen 3).

466. Mae paragraffau 1(3) i (9) a 2 i 5 o Atodlen 3 yn gymwys mewn perthynas ag amod ôl-ofal a osodir gan orchymyn o dan adran 102 fel y maent yn gymwys mewn perthynas ag amod ôl-ofal a osodir pan roddir caniatâd cynllunio.

Adran 103 – Rhoi effaith i ganiatadau mwynau sy'n ymwneud â safleoedd segur

467. Mae'r adran hon yn cyflwyno Atodlen 8, sy'n ymwneud â thir sydd â budd caniatâd mwynau nad yw'n cael ei weithredu ar hyn o bryd.

468. Fel y nodwyd uchod, yng nghyd-destun Atodlenni 3 a 5, gall gweithrediadau mwyngloddio bara am flynyddoedd lawer neu hyd yn oed ddegawdau. Mae caniatâd mwynau yn gweithredu i ganiatáu cyfres o weithrediadau dros gyfnod estynedig, ac efallai y bydd cymeriad y tir cyfagos a ffactorau eraill yn newid yn sylweddol yn ystod y cyfnod hwnnw; fodd bynnag, unwaith y bydd datblygiad sydd wedi ei awdurdodi drwy roi caniatâd cynllunio wedi dechrau (gweler adran 99), mae modd ei gwblhau ar unrhyw adeg wedi hynny. Mae ystyriaethau tebyg yn gymwys mewn perthynas â dyddodi gwastraff mwynau. Mae hyn wedi arwain at ganiatadau mwynau yn parhau i gael eu rhoi ar waith, yn gwbl gyfreithlon, ddegawdau lawer ar ôl iddynt gael eu rhoi am y tro cyntaf. Mewn rhai achosion, rhoddwyd y caniatadau hŷn hynny yn wreiddiol yn ddarostyngedig i amodau a oedd yn wahanol i'r rhai a fyddai ynghlwm wrth ganiatâd tebyg pe bai'n cael ei roi heddiw. Mae'r broblem hon wedi arwain at gyfres o newidiadau yn y gyfraith dros y deugain mlynedd diwethaf.

Caniatâd mwynau cyn-1948

469. Bernir bod datblygiad mwynau a awdurdodwyd gan orchymyn datblygu interim rhwng 22 Gorffennaf 1943 a 30 Mehefin 1948 wedi cael caniatâd cynllunio o dan Ran 3 o Ddeddf Cynllunio Gwlad a Thref 1947 yn rhinwedd adran 77 o'r Ddeddf honno. Cyfeirir at ganiatâd tybiedig o'r fath yn y Ddeddf hon fel "caniatâd mwynau cyn-1948" (is-adran (6)).

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. O dan Ddeddf 1991, roedd rhaid cofrestru caniatâd mwynau cyn-1948 gyda'r awdurdod cynllunio mwynau erbyn 25 Mawrth 1992 (hynny yw 6 mis ar ôl i adran 22 o'r Ddeddf honno ddod i rym) os oedd am barhau i fod yn effeithiol – fel arall byddai'n darfod. Pan fo caniatâd o'r fath sy'n ymwneud â thir yr oedd datblygiad mwynau yn cael ei gynnal arno yn ystod y cyfnod o ddwy flynedd a ddaeth i ben â 1 Mai 1991 ('y cyfnod perthnasol o ddwy flynedd'), roedd i gael ei gofrestru yn ddarostyngedig i amodau newydd – a benderfynwyd o dan y weithdrefn yn Atodlen 2 i'r Ddeddf honno – ac a gafodd effaith wedi hynny ar y sail honno.

471. Cafodd y darpariaethau hyn eu haddasu gan adran 87 o Ddeddf 2004 mewn perthynas â thir y Goron, fel bod rhaid cofrestru caniatâdau mwynau cyn-1948 a oedd yn ymwneud â thir y Goron erbyn 6 Rhagfyr 2006, a'r cyfnod o ddwy flynedd a ddaeth i ben â 7 Mehefin 2006 oedd y cyfnod perthnasol o ddwy flynedd.

472. Pan gofrestrwyd caniatâd mwynau cyn-1948 ond yr oedd yn ymwneud â thir nad oedd unrhyw ddatblygiad mwynau wedi ei gynnal arno yn ystod y cyfnod perthnasol o ddwy flynedd, caniatawyd iddo aros yn segur. Ni ellid dibynnu ar ganiatâd o'r fath i awdurdodi datblygiad mwynau newydd; ond gellid gwneud cais ar unrhyw adeg o dan baragraff 2 o Atodlen 2 i Ddeddf 1991 i benderfynu'r amodau y byddai'n ddarostyngedig iddynt ac a fyddai'n llywodraethu datblygiad o'r fath yn y dyfodol.

Caniatâd mwynau ôl-1948

473. Cyfeirir at ganiatâd cynllunio ar gyfer datblygiad mwynau a roddwyd ar 1 Gorffennaf 1948 neu ar ôl hynny yn y Ddeddf hon fel "caniatâd mwynau ôl-1948" (is-adran (6)). O dan baragraff 3 o Atodlen 13 i Ddeddf 1995, roedd rhaid i bob awdurdod cynllunio mwynau lunio rhestr o'r holl safleoedd yn ei ardal lle y rhoddwyd yr holl ganiatadau neu'r rhan fwyaf ohonynt yn ymwneud â'r safle hwnnw rhwng 1 Gorffennaf 1948 a 21 Chwefror 1982. Roedd safleoedd o'r fath i'w rhestru mewn dau gategori:

a. safleoedd gweithredol Cyfnod I neu Gyfnod II (nid yw'r gwahaniaeth rhwng safleoedd Cyfnod I a safleoedd Cyfnod II yn berthnasol mwyach); a

b. safleoedd segur (gweler paragraffau 2 i 4 o Atodlen 13 i Ddeddf 1995).

474. Mewn perthynas â phob safle gweithredol, roedd y rhestr i bennu dyddiad erbyn pryd y byddai angen gwneud cais i gymeradwyo'r amodau a ddylai lywodraethu pob caniatâd sy'n ymwneud â'r safle hwnnw. Os na wnaed cais o'r fath erbyn y dyddiad hwnnw, neu os na chymeradwywyd unrhyw amodau, byddai'r caniatâd yn darfod. Ond unwaith y penderfynwyd amodau o'r fath, o dan y weithdrefn yn Atodlen 13 i Ddeddf 1995, cafodd y caniatâd effaith wedyn ar y sail honno.

475. Safle segur oedd safle Cyfnod I neu Gyfnod II lle nad oedd unrhyw ddatblygiad mwynau wedi ei gynnal rhwng 22 Chwefror 1982 a 6 Mehefin 1995 (ac eithrio gan ddibynnu ar ganiatâd cyn-1948 neu ganiatâd a roddwyd drwy orchymyn datblygu). Pan fo caniatâd mwynau ôl-1948 yn ymwneud â safle a restrwyd fel safle segur, gallai fod ar unrhyw adeg yn destun cais o dan baragraff 9 o'r Atodlen honno i benderfynu'r amodau y byddai'n cael ei lywodraethu ganddynt yn y dyfodol.

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.

Amodau

476. Roedd y darpariaethau yn Atodlen 2 i Ddeddf 1991 sy'n ymwneud â chofrestru caniatadau cyn-1948, a'r rhai yn Atodlen 13 i Ddeddf 1995 sy'n ymwneud â rhestru caniatadau ôl-1948, yn ei gwneud yn ofynnol i gamau gael eu cymryd erbyn dyddiadau sydd bellach wedi hen fynd heibio. Nid ydynt yn berthnasol mwyach, ac nid ydynt wedi eu hailddatgan yn y Ddeddf hon.

477. Yn yr un modd, ni ellir cymryd camau mwyach o dan y darpariaethau yn Atodlen 2 i Ddeddf 1991 ac Atodlen 13 i Ddeddf 1995 ynghylch pennu amodau caniatadau mwynau sy'n ymwneud â safleoedd nad ydynt yn segur, felly nid yw'r Ddeddf hon yn gwneud darpariaeth ynghylch pennu amodau'r caniatadau hynny.

478. Mae Atodlen 2 i Ddeddf 1991 ac Atodlen 13 i Ddeddf 1995, a'r adrannau sy'n eu cyflwyno, wedi eu diddymu o ran Cymru gan Atodlen 2 i'r Ddeddf Darpariaethau Canlyniadol. Fodd bynnag, yn rhinwedd paragraff 8 o Atodlen 5 i'r Ddeddf Darpariaethau Canlyniadol, nid yw hyn yn effeithio ar ddilysrwydd neu effaith y caniatadau yr oedd y darpariaethau hynny'n gymwys iddynt nac unrhyw benderfyniadau a wnaed odanynt.

479. Mae'n dal yn bosibl gwneud cais i benderfynu'r amodau a ddylai fod yn gymwys i:

a. caniatâd mwynau cyn-1948 a gofrestrwyd o dan Atodlen 2 i Ddeddf 1991, ond sy'n ymwneud â thir lle nad oedd unrhyw ddatblygiad mwynau wedi ei gynnal yn y cyfnod perthnasol o ddwy flynedd;

b. caniatâd mwynau ôl-1948 sy'n ymwneud â safle a oedd yn cael ei ddangos fel safle segur ar restr a luniwyd o dan baragraff 3 o Atodlen 13 i Ddeddf 1995.

480. Mae Atodlen 8 yn llywodraethu camau cyflwyno a phrosesu ceisiadau o'r fath sy'n galluogi'r caniatadau hŷn hyn i gael eu diweddaru er mwyn bod yn addas i reoleiddio cynnal datblygiad mwynau yn y dyfodol. Mae'r Atodlen hon yn ailddatgan darpariaethau Atodlen 2 i Ddeddf 1991 ac Atodlen 13 i Ddeddf 1995 sy'n parhau i fod yn berthnasol.

Atodlen 8 – Caniatadau mwynau sy'n ymwneud â safleoedd segur

481. Pan gofrestrwyd caniatâd mwynau cyn-1948 o dan Atodlen 2 i Ddeddf 1991, a'i fod yn ymwneud â thir lle na chynhaliwyd datblygiad mwynau yn y cyfnod perthnasol o ddwy flynedd, caniateir gwneud cais i benderfynu'r amodau a ddylai fod yn gymwys i'r tir hwnnw o dan yr Atodlen hon:

a. gan berchennog ar unrhyw ran o'r tir y mae'r caniatâd yn ymwneud ag ef; neu

b. gan berson sydd â buddiant mewn mwyn y mae'r caniatâd yn ymwneud ag ef (paragraff 1(1)(a) a (4)).

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. Pan fo caniatâd mwynau ôl-1948 yn ymwneud â safle a oedd yn cael ei ddangos fel safle segur ar restr a luniwyd o dan Atodlen 13 i Ddeddf 1995, caniateir gwneud cais i benderfynu'r amodau a ddylai fod yn gymwys i'r safle o dan yr Atodlen hon:

a. gan berchennog ar unrhyw ran o'r tir y mae'r caniatâd yn ymwneud ag ef (neu, os oes mwy nag un caniatâd, y mae unrhyw un neu ragor ohonynt yn ymwneud ag ef); neu

b. gan berson sydd â buddiant mewn mwyn y mae'r caniatâd neu unrhyw un o'r caniatadau yn ymwneud ag ef (paragraff 1(1)(b) a (4)).

483. Yn y naill achos neu'r llall, ystyr "perchennog" yw rhydd-ddeiliad y tir neu denant o dan les sydd ag o leiaf saith mlynedd yn weddill (paragraff 1(4)).

484. Rhaid i gais o dan yr Atodlen hon fod yn ysgrifenedig a rhaid iddo ddangos y tir neu'r safle y mae'r cais yn ymwneud ag ef, yr holl ganiatadau mwynau sy'n ymwneud ag ef a'r tir y mae gan y ceisydd fuddiant ynddo. Rhaid iddo hefyd nodi'r amodau y mae'r ceisydd o'r farn y dylid eu cymhwyso i bob un o'r caniatadau hynny (paragraff 1(2)(a) i (c)) ac (e)). Caiff rheoliadau o dan baragraff 6 ddarparu ar gyfer gwneud cais ar-lein.

485. Rhaid i'r cais hefyd ddangos unrhyw un arall a fyddai â hawlogaeth ar hyn o bryd i wneud cais o'r fath, a darparu ei gyfeiriad (paragraff 1(2)(d)). Ymhellach, pan fo rheoliadau o dan adran 58 yn ei gwneud yn ofynnol i geiswyr am ganiatâd cynllunio hysbysu perchnogion eraill ar y tir o dan sylw a rhoi gwybod i'r awdurdod cynllunio y cydymffurfiwyd â'r gofynion hynny, mae'r gofynion hynny yn gymwys i'r un graddau i gais o dan yr Atodlen hon (paragraff 1(3)). Mae'r darpariaethau hyn yn galluogi pob person o'r fath i gael cyfle i wneud cais ei hun. Mae hynny yn ei dro yn galluogi'r awdurdod i ystyried buddiannau pawb o dan sylw ar un adeg, ac unrhyw sylwadau y bydd unrhyw un neu ragor ohonynt yn eu gwneud mewn perthynas â cheisiadau a wneir gan unrhyw un neu ragor o'r lleill (gweler hefyd baragraff 7).

486. Ar ôl i gais ddod i law awdurdod, rhaid iddo ei gydnabod (paragraff 2(1)(a)). A rhaid iddo roi cyhoeddusrwydd i'r cais os yw'n ofynnol iddo wneud hynny drwy reoliadau, (paragraff 2(9)). Pan fo'r awdurdod yn ystyried bod angen rhagor o wybodaeth arno, rhaid iddo ofyn am hynny o fewn mis (paragraff 2(4) a (5)).

487. Yna rhaid i'r awdurdod benderfynu'r amodau y mae'r caniatadau i fod yn ddarostyngedig iddynt – gall y rhain fod yn ychwanegol at y rhai y maent yn ddarostyngedig iddynt ar hyn o bryd, neu yn eu lle (paragraff 2(1)(b), (2)(a) a (b)).Rhaid i'r awdurdod roi sylw i unrhyw ganllawiau perthnasol a ddyroddir gan Weinidogion Cymru (paragraff 2(3)).

488. Pan fo'r cais yn ymwneud â chaniatâd cyn-1948, rhaid gosod amod sy'n ei gwneud yn ofynnol i'r datblygiad mwynau stopio ar 21 Chwefror 2042 neu cyn hynny (paragraff 2(1)(b) a (2)(c)). Pan fo hyn yn gymwys, nid yw hynny'n golygu bod y caniatâd i'w ystyried yn "caniatâd cynllunio a roddir am gyfnod cyfyngedig" o dan adran 67(3) (gweler paragraff 2(10)).

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. Pan fo'r awdurdod wedi methu â hysbysu'r ceisydd am ei benderfyniad cyn diwedd y cyfnod o dri mis ar ôl i'r cais ddod i law, neu o gael yr wybodaeth bellach sydd ei hangen arno – neu o fewn cyfnod hwy y cytunir arno'n ysgrifenedig rhyngddynt – tybir ei fod wedi cytuno i'r amodau a gynigiwyd gan y ceisydd (paragraff 2(6) i (8)). Bydd y caniatâd, o'r adeg honno, yn cael effaith yn ddarostyngedig i'r amodau hynny (paragraff 5(1) a (2)(a)).

490. Mae paragraff 3 yn darparu, yn yr un modd â gyda cheisiadau cynllunio (gweler adran 72), y caiff Gweinidogion Cymru gyfarwyddo awdurdod i anfon cais penodol atynt o dan yr Atodlen hon, neu unrhyw gais o'r fath mewn categori penodol, fel y gallant ei benderfynu eu hunain. Rhaid iddynt hysbysu'r ceisydd pan fo hyn yn digwydd, ac yna rhaid iddynt brosesu'r cais yn union fel y byddai awdurdod yn ei brosesu; mae Pennod 2 o Ran 14 yn gwneud darpariaeth bellach ynghylch hyn.

491. Mae paragraff 4 yn darparu ar gyfer hawl i apelio i Weinidogion Cymru yn erbyn penderfyniad gan yr awdurdod cynllunio i osod amodau sy'n wahanol i'r rhai a gynigir yn y cais. Rhaid gwneud apêl o'r fath o fewn chwe mis sy'n dechrau â thrannoeth y diwrnod y mae'r awdurdod cynllunio yn gwneud ei benderfyniad ar y cais, ar ffurflen a gyhoeddir neu a ddarperir gan neu ar ran Gweinidogion Cymru (paragraff 4(2) a (3)). Cânt ganiatáu neu wrthod yr apêl a chânt wrthdroi neu amrywio penderfyniad yr awdurdod; mae hyn yn eu galluogi i osod amodau gwahanol. Os ydynt yn ystyried bod yr apelydd yn oedi proses apêl, cânt ddyroddi rhybudd y bydd yr apêl yn cael ei gwrthod oni bai y caiff y broses ei chyflymu; os yw'r apelydd yn methu â chymryd y camau gofynnol, yna cânt wrthod yr apêl (paragraff 4(4) a (5)).

492. Bwriad paragraff 7 yw sicrhau bod yr holl geisiadau posibl y gellid eu gwneud mewn perthynas ag unrhyw un safle yn cael eu penderfynu ar yr un pryd. Mae'n darparu, pan fo person (A) wedi gwneud cais o dan yr Atodlen hon mewn cysylltiad â chaniatâd mwynau cyn-1948, na chaiff A wneud cais arall o'r fath sy'n ymwneud â'r un caniatâd. Pan fo A wedi gwneud cais mewn perthynas â chaniatâd ôl-1948, ni chaiff A wneud cais arall sy'n ymwneud â'r un safle. Caiff person arall (B) wneud cais sy'n ymwneud â'r un caniatâd neu, yn ôl y digwydd, yr un safle – ond dim ond os nad yw cais A wedi ei benderfynu eto. Os yw B yn gwneud cais o'r fath (neu os yw B, C a D i gyd yn gwneud ceisiadau o'r fath) cyn i gais A gael ei benderfynu, yna mae'r holl geisiadau i'w penderfynu gyda'i gilydd, fel pe baent i gyd wedi eu gwneud ar y dyddiad y gwnaed y diweddaraf o'r ceisiadau. Mae hynny'n sicrhau bod yr awdurdod – neu Weinidogion Cymru – yn gallu pennu'r amodau a ddylai fod yn gymwys i'r holl ganiatadau o dan sylw.

493. O dan baragraff 5(1), pan fo cais wedi ei wneud o dan yr Atodlen hon, bydd yr amodau a bennir mewn ymateb i'r cais yn cymryd effaith cyn gynted ag y bydd y cais wedi ei benderfynu'n derfynol. Heblaw fel y nodir uchod mewn perthynas â pharagraff 2(6) i (8), paragraff 5(2) bydd y cais yn cael ei benderfynu'n derfynol unwaith y bydd yr awdurdod wedi penderfynu amodau'r caniatadau ac na yw'n bosibl cynnal apêl bellach na her pellach yn y llysoedd.

494. Unwaith bod amodau caniatâd mwynau wedi eu pennu o dan yr Atodlen hon, yna bydd yn cael ei adolygu'n gyfnodol yn unol ag Atodlen 9, ynghyd â'r holl ganiatadau mwynau eraill.

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.

Adran 104 – Adolygiad cyfnodol o ganiatadau mwynau

495. Oherwydd cymeriad hirdymor datblygiad mwynau, ac o ganlyniad, nodweddion arbennig caniatadau mwynau, mae angen adolygu pob caniatâd mwynau o bryd i'w gilydd. Mae'r adran hon yn cyflwyno Atodlen 9 sy'n darparu ar gyfer yr adolygiad cyfnodol o'r holl ganiatadau mwynau sy'n weddill.

Atodlen 9 – Adolygiad cyfnodol o ganiatadau mwynau

Paragraff 1 – Dyletswydd i gynnal adolygiadau cyfnodol o ganiatadau mwynau

496. Mae'r Atodlen hon yn ei gwneud yn ofynnol i bob awdurdod cynllunio gynnal adolygiadau cyfnodol o'r holl ganiatadau mwynau sy'n ymwneud â phob safle mwyngloddio yn ei ardal (paragraff 1(1)).

497. Diffinnir safle mwyngloddio at y diben hwn fel y tir y mae caniatâd mwynau penodol yn ymwneud ag ef. Fodd bynnag, mae rhai caniatadau mwynau yn ymwneud â pharseli o dir sy'n cyffinio neu'n gorgyffwrdd; yn unol â hynny, pan fo'r awdurdod yn ystyried (yng ngoleuni unrhyw ganllawiau perthnasol gan Weinidogion Cymru) y dylid trin dau neu ragor o safleoedd fel un safle at ddibenion adolygu'r caniatadau sy'n ymwneud â hwy, ystyrir mai safle yw'r holl dir y mae unrhyw un neu ragor o'r caniatadau hynny'n berthnasol iddo. Yna mae cyfeiriadau at ganiatâd mwynau sy'n ymwneud â safle mwyngloddio yn gyfeiriadau at unrhyw un neu ragor o'r caniatadau sy'n ymwneud ag unrhyw ran o'r tir o fewn safle neu grŵp o safleoedd o'r fath. Mae'r darpariaethau hyn, ym mharagraff 1(2) a (3), yn galluogi'r awdurdod i gymryd golwg gyfannol ar grwpiau o safleoedd.

Paragraff 2 – Y dyddiad adolygu cyntaf

498. Yr egwyddor gyffredinol, ym mharagraff 2, yw y bydd yr adolygiad cyntaf o'r caniatadau sy'n ymwneud â safle mwyngloddio fel arfer yn cael ei gynnal 15 mlynedd ar ôl y dyddiad y rhoddwyd neu y diweddarwyd y caniatadau. Mae tabl ym mharagraff 2(2) yn dangos y sail ar gyfer cyfrifo'r dyddiad adolygu cyntaf hwnnw, drwy gyfeirio at gategorïau amrywiol o safleoedd. Pan fo safle yn dod o fewn mwy nag un categori, gan arwain at ddau ddyddiad neu ragor i'w defnyddio i gyfrifo'r dyddiad adolygu cyntaf, cyfrifir y dyddiad adolygu drwy gyfeirio at y diweddaraf ohonynt (paragraff 2(6)).

499. Caniateir gohirio amseriad yr adolygiad cyntaf o dan y weithdrefn ym mharagraff 6.

500. Mae'r categori cyntaf o safleoedd yn cynnwys y rhai pan fo'r caniatadau sy'n ymwneud â'r safle yn cynnwys un neu ragor o ganiatadau mwynau a roddwyd cyn 1 Gorffennaf 1948. Yn yr achos hwn, y dyddiad i'w ddefnyddio i gyfrifo amseriad yr adolygiad cyntaf fydd y dyddiad y penderfynwyd yn derfynol amodau newydd y caniatâd hwnnw o dan Atodlen 2 i Ddeddf 1991 (neu o dan baragraff 1(1)(a) o Atodlen 8 i'r Ddeddf hon). Yn rhinwedd paragraff 2(8) o'r Atodlen hon i'r Ddeddf, mae'r dyddiad y penderfynwyd yn derfynol yr amodau i'w ganfod yn unol â pharagraff 10(2) o'r Atodlen i Ddeddf 1991 (neu baragraff 5(2) o Atodlen 8 i'r Ddeddf hon). Pan fo dau neu ragor o ganiatadau cyn-1948 yn ymwneud â safle, y penderfynwyd yn derfynol eu hamodau ar ddyddiadau gwahanol, mae'r tabl ym mharagraff 2(2) yn nodi mai'r dyddiad diweddaraf o'r dyddiadau hynny fydd yn berthnasol.

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. Mae'r ail gategori o safleoedd yn cynnwys y rhai a ddangoswyd ar restr a luniwyd o dan Atodlen 13 i Ddeddf 1995. Bydd y rhain yn safleoedd mwyngloddio lle y rhoddwyd yr holl ganiatadau mwynau neu'r rhan fwyaf ohonynt sy'n ymwneud â hwy rhwng 1 Gorffennaf 1948 ac 21 Chwefror 1982. Yn yr achos hwn, y dyddiad i'w ddefnyddio i gyfrifo amseriad yr adolygiad fydd y dyddiad y penderfynwyd yn derfynol amodau newydd y caniatadau sy'n ymwneud â'r safle o dan Atodlen 13 i Ddeddf 1995 (neu o dan Atodlen 8 i'r ddeddf hon). Mae'r dyddiad y penderfynir yn derfynol yr amodau i'w ganfod yn unol â pharagraff 1(7) o Atodlen 13 i Ddeddf 1995 (neu baragraff 5(2) o Atodlen 8 i'r Ddeddf hon).

502. Mae'r trydydd categori o safleoedd yn cynnwys y rhai nad oes ganddynt unrhyw ganiatadau cyn-1948 yn ymwneud â hwy, ac nad oeddent yn cael eu dangos ar restr a luniwyd o dan Atodlen 13 i Ddeddf 1995. Bydd hyn felly yn cynnwys safleoedd mwyngloddio lle y rhoddwyd yr holl ganiatadau mwynau neu'r rhan fwyaf ohonynt yn fwy diweddar na 21 Chwefror 1982. Yn yr achos hwn, y dyddiad i'w ddefnyddio i gyfrifo amseriad yr adolygiad o'r caniatadau sy'n ymwneud â safle fydd yn gyffredinol y dyddiad y rhoddwyd y caniatâd mwyaf diweddar o'r fath. Fodd bynnag, pan fo'r caniatâd neu'r caniatadau diweddaraf rhyngddynt yn ymwneud â rhan o'r safle yn unig, caiff yr awdurdod ystyried (yng ngoleuni unrhyw ganllawiau perthnasol gan Weinidogion Cymru) mai'r dyddiad i'w ddefnyddio i gyfrifo amseriad yr adolygiad ddylai fod pan roddwyd yr olaf o'r caniatadau eraill sy'n ymwneud â'r safle. Yn yr achos hwnnw mae'r caniatâd neu'r caniatadau mwy diweddar i'w trin fel pe baent wedi eu rhoi ar y dyddiad hwnnw (paragraff 2(3) i (5)).

503. Y pedwerydd categori yw pan fo gorchymyn wedi ei wneud o dan adran 102 yn addasu neu'n dirymu un neu ragor o'r caniatadau mwynau sy'n ymwneud â'r holl safle neu ran ohono. A'r pumed categori yw pan fo gorchymyn datbarhau wedi ei wneud o dan adran 206 mewn cysylltiad â'r defnydd o'r safle cyfan neu ran ohono ar gyfer cynnal gweithrediadau mwyngloddio neu ddyddodi gwastraff. Yn y naill achos neu'r llall, gall hyn arwain at ganiatâd newydd ar gyfer datblygiadau mwynau i bob pwrpas; ac felly pennir amseriad yr adolygiad drwy gyfeirio at ddyddiad y gorchymyn perthnasol.

504. Gall safle ddod o fewn mwy nag un o'r categorïau hyn, gan arwain at fwy nag un dyddiad ar gyfer cyfrifo'r dyddiad adolygu. Yn yr achos hwnnw y dyddiad i'w ddefnyddio fydd y diweddaraf o'r dyddiadau hynny (paragraff 2(6)).

505. Mewn perthynas â safleoedd yn y categori cyntaf a'r ail gategori, caiff rheoliadau bennu dyddiad adolygu sy'n wahanol i'r rhai a gyfrifir drwy gyfeirio at y tabl. Gallant hefyd bennu dyddiad adolygu pan na ellir pennu dyddiad drwy gyfeirio at y tabl (paragraff 2(7)).

Paragraff 3 – Dyddiadau adolygu diweddarach

506. Yn dilyn yr adolygiad cyntaf o'r caniatadau sy'n ymwneud â safle mwyngloddio, cyfrifir amseriad yr ail adolygiad ac adolygiadau dilynol gan baragraff 3. Bydd yr ail adolygiad o'r safle fel arfer yn cael ei gynnal 15 mlynedd ar ôl i'r adolygiad cyntaf hwnnw arwain at benderfynu amodau'r caniatadau yn derfynol, yn unol â pharagraff 12. Bydd pob adolygiad dilynol yn cael ei gynnal 15 mlynedd ar ôl penderfyniad terfynol yr un blaenorol.

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. Caniateir gohirio amseriad yr ail adolygiad a'r adolygiadau dilynol, fodd bynnag, o dan y weithdrefn ym mharagraff 6.

508. Gall yr adolygiad cyntaf o'r caniatadau sy'n ymwneud â safle mwyngloddio (ac mewn rhai achosion yr ail adolygiad) fod wedi ei gynnal o dan Atodlen 14 i Ddeddf 1995 cyn i'r Ddeddf hon ddod i rym. Unwaith y daw'r Ddeddf hon i rym, bydd adolygiad o'r fath yn cael ei drin fel pe bai wedi ei gynnal o dan Atodlen 9 i'r Ddeddf hon, yn rhinwedd adran 35 o Ddeddf Deddfwriaeth (Cymru) 2019. Bydd yr adolygiad nesaf sy'n ofynnol gan Atodlen 9 felly yn ail adolygiad o'r caniatadau neu'n adolygiad dilynol, a bydd dyddiad yr adolygiad hwnnw fel arfer 15 mlynedd ar ôl i'r adolygiad blaenorol arwain at benderfynu eu hamodau'n derfynol.

Paragraffau 5 a 6 – Hysbysiad o adolygiad cyfnodol; Cais i ohirio'r dyddiad adolygu

509. Unwaith y bydd dyddiad adolygu ar gyfer y safle mwyngloddio wedi ei gyfrifo yn unol â pharagraffau 2 a 3, mae paragraff 5(1) yn ei gwneud yn ofynnol i'r awdurdod cynllunio gyflwyno hysbysiad o adolygiad o leiaf flwyddyn cyn y dyddiad hwnnw i bawb y mae'r awdurdod yn ystyried ei fod yn berson a chanddo un neu ragor o fuddiannau. At y diben hwn, "person a chanddo un neu ragor o fuddiannau" yw:

a. rhydd-ddeiliad unrhyw dir sydd wedi ei gynnwys yn y safle;

b. unrhyw ddeiliad les mewn tir o'r fath sydd ag o leiaf saith mlynedd yn weddill; ac

c. unrhyw un sydd â buddiant mewn unrhyw fwyn yn y safle (gweler paragraff 15).

510. Rhaid i'r hysbysiad hwnnw bennu'r safle, nodi'r caniatadau mwynau sy'n ymwneud ag ef a nodi'r sail yr anfonir hysbysiad at y person arni (paragraff 5(2)(a) i (c)). Rhaid iddo hefyd ddatgan y dyddiad adolygu, egluro bod rhaid gwneud cais i benderfynu amodau'r caniatadau erbyn y dyddiad hwnnw ac, os na wneir cais o'r fath, y bydd y caniatâd yn darfod (paragraffau 5(2)(d), (e) ac 8). Rhaid i'r hysbysiad hefyd dynnu sylw at yr hawl i wneud cais o dan baragraff 6 i ohirio'r dyddiad adolygu a datgan y dyddiad erbyn pryd y mae rhaid gwneud cais i ohirio (paragraff 5(2)(f)).

511. O dan baragraff 5(3) i (5), os yw'r awdurdod wedi cyflwyno hysbysiad o dan baragraff 5(1) ar berson â buddiant, ond nad oes unrhyw gais gan y person hwnnw wedi dod i law'r awdurdod wyth wythnos cyn y dyddiad adolygu, rhaid iddo gyflwyno nodyn atgoffa i'r person, gan nodi'r un manylion y mae'n ofynnol eu cynnwys yn yr hysbysiad gwreiddiol (ac eithrio'r rheini sy'n ymwneud â'r hawl i wneud cais i ohirio'r dyddiad adolygu), ddim hwyrach na phedair wythnos cyn y dyddiad adolygu.

512. Caiff rheoliadau o dan baragraff 5(6) ddarparu ar gyfer cyflwyno hysbysiad neu nodyn atgoffa o dan y paragraff hwn pan na ellir darganfod enw neu gyfeiriad person a chanddo un neu ragor o fuddiannau ar ôl gwneud ymholiadau rhesymol. Mae paragraff 5(7) o'r Atodlen hon yn ei gwneud yn glir, pan fo rheoliadau o'r fath yn cael eu gwneud, y byddent yn gymwys yn lle'r rheolau o dan adran 399 ynghylch cyflwyno hysbysiadau mewn amgylchiadau o'r fath.

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. Gall person a chanddo un neu ragor o fuddiannau sy'n cael hysbysiad am adolygiad, o dan baragraff 5(1), ystyried bod yr amodau sy'n gymwys ar hyn o bryd i'r holl ganiatadau yn foddhaol ac nad oes angen eu diwygio. Yn yr achos hwnnw, caiff y person – o fewn tri mis i gael yr hysbysiad – wneud cais i ohirio'r adolygiad (paragraff 6(1) a (2)). Rhaid i gais o'r fath nodi'r amodau hynny, egluro pam y mae'r ceisydd yn ystyried eu bod yn foddhaol a chynnig dyddiad newydd erbyn pryd y dylid eu hadolygu (paragraff 6(3)).

514. Os yw'r awdurdod, ar ôl i gais o'r fath ddod i law, yn cytuno bod yr amodau presennol yn foddhaol, rhaid iddo gytuno i'r gohiriad a phenderfynu dyddiad adolygu newydd. Fel arall, rhaid iddo wrthod y cais (paragraff 6(4) a (5)). Y naill ffordd neu'r llall, rhaid iddo hysbysu'r ceisydd am ei benderfyniad (paragraff 6(6)). Pan nad yw wedi hysbysu'r ceisydd am ei benderfyniad o fewn tri mis i gael y cais, ystyrir ei fod wedi caniatáu'r cais – fel bod yr amodau presennol yn parhau ar waith a bydd y dyddiad adolygu nesaf fel y'i cynigir yn y cais (paragraff 6(7) ac (8)).

Paragraffau 7 i 14 – Ceisiadau i'w hadolygu

515. Ar ôl cael ei hysbysu am adolygiad cyfnodol, caiff person a chanddo un neu ragor o fuddiannau wneud cais i'r awdurdod cynllunio o dan yr Atodlen hon i benderfynu'r amodau y dylai'r caniatadau mwynau sy'n ymwneud â safle fod yn ddarostyngedig iddynt (paragraff 7(1)). Rhaid i gais o'r fath fod yn ysgrifenedig; caiff rheoliadau o dan baragraff 13 ddarparu ar gyfer gwneud cais ar-lein.

516. Rhaid i'r cais nodi:

a. y tir neu'r safle y mae'n ymwneud ag ef;

b. yr adolygiad cyfnodol y gwneir y cais mewn cysylltiad ag ef (er enghraifft, yr adolygiad cyntaf neu'r ail adolygiad sy'n ymwneud â'r safle);

c. y caniatadau mwynau sy'n ymwneud ag ef; a

d. y tir y mae gan y ceisydd fuddiant ynddo (paragraff 7(2)(a) i (c)).

517. Rhaid i'r cais hefyd ddangos unrhyw un arall, a'i gyfeiriad, a fyddai â hawlogaeth ar hyn o bryd i wneud cais o'r fath (paragraff 7(2)(d)). Ymhellach, pan fo rheoliadau o dan adran 58 yn ei gwneud yn ofynnol i geiswyr am ganiatâd cynllunio hysbysu perchnogion eraill ar y tir o dan sylw a hysbysu'r awdurdod cynllunio y cydymffurfiwyd â'r gofynion hynny, mae'r gofynion hynny'n gymwys i'r un graddau i gais o dan yr Atodlen hon (paragraff 7(3)). Mae'r darpariaethau hyn yn galluogi pob person o'r fath i gael cyfle i wneud cais ei hun. Mae hynny, yn ei dro, yn galluogi'r awdurdod i ystyried buddiannau pawb o dan sylw ar un adeg, ac unrhyw sylwadau y bydd unrhyw un neu ragor ohonynt yn eu gwneud mewn perthynas â cheisiadau a wneir gan unrhyw un neu ragor o'r lleill (gweler hefyd baragraff 14).

518. Rhaid i'r cais hefyd nodi'r amodau y mae'r ceisydd yn ystyried y dylid eu cymhwyso i bob un o'r caniatadau sy'n ymwneud â'r safle a bennir yn yr hysbysiad o dan baragraff 5 (paragraff 7(2)(e)).

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. Os yw'r awdurdod wedi cyflwyno hysbysiad o dan baragraff 5 yn datgan ei fwriad i gynnal adolygiad o'r caniatadau sy'n gymwys i safle mwyngloddio penodol erbyn dyddiad penodedig, ac os nad oes cais o dan baragraff 7 wedi ei wneud i'r awdurdod erbyn y dyddiad hwnnw (neu unrhyw ddyddiad diweddarach y cytunwyd arno o dan baragraff 6) i adolygu'r amodau sydd ynghlwm wrth y caniatadau hynny, bydd y caniatadau hynny yn peidio â chael effaith i awdurdodi unrhyw ddatblygiad mwynau pellach. Byddai unrhyw amodau adfer neu ôl-ofal yn parhau i gael effaith, fodd bynnag (paragraff 8).

520. Pan wneir cais o dan baragraff 7, rhaid i'r awdurdod gydnabod bod y cais wedi dod i law (paragraff 9(1)(a)). Rhaid iddo hefyd roi cyhoeddusrwydd i'r cais os yw'n ofynnol iddo wneud hynny drwy reoliadau (paragraff 9(9)). Pan fo'r awdurdod yn ystyried bod angen rhagor o wybodaeth arno, rhaid iddo ofyn am hynny o fewn mis (paragraff 9(4) a (5)).

521. Yna rhaid i'r awdurdod benderfynu'r amodau y mae'r caniatâd i fod yn ddarostyngedig iddynt – gall y rhain fod yn ychwanegol at, neu yn lle, y rhai y mae'r caniatâd yn ddarostyngedig iddynt ar hyn o bryd (paragraff 9(1)(b) a (2)). Gweler hefyd Atodlen 5 ynghylch gosod amodau sy'n ei gwneud yn ofynnol i'r datblygiad mwynau stopio ar 21 Chwefror 2042 neu cyn hynny.

522. Pan fo'r awdurdod yn methu â hysbysu'r ceisydd am ei benderfyniad cyn diwedd y cyfnod o dri mis ar ôl i'r cais ddod i law, neu o gael yr wybodaeth bellach sydd ei hangen arno – neu o fewn cyfnod hwy y cytunir arno'n ysgrifenedig rhyngddynt – tybir ei fod wedi cytuno i'r amodau a gynigiwyd gan y ceisydd (paragraff 9(6) i (8)). Yn yr achos hwnnw, bydd y caniatâd, o'r adeg honno, yn cael effaith yn ddarostyngedig i'r amodau hynny (paragraff 12(1) a (2)(a)).

523. Mae paragraff 10 yn darparu y caiff Gweinidogion Cymru gyfarwyddo bod awdurdod i anfon cais penodol atynt o dan yr Atodlen hon, neu unrhyw gais o'r fath mewn categori penodol, fel y gallant ei benderfynu eu hunain. Rhaid iddynt hysbysu'r ceisydd pan fo hyn yn digwydd, os yw'r rheoliadau yn ei gwneud yn ofynnol iddynt wneud hynny, ac yna rhaid iddynt benderfynu'r cais yn union fel y byddai awdurdod yn ei brosesu; mae Pennod 2 o Ran 14 yn gwneud darpariaeth bellach ynghylch y weithdrefn gymwys.

524. Mae paragraff 11 yn darparu ar gyfer hawl i apelio i Weinidogion Cymru yn erbyn penderfyniad gan yr awdurdod cynllunio i osod amodau sy'n wahanol i'r rhai a gynigir yn y cais. Rhaid gwneud apêl o'r fath o fewn chwe mis drannoeth y diwrnod y mae'r awdurdod cynllunio yn gwneud ei benderfyniad ar y cais, ar ffurflen a gyhoeddir neu a ddarperir gan Weinidogion Cymru neu o dan eu hawdurdod.

525. Caiff Gweinidogion Cymru ganiatáu neu wrthod yr apêl a chânt wrthdroi neu amrywio penderfyniad yr awdurdod; mae hyn yn eu galluogi i osod amodau gwahanol. Os ydynt yn ystyried bod yr apelydd yn oedi proses apêl cânt ddyroddi rhybudd y bydd yr apêl yn cael ei gwrthod oni bai y caiff y broses ei chyflymu; os yw'r apelydd yn methu â chymryd y camau gofynnol, yna cânt wrthod yr apêl.

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. Bwriad paragraff 14 yw sicrhau bod yr holl geisiadau posibl y gellid eu gwneud mewn perthynas ag unrhyw un safle yn cael eu penderfynu ar yr un pryd. Mae'n darparu, pan fo person (A) wedi gwneud cais o dan yr Atodlen hon mewn cysylltiad â safle, ni chaiff A wneud cais arall sy'n ymwneud â'r un safle. Caiff person arall (B) wneud cais sy'n ymwneud â'r un safle – ond dim ond os nad yw cais A wedi ei benderfynu eto. Os yw B yn gwneud cais o'r fath (neu os yw B, C a D i gyd yn gwneud ceisiadau o'r fath) cyn i gais A gael ei benderfynu, yna mae'r holl geisiadau i'w penderfynu gyda'i gilydd, fel pe baent i gyd wedi eu gwneud ar y dyddiad y gwnaed y diweddaraf o'r ceisiadau. Mae hynny'n sicrhau bod yr awdurdod – neu Weinidogion Cymru – yn gallu penderfynu'r amodau a ddylai fod yn gymwys i'r holl ganiatadau o dan sylw.

527. O dan baragraff 12(1), pan fydd cais wedi ei wneud o dan baragraff 7, bydd yr amodau a bennir mewn ymateb i'r cais yn cymryd effaith cyn gynted ag y bydd y cais wedi ei benderfynu'n derfynol. Heblaw fel y nodir uchod mewn perthynas â pharagraff 9(6) i (8), bydd hynny unwaith y bydd yr awdurdod wedi penderfynu amodau'r caniatadau ac na yw'n bosibl cynnal apêl na her pellach yn y llysoedd.

Pennod 11 – Digolledu a phrynu buddiannau mewn tir

528. Y prif gam sydd ar gael i'r rhai y mae penderfyniadau cynllunio a wnaed gan awdurdodau cynllunio wedi cael effaith andwyol arnynt yw apelio i Weinidogion Cymru. Mae'r Bennod hon yn ymdrin â dau gam arall a all fod ar gael mewn rhai sefyllfaoedd pan fo penderfyniadau cynllunio yn effeithio'n andwyol ar y rhai sydd â buddiant mewn tir.

529. Yn gyntaf, gall digolledu fod ar gael pan fo perchnogion tir yn profi colled neu ddifrod am fod caniatâd cynllunio, i bob pwrpas, wedi ei dynnu'n ôl. Gall hyn ddigwydd mewn dwy sefyllfa:

    a. pan wrthodir caniatâd cynllunio ar gyfer datblygiad a ganiatawyd yn flaenorol gan orchymyn datblygu (neu orchymyn datblygu lleol), neu pan y'i rhoddir yn ddarostyngedig i amodau sy'n wahanol i'r rhai a osodwyd gan y gorchymyn, (adran 105); neu

    b. pan fo caniatâd a roddwyd yn cael ei addasu neu ei ddirymu (adran 106).

530. Mae'r darpariaethau hynny'n gymwys mewn ffordd ychydig yn wahanol pan fo'r caniatâd sy'n cael ei dynnu'n ôl, ei addasu neu ei ddirymu ar gyfer datblygiad mwynau (o dan Ran 1 o Atodlen 11). Mae hawl hefyd i ddigolledu (o dan Ran 2 o'r Atodlen honno) pan fo hawliau i weithio mwynau wedi eu cyfyngu yn dilyn adolygiad o ganiatadau mwynau o dan Atodlen 9.

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. Yn ail, er y gall digolledu fod yn llwybr priodol pan fo gwerth tir wedi ei leihau o ganlyniad i benderfyniadau penodol, mewn rhai achosion gall penderfyniadau o'r fath wneud y tir bron yn ddiwerth, o leiaf i'r perchnogion presennol. Caiff perchnogion tir felly gyflwyno hysbysiad i'r awdurdod cynllunio sy'n ei gwneud yn ofynnol i'r awdurdod brynu eu buddiant mewn tir pan berir iddo fod yn ddiwerth i bob pwrpas gan nad oes modd ei ddefnyddio o ganlyniad i'r canlynol:

a. bod caniatâd cynllunio wedi ei wrthod, neu ei roi yn ddarostyngedig i amodau; neu
b. bod caniatâd a roddwyd wedi ei addasu neu ei ddirymu (adran 110).

Adran 105 – Digolledu am wrthod caniatâd cynllunio a roddwyd yn flaenorol drwy orchymyn neu am ei roi yn amodol

532. Pan fo caniatâd cynllunio yn ofynnol ar gyfer datblygiad a ganiatawyd yn flaenorol gan orchymyn datblygu neu orchymyn datblygu lleol ac y'i gwrthodir neu y'i rhoddir yn ddarostyngedig i amodau sy'n wahanol i'r rhai a osodwyd gan y gorchymyn, gall hawl i ddigolledu godi.

533. Y senario gyntaf yw pan fo caniatâd cynllunio a roddir yn gyffredinol drwy orchymyn ar gyfer datblygiad sydd o fewn categori penodol yn cael ei dynnu'n ôl gan gyfarwyddyd o dan y gorchymyn (y cyfeirir ato'n gyffredinol fel cyfarwyddyd erthygl 4 yn achos gorchymyn datblygu) sy'n gymwys i eiddo penodol. Nid yw cyfarwyddyd o'r fath yn atal datblygiad o'r fath rhag digwydd ond mae'n golygu bod rhaid ceisio caniatâd ar ei gyfer drwy gyflwyno cais.

534. Os cyflwynir cais o'r fath, gall arwain at wrthod caniatâd neu ei roi yn ddarostyngedig i amodau sy'n wahanol i'r rhai a osodwyd gan y gorchymyn. Os gwneir y cais o fewn 12 mis i wneud y cyfarwyddyd, a bod person a chanddo un neu ragor o fuddiannau yn y tir yn dioddef colled neu ddifrod yn sgil y penderfyniad – naill ai oherwydd ei fod wedi mynd i wariant wrth gynnal gwaith (gweler adran 107 a ddaw yn ofer, neu am unrhyw reswm arall – mae gan y person hwnnw hawlogaeth i hawlio digolledu gan yr awdurdod cynllunio (is-adrannau (1), (2) a (4)).

535. Yr ail senario yw pan fo caniatâd cynllunio a roddwyd yn flaenorol gan orchymyn ar gyfer datblygiad o fewn categori penodol yn cael ei dynnu'n ôl am fod y gorchymyn ei hun wedi ei newid, ei ddiwygio neu ei ddirymu. Mae newidiadau o'r fath yn digwydd o bryd i'w gilydd ac nid ydynt yn atal datblygiad o'r fath rhag digwydd, ond maent yn golygu bod rhaid ceisio caniatâd ar ei gyfer drwy gyflwyno cais.

536. Yma hefyd, os cyflwynir cais o'r fath, gellir gwrthod caniatâd neu ei roi yn ddarostyngedig i amodau sy'n wahanol i'r rhai a osodwyd yn flaenorol gan y gorchymyn. Os gwneir y cais o fewn 12 mis i wneud y newid i'r gorchymyn, a bod person a chanddo un neu ragor o fuddiannau yn y tir yn dioddef colled neu ddifrod yn sgil y penderfyniad – eto, naill ai oherwydd ei fod wedi mynd i wariant wrth gynnal gwaith (gweler adran 107) a ddaw yn ofer, neu am unrhyw reswm arall – mae gan y person hwnnw hawlogaeth i hawlio digolledu gan yr awdurdod cynllunio (is-adrannau (1), (2) a (5)).

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. Yn y naill senario neu'r llall, rhaid cyflwyno'r hawliad am ddigolledi o fewn 12 mis i'r penderfyniad sy'n arwain ato (is-adran (3)). Ceir darpariaeth bellach ynghylch gwneud hawliad am ddigolledi a phenderfynu digolledi yn adrannau 107 i 109 a 391 i 393.

538. Fodd bynnag, yn rhinwedd is-adrannau (6)(a) a (7), nid yw'r hawl i ddigolledi o dan yr adran hon yn gymwys pan:

a. rhoddir caniatâd drwy orchymyn datblygu ar gyfer datblygiad o fewn categori a bennir mewn rheoliadau;

b. tynnir y caniatâd hwnnw yn ôl mewn ffordd a bennir mewn rheoliadau;

c. cyhoeddwyd o leiaf 12 mis o rybudd o'r tynnu'n ôl yn unol â rheoliadau; a

d. nad oedd y datblygiad wedi dechrau cyn cyhoeddi'r hysbysiad, neu mae'r gorchymyn yn caniatáu i'r datblygiad gael ei gwblhau ar ôl i'r caniatâd gael ei dynnu'n ôl.

539. Y rheoliadau sy'n gymwys at y dibenion hyn ar hyn o bryd yw rheoliadau 2 i 4 o Reoliadau Cynllunio Gwlad a Thref (Digolledu) (Cymru) (Rhif 2) 2014 (O.S. 2014/2693 (Cy. 268)).

540. Yn rhinwedd is-adrannau (6)(b) a (7), nid yw'r hawl i ddigolledi o dan yr adran hon yn gymwys pan:

a. rhoddir caniatâd gan orchymyn datblygu lleol, ac fe'i tynnir yn ôl gan gyfarwyddyd o dan y gorchymyn hwnnw, neu yn sgil diwygio neu ddirymu'r gorchymyn hwnnw;

b. cyhoeddwyd o leiaf 12 mis o rybudd o'r tynnu'n ôl yn unol â'r rheoliadau (rheoliad 5 o Reoliadau Cynllunio Gwlad a Thref (Digolledu) (Cymru) (Rhif 2) 2014 ar hyn o bryd); ac

c. nad oedd y datblygiad wedi dechrau cyn cyhoeddi'r hysbysiad, neu mae'r gorchymyn yn caniatáu i'r datblygiad gael ei gwblhau ar ôl i'r caniatâd gael ei dynnu'n ôl.

541. Canlyniad y darpariaethau hyn yw nad yw atebolrwydd yr awdurdod cynllunio am dalu digolledi ond yn codi am gyfnod cyfyngedig ar ôl i'r cyfarwyddyd gael ei wneud neu ar ôl i'r gorchymyn gael ei ddiwygio.

542. Nid yw'r hawlogaeth i ddigolledi o dan yr adran hon yn gymwys yn achos datblygiad ar dir gweithredol ymgymerwr statudol (ond gweler adrannau 319 a 321, sy'n rhoi hawlogaethau tebyg i ddigolledi yn yr achos hwnnw).

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).

Adran 106 – Digolledu pan fo caniatâd cynllunio yn cael ei addasu neu ei ddirymu

543. Pan roddir caniatâd cynllunio mewn ymateb i gais, fel arfer gellir ei weithredu ar unrhyw adeg, yn ddarostyngedig i unrhyw amod terfyn amser a allai fod wedi ei osod neu ei awgrymu. Fodd bynnag, os addesir neu os dirymir y caniatâd cyn iddo gael ei weithredu'n llawn, drwy wneud gorchymyn o dan adran 102, gall hynny arwain at berson a chanddo un neu ragor o fuddiannau yn y tir yn dioddef colled neu ddifrod – naill ai oherwydd ei fod wedi mynd i wariant wrth gynnal gwaith (gweler adran 107 isod) a ddaw yn ofer neu am unrhyw reswm arall sydd i'w briodoli i'r addasu neu'r dirymu.

544. Pan fo hynny'n digwydd, mae gan y person hwnnw hawlogaeth i wneud hawliad am ddigolledu gan yr awdurdod cynllunio (is-adrannau (1) a (2)). Rhaid gwneud hawliad o'r fath o fewn 12 mis i'r diwrnod y mae'r addasu neu'r dirymu yn cymryd effaith (is-adran (3)). Ceir darpariaeth bellach ynghylch gwneud hawliad am ddigolledu a phenderfynu digolledu o dan yr adran hon yn adrannau 107 i 109 a 391 i 393.

545. Nid yw'r hawlogaeth i ddigolledu o dan yr adran hon ond yn gymwys mewn amgylchiadau cyfyngedig pan fo'r caniatâd a addesir neu a ddirymir yn ganiatâd ar gyfer datblygu mwynau (gweler adran 109 a pharagraff 2 o Atodlen 11). Hefyd, nid yw'n gymwys o gwbl yn achos datblygiad ar dir gweithredol ymgymerwr statudol (ond gweler adrannau 319 a 321).

Adran 107 – Digolledu am newidiadau i ganiatâd cynllunio: darpariaeth atodol

546. Mae adrannau 105 a 106 ill dwy yn cyfeirio at sefyllfa pan fo digolledu yn daladwy mewn cysylltiad â gwariant yr eir iddo wrth gynnal gwaith a ddaw yn ofer oherwydd y penderfyniad. Mae is-adran (2) yn darparu bod gwaith, at y dibenion hyn, yn cynnwys nid yn unig cynnal y gwaith ei hun ond hefyd gynhyrchu planiau a materion paratoadol tebyg eraill.

547. Nid oes unrhyw ddigolledu yn daladwy o dan y naill adran na'r llall, fodd bynnag, mewn cysylltiad â gwaith a gynhaliwyd cyn rhoi'r caniatâd cynllunio sydd wedi ei dynnu'n ôl, ei addasu neu ei ddirymu, neu unrhyw beth arall a wnaed neu nas gwnaed cyn rhoi'r caniatâd hwnnw (is-adran (3)). Mae hyn yn golygu nad yw digolledu yn daladwy am waith a wnaed cyn hynny, ar sail hapfasnachol.

Adran 108 – Dosrannu ac adennill digolledu am ddibrisiant
Atodlen 10 – Dosrannu ac adennill digolledu am ddibrisiant

548. Mae Atodlen 10 yn gosod gofynion ychwanegol ar awdurdod cynllunio pan fo digolledu yn dod yn daladwy mewn cysylltiad â dibrisiant yng ngwerth tir.

549. Yn y sefyllfa honno, rhaid i'r awdurdod cynllunio ddosrannu'r digolledu am ddibrisiant rhwng y gwahanol rannau o'r tir y mae'r hawliad yn ymwneud ag ef (os yw'n ystyried ei bod yn ymarferol gwneud hynny) a hysbysu'r hawlydd a phawb arall sydd â buddiant y mae'r dosraniad yn effeithio arnynt. Yr Uwch Dribiwnlys sydd i ymdrin ag anghydfodau ynghylch dosraniad o'r fath – pan fo'n briodol, yn unol ag unrhyw benderfyniad blaenorol sy'n ymwneud â'r un mater (paragraff 2).

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. Yna rhaid i'r awdurdod hysbysu Gweinidogion Cymru fod digolledíad am ddibrisiant wedi dod yn daladwy. Rhaid i Weinidogion Cymru, yn eu tro, gyflwyno hysbysiad digolledu i'r awdurdod lleol perthnasol a, phan fo'n wahanol, yr awdurdod cynllunio. Rhaid i'r hysbysiad hwnnw bennu'r gorchymyn neu'r penderfyniad sy'n arwain at y digolledu, y tir y mae'n ymwneud ag ef, faint o ddigolledíad sydd am ddibrisiant yng ngwerth y tir hwnnw ac unrhyw ddosraniad o'r swm hwnnw o dan baragraff 2. Mae'r hysbysiad i'w gofrestru fel pridiant tir lleol (paragraff 3).

551. Yn rhinwedd paragraff 4, unwaith y bydd hysbysiad digolledu wedi ei gofrestru mewn perthynas â darn o dir, ni chaniateir cynnal unrhyw ddatblygiad o sylwedd (sy'n ddatblygiad i godi adeiladau preswyl, masnachol neu ddiwydiannol, yn weithrediadau mwyngloddio neu'n ddatblygiad gwerth uchel arall a nodir gan Weinidogion Cymru) ar y tir hwnnw hyd nes bod swm y digolledíad a ganfuwyd yn unol â pharagraff 5 wedi ei dalu i Weinidogion Cymru o dan baragraff 6.

552. O dan baragraff 5, y swm sy'n adenilladwy, mewn egwyddor, yw cyfanswm y digolledíad a dalwyd mewn gwirionedd – neu'r gyfran o'r swm hwnnw sydd i'w briodoli i'r rhan o'r tir y mae'r datblygiad i'w gynnal arno. Fodd bynnag, gellir gohirio hyn yn gyfan gwbl neu'n rhannol pan fo adennill y swm yn llawn yn debygol o atal unrhyw ddatblygiad priodol. Ac heblaw am unrhyw swm a ohiriwyd, nid oes unrhyw swm pellach yn adenilladwy os bydd datblygiad dilynol.

553. Mae'r digolledíad sy'n adenilladwy yn rhinwedd paragraff 5 yn daladwy i Weinidogion Cymru naill ai fel un taliad cyfalaf, neu fel cyfres o daliadau (gan gynnwys llog) fel y'i cyfarwyddir ganddynt, a sicrheir fel y bo'n briodol. Os datblygir y tir heb adennill y digolledíad sydd wedi ei dalu, caiff Gweinidogion Cymru gyflwyno hysbysiad i'r rhai sy'n gyfrifol yn mynnu eu bod yn talu'r swm y maent yn ystyried ei fod yn adenilladwy o fewn cyfnod a bennir yn yr hysbysiad (paragraff 6).

554. Mae paragraff 7 yn gymwys pan fo buddiant mewn tir yn cael ei gaffael yn orfodol (heblaw ar gyfer mannau agored) neu pan gaiff ei werthu drwy gytundeb i awdurdod â phwerau prynu gorfodol, a bo hysbysiad digolledu wedi ei gofrestru mewn cysylltiad â'r tir hwnnw o ganlyniad i benderfyniad cynllunio a wnaed cyn y caffaeliad. Mewn sefyllfa o'r fath, caiff Gweinidogion Cymru adennill oddi wrth yr awdurdod caffael y digolledíad sydd i'w briodoli i'r tir a gaffaelir neu a werthir.

555. Unwaith y bydd Gweinidogion Cymru wedi adennill rhan o'r digolledíad neu'r cyfan o'r digolledíad o dan baragraff 6 neu 7, rhaid iddynt wedyn dalu'r swm hwnnw i'r awdurdod cynllunio a dalodd y digolledíad yn wreiddiol, llai unrhyw swm a dalwyd ganddynt eisoes drwy grant o dan adran 395.

Adran 109 – Digolledíad am newidiadau i ganiatâd cynllunio ar gyfer datblygiad mwynau

556. Caiff unrhyw ganiatâd cynllunio a roddir awdurdodi cynnal datblygiad mwynau – hynny yw, cynnal gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau – dros sawl blwyddyn neu hyd yn oed ddegawdau. O ganlyniad, efallai y bydd angen addasu neu ddirymu caniatadau o'r fath ac maent bellach yn cael eu hadolygu o bryd i'w gilydd, o dan y weithdrefn yn Atodlen 9. Gall camau o'r fath arwain at golled neu ddifrod i'r rhai â buddiannau yn y tir o dan sylw.

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. Mae'r adran hon yn cyflwyno Atodlen 11 sy'n darparu cyfundrefn ddigolledu ychydig yn wahanol sy'n gymwys mewn achosion o'r fath. Mae Rhan 1 yn addasu'r hawlogaeth i ddigollediad o dan adran 105 neu 106; mae Rhan 2 yn ymdrin â'r hawlogaeth i ddigollediad oherwydd newidiadau a wnaed yn dilyn adolygiad cyfnodol.

Atodlen 11 – Digollediad am newidiadau i ganiatâd cynllunio ar gyfer datblygiad mwynau

Rhan 1 – Digollediad pan fo caniatâd cynllunio yn cael ei dynnu'n ôl, ei addasu neu ei ddirymu

558. Mewn egwyddor, mae'r hawlogaeth i hawlio digollediad o dan adran 105 (am benderfyniad anffafriol yn dilyn tynnu caniatâd a roddwyd drwy orchymyn datblygu yn ôl) neu adran 106 (am benderfyniad i addasu neu ddirymu caniatâd) yn gymwys i ganiatadau ar gyfer datblygiad mwynau fel mewn achosion eraill. Fodd bynnag, mae'r rheolau arferol wedi eu haddasu gan ddarpariaethau'r Atodlen hon i ymdrin ag amgylchiadau datblygiad mwynau. Caiff rheoliadau a wneir o dan adran 394(1)(a) wneud addasiadau pellach.

559. O dan baragraff 1 o'r Atodlen hon, pan fo hawliad o dan naill ai adran 105 neu adran 106 yn cynnwys elfen sy'n ymwneud ag adeiladau, cyfarpar neu beiriannau a ystyrir yn ddiangen o ganlyniad i'r penderfyniad, ni fydd digollediad ond yn daladwy pan ellir dangos nad oes ganddynt unrhyw ddefnydd buddiol arall neu mai dim ond at ddiben arall sy'n arwain at golled ariannol y gellir eu defnyddio. Gall yr Uwch Dribiwnlys ymdrin â'r elfen honno o'r hawliad ar wahân.

560. Pan fo'r caniatâd yn ymwneud ag echdynnu mwynau i'w defnyddio at ddibenion amaethyddol ar yr un tir, fodd bynnag, mae'r rheolau arferol (yn ymwneud â digollediad am benderfyniadau nad ydynt yn gysylltiedig â mwynau) yn gymwys (paragraff 1(4)).

561. Yn ail, pan fo caniatâd ar gyfer datblygiad mwynau yn cael ei addasu drwy orchymyn o dan adran 102, dim ond mewn sefyllfaoedd penodol y mae digollediad (o dan adran 106) ar gael. Y sefyllfa gyntaf yw pan fo'r addasiad yn arwain at gyfyngiad ar hawliau gweithio neu'n addasu cyfyngiad sy'n bodoli eisoes (heblaw un a osodwyd gan amod adfer neu amod ôl-ofal) (paragraff 2(1) a (2)). Ystyr "cyfyngiad ar hawliau gweithio" yw newid sy'n lleihau neu'n cyfyngu ar faint yr ardal a ddefnyddir ar gyfer gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau, neu ddyfnder mwyngloddio neu uchder unrhyw ddyddodyn gwastraff, neu'r gyfradd weithio, neu'r dyddiad erbyn pryd y mae rhaid i weithrediadau ddod i ben, neu gyfanswm y mwynau y caniateir eu hechdynnu neu'r gwastraff y caniateir ei ddyddodi (paragraff 4).

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. Mae digolledi ad hefyd ar gael:

a. pan roddwyd y caniatâd sydd bellach yn cael ei addasu lai na phum mlynedd yn gynharach (paragraff 2(1) a (3)); neu

b. pan fo unrhyw un neu ragor o'r canlynol wedi digwydd, mewn perthynas â'r tir y mae'r gorchymyn yn ymwneud ag ef, yn y pum mlynedd cyn addasu'r caniatâd:
   i. gwnaed gorchymyn addasu cynharach o dan adran 102;
   ii. penderfynwyd cais i adolygu'r amodau sydd ynghlwm wrth ganiatâd, o dan Atodlen 8;
   iii. penderfynwyd cais yn derfynol i bennu amodau'r caniatadau mwynau o dan baragraff 7 o Atodlen 9;
   iv. gwnaed gorchymyn datbarhau (o dan adran 206) mewn perthynas â defnydd ar gyfer gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau; neu
   v. gwnaed gorchymyn gwahardd (o dan Ran 1 o Atodlen 15).

Ym mhob un o'r pum achos hyn, bydd hyn wedi arwain at adolygu'r caniatâd.

563. Mae hyn yn golygu y gall awdurdod cynllunio addasu caniatâd mwynau i'w gysoni â safonau presennol heb orfod talu digolledi ad, ond dim ond pan na fo'r addasiad yn cyfyngu ar hawliau gweithio a phan fo o leiaf bum mlynedd wedi mynd heibio ers i'r caniatâd gael ei roi neu ei adolygu mewn rhyw ffordd neu ei gilydd.

Rhan 2 – Digolledi ad yn dilyn adolygiad cyfnodol o ganiatadau mwynau

564. Bydd yr holl ganiatadau mwynau sy'n ymwneud â phob safle yn cael eu hadolygu o bryd i'w gilydd, o dan y weithdrefn yn Atodlen 9. Gall hyn arwain at newid yn yr amodau sydd ynghlwm wrth y caniatadau sy'n cael yr effaith o osod cyfyngiad ar hawliau gweithio (fel y'u diffinnir ym mharagraff 4). Pan fo hyn yn arwain at berson a chanddo un neu ragor o fuddiannau yn y tir yn dioddef colled neu ddifrod – naill ai oherwydd gwariant yr aed iddo wrth gynnal gwaith a ddaw yn ofer, neu am unrhyw reswm arall – mae gan y person hwnnw hawlogaeth i hawlio digolledi ad oddi wrth yr awdurdod cynllunio (paragraff 3(1) a (2)).

565. Rhaid gwneud hawliad o'r fath o fewn 12 mis i ddiwedd yr adolygiad sy'n arwain ato (paragraff 3(3)).

566. Mae "gwaith" yn cynnwys llunio planiau a materion paratoadol tebyg eraill. Fodd bynnag, nid oes unrhyw ddigolledi ad yn daladwy mewn cysylltiad â gwaith a gynhaliwyd cyn rhoi'r caniatâd cynharaf sy'n ymwneud â'r safle sydd wedi ei addasu yn ystod yr adolygiad, neu unrhyw beth arall a wnaed neu nas gwnaed cyn rhoi'r caniatâd hwnnw. Mae darpariaethau Atodlen 10 – sy'n ymdrin â dosrannu ac adennill digolledi ad – hefyd yn gymwys yma (paragraff 3(4) i (6)).

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)).

Adran 110 – Cyflwyno hysbysiad prynu pan fo caniatâd cynllunio yn cael ei wrthod, ei ddirymu neu ei wneud yn amodol

567. Pan fo:

a. caniatâd cynllunio yn cael ei wrthod gan awdurdod cynllunio neu gan Weinidogion Cymru ar apêl, neu'n cael ei roi ond yn ddarostyngedig i amodau; neu

b. caniatâd yn cael ei ddirymu neu ei addasu yn sgil gosod amodau,

efallai y bydd yn bosibl parhau i ddefnyddio'r tir o dan sylw at ei ddiben presennol, neu gael caniatâd cynllunio ar gyfer rhyw fath arall o ddatblygiad.

568. Fodd bynnag, gall fod:

a. y tir yn annefnyddiadwy yn ei gyflwr presennol;

b. pan fo caniatâd wedi ei roi yn ddarostyngedig i amodau, neu pan fo caniatâd wedi ei addasu drwy osod amodau newydd, na ellir gwneud y tir yn ddefnyddiadwy drwy gynnal y datblygiad y mae'r caniatâd yn ymwneud ag ef yn ddarostyngedig i'r amodau hynny; ac

c. na ellir gwneud y tir yn ddefnyddiadwy drwy gynnal unrhyw ddatblygiad arall y rhoddwyd caniatâd ar ei gyfer, neu y mae'r awdurdod cynllunio neu Weinidogion Cymru wedi ymrwymo i roi caniatâd ar ei gyfer.

Gallai hyn ddigwydd, er enghraifft, pan fo darn bach o dir trefol yn wag ar hyn o bryd ac oherwydd ei faint, ei dopograffeg a'i gyflwr, nad oes posibilrwydd realistig iddo gael ei ddatblygu at unrhyw ddiben o gwbl.

569. Pan fo perchennog ar fuddiant mewn tir yn honni bod y tir yn annefnyddiadwy ar ôl penderfynu cais cynllunio neu wneud gorchymyn yn addasu neu'n dirymu caniatâd, caiff y perchennog gyflwyno hysbysiad prynu i'r awdurdod cynllunio. Hynny yw, hysbysiad sy'n ei gwneud yn ofynnol i'r awdurdod brynu buddiant y perchennog yn y tir (is-adran (2)). Mae hyn i bob pwrpas yn broses gaffael orfodol i'r gwrthwyneb: y perchennog tir sy'n ceisio gorfodi'r awdurdod i brynu'r tir.

570. Mae tir yn "annefnyddiadwy" at y dibenion hyn os na ellir gwneud defnydd rhesymol fuddiol ohono. Wrth benderfynu hynny, nid oes unrhyw ystyriaeth i'w rhoi i ddatblygiad na roddwyd caniatâd ar ei gyfer, ac nad yw'r awdurdod cynllunio na Gweinidogion Cymru wedi ymrwymo i roi caniatâd ar ei gyfer. Nid yw tir yn annefnyddiadwy os achoswyd ei gyflwr presennol gan dor rheolaeth gynllunio ac y gellid ei unioni drwy gymryd camau sydd wedi neu y gellid bod wedi eu gwneud yn ofynnol gan hysbysiad gorfodi (Atodlen 12, paragraff 1).

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. Nid oes hawl i gyflwyno hysbysiad prynu ar y sail bod tir yn annefnyddiadwy oherwydd bod caniatâd wedi ei roi yn ddarostyngedig i amodau terfyn amser – hynny yw, amodau o dan adran 93 (o ran pryd y mae rhaid dechrau datblygiad), o dan adran 94 (o ran pryd y mae rhaid cyflwyno materion a gadwyd yn ôl i'w cymeradwyo) neu o dan Atodlen 5 (o ran pryd y mae rhaid i ddatblygiad mwynau ddod i ben) (is-adran (4)).

572. Pan fo tir yn annefnyddiadwy dim ond oherwydd bod hysbysiad datbarhau wedi ei wneud mewn perthynas ag ef, caniateir cyflwyno hysbysiad prynu o dan adran 211 yn hytrach nag o dan yr adran hon (is-adran (5)).

573. Pan fo adeilad rhestredig mewn cyflwr gwael, caiff yr awdurdod cynllunio gyflwyno hysbysiad atgyweirio i berchnogion yr adeilad o dan adran 138 o Ddeddf 2023, gan eu hysbysu y bydd yr awdurdod cynllunio yn caffael yr adeilad yn orfodol oni bai bod atgyweiriadau penodedig yn cael eu gwneud. Pan fo hysbysiad o'r fath wedi ei gyflwyno, nid oes gan berchennog ar yr adeilad hawlogaeth i gyflwyno hysbysiad prynu o dan yr adran hon mewn cysylltiad ag ef nes bod o leiaf dri mis wedi mynd heibio ers cyflwyno'r hysbysiad atgyweirio. Mae hynny'n golygu y gellir penderfynu'r sefyllfa o ran defnyddioldeb y tir yn sgil unrhyw waith a wnaed i'r adeilad mewn ymateb i'r hysbysiad atgyweirio (is-adran (6)(a)).

574. Ni chaniateir ychwaith gyflwyno hysbysiad prynu mewn cysylltiad ag adeilad rhestredig os yw caffaeliad gorfodol yr adeilad wedi dechrau yn ystod y cyfnod hwnnw o dri mis, o dan adran 137 o Ddeddf 2023, oni roddwyd y gorau i'r broses gaffael wedi hynny (is-adrannau (6)(b) a (7)).

575. Mae'r gofynion manwl o ran cyflwyno hysbysiad prynu i'r awdurdod cynllunio wedi eu nodi yn Rhan 2 o Atodlen 12. Nodir y camau sydd i'w cymryd gan yr awdurdod a chan Weinidogion Cymru ar ôl cyflwyno hysbysiad prynu yn Rhan 3 o'r Atodlen honno. Nodir darpariaethau arbennig o ran hysbysiadau prynu sy'n effeithio ar dir amaethyddol yn Rhan 4.

Atodlen 12 – Hysbysiadau prynu

576. Mae'r Atodlen hon yn nodi'r gofynion a'r gweithdrefnau manwl o ran cyflwyno hysbysiad prynu a'r camau sydd i'w cymryd ar ôl cyflwyno hysbysiad, a'r rheolau arbennig sydd i'w cymhwyso yn achos hysbysiad sy'n ymwneud â thir amaethyddol.

577. Mae'r Atodlen yn gymwys i'r un graddau i gyflwyno hysbysiad prynu ar ôl gwneud gorchymyn datbarhau (gweler adran 213).

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).

Rhan 2 – Cyflwyno hysbysiad prynu

578. O dan baragraff 3(1), ni chaiff perchennog ar fuddiant preifat yn nhir y Goron ond cyflwyno hysbysiad prynu mewn cysylltiad â'r buddiant hwnnw os yw:

a. y buddiant wedi ei gynnig yn gyntaf i awdurdod priodol y Goron am bris a fyddai i'w gael pe bai hysbysiad prynu yn cael ei gyflwyno yn y modd arferol; a

b. y cynnig hwnnw wedi ei wrthod.

Diffinnir "tir y Goron" ac "awdurdod priodol y Goron" yn adran 401.

579. Dim ond awdurdod priodol y Goron a gaiff gyflwyno hysbysiad prynu mewn perthynas â buddiant y Goron neu fuddiant Dugiaeth mewn tir sy'n rhan o Ystad y Goron, neu sy'n perthyn i'w Fawrhydi yn hawl Ei ystadau preifat neu Ddugiaeth Caerhirfryn, neu sy'n perthyn i Ddugiaeth Cernyw. Ni chaiff unrhyw un gyflwyno hysbysiad mewn cysylltiad â buddiant y Goron neu fuddiant Dugiaeth mewn unrhyw dir arall (paragraff 3(2) a (3)).

580. Rhaid i hysbysiad prynu ymwneud â'r holl dir y mae'r penderfyniad cynllunio neu'r gorchymyn o dan sylw yn ymwneud ag ef. Ni chaiff gynnwys unrhyw dir arall (paragraff 4(1)).

581. Pan gyflwynir yr hysbysiad yn dilyn penderfyniad ar gais cynllunio, rhaid ei gyflwyno o fewn 12 mis i'r dyddiad y gwneir y penderfyniad gan yr awdurdod cynllunio – neu o fewn 12 mis i ddyddiad penderfyniad Gweinidogion Cymru neu arolygydd yn achos apêl. Pan fo'r hysbysiad yn codi am fod gorchymyn yn addasu neu'n dirymu caniatâd, rhaid ei gyflwyno o fewn 12 mis i'r dyddiad y mae'r gorchymyn yn cymryd effaith. Pan fo'r hysbysiad yn codi oherwydd gorchymyn datbarhau, rhaid ei gyflwyno o fewn 12 mis i'r dyddiad y mae'r gorchymyn yn cymryd effaith. Caiff Gweinidogion Cymru estyn y terfynau amser hyn mewn achos penodol os oes rheswm da dros wneud hynny (paragraff 4(2) i (4)). Caiff rheoliadau ddarparu ar gyfer manylion ei gyflwyno.

582. Ni chaniateir diwygio hysbysiad prynu unwaith y mae wedi ei gyflwyno. Fodd bynnag, nid yw hynny'n atal y person a wnaeth ei gyflwyno rhag cyflwyno hysbysiad pellach mewn cysylltiad â'r un penderfyniad; yn yr achos hwnnw trinnir yr hysbysiad cynharach fel pe bai wedi ei dynnu'n ôl, oni bai bod y person yn datgan fel arall (paragraff 4(6) a (7)).

Rhan 3 – Camau gweithredu yn dilyn cyflwyno hysbysiad prynu ac effaith hysbysiad

583. Pan fo person wedi cyflwyno hysbysiad prynu i awdurdod cynllunio, rhaid i'r awdurdod gyflwyno hysbysiad derbyn neu hysbysiad gwrthod i'r person o fewn tri mis (paragraff 5(1) a (4)).

584. Pan fo'r awdurdod yn cyflwyno hysbysiad derbyn i berson yn datgan bod yr awdurdod (neu awdurdod lleol penodedig arall) yn fodlon prynu buddiant y person yn y tir, ystyrir bod yr awdurdod wedi ei awdurdodi i gaffael buddiant y person yn orfodol o dan adran 263, a'i fod wedi cyflwyno hysbysiad i drafod telerau mewn cysylltiad â'r buddiant hwnnw.

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. Pan fo'r awdurdod yn cyflwyno hysbysiad derbyn yn datgan bod ymgymerwr statudol wedi cytuno i'w brynu, ystyrir bod yr ymgymerwr wedi ei awdurdodi i gaffael buddiant y person yn orfodol o dan y deddfiad sy'n ei alluogi i gaffael tir mewn amgylchiadau eraill, ac wedi cyflwyno hysbysiad i drafod telerau (paragraff 5(2) a (5)).

586. Pan fo'r awdurdod yn cyflwyno hysbysiad gwrthod i berson sy'n datgan nad yw'n fodlon prynu buddiant y person, ac nad yw wedi gallu dod o hyd i awdurdod arall neu ymgymerwr statudol sy'n fodlon ei brynu, rhaid iddo yn gyntaf anfon copi o'r hysbysiad prynu a'r hysbysiad gwrthod at Weinidogion Cymru (paragraff 5(3) a (6)).

587. Os yw Gweinidogion Cymru yn ystyried bod y tir yn annefnyddiadwy, rhaid iddynt mewn egwyddor gadarnhau'r hysbysiad prynu, er y cânt roi awdurdod lleol arall neu ymgymerwr statudol yn lle'r awdurdod cynllunio y cyflwynwyd yr hysbysiad iddo (paragraff 6(2) a (10)).

588. Fodd bynnag, yn hytrach na chadarnhau'r hysbysiad prynu, caiff Gweinidogion Cymru i bob pwrpas amrywio neu wrthdroi'r penderfyniad a arweiniodd at gyflwyno'r hysbysiad, er mwyn sicrhau nad yw'r tir yn annefnyddiadwy mwyach. Hynny yw, cânt roi caniatâd ar gyfer datblygiad a wrthodwyd gan yr awdurdod, adfer y caniatâd a ddirymwyd gan yr awdurdod, amrywio neu ddileu'r amodau, neu ddirymu neu ddiwygio gorchymyn datbarhau (paragraff 6(3) a (7)). Neu gallant benderfynu y dylid rhoi caniatâd ar gyfer datblygiad arall a fyddai'n gwneud y tir yn ddefnyddiadwy, ac os felly cânt gyfarwyddo'n unol â hynny (paragraff 6(4) a (5)). Wrth ystyried a ddylid rhoi unrhyw ganiatâd cynllunio, rhaid iddynt roi sylw i'r cynllun datblygu ac unrhyw ystyriaethau perthnasol eraill (paragraff 6(6)).

589. Weithiau rhoddir caniatâd cynllunio ar gyfer datblygiad ar safle mwy, fel nad adeiladir ar ran o'r safle ac fel bod iddi ddefnydd cyfyngedig. Er enghraifft, llain o dir agored i sicrhau bod datblygiad tai newydd a rheilffordd gyfagos wedi eu gwahanu, neu ardal agored sydd wedi ei thirlunio i ddarparu tir amwynder naill ai ar gyfer y datblygiad neu ar gyfer yr ardal gyfagos. Os gwrthodir caniatâd cynllunio ar ôl hynny i adeiladu ar y rhan honno, gan arwain at gyflwyno hysbysiad prynu, caiff yr awdurdod ei wrthod a chaiff Gweinidogion Cymru wrthod ei gadarnhau os ydynt o'r farn y dylai'r rhan aros heb adeiladu arni (paragraff 7).

590. Cyn cymryd unrhyw gamau mewn perthynas â hysbysiad prynu a anfonir atynt, rhaid i Weinidogion Cymru yn gyntaf egluro'r hyn y maent yn bwriadu ei wneud ag ef i'r holl bartïon a chanddynt un neu ragor o fuddiannau – y person a gyflwynodd yr hysbysiad, yr awdurdod cynllunio ac unrhyw awdurdod lleol arall neu ymgymerwr statudol y maent yn cynnig ei roi yn lle'r awdurdod cynllunio. Rhaid iddynt hefyd bennu cyfnod (o 28 o ddiwrnodau o leiaf) pan gaiff unrhyw un o'r partïon hynny ofyn am gyfle i gael gwrandawiad gan arolygydd. Yna cânt barhau â'r camau a gynigiwyd ganddynt yn wreiddiol neu gymryd camau eraill y maent yn ystyried eu bod yn briodol (paragraff 8).

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. Pan fo Gweinidogion Cymru yn penderfynu cadarnhau'r hysbysiad prynu, mae'r awdurdod cynllunio (neu, pan fo'n briodol, yr awdurdod lleol arall neu'r ymgymerwr statudol a roddwyd yn ei le) yn cael ei drin fel pe bai wedi ei awdurdodi i gaffael yn orfodol fuddiant y person a gyflwynodd yr hysbysiad o dan y darpariaethau caffael perthnasol, ac fel pe bai wedi cyflwyno hysbysiad i drafod telerau mewn cysylltiad â'r buddiant hwnnw – fel gyda hysbysiad a dderbyniwyd ar y dechrau (paragraff 9(1) a (2)).

592. Pan na fo Gweinidogion Cymru yn cymryd unrhyw gamau o fewn chwe mis i anfon yr hysbysiad prynu atynt (neu o fewn naw mis i gyflwyno'r hysbysiad yn wreiddiol, os yn gynt):

a. mae'r hysbysiad yn cael ei drin fel pe bai wedi ei gadarnhau; a

b. mae'r awdurdod cynllunio yn cael ei drin fel pe bai wedi ei awdurdodi i gaffael buddiant y person yn orfodol, o dan adran 263, ac fel pe bai wedi cyflwyno hysbysiad i drafod telerau mewn cysylltiad â'r buddiant hwnnw (paragraff 9(3) a (4)).

593. Fodd bynnag, nid yw'r cyfnod hwnnw o chwe (neu naw) mis yn cynnwys unrhyw gyfnod ar ôl i'r hysbysiad gael ei anfon at Weinidogion Cymru pan fydd ganddynt ger eu bron apêl naill ai o dan y Ddeddf hon neu o dan Ddeddf 2023 neu Ddeddf Sylweddau Peryglus 1990. Mae hyn yn golygu y gall apêl o'r fath gael ei phenderfynu gyntaf, cyn iddynt ystyried pa gamau i'w cymryd mewn perthynas â'r hysbysiad prynu, neu a ddylent adael iddi gael ei chadarnhau yn ddiofyn (paragraff 9(5)).

594. Os diddymir penderfyniad Gweinidogion Cymru mewn perthynas â hysbysiad prynu mewn achos yn yr Uchel Lys o dan adran 376, trinnir yr hysbysiad fel pe bai wedi ei ganslo. Os bydd hynny'n digwydd, caiff y person a'i cyflwynodd gyflwyno un arall, o fewn 12 mis i'r penderfyniad yn ymwneud â diddymu'r hysbysiad cyntaf (paragraff 10).

595. Unwaith y bydd hysbysiad prynu wedi ei dderbyn neu ei gadarnhau, ac y bernir bod hysbysiad i drafod telerau wedi ei gyflwyno, yna bydd prynu'r tir yn mynd yn ei flaen yn union fel pe bai wedi ei gaffael yn orfodol. Cais ffurfiol yw hysbysiad i drafod telerau (o dan adran 5 o Ddeddf Prynu Gorfodol 1965 (p. 56) ('Deddf 1965')) yn datgan y rhoddwyd pwerau i awdurdod i gaffael darn o dir a'i fod bellach yn barod i drafod telerau ar gyfer prynu'r tir ac yn gwahodd y derbynnydd i gytuno ar y digolledia sy'n daladwy. Os na ellir penderfynu swm y digolledia drwy gytundeb, bydd yn cael ei benderfynu gan yr Uwch Dribiwnlys (o dan adran 6 o Ddeddf 1965).

596. Pan gyflwynir hysbysiad i drafod telerau yn ystod pryniant gorfodol, gall yr awdurdod caffael ei dynnu'n ôl, o dan adran 31 o Ddeddf Digolledia Tir 1961 (p. 33) ('Deddf 1961'). Ond pan fo hysbysiad i drafod telerau yn cael ei drin fel pe bai wedi ei gyflwyno, oherwydd derbyn neu gadarnhau hysbysiad prynu o dan baragraff 5(5) neu 9(1) neu 9(3)(b), ni all yr awdurdod neu'r ymgymerwr statudol sydd i brynu'r tir ei dynnu'n ôl. Fodd bynnag, pan fo hysbysiad prynu yn cael ei dynnu'n ôl ei hun, neu'n cael ei drin fel pe bai wedi ei ganslo o dan baragraff 10, bernir wedyn fod yr hysbysiad i drafod telerau wedi ei dynnu'n ôl (paragraff 11).

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. Pan delir digolledíad am gost gwaith sydd wedi dod yn ofer yn sgil tynnu'n ôl, dirymu etc. ganiatâd cynllunio (o dan adran 105 neu 106), a bod hysbysiad prynu yn cael ei dderbyn neu ei gadarnhau yn dilyn hynny, bydd y pris a delir am gaffael y tir yn cael ei leihau yn unol â swm y digolledíad hwnnw (paragraff 12). Mae hyn yn osgoi cyfrif dwbl.

Rhan 4 – Hollti tir amaethyddol: yr hawl i wneud prynu y gweddill yn orfodol

598. Ni all hysbysiad prynu ond ymwneud â darn o dir sy'n destun penderfyniad cynllunio neu orchymyn yn addasu neu'n diddymu caniatâd cynllunio. Fodd bynnag, pan fo'n rhan o ardal fwy o dir o dan yr un berchnogaeth ac os derbynnir neu os cadarnheir hysbysiad prynu mewn perthynas â'r rhan honno fel ei bod wedi ei phrynu'n unol â hynny, y canlyniad fydd bod y person a gyflwynodd yr hysbysiad yn dal i fod yn berchen ar y rhan sy'n weddill o'r ardal fwy, na ellir ei defnyddio ar ei phen ei hun efallai.

599. Mae hon yn broblem benodol mewn perthynas â ffermdir. Felly, mae Rhan 4 o'r Atodlen hon yn darparu gweithdrefn i ymdrin â'r sefyllfa sy'n codi pan:

a. bo person sy'n berchen ar fuddiant (o fwy na les flynyddol) mewn uned amaethyddol yn cyflwyno hysbysiad prynu mewn perthynas â rhan ohoni a dderbynnir neu a gadarnheir; a

b. bo'r person hwnnw wedyn yn honni na ellir yn rhesymol ffermio'r ardal o'r uned nad effeithir arni sy'n weddill – naill ai ar ei phen ei hun neu ar y cyd â thir arall yn yr un uned neu mewn uned arall a feddiannir gan yr hawlydd (paragraff 13(1) a (2)(a)).

600. Mewn achos o'r fath, caiff yr hawlydd gyflwyno gwrth-hysbysiad i'r awdurdod yn cynnig caffael y tir, gan ei gwneud yn ofynnol i'r awdurdod brynu'r ardal o'r uned amaethyddol nad effeithir arni sy'n weddill. Ni ellir cyflwyno'r gwrth-hysbysiad mewn cysylltiad â thir sydd eisoes yn destun hysbysiad i drafod telerau am unrhyw reswm, fodd bynnag (paragraff 13(2)(b) a (6)). Ac mae paragraff 13(7) yn cadw'n benodol hawliau'r awdurdod caffael a'r perchennog tir mewn perthynas â phrynu ardaloedd ychwanegol bach o dir, o dan adran 8(2) a (3) o Ddeddf 1965.

601. Rhaid cyflwyno'r gwrth-hysbysiad o fewn deufis i drin yr hysbysiad i drafod telerau fel pe bai wedi ei gyflwyno mewn ymateb i'r hysbysiad prynu. Rhaid cyflwyno copïau o'r gwrth-hysbysiad i bawb sydd â buddiant yng ngweddill yr uned (paragraff 13(3) a (4)).

602. Unwaith y bydd gwrth-hysbysiad wedi ei gyflwyno, os nad yw'r awdurdod caffael yn ei dderbyn o fewn dau fis, caiff naill ai'r awdurdod neu'r hawlydd atgyfeirio'r mater i'r Uwch Dribiwnlys. Yna rhaid i'r Tribiwnlys benderfynu a ellir ffermio'r tir hwnnw fel uned ar wahân ar ei ben ei hun neu ar y cyd â thir perthnasol arall a chaiff naill ai gwrthod neu gadarnhau'r gwrth-hysbysiad. Os caiff y gwrth-hysbysiad ei dderbyn neu ei gadarnhau, trinnir yr awdurdod fel pe bai wedi ei awdurdodi i gaffael y buddiant yn y tir ychwanegol yn orfodol ac fel pe bai wedi cyflwyno hysbysiad i drafod telerau mewn cysylltiad â'r buddiant hwnnw (paragraff 14(1) i (4)).

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. Pan drinnir hysbysiad i drafod telerau fel pe bai wedi ei gyflwyno, o ganlyniad i dderbyn neu gadarnhau gwrth-hysbysiad o dan baragraff 14, ni all yr awdurdod caffael ei dynnu'n ôl (paragraff 14(7)). Fodd bynnag, pan fo gwrth-hysbysiad yn cael ei dynnu'n ôl ei hun, trinnir yr hysbysiad i drafod telerau wedyn fel pe bai wedi ei dynnu'n ôl (paragraff 14(6)).

604. Mae unrhyw anghydfod ynghylch y digolledia sy'n daladwy am y caffaeliad i'w benderfynu gan y Tribiwnlys, a chaiff yr hawlydd dynnu'r gwrth-hysbysiad yn ôl o fewn chwe wythnos i ddyddiad y penderfyniad hwnnw, ond dim hwyrach na hynny (paragraff 14(5)). Wrth benderfynu'r digolledia, mae gwerth y buddiant a gaffaelir i'w asesu gan ragdybio na fyddai unrhyw ganiatâd cynllunio yn cael ei roi ar gyfer unrhyw ddatblygiad o'r tir a chan anwybyddu unrhyw ganiatâd a roddwyd eisoes i'r graddau nad yw wedi ei weithredu eto (paragraff 14(8)).

605. Pan fo'r awdurdod caffael yn caffael les tir amaethyddol yn rhinwedd gwrth-hysbysiad a gyflwynir o dan baragraff 13, ond nad yw'n caffael buddiant y lesydd (h.y. y landlord), rhaid iddo gynnig ildio'r les i'r lesydd ar delerau y mae'n ystyried eu bod yn rhesymol (neu fel y'u penderfynir gan yr Uwch Dribiwnlys yn achos anghytundeb). Pan fo hyn yn arwain at yr awdurdod yn talu swm i'r lesydd am ildio'r les, a bo'r lesydd yn gwrthod ei dderbyn, caiff yr awdurdod dalu'r arian i mewn i'r llys yn unol â'r weithdrefn a nodir yn adran 9 o Ddeddf 1965 (paragraff 15(1) i (8)). Er bod yr awdurdod caffael yn dal i fod yn berchen ar y les, caiff ffermio'r tir, hyd yn oed os nad yw ei bwerau statudol yn caniatáu ar gyfer hynny fel arall (paragraff 15(9)).

Pennod 12 – Cofrestr

Adran 111 – Cofrestr o orchmynion datblygu lleol, ceisiadau cynllunio etc.

606. Mae'n bwysig bod penderfyniadau cynllunio a gwybodaeth gysylltiedig ar gael i'r cyhoedd. Mae'n sicrhau bod y rhai sy'n berchen ar dir ac yn ei feddiannu, a darpar brynwyr yn gallu rhoi trefn ar eu materion yn gywir, ac y gall pawb y mae'r system gynllunio yn effeithio arnynt, gan gynnwys aelodau'r cyhoedd, ddysgu sut mae'n cael ei weinyddu.

607. I'r perwyl hwnnw, mae'n ofynnol i bob awdurdod cynllunio gadw cofrestr sy'n cynnwys gwybodaeth, fel y'i pennir mewn rheoliadau, sy'n ymwneud â cheisiadau amrywiol a rhai penderfyniadau ynghylch apelau gorfodi (is-adran (1)(b) i (g)). Rhaid ei chadw fel sy'n ofynnol gan reoliadau a gaiff hefyd ei gwneud yn ofynnol i gategorïau gwahanol o wybodaeth gael eu cadw mewn rhannau ar wahân (is-adrannau (3)(a) a (5)).

608. Mewn perthynas â cheisiadau o wahanol fathau, rhaid i'r rheoliadau hynny ei gwneud yn ofynnol bod y gofrestr yn cynnwys gwybodaeth ynghylch sut yr ymdriniwyd â phob cais (is-adran (2)). Cânt hefyd ei gwneud yn ofynnol bod rhan o'r gofrestr yn cynnwys copi o bob cais a'r deunyddiau a gyflwynwyd gyda'r cais a bod pob cofnod sy'n ymwneud â'r cais yn cael ei ddileu o'r rhan honno unwaith y bydd y cais (ac unrhyw apêl gysylltiedig) wedi ei waredu yn derfynol (is-adran (3)(b) ac (c)).

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. Mae'r gofynion cyfredol yn erthygl 29 o Orchymyn 2012. Maent yn pennu bod rhaid i bob awdurdod cynllunio gadw cofrestr mewn tair rhan:

a. mae Rhan Un i gynnwys manylion pob cais a wneir i'r awdurdod am ganiatâd cynllunio neu ar gyfer cymeradwyo materion a gadwyd yn ôl nad ydynt wedi eu gwaredu yn derfynol.

b. mae Rhan Dau i gynnwys manylion llawn ceisiadau yn y categorïau a ganlyn a sut yr ymdriniwyd â hwy (gan gynnwys unrhyw benderfyniad cysylltiedig gan Weinidogion Cymru):
   i. ceisiadau a wneir i'r awdurdod am ganiatâd cynllunio, cymeradwyaethau ar gyfer materion a gadwyd yn ôl a newidiadau ansylweddol a gymeradwywyd o dan adran 100;
   ii. ceisiadau i gymeradwyo datblygiad brys y Goron o dan adran 85;
   iii. ceisiadau i benderfynu amodau caniatadau mwynau neu i ohirio dyddiadau adolygu, o dan Atodlenni 8 a 9; a
   iv. ceisiadau am dystysgrifau cyfreithlondeb, o dan Ran 5.

   Mae hefyd i gynnwys caniatadau a thystysgrifau a roddwyd mewn ymateb i apêl gorfodi, gan gynnwys manylion rhwymedigaethau cynllunio cysylltiedig o dan adran 165 a chytundebau o dan adran 278 o Ddeddf 1980.

c. mae Rhan Tri i gynnwys manylion yr holl orchmynion datblygu lleol a gynigiwyd neu a wnaed gan yr awdurdod, gan gynnwys rhesymau drostynt.

610. Rhaid i'r gofrestr fod ar gael i'r cyhoedd edrych arni ar bob adeg resymol (is-adran (6)); er y caniateir codi tâl (o dan adran 360) i edrych arni, neu i gopïo eitemau ynddi. Mae Erthygl 29 o Orchymyn 2012 yn darparu y caniateir cadw'r gofrestr gyfan ym mhrif swyddfa'r awdurdod; neu caniateir cadw rhannau ohoni ar wahân ac ar gael yn gyfleus i'r rhan o'r awdurdod y mae'n ymwneud â hi. Caiff yr awdurdod hefyd sicrhau bod y gofrestr ar gael i'r cyhoedd edrych arni ar wefan a gynhelir at y diben hwnnw.

RHAN 4 – GORFODI

611. Mae angen mecanwaith gorfodi ar unrhyw system reoleiddio os yw am fod yn effeithiol. Nid yw cynllunio yn wahanol o ran hynny; ac mae pob Deddf Gynllunio ers 1947 wedi cynnwys mecanwaith o'r fath. Mae'r Rhan hon o'r Ddeddf yn disodli'r darpariaethau presennol a dylid ei darllen ar y cyd â'r canllawiau perthnasol yn *Llawlyfr Rheoli Datblygu* a Chylchlythyr 24/97 *(Gorfodi rheolaeth gynllunio: darpariaethau deddfwriaethol a gofynion gweithdrefnol)* Llywodraeth Cymru.

Adran 112 – Ymadroddion a ddefnyddir mewn cysylltiad â gorfodi

612. Mae'r adran hon yn egluro ystyr ymadroddion allweddol penodol a ddefnyddir yn y Rhan hon o'r Ddeddf.

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. Mae is-adran (1) yn ymdrin â "tor rheolaeth gynllunio" sef pan fo:

a. datblygiad y mae caniatâd cynllunio yn ofynnol ar ei gyfer yn cael ei gynnal, ond heb fod caniatâd cynllunio wedi ei roi; neu

b. datblygiad y rhoddwyd caniatâd ar ei gyfer yn cael ei gynnal ond heb gydymffurfio ag un neu ragor o amodau sydd ynghlwm wrth y caniatâd hwnnw.

614. Nid yw tor rheolaeth gynllunio yn drosedd ynddo'i hun. Gall toriad arwain at gamau gorfodi, fodd bynnag, os yw hynny'n briodol. Yna, y methiant i gydymffurfio ag, er enghraifft, hysbysiad tor amod neu hysbysiad gorfodi yw'r hyn a allai ffurfio trosedd.

615. Diffinnir "cymryd cam gorfodi", yn is-adran (2), fel dyroddi hysbysiad rhybuddio am orfodi, cyflwyno hysbysiad tor amod neu ddyroddi hysbysiad gorfodi. Dyma'r tri math o gamau o sylwedd sy'n destun y Rhan hon o'r Ddeddf. Mae pob un yn ymdrin â math gwahanol o doriad:

a. hysbysiad rhybuddio am orfodi, pan fo'r datblygiad anawdurdodedig o fath fel y byddai'n debygol y byddai caniatâd cynllunio yn cael ei roi ar ei gyfer pe bai cais am ganiatâd yn cael ei wneud; a

b. hysbysiad tor amod neu hysbysiad gorfodi, pan fo'r toriad o fath fel bod angen ei unioni.

616. Mae'r mathau eraill o gamau yr ymdrinnir â hwy yn y Rhan hon – dyroddi hysbysiad stop dros dro neu hysbysiad stop a cheisio gwaharddeb – wedi eu cynllunio i ymdrin â sefyllfaoedd brys a allai godi, ac mae camau gorfodi o sylwedd fel arfer yn eu dilyn.

617. Mae is-adran (3)(a) yn egluro, yn y Rhan hon o'r Ddeddf, fod amod mewn caniatâd cynllunio yn cynnwys cyfyngiad. Mae hyn yn osgoi'r posibilrwydd o anghydfodau anfuddiol ynghylch pa un a yw cyfyngiad penodol yn amod neu'n gyfyngiad.

618. Mae is-adran (3)(b) yn egluro, yn y Rhan hon o'r Bil, nad yw cyfeiriad at ddefnydd o dir yn gyffredinol yn cynnwys cyfeiriad at y defnydd o dir ar gyfer cynnal gweithrediadau (hynny yw, adeiladu, peirianneg, mwyngloddio neu weithrediadau eraill).

619. Fodd bynnag, mae cyfeiriadau at ddatbarhau defnydd o dir yn adrannau 128(6)(a)(ii) a 143(2) yn cynnwys datbarhau defnydd i gynnal gweithrediadau mwyngloddio.

Adran 113 – Terfynau amser i gymryd cam gorfodi

620. Mae'r adran hon yn darparu na chaniateir cymryd camau gorfodi ar ôl diwedd cyfnod penodol ar ôl i dor rheolaeth gynllunio ddigwydd. Mae'r terfynau amser hyn, a nodir mewn tabl sy'n ffurfio rhan o is-adran (1), wedi eu cynllunio i daro cydbwysedd rhwng rhoi amser i awdurdod ymchwilio'n iawn i'r hyn sydd wedi digwydd – a'r hyn y dylid ei wneud yn ei gylch – a rhoi sicrwydd i berchnogion tir, meddianwyr neu ddarpar brynwyr na fyddant o dan fygythiad am byth o gamau gorfodi'n cael eu cymryd.

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. Yn achos gweithrediadau ar dir (hynny yw, gweithrediadau adeiladu, peirianneg, mwyngloddio neu weithrediadau eraill mewn tir, ar dir, dros dir neu o dan dir), y terfyn amser yw pedair blynedd.

622. Mae'r terfyn amser pedair blynedd hefyd yn gymwys pan fo defnydd o adeilad yn cael ei newid, naill ai:

a. o ddefnydd amhreswyl i'w ddefnyddio fel un annedd neu ragor; neu

b. o ddefnydd fel un annedd neu ragor i'w ddefnyddio fel nifer gwahanol o anheddau (er enghraifft, o ddefnydd fel dau fflat deulawr i'w ddefnyddio fel pum fflat).

623. Gall newidiadau defnydd o'r fath fod yn annymunol mewn rhai achosion ac felly yn cyfiawnhau cymryd camau gorfodi. Fodd bynnag, mae terfyn amser byrrach ar gyfer cymryd camau gorfodi yn rhoi rhywfaint o sicrwydd i feddianwyr anheddau a'u teuluoedd, yn enwedig pan nad hwy oedd yn gyfrifol am y newid.

624. Mae terfyn amser o ddeng mlynedd yn gymwys mewn perthynas ag unrhyw dor rheolaeth gynllunio arall – yn benodol, unrhyw newid defnydd arall ac unrhyw dor amod.

625. Mae pob un o'r terfynau amser hyn fel arfer yn dechrau o ddyddiad y tor rheolaeth gynllunio perthnasol. Fodd bynnag, pan fo camau gorfodi eisoes wedi eu cymryd, mae'r cyfnod yn dechrau o ddyddiad y camau hynny. Er enghraifft, os yw gweithrediad anawdurdodedig yn digwydd yn 2020 a bod awdurdod yn dyroddi hysbysiad gorfodi yn 2022, caiff ddyroddi hysbysiad diwygiedig hyd at 2026 (is-adran (2)(b)).

626. Ymhellach, pan fo hysbysiad gorfodi wedi ei ddyroddi mewn perthynas â methiant i gydymffurfio ag amod, nid yw hynny'n atal dyroddi hysbysiad tor amod (is-adran (2)(a)).

Adran 114 – Pŵer awdurdod cynllunio i gyflwyno hysbysiad ymchwilio am orfodi

627. Pan ymddengys y gallai tor rheolaeth gynllunio fod wedi digwydd, mae angen i'r awdurdod cynllunio yn gyntaf gael gwybodaeth gywir ynghylch yr hyn sydd wedi digwydd. I'r perwyl hwn, caiff gyflwyno "hysbysiad ymchwilio am orfodi" o dan adran 114 i unrhyw berchnogion neu feddianwyr ar y tir o dan sylw ac i unrhyw un arall sy'n cynnal gweithrediadau ar y tir neu'n ei ddefnyddio, o dan is-adran (2). Cyfeiriwyd at hysbysiad o'r fath fel "planning contravention notice" yn Neddf 1990.

628. Rhaid i'r hysbysiad bennu'r hyn y mae'r awdurdod yn ystyried ei fod yn dor rheolaeth gynllunio a'i gwneud yn ofynnol i'r derbynyddion ddarparu hynny o wybodaeth ag y gallant o ran yr hyn sy'n digwydd ar y tir. Er enghraifft, gall ofyn am ba hyd y mae unrhyw weithrediadau wedi bod yn digwydd yno, pryd y dechreuodd defnydd o'r tir a pha un a gydymffurfir ag unrhyw amodau cynllunio. Gall hefyd ei gwneud yn ofynnol darparu gwybodaeth ynghylch enwau a manylion cyswllt pawb sy'n gysylltiedig â'r tir a'r gweithgareddau sy'n digwydd arno (is-adrannau (3) i (5)).

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. O dan is-adrannau (6) a (7), caiff yr hysbysiad hefyd bennu amser a man lle y bydd yr awdurdod yn ystyried unrhyw gynnig gan dderbynyddion yr hysbysiad i ymatal rhag cynnal y gweithrediadau neu'r gweithgareddau sy'n digwydd ar hyn o bryd, i wneud cais am ganiatâd cynllunio i'w hawdurdodi neu i wneud gwaith unioni. Mae hyn yn rhoi cyfle iddynt i roi eu hochr hwythau o'r stori a gwneud cynnig i unioni'r tor rheolaeth gynllunio ac unrhyw niwed a allai fod wedi ei achosi, heb fod angen i'r awdurdod gymryd camau gorfodi pellach.

630. O dan is-adran (8), rhaid i'r hysbysiad hysbysu'r derbynyddion am ganlyniadau posibl methu â darparu ymateb boddhaol. Yn benodol, gallai trosedd o dan adran 115 gael ei chyflawni a gallai camau gorfodi gael eu cymryd wedyn. Rhaid iddo hefyd esbonio effaith adrannau 124(6) a 152(7): er y gall digolledia fod yn daladwy weithiau yn dilyn dyroddi hysbysiad stop dros dro neu hysbysiad stop, ni fydd yr hawl i ddigolledia o'r fath am golled neu ddifrod yn gymwys os gellid bod wedi osgoi'r golled neu'r difrod drwy ddarparu gwybodaeth mewn ymateb i hysbysiad ymchwilio am orfodi.

631. Mae is-adran (9) yn ei gwneud yn ofynnol i dderbynnydd hysbysiad ymchwilio am orfodi ymateb i'r awdurdod drwy roi gwybodaeth yn ysgrifenedig.

632. Mae is-adran (10) yn darparu nad yw cyflwyno'r hysbysiad yn atal yr awdurdod cynllunio rhag cymryd unrhyw gam arall mewn cysylltiad â'r tor rheolaeth, megis cyflwyno hysbysiad stop dros dro.

Adran 115 – Y drosedd o fethu â chydymffurfio â hysbysiad ymchwilio am orfodi

633. Mae methu â chydymffurfio â gofyniad hysbysiad ymchwilio am orfodi o fewn 21 o ddiwrnodau yn drosedd o dan is-adran (1). Mae'n amddiffyniad (o dan is-adran (3)) i berson y cyflwynwyd hysbysiad iddo brofi bod gan y person esgus rhesymol dros fethu â chydymffurfio â'r gofyniad.

634. Caniateir i berson gael ei gyhuddo o drosedd o dan yr adran hon drwy gyfeirio at ddiwrnod neu gyfnod hwy, a chaniateir iddo gael ei euogfarnu o fwy nag un drosedd drwy gyfeirio at gyfnodau gwahanol (is-adran (2)).

635. O dan is-adran (4), y gosb uchaf ar euogfarn ddiannod (yn y llys ynadon) am drosedd o dan is-adran (1) yw dirwy hyd at Lefel 3 ar y raddfa safonol.

636. Fodd bynnag, os yw person yn ymateb yn fwriadol neu'n ddi-hid i hysbysiad drwy ddarparu gwybodaeth sy'n anwir neu'n gamarweiniol, mae hynny'n drosedd fwy difrifol, o dan is-adran (5). Mae is-adran (6) yn darparu bod person, ar euogfarn ddiannod am drosedd o dan is-adran (5), yn agored i dalu dirwy (ac nid oes terfyn ar swm y ddirwy y caiff y llys ei gosod). Mae'r gosb uwch yn codi oherwydd gallai'r awdurdod fynd ymlaen i wneud penderfyniadau ar sail yr hyn y mae'n ystyried ar gam ei fod yn wybodaeth gywir. Yn ogystal, mewn rhai achosion, gall datblygiad anawdurdodedig arwain at elw ariannol sylweddol i'r rheini sy'n gyfrifol, a allai felly gael eu temtio i ddarparu gwybodaeth anwir mewn ymgais i osgoi gorfod rhoi'r gorau i'w gweithgareddau.

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.

Adran 116 – Pwerau i fynd ar dir at ddibenion gorfodi

637. Efallai y bydd awdurdod sy'n ystyried camau gorfodi yn dymuno cael rhagor o wybodaeth am yr hyn sy'n digwydd ar ddarn penodol o dir. Efallai y bydd perchnogion a meddianwyr y tir yn dymuno gwrthsefyll ymyrraeth ormodol, fodd bynnag. Mae adrannau 116 i 118 yn darparu hawl mynediad i dir ond hefyd yn darparu mesurau diogelu er mwyn osgoi camddefnyddio.

638. Mae is-adran (1) yn grymuso unrhyw berson sydd wedi ei awdurdodi'n ysgrifenedig gan awdurdod cynllunio i fynd ar unrhyw dir er mwyn asesu a fu tor rheolaeth gynllunio naill ai ar y tir hwnnw neu ar unrhyw dir arall, neu i benderfynu a ddylai'r awdurdod arfer ei bwerau gorfodi o dan y Rhan hon o'r Ddeddf neu sut y dylai arfer y pwerau hynny. Unwaith y bydd unrhyw un o'r pwerau hynny wedi ei arfer er mwyn ei gwneud yn ofynnol cymryd camau, caiff person awdurdodedig fynd ar unrhyw dir i weld a yw'r camau angenrheidiol wedi digwydd mewn gwirionedd.

639. Mae pŵer gan Weinidogion Cymru o dan is-adran (2) i awdurdodi person i fynd ar unrhyw dir at ddiben eu galluogi i benderfynu pa un a ddylid dyroddi hysbysiad gorfodi neu hysbysiad stop mewn perthynas â'r tir hwnnw neu rywle arall, naill ai ganddynt hwy wrth arfer eu pwerau o dan adrannau 144 a 150 neu gan yr awdurdod. Ond ni chaniateir iddynt awdurdodi person i fynd ar dir heb ymgynghori yn gyntaf â'r awdurdod y mae'r tir y mae'r hysbysiad yn ymwneud ag ef yn ei ardal.

640. Caiff y rhai sy'n arfer pŵer i fynd ar dir o dan is-adran (1) neu (2) fynd ag unrhyw bersonau eraill sy'n angenrheidiol ar gyfer eu hymchwiliadau gyda hwy (is-adran (6)(b)).

641. Fodd bynnag, dim ond ar unrhyw adeg resymol ac os oes sail resymol dros wneud hynny y caniateir arfer y pŵer mynediad (is-adran (4)). Yn y naill achos neu'r llall, bydd yr hyn sy'n rhesymol yn dibynnu ar yr amgylchiadau. Ni chaiff person sy'n arfer y naill bŵer neu'r llall ei gwneud yn ofynnol cael mynediad i adeilad a ddefnyddir fel annedd oni bai ei fod wedi rhoi o leiaf 24 o oriau o rybudd i holl feddianwyr yr adeilad (is-adran (5)).

642. Er mwyn sicrhau nad yw'r pwerau hyn yn cael eu camddefnyddio, mae is-adran (6) yn darparu bod rhaid i'r rhai sy'n mynd ar unrhyw dir gan ddibynnu arnynt, os caiff ei herio gan berchnogion neu feddianwyr y tir neu unrhyw un sy'n gweithredu ar eu rhan, allu dangos tystiolaeth o'i awdurdodiad ac egluro pam ei fod yno. Os yw'n mynd ar dir pan fydd y perchnogion a'r meddianwyr yn absennol, rhaid iddo sicrhau bod y tir wedi ei ddiogelu yr un mor effeithiol wrth iddo adael ag y bu wrth iddo gyrraedd.

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.

Adran 117 – Gwarant i fynd ar dir

643. Gall perchnogion a meddianwyr ar dir fod yn fodlon caniatáu i'r rhai sydd wedi eu hawdurdodi gan awdurdod cynllunio neu Weinidogion Cymru fynd ar dir o dan adran 116. Fodd bynnag, mewn rhai achosion gall fod yn angenrheidiol i'r awdurdod neu Weinidogion Cymru geisio gwarant gan y llysoedd ynadon, o dan is-adrannau (1) a (3), sef, pan fo sail resymol dros fynd ar dir a naill ai:

a. bo mynediad i'r tir wedi ei wrthod (caiff cais ei drin fel pe bai wedi ei wrthod os na cheir ymateb i gais i ganiatáu mynediad o fewn cyfnod rhesymol); neu

b. bo'r amgylchiadau yn awgrymu y gellir disgwyl gwrthodiad.

644. Gall y ffaith bod awdurdod yn gallu ceisio gwarant o'r fath ddarbwyllo perchnogion a meddianwyr i ganiatáu mynediad fel na fydd angen trafferthu'r llys.

645. Bydd gwarant yn caniatáu mynediad i'r tir gan berson sydd wedi ei awdurdodi gan yr awdurdod cynllunio neu Weinidogion Cymru, ar un achlysur yn unig ac ar adeg resymol yn unig. Mae hefyd yn caniatáu i'r person awdurdodedig fynd â pherson neu bersonau eraill gydag ef (is-adrannau (4) a (5)(b)).

646. Caniateir ceisio gwarant hefyd pan fo angen gweithredu ar frys. Yn yr achos hwn, caniateir mynediad i dir ar unrhyw adeg (is-adrannau (1)(b)(ii) a (4)(b)).

647. Mae is-adran (5) yn darparu mesurau diogelu i sicrhau nad yw'r pwerau hyn yn cael eu camddefnyddio sydd yr un fath â'r rhai pan eir ar y tir o dan adran 116. Dim ond am hyd at fis ar ôl ei dyroddi y caniateir dibynnu ar y warant i sicrhau mynediad (is-adran (6)).

Adran 118 – Darpariaeth atodol ynghylch pwerau mynediad

648. Er mwyn sicrhau bod yr hawl i fynd ar dir yn effeithiol, mae is-adran (2) yn darparu ei bod yn drosedd rhwystro'n fwriadol berson sy'n arfer hawl o'r fath – naill ai o dan adran 116 neu o dan warant a geir o dan adran 117 – rhag cael mynediad neu gynnal yr ymchwiliad angenrheidiol. Gellir cosbi'r drosedd ar euogfarn ddiannod (yn y llys ynadon) drwy ddirwy hyd at Lefel 3 ar y raddfa safonol (is-adran (3)).

649. Mae is-adrannau (4) i (6), fodd bynnag, yn darparu mesurau diogelu i sicrhau nad yw'r hawl mynediad o dan y darpariaethau hyn yn cael ei chamddefnyddio. Os difrodir tir neu eitemau ar y tir wrth arfer hawl mynediad, caiff y rhai sy'n dioddef y difrod adennill digolledi oddi wrth yr awdurdod cynllunio neu Weinidogion Cymru pan fo hynny'n berthnasol. Os yw'r rhai sy'n arfer yr hawl mynediad yn darganfod gwybodaeth sy'n ymwneud â phroses weithgynhyrchu neu gyfrinach fasnach ac yna'n ei datgelu at ddibenion nad ydynt yn gysylltiedig â'r camau gorfodi, maent yn cyflawni trosedd. Gellir cosbi trosedd o'r fath ar euogfarn ddiannod drwy ddirwy (ac nid oes terfyn ar swm y ddirwy y caiff y llys ei gosod); a gellir ei chosbi ar euogfarn ar ddi tiad (yn Llys y Goron) drwy ddirwy, eto heb uchafswm i'r swm y gellir ei osod, neu ddedfryd o garchar o hyd at ddwy flynedd, neu'r ddwy.

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.

Adran 119 – Pŵer awdurdod cynllunio i ddyroddi hysbysiad rhybuddio am orfodi

650. Mewn rhai achosion, mae'n bosibl y bydd datblygiad wedi ei gynnal heb ganiatâd cynllunio sydd felly'n dor rheolaeth gynllunio, ond yr ymddengys ei fod yn dderbyniol neu y gellid ei wneud yn dderbyniol drwy amodau cynllunio. Gall hyn arwain at ddyroddi "hysbysiad rhybuddio am orfodi", o dan is-adran (1).

651. Caiff awdurdod cynllunio ddyroddi hysbysiad rhybuddio am orfodi pan fo'n ystyried y bu tor rheolaeth gynllunio ond ei fod hefyd yn ystyried ei bod yn rhesymol debygol y byddai caniatâd cynllunio yn cael ei roi ar gyfer y datblygiad o dan sylw. Wrth ystyried a yw'n rhesymol debygol y bydd caniatâd cynllunio yn cael ei roi, rhaid i'r awdurdod roi sylw i'r cynllun datblygu, ochr yn ochr ag unrhyw ystyriaethau perthnasol eraill, gan gynnwys ei bolisïau defnydd tir ei hunan ac ystyriaethau'n ymwneud â'r defnydd o'r Gymraeg; a rhaid iddo wneud ei benderfyniad yn unol â'r cynllun, oni bai bod yr ystyriaethau eraill hynny yn nodi fel arall (is-adran (2) ac adran 408(3)).

652. Rhaid i'r hysbysiad bennu'r hyn y mae'r awdurdod yn ystyried ei fod yn ffurfio tor rheolaeth gynllunio, a datgan y gellir cymryd camau gorfodi oni cheir cais cynllunio o fewn cyfnod penodedig (is-adran (3)). Ar ôl dyroddi hysbysiad, rhaid cyflwyno copi ohono wedyn i holl berchnogion a meddianwyr y tir o dan sylw ac i unrhyw un arall y byddai camau gorfodi'n cael effaith sylweddol arno pe bai'r camau hynny'n cael eu cymryd (is-adran (4)).

653. Nid yw'n bosibl dyroddi mwy nag un hysbysiad rhybuddio am orfodi mewn perthynas â'r un toriad (is-adran (5)).

654. Nid yw dyroddi hysbysiad o'r fath yn cyfyngu ar bwerau awdurdod cynllunio i gymryd camau gorfodi pellach (is-adran (6)); ac nid ychwaith yn rhwystro disgresiwn yr awdurdod wrth benderfynu unrhyw gais cynllunio a gyflwynir. Mae'n galluogi'r rhai sy'n gyfrifol am yr hyn yr ymddengys ei fod yn dor rheolaeth i geisio unioni'r sefyllfa.

Adran 120 – Pŵer awdurdod cynllunio i ddyroddi hysbysiad stop dros dro

655. Pan gynhelir gweithgaredd sy'n edrych fel tor rheolaeth gynllunio, caiff yr awdurdod cynllunio weithiau ystyried ei bod yn briodol ei atal ar unwaith. Gallai hyn, er enghraifft, ganiatáu i ymchwiliadau gael eu cynnal. Mewn sefyllfa o'r fath gall yr awdurdod cynllunio ddyroddi "hysbysiad stop dros dro", o dan is-adrannau (1) a (2), a fydd yn pennu'r gweithgaredd sy'n ymddangos fel pe bai'n dor rheolaeth gynllunio a gwahardd cynnal y gweithgaredd hwnnw. Rhaid i'r hysbysiad hefyd dynnu sylw at ganlyniadau posib diystyru'r gwaharddiad - sef erlyniad o dan adran 123. Bydd hefyd yn nodi rhesymau'r awdurdod dros ei ddyroddi.

656. O dan is-adrannau (3) a (4), rhaid arddangos copi o'r hysbysiad ar y tir, neu mor agos i'r tir ag y bo'n bosibl, i'w ddwyn at sylw'r rheini, megis contractwyr, sy'n cynnal y gweithgaredd.

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. Unwaith y bydd copi o'r hysbysiad wedi ei arddangos ar y tir, caiff yr awdurdod cynllunio hefyd gyflwyno copi i unrhyw un yr ymddengys i'r awdurdod ei fod yn berchennog neu'n feddiannydd ar y tir neu ei fod yn cynnal y gweithgaredd o dan sylw (is-adran (5)). Mae hyn yn golygu nad oes rhaid i'r awdurdod oedi cyn dyroddi ac arddangos yr hysbysiad wrth iddo ddatrys cwestiynau ynghylch perchnogaeth. Nid oes rhaid iddo ychwaith gyflwyno copi o'r hysbysiad i'r rhai sy'n cynnal y gweithgaredd, a allai fod yn amharod i gydweithredu.

Adran 121 – Cyfyngiadau ar y pŵer i ddyroddi hysbysiad stop dros dro

658. O dan is-adran (1), ni chaiff hysbysiad stop dros dro wahardd defnyddio adeilad fel annedd na chynnal gweithgareddau eraill a bennir mewn rheoliadau.

659. Yn gyffredinol, ni chaiff awdurdod ddefnyddio hysbysiad stop dros dro i wahardd gweithgaredd neu ddefnydd o dir sydd wedi bod yn digwydd am fwy na phedair blynedd (yn ddi-dor neu fel arall) heb ganiatâd cynllunio (is-adrannau (2) a (3)). Fodd bynnag, caiff hysbysiad stop dros dro wahardd cynnal gweithrediadau ar dir a dyddodi gwastraff, hyd yn oed pan fônt wedi bod yn digwydd am fwy na phedair blynedd (is-adran (4)).

Adran 122 – Hyd etc. hysbysiad stop dros dro

660. Mae hysbysiad stop dros dro yn cymryd effaith yn rhinwedd is-adran (1) cyn gynted ag y bydd copi ohono'n cael ei arddangos gyntaf ar y tir neu gerllaw'r tir y mae'n ymwneud ag ef. Yna bydd yn parhau mewn grym am 28 o ddiwrnodau, neu tan ddiwedd y cyfnod a nodir ynddo (os yw'n llai na 28 o ddiwrnodau) neu hyd nes y bydd yr awdurdod yn ei dynnu'n ôl (is-adrannau (2) a (3)).

661. Ni chaiff yr awdurdod ddyroddi hysbysiad stop dros dro arall mewn perthynas â'r un tor rheolaeth, oni bai ei fod yn cymryd camau gorfodi o'r fath yn gyntaf neu'n ceisio gwaharddeb gan y llys (is-adrannau (4) a (5)). Mae hyn yn sicrhau na ellir dyroddi cyfres o hysbysiadau stop dros dro i berchnogion a meddianwyr ar dir, na'r rhai sy'n cynnal gweithgareddau ar dir, nad oes hawl i apelio yn eu herbyn.

Adran 123 – Y drosedd o dorri hysbysiad stop dros dro

662. Am gyhyd ag y mae hysbysiad stop dros dro yn cael effaith (gweler adran 122), mae'n drosedd o dan adran 123(1) i gynnal y gweithgaredd a waherddir gan yr hysbysiad neu i beri neu ganiatáu i unrhyw un arall gynnal y gweithgaredd.

663. Caniateir i berson gael ei gyhuddo o drosedd o dan yr adran hon drwy gyfeirio at ddiwrnod neu gyfnod hwy, a chaniateir iddo gael ei euogfarnu o fwy nag un drosedd drwy gyfeirio at gyfnodau gwahanol (is-adran (2)).

664. O dan is-adran (3), mae'n amddiffyniad i berson sy'n cael ei erlyn brofi:

a. na chyflwynwyd copi o'r hysbysiad iddo; a

b. nad oedd yn gwybod (ac na ellid bod wedi disgwyl yn rhesymol iddo wybod) am ei fodolaeth.

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. Mae is-adran (4) yn darparu mai'r gosb ar euogfarn ddiannod (yn y llys ynadon) neu euogfarn ar dditiad (yn Llys y Goron) am drosedd o dan yr adran hon yw dirwy. Nid oes terfyn ar swm y ddirwy y caiff y llys ei gosod. Wrth benderfynu swm y ddirwy, rhaid i'r llys roi sylw i'r elw sy'n cronni (neu'n debygol o gronni) i'r person a euogfernir oherwydd y drosedd.

Adran 124 – Digolledi am golled neu ddifrod a achosir gan hysbysiad stop dros dro

666. Nod dyroddi hysbysiad stop dros dro yw darparu ateb tymor byr pan fo angen gweithredu ar frys, ac, er enghraifft, os bydd gan yr awdurdod cynllunio wybodaeth anghyflawn o bosibl ynghylch yr hyn sy'n digwydd ar y tir. Bydd yr hysbysiad yn dod i rym cyn gynted ag y bydd copi yn cael ei arddangos ar y safle neu'n agos ato, ac nid oes hawl apelio.

667. Felly, mae hawl o dan is-adrannau (1), (3) a (4) i hawlio digolledi (am golled a difrod a ddioddefir oherwydd yr hysbysiad) gan yr awdurdod cynllunio a ddyroddodd yr hysbysiad pan fo:

a. hysbysiad yn cael ei ddyroddi mewn perthynas â gweithgaredd sy'n digwydd sydd, ar yr adeg y mae'r hysbysiad yn cymryd effaith, wedi ei awdurdodi gan ganiatâd cynllunio a roddwyd cyn y diwrnod y mae'r hysbysiad yn cymryd effaith;

b. tystysgrif cyfreithlondeb (gweler adran 156) yn cael ei dyroddi mewn perthynas â'r gweithgaredd a bennir yn yr hysbysiad; neu

c. hysbysiad yn cael ei arddangos, ond bod yr awdurdod cynllunio yn penderfynu peidio â chymryd camau gorfodi ac yn tynnu'r hysbysiad yn ôl.

668. Nid oes hawl i ddigolledi yn codi, fodd bynnag, pan roddir caniatâd cynllunio i awdurdodi'r gweithgaredd ar neu ar ôl y diwrnod yr arddangosir yr hysbysiad stop dros dro (is-adran (2)). Nid yw digolledi yn daladwy ychwaith pan allai'r hawlydd fod wedi osgoi dioddef y golled neu'r difrod drwy ddarparu'r wybodaeth yr oedd yn ofynnol iddo ei darparu neu drwy gydweithredu â'r awdurdod cynllunio mewn unrhyw ffordd arall (is-adran (6)).

669. Pan wneir hawliad am ddigolledi mewn perthynas ag achos o fewn is-adran (1)(a) neu (b), rhaid iddo gael ei wneud yn ysgrifenedig o fewn 12 mis i'r dyddiad y mae'r hysbysiad stop dros dro yn cymryd effaith. Pan fo'n cael ei wneud mewn perthynas ag achos o fewn is-adran (1)(c), rhaid gwneud yr hawliad o fewn 12 mis i'r dyddiad y tynnir yr hysbysiad yn ôl (is-adran (7)).

Adran 125 – Pŵer awdurdod cynllunio i gyflwyno hysbysiad tor amod

670. Pan fo datblygiad yn cael ei gynnal nad yw'n unol ag un neu ragor o'r amodau sydd ynghlwm wrth ganiatâd cynllunio, gall hynny arwain at gyflwyno "hysbysiad tor amod" i'r rhai sy'n gyfrifol, o dan is-adran (1). Gall hyn fod yn lle neu yn ogystal â ddyroddi hysbysiad gorfodi mewn perthynas â thor amodau.

671. Nid oes hawl i apelio yn erbyn hysbysiad tor amod – fel y sydd yn erbyn hysbysiad gorfodi – a gall methu â chydymffurfio ag ef arwain at erlyniad ar unwaith.

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. O dan is-adrannau (2) a (3) caiff yr awdurdod cynllunio gyflwyno hysbysiad tor amod i'r rhai sy'n cynnal (neu a gynhaliodd) y datblygiad o dan sylw, sy'n peri neu'n caniatáu iddo gael ei gynnal neu i unrhyw un sy'n rheolaethu'r tir. Byddai hynny'n cynnwys perchnogion rhydd-ddaliadol neu lesddaliadol. Ond hefyd, er enghraifft, gontractwyr sy'n cynnal gweithrediadau adeiladu ar y tir heb gydymffurfio ag amodau ynghylch y dulliau gweithredu neu'n defnyddio'r deunyddiau anghywir; neu reolwr bwyty sy'n gweithredu yn groes i'r amodau ynghylch oriau agor.

673. O dan is-adran (4), rhaid i'r hysbysiad:

a. pennu'r amodau y mae'n ymwneud â hwy;

b. ei gwneud yn ofynnol i'r person y'i cyflwynir iddo sicrhau cydymffurfedd â'r amodau hynny; ac

c. pennu'r camau sydd i'w cymryd i sicrhau cydymffurfedd.

674. Rhaid i'r hysbysiad nodi o fewn pa gyfnod y mae rhaid sicrhau cydymffurfedd â'r amodau penodedig. Rhaid i'r cyfnod hwnnw fod yn 28 o ddiwrnodau o leiaf, a chaiff yr awdurdod ganiatáu mwy o amser ar gyfer cydymffurfedd drwy gyflwyno hysbysiad pellach (is-adrannau (6) i (8)).

675. O ganlyniad i adran 113(2)(a), caniateir cyflwyno hysbysiad tor amod mewn perthynas â thor amod ar unrhyw adeg pan fydd hysbysiad gorfodi yn cael effaith mewn perthynas â'r tor amod hwnnw.

676. O dan is-adrannau (9) a (10), ar ôl i awdurdod gyflwyno hysbysiad tor amod i berson, caiff dynnu'r hysbysiad yn ôl drwy gyflwyno hysbysiad pellach i'r person. Nid yw hynny'n ei atal rhag cyflwyno hysbysiad tor amod arall, fodd bynnag, er enghraifft i gywiro diffyg yn yr hysbysiad gwreiddiol, neu mewn perthynas â thor amod dilynol.

Adran 126 – Y drosedd o fethu â chydymffurfio â hysbysiad tor amod

677. O dan is-adrannau (1) a (5), mae unrhyw un y mae hysbysiad tor amod wedi ei gyflwyno iddo yn euog o drosedd os na chydymffurfir, ar ôl y cyfnod a nodir yn yr hysbysiad ar gyfer cydymffurfio (neu fel y'i haddaswyd gan unrhyw hysbysiad pellach a allai fod wedi ei gyflwyno), ag unrhyw un neu ragor o'r amodau yn yr hysbysiad, nad yw unrhyw un neu ragor o'r camau gofynnol wedi eu cymryd neu nad yw unrhyw un neu ragor o weithgareddau penodedig wedi eu stopio.

678. Caniateir i berson gael ei gyhuddo o drosedd o dan yr adran hon drwy gyfeirio at ddiwrnod neu gyfnod hwy, a chaniateir iddo gael ei euogfarnu o fwy nag un drosedd drwy gyfeirio at gyfnodau gwahanol (is-adran (2)).

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. Gall ddigwydd bod hysbysiad tor amod yn cael ei gyflwyno i rywun nad yw'n gyfrifol (neu nad yw'n gyfrifol mwyach) am y tor amod a nodwyd ynddo. Yn unol â hynny, mae'n amddiffyniad o dan is-adran (3) i'r rhai a gyhuddir o fethu â chydymffurfio brofi naill ai:

a. eu bod wedi cymryd pob cam rhesymol i sicrhau cydymffurfedd â'r amodau; neu

b. nad oedd ganddynt reolaeth mwyach dros y tir ar adeg y drosedd honedig.

680. Y gosb uchaf ar euogfarn ddiannod (yn y llys ynadon) yw dirwy hyd at Lefel 3 ar y raddfa safonol (is-adran (4)).

Adran 127 – Effaith rhoi caniatâd cynllunio neu ddileu amod ar hysbysiad tor amod

681. O dan is-adrannau (1) a (2), os cyflwynwyd hysbysiad tor amod sy'n ymwneud â thor amod sydd ynghlwm wrth ganiatâd blaenorol a roddwyd (A), ac yna rhoddir ail ganiatâd cynllunio (B) mewn cysylltiad â'r datblygiad sydd eisoes wedi ei gynnal, mae'r hysbysiad yn peidio â chael effaith i'r graddau ei fod yn anghyson â chaniatâd B.

682. O dan is-adrannau (1) a (3), os cyflwynwyd hysbysiad tor amod sy'n ymwneud â thor amod sydd ynghlwm wrth ganiatâd blaenorol a roddwyd, ac yna caiff yr amod hwnnw ei ddileu neu ei ddisodli gan amod arall, mae'r hysbysiad yn peidio â chael effaith i'r graddau y mae'n ei gwneud yn ofynnol cydymffurfio â'r hen amod.

683. Er enghraifft, os rhoddir caniatâd yn 2020 ar gyfer newid defnydd adeilad i fwyty, yn ddarostyngedig i amod na chaniateir iddo weithredu ar ôl hanner nos, gellid cyflwyno hysbysiad i weithredwr y bwyty ym mis Mawrth 2022 pe bai'r bwyty ar agor yn rheolaidd tan 12:30am, gan ei gwneud yn ofynnol cydymffurfio erbyn mis Mai 2022. Os yw'r amod, ar ryw adeg ar ôl cyflwyno'r hysbysiad, yn cael ei ddileu a'i ddisodli gan un sy'n ei gwneud yn ofynnol iddo gau am 1:00am, mae'r hysbysiad tor amod yn peidio â chael effaith. Fodd bynnag, byddai'n bosibl o hyd i'r awdurdod gyflwyno hysbysiad arall pe bai'r bwyty yn aros ar agor tan 1:30am ar ôl hynny.

684. Mae is-adran (4) yn darparu bod person yn dal yn agored i gael ei erlyn o dan adran 126 am unrhyw fethiant blaenorol i gydymffurfio â hysbysiad tor amod hyd yn oed os yw'r hysbysiad hwnnw wedi peidio â chael effaith yn gyfan gwbl neu'n rhannol yn rhinwedd yr adran hon.

685. Oni chydymffurfir â hysbysiad erbyn y dyddiad penodedig, bydd hynny'n drosedd o dan adran 126. Nid yw'r ffaith bod yr hysbysiad wedi peidio â chael effaith wedi hynny yn rhinwedd yr adran hon yn effeithio ar atebolrwydd y derbynnydd i gael ei erlyn am fethu â chydymffurfio â'r hysbysiad hyd at y dyddiad yr oedd yn peidio â chael effaith.

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.

Adran 128 – Pŵer awdurdod cynllunio i ddyroddi hysbysiad gorfodi

686. Yr awdurdod cynllunio sy'n gyfrifol am ymchwilio i achosion posibl o dor rheolaeth gynllunio a phenderfynu'r camau priodol. O blith yr holl fathau o gamau gorfodi sydd ar gael i awdurdod i ymdrin â datblygiad anawdurdodedig, dyroddi hysbysiad gorfodi yw'r math a ddefnyddir amlaf.

687. O dan is-adran (1), caiff awdurdod ddyroddi hysbysiad gorfodi os yw'n ystyried y bu tor rheolaeth gynllunio yn ei ardal (gweler adran 112(1) am yr hyn sy'n "tor rheolaeth gynllunio").

688. Mae rhai achosion o dor rheolaeth yn gymharol fach a gall amgylchiadau ffeithiol neu bersonol penodol awgrymu nad yw cymryd camau ffurfiol yn briodol. Felly gellir penderfynu yn ôl disgresiwn a ddylid dyroddi hysbysiad. Wrth ystyried a ddylid cymryd camau rhaid i'r awdurdod roi sylw i'r cynllun datblygu, ochr yn ochr ag unrhyw ystyriaethau perthnasol eraill, gan gynnwys ei bolisïau defnydd tir ei hunan ac ystyriaethau'n ymwneud â'r defnydd o'r Gymraeg; a rhaid iddo wneud ei benderfyniad yn unol â'r cynllun, oni bai bod yr ystyriaethau eraill hynny yn nodi fel arall (is-adran (2) ac adran 408(3)).

689. Mae is-adrannau (3) a (4) yn darparu bod rhaid i hysbysiad gorfodi egluro'r hyn yr ymddengys ei fod yn dor rheolaeth a pha un o'r ddau gategori yn adran 112(1) y mae'r toriad yn dod o'i fewn.

690. O dan is-adrannau (5) a (6), rhaid i hysbysiad egluro'r hyn y mae'r awdurdod cynllunio yn ei gwneud yn ofynnol ei wneud er mwyn unioni'r toriad (yn gyfan gwbl neu'n rhannol), neu unrhyw niwed i amwynder a achosir ganddo, neu'r ddau. O ran unioni'r toriad, gellir cyflawni hyn drwy:

a. gwneud i'r datblygiad anawdurdodedig gydymffurfio â thelerau unrhyw ganiatâd a roddwyd;

b. rhoi'r gorau (yn gyfan gwbl neu'n rhannol) i'r defnydd cyfredol o'r tir – ac, yn rhinwedd adran 112(3)(b), gallai hyn gynnwys defnydd ar gyfer gweithrediadau mwyngloddio; neu

c. adfer y tir i'w gyflwr cyn i'r toriad ddigwydd.

691. Mae is-adran (7) yn egluro y caiff hysbysiad gorfodi ei gwneud yn ofynnol addasu neu symud ymaith adeiladau, neu gynnal gweithrediadau. Er enghraifft, gallai hysbysiad ei gwneud yn ofynnol symud ymaith fyngalo sydd wedi ei godi heb fod unrhyw ganiatâd wedi ei roi ac adfer y tir i'w gyflwr blaenorol. Neu gallai ei gwneud yn ofynnol i'r byngalo gael ei addasu yn unol â'r hyn sydd wedi ei ganiatáu. Pan fo'r tor rheolaeth yn ymwneud â thipio gwastraff heb ganiatâd, neu'n groes i ganiatâd sydd wedi ei roi, caiff yr hysbysiad ei gwneud yn ofynnol diwygio amlinellau'r dyddodyn gwastraff sy'n deillio o hynny.

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. Pan fo adeilad wedi ei ddymchwel yn groes i reolaeth gynllunio, caiff hysbysiad gorfodi (o dan is-adrannau (9) a (10)) ei gwneud yn ofynnol codi adeilad amnewid. Yn gyffredinol, rhaid i'r adeilad amnewid hwnnw fod mor debyg â phosibl i'r un a ddymchwelwyd, ond rhaid iddo gydymffurfio â rheoliadau adeiladu ac unrhyw reoliadau o dan is-adran (10), a gall gynnwys newidiadau na fyddent wedi bod yn dor rheolaeth gynllunio pe baent wedi eu gwneud i'r adeilad gwreiddiol.

Adran 129 – Cyflwyno hysbysiad gorfodi, yr hysbysiad yn cymryd effaith etc.

693. O dan is-adrannau (1)(a) a (2), mae hysbysiad gorfodi i bennu'r dyddiad y mae i ddod i rym; yna bydd fel arfer yn dod i rym ar ddechrau'r diwrnod hwnnw. Rhaid i'r diwrnod hwnnw fod o leiaf 28 o ddiwrnodau ar ôl cyflwyno pob un o'r copïau o'r hysbysiad (adran (5)(b)) a gellir cyflwyno'r copïau ar ddyddiadau gwahanol. Yn hynny o beth, gellir cyfrifo y bydd y dyddiad y daw'r hysbysiad i rym yn fwy na 28 o ddiwrnodau ar ôl y dyddiad olaf y bydd unrhyw un o'r copïau yn debygol o gael ei gyflwyno.

694. O dan is-adrannau (1)(b) a (3), rhaid i hysbysiad gorfodi hefyd bennu o fewn pa gyfnod y mae rhaid cymryd y camau a bennir yn yr hysbysiad neu y mae rhaid i'r gweithgareddau a bennir ynddo gael eu stopio; gellir pennu cyfnodau gwahanol ar gyfer camau gwahanol neu weithgareddau gwahanol. Fel arfer, bydd y cyfnodau hynny yn cael eu pennu drwy gyfeirio at y dyddiad y daw'r hysbysiad i rym.

695. Unwaith y bydd yr awdurdod wedi dyroddi hysbysiad gorfodi, rhaid i'r awdurdod o fewn 28 o ddiwrnodau gyflwyno copi ohono i bob perchennog a pob meddiannydd ar y tir y mae'r hysbysiad yn ymwneud ag ef, ac i unrhyw berson arall sydd â buddiant yn y tir y mae'r awdurdod yn meddwl y gallai'r hysbysiad gael effaith sylweddol arno (is-adrannau (4) a (5)(a)). Os gwneir apêl yn erbyn hysbysiad gorfodi, caiff Gweinidogion Cymru (neu arolygydd ar eu rhan) wrth benderfynu arno anwybyddu'r ffaith nad yw copi o'r hysbysiad wedi cael ei gyflwyno'n gywir i berson fel sy'n ofynnol gan yr adran hon, os nad yw'r methiant wedi cael effaith andwyol ar y person hwnnw na'r apelydd (adran 132(3)).

696. Caiff rheoliadau o dan is-adran (6) bennu materion ychwanegol y mae rhaid eu cynnwys mewn hysbysiad gorfodi, ac yn benodol gallant ei gwneud yn ofynnol i bob hysbysiad gael ei gyflwyno gyda nodyn yn egluro'r hawl i apelio yn ei erbyn. Y rheoliadau cyfredol yw Rheoliadau Cynllunio Gwlad a Thref (Hysbysiadau Gorfodi ac Apelau) (Cymru) 2017 (O.S. 2017/530 (Cy. 113)) ('Rheoliadau Gorfodi 2017'). Mae rheoliad 6 ei gwneud yn ofynnol i'r hysbysiad ddatgan y rhesymau pam y mae'r awdurdod wedi dyroddi'r hysbysiad, gan gynnwys y darpariaethau perthnasol yn y cynllun datblygu, a phennu union ffiniau'r tir y mae'r hysbysiad yn effeithio arno (bydd hyn bron bob amser drwy gyfeirio at blan). Mae rheoliad 7 yn nodi'r hyn y mae rhaid ei gynnwys yn y nodyn esboniadol ynghylch yr hawl i apelio, a sut y gellir ei arfer.

Adran 130 – Amrywio hysbysiad gorfodi a thynnu hysbysiad gorfodi yn ôl

697. O dan is-adrannau (1)(b) a (2), unwaith y bydd awdurdod cynllunio wedi dyroddi hysbysiad, caiff ar unrhyw adeg amrywio neu lacio unrhyw un neu ragor o'i ofynion; yn benodol, caiff amrywio'r hysbysiad i ganiatáu mwy o amser i gydymffurfio. Gall yr awdurdod hefyd, o dan is-adran (1)(a), dynnu'r hysbysiad yn ôl yn llwyr; caiff fynd ymlaen i ddyroddi hysbysiad arall o dan is-adran (3).

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. Pan fo hysbysiad yn cael ei amrywio neu ei dynnu'n ôl ar ôl i gopïau ohono gael eu cyflwyno o dan adran 129(4), rhaid i'r awdurdod roi hysbysiad o'r amrywio neu'r tynnu'n ôl i unrhyw un y cyflwynwyd copi o'r hysbysiad gwreiddiol iddo a hefyd i unrhyw un y byddai rhaid cyflwyno copi o hysbysiad iddo pe bai un yn cael ei ddyroddi nawr (is-adrannau (4) a (5)). Mae'r ddarpariaeth olaf yn cydnabod y gallai amgylchiadau (gan gynnwys perchnogaeth y tir) fod wedi newid ers i'r hysbysiad gwreiddiol gael ei ddyroddi.

Adran 131 – Yr hawl i apelio yn erbyn hysbysiad gorfodi

699. Mae'r adran hon yn rhoi hawl i apelio yn erbyn hysbysiad gorfodi i Weinidogion Cymru. Mae Pennod 2 o Ran 14 yn gwneud darpariaeth bellach ynghylch penderfynu apelau yn erbyn hysbysiadau gorfodi, yn enwedig pwerau a dyletswyddau arolygwyr.

700. Mae is-adran (1) yn darparu y caiff apêl gael ei gwneud gan unrhyw un sydd â buddiant yn y tir y mae'r hysbysiad yn ymwneud ag ef (er enghraifft rhydd-ddeiliad neu lesddeiliad, neu ddeiliad unrhyw fuddiant cyfreithiol neu fuddiant ecwitïol arall megis morgais). Gall hefyd gael ei wneud gan berson a oedd yn feddiannydd ar y tir yn rhinwedd trwydded pan ddyroddwyd yr hysbysiad ac sy'n dal i fod yn meddiannu'r tir. Nid oes ots a gyflwynwyd copi o'r hysbysiad i'r person hwnnw.

701. Mae is-adran (2) yn nodi'r unig seiliau y caniateir gwneud apêl arnynt yn erbyn hysbysiad gorfodi.

702. Gwneir apêl ar y sail ym mharagraff (a) ar y sail y dylid rhoi caniatâd cynllunio i awdurdodi un neu ragor o'r materion y pennir yn yr hysbysiad eu bod yn dor rheolaeth. Bydd hyn i bob pwrpas yn codi'r un materion ag a fyddai wedi codi pe ceisid caniatâd ar gyfer y materion hynny cyn iddynt ddigwydd (hynny yw, ynghylch eu derbynioldeb yn nhermau polisi cynllunio).

703. Fodd bynnag, yn rhinwedd is-adrannau (3) a (5), ni chaniateir gwneud apêl ar y sail hon os oedd Gweinidogion Cymru, cyn cyflwyno'r hysbysiad, ar apêl o dan adran 73 wedi gwrthod rhoi caniatâd ar gyfer datblygiad a fyddai wedi arwain at awdurdodi'r mater neu'r materion o dan sylw – neu wedi gwrthod apêl o'r fath o dan adran 77(7) ar sail oedi gormodol gan yr apelydd. Mae hyn yn osgoi gwastraffu amser a achosir gan godi'r un mater ddwywaith.

704. Pan fo hysbysiad gorfodi yn ymwneud â thor amod caniatâd cynllunio, gwneir apêl ar y sail ym mharagraff (a) ar y sail y dylid dileu'r amod. Yn rhinwedd is-adrannau (4) a (5), fodd bynnag, ni chaniateir gwneud apêl ar y sail hon os gwnaeth Gweinidogion Cymru, cyn dyroddi'r hysbysiad, benderfyniad ar apêl o dan adran 73 a arweiniodd at gadarnhau'r amod (neu os gwnaethant wrthod yr apêl oherwydd oedi gormodol o dan adran 77).

705. Caiff rheoliadau o dan adran 364(4) ei gwneud yn ofynnol talu ffi am wneud apêl.

706. Gwneir apêl ar y sail ym mharagraff (b) ar y sail na wnaeth y materion y pennir yn yr hysbysiad eu bod yn dor rheolaeth gynllunio ddigwydd.

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. Gwneir apêl ar y sail ym mharagraff (c) ar y sail nad yw'r materion a bennir yn yr hysbysiad, os digwyddasant, yn dor rheolaeth gynllunio – oherwydd, er enghraifft, nad oeddent yn ddatblygiad, neu y rhoddwyd caniatâd cynllunio iddynt naill ai drwy orchymyn datblygu neu mewn ymateb i gais.

708. Gwneir apêl ar y sail ym mharagraff (d) ar y sail, ar y diwrnod y dyroddwyd yr hysbysiad gorfodi, na ellid cymryd unrhyw gamau gorfodi mewn cysylltiad ag unrhyw doriad o'r fath, oherwydd y terfynau amser perthnasol yn adran 113.

709. Gwneir apêl ar y sail ym mharagraff (e) ar y sail na chyflwynwyd copïau o'r hysbysiad yn gywir, fel sy'n ofynnol gan adran 129.

710. Gwneir apêl ar y sail ym mharagraff (f) ar y sail bod gofynion yr hysbysiad – naill ai'r camau y mae'r hysbysiad yn ei gwneud yn ofynnol eu cymryd, neu'r gweithgareddau y mae'n ei gwneud yn ofynnol iddynt ddod i ben – yn mynd y tu hwnt i'r hyn sy'n angenrheidiol i unioni'r tor rheolaeth neu unrhyw niwed i amwynder a achosir ganddo.

711. Gwneir apêl ar y sail ym mharagraff (g) ar y sail bod yr amser a ganiateir ar gyfer cydymffurfio â'r gofynion hynny yn afresymol o fyr.

712. Yna mae is-adrannau (6) i (10) yn darparu ar gyfer y weithdrefn i wneud apêl. Yn gyntaf, o dan is-adran (6), rhaid gwneud yr apêl cyn y dyddiad a bennir yn yr hysbysiad fel y dyddiad y mae i gymryd effaith. Gellir gwneud hyn drwy anfon hysbysiad drwy'r post neu'n electronig ar y fath adeg fel y byddai, yng nghwrs arferol digwyddiadau, yn cyrraedd cyn y dyddiad hwnnw. Ni ellir estyn y dyddiad cau hwn.

713. Pan fo apêl yn cael ei gwneud, ni fydd yr hysbysiad gorfodi yn dod i rym hyd nes y penderfynir yr apêl yn derfynol (oni bai bod yr Uchel Lys neu'r Llys Apêl yn gorchymyn fel arall o dan adran 378(6)) (is-adran (7)(a)).

714. Pan fo apêl wedi ei gwneud, ni all yr apelydd nac unrhyw un arall hawlio mewn unrhyw achos arall na chyflwynwyd yr hysbysiad gorfodi i'r apelydd yn unol ag adran 129 (gweler is-adran (7)(b)).

715. O dan is-adrannau (8) a (9), rhaid i berson sy'n apelio yn erbyn hysbysiad gorfodi gyflwyno datganiad achos sy'n nodi'r wybodaeth sy'n ofynnol gan reoliadau. O dan reoliad 8(1) o Reoliadau Gorfodi 2017, mae'r datganiad i nodi'r sail dros apelio y dibynnir arni, y ffeithiau perthnasol a'r achos a gyflwynir. Mae copïau o'r holl ddogfennau ategol y mae'r apelydd yn cyfeirio atynt neu'n dibynnu arnynt i fynd gyda'r datganiad. Mae'r datganiad i'w gyflwyno gyda'r apêl ei hun, neu o fewn y saith diwrnod dilynol, neu o fewn y cyfnod hwy hwnnw a ganiateir yn ysgrifenedig gan Weinidogion Cymru (yn ymarferol, gan PEDW) cyn y dyddiad yr oedd yr hysbysiad i fod i gymryd effaith; rhaid anfon copi at yr awdurdod cynllunio cyn gynted ag y bo'n ymarferol.

716. Oni chyflwynir yr wybodaeth sy'n ofynnol gan y rheoliadau o fewn terfyn amser perthnasol mewn perthynas ag un neu ragor o'r seiliau dros apelio y dibynnir arnynt, caiff Gweinidogion Cymru neu'r arolygydd benderfynu'r apêl heb ystyried y seiliau hynny (is-adran (10)).

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. Penderfynir apêl o dan yr adran hon yn unol â rheoliadau a wneir o dan adran 367 (Rheoliadau Cynllunio Gwlad a Thref (Ceisiadau Atgyfeiriedig a Gweithdrefn Apelau) (Cymru) 2017 (O.S. 2017/544 (Cy. 121)) ('Rheoliadau Ceisiadau Atgyfeiriedig2017') ar hyn o bryd). Ar ôl i'r apêl ddod i law, bydd PEDW (ar ran Gweinidogion Cymru) yn hysbysu'r apelydd a'r awdurdod cynllunio ynghylch y dyddiad cychwyn. Rhaid i'r awdurdod gyflwyno datganiad llawn o'i achos a deunydd ategol – gan gynnwys copi o'r hysbysiad a rhestr o'r rhai y cyflwynwyd copïau iddynt – o fewn pedair wythnos i'r dyddiad hwnnw.

Adran 132 – Penderfynu apêl: cyffredinol

718. Wrth ymdrin ag apêl yn erbyn hysbysiad gorfodi, caiff Gweinidogion Cymru neu'r arolygydd gywiro unrhyw ddiffyg, unrhyw wall neu unrhyw gamddisgrifiad neu amrywio telerau'r hysbysiad, os ydynt wedi eu bodloni na fydd gwneud hynny yn achosi anghyfiawnder i'r apelydd na'r awdurdod cynllunio (is-adran (1)). Mae'r pŵer hwn yn rhoi disgresiwn eang i'r rhai sy'n penderfynu apelau, i gywiro camddatganiadau ffeithiol, neu gamddisgrifiad o'r tor rheolaeth gynllunio; mae'n eu galluogi i newid gofynion yr hysbysiad, neu'r cyfnod y mae rhaid cydymffurfio â'r gofynion hynny ynddo.

719. Wrth benderfynu'r apêl, caiff Gweinidogion Cymru neu'r arolygydd ganiatáu'r apêl, ac os felly cânt ddiddymu'r hysbysiad (is-adran (2)(a)).

720. Pan fo apêl yn cael ei gwneud ar y sail yn adran 131(2)(e), gan honni cyflwyno diffygiol, caniateir i'r sawl sy'n penderfynu'r apêl anwybyddu'r ffaith nad yw copi o'r hysbysiad wedi ei gyflwyno'n gywir i berson, fel sy'n ofynnol gan adran 129, os yw wedi ei fodloni nad yw'r methiant wedi cael effaith andwyol ar y person hwnnw na'r apelydd (is-adran (3)).

721. Rhaid i Weinidogion Cymru neu'r arolygydd roi unrhyw gyfarwyddydau sy'n angenrheidiol i roi effaith i'w penderfyniad (is-adran (2)(b)).

722. O dan is-adran (4), pan fo'r apelydd yn methu â chyflwyno'r wybodaeth ofynnol o fewn y cyfnod gofynnol, o dan adran 131(9), caiff Gweinidogion Cymru neu'r arolygydd wrthod yr apêl. Yn yr un modd, pan fo'r awdurdod yn methu â chyflwyno'r deunydd sy'n ofynnol gan reoliadau a wneir o dan adran 367 (Rheoliadau Ceisiadau Atgyfeiriedig 2017 ar hyn o bryd), cânt ganiatáu'r apêl.

Adran 133 – Rhoi caniatâd cynllunio etc. wrth benderfynu apêl

723. Pan fo apêl yn erbyn hysbysiad gorfodi yn cael ei gwneud ar y sail y dylid rhoi caniatâd neu y dylid dileu'r amod o dan sylw (gan gynnwys apêl a wneir ar sail (a)), un ymateb sydd ar gael i Weinidogion Cymru neu'r arolygydd wrth benderfynu'r apêl yw rhoi caniatâd neu, yn ôl y digwydd, ddileu'r amod (is-adrannau (1) a (2)).

724. Wrth ystyried a ddylid rhoi caniatâd cynllunio, rhaid iddynt roi sylw i'r cynllun datblygu, ochr yn ochr ag unrhyw ystyriaethau perthnasol eraill, gan gynnwys polisïau defnydd tir Gweinidogion Cymru ac ystyriaethau sy'n ymwneud â'r defnydd o'r Gymraeg; rhaid iddynt wneud eu penderfyniad yn unol â'r cynllun, oni bai bod yr ystyriaethau eraill hynny'n dangos fel arall (is-adran (3); adran 408(3)). Mae hyn yn arwain at benderfynu apêl ar y sail yn adran 131(2)(a) ar yr un sail yn union ag y byddai wedi bod yn gymwys pe bai cais cynllunio wedi ei gyflwyno ar y dechrau.

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. O dan is-adran (4), caniateir rhoi caniatâd o dan yr adran hon ar gyfer yr holl faterion y pennir yn yr hysbysiad eu bod yn dor rheolaeth gynllunio neu unrhyw un neu ragor o'r materion hynny; ac mewn perthynas â'r tir cyfan neu unrhyw ran o'r tir o dan sylw. Er enghraifft, pan fo hysbysiad gorfodi yn ymwneud ag adeiladu heb awdurdod estyniad cefn i dŷ a llawr ychwanegol, caniateir rhoi caniatâd mewn ymateb i'r apêl am un neu'r llall neu am y ddau; pan fo'r hysbysiad yn ymwneud â defnyddio cae mawr fel safle gwersylla, caniateir rhoi caniatâd ar gyfer defnyddio'r cae cyfan neu unrhyw ran ohono.

726. Y caniatâd y caniateir ei roi o dan yr adran hon yw unrhyw ganiatâd cynllunio y gellid ei roi mewn ymateb i gais o dan Ran 3 (is-adran (5)).

727. Pan fo Gweinidogion Cymru, neu'r arolygydd, mewn ymateb i apêl ar y sail yn adran 131(2)(a), yn penderfynu dileu amod o dan yr adran hon, cânt osod un neu ragor o amodau eraill, pa un a yw neu a ydynt yn fwy beichus neu'n llai beichus (is-adran (6)).

728. Mae penderfyniad Gweinidogion Cymru i roi caniatâd cynllunio neu i ddileu amod o dan yr adran hon yn derfynol – yn ddarostyngedig i unrhyw her yn yr Uchel Lys (is-adran (9)).

Adran 134 – Dyroddi tystysgrif cyfreithlondeb wrth benderfynu apêl

729. Mewn llawer o apelau gorfodi, mae'r cwestiwn yn codi o ran pa un a yw'r gweithgaredd y nodir yn yr hysbysiad gorfodi ei fod yn dor rheolaeth gynllunio yn gyfreithlon mewn gwirionedd. Mewn ymateb i apêl o'r fath, caiff Gweinidogion Cymru neu'r arolygydd benderfynu felly o dan is-adran (1) a oedd defnydd presennol o'r tir o dan sylw yn gyfreithlon ar y diwrnod y gwnaed yr apêl, a oedd gweithrediadau a oedd wedi eu cyflawni cyn y diwrnod hwnnw yn gyfreithlon neu a oedd methiant i gydymffurfio ag amod ar ganiatâd cynllunio yn gyfreithlon.

730. Os ydynt yn penderfynu bod unrhyw un neu ragor o'r pethau hynny'n gyfreithlon, cânt ddyroddi tystysgrif cyfreithlondeb (is-adran (2)). Yn rhinwedd is-adran (3), caiff darpariaethau'r Ddeddf sy'n ymwneud â chynnwys ac effaith tystysgrif (yn Rhan 5) eu haddasu o ran eu cymhwyso i dystysgrif a ddyroddir tystysgrif pan benderfynir apêl yn erbyn hysbysiad gorfodi.

731. Caniateir dirymu tystysgrif a ddyroddir yn rhinwedd yr adran hon os daw i'r amlwg iddi gael ei dyroddi gan ddibynnu ar ddatganiad neu ddogfen a oedd yn anwir, neu yn absenoldeb gwybodaeth berthnasol a gelwyd – gweler adran 163 fel y'i haddaswyd gan is-adran (4). Mae'n drosedd o dan is-adran (5) i geisio dylanwadu ar benderfyniad ynghylch cyfreithlondeb o dan yr adran hon drwy wneud yn fwriadol neu'n ddi-hid ddatganiad sy'n anwir neu'n gamarweiniol mewn modd perthnasol, neu ddibynnu ar ddogfen sy'n anwir neu'n gamarweiniol neu atal gwybodaeth gyda'r bwriad o dwyllo. Mae trosedd o'r fath yn drosedd neillffordd (trosedd y gellir ei rhoi ar brawf naill ai yn y llysoedd ynadon neu yn Llys y Goron) ac y gellir ei chosbi ar euogfarn drwy ddirwy (ac nid oes terfyn ar swm y ddirwy y caiff y llys ei gosod).

732. Mae penderfyniad Gweinidogion Cymru ynghylch cyfreithlondeb gweithgaredd o dan yr adran hon yn derfynol – yn ddarostyngedig i unrhyw her yn yr Uchel Lys (is-adran (7)).

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)).

Adran 135 – Gorchymyn i ganiatáu camau sy'n ofynnol gan hysbysiad gorfodi

733. Unwaith y bydd hysbysiad gorfodi wedi dod i rym, rhaid cydymffurfio ag ef. Os yw'r hysbysiad yn ei gwneud yn ofynnol cymryd camau – er enghraifft, os bydd adeiladau neu waith i gael eu haddasu neu eu symud neu weithrediadau i gael eu cynnal (gweler adran 128(7)) – rhaid cymryd y camau hynny o fewn y cyfnod penodedig. Perchnogion tir sy'n bennaf gyfrifol am sicrhau cydymffurfedd; a hwy sy'n agored i gael eu herlyn o dan adran 138(1) am fethu â chydymffurfio â'r hysbysiad.

734. Pan gyflwynir copi o hysbysiad i'r perchnogion yn ei gwneud yn ofynnol cymryd camau o'r fath ar y tir, neu pan fônt fel arall yn dod yn ymwybodol o'r hysbysiad, efallai y bydd modd iddynt gymryd y camau hynny, er mwyn cydymffurfio â'r hysbysiad.

735. Fodd bynnag, os yw'r tir o dan reolaeth rhywun arall (lesddeiliad neu denant, er enghraifft), sy'n atal y perchnogion rhag cymryd y camau hynny, cânt wneud cais i'r llys ynadon (drwy gŵyn) am orchymyn o dan yr adran hon, gan ganiatáu iddynt fynd ar y tir a chymryd y camau hynny.

Adran 136 – Pŵer i fynd ar dir a chymryd camau sy'n ofynnol gan hysbysiad gorfodi

736. Pan fo hysbysiad gorfodi wedi dod i rym sy'n ei gwneud yn ofynnol cymryd camau ac na chydymffurfiwyd ag ef, gall arwain at erlyn y rhai sy'n gyfrifol am y methiant i gydymffurfio. Fodd bynnag, ni fydd erlyniad o'r fath – pa un a yw'n llwyddiannus ai peidio – yn arwain at gymryd y camau gofynnol mewn gwirionedd. Mae'r adran hon yn galluogi awdurdod cynllunio i fynd ar y tir pan nad yw camau wedi eu cymryd o fewn yr amser a bennwyd yn yr hysbysiad, a chymryd y camau angenrheidiol ei hun (is-adran (1)).

737. Os bydd unrhyw un yn rhwystro camau o'r fath, bydd yn euog o drosedd o dan is-adran (2) a all arwain at ddirwy ar euogfarn ddiannod (yn y llys ynadon) hyd at Lefel 3 ar y raddfa safonol.

Adran 137 – Adennill costau cydymffurfio â hysbysiad gorfodi

738. Mae'r adran hon yn galluogi awdurdod cynllunio i adennill unrhyw gostau y mae wedi mynd iddynt yn rhesymol wrth arfer ei bwerau o dan adran 136. Mae hefyd yn ymgorffori darpariaethau yn Neddf Iechyd y Cyhoedd 1936 (p. 49) a gymhwyswyd i adennill costau yn y sefyllfa hon.

739. Mae is-adran (1) yn galluogi'r awdurdod i adennill y costau hynny oddi wrth berchnogion presennol y tir – hynny yw, y rhydd-ddeiliaid neu'r rhai a chanddynt hawlogaeth i gael y rhent.

740. Fodd bynnag, os oes gan y perchnogion hawlogaeth i gael y rhent dim ond fel asiant ar gyfer rhywun arall ("y penadur") ac nad ydynt wedi cael digon o arian drwy rent i'w galluogi i ad-dalu costau'r awdurdod yn llawn, yna mae eu hatebolrwydd wedi ei gyfyngu gan is-adran (2) i'r swm o arian y maent wedi ei gael ar ran y penadur ers y diwrnod y mynnodd yr awdurdod fod y costau yn cael eu talu. Yn y sefyllfa honno, mae gan yr awdurdod hawlogaeth i adennill ei holl gostau neu weddill ei gostau oddi wrth y penadur (is-adran (3)).

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. Pan fo copi o hysbysiad gorfodi wedi ei gyflwyno o ganlyniad i dor rheolaeth gynllunio, a

a. bo perchnogion neu feddianwyr y tir wedi gorfod cymryd camau i sicrhau y cydymffurfir â'r hysbysiad; neu

b. bo'r awdurdod wedi gorfod cymryd camau'n ddiofyn,

mae unrhyw gostau yr aed iddynt gan y perchnogion neu'r meddianwyr (gan gynnwys costau a dalwyd i'r awdurdod o dan is-adran (1)) i'w trin fel pe aed iddynt neu y'u talwyd ar ran y person a gyflawnodd y tor rheolaeth gwreiddiol (is-adran (4)). Mae hynny'n galluogi adennill y costau hynny oddi wrth y person a gyflawnodd y toriad gwreiddiol, naill ai drwy negodi neu achos llys.

742. O dan is-adran (5), os yw'r awdurdod yn mynd i gostau o dan adran 136, byddant yn bridiant ar y tir hyd nes y byddant wedi eu hadennill yn llawn o dan is-adran (1). Mae'r pridiant yn cymryd effaith fel pridiant tir lleol ar ddechrau'r diwrnod ar ôl y diwrnod y mae'r awdurdod yn cwblhau'r camau y mae'r costau'n ymwneud â hwy.

743. Mewn rhai achosion, pan fo hysbysiad gorfodi yn cael ei gyflwyno a bo awdurdod cynllunio yn cymryd cam o dan adran 136 oherwydd diffyg cydymffurfedd, gall hynny arwain at symud ymaith ddeunyddiau adeiladu, stoc neu eitemau eraill o'r tir. Pan fo hyn yn digwydd, mae is-adrannau (7) ac (8) yn ei gwneud yn ofynnol i'r eitemau hynny gael eu cynnig i'w perchnogion. Os nad ydynt yn cael eu hawlio a'u symud ymaith o fewn tri diwrnod, caiff yr awdurdod eu gwerthu a thalu'r enillion i berchnogion y deunyddiau adeiladu, y stoc neu'r eitemau eraill – ar ôl didynnu unrhyw gostau y caniateir i'r awdurdod eu hadennill.

Adran 138 – Troseddau o fethu â chydymffurfio â hysbysiad gorfodi

744. Nid yw cynnal datblygiad heb ganiatâd cynllunio yn drosedd ynddi ei hun. Fodd bynnag, unwaith y bydd awdurdod cynllunio wedi dyroddi hysbysiad gorfodi, bydd yr hysbysiad yn dod i rym a bydd yn ei gwneud yn ofynnol i gamau gael eu cymryd. Ar y pwynt hwnnw, mae methu â chydymffurfio â'r hysbysiad yn drosedd o dan yr adran hon.

745. Mae'r drosedd gyntaf, o dan is-adran (1), yn gymwys i'r perchennog ar y tir y mae'r hysbysiad gorfodi yn ymwneud ag ef.

746. Mae'r ail drosedd, o dan is-adran (4) yn gymwys i unrhyw un heblaw'r perchennog sydd fod bynnag yn ymwneud yn sylweddol â'r tir – hynny yw, person sydd ar unrhyw adeg yn rheolaethu'r tir neu sydd â rhyw fuddiant arall ynddo (megis fel lesddeiliad) (is-adran (3)).

747. Rhyngddynt, mae'r ddau gategori yn cynnwys pawb sy'n gallu gwneud beth bynnag sy'n angenrheidiol i sicrhau y cydymffurfir â'r hysbysiad gorfodi.

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. Mae'r drosedd gyntaf, o dan is-adran (1), wedi ei chyflawni gan berchnogion y tir:

a. pan fo hysbysiad gorfodi yn ei gwneud yn ofynnol i gam gael ei gymryd neu i weithgaredd gael ei stopio erbyn dyddiad penodol; a

b. pan nad yw'r cam wedi ei gymryd, neu nad yw'r gweithgaredd wedi ei stopio, erbyn y dyddiad hwnnw.

749. Mae gan berchnogion amddiffyniad rhag erlyniad o dan is-adran (1) os gallant ddangos eu bod wedi gwneud popeth y gellid bod wedi disgwyl iddynt ei wneud i sicrhau cydymffurfedd â'r hysbysiad (is-adran (2)).

750. Mae'r ail drosedd, o dan is-adran (4), yn gymwys i berson heblaw'r perchennog sy'n rheolaethu'r tir neu sydd â buddiant yn y tir y mae hysbysiad gorfodi yn ymwneud ag ef, pan fo'r hysbysiad yn ei gwneud yn ofynnol i weithgaredd ddod i ben ar ôl dyddiad penodedig. Caiff ei chyflawni os yw'r person hwnnw yn cynnal y gweithgaredd hwnnw ar unrhyw adeg ar ôl y dyddiad hwnnw neu'n peri neu'n caniatáu i rywun arall ei gynnal. Os bydd gweithgaredd yn dod i ben ond yna yn ailddechrau yn groes i'r hysbysiad, gall hynny arwain at erlyn y rhai sy'n gyfrifol.

751. O dan is-adran (6), bydd gan y rhai a gyhuddir o'r naill neu'r llall o'r troseddau o dan yr adran hon amddiffyniad os ydynt yn gallu dangos:

a. na chyflwynwyd copi o'r hysbysiad iddynt, o dan adran 129;

b. nad oedd yr hysbysiad wedi ei gynnwys yn y gofrestr a gedwir gan yr awdurdod cynllunio o dan adran 154; ac

c. nad oeddent yn gwybod am fodolaeth yr hysbysiad.

752. Rhaid dwyn erlyniad am drosedd o dan yr adran hon yn y llys ynadon, ac yn ymarferol bydd fel arfer yn cael ei gychwyn gan yr awdurdod cynllunio. O dan is-adrannau (7) ac (8), mae person a euogfernir o'r naill drosedd neu'r llall yn agored i dalu dirwy (ac nid oes terfyn ar swm y ddirwy y caiff y llys ei gosod). Wrth benderfynu ar faint unrhyw ddirwy, rhaid i'r llys roi sylw i'r fantais ariannol sydd wedi cronni (neu yr ymddengys ei bod yn debygol o gronni), o ganlyniad i'r drosedd.

753. Caniateir i berson gael ei gyhuddo o drosedd o dan yr adran hon drwy gyfeirio at ddiwrnod neu gyfnod hwy, a chaniateir iddo gael ei euogfarnu o fwy nag un drosedd drwy gyfeirio at gyfnodau gwahanol (is-adran (5)).

Adran 139 – Sicrwydd nad yw person yn wynebu risg o gael ei erlyn am drosedd o dan adran 138

754. Pan fo awdurdod yn dyroddi hysbysiad gorfodi, rhaid cyflwyno copi i berchnogion y tir ac i eraill sy'n ymwneud yn sylweddol â rheoli'r tir, o dan adran 129. Os na chydymffurfir â'r hysbysiad, bydd hyn fel arfer yn arwain at y personau hynny yn dod yn agored i gael eu herlyn o dan adran 138. Ond gall hyn arwain at ganlyniadau anffodus mewn rhai achosion – er enghraifft, pan na fu tenantiaid neu drwyddedeion rhannau o'r tir yn gyfrifol o gwbl am y gweithgaredd sydd wedi arwain at gamau'r awdurdod neu nad oes ganddynt y gallu i ddod â'r gweithgaredd i ben.

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. Felly, caiff awdurdod gyflwyno "hysbysiad dim erlyn" i berson o dan yr adran hon naill ai ar yr un pryd ag y mae'n cyflwyno copi o hysbysiad gorfodi i'r person neu ar unrhyw adeg ar ôl hynny (is-adran (2)).

756. Gall hefyd gyflwyno hysbysiad dim erlyn i berson na chyflwynwyd copi o'r hysbysiad gorfodi iddo, ond y byddai copi yn cael ei gyflwyno iddo pe bai'r hysbysiad yn cael ei ailddyroddi, os yw person o'r fath yn gofyn am hynny (is-adran (3)).

757. Mae hysbysiad dim erlyn o dan is-adran (4)(a) yn rhoi sicrwydd i'r personau y'i cyflwynir iddynt na fyddant yn cael eu herlyn mewn cysylltiad â'r hysbysiad gorfodi. Mae hysbysiad o dan is-adran (4)(b) yn rhoi sicrwydd i'r personau hynny na fyddant yn cael eu herlyn mewn perthynas â rhai o'r materion sy'n destun yr hysbysiad gorfodi (a rhaid i'r hysbysiad egluro eu bod yn wynebu'r risg o hyd o gael eu herlyn am y materion eraill a godir yn yr hysbysiad gorfodi) (is-adran (5) hefyd).

758. Pan fo hysbysiad dim erlyn wedi ei gyflwyno i berson, caiff yr awdurdod dynnu'r sicrwydd yn ôl (yn gyfan gwbl neu'n rhannol) drwy gyflwyno hysbysiad pellach i'r person hwnnw, o dan is-adran (7), sy'n pennu amser pan fydd y sicrwydd yn peidio â gweithredu. Rhaid i'r adeg a bennir yn yr hysbysiad pellach hwnnw roi cyfle rhesymol i'r person y'i cyflwynir iddo i gydymffurfio â'r hysbysiad gorfodi gwreiddiol, i'r graddau y gallai hynny fod yn berthnasol. Fodd bynnag, ni all yr hysbysiad pellach effeithio ar atebolrwydd y person i gael ei erlyn am unrhyw fethiant i gydymffurfio a allai fod wedi digwydd cyn yr adeg benodedig (is-adrannau (8) a (9)). O dan is-adran (6), rhaid i hysbysiad dim erlyn egluro y gellir ei dynnu'n ôl drwy hysbysiad pellach o dan is-adran (7).

759. Mae hysbysiad dim erlyn – i'r graddau nad yw'n cael ei dynnu'n ôl – yn rhwymo unrhyw un a fyddai fel arall â phŵer i erlyn am drosedd o dan adran 138. Yn benodol, mae'n rhwymo'r awdurdod ei hun (is-adran (10)).

Adran 140 – Y seiliau dros apelio i beidio â chael eu codi mewn achosion eraill

760. Mae adran 131(2) yn nodi ar ba seiliau y caniateir gwneud apêl i Weinidogion Cymru yn erbyn hysbysiad gorfodi. Mae'r adran hon yn darparu na ellir codi'r seiliau hynny yn gyffredinol mewn unrhyw achos cyfreithiol arall.

761. Yr unig eithriad i hynny yw pan na chyflwynwyd copi o'r hysbysiad i berson a oedd â buddiant yn y tir ar yr adeg y dyroddwyd hysbysiad gorfodi yn unol ag adran 129(4) ac nad oedd yn gwybod dim am ei fodolaeth.

762. Er enghraifft, os gall y rhai sy'n cael eu herlyn o dan adran 138 am beidio â chydymffurfio â'r hysbysiad brofi nad oeddent yn gwybod am yr hysbysiad (ac na ellid bod wedi disgwyl yn rhesymol iddynt wybod) a bod y methiant i gyflwyno copi o'r hysbysiad iddynt wedi cael effaith andwyol arnynt, gallant godi'r seiliau hynny yn ystod yr achos troseddol.

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.

Adran 141 – Effaith rhoi caniatâd cynllunio ar hysbysiad gorfodi

763. Pan fo hysbysiad gorfodi wedi ei ddyroddi mewn perthynas â chynnal datblygiad sy'n dor rheolaeth gynllunio, gellir rhoi caniatâd cynllunio wedi hynny ar gyfer rhywfaint neu'r cyfan o'r datblygiad hwnnw – o bosibl oherwydd newid mewn amgylchiadau. Yn y sefyllfa honno, i'r graddau y bo'r hysbysiad yn anghyson â'r caniatâd, bydd yn peidio â chael effaith neu, os nad yw wedi dod i rym hyd hynny, ni fydd yn cymryd effaith (is-adran (1)).

764. Er enghraifft, os defnyddir cae heb ganiatâd cynllunio fel safle ar gyfer gosod 70 o garafanau, caniateir dyroddi hysbysiad gorfodi sy'n ei gwneud yn ofynnol iddynt gael eu symud ymaith. Os rhoddir caniatâd cynllunio wedi hynny i awdurdodi defnyddio rhan uchaf y cae ar gyfer 40 o garafanau, bydd yr hysbysiad yn peidio â chael effaith mewn perthynas â'r rhan o'r cae y gellir ei defnyddio'n gyfreithlon ar gyfer hyd at 40 o garafanau. Bydd yn parhau mewn grym mewn perthynas â rhan isaf y cae, fodd bynnag, a bydd unrhyw ddefnydd o'r ardal honno ar gyfer carafannau yn torri'r hysbysiad, a allai arwain at erlyniad am beidio â chydymffurfio.

765. Fodd bynnag, nid yw rhoi'r caniatâd dilynol yn newid y ffaith bod y datblygiad yn dor rheolaeth gynllunio ar yr adeg y'i cynhaliwyd. Byddai unrhyw fethiant i gydymffurfio â'r hysbysiad, cyn i'r caniatâd gael ei roi, wedi bod yn drosedd o dan 138; a bydd unrhyw un sy'n gyfrifol am y methiant hwnnw yn dal i fod yn agored i gael ei erlyn o ganlyniad (is-adran (2)). Yn yr enghraifft uchod, os rhoddir y caniatâd ar gyfer y 40 o garafanau bum mlynedd ar ôl i'r hysbysiad gorfodi gael ei ddyroddi, ond cyn i'r caniatâd gael ei roi na symudwyd y carafannau ymaith o ran uchaf y cae yn ystod y cyfnod hwn, byddai hynny'n fethiant i gydymffurfio â'r hysbysiad, a allai arwain at erlyn y rhai sy'n gyfrifol.

Adran 142 – Caniatâd cynllunio tybiedig pan gydymffurfir â hysbysiad gorfodi

766. Mae is-adrannau (1) a (2) yn ymdrin â'r arfer a elwir weithiau yn danorfodi. Hynny yw, pan fo hysbysiad yn nodi bod tor rheolaeth gynllunio wedi digwydd, sy'n cynnwys mwy nag un mater, ond yn ei gwneud yn ofynnol unioni rhai o'r materion hynny yn unig. Mae'r adran hon yn darparu, yn y sefyllfa honno, fod caniatâd cynllunio yn cael ei drin fel pe bai wedi ei roi o dan adran 49 ar gyfer yr eitemau eraill a grybwyllir yn yr hysbysiad nad oedd angen eu hunioni ganddo.

767. Er enghraifft, gallai hysbysiad ddatgan bod tor rheolaeth gynllunio wedi digwydd sy'n cynnwys gosod llain galed goncrid, codi adeilad storio a pharcio lorïau ar y llain galed; ond dim ond ei gwneud yn ofynnol symud ymaith yr adeilad a sicrhau nad yw'r tir yn cael ei ddefnyddio fel maes parcio lorïau. Mae caniatâd cynllunio yn cael ei drin, felly, fel pe bai wedi ei roi ar gyfer y llain galed.

768. Mae is-adrannau (3) a (4) yn gymwys pan fo hysbysiad gorfodi yn ymwneud â thor rheolaeth gynllunio pan fo adeilad yn cael ei ddymchwel. Pan fo hysbysiad o'r fath yn ei gwneud yn ofynnol i'r toriad gael ei unioni drwy godi adeilad amnewid, ac y cydymffurfir â'r hysbysiad, ystyrir bod caniatâd wedi ei roi ar gyfer codi'r adeilad amnewid.

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.

Adran 143 – Effaith barhaus hysbysiad gorfodi mewn perthynas â datblygiad diweddarach

769. Pan fo hysbysiad gorfodi wedi ei ddyroddi mewn cysylltiad â thor rheolaeth benodol, ac y cydymffurfiwyd â'r hysbysiad, nid yw'r hysbysiad yn peidio â chael effaith (is-adran (1)). Os bydd y toriad yn digwydd eto, nid oes rhaid i'r awdurdod cynllunio ddechrau o'r newydd a dyroddi hysbysiad newydd a allai arwain at apêl bellach a rhagor o oedi. O ganlyniad i'r adran hon, caiff yr awdurdod ddibynnu ar yr hysbysiad presennol a chymryd camau priodol i sicrhau y cydymffurfir ag ef o hyd.

770. Mae is-adran (2) yn darparu, pan fo hysbysiad yn ei gwneud yn ofynnol datbarhau defnydd o dir a bo'r defnydd hwnnw yn cael ei ddatbarhau, fod y gofyniad hwnnw'n gweithredu fel gwaharddiad ar ailddechrau'r defnydd hwnnw byth (oni roddir caniatâd cynllunio ar ryw adeg yn y dyfodol). Ac yn rhinwedd adran 112(2)(b), mae hyn hefyd yn gymwys i ddefnyddio tir ar gyfer cynnal gweithrediadau mwyngloddio.

771. Mae is-adrannau (4) i (6) yn gymwys pan fo hysbysiad yn ei gwneud yn ofynnol addasu neu symud ymaith adeiladau (sydd at y diben hwn yn cynnwys "gwaith"), ac y cydymffurfir â'r gofyniad hwnnw. Os byddant wedyn yn cael eu hadfer neu eu hailosod yn groes i reolaeth gynllunio, gellir dibynnu ar yr hysbysiad gwreiddiol i'w gwneud yn ofynnol addasu'r adeiladau newydd neu eu symud ymaith, yn union fel yr oedd yn gymwys i'r adeiladau gwreiddiol. Caiff yr awdurdod cynllunio gynnal y gwaith angenrheidiol ei hun (o dan adran 136) pe bai angen – er bod rhaid iddo roi o leiaf 28 o ddiwrnodau o rybudd i berchnogion a meddianwyr ar y tir o'i fwriad i wneud hynny.

772. Pan fo adeiladau'n cael eu hadfer neu eu hailosod o dan amgylchiadau o'r fath, mae'r rhai sy'n gyfrifol yn cyflawni trosedd o dan is-adran (8). Y gosb ar euogfarn ddiannod (yn y llys ynadon) yw dirwy (ac nid oes terfyn ar swm y ddirwy y caiff y llys ei gosod).

773. Fodd bynnag, er bod yr hysbysiad gorfodi yn gymwys yn gyffredinol i'r adeilad sydd wedi ei addasu neu ei ailosod yn union fel y mae'n gymwys i'r adeilad gwreiddiol, ni all methiant i addasu'r adeilad sydd wedi ei adfer neu ei ailosod arwain at erlyn perchennog y tir o dan adran 138(1) am beidio â chydymffurfio â'r hysbysiad.

Adran 144 – Pŵer Gweinidogion Cymru i ddyroddi hysbysiad gorfodi

774. Caiff hysbysiadau gorfodi eu dyroddi gan awdurdodau cynllunio bron bob amser. Yn eithriadol, fodd bynnag, gall Gweinidogion Cymru ddyroddi hysbysiad gorfodi o dan yr adran hon.

775. Fel gyda hysbysiad a ddyroddir gan awdurdod, rhaid i Weinidogion Cymru, wrth ystyried a ydynt am gymryd cam o'r fath, roi sylw i'r cynllun datblygu, ochr yn ochr ag unrhyw ystyriaethau perthnasol eraill, gan gynnwys eu polisïau defnydd tir eu hunain ac ystyriaethau sy'n ymwneud â'r defnydd o'r Gymraeg; a rhaid iddynt wneud eu penderfyniad yn unol â'r cynllun, oni bai bod yr ystyriaethau eraill hynny'n dangos fel arall (is-adran (2); ac adran 408(3)). Rhaid iddynt hefyd ymgynghori â'r awdurdod cynllunio ar gyfer yr ardal sy'n cynnwys y tir y mae'n ymwneud ag ef (is-adran (3)).

776. Mae i hysbysiad gorfodi a ddyroddir gan Weinidogion Cymru yr un effaith ag un a ddyroddir gan awdurdod cynllunio (is-adran (4)).

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. Mae'r darpariaethau sy'n ymwneud â hysbysiadau gorfodi a ddyroddir gan awdurdodau cynllunio yn gymwys i'r un graddau i hysbysiadau a ddyroddir gan Weinidogion Cymru – a dylid deall yn gyffredinol fod unrhyw gyfeiriad at gam a gymerir gan yr awdurdod cynllunio neu mewn perthynas ag ef yn cyfeirio at gam gan Weinidogion Cymru neu mewn perthynas â Gweinidogion Cymru. Fodd bynnag, pan ddyroddir hysbysiad gan Weinidogion Cymru o dan yr adran hon, mae'r pŵer i gyflwyno hysbysiad dim erlyn o dan adran 139 yn arferadwy gan y Cwnsler Cyffredinol (is-adran (5)).

Adran 145 – Pŵer awdurdod cynllunio i ddyroddi hysbysiad stop

778. Nid yw hysbysiad gorfodi yn dod i rym cyn gynted ag y caiff ei ddyroddi. Ac os yw dyroddi hysbysiad o'r fath yn arwain at apêl, ac o bosibl at apêl bellach i'r Uchel Lys, efallai na fydd yn dod i rym am rai misoedd. Hyd yn oed pan fydd yn cael effaith, bydd hysbysiad fel arfer yn caniatáu cyfnod ar gyfer cydymffurfedd. Pan fo gweithgaredd yn digwydd sydd, er enghraifft, yn achosi niwed sylweddol i'r amgylchedd ffisegol a chanlyniadau andwyol i'r rhai sy'n byw ac yn gweithio gerllaw, gall yr oedi hwn fod yn annymunol.

779. Pan fo'r awdurdod yn dyroddi hysbysiad gorfodi sy'n ei gwneud yn ofynnol i weithgaredd ddod i ben, a'i fod yn ystyried y dylai'r gweithgaredd ddod i ben cyn i'r hysbysiad gael effaith, caiff felly hefyd ddyroddi "hysbysiad stop", o dan is-adran (1). Bydd hyn yn ei gwneud yn ofynnol i'r gweithgaredd stopio, yn ogystal ag unrhyw weithgaredd sy'n gysylltiedig â'r gweithgaredd hwnnw; cyfeirir at y rheini gyda'i gilydd fel y "gweithgaredd perthnasol" (is-adran (2)).

780. Rhaid i hysbysiad stop gyfeirio at yr hysbysiad gorfodi y mae'n ymwneud ag ef, gwahardd y gweithgaredd perthnasol ar y tir (neu ar ran benodedig ohono) a datgan y dyddiad y mae'r hysbysiad i ddod i rym arno (is-adran (3)).

Adran 146 – Cyfyngiadau ar y pŵer i ddyroddi hysbysiad stop

781. Ni chaiff awdurdod ddyroddi hysbysiad stop ar ôl i'r hysbysiad gorfodi y mae'n ymwneud ag ef ddod i rym (is-adran (1)).

782. Ni chaiff hysbysiad stop wahardd defnyddio adeilad fel annedd (is-adran (2)).

783. Yn ogystal, ni chaiff yr hysbysiad wahardd cynnal gweithgaredd sydd wedi ei gynnal ar y tir am o leiaf bedair blynedd (naill ai'n ddi-dor neu fel arall) heb ganiatâd cynllunio (is-adran (3)).

784. Fodd bynnag, nid yw hynny'n atal hysbysiad stop rhag cael ei ddyroddi i stopio ar unwaith y defnydd o dir ar gyfer cynnal gweithrediadau adeiladu, mwyngloddio neu beirianneg ar dir, neu unrhyw weithgaredd sy'n ddeilliadol i weithrediadau o'r fath neu ddyddodi gwastraff – hyd yn oed pan fo gweithgareddau o'r fath wedi eu cynnal am fwy na phedair blynedd (is-adran (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)).

Adran 147 – Cyflwyno ac arddangos hysbysiad stop

785. Pan fo awdurdod yn dyroddi hysbysiad stop, rhaid iddo gyflwyno copïau fel y gwêl yn dda i'r rhai sydd â buddiant yn y tir y mae'n ymwneud ag ef neu'r rhai sy'n cynnal y gweithgaredd y mae'r hysbysiad yn ceisio ei stopio (is-adrannau (1) a (2)). Fodd bynnag, nid oes rhaid iddo gyflwyno copi i bawb yn y naill gategori neu'r llall – gan y gallai safle mawr fod yn destun llawer o fuddiannau cyfreithiol a diben yr hysbysiad yw sicrhau bod camau'n cael eu cymryd ar unwaith. Gall fod llawer o gontractwyr ac is-gontractwyr yn rhan o'r gweithgaredd tramgwyddus, felly bydd angen ystyried yn ofalus pwy y dylid cyflwyno hysbysiad iddo.

786. Gellir cyflwyno copi o hysbysiad stop ar yr un pryd â chopi o'r hysbysiad gorfodi y mae'n gysylltiedig ag ef, a gwneir hynny'n aml; neu gellir ei gyflwyno yn ddiweddarach; ac mae copi o'r hysbysiad gorfodi hwnnw i fynd gyda phob copi o'r hysbysiad stop (is-adrannau (3) a (4)).

787. Fel arfer bydd yr hysbysiad stop yn dod i rym o leiaf dri diwrnod ar ôl i'r copïau gael eu cyflwyno, neu heb fod yn hwyrach na 28 o ddiwrnodau ar ôl y dyddiad cyflwyno (is-adran (5)). Fodd bynnag, gall ddod i rym yn gynt os yw'r awdurdod yn ystyried bod rhesymau arbennig pam y mae hynny'n briodol; ac os felly rhaid i bob copi o'r hysbysiad gynnwys datganiad o'r rhesymau hynny.

788. Caiff yr awdurdod arddangos hysbysiad safle ar y tir perthnasol neu, pan na fo hynny'n ymarferol, mor agos at y tir ag y bo modd. Rhaid i'r hysbysiad hwnnw ddatgan bod hysbysiad stop wedi ei ddyroddi, gan bennu ar ba ddyddiad y mae'n cymryd effaith a pha weithgaredd a waherddir ganddo, a nodi bod methiant i gydymffurfio â'r hysbysiad yn drosedd o dan adran 151.

Adran 148 – Tynnu hysbysiad stop yn ôl

789. Caiff awdurdod cynllunio dynnu hysbysiad stop yn ôl ar unrhyw adeg ar ôl iddo ei ddyroddi – pa un a yw wedi dod i rym ai peidio. Os yw'n gwneud hynny, rhaid iddo gyflwyno hysbysiad o'r tynnu'n ôl i bawb y cyflwynwyd copi o'r hysbysiad gwreiddiol iddo. Ac os oedd wedi arddangos hysbysiad safle, rhaid rhoi yn lle hynny hysbysiad yn datgan bod yr hysbysiad stop wedi ei dynnu'n ôl (is-adrannau (1) a (2)).

790. Nid yw tynnu hysbysiad stop yn ôl yn atal yr awdurdod rhag dyroddi hysbysiad stop arall (is-adran (3)) – ond dim ond hyd nes i'r hysbysiad gorfodi cysylltiedig ddod i rym.

Adran 149 – Hyd ac effaith hysbysiad stop

791. Unwaith y bydd hysbysiad stop wedi ei ddyroddi, mae'n dod i rym ar ddechrau'r diwrnod a bennir yn yr hysbysiad fel y diwrnod y mae'n dod i rym. Yna, bydd yn parhau i gael effaith hyd ddiwedd y cyfnod y mae'r hysbysiad gorfodi cysylltiedig yn ei gwneud yn ofynnol i'r gweithgaredd gwaharddedig gael ei stopio ynddo (is-adrannau (1) a (2)).

792. Fodd bynnag, os bydd yr awdurdod yn tynnu'r hysbysiad gorfodi yn ôl cyn y dyddiad y mae rhaid cydymffurfio â'r hysbysiad hwnnw, neu os caiff ei ddiddymu o ganlyniad i apêl, mae'r hysbysiad stop yn cael ei ddiddymu hefyd. Os caiff yr hysbysiad stop ei hun ei dynnu'n ôl ei hun cyn y dyddiad hwnnw, mae hefyd yn peidio â chael effaith (is-adran (3)).

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. Os yw'r hysbysiad gorfodi yn cael ei amrywio fel nad yw'n ei gwneud yn ofynnol mwyach i weithgaredd penodol ddod i ben, bydd yr hysbysiad stop cysylltiedig hefyd yn peidio â chael effaith mewn perthynas â'r gweithgaredd hwnnw (is-adran (4)).

794. Pan na fo copi o hysbysiad gorfodi wedi ei gyflwyno i rywun fel sy'n ofynnol gan adran 129, ni fydd hynny'n annilysu hysbysiad stop cysylltiedig os gellir dangos bod yr awdurdod wedi cymryd pob cam rhesymol i sicrhau bod yr hysbysiad gorfodi yn cael ei gyflwyno i'r person hwnnw (is-adran (5)).

Adran 150 – Pŵer Gweinidogion Cymru i ddyroddi hysbysiad stop

795. Pan ddyroddir hysbysiad gorfodi, naill ai gan awdurdod cynllunio neu gan Weinidogion Cymru, yn ei gwneud yn ofynnol i weithgaredd gael ei stopio a bod Gweinidogion Cymru yn ystyried y dylid ei stopio o fewn cyfnod byrrach na'r hyn a bennir yn yr hysbysiad gorfodi, cânt ddyroddi hysbysiad stop – ar ôl ymgynghori â'r awdurdod cynllunio perthnasol.

796. Mae i hysbysiad stop a ddyroddir gan Weinidogion Cymru yr un effaith ag un a ddyroddir gan awdurdod cynllunio. Ac mae adrannau 145(2) i 149 – o ran cynnwys hysbysiad, cyflwyno ac arddangos hysbysiad, hyd ac effaith hysbysiad, a thynnu hysbysiad yn ôl – yn gymwys i hysbysiad o'r fath i'r un graddau ag y maent gymwys i hysbysiad a ddyroddir gan awdurdod.

Adran 151 – Y drosedd o dorri hysbysiad stop

797. O dan is-adran (1), unwaith y bydd hysbysiad stop wedi dod i rym sy'n ei gwneud yn ofynnol i weithgaredd stopio, mae person sy'n cynnal y gweithgaredd hwnnw, neu'n peri neu'n caniatáu i rywun arall gynnal y gweithgaredd hwnnw, yn cyflawni trosedd – ond dim ond os yw'r awdurdod cynllunio (neu Weinidogion Cymru):

    a. wedi cyflwyno copi o'r hysbysiad i'r person hwnnw; neu

    b. wedi arddangos hysbysiad safle sy'n ymwneud â'r hysbysiad stop.

798. Caniateir i berson gael ei gyhuddo o drosedd o dan yr adran hon drwy gyfeirio at ddiwrnod neu gyfnod hwy, a chaniateir iddo gael ei euogfarnu o fwy nag un drosedd drwy gyfeirio at gyfnodau gwahanol (is-adran (2)).

799. O dan is-adran (3), pan fo'r awdurdod yn dibynnu ar fod wedi ymddangos hysbysiad safle sy'n ymwneud â'r hysbysiad stop, bydd gan y rhai a gyhuddir o drosedd o dan yr adran hon amddiffyniad os ydynt yn gallu dangos:

    a. na chyflwynwyd copi o'r hysbysiad iddynt, o dan adran 147; a

    b. nad oeddent yn gwybod (ac na ellid bod wedi disgwyl yn rhesymol iddynt wybod) am fodolaeth yr hysbysiad.

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. Mae trosedd o dan yr adran hon yn drosedd neillffordd (y gellir ei rhoi ar brawf naill ai yn y llysoedd ynadon neu yn Llys y Goron). O dan is-adrannau (4) a (5), mae person a geir yn euog yn agored i dalu dirwy (ac nid oes terfyn ar swm y ddirwy y caiff y llys ei gosod). Fel ag yn achos erlyniad am beidio â chydymffurfio â hysbysiad gorfodi, mae dyletswydd benodol wedi ei gosod ar y llys, wrth benderfynu maint unrhyw ddirwy, i roi sylw i'r budd ariannol sydd wedi cronni (neu yr ymddengys ei fod yn debygol o gronni) o ganlyniad i'r drosedd.

Adran 152 – Digolledia am golled neu ddifrod a achosir gan hysbysiad stop

801. Mae hawl i hawlio digolledia yn codi o dan is-adrannau (1) a (2) pan fo un o'r canlynol yn digwydd ar ôl i hysbysiad stop gael ei ddyroddi:

a. bod yr hysbysiad gorfodi cysylltiedig yn cael ei ddiddymu, neu'n cael ei amrywio fel nad yw bellach yn ei gwneud yn ofynnol i'r gweithgaredd a waherddir gan yr hysbysiad stop ddod i ben (heblaw ar y sail bod caniatâd cynllunio yn cael ei roi mewn ymateb i apêl ar y sail yn adran 131(2)(a)) (gweler adran 131(2)(a));

b. bod yr hysbysiad gorfodi yn cael ei dynnu'n ôl (heblaw oherwydd, ar ôl ei ddyroddi, fod caniatâd cynllunio wedi ei roi yn awdurdodi'r gweithgaredd hwnnw); neu

c. bod yr hysbysiad stop ei hun yn cael ei dynnu'n ôl.

802. O dan is-adrannau (3) a (4) mae gan berson sydd â buddiant yn y tir y mae'r hysbysiad stop yn ymwneud ag ef ar yr adeg y cyflwynir yr hysbysiad am y tro cyntaf, neu sy'n meddiannu'r tir hwnnw, hawlogaeth i gael ei ddigolledu am golled neu ddifrod y gellir ei phriodoli neu ei briodoli yn uniongyrchol i:

a. y gwaharddiad a gynhwysir yn yr hysbysiad stop; neu

b. pan fo'r hysbysiad gorfodi yn cael ei amrywio, y gwaharddiad gan yr hysbysiad stop ar y gweithgareddau nad ydynt wedi eu gwahardd mwyach gan yr hysbysiad gorfodi.

803. Mae'r golled honno neu'r difrod hwnnw yn cynnwys unrhyw golled oherwydd tor contract sy'n codi o ganlyniad i gael ei orfodi i gymryd camau i gydymffurfio â'r hysbysiad stop.

804. Mae digolledia yn daladwy fel arfer gan yr awdurdod cynllunio a ddyroddodd yr hysbysiad gorfodi sy'n gysylltiedig â'r hysbysiad stop. Pan ddyroddwyd yr hysbysiad gorfodi gan Weinidogion Cymru, fodd bynnag, mae'r digolledia yn daladwy ganddynt hwy (is-adran (5)).

805. Nid yw digolledia yn daladwy am orfod stopio gweithgaredd a oedd, ar y pryd, yn dor rheolaeth gynllunio (is-adran (6)). Nid yw ychwaith yn daladwy pan allai hawlydd fod wedi osgoi dioddef y golled neu'r difrod drwy ddarparu gwybodaeth y gofynnwyd amdani gan yr awdurdod cynllunio, neu drwy gydweithredu â'r awdurdod neu Weinidogion Cymru mewn unrhyw ffordd arall wrth ymateb i gais o'r fath (is-adran (7)).

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. Rhaid i hawliad am ddigolledia o dan yr adran hon gael ei wneud yn ysgrifenedig. Rhaid iddo hefyd gael ei gyflwyno o fewn deuddeg mis i'r diwrnod y caiff yr hysbysiad gorfodi ei ddiddymu, ei amrywio neu ei dynnu'n ôl, neu i'r hysbysiad stop gael ei dynnu'n ôl (is-adran (8)).

Adran 153 – Gwaharddebau i atal tor rheolaeth gynllunio

807. O dan yr adran hon caiff awdurdod cynllunio wneud cais am waharddeb gan yr Uchel Lys neu'r llys sirol, sy'n atal tor rheolaeth gynllunio gwirioneddol neu ddisgwyliedig – pa un a yw wedi arfer, neu'n ystyried arfer, ei bwerau eraill o dan y Rhan hon o'r Ddeddf ai peidio (is-adrannau (1) a (2)).

808. O dan is-adran (3), caiff y llys roi gwaharddeb wedyn ar unrhyw delerau y mae'n ystyried eu bod yn briodol.

809. Mae is-adran (4) yn galluogi rheolau'r llys i ddarparu i waharddeb gael ei dyroddi hyd yn oed pan nad yw'r awdurdod yn gwybod pwy yw'r rhai sy'n cyflawni, neu y disgwylir iddynt gyflawni, y tor rheolaeth gynllunio.

Adran 154 – Cofrestr o hysbysiadau gorfodi, camau gorfodi eraill a hysbysiadau stop

810. Rhaid i'r awdurdod cynllunio gadw cofrestr sy'n cynnwys gwybodaeth ynghylch hysbysiadau rhybuddio am orfodi, hysbysiadau tor amod, hysbysiadau gorfodi a hysbysiadau stop a ddyroddir neu a gyflwynir gan yr awdurdod, a hysbysiadau a ddyroddir neu a gyflwynir gan Weinidogion Cymru mewn perthynas â thir yn ei ardal. O dan is-adran (4), rhaid i'r gofrestr fod ar gael i'r cyhoedd edrych arni ar bob adeg resymol.

811. Caiff rheoliadau bennu yn union beth sydd i'w gynnwys, ym mha ffordd a pha bryd y caiff cofnodion ynddi eu dileu (is-adrannau (1) i (3)). Mae'r gofynion perthnasol i'w gweld ar hyn o bryd yng Ngorchymyn 2012.

812. Gall y ffaith bod gwybodaeth ynghylch hysbysiad gorfodi wedi ei chofnodi'n briodol yn y gofrestr fod yn bwysig wrth benderfynu a yw person yn agored i'w euogfarnu am fethu â chydymffurfio â'r hysbysiad, o dan adran 138(6)(b)).

RHAN 5 – TYSTYSGRIFAU CYFREITHLONDEB

813. Cyflwynodd Deddf 1991 system lle y caiff awdurdod cynllunio ddyroddi tystysgrif sy'n nodi y gellir gwneud unrhyw ddefnydd penodedig neu gynnal unrhyw weithrediad penodedig (pa un a yw eisoes wedi dechrau ai peidio) heb fod angen cais cynllunio.

814. Mae'r Rhan hon o'r Ddeddf yn egluro yn gyntaf (yn adran 155) ystyr "cyfreithlon". Yna mae'n darparu gweithdrefn sy'n galluogi i unrhyw un gael tystysgrif derfynol ynghylch cyfreithlondeb unrhyw ddefnyddiau sy'n cael eu gwneud neu unrhyw weithrediadau sy'n cael eu cynnal ar hyn o bryd, neu sy'n arfaethedig, ar ddarn o dir.

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. Mae'n disgrifio dau fath o dystysgrif y gellir eu ceisio:

a. tystysgrif cyfreithlondeb ar gyfer defnydd neu ddatblygiad presennol (y cyfeirir ati weithiau fel 'CLEUD'), mewn achosion pan fo'r defnydd neu'r gweithrediad o dan sylw eisoes wedi dechrau (adran 156); a

b. tystysgrif cyfreithlondeb ar gyfer defnydd neu ddatblygiad arfaethedig ('CLOPUD'), pan nad yw'r defnydd neu'r gweithrediad wedi dechrau eto (adran 157).

816. Mae adrannau 156 i 164 yn nodi:

a. sut y caniateir gwneud cais i gael y naill fath o dystysgrif neu'r llall;

b. yr hyn y mae rhaid i dystysgrif o'r fath ei gynnwys;

c. sut, os na fydd cais o'r fath yn llwyddiannus, y gellir gwneud a phenderfynu apêl; a

d. pryd a sut y caniateir dirymu tystysgrif.

817. Mae'r Rhan hon yn disodli, i raddau helaeth, adrannau 191 i 196 o Ddeddf 1990 a gyflwynwyd ar eu ffurf bresennol gan Ddeddf 1991.

Adran 155 – Ymadroddion yn ymwneud â chyfreithlondeb

818. Mae'r adran hon yn egluro'r amgylchiadau pan fo defnyddiau o dir neu weithrediadau yn gyfreithlon.

819. Mae'r adran wedi ei drafftio drwy gyfeirio at gymryd camau gorfodi, fel y'u diffinnir yn adran 112(2); fodd bynnag, nid yw'r ffaith y caniateir cymryd camau gorfodi mewn perthynas â defnyddiau neu weithrediadau penodol yn golygu bod rhaid cymryd camau o'r fath, neu y bydd camau o'r fath o reidrwydd yn cael eu cymryd er mwyn eu hunioni. Caiff penderfyniad i gymryd camau o'r fath ei wneud yn ôl disgresiwn yr awdurdod cynllunio, yng ngoleuni'r cynllun datblygu a'r holl ystyriaethau perthnasol eraill (adrannau 119(2) a 128(2)). Ond mae darpariaethau'r adran hon yn galluogi perchnogion ar dir, darpar brynwyr a'r awdurdod i ganfod statws cynllunio tir, er mwyn penderfynu pa gamau, os o gwbl, sy'n briodol.

820. Pan nad oes hysbysiad gorfodi yn cael effaith ar hyn o bryd mewn cysylltiad â'r tir o dan sylw, mae newid yn y defnydd o'r tir neu gynnal gweithrediad arno yn gyfreithlon os na ellir cymryd camau gorfodi mewn cysylltiad ag ef (am y rhesymau yn is-adran (2)).

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. Yn gyntaf, bydd gan ddefnydd o dir imiwnedd rhag camau gorfodi, ac felly bydd yn gyfreithlon, os nad yw'n "datblygiad" (is-adran (2)(a)) – hynny yw, os na ddeilliodd o ganlyniad i newid defnydd a oedd yn ffurfio datblygiad ar yr adeg y digwyddodd; neu, yn achos defnydd arfaethedig, os na fydd yn dod i fodolaeth o ganlyniad i newid a fydd yn gyfystyr â datblygiad. Mae adran 3(2)(b) yn darparu y bydd newid sylweddol yn y defnydd o dir fel arfer yn golygu datblygiad; ac mae adran 5 yn egluro bod rhai defnyddiau penodol yn golygu newid sylweddol, hyd yn oed os na fyddent yn golygu hynny fel arall. Mae adran 6(5) i (7), fodd bynnag, yn darparu nad yw rhai newidiadau yn y defnydd o dir yn golygu datblygiad (yn enwedig newid i'w ddefnyddio ar gyfer amaethyddiaeth neu goedwigaeth a newid o un defnydd o fewn gorchymyn dosbarthiadau defnydd i ddefnydd arall o fewn yr un dosbarth).

822. Bydd gan weithrediad imiwnedd rhag camau gorfodi, ac felly bydd yn gyfreithlon, os nad yw'n ddatblygiad (is-adran (2)(a)). Mae adran 3(2)(a) yn darparu bod cyflawni gweithrediadau ar dir (hynny yw, mewn, ar, dros neu o dan dir: gweler adran 408(2)) yn ddatblygiad fel arfer. Mae adran 4 wedyn yn darparu bod gweithrediadau yn cynnwys gweithrediadau adeiladu, peirianneg a mwyngloddio ac yn egluro pob un o'r termau hynny yn fanylach. Mae adran 6(2) i (4) yn darparu nad yw rhai gweithrediadau cymharol fach yn golygu datblygiad (yn enwedig newidiadau i du mewn adeilad a gwaith ffordd gan ymgymerwyr statudol a chyrff tebyg).

823. Yn ail, bydd gan ddefnydd o dir imiwnedd rhag camau gorfodi, ac felly bydd yn gyfreithlon, os byddai newid i'r defnydd hwnnw yn ddatblygiad, ond na fyddai cais am ganiatâd cynllunio yn ofynnol (is-adran (2)(b)). Byddai hyn yn digwydd, yn benodol, pan fyddai newid o'r fath yn cael caniatâd drwy orchymyn datblygu neu orchymyn datblygu lleol. Mae Gorchymyn 1995 yn rhoi caniatâd ar gyfer nifer o newidiadau defnydd cymharol fach. Byddai hefyd yn digwydd mewn achosion pan fo'r defnydd o'r tir yn newid yn ôl i ddefnydd blaenorol, fel y nodir yn adran 43(3) i (6).

824. Yn yr un modd, bydd gan weithrediad imiwnedd rhag camau gorfodi, ac felly bydd yn gyfreithlon, pe byddai'n ddatblygiad, ond na fyddai cais am ganiatâd cynllunio yn ofynnol (is-adran (2)(b)). Byddai hyn yn digwydd, yn benodol, pan fyddai gweithrediad o'r fath yn cael caniatâd drwy orchymyn datblygu neu orchymyn datblygu lleol. Mae Gorchymyn 1995 yn rhoi caniatâd ar gyfer nifer mawr o weithrediadau (yn enwedig y rhai sy'n gymharol fach neu a ganiateir o dan ddeddfwriaeth arall).

825. Yn drydydd, gall defnydd o dir fod yn ganlyniad i newid defnydd a oedd yn ddatblygiad ar yr adeg y digwyddodd ac na roddwyd caniatâd ar ei gyfer drwy orchymyn datblygu neu orchymyn datblygu lleol; neu gall fod gweithrediad wedi digwydd a oedd yn ddatblygiad ac na roddwyd caniatâd ar ei gyfer drwy unrhyw orchymyn bryd hynny. Yn y naill achos neu'r llall, felly, gallai'r defnydd neu'r gweithrediad fod wedi bod yn destun camau gorfodi. Fodd bynnag, fel y nodir yn adran 113, dim ond o fewn cyfnod penodedig y gellir cymryd camau o'r fath – pedair neu ddeng mlynedd yn gyffredinol yn dibynnu ar natur y toriad. Os yw'r cyfnod hwnnw wedi dod i ben heb i'r camau gorfodi gael eu cymryd, neu os cymerwyd camau ond na wnaethant arwain at hysbysiad gorfodi sydd bellach mewn grym, mae'r defnydd neu'r gweithrediad bellach yn gyfreithlon (is-adran (2)(c)).

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. Yn olaf, fel y nodwyd yn is-adran (1)(b), gall fod hysbysiad gorfodi sydd mewn grym ar hyn o bryd mewn cysylltiad â'r tir perthnasol, ond nad yw'r defnydd neu'r gweithrediad o dan sylw bellach yn torri'r hysbysiad hwnnw. Yn y sefyllfa honno, mae cyfreithlondeb y defnydd neu'r gweithrediad yn dibynnu ar a ganiateir cymryd camau gorfodi pellach mewn cysylltiad ag ef, fel yr amlinellir yn is-adran (2). Er enghraifft, mae'n bosibl y bydd hysbysiad gorfodi ar waith sy'n gwahardd meddiannu annedd heblaw gan weithiwr amaethyddol; ni fydd hynny'n atal adeiladu addasiadau i du mewn yr annedd, neu adeiladu estyniad bach, rhag bod yn gyfreithlon.

827. Mae methu â chydymffurfio ag amod neu gyfyngiad sydd ynghlwm wrth ganiatâd cynllunio yn dor rheolaeth gynllunio (gweler adran 112(1)(b)). Yn rhinwedd is-adran (3), fodd bynnag, bydd y sefyllfa sy'n codi o ganlyniad i fethiant o'r fath yn "cyfreithlon" os:

a. yw'r cyfnod ar gyfer cymryd camau gorfodi ynghylch y methiant wedi dod i ben; a

b. nad yw'r mater yn rhan o'r methiant i gydymffurfio ag unrhyw un neu ragor o ofynion yr hysbysiad tor amod neu'r hysbysiad gorfodi sydd mewn grym – gan gofio'r cyfnod ar gyfer cymryd camau o'r fath mewn cysylltiad â thoriad yn y gorffennol (deng mlynedd fel arfer: gweler adran 113(1)).

828. Yn y Rhan hon, nid yw'r term "defnydd o dir" yn cynnwys defnydd er mwyn cynnal gweithrediadau ar dir (is-adran (5)(a)). Mae hyn yn golygu, er enghraifft, pan fo maes chwaraeon yn dod yn safle datblygiad ac y rhoddir caniatâd cynllunio ar gyfer adeiladu tai newydd, bod ei ddefnydd yn parhau fel maes chwaraeon hyd nes i'r gwaith o adeiladu'r tai ddechrau. Ac unwaith y bydd y gwaith hwnnw wedi ei ddechrau mae'r defnydd o'r tir ar gyfer tai. Ond penderfynir cyfreithlondeb yr hyn a gyflawnir drwy ystyried a roddwyd caniatâd cynllunio ar gyfer adeiladu'r tai, ac a allai camau gorfodi ddigwydd os na roddwyd caniatâd o'r fath, yn hytrach nag a roddwyd caniatâd ar gyfer newid defnydd o faes chwaraeon i safle adeiladu.

Adran 156 – Tystysgrif cyfreithlondeb ar gyfer defnydd neu ddatblygiad presennol

829. O dan is-adran (1), caiff unrhyw berson wneud cais i awdurdod cynllunio am dystysgrif yn cadarnhau:

a. bod defnydd presennol o dir yn ardal yr awdurdod yn gyfreithlon; neu

b. bod gweithrediadau sydd wedi eu cynnal ar dir o'r fath yn gyfreithlon; neu

c. bod mater sy'n fethiant i gydymffurfio ag amod sydd ynghlwm wrth ganiatâd cynllunio a roddwyd mewn perthynas â thir o'r fath yn gyfreithlon.

830. Caiff cais ei wneud fel arfer gan berchnogion neu feddianwyr ar dir, darpar brynwyr neu drydydd partïon a chanddynt un neu ragor o fuddiannau.

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. Pan ddarperir gwybodaeth i'r awdurdod sy'n ei fodloni ynghylch cyfreithlondeb y defnydd, y gweithrediad neu'r mater arall ar y diwrnod y gwnaed y cais, rhaid iddo ddyroddi tystysgrif cyfreithlondeb (is-adran (2)). Caiff y dystysgrif ddisgrifio'r defnydd, y gweithrediad neu'r mater arall naill ai yn y telerau a nodir yn y cais neu mewn telerau eraill y mae'n ystyried eu bod yn fwy priodol. Yn yr achos olaf, gall yr awdurdod addasu'r telerau a nodir yn y cais neu roi ei rai ei hun yn eu lle. Er enghraifft, gall cais honni mai'r defnydd cyfreithlon o ddarn o dir yw ar gyfer *"parcio lorïau trwm"*; yna gellir dyroddi tystysgrif sy'n datgan mai'r defnydd cyfreithlon o'r tir yw ar gyfer *"parcio hyd at ddeg lori o [faint neu bwysau penodol]"*.

832. Nid yw dyroddi tystysgrif yn dibynnu ar ddymunoldeb neu fel arall yn nhermau polisi y defnydd neu'r gweithrediad o dan sylw. Mae'n dibynnu'n llwyr ar hanes cynllunio'r tir a'r amgylchiadau ar ddyddiad y cais – y ddau yn faterion ffeithiol – a dadansoddiad o ganlyniadau cyfreithiol y materion hynny.

833. Pan ddyroddir tystysgrif, mae'n dystiolaeth bendant o gyfreithlondeb – ar ddyddiad y cais – y defnydd, y gweithrediadau neu'r materion eraill y mae'n ymwneud â hwy (is-adran (4)).

834. Ond pan na fo'r awdurdod wedi cael digon o wybodaeth i'w alluogi i benderfynu beth yw'r defnydd cyfreithlon o ddarn o dir, os oes defnydd cyfreithlon o gwbl, neu gyfreithlondeb pob un neu unrhyw un o'r gweithrediadau a allai fod wedi eu cynnal ar y tir, rhaid iddo wrthod y cais (is-adran (3)).

835. Mae is-adran (5)(a) yn tynnu sylw at Ddeddf Cartrefi Symudol (Cymru) 2013 (dccc 6). Mae adran 7(1) o'r Ddeddf honno'n darparu y caiff awdurdod lleol yng Nghymru ddyroddi trwydded safle o dan y Ddeddf honno mewn cysylltiad â thir os yw'n ddarostyngedig i fudd caniatâd cynllunio ar gyfer defnyddio'r tir hwnnw fel safle cartref symudol heblaw drwy orchymyn datblygu. Yna mae adran 39(5) o'r Ddeddf honno yn darparu bod tystysgrif cyfreithlondeb a roddwyd o dan yr adran hon yn cael ei thrin fel pe bai'n rhoi caniatâd cynllunio ac eithrio drwy orchymyn datblygu. Mae hyn yn golygu pan fo tir sy'n cael ei ddefnyddio fel safle cartref symudol wedi dod yn imiwn rhag camau gorfodi – er enghraifft, oherwydd ei fod wedi ei ddefnyddio felly ers dros ddeng mlynedd – rhaid i awdurdod ddyroddi tystysgrif cyfreithlondeb os caiff ei wahodd i wneud hynny. Mae'r dystysgrif honno wedyn yn gweithredu fel pe bai'n rhoi caniatâd cynllunio; ac yna caiff yr awdurdod lleol ddyroddi trwydded safle.

836. Mae is-adran (5)(b) yn tynnu sylw yn yr un modd at Ddeddf Safleoedd Carafannau a Rheoli Datblygu 1960 (p. 62). Mae adran 3(3) o'r Ddeddf honno'n darparu y caiff awdurdod lleol yng Nghymru ddyroddi trwydded safle mewn cysylltiad â thir – heblaw safle a reoleiddir o dan Ddeddf Cartrefi Symudol (Cymru) 2013 – os yw'n cael budd o ganiatâd cynllunio i'w ddefnyddio fel maes carafannau. Yna mae adran 29(4B) o'r Ddeddf honno yn darparu bod tystysgrif a roddir o dan yr adran hon yn cael ei thrin fel pe bai'n rhoi caniatâd cynllunio.

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.

Adran 157 – Tystysgrif cyfreithlondeb ar gyfer defnydd neu ddatblygiad arfaethedig

837. O dan is-adran (1), caiff unrhyw berson wneud cais i awdurdod cynllunio am dystysgrif sy'n cadarnhau y byddai defnydd arfaethedig o dir yn ardal yr awdurdod yn gyfreithlon, neu y byddai gweithrediadau y cynigir eu cynnal ar dir o'r fath yn gyfreithlon. Yma hefyd caiff cais ei wneud fel arfer gan berchnogion neu feddianwyr ar dir, darpar brynwyr neu drydydd partïon a chanddynt un neu ragor o fuddiannau.

838. Pan ddarperir gwybodaeth i'r awdurdod sy'n ei fodloni ynghylch cyfreithlondeb y defnydd, y gweithrediad neu'r mater arall ar y diwrnod y gwnaed y cais, yn y telerau a nodir yn y cais, rhaid iddo ddyroddi tystysgrif cyfreithlondeb (is-adran (2)).

839. Yma hefyd, nid yw dyroddi tystysgrif yn dibynnu ar ddymunoldeb neu fel arall yn nhermau polisi y defnydd neu'r gweithrediad arfaethedig. Mae'n dibynnu'n llwyr ar hanes cynllunio'r tir a'r amgylchiadau ar ddyddiad y cais – y ddau yn faterion ffeithiol – a dadansoddiad o ganlyniadau cyfreithiol y materion hynny.

840. Pan ddyroddir tystysgrif, mae'n dystiolaeth bendant yn gyffredinol ynghylch cyfreithlondeb – ar ddyddiad y cais – y defnydd neu'r gweithrediadau y mae'n ymwneud ag ef neu â hwy (is-adran (4)). Ond ni fyddai hyn yn gymwys os oes newid sy'n berthnasol i gyfreithlondeb y materion hynny rhwng dyddiad y cais a'r dyddiad y maent yn dechrau. Er enghraifft, pe bai'r gorchymyn datblygu cyffredinol a ganiateir yn cael ei ddiwygio er mwyn tynnu caniatâd yn ôl ar gyfer y newid arfaethedig i ddefnydd neu weithrediadau, byddai hynny'n trechu tystysgrif a ddyroddwyd ar sail y gorchymyn heb ei ddiwygio i bob pwrpas.

841. Pan nad yw'r awdurdod wedi cael digon o wybodaeth i'w alluogi i benderfynu a fyddai'r defnydd neu'r gweithrediadau arfaethedig yn gyfreithlon, rhaid iddo wrthod y cais (is-adran (3)).

Adran 158 – Darpariaeth bellach ynghylch ceisiadau am dystysgrifau cyfreithlondeb

842. Rhaid i gais am dystysgrif o dan y Rhan hon bennu'r tir y mae'n ymwneud ag ef, a disgrifio'r defnydd, y gweithrediadau neu'r mater arall y mae'n ymwneud ag ef neu â hwy (is-adran (1)). Ymhellach, caiff rheoliadau o dan is-adran (2) ddarparu ar gyfer ffurf a chynnwys cais, sut y mae rhaid gwneud cais a pha ddogfennau neu ddeunyddiau eraill sydd i'w cynnwys gyda chais. Mae'r gofynion cyfredol yn erthygl 28(1), (2), a (4) i (6) o Orchymyn 2012.

843. Yn ogystal, caiff awdurdod cynllunio ei gwneud yn ofynnol bod rhaid i gais am dystysgrif cyfreithlondeb gynnwys unrhyw wybodaeth y mae'n ystyried ei bod yn angenrheidiol, ac unrhyw dystiolaeth bellach y mae'n ystyried ei bod yn angenrheidiol i ategu unrhyw beth yn y cais neu unrhyw beth sy'n ymwneud ag ef (is-adran (3)). Gallai hyn gynnwys, er enghraifft, fanylion gwerthu, derbynebau neu dystiolaeth ddogfennol arall, ffotograffau a datganiadau gan berchnogion cyfagos.

844. Yn rhinwedd is-adran (4), ni chaiff awdurdod ystyried cais os yw'n methu â chydymffurfio â gofynion is-adran (1) neu unrhyw reoliadau o dan is-adran (2), neu unrhyw ofynion penodol am wybodaeth bellach y mae wedi eu gwneud o dan is-adran (3).

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. Caiff rheoliadau o dan is-adrannau (5) a (6) ddarparu sut y mae awdurdod i ymdrin â chais am dystysgrif, cânt ei gwneud yn ofynnol i'r awdurdod hysbysu'r ceisydd am y canlyniad o fewn cyfnod penodedig a hysbysu Gweinidogion Cymru neu eraill ynghylch ceisiadau y mae wedi eu penderfynu; mae'r gofynion cyfredol yn erthygl 28(7) i (13) o Orchymyn 2012 sy'n nodi bod rhaid cydnabod cais a bod rhaid ymdrin ag ef o fewn wyth wythnos, neu unrhyw gyfnod hirach y mae'r awdurdod a'r ceisydd yn cytuno arno.

846. Fel arfer mae ffi yn daladwy am gais am dystysgrif, o dan reoliad 11 o Reoliadau 2015 (a wnaed o dan y pwerau a ailddatgenir yn adran 360).

847. Caiff rheoliadau o dan is-adran (7) addasu'r weithdrefn yn achos ceisiadau a wneir gan neu ar ran y Goron. Ar hyn o bryd nid yw erthygl 28(3) o Orchymyn 2012 ond yn darparu bod rhaid i ddatganiad sy'n nodi bod y cais wedi ei wneud mewn cysylltiad â thir y Goron fynd gyda chais o'r fath, ynghyd â'r awdurdodiad a roddwyd i'r cais gael ei wneud, pan fo hynny'n berthnasol.

Adran 159 – Darpariaeth bellach ynghylch tystysgrifau cyfreithlondeb

848. Pan fo'r awdurdod yn dyroddi tystysgrif cyfreithlondeb, rhaid iddo bennu'r tir y mae'n ymwneud ag ef, a all fod y tir cyfan a bennir yn y cais am y dystysgrif neu unrhyw ran o'r tir (is-adrannau (1)(a) a (3)(a)).

849. Rhaid i'r dystysgrif ddisgrifio'r defnydd, y gweithrediadau neu'r materion eraill y mae'n ymwneud ag ef neu â hwy, a all fod yr holl ddefnyddiau etc. neu unrhyw rai ohonynt a bennir yn y cais (is-adrannau (1)(b) a (3)(b)). Pan fo'r defnydd a bennir yn y dystysgrif o fewn un o'r dosbarthau o ddefnyddiau a bennir mewn rheoliadau a wneir o dan adran 6(6), rhaid i'r dystysgrif hefyd bennu'r dosbarth hwnnw (sydd yng Ngorchymyn Cynllunio Gwlad a Thref (Dosbarthiadau Defnydd) 1987 ar hyn o bryd).

850. Rhaid i'r dystysgrif hefyd ddatgan rhesymau'r awdurdod dros benderfynu bod y defnyddiau hynny, y gweithrediadau hynny neu'r materion eraill hynny yn gyfreithlon a'r dyddiad y gwnaed y cais (is-adran (1)(c) a (d)). Mae'r olaf yn arwyddocaol gan y bydd penderfyniad yr awdurdod yn seiliedig ar y ffeithiau a'r gyfraith fel sy'n gywir ar y dyddiad ymgeisio.

851. Nid yw tystysgrif ond yn cael effaith mewn perthynas â methiant i gydymffurfio ag amod mewn caniatâd cynllunio os yw'n disgrifio'r diffyg cydymffurfedd yn benodol (is-adran (4)).

852. Caiff rheoliadau ragnodi ffurf tystysgrif cyfreithlondeb; mae'r ffurflen bresennol yn Atodlen 7 i Orchymyn 2012.

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.

Adran 160 – Yr hawl i apelio yn erbyn gwrthod cais neu fethu â gwneud penderfyniad

853. Caiff person sydd wedi gwneud cais am dystysgrif cyfreithlondeb apelio i Weinidogion Cymru:

a. os yw'r awdurdod yn gwrthod y cais yn gyfan gwbl neu'n rhannol, neu'n dyroddi tystysgrif gyda disgrifiad o'r defnydd neu'r gweithrediad cyfreithlon sy'n wahanol i'r disgrifiad yn y cais (is-adrannau (1)(a) a (6)); neu

b. os yw'r awdurdod yn methu â hysbysu ei benderfyniad o fewn yr amser a bennir yn y rheoliadau neu unrhyw gyfnod estynedig y cytunwyd arno (is-adrannau (1)(b) a (2)).

854. Rhaid gwneud apêl o'r fath drwy gyflwyno hysbysiad o apêl i Weinidogion Cymru, ar y ffurf a ragnodir gan reoliadau (is-adrannau (3) a (4)). Mae'r gofynion cyfredol yn erthygl 26B o Orchymyn 2012 sy'n datgan bod rhaid i'r apelydd ddarparu datganiad llawn o'i achos, ynghyd â'r holl ddogfennau perthnasol. Fel arfer, gwneir apelau o'r fath ar-lein, drwy wefan PEDW.

855. Rhaid i'r apêl gael ei gwneud o fewn y cyfnod rhagnodedig drwy reoliadau, a rhaid i'r cyfnod hwnnw fod o leiaf 28 o ddiwrnodau ar ôl i'r apelydd gael hysbysiad o benderfyniad yr awdurdod neu ar ôl diwedd y cyfnod y dylai fod wedi gwneud penderfyniad ynddo (is-adrannau (4)(c) a (5)).

Adran 161 – Cyfyngiad ar amrywio cais ar ôl cyflwyno hysbysiad o apêl

856. Unwaith y bydd apêl o dan adran 160 wedi ei gwneud, ni chaniateir newid y cais a arweiniodd ati, ac eithrio mewn amgylchiadau a bennir mewn rheoliadau (is-adran (1)). Ar hyn o bryd mae erthygl 26C o Orchymyn 2012, a wnaed o dan y pŵer a ailddatgenir yn y ddarpariaeth hon, yn darparu ar gyfer amgylchiadau cyfyngedig iawn pan ganiateir i newid gael ei wneud. Diben y rhain yw cywiro anghysondeb yn unig pan fo modd gwneud hynny heb newid sylwedd y cais.

857. Pan wneir newid o'r fath, rhaid cynnal ymgynghoriad pellach os bydd Gweinidogion Cymru yn cyfarwyddo (is-adran (2)).

Adran 162 – Penderfynu apêl

858. Wrth benderfynu apêl o dan adran 162, rhaid i Weinidogion Cymru ganiatáu'r apêl os ydynt yn ystyried nad oedd y gwrthodiad i ddyroddi tystysgrif wedi ei wneud ar sail dda – neu, yn achos apêl nad yw wedi ei phenderfynu, na fyddai gwrthodiad i gyhoeddi tystysgrif wedi bod ar sail dda. Yn y naill achos neu'r llall, rhaid iddynt ddyroddi tystysgrif (neu, pan fo'n briodol, amrywio unrhyw dystysgrif a ddyroddwyd gan yr awdurdod) (is-adrannau (1) a (3)).

859. Mewn unrhyw achos arall, rhaid iddynt wrthod yr apêl (is-adran (2)).

860. Mae Pennod 2 o Ran 14 (achosion gerbron Gweinidogion Cymru) yn gymwys i benderfynu apelau o dan yr adran hon gan Weinidogion Cymru neu, yn fwy cyffredin, gan arolygwyr ar eu rhan. Mae eu penderfyniad ar apêl o'r fath yn derfynol, yn ddarostyngedig i'w hadolygu gan y llysoedd (is-adrannau (5) a (6)).

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. Mae adrannau 156(4), 157(4) a 159 yn gymwys i dystysgrif a ddyroddir (neu a amrywir) gan Weinidogion Cymru ar apêl o dan adran 160 ond rhaid eu darllen fel pe bai'r cyfeiriad at awdurdod cynllunio yn adran 159(1)(c) yn gyfeiriad at Weinidogion Cymru (is-adran (4)).

Adran 163 – Dirymu tystysgrif cyfreithlondeb
Adran 164 – Y drosedd o wneud datganiad anwir etc. i ddylanwadu ar ganlyniad cais neu apêl

862. Mae dyroddi tystysgrif cyfreithlondeb yn dibynnu'n helaeth ar gywirdeb a chyflawnrwydd yr wybodaeth a ddarperir gan y ceisydd i'r awdurdod a chan eraill y cysylltir â hwy. Pan fo'r wybodaeth honno'n anwir neu pan fo gwybodaeth wedi ei dal yn ôl, gall yr awdurdod ddirymu unrhyw dystysgrif sydd bellach yn ymddangos yn anghywir neu'n gamarweiniol (adran 163(1)).

863. Mae'r un peth yn gymwys pan fo Gweinidogion Cymru yn dyroddi neu'n amrywio tystysgrif ar apêl (adran 163(2)).

864. Caiff rheoliadau o dan adran 163(3) a (4) ddarparu ar gyfer y weithdrefn sydd i'w dilyn mewn achos o'r fath; mae'r gofynion cyfredol yn erthygl 28(15) i (17) o Orchymyn 2012 sy'n datgan bod rhaid i awdurdod, cyn dirymu tystysgrif, hysbysu perchnogion a meddianwyr y tir ac unrhyw un arall yr effeithir arno.

865. Am yr un rheswm, mae'n drosedd o dan adran 164 i geisio dylanwadu ar ganlyniad cais neu apêl drwy wneud yn fwriadol neu'n ddi-hid ddatganiad sy'n anwir neu'n gamarweiniol mewn modd perthnasol neu ddibynnu ar ddogfen anwir neu gamarweiniol neu atal gwybodaeth gyda'r bwriad o dwyllo. Mae'r drosedd yn drosedd neillffordd (hynny yw, gellir ei rhoi ar brawf naill ai yn y llys ynadon neu yn Llys y Goron); ac mae person a euogfernir yn agored i dalu dirwy (ac nid oes terfyn ar swm y ddirwy y caiff y llys ei gosod).

RHAN 6 – RHWYMEDIGAETHAU SY'N YMWNEUD Â DATBLYGIAD TIR A DEFNYDD O DIR

Pennod 1 – Rhwymedigaethau cynllunio

866. Mae rhwymedigaeth gynllunio yn drefniant yr ymrwymir iddo gan bersonau a chanddynt un neu ragor o fuddiannau mewn darn o dir (y cyfeirir atynt yma fel 'y perchnogion tir'), i sicrhau ei fod yn cael ei ddefnyddio neu ei ddatblygu mewn ffordd benodol, neu'n peidio â chael ei ddefnyddio neu ei ddatblygu mewn ffordd benodol, neu fod cyllid yn cael ei ddarparu i'r awdurdod cynllunio i sicrhau bod materion penodol yn cael eu cynnal ar y tir neu gerllaw iddo neu yn rhywle arall. Caniateir ei defnyddio i gyflawni canlyniadau penodol na allant fod yn destun amod ar ganiatâd cynllunio.

867. Gall rhwymedigaeth o dan Bennod 1 o'r Rhan hon fod ar ffurf naill ai cytundeb rhwng y perchnogion tir a'r awdurdod cynllunio neu'r bwrdd cydgynllunio. Neu gall fod yn ymgymeriad unochrog gan y perchnogion tir. Yn y naill achos neu'r llall, gellir ei gorfodi gan yr awdurdod yn unol ag adran 166.

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. Defnyddir rhwymedigaeth o'r fath fel arfer mewn cysylltiad â chynnig datblygiad penodol naill ai fel rhan o'r cais cynllunio cychwynnol neu fe'i cyflwynir yng ngoleuni trafodaethau dilynol rhwng y partïon. Caniateir ei defnyddio i wneud datblygiad yn dderbyniol yn nhermau cynllunio - er mwyn sicrhau bod seilwaith yn cael ei wella neu i gyflwyno seilwaith sy'n angenrheidiol i'w gefnogi, i liniaru niwed a all gael ei achosi ganddo neu i gyflawni buddion cysylltiedig. Caniateir ei defnyddio i sicrhau, er enghraifft, ddarpariaeth tai fforddiadwy (naill ai fel rhan o'r datblygiad neu fel arall), cyfleusterau addysg, mannau agored neu fuddion cyhoeddus eraill.

869. Mae adran 66(2) yn nodi y gall y ffaith bod person yn ymrwymo i rwymedigaeth gynllunio fod yn rheswm dros roi caniatâd cynllunio, ond dim ond os yw'r rhwymedigaeth:

a. yn uniongyrchol gysylltiedig â'r datblygiad;

b. yn angenrheidiol i'w wneud yn dderbyniol yn nhermau cynllunio; ac

c. yn gysylltiedig â'r datblygiad mewn modd teg a rhesymol o ran graddfa a maint.

870. Mae'r Bennod hon yn disodli, i raddau helaeth, adran 106 i 106D o Ddeddf 1990 – cyfeiriwyd yn gyffredin at rwymedigaethau o dan yr adrannau hynny fel 'cytundebau adran 106'.

Adran 165 – Rhwymedigaethau cynllunio

871. Mae is-adran (1) yn darparu y caiff unrhyw berchennog ar dir y mae rhwymedigaeth gynllunio'n ymwneud ag ef – hynny yw, unrhyw un a chanddo un neu ragor o fuddiannau yn y tir, megis rhydd-ddeiliad neu lesddeiliad neu ddeiliad unrhyw fuddiant cyfreithiol neu ecwitïol arall fel morgais neu fuddiant cyfamod – ymrwymo i rwymedigaeth gynllunio.

872. Caiff rhwymedigaeth fod ar ffurf cytundeb rhwng perchennog y tir, a fydd yn rhwym wrth ei delerau, a'r awdurdod a fydd yn gallu gorfodi'r telerau hynny ('yr awdurdod gorfodi'). Yr awdurdod gorfodi fel arfer fydd yr awdurdod cynllunio ar gyfer yr ardal sy'n cynnwys y tir dan sylw. Fodd bynnag, pan fo'r tir yn ardal bwrdd cydgynllunio o dan adran 8, caiff y rhwymedigaeth ddatgan y bydd yn cael ei gorfodi gan yr awdurdod lleol perthnasol (cyngor sir neu gyngor bwrdeistref sirol) (is-adrannau (7) ac (8)).

873. Fel arall, caiff rhwymedigaeth fod ar ffurf ymgymeriad unochrog gan berchennog y tir o dan sylw.

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. Yn ôl is-adran (2), caiff rhwymedigaeth wneud un neu ragor o'r canlynol:

a. caiff gyfyngu ar y datblygiad y caniateir ei wneud ar y tir, neu'r defnydd o'r tir;

b. caiff ei gwneud yn ofynnol bod gweithrediadau neu weithgareddau penodol yn cael eu cynnal ar y tir, neu fod y tir yn cael ei ddefnyddio mewn ffordd benodol; neu

c. caiff ei gwneud yn ofynnol i un neu ragor o daliadau gael eu gwneud i'r awdurdod cynllunio ar gyfer yr ardal y mae'r tir ynddi.

875. O ran y cyntaf o'r rhain, fel arfer mae gan "datblygiad" yr ystyr a roddir yn adran 3 – hynny yw, cynnal gweithrediadau neu wneud newid yn y defnydd o dir. Mae'r rhain yn cynnwys unrhyw waith a fyddai fel arfer yn gwneud cydsyniad adeilad rhestredig, cydsyniad ardal gadwraeth neu gydsyniad heneb gofrestredig yn ofynnol, ac amryw fathau eraill o gynigion. Fodd bynnag, yn rhinwedd is-adran (3), mewn perthynas â rhwymedigaeth cydsyniad seilwaith diffinnir "datblygiad" yn adran 133 o Ddeddf 2024 ac ar gyfer rhwymedigaeth cydsyniad datblygiad diffinnir "development" yn adran 32 o Ddeddf 2008.

876. Caiff rhwymedigaeth gynllunio fod yn ddarostyngedig i amodau, o dan is-adran (4). Caniateir datgan bod unrhyw gyfyngiad neu ofyniad a osodir gan rwymedigaeth (heblaw un lle y mae taliad yn ofynnol) yn gymwys naill ai am gyfnod amhenodol neu am gyfnod penodol.

877. Pan fo rhwymedigaeth yn ei gwneud yn ofynnol i daliad gael ei wneud, caiff hynny fod ar un achlysur neu ar sawl achlysur penodol, neu'n rheolaidd am gyfnod penodol neu am gyfnod amhenodol. Caniateir i swm y taliad neu'r taliadau gael ei bennu hefyd yn y rhwymedigaeth neu ei gyfrifo yn ôl fformiwla ynddi (is-adran (5)).

878. O dan is-adran (6), rhaid ymrwymo i rwymedigaeth gynllunio fel gweithred, a rhaid iddi:

a. datgan ei bod yn rhwymedigaeth gynllunio at ddibenion yr adran;

b. datgan ei bod yn rhwymedigaeth cydsyniad datblygiad neu'n rhwymedigaeth cydsyniad seilwaith, pan fo hynny'n briodol;

c. nodi'r tir y mae'n ymwneud ag ef;

d. rhestru pawb sy'n ymrwymo i'r rhwymedigaeth, a datgan beth yw eu buddiant yn y tir; ac

e. pennu'r awdurdod sy'n gyfrifol am orfodi'r rhwymedigaeth.

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. Os nad yw'r awdurdod gorfodi yn barti i'r rhwymedigaeth gynllunio, yna rhaid anfon copi ato (is-adran (8)). Byddai hyn yn digwydd, er enghraifft, pan fo'r rhwymedigaeth ar ffurf ymgymeriad unochrog neu, pan fo'r awdurdod gorfodi yn gyngor sir neu'n gyngor bwrdeistref sirol, yn achos rhwymedigaeth sy'n cynnwys bwrdd cydgynllunio.

Adran 166 – Gorfodi rhwymedigaethau cynllunio

880. Os yw rhwymedigaeth gynllunio i fod yn effeithiol, rhaid cael mecanwaith i sicrhau y gellir gorfodi ei thelerau. Mae is-adrannau (1) ac (11) yn unol â hynny yn darparu y bydd yr awdurdod gorfodi yn gyffredinol yn gallu gorfodi'r rhwymedigaeth yn erbyn:

a. y personau a ymrwymodd iddi ar y dechrau; a

b. y rhai y mae eu teitl i'r tir yn deillio o bersonau o'r fath, a'u holynwyr mewn teitl.

881. Mae'r olaf yn arwyddocaol gan y bydd rhwymedigaeth gynllunio yn aml yn cynnwys ymgymeriadau gan y perchnogion tir i wneud pethau penodol (megis gwneud gwaith penodol, defnyddio tir mewn ffordd benodol neu i dalu arian); a chaniateir ymrwymo iddi mewn amgylchiadau pan fo'r tir yn cael ei drosglwyddo i berchnogion newydd ar ôl iddo gael ei ddatblygu. Felly, mae rhwymedigaeth o'r fath yn wahanol i gyfamod cyfyngol na chaniateir ei orfodi yn erbyn perchnogion dilynol ond i'r graddau y mae'n cynnwys ymgymeriadau o natur negyddol (megis ymatal rhag defnyddio tir at ddibenion penodol).

882. Fodd bynnag, yn rhinwedd is-adran (2), caiff rhwymedigaeth gynllunio ddarparu nad yw person ond yn rhwym iddi gyhyd â bod gan y person hwnnw fuddiant yn y tir perthnasol.

883. O dan is-adran (3), caniateir i awdurdod gorfodi gael gwaharddeb yn y llysoedd sy'n ei gwneud yn ofynnol cydymffurfio â'r cyfyngiadau neu'r gofynion yn y rhwymedigaeth. Yn dilyn dyroddi gwaharddeb o'r fath, mae methiant parhaus i gydymffurfio yn troi'n ddirmyg llys, a all arwain at gosbau difrifol.

884. Os bydd rhwymedigaeth yn ei gwneud yn ofynnol i weithrediadau penodol gael eu cynnal ar y tir, a bod y rhai sy'n gyfrifol am eu cynnal yn methu â gwneud hynny, caiff yr awdurdod gorfodi hefyd:

a. mynd ar y tir a chynnal y gweithrediadau, ar ôl rhoi o leiaf 21 o ddiwrnodau o rybudd o'i fwriad i'r holl bersonau hynny y gellir gorfodi'r rhwymedigaeth yn eu herbyn; a

b. adennill y costau y mae'n mynd iddynt wrth wneud hynny oddi wrth unrhyw un neu ragor o'r personau hynny (is-adrannau (4) a (5)).

885. Mae'n drosedd o dan is-adran (6) i rwystro yn fwriadol berson sy'n arfer pŵer yr awdurdod i gynnal y gwaith hwnnw. Ar euogfarn ddiannod (yn y llys ynadon) am drosedd o'r fath, gellir dirwyo person hyd at Lefel 3 ar y raddfa safonol.

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. Yn rhinwedd is-adran (8), mae rhwymedigaeth gynllunio yn bridiant tir lleol. Bydd hyn yn dod â bodolaeth y rhwymedigaeth i sylw perchnogion dilynol ar y tir, a fydd yn rhwym iddi, o bosibl ymhell ar ôl yr ymrwymiad cychwynnol iddi. At ddibenion Deddf Pridiannau Tir Lleol 1975 (p. 76), yr awdurdod tarddiadol ar gyfer y pridiant hwn fydd yr awdurdod gorfodi.

887. Caiff rheoliadau o dan is-adran (9) ddarparu ar gyfer pridiannu ar y tir:

a. unrhyw daliadau y mae'n ofynnol eu gwneud o dan y rhwymedigaeth; a

b. unrhyw gostau yr aed iddynt gan yr awdurdod wrth gynnal gwaith o dan is-adran (4)(a) a fyddai'n adenilladwy o dan is-adran (4)(b).

888. Mae pridiant a osodir gan reoliadau o'r fath yn gymwys er gwaethaf:

a. unrhyw ddarpariaeth yn y rhwymedigaeth o dan is-adran (2) yn rhyddhau'r rhai nad ydynt yn berchnogion ar y tir rhag rhwymedigaethau odani; a

b. unrhyw achos o addasu neu ryddhau'r rhwymedigaeth o dan adran 167 neu 168.

Adran 167 – Addasu a rhyddhau rhwymedigaethau cynllunio

889. O dan is-adran (1), ni ellir ond addasu neu ryddhau (hynny yw, canslo) rhwymedigaeth gynllunio yn unol â'r adran hon ac adran 168, os deuir i gytundeb i'r perwyl hwnnw gan:

a. yr awdurdod priodol; a

b. pawb sydd wedi eu rhwymo gan y rhwymedigaeth.

Rhaid ymrwymo i gytundeb o'r fath drwy offeryn a gyflawnir fel gweithred (is-adran (2)).

890. Fel arfer, yr awdurdod y mae'r rhwymedigaeth yn orfodadwy ganddo fydd "yr awdurdod priodol". Ond yn achos rhwymedigaeth cydsyniad seilwaith, Gweinidogion Cymru ydyw; ac yn achos rhwymedigaeth cydsyniad datblygiad, yr Ysgrifennydd Gwladol ydyw (is-adran (11)).

891. Fel arall, gall unrhyw un sy'n rhwym wrth rwymedigaeth gynllunio wneud cais i'r awdurdod priodol o dan is-adran (3), ar unrhyw adeg fwy na phum mlynedd ar ôl yr ymrwymwyd iddi, i'r rhwymedigaeth gael ei haddasu neu ei rhyddhau. Gellir gosod terfyn amser gwahanol mewn rheoliadau.

892. Ni chaiff cais o dan is-adran (3) gynnig addasiad sy'n gosod cyfyngiad neu ofyniad ar rywun arall sydd wedi ei rwymo gan y rhwymedigaeth (is-adran (5)).

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. Mewn ymateb i gais i addasu neu ryddhau rhwymedigaeth gynllunio, gall yr awdurdod benderfynu:

a. y dylid cadw'r rhwymedigaeth wreiddiol fel y mae;

b. nad oes ganddi ddiben defnyddiol mwyach, ac y dylid ei rhyddhau;

c. bod ganddi ddiben defnyddiol o hyd, ac felly y dylid ei chadw, ond y byddai'n cyflawni'r diben hwnnw yr un mor dda pe bai'n cael ei haddasu fel y cynigir, ac y dylid ei haddasu – a'i gorfodi – yn unol â hynny (is-adrannau (6) a (8)).

894. Rhaid i'r awdurdod priodol hysbysu'r ceisydd am ei benderfyniad o fewn cyfnod a bennir mewn rheoliadau – ar hyn o bryd, wyth wythnos neu fel y cytunwyd rhwng y ceisydd a'r awdurdod (rheoliad 6(2) o Reoliadau Cynllunio Gwlad a Thref (Addasu a Rhyddhau Rhwymedigaethau Cynllunio) 1992 (O.S. 1992/2832) ('Rheoliadau Rhwymedigaethau Cynllunio 1992'). Caiff rheoliadau o'r fath hefyd wneud darpariaethau manwl eraill o ran ceisiadau – yn benodol, o ran eu ffurf a'u cynnwys, sut y maent i'w cyhoeddi, sut y mae sylwadau i'w hystyried, a sut y mae ceiswyr i'w hysbysu am benderfyniadau (is-adran (9)). Y rheoliadau cyfredol o dan y pwerau a ailddatgenir yn y darpariaethau hyn yw Rheoliadau Rhwymedigaethau Cynllunio 1992. Pan fo cais yn cael ei wneud i'r awdurdod gorfodi, ni chaniateir ei ystyried os yw'n methu â bodloni unrhyw ofynion yn y rheoliadau (is-adran (12)).

895. Mae adran 84 o Ddeddf Cyfraith Eiddo 1925 (p. 20) yn galluogi'r Uwch Dribiwnlys i addasu neu ryddhau cyfyngiadau ar y defnydd o dir o dan amgylchiadau penodol a byddai'n gymwys mewn egwyddor pan fo cyfyngiadau yn cael eu gosod gan rwymedigaeth gynllunio. Fodd bynnag, mae is-adran (10) yn datgymhwyso'r adran honno mewn achos o'r fath, o ystyried y weithdrefn arall a ddarperir gan yr adran hon ac adran 168.

896. Pan fo'r awdurdod priodol yn cytuno i addasu'r rhwymedigaeth fel y'i cynigiwyd yn y cais, gellir gorfodi'r rhwymedigaeth ar ei ffurf addasedig o'r diwrnod yr hysbysir y ceisydd am benderfyniad yr awdurdod (is-adran (8)).

Adran 168 – Apelau sy'n ymwneud â cheisiadau i addasu neu ryddhau rhwymedigaethau cynllunio

897. Pan fo cais i addasu neu ryddhau rhwymedigaeth gynllunio wedi ei wneud i awdurdod gorfodi o dan adran 167, caiff yr apelydd apelio i Weinidogion Cymru o dan is-adran (1) os yw naill ai:

a. yr awdurdod yn penderfynu cadw'r rhwymedigaeth gynllunio fel y mae; neu

b. yr awdurdod yn methu â hysbysu'r ceisydd am ei benderfyniad o fewn yr amserlen benodedig, ac os felly tybir bod yr awdurdod wedi penderfynu cadw'r rhwymedigaeth fel y mae (is-adran (2)).

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. Rhaid gwneud apêl o dan yr adran hon drwy gyflwyno hysbysiad o apêl i Weinidogion Cymru, o dan is-adran (3). Caiff rheoliadau o dan is-adran (4) ddarparu ar gyfer y ffurf sydd i'w defnyddio ar gyfer yr apêl, yr wybodaeth y mae rhaid iddi fynd gyda hi a'r ffordd y mae i'w chyflwyno. Cânt hefyd ddarparu ar gyfer y cyfnod y mae rhaid gwneud unrhyw apêl ynddo ac a ganiateir i'r cyfnod hwnnw gael ei estyn. Ar hyn o bryd y cyfnod hwnnw yw chwe mis o benderfyniad yr awdurdod, neu o ddiwedd y cyfnod o wyth wythnos a bennir o dan adran 167(7), wedi ei estyn pan fo'n berthnasol. Mae'r darpariaethau cyfredol yn rheoliad 7 o Rhwymedigaethau Cynllunio 1992.

899. Mae'r darpariaethau a ddarperir yn adran 167(6) i (8) yr un mor gymwys i benderfyniad Gweinidogion Cymru ar yr apêl hon. Mae hyn yn golygu y gallant wneud unrhyw un neu ragor o'r penderfyniadau a oedd ar gael i'r awdurdod wrth benderfynu'r cais cychwynnol. Pan fônt yn cytuno i addasu'r rhwymedigaeth fel y cynigir yn y cais, mae'r rhwymedigaeth yn orfodadwy ar ei ffurf addasedig o'r diwrnod yr hysbysir yr apelydd am eu penderfyniad (is-adran (5)).

900. Yn rhinwedd is-adran (6), mae penderfyniad Gweinidogion Cymru ar apêl yn derfynol – yn ddarostyngedig i unrhyw her yn yr Uchel Lys.

Adran 169 – Heriau cyfreithiol sy'n ymwneud â cheisiadau a wneir i Weinidogion Cymru neu'r Ysgrifennydd Gwladol

901. Mae'r adran hon yn gymwys pan fo:

a. cais i addasu neu ryddhau rhwymedigaeth cydsyniad seilwaith wedi ei wneud i Weinidogion Cymru; neu

b. cais i addasu neu ryddhau rhwymedigaeth cydsyniad datblygiad wedi ei wneud i'r Ysgrifennydd Gwladol.

902. Yn y naill achos neu'r llall, pan fônt yn penderfynu y dylai'r rhwymedigaeth barhau i gael effaith fel y mae, caniateir herio eu penderfyniad yn yr Uchel Lys, drwy hawliad am adolygiad barnwrol a wneir o dan is-adran (2). Rhaid i hawliad o'r fath gael ei wneud o fewn chwe wythnos i hysbysu'r ceisydd am y penderfyniad o dan adran 167(7).

903. Yn yr un modd, pan na fo'r ceisydd wedi cael ei hysbysu am benderfyniad o fewn y cyfnod a ragnodir o dan adran 167(7) – ar hyn o bryd, wyth wythnos neu unrhyw gyfnod estynedig y cytunwyd arno – caniateir herio'r methiant gan Weinidogion Cymru neu'r Ysgrifennydd Gwladol i hysbysu eu penderfyniad yn yr Uchel Lys, drwy hawliad am adolygiad barnwrol a wneir o dan is-adran (3). Yn yr achos hwn, rhaid gwneud hawliad o fewn chwe wythnos i ddiwedd y cyfnod rhagnodedig hwnnw.

Pennod 2 – Ardoll seilwaith cymunedol

904. Cyflwynwyd yr ardoll seilwaith cymunedol ('ASC') yn 2010, gan Ran 11 o Ddeddf 2008, ac a ailddatgenir yn y Bennod hon o'r Ddeddf (fel y mae'n gymwys yng Nghymru). Tâl yw ASC, y gellir ei godi gan awdurdodau cynllunio mewn cysylltiad â chynnal datblygiad yn eu hardal. Mae'n fodd i awdurdod gael cyllid i'w helpu i ddarparu'r seilwaith sydd ei angen i gefnogi datblygiad yn ei ardal.

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. Nid yw atebolrwydd i dalu ASC ond yn codi mewn ardal lle y mae'r awdurdod wedi ymgynghori ar gofrestr codi tâl a'i chymeradwyo ac wedi ei chyhoeddi. Bydd y gofrestr yn nodi'r gyfradd y codir yr ardoll yn unol â hi mewn cysylltiad â gwahanol fathau o ddatblygiad ac mewn gwahanol rannau o ardal yr awdurdod.

Adran 171 – Rheoliadau ASC

906. Mae manylion y gyfundrefn codi ASC i'w darparu mewn rheoliadau o dan is-adran (1). Yn gyffredinol nid yw'r Bennod hon o'r Ddeddf ond yn darparu'r pwerau galluogi y caiff Gweinidogion Cymru wneud rheoliadau o'r fath odanynt ac mae'n nodi'r materion y mae rhaid i'r rheoliadau ymdrin â hwy neu y caiff y rheoliadau ymdrin â hwy.

907. Mae is-adran (2) yn darparu bod Gweinidogion Cymru, wrth wneud y rheoliadau, i geisio sicrhau eu bod yn arwain at gostau yr eir iddynt wrth gefnogi datblygiad newydd mewn ardal yn cael eu hariannu'n rhannol neu'n gyfan gwbl gan berchnogion tir a datblygwyr, mewn ffordd nad yw'n gwneud y datblygiad yn anhyfyw yn economaidd.

908. Mae adran 204 yn darparu y caiff y rheoliadau wneud darpariaeth wahanol ar gyfer ardaloedd gwahanol, cymhwyso deddfwriaeth arall (gydag addasiadau neu hebddynt), darparu eithriadau a rhoi pwerau yn ôl disgresiwn i Weinidogion Cymru, awdurdodau lleol ac eraill.

909. Y rheoliadau cyfredol yw Rheoliadau Ardoll Seilwaith Cymunedol 2010 (O.S. 2010/948) ('Rheoliadau 2010').

Adran 172 – Codi tâl am ddatblygiad

910. Rhaid i reoliadau ASC ddarparu y caiff awdurdod codi tâl godi ASC mewn cysylltiad â datblygiad ardolladwy yn ei ardal. Fel arfer, awdurdod cynllunio yw'r awdurdod codi tâl ar gyfer ei ardal (is-adrannau (1) a (4)).

911. Fodd bynnag, caiff rheoliadau ddarparu mai'r cyngor sir neu'r cyngor bwrdeistref sirol yw'r awdurdod codi tâl ar gyfer ardal pan fo'r awdurdod cynllunio yn awdurdod parc cenedlaethol neu'n fwrdd cydgynllunio (is-adran (5)). Nid oes darpariaeth o'r fath wedi ei gwneud yn Rheoliadau 2010 hyd yma, felly awdurdod y parc cenedlaethol fyddai'r awdurdod codi tâl mewn parc cenedlaethol.

912. Ystyr "datblygiad ardolladwy" yw unrhyw beth a wneir i greu adeilad newydd neu i addasu adeilad presennol, neu unrhyw newid yn y defnydd o adeilad (neu ran o adeilad) presennol. Fodd bynnag, caiff rheoliadau ddarparu nad yw gwaith penodol na newidiadau penodol mewn defnydd i'w trin fel datblygiad ardolladwy, ac y caniateir trin gwaith i greu neu i addasu strwythurau o fathau eraill fel datblygiad ardolladwy (is-adran (3)).

Adran 173 – Defnyddio ASC: cyllido seilwaith

913. Pan fo awdurdod yn dewis codi ASC, rhaid i'r cyllid sy'n deillio o hynny gael ei gymhwyso i gefnogi datblygiad drwy gyllido seilwaith (is-adran (1); a gweler hefyd adrannau 195 i 199).

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. Diffinnir "seilwaith" at y dibenion hyn i gynnwys ffyrdd a chyfleusterau trafnidiaeth eraill, amddiffynfeydd rhag llifogydd, ysgolion a chyfleusterau addysgol eraill, cyfleusterau meddygol, cyfleusterau chwaraeon a hamdden a mannau agored (is-adran (2)). Caniateir diwygio'r rhestr honno gan y rheoliadau (is-adran (3)).

Adran 174 – Termau sy'n ymwneud ag atebolrwydd

915. Rhaid i'r rheoliadau gynnwys darpariaeth ar gyfer penderfynu pryd y trinnir datblygiad ardolladwy fel pe bai'n dechrau. Caiff hynny gynnwys y pwynt pan ymgymerir â rhyw weithgaredd penodedig neu pan fydd rhyw ddigwyddiad penodedig, sy'n gysylltiedig â'r datblygiad o dan sylw, hyd yn oed os nad yw'r gweithgaredd neu'r digwyddiad ynddo'i hun yn ddatblygiad ardolladwy. Rhaid i'r rheoliadau hefyd ddiffinio caniatâd cynllunio ASC at ddibenion y Bennod hon; mae hyn wedi ei ddiffinio yn Rheoliadau 2010 ar hyn o bryd i gynnwys gwahanol fathau o ganiatâd neu gydsyniad, yn benodol ac yn gyffredinol.

Adran 175 – Ysgwyddo atebolrwydd

Adran 176 – Atebolrwydd diofyn am ASC

916. Gwneir darpariaeth ynghylch pwy sy'n atebol am dalu ASC. Y rheol gyffredinol yw mai'r perchennog tir neu'r datblygwr sy'n atebol yn y pen draw am dalu ASC. Fodd bynnag, mae adran 175 yn darparu'n benodol ar gyfer cyfle i unrhyw berson i ysgwyddo atebolrwydd am ASC cyn dechrau'r datblygiad ardolladwy sy'n arwain at yr atebolrwydd. Rhaid gwneud hynny yn unol â gofynion gweithdrefnol y rheoliadau.

917. Os nad ysgwyddir atebolrwydd cyn i'r datblygiad ardolladwy ddechrau, mae adran 176(1) yn darparu bod rhaid i reoliadau ASC ddarparu i berchennog ar dir neu ddatblygwr tir fod yn atebol am ASC. At ddibenion yr adran hon ystyr "perchennog" yw perchennog ar fuddiant sylweddol yn y tir – hynny yw, yr ystad rydd-ddaliadol neu fuddiant lesddaliadol y mae ei gyfnod yn dod i ben fwy na saith mlynedd ar ôl i'r caniatâd cynllunio ASC ganiatáu am y tro cyntaf y datblygiad ardolladwy. Ystyr "datblygwr" yw person sy'n gyfrifol yn rhannol neu'n gyfan gwbl am gynnal datblygiad (adran 176(3)).

918. Caiff y rheoliadau wneud darpariaeth bellach ynghylch atebolrwydd am ASC mewn rhai achosion – megis ansolfedd rhywun sydd wedi ysgwyddo atebolrwydd (adran 176(2)). Cânt hefyd ddarparu i berson gael ei drin neu nad yw person i gael ei drin fel perchennog neu ddatblygwr er mwyn galluogi cynnwys mathau penodol o fuddiannau o fewn atebolrwydd diofyn neu eithrio mathau penodol o fuddiannau rhag atebolrwydd diofyn (adran 176(4)).

Adran 177 – Yr adeg pan fydd atebolrwydd yn codi

Adran 178 – Atebolrwydd mewn achosion eraill

919. Mae swm unrhyw atebolrwydd i'w gyfrifo drwy gyfeirio at y gofrestr codi tâl sy'n cael effaith ar gyfer yr ardal y mae'r datblygiad ardolladwy yn digwydd ynddo, ar yr adeg pan fydd caniatâd cynllunio ASC yn caniatáu am y tro cyntaf y datblygiad hwnnw (adran 177(1)). Mae'r rheoliadau i wneud darpariaeth ynghylch sut y mae'r adeg honno i'w phenderfynu a chânt yn benodol gynnwys darpariaeth ynghylch pan fo datblygiad wedi ei awdurdodi gan ganiatâd amlinellol neu gydsyniad cyffredinol (adran 177(2) a (3)).

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. Caiff rheoliadau hefyd ddarparu i atebolrwydd am ASC godi mewn cysylltiad â datblygiad ardolladwy a oedd yn destun esemptiad neu ostyngiad yn flaenorol (o dan adrannau 180 i 182) pan fo'r disgrifiad o'r datblygiad neu ddiben y datblygiad yn newid (adran 178(1)).

921. Caiff rheoliadau hefyd osod atebolrwydd am ASC pan fo datblygiad ardolladwy y mae caniatâd cynllunio ASC yn ofynnol ar ei gyfer yn dechrau hebddo. Mae hyn er mwyn sicrhau pan fo datblygiad wedi ei ddechrau yn anghyfreithlon, nad yw hynny yn osgoi talu ASC (adran 178(2)).

Adran 179 – Darpariaeth bellach ynghylch atebolrwydd am ASC

922. Caiff rheoliadau ASC wneud darpariaethau eraill ynghylch atebolrwydd am ASC, gan gynnwys:

a. atebolrwydd ar y cyd, ac atebolrwydd partneriaethau;

b. ysgwyddo atebolrwydd rhannol;

c. dosrannu atebolrwydd (gan gynnwys gweithdrefn ar gyfer datrys anghydfodau ynghylch atebolrwydd);

d. tynnu'n ôl a chanslo atebolrwydd a ysgwyddwyd; ac

e. trosglwyddo atebolrwydd (cyn neu ar ôl dechrau datblygiad ardolladwy a pha un a yw atebolrwydd wedi ei ysgwyddo ai peidio).

923. Os bydd rheoliadau yn gwneud darpariaeth ynghylch ysgwyddo atebolrwydd rhannol neu dynnu'n ôl neu ganslo atebolrwydd a ysgwyddwyd, rhaid iddynt hefyd wneud darpariaeth ynghylch atebolrwydd diofyn y perchennog neu'r datblygwr (is-adran (2)).

Adran 180 – Esemptiadau a gostyngiadau: cyffredinol
Adran 181 – Elusennau: esemptiad rhag atebolrwydd
Adran 182 – Esemptiadau a gostyngiadau: y weithdrefn

924. Caiff rheoliadau ASC ddarparu ar gyfer esemptiadau rhag atebolrwydd am ASC, a gostyngiadau mewn atebolrwydd. Cânt hefyd osod amodau y mae rhaid eu bodloni er mwyn i esemptiad neu ostyngiad fod yn gymwys; a chânt ei gwneud yn ofynnol i awdurdod ganiatáu esemptiadau a gostyngiadau o dan amgylchiadau penodedig (adran 180).

925. Yn benodol, mae adran 181 yn ei gwneud yn ofynnol i'r rheoliadau ddarparu bod elusen berthnasol yn esempt rhag atebolrwydd am ASC os yw'r adeilad neu'r strwythur y byddai'r atebolrwydd yn codi fel arall mewn cysylltiad ag ef i'w ddefnyddio'n gyfan gwbl neu'n bennaf at ddiben elusennol (fel y'i diffinnir yn adran 2 o Ddeddf Elusennau 2011 (p. 25)). O dan y Ddeddf honno, mae "elusen berthnasol" yn sefydliad sy'n elusen (o dan adran 1) sydd naill ai wedi ei gofrestru (o dan adran 29) neu nad yw'n ofynnol iddo fod wedi ei gofrestru. Caiff y rheoliadau ddarparu nad yw'r esemptiad yn gymwys o dan amgylchiadau penodol.

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. O dan adran 182, caiff rheoliadau hefyd ddarparu ar gyfer y weithdrefn sydd i'w dilyn i hawlio esemptiad neu ostyngiad – yn benodol, o ran penderfynu a yw unrhyw amodau o ran esemptiad neu ostyngiad wedi eu bodloni, rhoi gwybod am esemptiadau a gostyngiadau, a chadw cofnodion ohonynt.

927. Mae Rheoliadau 2010 yn caniatáu ar hyn o bryd ar gyfer esemptiadau a gostyngiadau fel a ganlyn:

a. mân ddatblygiad (rheoliad 42);

b. anecsau neu estyniadau preswyl (rheoliad 42A);

c. elusennau (rheoliad 43) (gweler hefyd adran 181);

d. tai cymdeithasol (rheoliad 49);

e. tai hunanadeiladu (rheoliad 54A); ac

f. amgylchiadau eithriadol (rheoliad 55).

Adran 183 – Cofrestr codi tâl

928. Rhaid i awdurdod sy'n cynnig codi ASC gyhoeddi cofrestr codi tâl, sy'n nodi cyfraddau neu feini prawf eraill a fydd yn penderfynu swm yr ASC a godir mewn cysylltiad â datblygiad ardolladwy mewn categorïau penodedig (is-adran (1)). Caiff cofrestr o'r fath ddarparu ar gyfer eithriadau, a chaiff roi pwerau yn ôl disgresiwn i Weinidogion Cymru, awdurdodau lleol ac eraill yn unol â darpariaethau a wneir yn y rheoliadau (adran 204).

929. Yn ymarferol, mae pob awdurdod sy'n codi ASC yn pennu'r swm sy'n daladwy drwy gyfeirio at raddfa'r datblygiad (o ran maint yr arwynebedd llawr neu nifer yr anheddau o dan sylw), ac mae'r gyfradd yn amrywio yn ôl:

a. y math o ddatblygiad (er enghraifft, preswyl neu amhreswyl; gwahanol gategorïau preswyl neu amhreswyl (siopau, swyddfeydd, etc.); a'r math o siop); a

b. lleoliad y safle lle y mae'r datblygiad yn digwydd.

930. Mae darpariaethau ynghylch llunio, cymeradwyo a chyhoeddi cofrestr codi tâl wedi eu nodi yn Atodlen 13. Mae rhagor o fanylion wedi eu darparu yn Rheoliadau 2010.

931. Darperir canllawiau presennol Llywodraeth Cymru ynghylch llunio cofrestr codi tâl yn *Ardoll Seilwaith Cymunedol (ASC): Cynhyrchu Rhestr Daliadau* (2011), sydd ar gael ar ei gwefan.

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.

Atodlen 13 – Ardoll Seilwaith Cymunedol: cofrestrau codi tâl

932. Mae paragraff 1 yn ei gwneud yn ofynnol i awdurdod, wrth lunio cofrestr codi tâl sy'n gosod cyfraddau ASC ac sy'n pennu'r meini prawf sy'n llywodraethu sut y cânt eu cymhwyso, roi sylw i gostau gwirioneddol a disgwyliedig seilwaith (fel y'i diffinnir yn adran 173), hyfywedd economaidd datblygiad a ffynonellau cyllid eraill ar gyfer seilwaith. Caiff rheoliadau wneud darpariaethau manylach ynghylch hyn. Cânt, yn benodol, ganiatáu neu ei gwneud yn ofynnol i awdurdod ystyried costau gweinyddu'r system ASC, costau pethau heblaw seilwaith sy'n helpu i fynd i'r afael ag effaith datblygiad ar ardal a'r ffynonellau cyllid eraill ar gyfer y pethau hynny. Cânt hefyd ganiatáu ar gyfer cyfraddau tâl gwahaniaethol.

933. Caiff rheoliadau ganiatáu neu ei gwneud yn ofynnol i gofrestr codi tâl gael ei llunio yn unol â dull cyfrifo penodol (paragraff 2) – er enghraifft, drwy gyfeirio at natur a lleoliad y datblygiad ardolladwy, mynegai mewn cysylltiad â chyfradd chwyddiant, a gwerthoedd neu faterion eraill a gynhyrchir at ddibenion statudol eraill (er enghraifft, rhestrau ardrethu annomestig). Ac mae'r gofrestr codi tâl i fod yn gymwys mewn perthynas ag unrhyw gyfnodau a bennir mewn rheoliadau (paragraff 3).

934. O dan baragraff 4, caiff rheoliadau ei gwneud yn ofynnol i awdurdodau codi tâl gynnal ymgynghoriad wrth lunio cofrestr codi tâl ddrafft.

935. Rhaid i'r awdurdod codi tâl benodi person i archwilio ei gofrestr codi tâl ddrafft (paragraff 6(3)), y mae rhaid iddo feddu ar gymwysterau a phrofiad priodol, a bod yn annibynnol ar yr awdurdod codi tâl. Rôl archwilydd o'r fath yw ystyried a gydymffurfiwyd â holl ofynion perthnasol yr Atodlen hon ac â'r rheoliadau wrth lunio'r drafft. Caiff yr awdurdod codi tâl, gyda chytundeb yr archwilydd, benodi un neu ragor o bersonau i gynorthwyo gyda'r archwiliad – er enghraifft, gyda materion prisio. Rhaid i'r rheoliadau ei gwneud yn ofynnol i'r awdurdod codi tâl ganiatáu i'r rhai sydd wedi cyflwyno sylwadau ar y drafft gael gwrandawiad gan yr archwilydd (paragraff 7).

936. Os yw'n ymddangos na chydymffurfiwyd yn llawn â gofynion perthnasol yr Atodlen hon na'r rheoliadau, ac na ellir lleddfu effaith diffyg cydymffurfedd o'r fath drwy addasu'r gofrestr codi tâl ddrafft yn unig, ni chaiff yr archwilydd argymell cymeradwyo'r drafft (paragraff 8(2)).

937. Os yw'n ymddangos na chydymffurfiwyd yn llawn â'r gofynion hynny, ond y gellir ymdrin â diffyg cydymffurfedd o'r fath drwy addasu'r gofrestr codi tâl ddrafft, rhaid i'r archwilydd argymell cymeradwyo'r drafft, yn amodol ar addasiadau priodol, ac addasiadau eraill o bosibl (paragraff 8(4) a (5)). Yn yr achos hwnnw, caiff yr awdurdod codi tâl gymeradwyo'r gofrestr codi tâl, yn amodol ar addasiadau addas i ymdrin â'r diffyg cydymffurfedd a nodwyd a chan ymgorffori o bosibl rai o'r addasiadau eraill a argymhellwyd gan yr archwilydd, neu bob un ohonynt (paragraff 9(2) i (4) a (7)).

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. Os yw'n ymddangos y cydymffurfiwyd yn llawn â gofynion perthnasol yr Atodlen a'r rheoliadau, rhaid i'r archwilydd argymell cymeradwyo'r gofrestr codi tâl ddrafft a chaiff argymell addasiadau pellach os caiff ei chymeradwyo (paragraff 8(6)). Yna caiff yr awdurdod codi tâl gymeradwyo'r gofrestr codi tâl, gan ymgorffori o bosibl rai o'r addasiadau eraill a argymhellwyd gan yr archwilydd, neu bob un ohonynt (paragraff 9(3), (4) a (7)).

939. Ni chaiff yr awdurdod codi tâl ond cymeradwyo'r gofrestr codi tâl os yw'r archwilydd wedi argymell ei chymeradwyo; a dim ond os yw wedi rhoi sylw i argymhellion yr archwilydd (paragraff 9(1)).

940. Rhaid i'r awdurdod codi tâl gyhoeddi argymhellion yr archwilydd a'r rhesymau drostynt (paragraff 8(7)). Os yw'n gwneud addasiadau i ymdrin â materion diffyg cydymffurfedd a godwyd gan yr archwilydd, rhaid iddo gyhoeddi adroddiad yn egluro sut y bydd yr addasiadau y mae'n eu cynnig yn ymdrin â'r materion hynny (paragraff 9(5)).

941. Caiff y rheoliadau ddarparu ar gyfer cywiro gwallau mewn cofrestr codi tâl ar ôl iddi gael ei chymeradwyo (paragraff 9(8)). Mae Rheoliadau 2010 yn gwneud darpariaeth ynghylch cywiro gwallau nad ydynt yn effeithio ar swm yr ASC y gellir ei godi ar gyfer categori penodol o ddatblygiad, neu sy'n angenrheidiol i roi effaith i'r addasiadau a argymhellwyd gan yr archwilydd.

942. Caiff rheoliadau ASC wneud darpariaeth ynghylch cyhoeddi cofrestr codi tâl ar ôl iddi gael ei chymeradwyo ac ni fydd y gofrestr yn cael effaith cyn y dyddiad y caiff ei chyhoeddi (paragraff 10).

943. Caiff awdurdod ddiwygio cofrestr codi tâl ar unrhyw adeg a rhaid iddo ddilyn yr un weithdrefn ag y mae'n ei dilyn wrth lunio'r gofrestr am y tro cyntaf (paragraff 11). Caiff hefyd benderfynu bod cofrestr codi tâl i beidio â chael effaith ac, os yw rheoliadau yn darparu ar gyfer hynny, dim ond mewn amgylchiadau a bennir ynddynt (paragraff 12).

Adran 184 – Amcangyfrif o'r swm

944. Caiff rheoliadau ASC ei gwneud yn ofynnol i awdurdod ddarparu amcangyfrif o swm yr ASC y gellir ei godi ar gyfer datblygiad ardolladwy, o dan amgylchiadau penodedig.

Adran 185 – Apelau yn ymwneud â chyfrifo ASC

945. Rhaid i'r rheoliadau ddarparu ar gyfer hawl i wneud apêl yn erbyn asesiad awdurdod o swm yr ASC sy'n daladwy. Mae apêl o'r fath i'w gwneud naill ai i swyddog prisio, a benodir o dan adran 61 o Ddeddf Cyllid Llywodraeth Leol 1988 (p. 41), neu i brisiwr dosbarth fel y'i diffinnir yn adran 622 o Ddeddf Tai 1985 (p. 68) (is-adrannau (1) a (2)). Caiff y rheoliadau wneud darpariaeth ynghylch y cyfnod y mae rhaid gwneud apêl o'r fath ynddo, y weithdrefn sydd i'w dilyn, talu ffioedd a dyfarnu costau (is-adran (3)).

946. Os bydd person sydd wedi ei dramgwyddo gan y penderfyniad ar apêl o'r fath yn ei herio drwy gais am adolygiad barnwrol, Cyllid a Thollau EF yw'r diffynnydd (is-adran (4)).

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)).

Adran 186 – Casglu a thalu ASC

947. Mae'r darpariaethau ynghylch talu a chasglu ASC i fod mewn rheoliadau a gaiff adlewyrchu'r darpariaethau hynny mewn deddfwriaeth arall sy'n llywodraethu casglu trethi lleol i ddarparu ar gyfer gwariant awdurdodau lleol (megis y dreth gyngor ac ardrethi annomestig). Caiff rheoliadau o'r fath ganiatáu ar gyfer talu ar gyfrif neu mewn rhandaliadau, talu ar ffurfiau heblaw arian (megis drwy roi tir ar gael neu ddarparu gwasanaethau) ac ar gyfer ad-dalu pan fo ASC wedi ei gordalu (is-adrannau (1) i (4) a (6)).

948. Yn rhinwedd is-adran (5), caiff rheoliadau o'r fath hefyd ganiatáu neu ei gwneud yn ofynnol i awdurdod codi tâl neu awdurdod cyhoeddus arall gasglu ASC a godir gan awdurdod arall.

949. Mae Rheoliadau 2010 yn cynnwys llawer o gyfeiriadau at bwerau a dyletswyddau "collecting authority" ("awdurdod casglu"), sef term nad yw'n ymddangos yn y Ddeddf. Mae'r rheoliadau hynny, fodd bynnag, yn darparu mai'r awdurdod codi tâl yw'r awdurdod casglu ar gyfer y ASC a godir yn ei ardal.

950. Caiff rheoliadau ASC hefyd wneud darpariaeth ynghylch talu ASC mewn achosion sy'n ymwneud â datblygiad gan y Goron neu ar dir y Goron (is-adran (7)).

Adran 187 – Gorfodi: cyffredinol

951. Rhaid i reoliadau ASC ddarparu ar gyfer gorfodi'r system ASC, ac i'r perwyl hwnnw cânt gynnwys darpariaethau:

a. sy'n ei gwneud yn ofynnol darparu gwybodaeth;

b. sy'n galluogi cymryd camau i adennill unrhyw swm sy'n ddyledus;

c. sy'n caniatáu i lys roi rhyddhad gwaharddol neu ryddhad arall; a

d. sy'n darparu ar gyfer cymryd camau os bydd person sy'n atebol am ASC yn marw neu'n mynd yn ansolfent (is-adran (2)(b) i (e)).

952. Caiff darpariaethau o'r fath adlewyrchu'r darpariaethau hynny mewn deddfwriaeth arall sy'n llywodraethu gorfodi trethi lleol i ddarparu ar gyfer gwariant awdurdodau lleol (megis y dreth gyngor ac ardrethi annomestig) (is-adran (2)(a)).

Adran 188 – Canlyniadau methu â chydymffurfio

Adran 189 – Llog a chosbau

953. Rhaid i reoliadau ASC gynnwys darpariaethau ynghylch canlyniadau methu â thalu ASC ar amser neu o gwbl. Cânt hefyd ddarparu ar gyfer canlyniadau methiannau i ysgwyddo atebolrwydd, i roi hysbysiad neu i gydymffurfio â gofynion gweithdrefnol.

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. Caiff darpariaethau gorfodi yn rheoliadau ASC osod gofyniad i dalu llog ar ASC nas talwyd, neu gosb neu ordal – ac mae llog, cosb neu ordal o'r fath i'w drin neu i'w thrin fel pe bai'n ASC at ddibenion adrannau 186 i 201 (casglu, gorfodi, defnyddio ASC etc.) ac adran 173 (y dibenion y caniateir defnyddio ASC ar eu cyfer). Ni chaiff unrhyw gosb neu ordal a osodir fod yn fwy na 30% o swm yr ASC sy'n ddyledus (neu £20,000 os yw'n fwy), ond caniateir gosod mwy nag un gosb neu ordal os yw'r rheoliadau yn darparu ar gyfer hynny (adran 189).

Adran 190 – Pŵer i stopio datblygiad

955. Caiff rheoliadau ASC gynnwys darpariaethau sy'n atal dros dro neu'n canslo penderfyniad i awdurdodi datblygiad y mae atebolrwydd am dalu ASC yn parhau mewn perthynas ag ef neu sy'n stopio datblygiad yn gyfan gwbl, hyd nes bod rhywun yn ysgwyddo atebolrwydd am dalu ASC neu fod rhywun yn talu'r swm sy'n ddyledus. Mae Rheoliadau 2010 yn darparu ar gyfer cyflawni hyn drwy ddyroddi hysbysiad stop ASC.

Adran 191 – Pwerau mynediad

956. Caiff rheoliadau ASC roi pŵer i fynd ar dir, fel rhan o'r broses orfodi. Ni chânt awdurdodi mynediad i annedd heb warant, fodd bynnag.

Adran 192 – Troseddau

957. Caiff y darpariaethau gorfodi yn y rheoliadau greu troseddau a rhoi pŵer i erlyn, fel rhan o'r mecanweithiau ar gyfer gorfodi gofynion y rheoliadau (is-adran (1)).

958. Mae is-adran (2) yn cyfyngu ar gwmpas y gosb sydd i'w gosod mewn rheoliadau. Yn benodol, pan fo'r rheoliadau'n caniatáu ar gyfer y posibilrwydd o garcharu ar euogfarn am drosedd a'i bod yn drosedd y gellir ei rhoi ar brawf yn ddiannod yn unig (yn y llys ynadon), ni chaiff yr uchafswm cyfnod fod yn hwy na 6 mis – neu 51 o wythnosau ar ôl i adran 281(5) o Ddeddf Cyfiawnder Troseddol 2003 (p. 44) ddod i rym.

959. At hynny, ar euogfarn ddiannod am drosedd neillffordd (naill ai yn y llysoedd ynadon neu yn Llys y Goron), ni chaiff uchafswm cyfnod y carcharu fod yn hwy na'r cyfnod a bennir yn adran 224(1A)(b) o'r Cod Dedfrydu a osodwyd gan Ddeddf Dedfrydu 2020 – sef chwe mis ar hyn o bryd. Ar euogfarn ar ddditiad (yn Llys y Goron), ni chaiff y cyfnod fod yn hwy na dwy flynedd.

960. Gellir gweld y mathau o droseddau y caniateir eu cynnwys yn Rheoliadau 2010, er enghraifft:

a. torri hysbysiad stop ASC, ac mae person a euogfernir yn agored i dalu dirwy (ac nid oes terfyn ar swm y ddirwy y caiff y llys ei gosod, sef "dirwy ddiderfyn") (rheoliad 93);

b. rhwystro person sy'n arfer pŵer mynediad, y gellir ei gosbi ar euogfarn ddiannod drwy ddirwy hyd at Lefel 3 ar y raddfa safonol (rheoliad 109); ac

c. cyflenwi gwybodaeth anwir, y gellir ei gosbi ar euogfarn ddiannod drwy ddirwy ddiderfyn, neu ar euogfarn ar ddditiad drwy garcharu am hyd at ddwy flynedd neu drwy ddirwy ddiderfyn neu'r ddau (rheoliad 110).

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. Rhoddir y pŵer i erlyn am unrhyw un neu ragor o'r troseddau hyn i'r awdurdod sy'n casglu'r ASC yn rheoliad 111 o Reoliadau 2010.

Adran 193 – Cofrestru atebolrwydd neu roi hysbysiad o atebolrwydd

962. Caiff y darpariaethau gorfodi yn y rheoliadau ddarparu ar gyfer cofrestru atebolrwydd gwirioneddol neu bosibl am ASC neu ar gyfer rhoi hysbysiad o atebolrwydd o'r fath. Cânt ddarparu ar gyfer creu, cofrestru a gorfodi pridiannau tir lleol – gan gynnwys gorfodi yn erbyn perchnogion olynol neu drwy werthiant o dan orchymyn llys – ac ar gyfer gwneud cofnodion mewn cofrestrau statudol eraill. Cânt hefyd wneud darpariaeth ar gyfer canslo taliadau o'r fath.

Adran 194 – Digolledaid: colled neu ddifrod o ganlyniad i gamau gorfodi

963. Pan gymerir camau gorfodi o dan rheoliadau a wneir o dan adrannau 187 i 193, gellir arwain at ddioddef colled neu ddifrod – er enghraifft, yn sgil arfer pwerau mynediad i dir. Caiff rheoliadau ddarparu i ddigolledaid fod yn daladwy pan fo hyn yn digwydd – er nad i berson sydd wedi methu â thalu ASC sy'n ddyledus (ac o bosibl o dan amgylchiadau eraill) (is-adrannau (2) i (4)). Cânt hefyd ddarparu ar gyfer gwneud hawliad am ddigolledaid, y swm sy'n daladwy, ac i ba raddau y caniateir defnyddio ASC i dalu'r swm hwnnw (is-adrannau (5) a (6)).

Adran 195 – Cyllido drwy ASC

Adran 196 – Cyllid ASC: rhestrau

964. Mae adran 195(1)(a) a (b) yn darparu y caiff rheoliadau ASC bennu'r hyn y caniateir ei gyllido drwy ASC, y mae rhaid ei gyllido drwy ASC neu na chaniateir ei gyllido drwy ASC – hynny yw, gwaith, gosodiadau, cyfleusterau eraill, cynnal a chadw, gweithgarwch hyrwyddo a gweithgareddau gweithredol eraill. O dan is-adran (1)(c) a (d) caiff y rheoliadau hynny hefyd bennu'r hyn sydd i'w drin, neu nad yw i'w drin, fel cyllido a'r meini prawf ar gyfer penderfynu'r ardaloedd a gaiff elwa o gyllid o'r fath.

965. Caiff y rheoliadau ganiatáu i ASC gael ei:

a. defnyddio i ad-dalu costau yr aed iddynt eisoes;

b. cadw ar gyfer costau y gellir mynd iddynt yn y dyfodol;

c. cymhwyso i gostau gweinyddol mewn cysylltiad â seilwaith; a

d. cymhwyso i gostau gweinyddol mewn cysylltiad ag ASC (gan gynnwys gorfodi ASC) (adran 195(2)(a) i (c) a (3)).

966. Cânt hefyd ddarparu ar gyfer rhoi benthyciadau, gwarantau neu indemniadau. A chânt ddarparu ar gyfer cymhwyso ASC pan oedd i'w chymhwyso i rywbeth nad oes ei gyllido mwyach (adran 195(2)(d) ac (e)).

967. O dan adran 196, caiff y rheoliadau ei gwneud yn ofynnol i'r awdurdod codi tâl lunio rhestr o'r hyn sydd i'w gyllido neu y caniateir ei gyllido yn rhannol neu'n gyfan gwbl drwy ASC a chânt ddarparu ar gyfer y weithdrefn sydd i'w dilyn wrth lunio rhestr o'r fath. Cânt hefyd bennu amgylchiadau pan gaiff yr awdurdod cyllido gymhwyso ASC i gyllido eitemau nad ydynt ar y rhestr a phan na chaiff wneud hynny.

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.

Adran 197 – Dyletswydd i drosglwyddo ASC i bersonau eraill
Adran 198 – Dyletswydd i drosglwyddo ASC: darpariaeth bellach

968. Nid yr awdurdod codi tâl ei hun o reidrwydd fydd yn gweithredu pob rhan o'r seilwaith sydd i'w gyllido drwy ASC. Caiff rheoliadau felly ei gwneud yn ofynnol i rywfaint neu'r cyfan o'r ASC a gesglir gan yr awdurdod codi tâl gael ei throsglwyddo i berson arall, a bennir yn y rheoliadau, i alluogi'r person hwnnw i gefnogi datblygiad yn yr ardal berthnasol gyfan neu ran ohoni – hynny yw, ardal gyfan yr awdurdod codi tâl neu ran ohoni neu ardal gyfunol dau neu ragor o awdurdodau (adran 197(1), (3), (4) a (5)).

969. Caiff y person y trosglwyddir yr arian iddo o dan adran 197(1) ei ddefnyddio, yn unol â'r rheoliadau, i gyllido:

a. darparu, gwella, amnewid, gweithredu neu gynnal a chadw seilwaith (gweler adran 173(2) am ystyr seilwaith); neu

b. unrhyw beth arall sy'n ymwneud â mynd i'r afael â'r gofynion a osodir ar yr ardal gan ddatblygiad (adran 197(2)).

970. O dan adran 198(1) a (2), caiff rheoliadau ddarparu ar gyfer amseriad taliadau a wneir o dan adran 197; a chânt bennu pethau y caniateir eu cyllido, y mae rhaid eu cyllido, neu na chaniateir eu cyllido drwy daliadau o'r fath – gan gynnwys costau gweinyddol. O dan adran 198(3), er enghraifft, cânt ei gwneud yn ofynnol cyfrif am y taliadau a'r defnydd a wneir ohonynt, eu monitro ac adrodd arnynt; a chânt wneud darpariaeth ar gyfer ad-dalu symiau nad ydynt wedi eu gwario neu symiau sydd wedi eu cam-gymhwyso.

971. Er enghraifft, gallai'r ddarpariaeth hon alluogi awdurdod i drosglwyddo arian i un o ymddiriedolaethau'r GIG, er mwyn helpu i ehangu canolfan iechyd leol sy'n ofynnol o ganlyniad i ddatblygiad newydd gerllaw. Ond gallai'r rheoliadau ei gwneud yn ofynnol i'r awdurdod codi tâl a'r ymddiriedolaeth fonitro'r gwariant.

Adran 199 – Defnyddio ASC mewn ardal nad yw'r ddyletswydd i drosglwyddo ASC yn gymwys iddi

972. Mewn rhai achosion, caiff rheoliadau osod dyletswydd ar awdurdod i drosglwyddo ASC (yn unol ag adran 197) ar gyfer rhan o'i ardal, ond nid ar gyfer y gweddill (y cyfeirir ati fel yr "ardal nas cwmpesir"). Pan fydd hyn yn digwydd, caiff y rheoliadau ganiatáu i'r awdurdod codi tâl ddefnyddio'r ASC sy'n dod i law ar gyfer datblygiad ardolladwy yn yr ardal nas cwmpesir (neu mewn rhan ohoni) i gefnogi datblygiad o'r ardal honno – drwy gyllido seilwaith yno, ac unrhyw beth arall sy'n mynd i'r afael â'r gofynion a osodir gan ddatblygiad (is-adrannau (1) i (4)).

973. O dan is-adran (5), caiff rheoliadau bennu pethau y caniateir eu cyllido, y mae rhaid eu cyllido, neu na chaniateir eu cyllido yn y ffordd hon mewn perthynas â'r ardal nas cwmpesir gan gynnwys costau gweinyddol.

Adran 200 – Adolygiadau ac apelau

974. Caiff y rheoliadau ddarparu ar gyfer adolygiadau ac apelau - gan gynnwys y cyfnod y caniateir arfer hawl i gael adolygiad neu hawl i apelio ynddo, y weithdrefn sydd i'w dilyn, talu ffioedd a dyfarnu costau.

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.

Adran 201 – Pŵer i wneud darpariaeth bellach ynghylch gweithdrefnau

975. Mae'r adran hon yn galluogi rheoliadau i wneud darpariaeth ynghylch ystod eang o faterion gweithdrefnol mewn perthynas ag awdurdodau sy'n cynnig dechrau codi ASC, y rhai sy'n codi ASC a'r rhai sy'n cynnig peidio â chodi ASC mwyach.

Adran 202 – Canllawiau

976. Rhaid i awdurdodau codi tâl, awdurdodau cyhoeddus eraill ac archwilwyr a benodir i ystyried cofrestrau codi tâl roi sylw i ganllawiau a ddyroddir gan Weinidogion Cymru mewn perthynas ag unrhyw fater sy'n gysylltiedig ag ASC.

Adran 203 – Y berthynas â phwerau eraill

977. Mae darnau eraill o ddeddfwriaeth sydd, i ryw raddau, yn gorgyffwrdd â'r gyfundrefn ASC sy'n destun y Bennod hon. Caiff rheoliadau ASC, yn unol â hynny, wneud darpariaeth, o dan is-adrannau (1) a (2), ynghylch arfer:

a. pwerau o dan Bennod 1 o'r Rhan hon, sy'n ymwneud â rhwymedigaethau cynllunio;

b. pwerau o dan adran 278 o Ddeddf 1980, sy'n ymwneud â chytundebau ynghylch gwaith priffyrdd; ac

c. pwerau statudol eraill sy'n ymwneud â chynllunio a datblygiad.

Ni chaniateir gwneud darpariaeth o'r fath ond at un neu ragor o'r dibenion a nodir yn is-adran (4).

978. Caniateir i Weinidogion Cymru roi canllawiau hefyd, ond eto dim ond at un neu ragor o'r dibenion yn is-adran (4). Os rhoddir canllawiau o'r fath, rhaid i awdurdodau codi tâl ac awdurdodau cyhoeddus eraill roi sylw iddynt. Caiff rheoliadau o dan is-adran (5) ddarparu na chaniateir rhoi canllawiau a chyfarwyddydau mewn perthynas â materion penodol.

RHAN 7 – PWERAU ERAILL YN YMWNEUD Â DEFNYDD O DIR NEU GYFLWR TIR

Pennod 1 – Pwerau i'w gwneud yn ofynnol datbarhau defnydd o dir etc.

Adran 206 – Pŵer i wneud gorchymyn datbarhau

979. Pan fydd caniatâd i newid y defnydd o dir wedi ei weithredu, ni ellir ei ddirymu; ac fel arfer ni ellir stopio'r defnydd sy'n deillio o hynny. Yn yr un modd, pan fo caniatâd ar gyfer cynnal datblygiad gweithredol ar dir wedi ei weithredu'n rhannol, gellir ei addasu i rwystro'r datblygiad rhag cael ei gwblhau, neu ei gwneud yn ofynnol iddo gael ei gwblhau mewn modd gwahanol; ond unwaith y bydd y gwaith wedi ei gwblhau, ni ellir addasu'r caniatâd na'i ddirymu, ac fel arfer ni ellir symud ymaith unrhyw adeiladau neu strwythurau a godwyd gan ddibynnu arno. Hefyd, pan fo datblygiad wedi digwydd yn y gorffennol nad yw'n bosibl cymryd camau gorfodi yn ei erbyn bellach, ni all yr awdurdod ddadwneud canlyniadau'r datblygiad hwnnw fel arfer.

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. Fodd bynnag, yn eithriadol, gall awdurdodau cynllunio a Gweinidogion Cymru ddewis ymwneud â'r mater pan fo tir yn cael ei ddefnyddio'n gyfreithlon (gweler adran 155) ond mewn modd sy'n achosi problemau – er enghraifft, pan fo cymeriad yr ardal o amgylch darn o dir wedi newid ers i ganiatâd gael ei roi flynyddoedd lawer yn ôl ar gyfer y defnydd o'r tir at ddiben sydd bellach yn ymddangos yn amhriodol. Neu efallai y byddant am orffen y defnydd o dir ar gyfer gweithrediadau mwyngloddio a allai fod wedi ei ganiatáu flynyddoedd lawer neu ddegawdau ynghynt. Neu efallai y byddant am addasu neu symud ymaith adeilad neu strwythur a godwyd yn gyfreithlon gryn amser yn ôl neu y mae'r gwaith o'i godi bellach yn esempt rhag camau gorfodi.

981. Mae'r adran hon galluogi awdurdod cynllunio i wneud gorchymyn datbarhau o dan amgylchiadau o'r fath mewn perthynas ag unrhyw dir yn ei ardal, ac yn galluogi Gweinidogion Cymru i wneud gorchymyn o'r fath mewn perthynas ag unrhyw dir yng Nghymru (is-adrannau (1) a (2)). Gorchymyn yw "gorchymyn datbarhau" sy'n:

a. ei gwneud yn ofynnol datbarhau defnydd o'r tir;

b. caniatáu i'r defnydd barhau, ond sy'n gosod amodau ar ddefnydd parhaus o'r fath;

c. ei gwneud yn ofynnol i gamau gael eu cymryd i addasu neu symud ymaith adeilad neu waith sydd ar y tir ar hyn o bryd; neu

d. ei gwneud yn ofynnol i gamau gael eu cymryd i addasu neu symud ymaith gyfarpar neu beiriannau a ddefnyddir ar gyfer gweithrediadau mwyngloddio neu i ddyddodi gwastraff ar y tir (is-adrannau (5) ac (8)).

982. Gallai'r defnydd o dir a all fod yn destun gorchymyn datbarhau gynnwys defnydd ar gyfer gweithrediadau mwyngloddio, ond ni allai gynnwys defnydd ar gyfer gweithrediadau adeiladu, gweithrediadau peirianneg neu weithrediadau eraill (is-adran (6)).

983. Caiff gorchymyn datbarhau hefyd roi caniatâd cynllunio ar gyfer datblygu'r tir (adran 207). Mae hyn yn galluogi'r awdurdod cynllunio neu Weinidogion Cymru i sicrhau, er enghraifft, newid yn y defnydd o'r tir o ddefnydd sy'n annymunol i un y mae'n ei ystyried ei fod yn fwy priodol. Neu caiff gorchymyn ei gwneud yn ofynnol symud ymaith adeilad neu strwythur sy'n anfoddhaol a hwyluso rhoi rhywbeth arall yr ystyrir ei fod yn well yn ei le.

984. Ni chaniateir gwneud gorchymyn datbarhau onid yw'r awdurdod cynllunio (neu Weinidogion Cymru, fel y bo'n briodol) yn ystyried ei bod yn briodol gwneud hynny er budd cynllunio'r ardal yn briodol (is-adran (3)). Rhaid iddynt hefyd ystyried y cynllun datblygu, ochr yn ochr ag unrhyw ystyriaethau perthnasol eraill, gan gynnwys polisïau defnydd tir Gweinidogion Cymru ac ystyriaethau sy'n ymwneud â'r defnydd o'r Gymraeg; a rhaid iddynt wneud eu penderfyniad yn unol â'r cynllun ar gyfer yr ardal oni bai bod yr ystyriaethau eraill hynny yn awgrymu fel arall (adran 206(4); adran 408(3)).

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. Pan fydd gofynion gorchymyn yn arwain at bobl yn cael eu dadleoli o'u cartrefi, rhaid i'r awdurdod cynllunio y mae'r fangre yn ei ardal, os nad oes llety addas ar gael, sicrhau eu bod yn cael eu hailgartrefu mewn llety addas cyn i ofynion y gorchymyn gael eu dwyn i effaith (is-adran (7)).

986. Gall gwneud gorchymyn datbarhau arwain at hawliad am ddigolledia d (o dan adran 211 neu 212) pan fo'n achosi difrod, neu gyflwyno hysbysiad prynu (o dan adran 213) pan fo'n arwain at dir sy'n annefnyddiadwy.

987. Gwneir darpariaeth bellach yn Atodlen 14 o ran y weithdrefn ar gyfer gwneud gorchymyn datbarhau.

Atodlen 14 – Gorchmynion datbarhau

988. Mae Rhan 1 o Atodlen 14 yn nodi'r weithdrefn ar gyfer gwneud gorchymyn datbarhau gan awdurdod cynllunio. O dan baragraff 1(1) i (3) a (5), rhaid i'r awdurdod gyflwyno gorchymyn i Weinidogion Cymru; rhaid i'r awdurdod hefyd gyflwyno hysbysiad o'r cyflwyniad hwnnw i berchnogion a meddianwyr y tir o dan sylw ac i unrhyw un arall y mae'r awdurdod yn ystyried y bydd y gorchymyn yn debygol o effeithio arno. Rhaid i'r hysbysiad ddatgan y cânt, o fewn cyfnod (a bennir yn yr hysbysiad) o 28 o ddiwrnodau o leiaf, ofyn am gyfle i gyflwyno sylwadau gerbron arolygydd.

989. Os bydd unrhyw un o'r rhai sy'n cael yr hysbysiad yn gwneud cais o'r fath, rhaid rhoi cyfle iddo ac i'r awdurdod cynllunio i gael gwrandawiad gan arolygydd (paragraff 1(4)).

990. Yna caiff Gweinidogion Cymru gadarnhau'r gorchymyn, gydag addasiadau neu hebddynt. Cânt ychwanegu, dileu neu amrywio darpariaeth sy'n rhoi caniatâd cynllunio. Pan fo'r gorchymyn wedi ei gadarnhau gan Weinidogion Cymru, rhaid i'r awdurdod cynllunio hysbysu pawb y cyflwynwyd copi o'r hysbysiad o gyflwyno'r gorchymyn iddynt ac unrhyw un arall sydd wedi dod yn berchennog neu'n feddiannydd ar y tir ers hynny (paragraff 1(6) i (8)).

991. Mae Rhan 2 o Atodlen 14 yn nodi'r weithdrefn ar gyfer gwneud gorchymyn datbarhau gan Weinidogion Cymru. O dan baragraff 2(1) i (3) a (5), rhaid iddynt yn gyntaf ymgynghori â'r awdurdod cynllunio a, chyn gwneud y gorchymyn, rhaid iddynt gyflwyno hysbysiad o'r gorchymyn arfaethedig i'r awdurdod cynllunio, i berchnogion a meddianwyr y tir o dan sylw ac i unrhyw un arall y maent yn meddwl y bydd y gorchymyn yn effeithio arno. Rhaid i'r hysbysiad ddatgan y cânt, o fewn cyfnod (a bennir yn yr hysbysiad) o 28 o ddiwrnodau o leiaf, ofyn am gyfle i gyflwyno sylwadau gerbron arolygydd.

992. Os bydd unrhyw un o'r rhai sy'n cael yr hysbysiad yn gwneud cais o'r fath, rhaid rhoi cyfle i'r person hwnnw ac i'r awdurdod cynllunio i gael gwrandawiad gan arolygydd (paragraff 2(4)).

993. Yna caiff Gweinidogion Cymru wneud y gorchymyn, gydag addasiadau neu hebddynt. Pan fyddant yn gwneud y gorchymyn, rhaid iddynt hysbysu pawb y cyflwynwyd hysbysiad o'r gorchymyn arfaethedig iddynt ac unrhyw un arall sydd wedi dod yn berchennog neu'n feddiannydd ar y tir ers hynny (paragraff 2(6)).

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. O dan Ran 3 o'r Atodlen hon, mae ystyriaethau ychwanegol yn gymwys pan fo'r awdurdod cynllunio yn dymuno cymryd camau datbarhau mewn perthynas â datblygiad sy'n weithrediadau mwyngloddio neu sy'n dyddodi gwastraff. Ystyr "gweithrediadau mwyngloddio" yw ennill a gweithio mwynau ar dir, pa un ai drwy weithio o dan y ddaear neu ar wyneb y ddaear (gweler adran 4(5)). Mae hyn yn codi oherwydd bod natur datblygiad o'r fath yn golygu, pan fydd yn dod i ben – un ai dros dro neu'n barhaol – y gallai fod angen adfer y tir yr effeithir arno neu roi triniaeth arbennig iddo.

995. Mewn egwyddor, caniateir i orchymyn datbarhau gael ei wneud gan yr awdurdod cynllunio neu gan Weinidogion Cymru mewn perthynas â datblygiad o'r fath, o dan Ran 1 neu Ran 2 o Atodlen 14, yn union fel mewn unrhyw achos arall. Fodd bynnag, pe bai gorchymyn yn ei gwneud yn ofynnol i'r defnydd o dir ar gyfer gweithrediadau mwyngloddio neu ddyddodi gwastraff yn unig ddod i ben, gallai hynny arwain at adael y tir mewn cyflwr anfoddhaol – yn union fel pan fo'r defnydd o dir at ddibenion o'r fath yn dod i ben yn naturiol. Er mwyn osgoi hynny, caiff gorchymyn datbarhau osod un neu ragor o amodau adfer (paragraff 3(1)). Diffinnir amod o'r fath (gan baragraff 1(2)(a) o Atodlen 3) fel un sy'n ei gwneud yn ofynnol i'r tir y mae'r gweithrediadau neu'r dyddodi yn effeithio arno gael ei adfer drwy ddefnyddio isbridd, uwchbridd neu ddeunydd creu pridd.

996. Pan fo gorchymyn datbarhau o'r fath yn gosod amod adfer, caiff hefyd osod un neu ragor o amodau ôl-ofal – hynny yw, amodau sy'n pennu y dygir y tir i'r safon ofynnol at ddibenion amaethyddiaeth, tyfu pren neu amwynder, ac sy'n ei gwneud yn ofynnol i gamau gael eu cymryd i ddod â'r tir i gyflwr sy'n addas ar gyfer y defnydd hwnnw (paragraff 1(2)(b) o Atodlen 3). Caniateir gosod amodau o'r fath hefyd pan fo gorchymyn yn ei gwneud yn ofynnol datbarhau'r defnydd o dir, a bo un neu ragor o amodau adfer eisoes ar waith, ynghlwm wrth roi caniatâd cynllunio.

997. Mae paragraffau 1(3) i (9) a 2 i 5 o Atodlen 3 yn gymwys i amodau ôl-ofal a osodir gan orchymyn datbarhau yn union fel y maent yn gymwys pan fo amodau o'r fath ynghlwm wrth ganiatâd cynllunio ar gyfer gweithrediadau mwyngloddio neu ddyddodi gwastraff, a roddir mewn ymateb i gais. Mae'r darpariaethau hynny'n ymdrin â'r defnyddiau y caniateir eu pennu mewn amodau ôl-ofal, safon yr adfer a'r gwelliant a allai fod yn ofynnol mewn perthynas â phob defnydd o'r fath a'r weithdrefn i sicrhau y cydymffurfir ag amodau o'r fath. Maent hefyd yn gymwys i orchmynion datbarhau a wneir gan Weinidogion Cymru gydag unrhyw addasiadau angenrheidiol (paragraff 3(3)(b)).

Adran 207 – Caniatâd cynllunio a roddir gan orchymyn datbarhau

998. O dan is-adran (1), caiff gorchymyn datbarhau roi caniatâd cynllunio. Gallai hyn fod yn arwyddocaol wrth asesu swm y digollediad sy'n daladwy mewn cysylltiad â chyflwyno'r gorchymyn.

999. Caniateir rhoi caniatâd cynllunio drwy'r orchymyn ar gyfer unrhyw ddatblygiad (is-adran (2)) – a chaiff y caniatâd a roddir gan y gorchymyn fod yn gyflawn neu'n amlinellol. Mae hyn yn galluogi gorchymyn i orffen defnydd presennol o dir, sy'n cael ei ystyried yn anfoddhaol, ond i ddynodi un neu ragor o ddefnyddiau neu weithrediadau eraill a fyddai'n well.

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. Caiff y gorchymyn hefyd, er enghraifft, roi caniatâd ar gyfer datblygiad a gynhaliwyd cyn i'r gorchymyn gael ei gyflwyno gan yr awdurdod cynllunio i Weinidogion Cymru i'w gymeradwyo (yn achos gorchymyn a wneir gan awdurdod cynllunio) neu cyn i Weinidogion Cymru roi hysbysiad o'r gorchymyn arfaethedig i'r awdurdod cynllunio (yn achos gorchymyn sydd i'w wneud gan Weinidogion Cymru). Yn yr achos hwnnw, caiff y caniatâd a roddir gan y gorchymyn awdurdodi cynnal y datblygiad o'r adeg y dechreuodd gyntaf. Neu, os rhoddwyd caniatâd eisoes ar gyfer y datblygiad ond dim ond am gyfnod cyfyngedig, caiff y caniatâd a roddir yn awr gan y gorchymyn awdurdodi i'r datblygiad barhau o ddiwedd y cyfnod hwnnw (is-adran (4)).

1001. Mae hyn yn galluogi gorchymyn i awdurdodi, er enghraifft, ddefnydd presennol o dir sydd wedi dechrau heb ganiatâd, neu gadw adeilad sydd eisoes wedi ei godi'n anghyfreithlon, yn lle defnydd o dir a ganiatawyd yn y gorffennol ond sydd bellach yn cael ei ystyried yn amhriodol.

1002. Pan fo gorchymyn datbarhau yn rhoi caniatâd, bydd y caniatâd hwnnw yn ddarostyngedig i unrhyw amod a fyddai'n ofynnol pe bai'r caniatâd yn cael ei roi mewn ymateb i gais (is-adrannau (1) a (7)(a)). Byddai hyn yn cynnwys, er enghraifft, amod ynghylch yr amser y mae rhaid i'r datblygiad ddechrau ynddo (o dan adran 93); ac, yn achos caniatâd ar gyfer datblygiad mwynau, amod ynghylch erbyn pa bryd y mae rhaid ei gwblhau (o dan Atodlen 3). Caiff y caniatâd hefyd gynnwys amodau o ran cadw a phlannu coed (is-adran (7)(b)).

Adran 208 – Pŵer i wneud gorchymyn gwahardd neu orchymyn diogelu
Atodlen 15 – Gorchmynion gwahardd a gorchmynion diogelu

1003. Unwaith y bydd mwyngloddio neu ddyddodi gwastraff mwynau wedi dod i ben, mae perygl y gallai'r tir gael ei adael mewn cyflwr anfoddhaol, o bosibl am flynyddoedd lawer. Ystyr "gwastraff mwynau" yw deunydd sy'n weddill ar ôl i fwynau gael eu hechdynnu o dir neu sy'n deillio fel arall o gynnal gweithrediadau mwyngloddio; ac ystyr "dyddodi gwastraff mwynau" yw unrhyw broses y crëir neu y cynyddir dyddodyn deunydd o'r fath drwyddi (gweler adran 408). Mae Atodlen 15, a gyflwynir gan adran 208, yn darparu pwerau i awdurdod cynllunio (neu Weinidogion Cymru) sicrhau nad yw hyn yn digwydd.

1004. Mae Rhan 1 o'r Atodlen hon yn ei alluogi i wneud "gorchymyn gwahardd" pan fo tir wedi cael ei ddefnyddio yn y gorffennol ar gyfer gweithrediadau mwyngloddio neu ddyddodi gwastraff, ond bod y defnydd hwnnw wedi dod i ben yn barhaol. Mae gorchymyn o'r fath yn sicrhau nad yw'r defnydd yn dechrau eto. Caiff gorchymyn hefyd osod gofynion pellach, gan gynnwys drwy amodau adfer. Mae Rhan 2 yn ei alluogi i wneud "gorchymyn diogelu" pan oedd tir yn cael ei ddefnyddio yn y fath fodd, ond bod y defnydd hwnnw wedi ei atal dros dro er mwyn sicrhau bod yr amgylchedd yn cael ei ddiogelu'n briodol nes bod y defnydd yn dechrau eto.

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.

Rhan 1 – Gorchmynion gwahardd

1005. Mae Rhan 1 yn gymwys pan fo tir yn ardal awdurdod cynllunio wedi ei ddefnyddio yn y gorffennol ar gyfer datblygiad sy'n weithrediadau mwyngloddio neu sy'n cynnwys dyddodi gwastraff mwynau. Pan fo'r awdurdod o'r farn nad oes gweithgarwch o'r fath wedi digwydd ar y tir yn ystod y ddwy flynedd ddiwethaf ac nad yw'n debygol (ar sail y dystiolaeth sydd ar gael iddo) y bydd gweithgarwch o'r fath yn ailddechrau i unrhyw raddau sylweddol, caiff wneud gorchymyn gwahardd, yn gwahardd ailddechrau gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau (paragraff 1(1) a (3) i (5)).

1006. Yn yr un modd, caiff Gweinidogion Cymru wneud gorchymyn o'r fath pan fo tir yng Nghymru wedi ei ddefnyddio yn y gorffennol ar gyfer datblygiad o'r fath ond nad oes gweithgarwch o'r fath wedi digwydd ar y tir yn ystod y ddwy flynedd ddiwethaf, a phan fo Gweinidogion Cymru yn ystyried nad yw'n debygol y bydd gweithgarwch o'r fath yn ailddechrau i unrhyw raddau sylweddol (paragraff 1(2) i (5)).

1007. O dan baragraff 1(6), caiff gorchymyn o'r fath hefyd osod gofynion sydd wedi eu cynllunio i sicrhau nad yw'r tir yn cael ei adael mewn cyflwr anfoddhaol:

a. bod cyfarpar neu beiriannau a ddefnyddiwyd ar gyfer y gweithrediadau mwyngloddio neu'r dyddodi gwastraff mwynau (neu at ryw ddiben atodol) yn cael eu haddasu neu eu symud ymaith;

b. bod unrhyw niwed i amwynder sydd wedi ei achosi gan y gweithrediadau neu'r dyddodi yn cael ei liniaru neu ei ddileu – gallai hyn ei gwneud yn ofynnol, er enghraifft, newid siâp pentyrrau sborion neu blannu gwrychoedd sgrinio;

c. bod angen cydymffurfio ag amod ar y caniatâd gwreiddiol;

d. bod amod adfer yn cael ei osod.

1008. Fodd bynnag, ni chaiff gorchymyn ei gwneud yn ofynnol unioni niwed o ganlyniad i ymsuddiant a achoswyd gan fwyngloddio tanddaearol (paragraff 1(6)(b)).

1009. Os yw gorchymyn gwahardd – neu'r caniatâd gwreiddiol – yn gosod un neu ragor o amodau adfer, caiff y gorchymyn hefyd osod amodau ôl-ofal (a ddiffinnir yn Atodlen 3, paragraff 1(2)). Yn yr achos hwnnw, mae darpariaethau paragraff 1(3) i (5) o Atodlen 3 yn gymwys i amodau ôl-ofal a osodir gan orchymyn gwahardd yn union fel y maent yn gymwys pan fo amodau o'r fath ynghlwm wrth ganiatâd cynllunio ar gyfer gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau (paragraff 1(7) ac (8)).

1010. Mae paragraff 4 yn darparu bod gorchymyn gwahardd, unwaith y bydd yn cymryd effaith, yn dwyn i ben yn awtomatig unrhyw ganiatâd cynllunio ar gyfer gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau y mae'r gorchymyn yn ymwneud â hwy – er nad yw hynny'n effeithio ar gyfreithlondeb unrhyw weithrediadau neu ddyddodi o'r fath sydd eisoes wedi digwydd. Nid yw gwneud gorchymyn yn atal yr awdurdod cynllunio na Gweinidogion Cymru rhag rhoi caniatâd pellach ar gyfer datblygiad o'r fath yn y dyfodol.

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. Rhaid i orchymyn gwahardd a wneir gan awdurdod cynllunio o dan yr Atodlen hon gael ei gadarnhau gan Weinidogion Cymru; mae'r weithdrefn ar gyfer gwneud hynny (o dan baragraff 2) yr un fath yn fras ag ar gyfer gorchymyn datbarhau a wneir gan awdurdod cynllunio o dan baragraff 1 o Atodlen 14. A rhaid hysbysu'r awdurdod am orchymyn arfaethedig i'w wneud gan Weinidogion Cymru; mae'r weithdrefn ar gyfer gwneud hynny (o dan baragraff 3) yr un fath ag ar gyfer gorchymyn datbarhau a wneir ganddynt o dan baragraff 2 o Atodlen 14.

Rhan 2 – Gorchmynion diogelu

1012. Mae Rhan 2 yn gymwys pan fo tir yn ardal awdurdod cynllunio wedi ei ddefnyddio yn y gorffennol ar gyfer datblygiad sy'n weithrediadau mwyngloddio neu sy'n cynnwys dyddodi gwastraff mwynau. Pan fo'r awdurdod o'r farn nad oes gweithgarwch o'r fath wedi digwydd ar y tir yn ystod y deuddeg mis diwethaf, a'i bod yn debygol (ar sail y dystiolaeth sydd ar gael iddo) y bydd gweithgarwch o'r fath yn ailddechrau i raddau sylweddol yn y dyfodol, caiff wneud gorchymyn diogelu, sy'n ei gwneud yn ofynnol i gamau gael eu cymryd i ddiogelu'r amgylchedd yn y cyfamser (paragraff 5(1) a (3) i (5)).

1013. Yn yr un modd, caiff Gweinidogion Cymru wneud gorchymyn o'r fath pan fo tir wedi ei ddefnyddio yn y gorffennol ar gyfer datblygiad o'r fath, ond nad oes gweithgarwch o'r fath wedi digwydd yn ystod y deuddeg mis diwethaf, a'u bod o'r farn ei bod yn debygol y bydd gweithgarwch o'r fath yn ailddechrau i raddau sylweddol maes o law (paragraff 5(2) i (5)).

1014. O dan baragraff 5(6) a (7), caiff gorchymyn diogelu ei gwneud yn ofynnol i unrhyw un neu ragor o'r camau a ganlyn gael eu cymryd i ddiogelu'r amgylchedd, o fewn cyfnod a bennir yn y gorchymyn (a chaniateir pennu cyfnodau gwahanol ar gyfer y gwahanol gamau):

a. camau i ddiogelu amwynder y tir y mae'r gorchymyn yn ymwneud ag ef a'r ardal gyfagos, hyd nes y bydd gweithrediadau mwyngloddio etc. yn ailddechrau;

b. camau i ddiogelu'r ardal rhag difrod yn ystod y cyfnod hwnnw; neu

c. camau i atal unrhyw ddirywiad yng nghyflwr y tir yn ystod y cyfnod hwnnw.

1015. Yn gyffredinol, rhaid i orchymyn diogelu a wneir gan awdurdod cynllunio o dan yr Atodlen hon gael ei gadarnhau gan Weinidogion Cymru; mae'r weithdrefn (o dan baragraff 6) yr un fath yn fras ag ar gyfer gorchymyn datbarhau a wneir gan awdurdod cynllunio o dan baragraff 1 o Atodlen 14. A rhaid hysbysu'r awdurdod am orchymyn y mae Gweinidogion Cymru yn cynnig ei wneud; eto, mae'r weithdrefn (o dan baragraff 7) yr un fath yn fras ag ar gyfer gorchymyn datbarhau a wneir ganddynt o dan baragraff 2 o Atodlen 14.

1016. Mae paragraff 8 yn darparu bod gorchymyn diogelu yn bridiant tir lleol ac mae hyn yn sicrhau y bydd yn dod i sylw perchnogion y dyfodol os yw perchnogaeth y tir yn newid.

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. Ar ôl i orchymyn diogelu ddod i rym, ar y sail bod y gweithrediadau mwyngloddio neu'r dyddodi gwastraff mwynau wedi eu hatal dros dro, gall amgylchiadau newid. Mae'r awdurdod cynllunio, felly, o dan ddyletswydd o dan baragraff 9(1) i adolygu'r holl orchmynion diogelu a wnaed yn ei ardal, naill ai gan yr awdurdod ei hun neu gan Weinidogion Cymru. Gall adolygiad o'r fath arwain at ddirymu'r cyfan neu ran o unrhyw un neu ragor o'r gorchmynion hynny neu wneud gorchymyn newydd, yn lle gorchymyn sy'n bodoli eisoes neu'n ychwanegol ato. Neu, os yw'n ystyried nad yw'r gweithrediadau mwyngloddio neu'r dyddodi gwastraff mwynau, wedi'r cyfan, yn mynd i ailddechrau, caiff yr awdurdod ddewis gwneud gorchymyn gwahardd.

1018. O dan baragraff 6(2), pan fo gorchymyn diogelu newydd yn dirymu gorchymyn blaenorol, ac nad yw'n ei gwneud yn ofynnol i unrhyw gamau newydd gael eu cymryd, nid oes angen i Weinidogion Cymru gadarnhau hynny.

1019. Rhaid adolygu pob gorchymyn diogelu o dan baragraff 9 fewn pum mlynedd iddo gael ei wneud gyntaf; ac eto o fewn pum mlynedd ar ôl hynny (paragraff 9(2) a (3)). Pan fo dau orchymyn neu ragor yn effeithio ar yr un tir, rhaid eu hadolygu gyda'i gilydd (paragraff 9(4)).

1020. Pan fydd gorchymyn diogelu wedi dod i rym, ni fydd hynny'n negyddu'r caniatâd a awdurdododd yn wreiddiol y gweithrediadau mwyngloddio neu'r dyddodi gwastraff mwynau a oedd wedi dod i ben dros dro. A bydd y caniatâd hwnnw'n parhau i fod yn effeithiol, i awdurdodi unrhyw weithrediadau yn y dyfodol etc. Fodd bynnag, cyn ailddechrau gweithrediadau o'r fath etc., rhaid rhoi hysbysiad o'r ailddechrau i'r awdurdod cynllunio a rhaid i'r hysbysiad hwnnw nodi'r dyddiad y bwriedir ailddechrau gweithrediadau o'r fath etc.; ac yna rhaid i'r awdurdod ddirymu'r gorchymyn diogelu o fewn dau fis i'r dyddiad a bennir fel yr un y bydd y gweithrediadau etc. yn ailddechrau (paragraff 10(1) i (4)).

1021. Os na fydd yr awdurdod yn dirymu'r gorchymyn diogelu o fewn y cyfnod o ddau fis, caiff y person a'i hysbysodd am y bwriad i ailddechrau gweithgarwch ar y tir wneud cais i Weinidogion Cymru iddynt hwythau ddirymu'r gorchymyn, gan roi hysbysiad o hynny i'r awdurdod. Ac os yw'r person hwnnw neu'r awdurdod yn gwneud archiad i gyflwyno sylwadau gerbron arolygydd, rhaid trefnu hynny. Os yw Gweinidogion Cymru wedi eu bodloni bod gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau wedi ailddechrau i raddau helaeth ar y tir, rhaid iddynt ddirymu'r gorchymyn diogelu – a hysbysu'r ceisydd, yr awdurdod, pob perchennog a phob meddiannydd ar y tir ac unrhyw berson arall y mae Gweinidogion Cymru yn meddwl y bydd dirymu'r gorchymyn yn effeithio arno, eu bod wedi gwneud hynny (paragraff 10(5) i (9)).

Adran 209 – Pwerau i fynd ar dir, cymryd camau a wneir yn ofynnol gan orchymyn ac adennill costau

1022. Caiff gorchymyn datbarhau a wneir o dan adran 206 osod gofyniad i gamau gael eu cymryd o fewn cyfnod penodedig i addasu neu symud ymaith unrhyw adeiladau neu waith, neu unrhyw gyfarpar neu beiriannau. Caiff gorchymyn gwahardd a wneir o dan Ran 1 o Atodlen 15 hefyd osod gofyniad i gamau gael eu cymryd i addasu neu symud ymaith gyfarpar neu beiriannau, neu ddileu neu liniaru unrhyw niwed i amwynder. Bydd gorchymyn diogelu, a wneir o dan Ran 2 o Atodlen 15, yn gosod gofyniad i gamau gael eu cymryd i ddiogelu'r amgylchedd.

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. Mewn unrhyw un neu ragor o'r sefyllfaoedd hyn, pan na chymerir y camau sy'n ofynnol gan y gorchymyn o fewn y cyfnod penodedig, neu o fewn unrhyw gyfnod hwy a ganiateir gan yr awdurdod cynllunio ar gyfer yr ardal y mae'r tir ynddi, caiff yr awdurdod fynd ar y tir ar unrhyw adeg resymol, a chymryd y cam angenrheidiol ei hun (is-adrannau (1), (2) a (6)).

1024. Pan fo'n gwneud hynny, caiff yr awdurdod adennill ei gostau rhesymol oddi wrth un neu ragor o berchnogion presennol y tir (is-adran (3)). Os yw'r awdurdod yn symud ymaith unrhyw ddeunyddiau – megis pridd neu ddeunyddiau eraill – o'r tir wrth gymryd y camau sy'n ofynnol gan y gorchymyn, rhaid iddo ganiatáu cyfnod o dri diwrnod o leiaf i berchennog y deunyddiau hynny eu hawlio. Os nad ydynt yn cael eu hawlio o fewn y cyfnod hwnnw, caiff werthu'r deunyddiau, a thalu'r enillion i'w perchennog, ar ôl didynnu ei gostau (is-adrannau (4) a (5)).

Adran 210 – Y drosedd o fethu â chydymffurfio â gorchymyn

1025. Pan fo gorchymyn datbarhau yn ei gwneud yn ofynnol i ddefnydd o dir ddod i ben, mae'n drosedd o dan is-adran (1)(a)(i) i barhau i ddefnyddio'r tir neu i beri neu ganiatáu i'r tir gael ei ddefnyddio at y diben hwnnw. A phan fo gorchymyn yn caniatáu i ddefnydd barhau, ond yn gosod amod ar ddefnydd parhaus o'r fath, mae'n drosedd (o dan is-adran (1)(a)(ii)) i fethu â chydymffurfio â'r amod hwnnw. Gellir rhoi'r naill drosedd neu'r llall ar brawf yn ddiannod (yn y llys ynadon) neu ar dditiad (yn Llys y Goron). Yn y naill achos neu'r llall, mae person a euogfernir yn agored i dalu dirwy (ac nid oes terfyn ar swm y ddirwy y caiff y llys ei gosod).

1026. Pan fo gorchymyn gwahardd yn gwahardd ailddechrau defnydd o dir ar gyfer gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau, a bo'r person yn methu â chydymffurfio, mae hynny'n drosedd o dan adran 210(1)(b). Pan fo gorchymyn gwahardd yn ei gwneud yn ofynnol i gamau gael eu cymryd (neu'n gosod amodau ar ailddechrau defnydd o'r fath) a bo'r person yn methu â chydymffurfio, mae hynny'n drosedd o dan adran 210(1)(c). A phan fo gorchymyn diogelu yn ei gwneud yn ofynnol i gamau gael eu cymryd, a bo'r person yn methu â chydymffurfio, mae hynny'n drosedd o dan adran 210(2). Mae adran 210(3) yn gymwys i droseddau o'r fath fel y mae'n gymwys i'r drosedd o fethu â chydymffurfio â gorchymyn datbarhau o dan adran 210(1)(a).

1027. Pan fo person yn cael ei gyhuddo o drosedd o'r fath, mae'n amddiffyniad (o dan is-adran (4)) i brofi bod y person wedi cymryd pob rhagofal rhesymol ac wedi arfer pob diwydrwydd dyladwy i osgoi cyflawni'r drosedd.

1028. Pan ddibynnir ar amddiffyniad o'r fath, a'i fod yn cynnwys person sy'n cael ei gyhuddo (A) yn honni mai bai trydydd parti (B) oedd y methiant i gydymffurfio â'r gorchymyn, neu fod A yn dibynnu ar wybodaeth a ddarparwyd gan B, yna rhaid i A roi i'r erlynydd – o leiaf saith niwrnod cyn dyddiad y gwrandawiad – yr holl wybodaeth ym meddiant A a fydd yn cynorthwyo'r erlynydd i allu dangos pwy yw B (is-adrannau (5) a (6)).

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)).

Adran 211 – Digolledi am ddifrod a achosir gan orchymyn datbarhau

1029. Bydd gwneud gorchymyn datbarhau yn gorffen defnydd cyfreithlon presennol o ddarn o dir neu'n ei gwneud yn ofynnol symud ymaith adeilad neu waith sydd ar y tir yn gyfreithlon. Pan fo hyn yn arwain at leihad yng ngwerth y rhydd-ddaliad, y lesddaliad neu unrhyw fuddiant arall yn y tir o dan sylw, mae gan ddeiliad y buddiant hwnnw hawlogaeth i hawlio digolledi (is-adran (2)(a)). Mae digolledi hefyd yn daladwy i unrhyw un sy'n meddiannu'r tir am y tarfu ar eu mwynhad o'r tir (is-adran (2)(b)).

1030. Yn ogystal, mae digolledi yn daladwy i unrhyw un sy'n mynd i wariant wrth gynnal gwaith i gydymffurfio â'r gorchymyn (is-adran (3)). Byddai hyn yn cynnwys, er enghraifft, symud ymaith adeilad, neu gyfarpar a pheiriannau.

1031. Fodd bynnag, mae digolledi yn unrhyw un o'r achosion hynny wedi ei leihau gan swm sy'n hafal i werth i'r hawlydd unrhyw bren defnyddiadwy, cyfarpar neu ddeunyddiau eraill a symudir ymaith o'r tir (is-adran (5)).

1032. Er enghraifft, os deuir â'r defnydd o dir fel iard sborion i ben gan orchymyn datbarhau, a bod caniatâd cynllunio yn cael ei roi ar gyfer defnydd arall, llai gwerthfawr, mae digolledi yn daladwy i'r perchennog am y golled yng ngwerth y tir ac am y gost o symud ymaith y cyfarpar a'r deunydd. Ond bydd y digolledi hwnnw yn cael ei leihau gan werth yr eitemau a symudir ymaith.

1033. Mae hawliad am ddigolledi o dan yr adran hon i'w wneud o fewn 12 mis i'r adeg y mae'r gorchymyn yn cymryd effaith (is-adran (4)). Darperir y weithdrefn ar gyfer gwneud hawliad yn adrannau 391 i 393.

1034. Os yw gorchymyn datbarhau yn arwain at gyflwyno hysbysiad prynu o dan adran 213 a'i fod yn cael ei dderbyn neu ei gadarnhau o dan y weithdrefn yn Atodlen 12, nid oes unrhyw ddigolledi yn daladwy o dan yr adran hon (is-adran (6)).

Adran 212 – Digolledi am effeithiau gorchmynion sy'n ymwneud â mwynau

1035. Mae swm y digolledi y caniateir ei hawlio o dan adran 211 wedi ei gyfyngu mewn achosion pan fo gorchymyn datbarhau yn ymwneud â gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau. Rhoddir y manylion yn Rhan 1 o Atodlen 16. Ac mae Rhan 2 o'r Atodlen honno yn ymdrin â thalu digolledi pan wneir gorchymyn gwahardd neu orchymyn diogelu.

1036. Caiff rheoliadau o dan adran 394 addasu ymhellach y rheolau arferol ynghylch yr hawlogaeth i ddigolledi o ran eu cymhwysiad i achosion o'r fath.

Atodlen 16 – Digolledi am effeithiau gorchmynion sy'n ymwneud â mwynau

Rhan 1 – Digolledi yn dilyn gwneud gorchymyn datbarhau

1037. Pan fo gorchymyn datbarhau yn ymwneud â defnydd o dir ar gyfer cynnal gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau, dim ond mewn pedair sefyllfa y mae digolledi o dan adran 211 ar gael.

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. Yn gyntaf, mae digolledia ar gael pan fo'r gorchymyn yn gosod cyfyngiad ar hawliau gweithio neu'n addasu neu'n amnewid cyfyngiad presennol (heblaw un a osodir gan amod adfer neu amod ôl-ofal). Mae cyfyngiad ar hawliau gweithio yn newid sy'n lleihau neu'n cyfyngu ar faint yr ardal a ddefnyddir ar gyfer gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau, neu ddyfnder mwyngloddio neu uchder unrhyw ddyddodyn gwastraff, neu'r gyfradd weithio, neu'r dyddiad erbyn pryd y mae rhaid i weithrediadau ddod i ben, neu gyfanswm y mwynau y caniateir eu hechdynnu neu'r gwastraff y caniateir ei ddyddodi (paragraff 1(2) a (6)).

1039. Yn ail, mae digolledia yn daladwy pan na fo'r gorchymyn yn gosod amod ar barhau â'r defnydd o'r tir ar gyfer gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau, neu'n ei gwneud yn ofynnol addasu neu symud ymaith adeiladau, gwaith, cyfarpar neu beiriannau (paragraff 1(3)). Gellid gosod amod o'r fath, er enghraifft, pan fo gorchymyn yn gosod cyfyngiadau ar y ffordd y cynhelir gweithrediadau, i sicrhau eu bod yn cydymffurfio ag arferion gweithio cyfredol.

1040. Yn drydydd, mae digolledia yn daladwy pan fo'r gorchymyn yn ymwneud â gweithrediadau neu ddyddodi sydd wedi bod yn digwydd am lai na phum mlynedd (paragraff 1(4)).

1041. Yn bedwerydd, mae digolledia yn daladwy o dan baragraff 1(5) pan fo un neu ragor o'r canlynol wedi digwydd, yn y pum mlynedd cyn gwneud y gorchymyn:

a. gwnaed gorchymyn datbarhau arall yn ymwneud â defnydd o'r tir ar gyfer cynnal gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau;

b. daethpwyd â'r caniatâd i ben drwy orchymyn gwahardd (o dan Ran 1 o Atodlen 15);

c. gwnaed gorchymyn yn addasu'r caniatadau mwynau sy'n ymwneud â'r safle;

d. roedd y safle wedi bod yn safle segur, a gwnaed cais o dan atodlen 8 i benderfynu'r amodau sydd ynghlwm wrth y caniatâd; neu

e. penderfynwyd y caniatadau sy'n ymwneud â'r safle o dan baragraff 7 o Atodlen 9 at ddibenion adolygiad cyfnodol.

Ym mhob achos, bydd hyn wedi arwain at adolygu'r gweithgarwch mwyngloddio ar y safle.

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. Mae hyn yn golygu y gall awdurdod cynllunio addasu caniatâd mwynau drwy gyflwyno gorchymyn datbarhau i'w gysoni â safonau presennol heb orfod talu digollediad, ond dim ond:

a. pan na fo'r gorchymyn
   i. yn cyfyngu ar, yn addasu neu'n amnewid hawliau gweithio,
   ii. yn gosod amodau ar y defnydd parhaus o'r tir ar gyfer cynnal gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau,
   iii. yn ei gwneud yn ofynnol addasu neu symud ymaith unrhyw adeiladau, unrhyw waith, unrhyw gyfarpar neu unrhyw beiriannau a ddefnyddir mewn cysylltiad â'r gweithrediadau neu ddyddodi gwastraff mwynau, neu

b. pan fo o leiaf bum mlynedd wedi mynd heibio ers i'r gweithgarwch mwyngloddio ddechrau;

c. pan fo'r gweithgarwch wedi cael ei adolygu mewn un ffordd neu ei gilydd.

Rhan 2 – Digollediad yn dilyn gwneud gorchymyn gwahardd neu orchymyn diogelu

1043. Mae paragraff 2 yn darparu bod digollediad yn daladwy am wneud gorchymyn gwahardd pan fo'r gorchymyn yn ymwneud â gweithrediadau neu ddyddodi sydd wedi bod yn digwydd am lai na phum mlynedd, neu pan fo un o'r canlynol wedi digwydd yn ystod y pum mlynedd cyn gwneud y gorchymyn:

a. daethpwyd â'r caniatâd i ben drwy orchymyn gwahardd arall; neu

b. gwnaed gorchymyn datbarhau yn ymwneud â defnydd o'r tir ar gyfer cynnal gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau neu gwnaed gorchymyn addasu o dan adran 102 (sy'n golygu, yn y ddau achos, y byddai'r caniatâd wedi cael ei adolygu yn y 5 mlynedd flaenorol).

1044. Mewn achosion o'r fath, mae paragraff 2(1) yn cymhwyso'r darpariaethau yn adran 211(2) i (5). Gall digollediad gael ei hawlio gan berson sy'n dioddef difrod oherwydd gwneud gorchymyn gwahardd, naill ai drwy leihad yng ngwerth unrhyw fuddiant yn y tir o dan sylw, neu am darfu ar y mwynhad o'r tir, neu fynd i wariant wrth gynnal gwaith i gydymffurfio â'r gorchymyn. Bydd digollediad o'r fath, fodd bynnag, yn cael ei leihau gan swm sy'n hafal i werth deunyddiau a symudir ymaith o'r tir i'r hawlydd.

1045. Er enghraifft, os yw tir wedi cael ei ddefnyddio fel safle mwynau am lai na phum mlynedd, daw'r defnydd hwnnw i ben, a gwneir gorchymyn gwahardd yn ei atal rhag ailddechrau, yn ddarostyngedig i amodau adfer ac ôl-ofal, mae digollediad yn daladwy i'r perchennog am unrhyw leihad yng ngwerth y tir, ac am gost cydymffurfio â'r amodau, ond bydd wedi ei leihau gan werth yr eitemau a symudir ymaith (o bosibl i'w gwerthu, neu i'w trosglwyddo i safleoedd eraill sy'n eiddo i'r hawlydd).

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. Pan wneir gorchymyn gwahardd mewn amgylchiadau eraill (h.y. pan na fydd y naill amod na'r llall ym mharagraff 2 yn cael eu bodloni), neu pan wneir gorchymyn diogelu, mae paragraff 3 yn darparu bod digolledi yn daladwy i unrhyw berson a chanddo un nru ragor o fuddiannau yn y tir am:

a. unrhyw wariant yr aed iddo ar waith (gan gynnwys eitemau paratoadol fel llunio planiau etc.) a ddaw yn ofer oherwydd y gorchymyn; a

b. unrhyw golled neu ddifrod arall y gellir ei phriodoli neu ei briodoli'n uniongyrchol i wneud y gorchymyn (gan gynnwys costau cynnal gwaith i liniaru neu ddileu'r niwed a achosir i amwynder gan y gweithrediadau, oni bai bod hynny'n cael ei gynnwys mewn hawliad arall am ddigolledi) (paragraff 3(2) a (4)).

1047. Mae swm y golled neu'r difrod y mae digolledi yn daladwy amdani neu amdano o dan baragraff 3 i'w gyfrifo heb ystyried:

a. gwerth unrhyw fwyn na ellir ei dynnu na'i weithio mwyach, unrhyw wastraff mwynau na ellir ei ddyddodi mwyach, ac unrhyw wagle na ellir ei lenwi mwyach, o ganlyniad i'r gorchymyn; na

b. yn achos gorchymyn gwahardd, gost cydymffurfio ag amodau adfer neu ôl-ofal a osodir o ganlyniad i'r gorchymyn.

Ac mae'r digolledi i'w leihau gan werth deunyddiau a symudir ymaith o'r safle (paragraff 3(5) a (6)).

1048. Rhaid i'r awdurdod cynllunio, wrth gyfrifo swm y digolledi sy'n daladwy o dan baragraff 3, ddidynnu'r swm a bennir yn unol â pharagraff 4. Os yw'r awdurdod wedi ei fodloni mai'r hawlydd yw'r unig berson a chanddo hawlogaeth i hawlio o ganlyniad i'r gorchymyn, rhaid iddo ddidynnu'r swm a bennir mewn rheoliadau (gweler rheoliad 7(1) o Reoliadau Cynllunio Gwlad a Thref (Digolledu am Gyfyngiadau ar Weithio Mwynau a Dyddodi Gwastraff Mwynau) 1997 (O.S. 1997/1111); ac os yw'n ystyried bod eraill neu y gall fod eraill a chanddynt hawlogaeth i hawlio, rhaid iddo ddidynnu ffracsiwn priodol y swm hwnnw wedi ei luosi â'r ffracsiwn priodol. Gellir mynegi'r ffracsiwn hwnnw fel BH ÷ GC, pan BH yw asesiad yr awdurdod o werth buddiant yr hawlydd yn y tir a GC yw ei asesiad o gyfanswm gwerth yr holl fuddiannau yn y tir. Mae hynny'n sicrhau bod y cyfanswm a ddidynnir o gyfanswm y digolledi sy'n daladwy mewn cysylltiad â gorchymyn penodol bob amser yr un peth, pa un ai y'i telir i un hawlydd ar un adeg neu i sawl hawlydd ar wahanol adegau.

1049. Mae hawliad am ddigolledi o dan baragraff 2 neu 3 i'w wneud o fewn 12 mis i'r adeg y mae'r gorchymyn yn cymryd effaith. Darperir y weithdrefn ar gyfer gwneud hawliad yn adrannau 391 i 393.

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.

Adran 213 – Cyflwyno hysbysiad prynu yn dilyn gwneud gorchymyn datbarhau

1050. Pan wneir gorchymyn datbarhau mewn perthynas â darn o dir, gall olygu:

a. bod y tir yn annefnyddiadwy yn ei gyflwr presennol; a

b. nad yw'n bosibl gwneud y tir yn ddefnyddiadwy drwy gynnal unrhyw ddatblygiad arall y rhoddwyd caniatâd ar ei gyfer – pa un ai drwy'r gorchymyn ei hun neu fel arall – neu y mae'r awdurdod cynllunio neu Weinidogion Cymru wedi ymrwymo i roi caniatâd cynllunio ar ei gyfer (is-adrannau (1) a (3)).

1051. Mae tir yn annefnyddiadwy at y dibenion hyn os na ellir gwneud defnydd rhesymol fuddiol ohono ac, wrth benderfynu hynny, nid oes unrhyw ystyriaeth i'w rhoi i ddatblygiad na roddwyd caniatâd ar ei gyfer, ac nad yw'r awdurdod cynllunio na Gweinidogion Cymru wedi ymrwymo i roi caniatâd ar ei gyfer. Nid yw tir yn annefnyddiadwy, fodd bynnag, os achoswyd ei gyflwr presennol gan dor rheolaeth gynllunio ac y gellid ei unioni drwy gymryd camau sydd wedi bod yn ofynnol neu a allai fod yn ofynnol gan hysbysiad gorfodi (paragraff 1 o Atodlen 12).

1052. Pan fo person sydd â buddiant mewn tir yn honni bod y tir yn annefnyddiadwy ar ôl cyflwyno gorchymyn datbarhau, caiff y perchennog gyflwyno "hysbysiad prynu" i'r awdurdod cynllunio. Hynny yw, hysbysiad sy'n ei gwneud yn ofynnol i'r awdurdod brynu buddiant y perchennog yn y tir (is-adran (2)). Mae hyn i bob pwrpas yn broses gaffael orfodol i'r gwrthwyneb: y perchennog tir sy'n ceisio gorfodi'r awdurdod i brynu'r tir.

1053. Rhaid i'r hysbysiad prynu ymwneud â'r holl dir sy'n ddarostyngedig i'r gorchymyn; ni chaiff gynnwys unrhyw dir arall. Rhaid ei gyflwyno o fewn 12 mis i'r adeg y mae'r gorchymyn yn cymryd effaith, oni bai bod Gweinidogion Cymru yn estyn y terfyn amser hwn (paragraff 4(1) i (4) o Atodlen 12).

1054. Caiff yr awdurdod cynllunio dderbyn neu wrthod yr hysbysiad. Os gwrthodir yr hysbysiad, fe'i hanfonir at Weinidogion Cymru. Cânt ei gadarnhau, neu cânt ddirymu'r gorchymyn datbarhau, neu ei ddiwygio er mwyn osgoi sefyllfa pan fo'n gwneud y tir o dan sylw yn annefnyddiadwy (paragraff 6(3)(e) o Atodlen 12).

1055. Mae'r gofynion a'r gweithdrefnau manwl sy'n ymwneud â chyflwyno, derbyn, gwrthod a chadarnhau hysbysiad prynu yn dilyn gwneud gorchymyn datbarhau fel arall yr un peth â'r rhai sy'n ymwneud â hysbysiad yn dilyn penderfyniadau cynllunio eraill, a nodir yn Atodlen 12 – a ystyriwyd eisoes yng nghyd-destun hysbysiadau prynu yn dilyn gwrthod neu ddirymu caniatâd o dan adran 110. Mae'r gofynion manwl o ran cyflwyno'r hysbysiad i'r awdurdod cynllunio wedi eu nodi yn Rhan 2 o'r Atodlen honno. Nodir y camau i'w cymryd gan yr awdurdod a chan Weinidogion Cymru ar ôl cyflwyno hysbysiad yn Rhan 3. A nodir darpariaethau arbennig o ran hysbysiadau prynu sy'n effeithio ar dir amaethyddol yn Rhan 4.

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.

Pennod 2 – Tir sy'n effeithio'n andwyol ar amwynder cymdogaeth
Adran 214 – Pŵer awdurdod cynllunio i ddyroddi hysbysiad cynnal a chadw tir

1056. Pan fo tir mewn cyflwr gwael, gall hynny fod oherwydd ei fod yn cael ei ddefnyddio at ddiben sy'n dor rheolaeth gynllunio ac os felly efallai y gall yr awdurdod ei unioni drwy gymryd camau gorfodi. Pan na fo'r defnydd o dir yn dor rheolaeth gynllunio, caiff yr awdurdod ddewis addasu neu ddirymu'r caniatâd cynllunio perthnasol neu gyflwyno gorchymyn datbarhau.

1057. Mewn rhai sefyllfaoedd, nid y defnydd o'r tir mewn egwyddor yw'r broblem, ond y ffordd y mae'r defnydd hwnnw'n cael ei weithredu. Er enghraifft, gall deiliad tŷ esgeuluso'r tu allan i dŷ a'r ardd gysylltiedig yn llwyr, fel ei fod yn dod yn ddolur llygad ac yn denu fermin. Neu gellir gweithredu ffatri yn y fath fodd fel bod y tir o'i hamgylch yn cael ei ddefnyddio ar gyfer dympio cyfarpar dros ben, ac yn denu tipio anghyfreithlon cyffredinol.

1058. Caiff yr awdurdod cynllunio, felly, gyflwyno "hysbysiad cynnal a chadw tir" o dan Bennod 2 o'r Rhan hon pan fo cyflwr darn o dir yn effeithio ar amwynder rhan o'r ardal gyfagos (is-adran (1)). Cyfeirir at hysbysiad o'r fath mewn rhai cyd-destunau fel 'hysbysiad tir anniben' neu 'hysbysiad adran 215' – hyd yn hyn fe'i cyflwynwyd o dan bwerau yn adran 215 o Ddeddf 1990.

1059. Ni chaniateir dyroddi hysbysiad o'r fath, fodd bynnag, pan fo cyflwr y tir yn deillio o ddefnydd awdurdodedig o'r tir, neu gynnal gweithrediadau, sydd fel arfer yn arwain at golli amwynder (is-adran (2)) – ar yr amod nad yw'r defnydd hwnnw'n torri unrhyw orchymyn datbarhau (o dan adran 206), neu orchymyn gwahardd neu orchymyn diogelu (o dan adran 208) neu rwymedigaeth gynllunio (o dan adran 165). Er enghraifft, bydd iard deliwr metel sgrap yn aml yn hyll, ond y ffordd i ymdrin â hynny fyddai cymryd camau datbarhau yn hytrach na chyhoeddi hysbysiad o dan y Rhan hon.

1060. Mae is-adran (3) yn ei gwneud yn ofynnol i hysbysiad cynnal a chadw tir:

a. pennu pa gamau sydd i'w cymryd i unioni cyflwr y tir o dan sylw;

b. datgan y dyddiad y mae'r hysbysiad i gymryd effaith; ac
c. pennu'r cyfnod y mae'r camau hynny i'w cymryd ynddo.

1061. Daw'r hysbysiad i rym ar ddechrau'r diwrnod a bennir ynddo (is-adran (4)), ond bydd y dyddiad y mae'r hysbysiad i fod i gymryd effaith yn cael ei ohirio pan wneir apêl i Weinidogion Cymru o dan adran 215 neu i'r Uchel Lys o dan adran 379(4).

1062. O dan is-adran (5) a (6), unwaith y bydd yr awdurdod wedi dyroddi hysbysiad, rhaid iddo gyflwyno copi i bob perchennog a phob meddiannydd ar y tir y mae'r hysbysiad yn ymwneud ag ef o fewn 28 o ddiwrnodau. Rhaid llunio'r hysbysiad fel ei fod yn dod i rym o leiaf 28 o ddiwrnodau ar ôl y dyddiad y cyflwynir y copi diwethaf o'r fath. Caiff rheoliadau ei gwneud yn ofynnol bod nodyn esboniadol yn mynd gyda phob copi o'r hysbysiad ynghylch yr hawl i apelio yn ei erbyn o dan adran 215.

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.

Adran 215 – Yr hawl i apelio yn erbyn hysbysiad cynnal a chadw tir

1063. Caiff unrhyw berson sydd wedi cael copi o hysbysiad cynnal a chadw tir apelio yn ei erbyn i Weinidogion Cymru, o dan is-adran (1). A chaiff unrhyw un sydd â buddiant yn y tir y mae'n ymwneud ag ef apelio yn ei erbyn, hyd yn oed os na chafodd gopi o'r hysbysiad.

1064. O dan is-adran (2), y seiliau y caniateir gwneud apêl arnynt o dan yr adran hon yw:

a. nad yw cyflwr y tir yn niweidio amwynder yr ardal gyfagos;

b. nad yw'r defnydd o'r tir yn dor rheolaeth gynllunio – ac nad yw'n torri unrhyw orchymyn datbarhau, gorchymyn gwahardd, gorchymyn diogelu neu rwymedigaeth gynllunio – a bod cyflwr y tir o ganlyniad, yng nghwrs arferol digwyddiadau, i'r defnydd hwnnw;

c. bod y camau y mae'n ofynnol gan yr hysbysiad eu cymryd yn fwy na'r hyn sy'n angenrheidiol i atal cyflwr y tir rhag niweidio amwynder yr ardal gyfagos; a

d. bod y cyfnod a ganiateir ar gyfer cymryd y camau hynny yn afresymol o fyr.

1065. Rhaid i apêl o'r fath gael ei gwneud drwy gyflwyno hysbysiad o apêl i Weinidogion Cymru (yn ymarferol, PEDW) ar unrhyw adeg cyn y dyddiad a bennir yn yr hysbysiad cynnal a chadw tir fel y dyddiad y mae'n dod i rym. Mae hyn yn darparu cyfnod o 28 o ddiwrnodau o leiaf o'r adeg y cyflwynir copïau o'r hysbysiad i wneud apêl.

1066. Unwaith y bydd apêl wedi ei gwneud o dan yr adran hon, ni fydd yr hysbysiad yn cael effaith hyd nes y penderfynir yr apêl yn derfynol (neu y tynnir yr apêl yn ôl). Os, yn dilyn apêl o'r fath, caiff penderfyniad Gweinidogion Cymru ei herio'n llwyddiannus yn yr Uchel Lys o dan adran 379(4), caiff yr apêl ei hanfon yn ôl atynt i'w hailbenderfynu, ac ni fydd yr hysbysiad ond yn dod i rym unwaith y bydd yr ail wrandawiad hwnnw (ac unrhyw her ddilynol i'r llys) wedi dod i ben (is-adran (4)(a)).

1067. Pan fo apêl yn cael ei gwneud, nid oes gan yr apelydd, nac unrhyw berson, hawlogaeth i ddadlau mewn unrhyw achos dilynol na chyflwynwyd copi o'r hysbysiad i'r apelydd (is-adran (4)(b)).

1068. Caiff rheoliadau o dan is-adran (5) wneud darpariaeth bellach ynghylch gwneud apêl – ffurf yr hysbysiad o apêl, pa wybodaeth y mae rhaid ei darparu, ac at bwy y mae rhaid anfon copi. Gweler (ar hyn o bryd) rheoliad 10 o Reoliadau Gorfodi 2017.

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.

Adran 216 – Penderfynu apêl

1069. Wrth ymdrin ag apêl yn erbyn hysbysiad cynnal a chadw tir, caiff Gweinidogion Cymru (neu arolygydd ar eu rhan) gywiro unrhyw ddiffyg, unrhyw wall neu unrhyw gamddisgrifiad, neu amrywio telerau'r hysbysiad. Ni chânt ond wneud hyn os ydynt wedi eu bodloni na fydd gwneud hynny yn achosi anghyfiawnder naill ai i'r apelydd neu'r awdurdod cynllunio (is-adran (1)). Mae'r pŵer hwn yn rhoi disgresiwn eang i Weinidogion Cymru (neu'r arolygydd), i gywiro unrhyw wallau ffeithiol, neu gamddisgrifiad o'r tir neu ei gyflwr; ac mae'n eu galluogi i newid gofynion yr hysbysiad, neu'r cyfnod y mae rhaid cydymffurfio â'r gofynion hynny ynddo.

1070. Wrth benderfynu'r apêl, caiff Gweinidogion Cymru (neu'r arolygydd) ganiatáu'r apêl, ac os ydynt yn gwneud hyn cânt ddiddymu'r hysbysiad (is-adran (2)(a)). Rhaid iddynt hefyd, pa un a ydynt yn penderfynu caniatáu'r apêl ai peidio, roi unrhyw gyfarwyddydau i roi effaith i'w penderfyniad (is-adran (2)(b)).

1071. Mae Pennod 2 o Ran 14 yn gwneud darpariaeth bellach o ran penderfynu apelau i Weinidogion Cymru yn erbyn hysbysiadau cynnal a chadw tir, yn enwedig pwerau a dyletswyddau arolygwyr. Mae'r darpariaethau cyfredol o ran penderfynu apelau o'r fath yn Rheoliadau Gorfodi 2017 (gweler rheoliad 2(2)(f)).

Adran 217 – Y seiliau dros apelio i beidio â chael eu codi mewn achosion eraill

1072. Pan fo person yn dymuno herio dilysrwydd hysbysiad ar seiliau (a) a (b) yn adran 215– sef, nad yw cyflwr y tir yn niweidio amwynder yr ardal gyfagos, neu ei fod yn deillio o ddefnydd o'r tir nad yw'n dor rheolaeth gynllunio neu'n torri unrhyw orchymyn neu rwymedigaeth – y rheol gyffredinol yw na ellir gwneud hynny ond drwy apêl i Weinidogion Cymru o dan yr adran honno. Ni ellir defnyddio'r seiliau hynny mewn unrhyw achos arall, megis drwy adolygiad barnwrol neu mewn erlyniad troseddol o dan adran 220. Nid yw'r cyfyngiad hwn ond yn gymwys pan fo'r hysbysiadau wedi eu cyflwyno i'r holl berchnogion a meddianwyr.

Adran 218 – Gorchymyn i ganiatáu camau sy'n ofynnol gan hysbysiad cynnal a chadw tir

1073. Unwaith y bydd hysbysiad cynnal a chadw tir wedi dod i rym, rhaid cydymffurfio ag ef, a rhaid i gamau sy'n ofynnol gan yr hysbysiad (gweler adran 214(3)(a)) gael eu cymryd o fewn y cyfnod penodedig gan y rhai y cyflwynwyd copïau ohono iddynt.

1074. Pan gyflwynir copi o hysbysiad i'r perchnogion yn ei gwneud yn ofynnol i gamau o'r fath gael eu cymryd ar y tir, neu pan fônt fel arall yn dod yn ymwybodol o'r hysbysiad, efallai y bydd modd iddynt gymryd y camau hynny, er mwyn cydymffurfio â'r hysbysiad. Fodd bynnag, os yw'r tir o dan reolaeth rhywun arall, sy'n atal y perchnogion rhag cymryd y camau hynny, cânt wneud cais i'r llysoedd ynadon (drwy gŵyn) am orchymyn o dan yr adran hon, gan ganiatáu iddynt fynd ar y tir a chymryd y camau hynny.

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.

Adran 219 – Pwerau i fynd ar dir, cymryd camau sy'n ofynnol gan hysbysiad cynnal a chadw tir ac adennill costau

1075. Pan fo hysbysiad cynnal a chadw tir wedi dod i rym, yn ei gwneud yn ofynnol i gamau gael eu cymryd, mae'n bosibl na chydymffurfir ag ef o hyd – naill ai o fewn y cyfnod a nodir yn yr hysbysiad, neu o fewn pa bynnag gyfnod hwy a ganiateir gan yr awdurdod. Gall hynny arwain at erlyn y rhai sy'n gyfrifol am y methiant i gydymffurfio, o dan adran 220; ond ni fydd erlyniad o'r fath – pa un a yw'n llwyddiannus ai peidio – yn arwain at gymryd y camau gofynnol mewn gwirionedd. Mae is-adran (1)(a) felly yn galluogi awdurdod cynllunio i fynd ar y tir mewn sefyllfa o'r fath a chymryd y camau angenrheidiol ei hun.

1076. Mae is-adran (1)(b) yn galluogi awdurdod i adennill unrhyw gostau y mae wedi mynd iddynt yn rhesymol wrth arfer ei bwerau i gymryd camau o dan yr adran hon oddi wrth berchnogion presennol y tir - sef, y rhydd-ddeiliaid neu'r rhai sydd â hawlogaeth i gael y rhent. Mae hyn yn helpu i sicrhau eu bod yn cymryd y camau angenrheidiol eu hunain, neu'n trefnu iddynt gael eu cymryd, er mwyn osgoi bod rhaid i'r awdurdod ymwneud â'r mater.

1077. Fodd bynnag, os oes gan y perchnogion hawlogaeth i gael y rhent dim ond fel asiant ar gyfer rhywun arall (y "penadur"), ac nad ydynt wedi cael digon o arian drwy rent i'w galluogi i ad-dalu costau'r awdurdod yn llawn, yna mae eu hatebolrwydd wedi ei gyfyngu (gan is-adran (2)) i swm yr arian y maent wedi ei gael ar ran y penadur ers y diwrnod y mynnodd yr awdurdod fod y costau yn cael eu talu. Ac yn y sefyllfa honno, mae gan yr awdurdod hawlogaeth i adennill gweddill ei gostau oddi wrth y penadur (is-adran (3)).

1078. Pan fo copi o hysbysiad cynnal a chadw tir wedi cael ei gyflwyno, ac

a. bo perchnogion neu feddianwyr y tir wedi gorfod cymryd camau i sicrhau y cydymffurfir â'r hysbysiad; neu

b. bo'r awdurdod wedi gorfod cymryd camau'n ddiofyn,

mae unrhyw gostau yr aed iddynt gan y perchnogion neu'r meddianwyr (gan gynnwys costau a dalwyd i'r awdurdod o dan is-adran (1)(b)) yn cael eu trin fel pe aed iddynt neu pe baent wedi eu talu ar ran y person a oedd wedi peri neu ganiatáu i'r tir fod yn y cyflwr yr oedd ar yr adeg y dyroddodd yr awdurdod yr hysbysiad am y tro cyntaf - gan mai dyna fydd wedi arwain at gymryd camau gan yr awdurdod (is-adran (4)). Mae hyn yn galluogi adennill y costau hynny oddi wrth y person a gyflawnodd y toriad gwreiddiol – naill ai drwy negodi neu achos llys.

1079. O dan is-adran (5), os eir i gostau gan yr awdurdod wrth gymryd camau o dan is-adran (1)(a), byddant yn bridiant ar y tir hyd nes y byddant wedi eu hadennill yn llawn o dan is-adran (1)(b). Mae'r pridiant yn cymryd effaith fel pridiant tir lleol ar ddechrau'r diwrnod ar ôl y diwrnod y mae'r awdurdod yn cwblhau'r camau y mae'r costau'n ymwneud â hwy (h.y. y camau a bennir yn yr hysbysiad) (is-adran (6)).

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. Mewn rhai achosion, pan fo hysbysiad cynnal a chadw tir yn cael ei gyflwyno a bo awdurdod cynllunio yn gweithredu o dan is-adran (1)(a) oherwydd diffyg cydymffurfedd, gall hynny arwain at symud ymaith ddeunyddiau adeiladu, stoc, neu eitemau eraill o'r tir. Os nad ydynt yn cael eu hawlio a'u symud ymaith o fewn tri diwrnod, caiff yr awdurdod eu gwerthu a thalu'r enillion i berchnogion y deunyddiau adeiladu, y stoc neu'r eitemau eraill – ar ôl didynnu unrhyw gostau y caniateir i'r awdurdod eu hadennill oddi wrth y perchnogion (is-adrannau (7) ac (8).

Adran 220 – Y drosedd o fethu â chydymffurfio â hysbysiad cynnal a chadw tir

1081. Nid yw caniatáu i dir fynd i gyflwr gwael yn drosedd ynddo ei hun. Fodd bynnag, unwaith y bydd awdurdod cynllunio wedi dyroddi hysbysiad cynnal a chadw tir, os nad yw wedi ei ddiddymu ar apêl, bydd yn dod i rym a bydd yn ei gwneud yn ofynnol i gamau gael eu cymryd. Cyflawnir trosedd o dan is-adran (1) gan berson y cyflwynwyd copi o hysbysiad cynnal a chadw tir iddo os yw'r person hwnnw yn methu â chymryd y camau sy'n ofynnol yn yr hysbysiad erbyn diwedd y cyfnod a ganiateir ar gyfer cydymffurfio – hynny yw, naill ai'r cyfnod a bennir yn yr hysbysiad, neu ba bynnag gyfnod hwy a ganiatawyd gan yr awdurdod a'i dyrododd (gweler is-adran (10)).

1082. Fodd bynnag, mae is-adrannau (2) i (6) yn galluogi person (A), y dygwyd achos troseddol yn ei erbyn o dan is-adran (1), i gael perchennog dilynol neu feddiannydd dilynol wedi ei ddwyn gerbron y Llys pan fo A wedi peidio â bod yn berchennog neu'n feddiannydd ar y tir rywbryd cyn diwedd y cyfnod ar gyfer cydymffurfio â'r hysbysiad. Diffinnir "perchennog dilynol neu feddiannydd dilynol" yn is-adran (11), fel a ganlyn:

a. pan gyflwynwyd yr hysbysiad i A fel perchennog ar y tir, y person (B) a olynodd A fel perchennog ydyw;

b. pan gyflwynwyd yr hysbysiad i A fel meddiannydd ar y tir, ac yna cymerodd rhywun arall drosodd o A fel meddiannydd, y person (B) a olynodd A fel meddiannydd ydyw;

c. pan gyflwynwyd yr hysbysiad i A fel meddiannydd ar y tir, ac ni chymerodd neb arall drosodd o A fel meddiannydd, person (C) y cyflwynwyd copi o'r hysbysiad arno fel perchennog ydyw.

Mewn achos o'r fath, rhaid i A gyflwyno hysbysiaeth i'r perwyl hwnnw ei fod wedi peidio â bod yn berchennog neu'n feddiannydd ar y tir cyn y dyddiad perthnasol a rhaid iddo roi o leiaf dri diwrnod o rybudd o'i fwriad.

1083. O dan is-adran (5), pan fo perchennog dilynol neu feddiannydd dilynol ((B) neu (C)) yn cael ei wneud yn barti i'r achos o dan is-adran (3), a bod y perchennog gwreiddiol (A) yn profi bod unrhyw fethiant i gydymffurfio â'r hysbysiad yn rhannol neu'n gyfan gwbl yn fai iddo, yna gellir euogfarnu B neu C o drosedd o dan is-adran (1). O dan is-adran (6) os yw A yn profi bod unrhyw fethiant i gymryd camau sy'n ofynnol gan y gorchymyn cynnal a chadw tir o ganlyniad, yn gyfan gwbl neu'n rhannol, i fethiant B neu C a bod A wedi cymryd pob cam rhesymol i sicrhau y cydymffurfiwyd â'r hysbysiad, bydd hynny'n amddiffyniad i A.

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. O dan is-adran (7), ni ellir ond rhoi'r drosedd o dan is-adran (1) ar brawf yn ddiannod (yn y llys ynadon). Mae person a geir yn euog yn agored i ddirwy hyd at Lefel 3 ar y raddfa safonol. Unwaith y mae person wedi ei euogfarnu, os na fydd y person hwnnw yn gwneud popeth posibl i sicrhau cydymffurfedd â'r hysbysiad, mae hynny'n drosedd bellach, o dan is-adran (8), y gellir ei chosbi ar euogfarn ddiannod drwy ddirwy hyd at un rhan o ddeg o Lefel 3 ar gyfer pob diwrnod pan nad yw'r camau sy'n ofynnol gan yr hysbysiad yn cael eu cymryd (is-adran (9)).

RHAN 8 – RHEOLAETHU HYSBYSEBION

1085. Gall arddangos hysbysebion olygu datblygiad neu beidio, ond fel rheol, nid gan y ddeddfwriaeth a ddisgrifir yn y Rhannau blaenorol o'r Ddeddf y caiff ei reoleiddio, ond gan god ar wahân a gynhwysir bron yn gyfan gwbl mewn rheoliadau a wneir o dan bwerau yn adrannau 221 i 228. Mae adran 230 yn darparu ei bod yn drosedd arddangos hysbyseb yn groes i reoliadau o'r fath; mae adran 231 yn rhoi pŵer i awdurdod cynllunio symud ymaith bosteri a phlacardiau anawdurdodedig ac mae adran 232 yn gwneud darpariaeth ar gyfer digolledi am ddifrod a achosir wrth arfer y pŵer hwnnw.

Adran 221 – Rheoliadau rheolaethu hysbysebion

1086. Rhaid i Weinidogion Cymru wneud rheoliadau o dan is-adran (1) sy'n cyfyngu ar y defnydd o dir ar gyfer arddangos hysbysebion, neu sy'n rheoleiddio'r defnydd hwnnw, fel y maent yn ystyried eu bod yn briodol er budd amwynder neu ddiogelwch y cyhoedd.

1087. Mae "hysbyseb" wedi ei ddiffinio yn is-adran (5)(a). Mae'n golygu:

a. unrhyw air, unrhyw lythyren, unrhyw fodel, unrhyw arwydd, unrhyw blacard, unrhyw fwrdd, unrhyw hysbysiad, unrhyw adlen, unrhyw fleind, unrhyw symbol neu unrhyw gynrychioliad, pa un a yw'n oleuedig ai peidio, sydd o ran ei natur yn cyhoeddi, yn rhoi cyhoeddusrwydd neu'n cyfarwyddo, ac sy'n cael ei ddefnyddio neu ei defnyddio i unrhyw raddau at y dibenion hynny;

b. unrhyw balis neu unrhyw strwythur tebyg sy'n cael ei ddefnyddio, ei ddylunio neu ei addasu i'w ddefnyddio at unrhyw un neu ragor o'r dibenion hynny; neu

c. unrhyw beth arall sy'n cael ei ddefnyddio yn bennaf, neu ei ddylunio neu ei addasu i'w ddefnyddio yn bennaf, at unrhyw un neu ragor o'r dibenion hynny.

1088. Mae'r cyntaf o'r categorïau hynny'n cynnwys eitemau – geiriau, llythrennau, symbolau neu gynrychioliadau – sy'n ffurfio elfennau o'r neges y mae'r hysbysebwr yn ceisio ei chyfleu i'r gwyliwr. Mae hefyd yn cynnwys eitemau – arwyddion, placardiau, byrddau, hysbysiadau, adlenni a bleindiau – sef y modd ffisegol i alluogi cyfleu'r neges honno. Bydd poster confensiynol sy'n hysbysebu bar o siocled, er enghraifft, fel arfer yn cynnwys llun o'r cynnyrch a rhywfaint o destun ategol, wedi ei argraffu ar ddarn o bapur; "hysbysebion" fydd y llun, y geiriau a'r papur, pan gânt eu defnyddio ar y cyd at ddibenion cyhoeddusrwydd. Caiff model 3-dimensiwn fod y neges ei hun a'r modd a ddefnyddir i'w chyfleu.

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. Yr ail a'r trydydd categori yw'r strwythurau a ddefnyddir i gynorthwyo i arddangos hysbyseb. Palisau hysbysebu ar ymylon ffyrdd yw'r enghraifft fwyaf amlwg, ond mae hysbysebion hefyd yn cael eu harddangos ar amrywiaeth eang o strwythurau eraill.

1090. Mae'r holl eitemau hyn wedi eu cynnwys yn y diffiniad o "hysbyseb".

1091. Mae hyn yn darparu diffiniad eang o "hysbyseb", sy'n cynnwys sawl math o arddangosiad o blât efydd bach y tu allan i feddygfa i sgrin ddigidol fawr neu dafluniad ar adeilad. Ac mae mathau newydd o arddangosfeydd hysbysebu – fel arddangosfeydd drôn goleuedig – yn cael eu cyflwyno drwy'r amser. Yn unol â hynny, mae'r gyfundrefn reolaethu wedi esblygu dros y blynyddoedd i ddarparu ar gyfer ystod eang o amgylchiadau ffeithiol.

1092. Sylwer bod y diffiniad yn eithrio'n benodol unrhyw beth a ddefnyddir yn gyfan gwbl fel cofeb neu signal rheilffordd.

1093. Y rheoliadau sydd mewn grym yng Nghymru ar hyn o bryd a wnaed o dan y pwerau a ailddatgenir yn y darpariaethau hyn yw Rheoliadau Cynllunio Gwlad a Thref (Rheolaethu Hysbysebion) 1992 (O.S. 1992/666) ('Rheoliadau Hysbysebion 1992').

1094. Mae rheoliad 4(1) o Reoliadau Hysbysebion 1992 yn darparu bod rhaid i awdurdodau cynllunio arfer eu pwerau er budd amwynder a diogelwch y cyhoedd yn unig, gan ystyried unrhyw ffactorau perthnasol. Yn benodol:

a. mewn perthynas ag amwynder, nodweddion cyffredinol yr ardal (gan gynnwys nodweddion o ddiddordeb arbennig), a diystyru pan fo'n briodol unrhyw hysbyseb sydd eisoes yn cael ei harddangos yno;

b. o ran diogelwch y cyhoedd, diogelwch y rhai sy'n defnyddio ffyrdd, rheilffyrdd, dyfrffyrdd, dociau, harbyrau ac aerodromau, ac effaith hysbysebion ar weledded arwyddion ffyrdd, signalau rheilffordd, a chymhorthion i fordwyo ac awyrlywio.

1095. Felly dim ond i reoleiddio cynnwys hysbysebion pan fo hynny'n angenrheidiol er budd amwynder a diogelwch y cyhoedd y caniateir defnyddio rheolaethu hysbysebion o dan Reoliadau Hysbysebion 1992.

1096. Mewn cyferbyniad, caiff rheoliadau wneud darpariaeth ynghylch dimensiynau, golwg a lleoliad hysbysebion y caniateir eu harddangos, y tir y caniateir eu harddangos arno neu ohono, a sut y caniateir eu rhoi yn sownd yn y tir (is-adran (2)); mae adrannau 222 i 228 yn rhoi enghreifftiau o faterion eraill y caniateir ymdrin â hwy yn y rheoliadau.

1097. O dan is-adran (4), caiff rheoliadau wneud darpariaeth ar gyfer rheolaethu hysbysebion sy'n cael eu harddangos, a thir sy'n cael ei ddefnyddio ar gyfer hysbysebu, ar yr adeg y maent yn dod i rym. Mae hyn yn galluogi rheoliadau i ddarparu, er enghraifft, y bydd angen caniatâd yn y dyfodol ar gyfer hysbysebion o fath y gellid eu harddangos yn flaenorol heb ganiatâd, neu gyda chaniatâd tybiedig.

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.

Adran 222 – Cydsyniad ar gyfer arddangos hysbysebion

1098. Caiff rheoliadau ddarparu na chaniateir arddangos hysbysebion, neu hysbysebion o ddisgrifiad penodol, ond gyda chydsyniad a chânt hefyd bennu pwy a gaiff roi cydsyniad o'r fath (is-adrannau (1) a (2)(a)).

1099. Cânt wneud darpariaeth o dan is-adrannau (2)(b), (3) a (4) ynghylch y weithdrefn ar gyfer cyflwyno a phenderfynu ceisiadau am gydsyniad o'r fath – gan gynnwys o ran ffurf ceisiadau a dogfennau sydd i'w cynnwys gyda cheisiadau, a'r cyhoeddusrwydd sydd i'w roi a'r hysbysu a'r ymgyngoriadau sydd i'w cynnal. Yn ogystal, cânt ddarparu ar gyfer canlyniadau cais yn methu â chydymffurfio â gofynion o'r fath, yr amgylchiadau pan gaiff person (yr awdurdod cynllunio ar hyn o bryd) wrthod penderfynu cais, a phan gaiff Gweinidogion Cymru alw'r cais i mewn i'w benderfynu ganddynt.

1100. Caiff rheoliadau hefyd ddarparu ar gyfer rhoi cydsyniad yn ddarostyngedig i amodau, gan gynnwys yr angen i gael cymeradwyaeth gan eraill, hyd cydsyniad, symud ymaith hysbysebion ar ddiwedd cyfnod a bennir mewn rheoliadau, a gwaith sydd i'w gynnal ar y tir o dan sylw (is-adrannau (2)(c) a (5)). Ar hyn o bryd mae Atodlen 1 i Reoliadau Hysbysebion 1992 yn pennu pum amod safonol ("standard condition") sy'n gymwys i bob cydsyniad.

1101. Mae rheoliadau 9 i 14 o Reoliadau Hysbysebion 1992 yn ymdrin â chyflwyno a phenderfynu ceisiadau am gydsyniad datganedig ("express consent") i'r awdurdod cynllunio.

1102. Caniateir rhoi cydsyniad datganedig naill ai ar gyfer defnyddio safle ar gyfer hysbysebu yn gyffredinol (megis ar gyfer palis ar ymyl ffordd) – fel nad oes angen cydsyniad pellach pan fydd un poster yn cael ei ddisodli gan un arall – neu ar gyfer awdurdodi hysbyseb benodol yn unig. Mae cydsyniad datganedig yn para am y cyfnod a bennir gan yr awdurdod cynllunio (pum mlynedd fel arfer), ac ar ôl hynny caniateir i'r safle barhau i gael ei ddefnyddio, neu i'r hysbyseb barhau i gael ei harddangos, gyda chydsyniad yn cael ei drin fel pe bai wedi ei roi, oni bai bod yr awdurdod yn ei gwneud yn ofynnol i'r arddangosiad ddod i ben.

Adran 223 – Cyfyngu ar arddangos hysbysebion pan na fo cydsyniad datganedig yn ofynnol fel arfer

1103. Mae'r diffiniad o "hysbyseb" yn ddigon eang i gynnwys llawer o achosion sy'n fân eu heffaith, neu fel arall yn amhriodol ar gyfer rheolaethu manwl. Felly, caiff rheoliadau hysbysebion ddarparu:

a. os yw hysbyseb mewn categorïau penodol yn cael ei harddangos yn unol ag amodau penodedig, mae cydsyniad i'w drin fel pe bai wedi ei roi ar gyfer yr arddangosiad – fel nad oes angen cais am ganiatâd (is-adran (1)(a)); a

b. y caniateir arddangos hysbysebion penodol heb gydsyniad (is-adran (1)(b)).

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. Gan ddibynnu ar y pwerau a ailddatgenir yn is-adran (1)(a), mae rheoliad 6 o Reoliadau Hysbysebion 1992 ac Atodlen 3 iddynt yn rhoi cydsyniad tybiedig ("deemed consent") ar hyn o bryd ar gyfer hysbysebion mewn 23 o gategorïau, wedi eu grwpio mewn 14 o Ddosbarthau. Ym mhob achos, nid yw hysbysebion ond yn dod o fewn y categori perthnasol os ydynt yn cydymffurfio ag amodau, gan gynnwys o ran y nifer y caniateir eu harddangos mewn un lleoliad, eu maint, ac a oes modd eu goleuo neu sut y caniateir eu goleuo. Rhaid eu harddangos hefyd yn unol â'r amodau safonol sydd yn Atodlen 1 ar hyn o bryd.

1105. Caiff rheoliadau alluogi Gweinidogion Cymru i gyfarwyddo mai dim ond gyda chydsyniad datganedig y caniateir arddangos hysbysebion yn un neu ragor o'r categorïau hynny (is-adran (2)(a)). Mae'r ddarpariaeth bresennol o ran gwneud cyfarwyddyd o'r fath yn rheoliad 7 o Reoliadau Hysbysebion 1992 ac mae cyfarwyddydau o'r fath wedi eu gwneud, er enghraifft, mewn perthynas â rhai byrddau gosod preswyl yn wardiau Cathays a Phlasnewydd yng Nghaerdydd.

1106. Pan drinnir cydsyniad fel pe bai wedi ei roi ar gyfer defnyddio safle ar gyfer hysbysebu, neu ar gyfer arddangos hysbyseb benodol, caiff rheoliadau alluogi, serch hynny, naill ai Gweinidogion Cymru neu'r awdurdod cynllunio i ddyroddi hysbysiad sy'n ei gwneud yn ofynnol datbarhau'r arddangosiad (is-adran (2)(b)). Mae'r ddarpariaeth bresennol o ran cyflwyno hysbysiad o'r fath yn rheoliad 8 o Reoliadau Hysbysebion 1992.

1107. Gan ddibynnu ar y pwerau a ailddatgenir yn is-adran (1)(b), mae rheoliad 3 o Reoliadau Hysbysebion 1992 ac Atodlen 2 iddynt yn rhestru ar hyn o bryd ddeg categori o hysbysebion y caniateir eu harddangos heb unrhyw gydsyniad, os ydynt yn cydymffurfio ag amodau penodedig ac ar yr amod y cânt eu harddangos yn unol â'r amodau safonol sydd yn Atodlen 1 ar hyn o bryd.

Adran 224 – Apelau

1108. Caiff rheoliadau ddarparu ar gyfer hawl i apelio i Weinidogion Cymru:

a. pan na phenderfynir cais am gydsyniad i arddangos hysbyseb, neu i ddefnyddio safle ar gyfer arddangosiad o'r fath;

b. pan fo'n cael ei wrthod, neu'n cael ei roi yn ddarostyngedig i amodau; neu

c. pan wneir gorchymyn sy'n ei gwneud yn ofynnol datbarhau arddangosiad presennol, neu'r defnydd o safle, y trinnir cydsyniad fel pe bai wedi ei roi ar ei gyfer (is-adrannau (1) a (2)).

1109. Cânt gynnwys terfynau amser ar gyfer apelio (a gaiff gynnwys darpariaeth sy'n eu galluogi i gael eu hestyn) a gofynion gweithdrefnol eraill a chânt wneud darpariaeth ynghylch dyletswyddau a phwerau Gweinidogion Cymru sy'n penderfynu'r apelau (is-adran (3)). Mae darpariaethau o'r fath i'w cael ar hyn o bryd yn rheoliad 15 o Reoliadau Hysbysebion 1992 a Rhannau 3 a 5 o Atodlen 4 iddynt.

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.

Adran 225 – Newid neu ddirymu cydsyniad

1110. Caiff rheoliadau hefyd ddarparu ar gyfer newid neu ddirymu cydsyniad i arddangos hysbyseb neu i ddefnyddio safle ar gyfer arddangosiad o'r fath. Mae rheoliad 16 o Reoliadau Hysbysebion 1992 yn darparu ar hyn o bryd weithdrefn sy'n debyg i'r un sy'n ymwneud ag addasu a dirymu caniatâd cynllunio, ac yn darparu na ellir newid neu ddirymu cydsyniad pan fydd yr arddangosiad wedi dechrau. Rhaid i orchymyn sy'n newid neu'n dirymu cydsyniad gael ei gymeradwyo gan Weinidogion Cymru, yn dilyn gwrandawiad os yw'r rhai yr effeithir arnynt yn gwneud gwrthwynebiadau.

Adran 226 – Digollediad

1111. Caiff rheoliadau hysbysebion wneud darpariaeth ar gyfer talu ddigolledia**d**, gan gynnwys:

a. pan wrthodir cydsyniad i arddangos hysbyseb, neu i ddefnyddio safle ar gyfer arddangosiad o'r fath, neu os rhoddir cydsyniad yn ddarostyngedig i amodau (is-adran (2)(a));

b. pan fo'r awdurdod cynllunio neu Weinidogion Cymru yn ei gwneud yn ofynnol datbarhau arddangosiad presennol, neu ddefnydd o safle, y trinnir cydsyniad pe bai wedi ei roi ar ei gyfer fel arfer (is-adran (2)(b)); neu

c. pan fo cydsyniad yn cael ei newid neu ei ddirymu (is-adran (2)(c)).

1112. Cânt wneud darpariaeth ynghylch yr amgylchiadau pan fo digolledia**d** yn daladwy, pwy sydd â hawlogaeth i hawlio ac am beth, pwy sydd i'w dalu a'r swm, a'r weithdrefn sydd i'w dilyn mewn perthynas â hawliadau ac anghydfodau (is-adrannau (3) i (6)).

1113. Ar hyn o bryd mae rheoliad 17 o Reoliadau Hysbysebion 1992 yn caniatáu i hawliad am ddigolledia**d** gael ei wneud os yw cydsyniad yn cael ei newid neu ei ddirymu, ond nid yn y sefyllfaoedd eraill y cyfeirir atynt yn is-adran (2).

Adran 227 – Rheoliadau rheolaethu hysbysebion: atodol

1114. Caiff rheoliadau ei gwneud yn ofynnol cadw cofrestrau o geisiadau am gydsyniad, a'r penderfyniadau a wneir ar y ceisiadau hynny. Gall hefyd fod yn ofynnol i awdurdodau cynllunio ddarparu gwybodaeth i Weinidogion Cymru i'w cynorthwyo i arfer eu swyddogaethau o dan y rheoliadau. Ar hyn o bryd nodir darpariaeth o'r fath yn rheoliadau 21 a 22 o Reoliadau Hysbysebion 1992.

Adran 228 – Pŵer i wneud darpariaeth wahanol ar gyfer ardaloedd gwahanol, gan gynnwys ardaloedd rheolaeth arbennig

1115. Mae rhai ardaloedd yn fwy sensitif nag eraill i hysbysebu amhriodol. Mae'r adran hon yn unol â hynny yn galluogi rheoliadau i wneud darpariaeth wahanol ar gyfer ardaloedd gwahanol (is-adran (1)).

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. Y rhai mwyaf arwyddocaol o'r rhain yw "ardaloedd rheolaeth arbennig". Ar hyn o bryd, caniateir i ardal o'r fath gael ei dynodi gan awdurdodau cynllunio a'i chymeradwyo gan Weinidogion Cymru neu ei dynodi gan Weinidogion Cymru. Pan fo rheoliadau hysbysebion yn gwneud darpariaeth ynghylch ardaloedd rheolaeth arbennig, rhaid iddynt gynnwys y weithdrefn sydd i'w dilyn cyn dynodi ardaloedd o'r fath, gan gynnwys er mwyn sicrhau bod cynigion yn cael eu cyhoeddi, a gellir clywed sylwadau mewn ymchwiliad neu wrandawiad (is-adrannau (2) a (5)).

1117. Rhaid i reoliadau ddarparu na chaiff Gweinidogion Cymru wneud na chymeradwyo gorchymyn sy'n dynodi ardal rheolaeth arbennig oni bai ei bod naill ai mewn ardal wledig neu mewn ardal lle mae angen gwarchodaeth arbennig oherwydd ei gwerth amwynder, megis canol tref hanesyddol (is-adran (4)). Pan fydd ardal rheolaeth arbennig wedi ei dynodi, caiff y rheoliadau wahardd pob arddangosiad o hysbysebion ynddi neu caiff ganiatáu arddangosiadau dim ond os ydynt mewn categorïau penodedig (is-adran (3)).

1118. Ar hyn o bryd, mae dynodi ardaloedd rheolaeth arbennig yn destun rheoliad 18 o Reoliadau Hysbysebion 1992 sy'n ei gwneud yn ofynnol i bob awdurdod ystyried o bryd i'w gilydd a ddylid dynodi ardal o'r fath; ac adolygu dynodiadau presennol o leiaf bob pum mlynedd. Mae'r weithdrefn ddynodi yn Atodlen 5 i'r Rheoliadau hynny.

Adran 229 – Caniatâd cynllunio tybiedig ar gyfer hysbysebion a arddangosir yn unol â rheoliadau

1119. Weithiau bydd arddangos hysbysebion yn gyfystyr â "datblygiad". Gallai hyn ddigwydd, er enghraifft, pan fo codi neu addasu hysbysfwrdd neu arwydd wyneb siop yn gyfystyr â gweithrediad adeiladu, gan fod "adeilad" yn cynnwys strwythur (gweler adran 408(1)). Pan fo hysbysebion yn cael eu harddangos ar ran allanol adeilad, mae hyn yn golygu newid sylweddol yn y defnydd o'r rhan honno o'r adeilad (gweler adran 5(4)).

1120. Fel arfer, rhaid awdurdodi cynnal datblygiad drwy roi caniatâd cynllunio (gweler adran 43). Fodd bynnag, byddai'n feichus mynnu cyflwyno cais am ganiatâd cynllunio yn ogystal â chais am gydsyniad o dan y rheoliadau hysbysebion mewn perthynas â'r un datblygiad, gan y byddai'r ddau gais yn cael eu hystyried gan yr un awdurdod, ar sail yr un ystyriaethau neu ystyriaethau tebyg iawn. Byddai'r un peth yn gymwys pan fo hysbyseb yn cael ei harddangos heb unrhyw angen i ofyn am gydsyniad. Mae'r adran hon felly'n darparu, pan fo arddangosiad o hysbysebion yn golygu datblygiad, ac yn cydymffurfio â'r rheoliadau, bod caniatâd cynllunio i'w drin fel pe bai wedi ei roi.

1121. Fodd bynnag, pan nad yw arddangosiad yn cydymffurfio â'r rheoliadau, ond ei fod yn golygu datblygiad, mae caniatâd cynllunio yn ofynnol o dan Ran 3 o'r Ddeddf. Os cynhelir datblygiad heb y caniatâd cynllunio gofynnol, gall fod yn destun camau gorfodi o dan Ran 4 o'r Ddeddf.

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.

Adran 230 – Y drosedd o arddangos hysbyseb yn groes i reoliadau

1122. Os yw hysbyseb yn cael ei harddangos yn groes i reoliadau hysbysebion, mae person yn euog o drosedd. Mae hyn yn gymwys i berson:

a. os yw'r person yn arddangos yr hysbyseb neu'n ei chynnal a'i chadw;

b. os y person yw perchennog neu feddiannydd y tir y mae'r hysbyseb yn cael ei harddangos arno neu ohono; neu

c. os yw'r hysbyseb yn rhoi cyhoeddusrwydd i nwyddau, gwasanaethau neu faterion eraill y person (is-adrannau (1) a (2)).

1123. Mae hyn yn wahanol i dor rheolaeth gynllunio brif ffrwd, gan fod atebolrwydd troseddol yn codi cyn gynted ag y bo hysbyseb nad yw'n cydymffurfio yn cael ei harddangos; nid oes angen i hysbysiad gorfodi gael ei ddyroddi yn gyntaf. Effaith hyn yw, er enghraifft, os yw cwmni sy'n creu hysbysebion yn codi palis ar ymyl ffordd ar dir sy'n eiddo i berson a bod poster nad yw'n cydymffurfio yn cael ei arddangos ar y tir hwnnw sy'n hyrwyddo busnes arall, bod trosedd yn cael ei chyflawni gan y cwmni hysbysebu, y person, a'r busnes arall. Caniateir i unrhyw un neu ragor neu bob un ohonynt gael eu herlyn.

1124. Fodd bynnag (fel y'i darperir yn is-adrannau (6) a (7)), mae'n amddiffyniad i berson sy'n dod o fewn yr ail neu'r trydydd o'r tri chategori a nodir yn is-adran (2) (ac nid y cyntaf) brofi:

i. bod yr hysbyseb wedi ei harddangos heb iddo wybod; neu
ii. bod y person wedi cymryd pob cam rhesymol i atal ei harddangos neu sicrhau ei bod yn cael ei symud ymaith.

Yn yr enghraifft uchod, bydd amddiffyniad gan y busnes sy'n cael ei hyrwyddo yn yr hysbyseb os yw'n gallu dangos iddo ofyn i'r cwmni hysbysebu dynnu'r poster i lawr; ond efallai na fydd amddiffyniad gan y perchennog tir os dangosir ei fod yn cael rhent am ddefnyddio ei dir i arddangos y palis.

1125. Mae person a geir yn euog o drosedd o dan is-adran (1) yn agored ar euogfarn ddiannod (yn y llys ynadon) i ddirwy nad yw'n fwy na'r swm a bennir mewn rheoliadau na chaiff fod yn fwy na Lefel 4 ar y raddfa safonol (is-adrannau (4) a (5)(a)).

1126. Os yw person yn cael ei euogfarnu o drosedd o dan is-adran (1) ac yna fod yr hysbyseb yn parhau i gael ei harddangos yn groes i'r rheoliadau, mae'r person (os yw'n dal i fod yn un neu ragor o'r tri chategori a nodir yn is-adran (2)) yn euog o drosedd bellach o dan is-adran (3). Mae'r un amddiffyniad ar gael, o dan is-adrannau (6) a (7). Mae person sy'n euog o'r drosedd hon yn agored ar euogfarn ddiannod i ddirwy nad yw'n fwy na'r swm penodedig na chaiff fod yn fwy nag un rhan o ddeg o Lefel 4 ar y raddfa safonol ar gyfer pob diwrnod y mae'r drosedd yn parhau (is-adrannau (4) a (5)(b)).

1127. Mae is-adran (8) yn tynnu sylw at y posibilrwydd o roi hysbysiadau cosb benodedig mewn perthynas â throseddau o'r fath o dan adrannau 43 a 47 o Ddeddf Ymddygiad Gwrthgymdeithasol 2003 (p. 38).

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).

Adran 231 – Pŵer i symud ymaith neu ddifodi placard a phoster

1128. Pan fo awdurdod cynllunio yn ystyried bod poster neu blacard yn cael ei arddangos yn ei ardal yn groes i'r rheoliadau hysbysebion, mewn modd sy'n achosi niwed i amwynder neu ddiogelwch y cyhoedd, caiff yr awdurdod cynllunio ei symud ymaith neu ei ddifodi ar yr amod nad yw'n cael ei arddangos y tu mewn i adeilad nad oes hawl mynediad cyhoeddus iddo (is-adrannau (1) a (2)).

1129. Fodd bynnag, pan fo'r poster neu'r placard yn nodi pwy a'i harddangosodd (neu a achosodd iddo gael ei arddangos) neu'n rhoi cyhoeddusrwydd i nwyddau neu wasanaethau person y mae'n ei adnabod, rhaid i'r awdurdod yn gyntaf hysbysu'r person hwnnw ei bod yn ymddangos bod y poster neu'r placard yn groes i'r rheoliadau a'i fod yn bwriadu ei symud ymaith ar ôl diwedd cyfnod penodedig o ddau ddiwrnod o leiaf. Os nad yw hynny'n arwain at symud ymaith y poster neu'r placard o fewn y cyfnod hwnnw, caiff yr awdurdod symud ymlaen i weithredu (is-adrannau (3) i (5)).

1130. Os yw'r hysbysiad hefyd yn rhybuddio'r derbynnydd bod yr awdurdod yn bwriadu adennill y costau y mae'n mynd iddynt wrth gymryd camau o'r fath, mae gan yr awdurdod hawlogaeth i adennill y costau hynny (is-adran (7)).

1131. Fodd bynnag, nid oes angen hysbysiad ymlaen llaw o'r fath:

a. pan nad yw'r poster neu'r placard yn rhoi cyfeiriad y person a'i harddangosodd neu a achosodd iddo gael ei arddangos (neu, yn ôl y digwydd, y person y mae ei nwyddau, ei wasanaethau neu ei faterion eraill yn cael cyhoeddusrwydd); a

b. pan nad yw'r awdurdod cynllunio yn gwybod cyfeiriad y personau hynny ac nad yw'n gallu ei ddarganfod ar ôl gwneud ymholiadau rhesymol (is-adrannau (3) a (6)).

Adran 232 – Digolledia am ddifrod a achosir wrth symud ymaith neu ddifodi placard neu boster

1132. Os yw'r awdurdod cynllunio yn mynd ar dir ac yn difodi neu'n symud ymaith boster neu blacard gan ddibynnu ar adran 231, ac wrth wneud hynny yn achosi difrod i'r tir neu'r eiddo, caiff person sydd wedi dioddef difrod o'r fath hawlio digolledia gan yr awdurdod o dan adran 232.

1133. Nid oes unrhyw ddigolledia yn daladwy i'r person a arddangosodd y poster neu'r placard neu a berodd iddo gael ei ddadleoli.

RHAN 9 – DIOGELU COED A CHOETIROEDD

1134. Mae'r Rhan hon o'r Ddeddf yn hyrwyddo plannu coed newydd ac yn manylu ar y systemau sydd ar waith i warchod coed a choetiroedd sy'n bodoli eisoes – y rhai sy'n ddarostyngedig i orchmynion diogelu a'r rhai mewn ardaloedd cadwraeth.

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.

Pennod 1 – Gorchmynion diogelu coed a gorchmynion diogelu coetir etc.

Adran 233 – Caniatâd cynllunio i gynnwys darpariaeth ar gyfer diogelu a phlannu coed

1135. Pan fo awdurdod cynllunio yn rhoi caniatâd ar gyfer unrhyw ddatblygiad, rhaid iddo osod amodau mewn achosion priodol i wneud darpariaeth ddigonol ar gyfer diogelu neu blannu coed. Mae'r rhain yn debygol o fod ar ffurf amodau:

a. sy'n ei gwneud yn ofynnol i goed sy'n bodoli eisoes – naill ai coed unigol neu grwpiau o goed neu goetiroedd – gael eu gwarchod yn ystod gwaith adeiladu; neu

b. sy'n ei gwneud yn ofynnol i goed newydd gael eu plannu fel rhan o'r gwaith tirlunio sydd i'w gynnal ar ôl cwblhau gwaith adeiladu neu weithrediadau eraill.

Mewn perthynas â gweithrediadau mwyngloddio a gwaredu gwastraff, gall amod o'r fath ei gwneud yn ofynnol cadw coed, neu blannu coed newydd, i sgrinio'r safle o dir cyfagos.

1136. Pan fo awdurdod yn rhoi caniatâd ar gyfer unrhyw ddatblygiad, rhaid iddo arfer ei bwerau cyffredinol o dan adrannau 234 a 235 i wneud gorchmynion diogelu coed neu orchmynion diogelu coetir, y mae'n ystyried eu bod yn angenrheidiol i ddiogelu coed sy'n bodoli eisoes ar safle'r datblygiad neu'n agos iddo, neu i sicrhau nad yw'r coed hynny sydd newydd eu plannu yn cael eu colli.

1137. Pan fo Gweinidogion Cymru yn penderfynu ceisiadau ac apelau, neu pan fo arolygwyr yn gwneud hynny ar eu rhan, mae ganddynt bŵer cyffredinol i osod amodau wrth roi caniatâd (adran 67, a gymhwysir gan adrannau 72(5) a 77(5)), a chânt hwythau hefyd felly ddewis gosod amodau tebyg yn ymwneud â diogelu neu blannu coed.

Adran 234 – Pŵer awdurdod cynllunio i wneud gorchymyn diogelu coed

1138. Caiff awdurdod cynllunio wneud "gorchymyn diogelu coed" i warchod coed yn ei ardal, pan fo'n ystyried ei bod yn briodol gwneud hynny er budd amwynder (is-adran (1)). Caniateir pennu'r ffactorau y mae rhaid eu hystyried wrth benderfynu a yw er budd amwynder gwneud hynny mewn rheoliadau a wneir o dan adran 238.

1139. Mae gorchymyn diogelu coed yn orchymyn ar gyfer diogelu coed unigol, grwpiau o goed, neu goed a bennir drwy gyfeirio at ardal o dir (is-adran (2)). Gellid defnyddio gorchymyn grŵp pan fo grŵp o goed yn tyfu'n agos at ei gilydd, y gellir eu pennu felly, er enghraifft "*dwy dderwen a thair castanwydden*". Gellir defnyddio gorchymyn ardal mewn perthynas ag ardal fwy o dir – er enghraifft, ardal o barcdir neu safle datblygiad helaeth – sy'n cynnwys llawer o goed, o bosib o wahanol rywogaethau, fel ei bod yn anymarferol eu pennu'n unigol. Ni chaniateir defnyddio gorchymyn i warchod gwrychoedd, llwyni na phrysglwyni.

1140. Prif effaith gorchymyn diogelu coed yw gwarchod y goeden neu'r coed rhag camau a gweithgareddau a bennir mewn rheoliadau, a all gynnwys gwaharddiadau ar gwympo, brigdorri, tocio, dadwreiddio, difrodi neu ddinistrio heb gydsyniad, yn ddarostyngedig i eithriadau a bennir gan reoliadau (gweler adran 240).

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. Fel arfer, mae gorchymyn diogelu coed yn gymwys er mwyn gwarchod coed sydd eisoes yn bodoli ar y dyddiad y'i gwneir. Caiff hefyd warchod coed y mae'n ofynnol eu plannu o dan amod sydd ynghlwm wrth ganiatâd cynllunio (o dan adran 233); ond fel arall ni fydd yn gwarchod coed a blannwyd (ac eithrio coed amnewid) na choed sydd wedi hunanhadu ar ôl dyddiad y gorchymyn (is-adran (3)).

1142. Pan roddir caniatâd i gynnal gwaith ar goed a warchodir gan orchymyn, caiff fod yn ddarostyngedig i amod sy'n ei gwneud yn ofynnol plannu coed amnewid; caiff y rheoliadau ddarparu i'r gorchymyn gael ei gymhwyso i goed a blannir un unol ag amod amnewid (gweler adran 241(5)). Pan fydd yn ofynnol i goeden a warchodir gael ei hamnewid o dan adran 245, bydd y gorchymyn yn gwarchod y goeden sydd newydd ei phlannu yn awtomatig (gweler adran 245(5)).

Adran 235 – Pŵer awdurdod cynllunio i wneud gorchymyn diogelu coetir

1143. Caiff awdurdod cynllunio hefyd wneud "gorchymyn diogelu coetir" i warchod coetir yn ei ardal, pan fo'n ystyried ei bod yn briodol gwneud hynny er budd amwynder (is-adrannau (1) a (2)). Yma hefyd, caniateir pennu'r ffactorau y mae rhaid eu hystyried wrth benderfynu a yw er budd amwynder gwneud hynny mewn rheoliadau a wneir o dan adran 238.

1144. Mae gorchymyn diogelu coed a wnaed cyn i'r Ddeddf hon ddod i rym, i'r graddau y mae'n ymwneud â choetir, bellach yn cael effaith fel gorchymyn diogelu coetir (gweler paragraff 19(3) o Atodlen 5 i'r Ddeddf Darpariaethau Canlyniadol).

1145. Mae gorchymyn diogelu coetir, yn wahanol i orchymyn diogelu coed, yn gymwys er mwyn gwarchod yr holl goed sy'n tyfu o fewn yr ardal benodedig o goetir, pa un a oedd y coed yn bodoli ar y dyddiad y cafodd ei wneud, neu eu bod wedi eu plannu neu eu bod wedi hunanhadu wedi hynny (is-adran (3)).

1146. Prif effaith gorchymyn diogelu coetir yw gwarchod y coed o fewn y coetir rhag camau a gweithgareddau a bennir mewn rheoliadau, a all gynnwys gwaharddiadau ar gwympo, brigdorri, tocio, dadwreiddio, difrodi neu ddinistrio heb gydsyniad – yn ddarostyngedig i eithriadau a bennir gan reoliadau (gweler adran 240).

1147. Pan roddir caniatâd i gynnal gwaith ar goed a warchodir gan orchymyn diogelu coetir, caiff fod yn ddarostyngedig i amod sy'n ei gwneud yn ofynnol plannu coed newydd; caiff y rheoliadau ddarparu i'r gorchymyn gael ei gymhwyso i goed a blannir un unol ag amod amnewid (gweler adran 241(5)). A phan fydd yn ofynnol i goed a warchodir gan orchymyn diogelu coetir gael eu hamnewid o dan adran 246, bydd y gorchymyn yn gwarchod y coed sydd newydd eu plannu yn awtomatig (gweler adran 246(6)).

Adran 236 – Pŵer Gweinidogion Cymru i wneud gorchmynion diogelu coed a gorchmynion diogelu coetir

1148. Mae gan Weinidogion Cymru hefyd bŵer i wneud gorchmynion diogelu coed a gorchmynion diogelu coetir os ydynt yn ystyried ei bod yn hwylus gwneud hynny er budd amwynder (o dan is-adrannau (1) a (2)). A chânt wneud gorchymyn, os ydynt yn ystyried ei bod yn briodol gwneud hynny er budd amwynder o dan is-adran (3) sy'n amrywio neu'n dirymu gorchymyn diogelu a wnaed gan awdurdod cynllunio.

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. Cyn cymryd unrhyw gamau o dan is-adran (1) neu (2), rhaid i Weinidogion Cymru ymgynghori â'r awdurdod cynllunio ar gyfer yr ardal sy'n cynnwys y coed neu'r coetiroedd sydd i'w gwarchod (is-adran (4)).

1150. Mae effaith gorchymyn diogelu coed neu orchymyn diogelu coetir a wneir gan Weinidogion Cymru yr un fath ag effaith gorchymyn a wneir gan yr awdurdod cynllunio.

Adran 237 – Rheoliadau diogelu coed: cyffredinol

1151. Yn gyffredinol, mae manylion y system warchod a ddarperir gan orchmynion diogelu coed i'w gweld mewn rheoliadau. Cyn i'r Ddeddf hon ddod i rym, mae rheoliadau o'r fath yng Nghymru wedi ymdrin â gwneud gorchmynion; ond mae'r angen i ofyn am gydsyniad i gynnal gwaith wedi ei gynnwys naill ai yn y ddeddfwriaeth sylfaenol neu yn y gorchymyn perthnasol ei hun. Mae'r Ddeddf hon yn ymgorffori'r newidiadau i Ddeddf 1990 a wnaed gan Ddeddf 2008 nad ydynt wedi eu dwyn i rym yng Nghymru yn flaenorol. Am y rhesymau hyn, mae'r gorchmynion a wneir o dan y Ddeddf hon yn llawer byrrach a symlach na'r rhai a'u rhagflaenodd, gyda'r holl fanylion gweithdrefnol ynghylch y system gydsynio a gwaharddiadau yn cael eu darparu gan reoliadau.

1152. Mae adrannau 238 i 243 yn amlinellu'r materion y caiff y rheoliadau eu cwmpasu, yn benodol. Maent hefyd yn ymestyn i orchmynion a wneir gan Weinidogion Cymru o dan adran 236(3), sy'n amrywio neu'n dirymu gorchmynion a wnaed gan awdurdodau cynllunio.

Adran 238 – Buddion amwynder: ffactorau i'w hystyried

1153. Caiff rheoliadau a wneir o dan adran 237 bennu'r materion y mae rhaid i awdurdodau cynllunio a Gweinidogion Cymru roi sylw iddynt wrth ystyried a ddylid gwneud gorchmynion diogelu coed a gorchmynion diogelu coetir o dan adrannau 234 i 236, ac y mae rhaid i Weinidogion Cymru roi sylw iddynt wrth ystyried a ddylid amrywio neu ddirymu gorchymyn o'r fath.

Adran 239 – Gwneud, amrywio neu ddirymu gorchmynion diogelu coed a gorchmynion diogelu coetir

1154. Caiff y rheoliadau o dan adran 237 ddarparu ar gyfer:

a. ffurf a chynnwys gorchmynion;

b. y weithdrefn i'w dilyn mewn cysylltiad â gwneud, amrywio neu ddirymu gorchmynion;

c. pryd y bydd gorchmynion yn cymryd effaith; a

d. sut y mae gorchmynion i'w cyhoeddi a'u rhoi ar gael i edrych arnynt (is-adran (1)).

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. Caiff y rheoliadau hefyd ddarparu i orchmynion beidio â chymryd effaith oni bai eu bod wedi eu cadarnhau. Mae is-adran (2) yn darparu, mewn achosion o'r fath, y caiff y rheoliadau hefyd wneud darpariaeth ynghylch gorchmynion yn cymryd effaith dros dro, yn ogystal â gwneud darpariaeth ynghylch pwy sydd i gadarnhau'r gorchymyn a'r weithdrefn ar gyfer gwneud hynny.

Adran 240 – Gweithgareddau y caniateir eu gwahardd

1156. O dan is-adran (1), caiff y rheoliadau wahardd y materion a ganlyn y mae gorchymyn diogelu coed neu orchymyn diogelu coetir mewn grym mewn perthynas â hwy:

a. torri coed i lawr neu eu dadwreiddio;

b. brigdorri neu docio coed;

c. difrodi neu ddinistrio coed yn fwriadol neu'n ddi-hid; a

d. peri neu ganiatáu unrhyw un neu ragor o'r gweithgareddau uchod.

1157. Caiff y rheoliadau hefyd ddarparu eithriadau i'r gwaharddiad hwn a chânt yn benodol ddarparu ar gyfer system pan ganiateir rhoi cydsyniad i awdurdodi gweithgareddau o'r fath (is-adrannau (2) a (3)).

Adran 241 – Cydsyniad ar gyfer gweithgareddau gwaharddedig ac apelau

1158. Pan fo rheoliadau'n darparu bod cydsyniad yn ofynnol ar gyfer gwaith i ddiogelu coed neu goetiroedd, caiff y rheoliadau hefyd wneud darpariaeth ynghylch pwy sydd i roi cydsyniad o'r fath, a'r weithdrefn sydd i'w dilyn mewn cysylltiad â cheisiadau, y ffurf sydd i'w defnyddio a'r deunydd ategol sydd i'w ddarparu (is-adrannau (2) a (6)). Cânt hefyd ddarparu ar gyfer rhoi cydsyniad yn ddarostyngedig i amodau, gan gynnwys o ran cymeradwyaethau sydd i'w cael ar gyfer manylion gwaith, o ran hyd cydsyniad, ac o ran plannu coed newydd (is-adrannau (3) a (4)). Cânt ddarparu yn ogystal ar gyfer apelau yn erbyn penderfyniadau anffafriol neu yn erbyn methiant i wneud unrhyw benderfyniad (is-adrannau (7) ac (8)).

1159. Pan fo amod sydd ynghlwm wrth roi cydsyniad ar gyfer gwaith i goeden yn ei gwneud yn ofynnol i goeden newydd gael ei phlannu, caiff rheoliadau ddarparu y bydd y gorchymyn diogelu coed yn gymwys i warchod y goeden newydd unwaith y bydd wedi ei phlannu neu cânt ddarparu y bydd y gorchymyn yn gymwys i goed newydd oni bai bod y person sy'n rhoi'r cydsyniad yn pennu fel arall (is-adran (5)).

Adran 242 – Digolledi

1160. Caiff rheoliadau ddarparu bod digolledi yn daladwy pan wrthodir cydsyniad ar gyfer gwaith i goed, neu os caiff ei roi yn ddarostyngedig i amodau, neu pan wrthodir unrhyw gymeradwyaeth sy'n ofynnol gan amod cydsyniad (is-adran (1)). Cânt wneud darpariaeth ynghylch pwy sydd i dalu'r digolledi, o dan ba amgylchiadau, ac ar ba sail (is-adrannau (2) a (3)). Cânt hefyd ddarparu ar gyfer y weithdrefn sydd i'w dilyn mewn cysylltiad â hawliad, ac ar gyfer datrys anghydfodau gan yr Uwch Dribiwnlys (is-adrannau (4) a (5)).

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. Mae hyn yn sylweddol wahanol i'r sefyllfa sy'n ymwneud â gwrthod cais am ganiatâd cynllunio o dan Ran 3 nad oes unrhyw ddigolledia yn gysylltiedig ag ef yn gyffredinol.

Adran 243 – Cofrestrau o wybodaeth sy'n ymwneud â gorchmynion diogelu coed a gorchmynion diogelu coetir

1162. Caiff rheoliadau ddarparu i gofrestrau sydd ar gael i'r cyhoedd gael eu cadw sy'n cynnwys gwybodaeth sy'n ymwneud â gorchmynion diogelu coed a gorchmynion diogelu coetir.

Adran 244 – Rheoliadau diogelu coed: cyfyngiad sy'n ymwneud â thrwyddedau cwympo coed o dan Ddeddf Coedwigaeth 1967

1163. Mae'r adran hon yn tynnu sylw at adran 15 o Ddeddf Coedwigaeth 1967 (p. 10) ('Deddf 1967') sy'n darparu mecanwaith i osgoi gorgyffwrdd diangen rhwng y gyfundrefn trwydded cwympo coed o dan Ran 2 o'r Ddeddf honno a'r gyfundrefn gydsynio o dan y Rhan hon o'r Ddeddf.

1164. Yn ddarostyngedig i nifer o eithriadau (gan gynnwys coed mewn gerddi a mannau cyhoeddus agored), er mwyn cwympo unrhyw goed (ond nid tocio na brigdorri coed o'r fath) mae'n ofynnol cael trwydded cwympo coed gan CNC o dan adran 9 o Ddeddf 1967. Felly y mae hi pa un a yw'r coed yn ddarostyngedig i orchymyn diogelu coed neu orchymyn diogelu coetir ai peidio.

1165. Pan fo'n ofynnol cael trwydded i gwympo coed sy'n ddarostyngedig i orchymyn diogelu coed neu orchymyn diogelu coetir, a'i bod yn ofynnol cael cydsyniad i gwympo'r goeden, ni chaniateir i'r awdurdod cynllunio ystyried cais am gydsyniad o dan y rheoliadau diogelu coed a wneir o dan y Rhan hon o'r Ddeddf (gweler adran 15(5) o Ddeddf 1967); yn hytrach, rhaid cyflwyno cais am drwydded cwympo coed i CNC. Os yw CNC yn gwrthod y cais am drwydded, nid yw'r cwestiwn o gydsyniad o dan y rheoliadau diogelu coed yn codi. Os yw CNC yn bwriadu caniatáu'r cais am drwydded, rhaid iddo hysbysu'r awdurdod cynllunio; os yw'r awdurdod yn gwrthwynebu, rhaid ei atgyfeirio at Weinidogion Cymru i'w benderfynu a all wedyn ei benderfynu fel pe bai'n gais o dan y rheoliadau, ac ni fydd trwydded cwympo coed yn ofynnol (gweler adran 15(1)(a) a (2) o Ddeddf 1967). Os yw CNC yn fodlon caniatáu i'r awdurdod wneud y penderfyniad, bydd yn anfon y cais i'r awdurdod a all wedyn ei benderfynu fel pe bai'n gais o dan y rheoliadau, ac ni fydd trwydded cwympo coed yn ofynnol (gweler adran 15(1)(b) a (3) o Ddeddf 1967).

Adran 245 – Amnewid coed: gorchmynion diogelu coed

1166. Pan fo coeden sy'n cael ei gwarchod gan orchymyn diogelu coed yn cael ei symud ymaith, ei dadwreiddio neu ei dinistrio mewn amgylchiadau pan fo rheoliadau coed wedi eu torri (e.e. pan fo'r rheoliadau'n ei gwneud yn ofynnol cael cydsyniad i'w symud etc., ond na chafwyd y cydsyniad) rhaid i berchnogion y tir blannu coeden amnewid. Rhaid plannu'r goeden amnewid yn y man lle'r oedd y goeden wreiddiol wedi ei lleoli neu'n agos i'r man hwnnw; a rhaid plannu'r goeden cyn gynted ag y bo'n rhesymol ymarferol. Bydd y gorchymyn yn parhau i gael effaith mewn perthynas â'r goeden amnewid.

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. Mae'r un ddyletswydd yn gymwys pan fo coeden a warchodir gan orchymyn yn cael ei symud ymaith, ei dadwreiddio neu ei dinistrio mewn amgylchiadau eraill a bennir yn y rheoliadau (is-adran (1)(a)(ii)). Yn ymarferol, gallai hyn ddigwydd, er enghraifft, pan fo rhaid plannu coeden amnewid pan fo'r goeden wreiddiol wedi ei symud ymaith heb ganiatâd oherwydd ei bod bellach yn beryglus. Bydd y ddyletswydd hefyd yn gymwys pan fo coeden a warchodir yn cael ei symud ymaith oherwydd ei bod wedi marw, ond dim ond mewn amgylchiadau a bennir mewn rheoliadau (is-adran (1)(b)).

1168. Mae is-adran (6) yn darparu bod y ddyletswydd o dan yr adran hon i blannu coeden amnewid yn disgyn ar bob perchennog olynol ar y tir hyd nes y cydymffurfir â hi. Ond nid yw'r ddyletswydd honno'n gymwys os yw'r awdurdod y mae'r tir yn ei ardal yn cytuno i'w hepgor, mewn ymateb i gais gan berchennog (is-adran (4)).

1169. Dim ond drwy ddyroddi hysbysiad amnewid coed o dan adran 252 y caniateir gorfodi'r ddyletswydd i blannu coeden amnewid.

Adran 246 – Amnewid coed: gorchmynion diogelu coetir

1170. Pan fo coed sy'n cael eu gwarchod gan orchymyn diogelu coetir (yn hytrach na gorchymyn diogelu coed) yn cael eu symud ymaith, eu dadwreiddio neu eu dinistrio mewn amgylchiadau pan fo rheoliadau coed wedi eu torri (e.e. pan fo'r rheoliadau'n ei gwneud yn ofynnol cael cydsyniad i'w symud etc., ond na chafwyd y cydsyniad) rhaid i berchnogion y tir blannu coed amnewid o feintiau a rhywogaethau priodol (is-adrannau (1) a (2)).

1171. Rhaid i nifer y coed a blannir fod yr un fath â nifer y coed a gafodd eu symud ymaith, eu dadwreiddio neu eu dinistrio, pan fo hynny'n hysbys. Pan nad yw'n hysbys, rhaid i'r amcangyfrif o'r nifer fod y gorau y gellir ei wneud yn rhesymol o'r nifer a gollwyd (is-adran (3)). Rhaid plannu'r coed amnewid yn y mannau lle'r oedd y coed gwreiddiol neu'n agos i'r mannau hynny, neu mewn man arall a ddynodir gan yr awdurdod cynllunio y mae'r tir yn ei ardal, y mae rhaid iddo fod ar yr un tir neu ar dir arall y cytunir arno gan yr awdurdod a pherchennog y tir arall hwnnw (is-adran (4)). Bydd y gorchymyn diogelu coetir yn parhau i gael effaith, mewn perthynas â'r coed amnewid (is-adran (6)).

1172. Mae is-adran (7) yn darparu bod y ddyletswydd o dan yr adran hon i blannu coed amnewid yn disgyn ar bob perchennog olynol ar y tir hyd nes y cydymffurfir â hi. Ond nid yw'r ddyletswydd honno'n gymwys os yw'r awdurdod y mae'r tir yn ei ardal yn cytuno i'w hepgor, mewn ymateb i gais gan berchennog (is-adran (5)).

1173. Dim ond drwy ddyroddi hysbysiad amnewid coed o dan adran 252 y caniateir gorfodi'r ddyletswydd i blannu coed amnewid.

Pennod 2 – Coed mewn ardaloedd cadwraeth

Adran 247 – Diogelu coed mewn ardaloedd cadwraeth

1174. Mae ardal gadwraeth yn ardal o ddiddordeb pensaernïol neu hanesyddol arbennig, y mae'n ddymunol cadw a gwella ei chymeriad neu ei hymddangosiad, a ddynodir o dan Ran 4 o Ddeddf 2023. Mewn llawer o ardaloedd cadwraeth, mae coed yn rhan sylweddol o'r cymeriad hwnnw.

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. Pan warchodir coeden unigol neu grŵp o goed mewn ardal gadwraeth gan orchymyn diogelu coed neu orchymyn diogelu coetir, bydd gwaith iddynt yn amodol ar yr angen am gydsyniad o dan y rheoliadau coed, fel gyda gwaith i goed o'r fath mewn mannau eraill. Pan nad yw coed mewn ardal gadwraeth yn cael eu gwarchod gan orchymyn o'r fath, fodd bynnag, gwaherddir y gwaith canlynol:

a. torri coeden i lawr, dadwreiddio coeden, brigdorri coeden neu docio coeden; a

b. difrodi neu ddinistrio coed yn fwriadol neu'n ddi-hid (is-adrannau (1) a (2)).

1176. Fodd bynnag, nid oes gwaharddiad o dan yr adran hon (is-adran (3)(a)) ar gynnal gwaith i goed mewn ardal gadwraeth a awdurdodir gan orchymyn cydsyniad seilwaith, o dan Ddeddf 2024, neu gan orchymyn sy'n rhoi cydsyniad datblygu o dan Ddeddf 2008.

1177. Nid yw gwaith o'r fath wedi ei wahardd chwaith os bodlonir yr amodau yn is-adrannau (4) i (7). Rhaid hysbysu'r awdurdod cynllunio am y bwriad i gynnal y gwaith, gan ddarparu digon o wybodaeth fel bod modd adnabod y goeden neu'r coed o dan sylw. Yna mae gan yr awdurdod chwe wythnos i roi cydsyniad. Os yw'n rhoi cydsyniad neu os nad yw'n ymateb i'r hysbysiad o fewn y cyfnod o chwe wythnos, caniateir i'r gwaith gael ei gynnal ar unrhyw adeg o fewn y ddwy flynedd ar ôl y dyddiad y cafodd yr awdurdod ei hysbysu. Os gosodir gorchymyn ar unrhyw adeg, bydd cydsyniad o dan y rheoliadau yn ofynnol yn union fel mewn unrhyw achos arall.

1178. Caiff rheoliadau ddarparu eithriadau i'r gofyniad hwn, yn enwedig o ran categorïau penodedig o waith, gwaith a gynhelir mewn amgylchiadau penodedig neu yn ddarostyngedig i amodau penodedig, gwaith mewn ardaloedd cadwraeth penodedig, gwaith i goed o feintiau neu rywogaethau penodedig, a gwaith i goed sy'n eiddo i gategorïau penodedig o berchnogion (is-adrannau (8) a (9)).

Adran 248 – Amnewid coed mewn ardaloedd cadwraeth

1179. Pan fo coeden mewn ardal gadwraeth nad yw wedi ei gwarchod gan orchymyn diogelu coed neu orchymyn diogelu coetir a'i bod yn cael ei symud ymaith, ei dadwreiddio neu ei dinistrio gan dorri adran 247(1), rhaid i berchnogion y tir blannu coeden amnewid o faint a rhywogaeth briodol oni bai bod yr awdurdod cynllunio wedi hepgor y gofyniad (is-adrannau (1)(a)(i) a (2)). Rhaid plannu'r goeden amnewid yn y man lle'r oedd y goeden wreiddiol wedi ei lleoli neu'n agos i'r man hwnnw; a rhaid plannu'r goeden cyn gynted ag y bo'n rhesymol ymarferol (is-adrannau (2) a (3)).

1180. Mae'r un ddyletswydd yn gymwys pan fo coeden mewn ardal gadwraeth nad yw wedi ei gwarchod gan orchymyn diogelu yn cael ei symud ymaith, ei dadwreiddio neu ei dinistrio mewn amgylchiadau eraill a bennir yn y rheoliadau (is-adran (1)(a)(ii)). Yn ymarferol, gallai hyn ddigwydd, er enghraifft, pan fo'r goeden wreiddiol wedi ei symud ymaith heb i hysbysiad gael ei roi oherwydd ei bod bellach yn beryglus. Bydd y ddyletswydd hefyd yn gymwys pan fo coeden o'r fath yn cael ei symud ymaith oherwydd ei bod wedi marw, ond dim ond mewn amgylchiadau a bennir mewn rheoliadau (is-adran (1)(b)).

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. Mae is-adran (5) yn darparu bod y ddyletswydd o dan yr adran hon i blannu coeden amnewid yn disgyn ar bob perchennog olynol ar y tir hyd nes y cydymffurfir â hi. Ond nid yw'r ddyletswydd honno'n gymwys os yw'r awdurdod cynllunio y mae'r tir yn ei ardal yn cytuno i'w hepgor, mewn ymateb i gais gan berchennog (is-adran (4)).

1182. Dim ond drwy ddyroddi hysbysiad amnewid coed o dan adran 252 y caniateir gorfodi'r ddyletswydd i blannu coeden amnewid.

Adran 249 – Cofrestr o hysbysiadau o fwriad i gynnal gwaith

1183. Rhaid i'r awdurdod cynllunio gadw cofnod o hysbysiadau a ddaw i'w law mewn perthynas â bwriad i gynnal gwaith i goeden mewn ardal gadwraeth o dan adran 247. Mae'r gofrestr i fod ar gael i'r cyhoedd edrych arni ar bob adeg resymol. Caiff rheoliadau bennu pa wybodaeth sydd i'w chynnwys mewn cofrestr o'r fath, a sut y mae i'w chadw.

Pennod 3 – Gorfodi

Adran 250 – Troseddau torri darpariaethau diogelu coed

1184. Nid yw cynnal datblygiad heb ganiatâd cynllunio yn drosedd; ond mae cynnal gwaith i goeden a warchodir gan orchymyn yn groes i'r rheoliadau o dan y Rhan hon yn drosedd. Mae hyn yn adlewyrchu'r ffaith, mewn sawl achos, y gall fod yn bosibl dadwneud neu o leiaf liniaru effeithiau datblygiad anawdurdodedig, ond nid yw'n bosibl ailblannu coeden sydd wedi ei chwympo; a gall hyd yn oed docio, brigdorri neu ddifrodi coeden ei gadael â chlefyd arni neu wedi ei hanffurfio am flynyddoedd lawer.

1185. Yn unol â hynny, mae'r adran hon yn creu dwy drosedd. Mae'r gyntaf, o dan is-adran (1), wedi ei chyflawni pan fo person yn cynnal gweithgareddau'n anghyfreithlon sy'n arwain at golli coeden a warchodir o dan y Rhan hon neu sy'n debygol o arwain at golli coeden o'r fath. Mae'r drosedd hon yn gymwys i:

a. torri coeden a warchodir i lawr neu ddadwreiddio coeden a warchodir;

b. dinistrio coeden a warchodir yn fwriadol neu'n ddi-hid;

c. brigdorri, tocio neu ddifrodi coeden a warchodir, yn fwriadol neu'n ddi-hid, mewn modd sy'n debygol o'i dinistrio; a

d. peri neu ganiatáu cynnal unrhyw un neu ragor o'r gweithgareddau hyn.

1186. Caiff y drosedd hon ei chyflawni pan fo person yn cynnal gweithgareddau o'r fath i goeden sy'n ddarostyngedig i orchymyn diogelu coed neu orchymyn diogelu coetir, gan dorri rheoliadau diogelu coed.

1187. Caiff y drosedd hefyd ei chyflawni pan fo person yn cynnal gweithgareddau o'r fath i goeden nad yw'n ddarostyngedig i'r naill math o orchymyn na'r llall, ond sydd mewn ardal gadwraeth, yn groes i adran 247. Mae'r adran honno'n ei gwneud yn ofynnol na ddylid cynnal gwaith i goed o'r fath oni bai bod yr awdurdod cynllunio wedi cael chwe wythnos o rybudd o'r gwaith ac mae naill ai wedi rhoi cydsyniad ar ei gyfer neu wedi methu ag ymateb cyn diwedd y cyfnod hwnnw.

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. Gellir cosbi trosedd o dan is-adran (1), ar euogfarn ddiannod (yn y llys ynadon) neu ar euogfarn ar dditiad (yn Llys y Goron), drwy ddirwy. Nid oes terfyn ar swm y ddirwy y caiff y llys ei gosod.

1189. Wrth ddedfrydu person sydd wedi ei euogfarnu o drosedd o dan is-adran (1), rhaid i'r llys roi sylw i unrhyw fudd ariannol sydd wedi cronni neu sy'n ymddangos yn debygol o gronni i'r person o ganlyniad i'r drosedd (is-adran (3)). Mae hyn yn golygu, er enghraifft, pan fo cwympo grŵp o goed a warchodir yn datgloi safle datblygiad gwerthfawr, y caiff y llys ystyried hynny wrth benderfynu'r ddirwy briodol.

1190. Mae'r ail drosedd, o dan is-adran (4), wedi ei chyflawni pan fo person yn cynnal gwaith anghyfreithlon arall, sy'n llai difrifol, i goeden a warchodir gan orchymyn diogelu coed neu orchymyn diogelu coetir – hynny yw, ei brigdorri neu ei thocio, neu ei difrodi'n fwriadol neu'n ddi-hid heb gydsyniad o dan y rheoliadau, pan nad yw'r gwaith yn debygol o arwain at golli'r goeden. Neu gellir ei gyflawni pan gynhelir gwaith o'r fath gan dorri adran 247(1), pan fo coeden nad yw wedi ei gwarchod gan orchymyn ond sydd mewn ardal gadwraeth.

1191. Gellir cosbi trosedd o dan is-adran (4) ar euogfarn ddiannod drwy ddirwy nad yw'n uwch na Lefel 4 ar y raddfa safonol (is-adran (5)).

Adran 251 – Gwaharddeb i atal torri darpariaethau diogelu coed

1192. Gall coeden gael ei chwympo neu ei difrodi'n gymharol gyflym. Felly, mae'n bwysig i awdurdod cynllunio allu cymryd camau ataliol yr un mor gyflym.

1193. Mae is-adran (1) yn grymuso awdurdod cynllunio i wneud cais i'r Uchel Lys neu'r llys sirol am waharddeb i atal trosedd wirioneddol neu drosedd ddisgwyliedig o dan adran 250; a chaiff y llys roi gwaharddeb o'r fath ar unrhyw delerau y mae'n ystyried eu bod yn briodol (is-adran (3)).

1194. Caiff rheolau llys hefyd ganiatáu i waharddeb gael ei rhoi, pan fo hynny'n briodol, yn erbyn person nad yw'n hysbys pwy ydyw (is-adran (4)). Gwneir hyn er mwyn ymdrin ag achosion megis pan fo gwaith yn cael ei gynnal gan gontractwyr sy'n cuddio pwy ydynt neu sy'n gweithredu o dan enwau ffug.

1195. Os yw awdurdod yn cael gwaharddeb o dan yr adran hon, nid yw hynny'n ei atal rhag cymryd camau eraill o dan y Rhan hon – yn benodol cychwyn erlyniad o dan adran 250 neu gyflwyno hysbysiad amnewid coed o dan adran 252.

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.

Adran 252 – Pŵer awdurdod cynllunio i ddyroddi hysbysiad amnewid coed

1196. Pan fo coed a warchodir gan orchymyn diogelu coed neu orchymyn diogelu coetir wedi eu symud ymaith neu eu dinistrio yn unol â chydsyniad a roddwyd o dan y rheoliadau, caiff y cydsyniad hwnnw fod yn ddarostyngedig i amod (o dan adran 241(3)(c) a (4)) sy'n ei gwneud yn ofynnol i un neu ragor o goed newydd gael eu plannu. Pan fo coed sy'n ddarostyngedig i orchymyn diogelu coed neu orchymyn diogelu coetir yn cael eu symud ymaith neu eu dinistrio mewn amgylchiadau eraill, gall fod angen eu hamnewid yn unol ag adran 245 neu 246; a phan fo coed eraill mewn ardaloedd cadwraeth yn cael eu symud ymaith, gall fod angen eu hamnewid yn unol ag adran 248. Yn yr amgylchiadau hyn, y prif ofyniad fydd plannu coeden o faint a rhywogaeth briodol, cyn gynted ag y bo'n rhesymol ymarferol, ar safle'r goeden wreiddiol neu'n agos iddi (neu mewn rhai achosion mewn man arall, fel y'i cytunir gyda'r awdurdod cynllunio).

1197. Pan na chydymffurfiwyd â gofyniad o'r fath, caiff awdurdod cynllunio ddyroddi "hysbysiad amnewid coed" o dan yr adran hon. Rhaid i'r hysbysiad ei gwneud yn ofynnol i goeden o faint a rhywogaeth benodol, neu i goed o feintiau a rhywogaethau penodol, gael ei phlannu neu eu plannu a rhaid iddo bennu'r dyddiad y mae'r hysbysiad i gymryd effaith a'r cyfnod y mae rhaid plannu'r goeden neu'r coed ynddo (is-adrannau (1), (2) a (7)).

1198. Ni chaniateir dyroddi hysbysiad amnewid coed fwy na phedair blynedd ar ôl y methiant i gydymffurfio â'r gofyniad plannu (is-adran (3)).

1199. Pan fo awdurdod yn dyroddi hysbysiad amnewid coed, rhaid iddo gyflwyno copi i bob perchennog ar y tir y mae'r gofyniad yn gymwys iddo – hynny yw, y tir y lleolwyd y goeden wreiddiol arno, a (phan fo'n wahanol) y tir y mae'r goeden amnewid i'w phlannu arno. Rhaid cyflwyno pob copi o fewn 28 o ddiwrnodau ar ôl y dyddiad y dyroddwyd yr hysbysiad; a rhaid i'r dyddiad a bennir yn yr hysbysiad fel y dyddiad y bydd yn cymryd effaith fod o leiaf 28 o ddiwrnodau ar ôl cyflwyno'r copi diwethaf (is-adrannau (4) a (5)).

1200. Caiff rheoliadau ei gwneud yn ofynnol i nodyn esboniadol yn hysbysu'r derbynnydd o'r hawl i apelio yn erbyn yr hysbysiad (is-adran (6)) fynd gyda phob copi o'r hysbysiad.

Adran 253 – Amrywio hysbysiad amnewid coed

1201. Pan fo hysbysiad amnewid coed wedi ei ddyroddi, caiff yr awdurdod cynllunio hepgor neu lacio unrhyw un neu ragor o'i ofynion – pa un a yw wedi cymryd effaith ai peidio. Pan fo'n gwneud hynny ar ôl i gopïau o'r hysbysiad amnewid coed gael eu cyflwyno, rhaid iddo roi hysbysiad o'r hepgor neu'r llacio i bawb a gafodd gopi.

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.

Adran 254 – Yr hawl i apelio yn erbyn hysbysiad amnewid coed

1202. Caiff person y cyflwynir copi o hysbysiad amnewid coed iddo apelio yn ei erbyn i Weinidogion Cymru ar un neu ragor o'r seiliau a ganlyn:

a. nad yw'r gofyniad i blannu coed amnewid yn gymwys neu y cydymffurfiwyd â'r gofyniad hwnnw eisoes;

b. y dylid hepgor y gofyniad i blannu coed amnewid o dan orchymyn diogelu coed, gorchymyn diogelu coetir, neu mewn ardal gadwraeth mewn perthynas ag un neu ragor o'r coed;

c. bod y gofyniad yn afresymol, mewn perthynas â meintiau neu rywogaethau'r coed sydd i'w plannu, neu'r cyfnod y maent i'w plannu ynddo;

d. nad yw'r plannu sy'n ofynnol gan yr hysbysiad yn ofynnol er budd amwynder, neu y byddai'n groes i'r arfer o goedwigaeth dda;

e. bod y man arfaethedig ar gyfer y plannu yn anaddas (is-adrannau (1) a (2)).

1203. Rhaid gwneud apêl drwy gyflwyno hysbysiad i Weinidogion Cymru (yn ymarferol, drwy ei anfon i PEDW) cyn y dyddiad y mae'r hysbysiad amnewid coed i ddod i rym – neu drwy anfon yr hysbysiad apêl yn y post neu drwy e-bost fel y dylai eu cyrraedd cyn y dyddiad hwnnw (is-adran (3)). Rhaid i'r hysbysiad o apêl nodi'r seiliau dros apelio, a'r ffeithiau y mae'n seiliedig arnynt, a rhaid i ddeunydd arall a bennir mewn rheoliadau fynd gyda'r hysbysiad (is-adrannau (4) a (5)). Mae'r gofynion presennol yn rheoliad 9 o Reoliadau Gorfodi 2017 sy'n ei gwneud yn ofynnol i ddatganiad achos llawn ynghyd ag unrhyw ddogfennau ategol fynd gydag apêl.

1204. Pan fo apêl o dan yr adran hon wedi ei gwneud, nid yw'r hysbysiad amnewid yn cael unrhyw effaith hyd nes bod yr apêl wedi ei penderfynu'n derfynol neu wedi ei thynnu'n ôl. Ac ni all unrhyw un honni na chafodd yr hysbysiad ei gyflwyno'n briodol i'r apelydd (is-adran (6)).

Adran 255 – Penderfynu apêl

1205. Ar apêl o dan adran 254, caiff Gweinidogion Cymru neu'r arolygydd sy'n penderfynu'r apêl ar eu rhan gywiro unrhyw ddiffyg, unrhyw wall neu unrhyw gamddisgrifiad yn yr hysbysiad amnewid coed, a chânt amrywio unrhyw un neu ragor o'i ofynion – er enghraifft, drwy amrywio nifer, meintiau a rhywogaethau coed sydd i'w plannu, neu'r amser y mae rhaid eu plannu o'i fewn neu'r lleoliad y mae rhaid eu plannu ynddo. Gall addasiadau o'r fath fod yn arbennig o berthnasol pan fo apêl wedi ei gwneud ar sail (c) neu (e) o adran 254(2). Dim ond os yw Gweinidogion Cymru wedi eu bodloni na fyddent yn achosi unrhyw anghyfiawnder un ai i'r apelydd neu i'r awdurdod cynllunio y caniateir eu gwneud, fodd bynnag.

1206. Mae Pennod 2 o Ran 14 yn darparu ar gyfer penderfynu apelau o'r fath – yn enwedig o ran pwerau a dyletswyddau arolygwyr, sydd yn ymarferol yn penderfynu'r mwyafrif helaeth ohonynt.

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. Pan fyddant yn caniatáu apêl, caiff Gweinidogion Cymru neu'r arolygydd ddiddymu'r hysbysiad a rhaid iddynt roi cyfarwyddydau i roi effaith i'w penderfyniad, pa un a ydynt yn penderfynu caniatáu'r apêl ai peidio (is-adran (2)).

Adran 256 – Gorchymyn i ganiatáu i goed cael eu plannu

1208. Pan fo hysbysiad amnewid yn ei gwneud yn ofynnol i goed gael eu plannu ar ddarn penodol o dir, gallai un neu ragor o berchnogion y tir hwnnw gael ei atal rhag cydymffurfio ag ef gan rywun arall sydd â buddiant yn y tir – pan fo, er enghraifft, rydd-ddeiliad y tir yn rhwystro lesddeiliad, neu i'r gwrthwyneb. Yn y sefyllfa honno, caiff y perchennog sy'n dymuno cydymffurfio â'r hysbysiad wneud cais i'r llys ynadon, drwy gŵyn, am orchymyn sy'n ei gwneud yn ofynnol i'r parti arall a chanddo un neu ragor o fuddiannau ganiatáu i'r perchennog gymryd y camau gofynnol.

Adran 257 – Pŵer i fynd ar dir a phlannu coed

Adran 258 – Adennill costau plannu coed

1209. Ar ôl diwedd y cyfnod a bennir mewn hysbysiad amnewid ar gyfer plannu coed – neu unrhyw gyfnod hwy a ganiatawyd gan yr awdurdod cynllunio – os na chydymffurfiwyd â'r hysbysiad yn llawn, caiff yr awdurdod fynd ar y tir ar unrhyw adeg resymol a phlannu unrhyw goed fel sy'n ofynnol o hyd i sicrhau cydymffurfedd (adran 257(1)).

1210. Mae'n drosedd o dan adran 257(2) i rwystro unrhyw un sy'n plannu coed yn y fath fodd ar ran yr awdurdod. Mae person a geir yn euog o drosedd o'r fath ar euogfarn ddiannod (yn y llys ynadon) yn agored i dalu dirwy hyd at Lefel 3 ar y raddfa safonol.

1211. Mae adran 258 yn galluogi awdurdod cynllunio i adennill unrhyw gostau y mae wedi mynd iddynt yn rhesymol wrth arfer ei bwerau o dan adran 257. Mae hefyd yn ymgorffori darpariaethau a oedd yn Neddf Iechyd y Cyhoedd 1936 yn flaenorol a gymhwyswyd i adennill costau yn y sefyllfa hon.

1212. Mae adran 258(1) yn galluogi'r awdurdod i adennill y costau oddi wrth berchennog presennol ar y tir – hynny yw, rhydd-ddeiliad neu berson sydd â hawlogaeth i gael y rhent.

1213. Fodd bynnag, os oes gan y perchennog hawlogaeth i gael y rhent dim ond fel asiant ar gyfer rhywun arall (y "penadur"), ac nad yw wedi cael digon o arian drwy rent i'w alluogi i ad-dalu costau'r awdurdod yn llawn, yna mae ei atebolrwydd wedi ei gyfyngu (adran 258(2)) i'r swm o arian y mae wedi ei gael ar ran y penadur ers y diwrnod y mynnodd yr awdurdod fod y costau yn cael eu talu. Yn y sefyllfa honno, mae gan yr awdurdod hawlogaeth i adennill gweddill ei gostau oddi wrth y penadur (adran 258(3)).

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. Pan fo hysbysiad amnewid coed wedi ei gyflwyno ac

a. bo perchnogion y tir wedi gorfod cymryd camau i sicrhau y cydymffurfir â'r hysbysiad; neu

b. bo'r awdurdod wedi gorfod cymryd camau'n ddiofyn,

mae unrhyw gostau yr aed iddynt gan y perchnogion (gan gynnwys costau a dalwyd i'r awdurdod o dan is-adran (1)) i'w trin fel ped aed iddynt neu y'u talwyd ar ran unrhyw berson sy'n gyfrifol am symud ymaith, dadwreiddio neu ddinistrio'r goeden wreiddiol neu'r coed gwreiddiol (adran 258(4)). Mae hynny'n galluogi adennill y costau hynny oddi wrth y person y gwnaeth ei weithredoedd arwain at ddyroddi'r hysbysiad – naill ai drwy negodi neu achos llys.

1215. O dan adran 258(5), os yw'r awdurdod yn mynd i gostau o dan adran 258, byddant yn bridiant ar y tir hyd nes y byddant wedi eu hadennill yn llawn o dan is-adran (1). Mae'r pridiant yn cymryd effaith fel pridiant tir lleol ar ddechrau'r diwrnod ar ôl y diwrnod y mae'r awdurdod yn cwblhau'r camau y mae'r costau'n ymwneud â hwy (adran 258(6)).

1216. Mewn rhai achosion, pan fo hysbysiad amnewid coed yn cael ei gyflwyno a bo awdurdod cynllunio yn cymryd camau o dan adran 257 oherwydd diffyg cydymffurfedd, gall hynny arwain at orfod symud deunyddiau ymaith o'r tir. Os nad ydynt yn cael eu hawlio a'u symud ymaith o fewn tri diwrnod, caiff yr awdurdod eu gwerthu a thalu'r enillion i berchnogion y deunyddiau – ar ôl didynnu unrhyw gostau y gall yr awdurdod eu hadennill.

Adran 259 – Pwerau i fynd ar dir heb warant

1217. O bryd i'w gilydd, caiff awdurdod cynllunio sy'n arfer y swyddogaethau a roddir iddo o dan y Rhan hon ofyn am ragor o wybodaeth nag sydd ar gael drwy arolygu'r tir (neu'r coed) o dan sylw yn unig o'r briffordd gyhoeddus neu o dir arall lle y mae hawl mynediad gyffredinol. Yn rhinwedd is-adran (1), felly, caiff unrhyw berson sydd wedi ei awdurdodi'n ysgrifenedig gan yr awdurdod – a allai gynnwys naill ai gyflogai neu ymgynghorydd – fynd ar unrhyw dir:

a. er mwyn cynnal arolwg ohono mewn cysylltiad â gwneud gorchymyn diogelu coed neu orchymyn diogelu coetir i warchod coed ar y tir;

b. er mwyn asesu a oes trosedd o dan adran 250 wedi ei chyflawni;

c. er mwyn penderfynu a ddylid dyroddi hysbysiad amnewid coed mewn perthynas â'r tir; neu

d. mewn cysylltiad ag unrhyw un neu ragor o'i swyddogaethau o dan y Rhan hon, gan gynnwys penderfynu a ddylid caniatáu cais am gydsyniad o dan reoliadau coed ai peidio neu a ddylid rhoi cydsyniad mewn ymateb i hysbysiad o waith arfaethedig i goed mewn ardal gadwraeth.

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. Yn rhinwedd is-adrannau (2) a (3), caiff person sydd wedi ei awdurdodi'n ysgrifenedig gan Weinidogion Cymru (ar ôl iddynt ymgynghori â'r awdurdod cynllunio perthnasol) fynd ar unrhyw dir:

a. er mwyn cynnal arolwg ohono mewn cysylltiad â gwneud, amrywio neu ddirymu gorchymyn diogelu coed neu orchymyn diogelu coetir mewn perthynas â'r tir; neu

b. mewn cysylltiad ag unrhyw un neu ragor o'i swyddogaethau o dan y Rhan hon gan gynnwys penderfynu pa un a ddylid caniatáu apêl sy'n deillio o gais am gydsyniad o dan reoliadau coed neu apêl yn erbyn hysbysiad amnewid coed ai peidio.

1219. Pan fo rheoliadau diogelu coed yn gwneud darpariaeth ar gyfer talu digolledi o dan ag adran 242, caiff swyddog o Swyddfa Brisio Cyllid a Thollau EF fynd ar unrhyw dir i gynnal arolwg ohono, neu i amcangyfrif ei werth, mewn cysylltiad â hawliad am ddigolledi o'r fath (is-adran (4)).

1220. Caiff y rhai sy'n arfer pŵer i fynd ar dir o dan is-adrannau (1), (2) neu (4) fynd ag unrhyw bersonau eraill sy'n angenrheidiol ar gyfer eu hymchwiliad gyda hwy; a chânt gymryd samplau o unrhyw goeden neu bridd (is-adran (7)(b) ac (c)).

1221. Fodd bynnag, dim ond ar unrhyw adeg resymol y caniateir arfer y pŵer mynediad a dim ond os oes sail resymol dros wneud hynny (is-adran (5)).

1222. Ni chaiff person sydd wedi ei awdurdodi gan awdurdod cynllunio â phŵer o dan adran 259(1)(a) i (c) i fynd ar dir sy'n cael ei feddiannu neu i gael mynediad i adeilad a ddefnyddir fel annedd arfer y pŵer hwnnw heb roi o leiaf 24 o oriau o rybudd i bob meddiannydd ar y tir neu'r adeilad (is-adran (6)(a)). Mae'r un peth yn wir am berson sydd wedi ei awdurdodi gan Weinidogion Cymru â phŵer a roddir gan adran 259(2)(a).

1223. Yn fwy cyffredinol, rhaid i berson sydd wedi ei awdurdodi gan awdurdod cynllunio neu gan Weinidogion Cymru, neu un o swyddogion Cyllid a Thollau EF, sy'n bwriadu mynd ar unrhyw dir at unrhyw ddiben arall, roi o leiaf 24 o oriau o rybudd i bob meddiannydd ar y tir (is-adran (6)(b)).

1224. Mae is-adrannau (7)(a) a (d) yn darparu bod rhaid i'r rhai sy'n mynd ar unrhyw dir gan ddibynnu ar bwerau o dan yr adran hon, os cânt eu herio gan berchnogion neu feddianwyr y tir neu unrhyw un sy'n gweithredu ar eu rhan, ddangos tystiolaeth o'u hawdurdodiad, ac egluro pam eu bod yno. Os ydynt yn mynd ar dir pan fydd y perchnogion a'r meddianwyr yn absennol, rhaid iddynt sicrhau bod y tir wedi ei ddiogelu yr un mor effeithiol wrth iddynt adael ag yr oedd wrth iddynt gyrraedd.

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.

Adran 260 – Gwarant i fynd ar dir

1225. Gall perchnogion a meddianwyr ar dir fod yn fodlon caniatáu i'r rhai sydd wedi eu hawdurdodi gan awdurdod cynllunio neu Weinidogion Cymru fynd ar dir o dan adran 259. Mewn rhai achosion, fodd bynnag, gall fod yn angenrheidiol i'r awdurdod neu Weinidogion Cymru geisio gwarant gan y llys ynadon. Caiff yr Ynad Heddwch ddyroddi'r warant pan fo sail resymol dros fynd ar dir, a bo

a. mynediad i'r tir wedi ei wrthod (caiff cais ei drin fel pe bai wedi ei wrthod os na cheir ymateb i gais i ganiatáu mynediad o fewn cyfnod rhesymol); neu

b. yr amgylchiadau yn awgrymu y gellir disgwyl gwrthodiad.

1226. Bydd gwarant yn caniatáu mynediad i'r tir gan berson sydd wedi ei awdurdodi gan yr awdurdod cynllunio neu Weinidogion Cymru (is-adran (2)). Mae gwarant yn awdurdodi mynediad i dir ar un achlysur yn unig, ac ar adeg resymol yn unig (is-adran (4)). Mae hefyd yn caniatáu cymryd samplau o unrhyw goeden neu bridd ac yn caniatáu i'r person awdurdodedig fynd â pherson neu bersonau eraill gydag ef (is-adran (5)(b) ac (c)).

1227. Caniateir dyroddi gwarant hefyd pan fo angen gweithredu ar frys, ac ni wyddys a ganiateir mynediad i'r tir. Yn yr achos hwn, caniateir mynediad i dir ar unrhyw adeg (is-adrannau (1)(b)(ii) a (4)(b)).

1228. Mae is-adran (5)(a) a (d) yn darparu mesurau diogelu i sicrhau nad yw'r pwerau hyn yn cael eu camddefnyddio. Mae'r mesurau diogelu yr un fath â'r rhai pan eir ar dir o dan adran 259. Dim ond am hyd at fis ar ôl ei dyroddi y caniateir dibynnu ar y warant i sicrhau mynediad (is-adran (6)).

Adran 261 – Darpariaethau atodol ynghylch pwerau mynediad

1229. Er mwyn sicrhau bod y pŵer i fynd ar dir yn effeithiol, mae is-adran (2) yn darparu ei bod yn drosedd rhwystro'n fwriadol berson sy'n arfer pŵer o'r fath – naill ai o dan adran 259 neu o dan warant a geir o dan adran 260. Gellir cosbi'r drosedd ar euogfarn ddiannod (yn y llys ynadon) drwy ddirwy o hyd at Lefel 3 ar y raddfa safonol (is-adran (3)).

1230. Mae is-adran (4), fodd bynnag, yn darparu mesurau diogelu i sicrhau, os difrodir y tir neu eitemau ar y tir wrth arfer hawl mynediad, y caiff y rhai sy'n dioddef y difrod adennill digolledigiad oddi wrth yr awdurdod cynllunio neu, pan fo hynny'n berthnasol, Weinidogion Cymru.

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.

RHAN 10 – CAFFAEL A CHYFEDDU TIR AT DDIBENION CYNLLUNIO ETC.

1231. Mae llawer o statudau sy'n ymwneud â thir yn cynnwys pwerau sy'n galluogi awdurdodau cyhoeddus i gaffael tir at ddibenion penodol (er enghraifft, meysydd awyr, coedwigaeth neu garthffosiaeth). Mae'r Rhan hon yn ailddatgan Rhan 9 o Ddeddf 1990 ac yn darparu pwerau mwy cyffredinol ar gyfer cyrff cyhoeddus penodol i gaffael neu gyfeddu tir at amrywiaeth o ddibenion. Mae'n galluogi awdurdodau lleol (gan gynnwys awdurdodau parciau cenedlaethol a byrddau cydgynllunio) i gaffael, naill ai drwy gytundeb neu'n orfodol, unrhyw dir sy'n ofynnol ar gyfer cynllunio eu hardal yn briodol neu i gyfeddu tir at wahanol ddibenion. Mae hefyd yn galluogi Gweinidogion Cymru i gaffael tir yn orfodol ar gyfer gwasanaethau cyhoeddus ac ar gyfer cynllunio'r ardal yn briodol.

1232. Fel gyda'r mwyafrif o statudau sy'n rhoi pwerau i gaffael tir, nid yw'r Ddeddf hon yn darparu ar gyfer mecanwaith caffael y mae Deddf 1965 a Deddf Caffael Tir 1981 (p. 67) ('Deddf 1981') yn ymdrin ag ef yn bennaf. Asesu digolledia am y tir a gaffaelwyd yw testun Deddf 1961.

1233. Yn y Rhan hon o'r Ddeddf:

a. mae "tir" yn cynnwys unrhyw fuddiant mewn tir neu hawl dros dir (adran 408(1));

b. mae "comin" yn cynnwys:
   i. comin neu faes tref neu bentref (a gofrestrwyd o dan Ddeddf Cofrestru Tir Comin 1965 (p. 64) neu Ddeddf Tiroedd Comin 2006 (p. 26)); a
   ii. tir sy'n ddarostyngedig i'w gau o dan y Deddfau Cau Tir (gweler adran 279(2));

c. ystyr "rhandir" yw rhandir sydd wedi ei ragnodi'n rhandir tanwydd neu'n rhandir gardd gae o dan un o'r Deddfau Cau Tir (gweler adran 279(2)); a

d. ystyr "man agored" yw:
   i. tir sydd wedi ei osod allan fel gardd;
   ii. tir a ddefnyddir ar gyfer hamdden gan y cyhoedd; a
   iii. claddfeydd nas defnyddir (adran 408(1)).

Adran 262 – Caffael tir drwy gytundeb at ddibenion cynllunio

1234. Yn y rhan fwyaf o achosion, mae awdurdodau cyhoeddus yn caffael tir drwy gytundeb, er bod ganddynt y gallu i arfer pwerau prynu gorfodol os oes angen. Mae is-adran (1) yn galluogi awdurdod lleol perthnasol (hynny yw, cyngor sir, cyngor bwrdeistref sirol, awdurdod parc cenedlaethol neu fwrdd cydgynllunio: gweler is-adran (8)) i gaffael unrhyw dir drwy gytundeb, ar yr amod y bodlonir amodau penodol.

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. O dan is-adrannau (2) a (3), ni chaiff awdurdod gaffael tir (y prif dir) oni bai ei fod yn ystyried:

a. y byddai gwneud hynny yn hwyluso datblygiad neu welliant – naill ai ar y prif dir neu mewn perthynas ag ef, ac a gyflawnir naill ai gan yr awdurdod ei hun neu gan rywun arall – sy'n debygol o gyfrannu at wella llesiant economaidd, cymdeithasol, amgylcheddol neu ddiwylliannol ei ardal; neu

b. bod y tir yn ofynnol at ddiben (pa un a yw'n cael ei gyflawni gan yr awdurdod ei hun neu gan rhywun arall) sy'n angenrheidiol ar gyfer cynllunio ei ardal yn briodol.

1236. O dan is-adran (4)(a), caiff yr awdurdod hefyd gaffael drwy gytundeb dir arall sy'n cyffinio sy'n ofynnol i hwyluso datblygiad y prif dir hwnnw – unwaith eto, naill ai gan yr awdurdod ei hun neu gan rywun arall. Byddai hyn yn galluogi, er enghraifft, gaffael llain o eiddo sy'n cyffinio â'r prif dir, sydd ei angen i alluogi adeiladu wal gydrannol neu ffordd fynediad.

1237. Mae is-adran (4)(b) yn gymwys pan fo'r prif dir yn gomin, yn fan agored neu'n rhandir. Mewn achos o'r fath, caiff yr awdurdod gaffael tir arall y caniateir ei ddefnyddio yn gyfnewid am y prif dir. Ac o dan is-adran (6), pan fo awdurdod yn cyfeddu at ryw ddiben arall (o dan adran 264) dir sy'n gomin neu'n rhandir, caiff gaffael tir i'w roi yn gyfnewid am y tir a gyfeddir.

1238. Mae is-adran (7) yn cymhwyso (i'r graddau y bo'n berthnasol) Ran 1 o Ddeddf 1965 (ac eithrio adrannau 4 i 8, 10 ac 31) i gaffael tir o dan yr adran hon. Mae hynny'n darparu ar gyfer manylion y broses gaffael. Mae'n galluogi caffael tir oddi wrth – ymhlith eraill – berchnogion rhydd-ddaliadol (gan gynnwys corfforaethau), tenantiaid oes, ac ymddiriedolaethau elusennol, ac mae'n ymdrin â chaffael tir sy'n ddarostyngedig i forgais neu rent-dal. Mae'n darparu gweithdrefn i alluogi'r awdurdod i fynd ar y tir y mae wedi ei gaffael. Mae hefyd yn galluogi trosglwyddo tir pan fo perchennog yn methu â chydweithredu yn dilyn talu'r pris y cytunwyd arno.

Adran 263 – Caffael tir yn orfodol at ddibenion cynllunio

1239. Caiff awdurdod lleol perthnasol (fel y'i diffinnir yn adran 262(8)) gaffael unrhyw dir yn ei ardal gan ddefnyddio pwerau gorfodol o dan yr adran hon os oes ganddo'r pŵer i gaffael y tir drwy gytundeb o dan adran 262. Fodd bynnag, er mwyn cyflawni caffaeliad o'r fath bydd angen i'r gorchymyn prynu gorfodol (GPG) gael ei awdurdodi gan Weinidogion Cymru, ac ni fydd hynny'n bosibl oni fyddant wedi eu bodloni bod achos cymhellol er budd y cyhoedd dros ddefnyddio pwerau gorfodol (is-adrannau (1)(b) a (2)).

1240. Caiff awdurdod gaffael yn orfodol fuddiant yn nhir y Goron, ond dim ond os yw'r buddiant yn cael ei ddal gan rywun heblaw'r Goron, a dim ond os yw awdurdod priodol y Goron yn rhoi ei gydsyniad (is-adran (3)). Am y diffiniadau o "tir y Goron" ac "awdurdod priodol y Goron" gweler adran 401.

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. O dan adran 13 o Ddeddf Llywodraeth Leol (Darpariaethau Amrywiol) 1976 (p. 57), gall awdurdod lleol y gellir ei awdurdodi i gaffael tir o dan yr adran hon hefyd gael ei awdurdodi i gaffael hawliau newydd dros y tir (hynny yw, hawliau sy'n dod i fodolaeth ar ôl dyddiad y GPG perthnasol). Mae is-adran (4) yn cymhwyso'r un egwyddor i achosion pan fo tir yn cael ei gaffael o dan yr adran hon gan fwrdd cydgynllunio. Mae is-adran (5) yn tynnu sylw at baragraff 1(2) o Atodlen 8 i Ddeddf 1995 sy'n cymhwyso'r un egwyddor i gaffael tir gan awdurdod parc cenedlaethol.

1242. Pan fo GPG yn cael ei wneud gan awdurdod o dan yr adran hon, rhaid iddo gael ei gyflwyno i'w gymeradwyo gan Weinidogion Cymru. Ar ôl ymgynghori â'r holl awdurdodau perthnasol ar gyfer yr ardal y mae'r tir a gaffaelir ynddi, caiff Gweinidogion Cymru awdurdodi awdurdod arall i gaffael y tir (is-adrannau (6) a (7)). Er enghraifft, pan fo GPG drafft yn cael ei wneud gan awdurdod parc cenedlaethol, cânt awdurdodi cyngor sir yn awdurdod caffael yn lle'r awdurdod parc, ar yr amod eu bod wedi ymgynghori â'r awdurdod parc a'r cyngor sir.

1243. Mae is-adran (8) yn cymhwyso Deddf 1981 i gaffael tir o dan yr adran hon. Mae'r Ddeddf honno yn darparu y bydd y caffaeliad yn cael ei awdurdodi drwy wneud GPG y mae rhaid i'r awdurdod roi cyhoeddusrwydd iddo ac i Weinidogion Cymru ei gadarnhau, os oes angen yn dilyn ymchwiliad. Pan fo'r GPG yn ymwneud â thir sy'n fan agored, yn rhandir neu'n gomin, neu sy'n perthyn i'r Ymddiriedolaeth Genedlaethol, gall fod angen sicrhau'r gymeradwyaeth drwy weithdrefn arbennig Senedd Cymru a nodir yn rheolau sefydlog y Senedd neu weithdrefn arbennig Senedd y Deyrnas Unedig. Caniateir herio GPG yn yr Uchel Lys. Bydd digolledia am gaffaeliad yn cael ei asesu yn unol â Deddf 1961 (gan gynnwys mewn achosion priodol adran 14A o'r Ddeddf honno sy'n datgymhwyso rhai caniatadau cynllunio penodol).

1244. Pan gyflwynir GPG i Weinidogion Cymru i'w gymeradwyo o dan Ran 2 o Deddf 1981, bydd cyfle i'w wrthwynebu, ond o dan is-adran (9) caiff Gweinidogion Cymru anwybyddu gwrthwynebiad pan fo mewn gwirionedd yn wrthwynebiad i'r cynllun datblygu sy'n ymwneud yn benodol â datblygiad y tir sy'n cael ei gaffael.

1245. Ar ôl i Weinidogion Cymru gymeradwyo GPG, cynhelir y caffaeliad o dan Deddf 1965.

Adran 264 – Cyfeddu tir sy'n ffurfio rhan o dir comin neu randir at ddiben arall

1246. Pan fo awdurdod lleol (fel y'i diffinnir yn adran 408(1)) yn dal tir sy'n gomin neu'n rhandir neu sy'n ffurfio rhan o gomin neu randir (fel y'u diffinnir yn adran 279(2)), caiff yr awdurdod wneud gorchymyn, os y'i cadarnheir gan Weinidogion Cymru, yn cyfeddu'r tir hwnnw at unrhyw ddiben arall y caiff yr awdurdod gaffael tir ato (naill ai o dan y Ddeddf hon neu unrhyw Ddeddf arall). Er enghraifft, gallai awdurdod benderfynu cyfeddu rhan o gomin cofrestredig at ddiben adeiladu tai – neu er mwyn creu ffordd i ddarparu mynediad i dai sydd i'w hadeiladu ar lain gyfagos.

1247. Yn rhinwedd is-adran (3), gall fod rhaid i orchymyn sy'n ymwneud ag unrhyw dir sy'n gomin, yn rhandir neu'n fan agored fod yn ddarostyngedig i weithdrefn arbennig Senedd Cymru o dan adran 19 o Deddf 1981 mewn amgylchiadau penodol.

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. Mae is-adran (4) yn gymwys pan fo tir wedi ei gaffael yn wreiddiol gan yr awdurdod o dan ddeddfiad yn ymgorffori'r Deddfau Cymalau Tiroedd (hynny yw, Deddf Cydgrynhoi Cymalau Tiroedd 1845 (p. 18) a Deddf Diwygio Deddfau Cydgrynhoi Cymalau Tiroedd 1860 (p. 106)), ac unrhyw Ddeddfau sy'n diwygio'r Deddfau hynny (is-adran (7)). Pan fydd tir o'r fath wedi ei gyfeddu o dan yr adran hon, a bod gwaith wedi ei gynnal arno, fe'i trinnir fel pe bai wedi ei awdurdodi gan y Ddeddf a awdurdododd y caffaeliad. Caiff hyn ganiatáu i hawliad am ddigolledia am effaith niweidiol gael ei wneud a'i setlo, o dan adran 68 o Deddf Cydgrynhoi Cymalau Tiroedd 1845 neu adran 10 o Ddeddf 1965.

1249. Pan fo tir wedi ei gyfeddu gan awdurdod lleol o dan yr adran hon, gall fod angen adlewyrchu hyn drwy addasu cyfrifon yr awdurdod.

1250. Mae is-adran (5)(a) yn gymwys pan:

a. bo'r cyfeddiant gan awdurdod nad yw Rhan 2 o Ddeddf Cynllunio Gwlad a Thref 1959 (p. 53) ('Deddf 1959') yn gymwys iddo; a

b. oedd y tir yn cael ei ddal yn union cyn y cyfeddiant at ddiben arfer swyddogaeth a gynorthwyir gan grant neu fe'i defnyddir ar gyfer swyddogaeth o'r fath yn y dyfodol.

Yn y naill achos neu'r llall, bydd yr addasiad fel y'i cyfarwyddir gan Weinidogion Cymru (is-adrannau (5)(a) a (6)).

1251. Mewn unrhyw achos arall, gwneir yr addasiad fel y bo'n briodol o dan yr holl amgylchiadau, fel sy'n ofynnol gan adran 24(1) o Ddeddf 1959 (is-adran (5)(b)).

Adran 265 – Tir y mae adrannau 266 i 268 yn gymwys iddo

1252. Pan fo awdurdod wedi caffael neu gyfeddu tir i'w ddefnyddio at ddibenion cynllunio, a'i fod yn ei ddal o hyd at y dibenion hynny, caiff wedyn:

a. cyfeddu'r tir at ryw ddiben arall, mwy penodol a awdurdodir gan ddeddfwriaeth (o dan adran 266);

b. ei waredu i drydydd parti er mwyn sicrhau ei fod yn cael ei ddefnyddio orau ar gyfer cynllunio ardal yr awdurdod yn briodol (o dan adran 267); neu

c. datblygu neu ddefnyddio'r tir ei hun (o dan adran 268).

1253. Mae is-adran (2) yn darparu bod y darpariaethau hynny yn cael effaith yn lle adran 122 o Ddeddf 1972, a fyddai fel arall yn llywodraethu cyfeddu tir gan awdurdod lleol, ac adran 123 o'r Ddeddf honno, a fyddai fel arall yn llywodraethu gwaredu tir gan awdurdod.

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.

Adran 266 – Cyfeddu tir a ddelir at ddibenion cynllunio

1254. O dan yr adran hon, pan fo awdurdod wedi caffael neu gyfeddu tir i'w ddefnyddio at ddibenion cynllunio, a'i fod yn ei ddal o hyd at y dibenion hynny, caiff wedyn gyfeddu'r tir at unrhyw ddiben arall, mwy penodol, y byddai ganddo hawlogaeth i gaffael tir ato o dan unrhyw ddeddfwriaeth – er enghraifft, i adeiladu tai neu osod allan fan agored (is-adran (1)).

1255. Fodd bynnag, ni chaiff yr awdurdod gyfeddu tir o dan yr adran hon at unrhyw ddiben y gallai gaffael tir ato o dan y Rhan hon. Yn yr un modd, ni chaiff yr awdurdod gyfeddu o dan yr adran hon adeilad rhestredig na thir cysylltiedig er mwyn sicrhau ei fod yn cael ei ddiogelu, ei reolaethu neu ei reoli, neu i hwyluso mynediad iddo. Rhaid gwneud hynny drwy gaffael yr adeilad a'r tir cysylltiedig naill ai drwy gytundeb, o dan adran 136 o Ddeddf 2023, neu yn orfodol o dan adran 137 o'r Ddeddf honno yn dilyn cyflwyno hysbysiad atgyweirio o dan adran 138 o'r Ddeddf honno.

1256. Pan fo'r tir o dan sylw yn gomin neu'n ffurfio rhan o gomin, neu ei fod ar ryw adeg wedi bod yn gomin neu wedi ffurfio rhan o gomin, a bo'r awdurdod yn ei reoli yn unol â Deddf leol, ni chaiff yr awdurdod ei gyfeddu heb gydsyniad Gweinidogion Cymru. Caiff Gweinidogion Cymru roi cydsyniad o'r fath naill ai mewn perthynas ag achos penodol neu mewn perthynas ag unrhyw gyfeddiant mewn categori penodol, ac ag amodau neu heb amodau (is-adrannau (2) a (3)).

1257. Pan fo'r tir sydd i'w gyfeddu yn rhan o unrhyw fan agored, rhaid i'r awdurdod yn gyntaf roi cyhoeddusrwydd i'r cynnig mewn papur newydd sy'n cylchredeg yn yr ardal a rhaid iddo ystyried unrhyw wrthwynebiadau sy'n codi (is-adran (4)).

1258. Mae is-adran (5) yn cymhwyso adran 264(4) i dir a gyfeddir o dan yr adran hon (gan drin gwaith a gynhelir ar y tir ar ôl ei gyfeddu fel gwaith awdurdodedig). Pan gyfeddir tir o dan yr adran hon, gall fod angen adlewyrchu hyn drwy addasu cyfrifon yr awdurdod, fel gyda chyfeddiant o dan adran 264 (5) a (6) a gymhwysir gan is-adran (5).

Adran 267 – Gwaredu tir a ddelir at ddibenion cynllunio

1259. Yr ail opsiwn sydd ar gael pan fo awdurdod lleol wedi caffael neu gyfeddu tir i'w ddefnyddio at ddibenion cynllunio, a'i fod yn ei ddal o hyd at y dibenion hynny, yw iddo waredu'r tir o dan yr adran hon i drydydd parti (megis datblygwr), i sicrhau:

a. y defnydd gorau o'r tir hwnnw neu thir arall (ac adeiladau neu waith cysylltiedig); neu

b. y codir adeiladau neu waith ar y tir hwnnw y mae eu hangen neu ei angen ar gyfer cynllunio'r ardal yn briodol.

1260. Mae gwaredu tir at y diben hwn yn cynnwys ei waredu drwy ei werthu neu ei gyfnewid, neu roi les ohono, neu greu hawl drosto megis hawddfraint. Ond nid yw'n cynnwys ei waredu drwy gyfeddiant, rhodd neu forgais (gweler y diffiniad o "gwaredu" yn adran 408(1)). Mae hyn yn galluogi, er enghraifft, awdurdod i grynhoi tir ar gyfer cynllun adfywio canol tref gan ddefnyddio ei bwerau o dan y Ddeddf hon ac yna ei drosglwyddo i ddatblygwr i gynnal y gwaith angenrheidiol.

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. Ni chaiff yr awdurdod waredu tir heb gydsyniad Gweinidogion Cymru pan fo:

a. y tir yn gomin neu'n ffurfio rhan o gomin, neu ar ryw adeg wedi bod yn gomin neu wedi ffurfio rhan o gomin a bo'r awdurdod yn ei reoli yn unol â Deddf leol (is-adrannau (2) a (3)); neu

b. y gwarediant i fod am bris sy'n llai na'r gwerth llawn ar y farchnad, ac eithrio pan fo'r gwarediant yn rhoi les am gyfnod o saith mlynedd neu lai, neu'n aseinio les sydd â llai na saith mlynedd yn weddill (is-adrannau (2) a (4)).

1262. Pan fo'r tir sydd i'w waredu yn rhan o unrhyw fan agored, rhaid i'r awdurdod yn gyntaf roi cyhoeddusrwydd i'r cynnig mewn papur newydd lleol sy'n cylchredeg yn yr ardal a rhaid iddo ystyried unrhyw wrthwynebiadau sy'n codi (is-adran (5)).

1263. Mae is-adran (6) yn gymwys pan fo tir wedi ei gaffael neu ei gyfeddu:

a. er mwyn hwyluso datblygiad neu welliant – naill ai ar neu mewn perthynas â'r tir ei hun (y prif dir) neu ar dir sy'n cyffinio – sy'n debygol o gyfrannu at wella llesiant economaidd, cymdeithasol, amgylcheddol neu ddiwylliannol ei ardal; neu

b. i'w roi yn gyfnewid am y prif dir.

1264. Wrth waredu tir o'r fath o dan yr adran hon, rhaid i'r awdurdod, i'r graddau y bo'n ymarferol, wneud darpariaeth ar gyfer y rhai a oedd yn byw neu'n cynnal busnes ar dir o'r fath, sy'n dymuno aros yno ac sy'n fodlon cydymffurfio â chynigion yr awdurdod ynghylch dyfodol y tir. Rhaid rhoi cyfle i bersonau o'r fath i sicrhau llety ar y tir sy'n addas i'w gofynion rhesymol, gan ystyried y pris y caffaelwyd eu tir oddi wrthynt.

Adran 268 – Datblygiad tir a ddelir at ddibenion cynllunio a defnydd ohono

1265. Y trydydd opsiwn sydd ar gael pan fo awdurdod wedi caffael neu gyfeddu tir i'w ddefnyddio at ddibenion cynllunio yw iddo ddatblygu neu ddefnyddio'r tir ei hun. O dan yr adran hon, caiff atgyweirio, cynnal a chadw ac yswirio'r adeiladau neu'r gwaith ar y tir a chaiff godi adeiladau newydd neu gynnal gwaith arall ar y tir, ar yr amod y cydymffurfir ag unrhyw ofynion cyfreithiol eraill (is-adrannau (1) a (2)(b)).

1266. Ni all awdurdod lleol ddibynnu ar y pwerau yn yr adran hon os gellid dibynnu ar bwerau o dan ddeddfwriaeth arall. Mae hyn yn sicrhau nad yw amodau a osodir ar arfer y pwerau eraill hynny yn cael eu trechu (is-adran (2)(a)). Fodd bynnag, caiff awdurdod ddefnyddio'r adran hon i'w alluogi i ddarparu parcio oddi ar y stryd, datblygu tir mewn ardaloedd a gynorthwyir, ac ymdrin ag adeiladau rhestredig – y gellid ei wneud hefyd o dan ddeddfwriaeth arall – neu i gynnal gwaith a awdurdodir o dan y Rhan hon o'r Ddeddf (is-adran (3)).

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)).

Adran 269 – Pŵer awdurdod lleol i gael meddiant o anheddau a osodir o dan denantiaethau penodol

1267. Pan fo awdurdod wedi caffael neu gyfeddu at ddibenion cynllunio annedd sy'n ddarostyngedig i denantiaeth o dan Ddeddf Rhenti 1977 (p. 42) neu Ran 1 o Ddeddf Tai 1988 (p. 50), gallai'r cyfyngiadau sydd fel arfer yn gymwys o dan y Deddfau hynny ei atal rhag cael meddiant ohoni. Fodd bynnag, os yw Gweinidogion Cymru yn ardystio bod angen cael meddiant o'r annedd ar unwaith, er mwyn i'r awdurdod gyflawni'r cynigion y'i caffaelwyd ar eu cyfer, mae'r adran hon yn galluogi rhoi cyfyngiadau o'r fath o'r neilltu.

Adran 270 – Pŵer Gweinidogion Cymru i sefydlu cyd-gorff i ddal tir a gaffaelir at ddibenion cynllunio

1268. Pan fo tir wedi ei gaffael at ddibenion cynllunio gan awdurdod lleol perthnasol (fel y'i diffinnir yn adran 262), pa un ai drwy gytundeb neu o dan bwerau gorfodol, caiff rheoliadau ddarparu iddo gael ei drosglwyddo i gyd-gorff sy'n cynnwys yr awdurdod hwnnw ac unrhyw awdurdod lleol arall (is-adran (1)).

1269. Caiff Gweinidogion Cymru wneud rheoliadau o'r fath, ond dim ond ar ôl ymgynghori â'r holl awdurdodau o dan sylw (is-adran (2)). Caiff y rheoliadau ddarparu i'r cyd-gorff fod yn gorff corfforedig, a chânt wneud darpariaethau eraill o ran ei gyfansoddiad a'i swyddogaethau. Cânt hefyd ddarparu i'r corff gael y pwerau a fyddai gan yr awdurdod lleol perthnasol o dan y Rhan hon neu o dan Ddeddf 2023, gan gynnwys o ran defnyddio a gwaredu tir (is-adran (3)).

Adran 271 – Caffael tir yn orfodol gan Weinidogion Cymru

1270. Caiff Gweinidogion Cymru gaffael unrhyw dir yng Nghymru gan ddefnyddio pwerau gorfodol o dan is-adran (1)(a), os yw'r tir yn ofynnol ar gyfer y gwasanaeth cyhoeddus. Mae hyn yn cynnwys gwasanaeth llywodraeth y DU, gwasanaeth Gwladwriaeth arall, neu wasanaeth sefydliad, swyddfa neu asiantaeth ryngwladol (megis Sefydliad Iechyd y Byd). Cânt hefyd gaffael tir o dan is-adran (1)(b) os yw i gael ei ddefnyddio ar gyfer y gwasanaeth cyhoeddus ac ar gyfer cynllunio'r ardal yn briodol neu i sicrhau datblygiad gorau'r tir neu'r defnydd gorau ohono.

1271. Pan fo Gweinidogion Cymru wedi caffael tir o dan is-adran (1), a elwir "y prif dir", cânt hefyd gaffael tir arall sy'n ofynnol:

a. ar gyfer cynllunio'r ardal o dan sylw yn briodol; neu

b. i sicrhau'r defnydd gorau neu fwyaf economaidd o'r prif dir hwnnw a datblygiad gorau neu fwyaf economaidd y prif dir (is-adran (3)(a) a (b)).

Yn rhinwedd y Ddeddf Darpariaethau Canlyniadol, mae hyn hefyd yn gymwys pan fônt yn dal o hyd dir a gaffaelwyd o dan pwerau cyfatebol mewn deddfwriaeth gynllunio gynharach.

1272. O dan is-adran (3)(c), pan fo'r prif dir yn ffurfio rhan o gomin, man agored neu randir, cânt gaffael tir arall y caniateir ei ddefnyddio at y diben hwnnw, yn gyfnewid am y prif dir.

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. Caiff Gweinidogion Cymru gaffael yn orfodol fuddiant yn nhir y Goron, o dan is-adran (2), ond dim ond os yw'r buddiant yn cael ei ddal gan rywun heblaw'r Goron, a dim ond os yw awdurdod priodol y Goron yn rhoi ei gydsyniad. Am y diffiniad o "tir y Goron" ac "awdurdod priodol y Goron" gweler adran 401.

1274. O dan is-adran (4) cânt gaffael hawliau newydd dros y tir sy'n cael ei gaffael (hynny yw, hawliau sy'n dod i fodolaeth ar ôl dyddiad y GPG perthnasol).

1275. Mae is-adran (5) yn cymhwyso Deddf 1981 i gaffael tir o dan yr adran hon, fel gyda chaffael tir gan awdurdod lleol o dan adran 263. Pan fo Gweinidogion Cymru yn llunio GPG drafft o dan yr adran hon, o dan Atodlen 1 i Ddeddf 1981, bydd cyfle i wneud gwrthwynebiadau, ond o dan is-adran (6) cânt anwybyddu gwrthwynebiad pan fo'n wrthwynebiad i'r cynllun datblygu sy'n ymwneud yn benodol â datblygiad y tir a gaffaelir.

1276. Bydd Deddf 1965 hefyd yn gymwys i gaffael tir o dan yr adran hon, ac mae is-adran (7) yn darparu y bydd cyfeiriadau at gyflawni'r gwaith yn y Ddeddf honno (er enghraifft, yn adrannau 5 a 6 o Ddeddf 1965) yn cynnwys codi adeiladau ar y tir, neu adeiladu neu gynnal gwaith arno, ar ran Gweinidogion Cymru at y dibenion y caffaelir y tir atynt.

Adran 272 – Gwaredu tir a gaffaelwyd o dan adran 271

1277. O dan is-adran (1), caiff Gweinidogion Cymru waredu unrhyw dir a gaffaelwyd ganddynt o dan adran 271. O ganlyniad i'r Ddeddf Darpariaethau Canlyniadol mae hynny yn cynnwys unrhyw dir a gaffaelwyd ganddynt o dan ddeddfwriaeth gynllunio gynharach ac y maent yn ei ddal o hyd. Caniateir gwaredu'r tir i unrhyw berson y maent yn ystyried ei fod yn briodol a chaiff hynny fod er mwyn sicrhau bod y tir yn cael ei ddefnyddio at y dibenion y'i caffaelwyd atynt neu fel arall (is-adrannau (2) a (3)).

Adran 273 – Dod â hawliau sy'n ymwneud â thir a gaffaelwyd yn orfodol o dan y Rhan hon i ben

1278. Yn dilyn caffael tir yn orfodol gan awdurdod lleol o dan adran 263 neu gan Weinidogion Cymru o dan adran 271, y rheol gyffredinol yw bod pob hawl tramwy preifat dros y tir yn cael ei diddymu yn awtomatig, yn rhinwedd is-adran (1)(a). Er enghraifft, os yw awdurdod yn caffael y rhydd-ddaliad dros ddarn o dir, mae unrhyw hawliau tramwy preifat ar draws y tir hwnnw yn peidio â chael effaith. Ond nid yw hyn yn gymwys os yw'r awdurdod caffael yn cytuno â'r person y mae'r hawl wedi ei breinio ynddo y dylai'r hawl aros yn ei lle, neu y dylid ei hamrywio (is-adran (3)).

1279. Dylid darllen is-adran (1) ochr yn ochr â'r darpariaethau ym Mhennod 2 o Ran 11, o ran dod â hawliau tramwy cyhoeddus dros dir a gaffaelwyd neu a gyfeddwyd o dan y Rhan hon i ben.

1280. Yn yr un modd, o dan is-adrannau (1)(b) ac (c), bydd caffael tir yn orfodol o dan adrannau 263 neu 271 yn drech yn gyffredinol nag unrhyw hawliau i osod, cadw neu gynnal a chadw cyfarpar ar y tir, a bydd gan yr awdurdod caffael hawlogaeth i unrhyw gyfarpar ar y tir. Mae hyn hefyd yn ddarostyngedig i unrhyw gytundeb rhwng yr awdurdod caffael a'r person y mae'r hawl wedi ei breinio ynddo.

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. Fodd bynnag, nid yw darpariaethau cyffredinol is-adran (1) yn gymwys i unrhyw hawliau sydd gan ymgymerwyr statudol na gweithredwyr rhwydwaith dros y tir sy'n cael ei gaffael at ddiben cynnal eu hymgymeriad, nac i unrhyw gyfarpar sydd ganddynt ar y tir (is-adran (2)(a) a (b)). Ymdrinnir â hwy yn unol ag adrannau 314 a 315, yn Rhan 12. Caiff yr awdurdod caffael (naill ai'r awdurdod lleol neu Weinidogion Cymru) gyfarwyddo hefyd nad yw darpariaethau is-adran (1) yn gymwys i unrhyw hawliau eraill nac unrhyw gyfarpar arall a bennir (is-adran (2)(c)).

1282. Pan fo unrhyw berson yn dioddef colled o ganlyniad i ddiddymu hawl neu drosglwyddo cyfarpar o dan yr adran, rhaid i'r awdurdod caffael dalu digolledi ad, sydd i'w benderfynu (os na chytunir arno) gan yr Uwch Dribiwnlys o dan Ddeddf 1961 (is-adrannau (4) a (5), ac adran 392).

Adran 274 – Ystyr "caffaeliad perthnasol" a "cyfeddiant perthnasol"

1283. Mae adrannau 275 i 277 yn gymwys pan fo tir mewn categorïau penodol – cominoedd, mannau agored a rhandiroedd (fel y'u diffinnir yn adrannau 279(2) a 408(1)), claddfeydd, a thir sy'n gysylltiedig ag adeiladau a ddefnyddir ar gyfer addoliad cyhoeddus – yn ddarostyngedig i gaffaeliad perthnasol neu gyfeddiant perthnasol. Mae'r adran hon yn egluro'r hyn a olygir gan y ddau derm hynny. Mae hefyd yn gymwys gydag addasiadau i adran 314 (hawliau ymgymerwyr statudol a gweithredwyr rhwydwaith dros dir sydd wedi bod yn destun caffaeliad perthnasol a chyfeddiant perthnasol - gweler adran 314(7)).

1284. Yn rhinwedd is-adran (1), caffaeliad perthnasol yw pan fo:

a. tir yn cael ei gaffael gan Weinidogion Cymru neu awdurdod lleol:
   i. o dan y Rhan hon neu Ran 11 o'r Ddeddf;
   ii. o dan Bennod 5 o Ran 3 o Ddeddf 2023; neu
   iii. yn orfodol o dan unrhyw ddeddfiad arall ac yn dir yng Nghymru;

b. tir yng Nghymru yn cael ei gaffael yn orfodol o dan unrhyw ddeddfiad – ac eithrio Ran 9 neu 10 o Ddeddf 1990 neu Bennod 5 o Ran 1 o Ddeddf Cynllunio (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) 1990 – gan awdurdod lleol yn Lloegr (gweler is-adran (5) am hyn) neu gan adran o'r llywodraeth (ac eithrio Gweinidogion Cymru); neu

c. tir yng Nghymru yn cael ei gaffael yn orfodol o dan unrhyw ddeddfiad gan ymgymerwr statudol.

1285. Yn rhinwedd is-adran (2), cyfeddiant perthnasol yw pan fo'r tir o dan sylw yn cael ei gyfeddu gan awdurdod lleol at ddibenion cynllunio.

1286. Mae is-adran (3) yn nodi y cymhwysir adrannau 275 i 277 gan y deddfiadau eraill a restrir yn yr is-adran, pan fo tir yn rhai o'r categorïau yn destun mathau penodol eraill o gaffaeliad, neu'n cael ei ddal at ddibenion y GIG.

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.

Adran 275 – Datblygiad tiroedd comin, mannau agored a rhandiroedd a defnydd ohonynt

Adran 276 – Datblygiad claddfeydd a defnydd ohonynt

1287. Mae adran 275 yn gymwys pan fu caffaeliad perthnasol neu gyfeddiant perthnasol o dir sy'n gomin, yn fan agored neu'n rhandir (fe y'u diffinnir yn adrannau 279(2) a 408(1)), neu sy'n ffurfio rhan o dir o'r fath. Mae adran 276 yn gymwys pan fu caffaeliad perthnasol neu gyfeddiant perthnasol o dir sy'n gladdfa neu sy'n ffurfio rhan o gladdfa.

1288. Y rheol gyffredinol (yn adrannau 275(1) a 276(1)) yw, pan fo tir o'r fath wedi ei gaffael gan y llywodraeth, caniateir iddo gael ei ddefnyddio wedyn at y diben y caffaelwyd y tir ato. Pan gafodd ei gaffael gan unrhyw awdurdod arall, caniateir iddo gael ei ddefnyddio mewn unrhyw ffordd, ar yr amod nad yw'r defnydd hwnnw yn dor rheolaeth gynllunio o dan Ran 4 (adrannau 275(3)(a) a 276(4)(a)).

1289. Yn rhinwedd adrannau 275(2) a 276(2), mae hyn yn gymwys er gwaethaf cyfyngiadau statudol a fyddai fel arall yn gymwys mewn ffordd a fyddai'n cyfyngu ar y defnydd o'r categori hwnnw o dir neu ei ddatblygiad. Mae'n trechu, er enghraifft, y cyfyngiadau yn erbyn defnyddio meysydd pentref o dan adran 12 o Ddeddf Cau Tir 1857 (p. 31) neu adran 29 o Ddeddf Tiroedd Comin 1876 (p. 56). Mae hefyd yn trechu rhwymedigaethau neu gyfyngiadau a fyddai'n gymwys fel arall (naill ai o dan gyfraith eglwysig neu fel arall) mewn perthynas â chladdfeydd, a chyfyngiadau penodol sy'n ymwneud â'r tir o dan sylw yn unig.

1290. Fodd bynnag, nid yw hyn yn awdurdodi unrhyw ddefnydd o'r tir nac unrhyw ddatblygiad y tir a fyddai'n torri'r gyfraith am unrhyw reswm arall, megis gweithgaredd a fyddai'n niwsans yn ôl y gyfraith gyffredin. Nid yw ychwaith yn awdurdodi unrhyw gorff corfforedig i weithredu mewn ffordd a fyddai'n torri ei gyfansoddiad (adrannau 175(3) a 276(4)).

1291. Pan fo'r tir o dan sylw yn gladdfa, ni chaniateir ei ailddefnyddio yn unol ag adran 276(1) ond unwaith y cydymffurfir â gofynion rheoliadau ynghylch symud ymaith weddillion dynol a'u hailgladdu a gwaredu henebion, er mwyn sicrhau yr ymdrinnir â materion o'r fath yn briodol ac yn sensitif (adran 276(3)). Mae rheoliadau o'r fath yn ddarostyngedig i adran 278.

Adran 277 – Datblygiad tir sy'n gysylltiedig ag addoliad crefyddol heblaw claddfeydd a defnydd ohono

1292. Mae'r adran hon yn gymwys pan fu caffaeliad perthnasol neu gyfeddiant perthnasol o dir arall sy'n gysylltiedig ag addoliad crefyddol, hynny yw:

a. tir sydd wedi ei gysegru ar gyfer addoliad crefyddol, yn unol â defodau yr Eglwys yng Nghymru neu Eglwys Loegr; neu

b. tir arall sy'n cynnwys adeilad a ddefnyddir (neu a ddefnyddiwyd yn flaenorol) ar gyfer addoliad crefyddol, gan unrhyw enwad neu grefydd, neu safle eglwys o'r fath neu adeilad o'r fath.

Fodd bynnag, nid yw'n gymwys i gladdfa (ond gweler adran 276).

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. O dan is-adran (1), pan fo tir o'r fath wedi ei gaffael gan y llywodraeth, caniateir iddo wedyn gael ei ddefnyddio at y diben y caffaelwyd y tir ato. Pan fo wedi ei gaffael gan unrhyw awdurdod arall, caniateir iddo gael ei ddefnyddio mewn unrhyw ffordd. Ond, yn y naill achos neu'r llall, nid yw'n awdurdodi unrhyw ddefnydd o dir nac unrhyw ddatblygiad tir a fyddai'n dor rheolaeth gynllunio o dan Ran 4 nac yn torri'r gyfraith am unrhyw reswm arall. Nid yw ychwaith yn awdurdodi unrhyw gorff corfforedig i weithredu mewn ffordd a fyddai'n torri ei gyfansoddiad (is-adran (6)).

1294. Yn rhinwedd is-adran (3), gellir datblygu a defnyddio'r tir o dan is-adran (1) er gwaethaf unrhyw rwymedigaethau neu gyfyngiadau a fyddai fel arall yn gymwys (naill ai o dan gyfraith eglwysig neu fel arall) mewn perthynas â chladdfeydd nas defnyddir, a chyfyngiadau penodol sy'n ymwneud â'r tir o dan sylw yn unig.

1295. Fodd bynnag, rhaid i ddatblygiad tir o'r fath neu'r defnydd ohono gydymffurfio â rheoliadau o dan is-adran (4) o ran symud ymaith weddillion dynol a'u hailgladdu, a gwaredu henebion, gosodiadau a dodrefn, er mwyn sicrhau yr ymdrinnir â'r materion hynny'n briodol ac yn sensitif. Caiff rheoliadau o'r fath hefyd wahardd neu gyfyngu ar ddefnyddio neu ddatblygu'r tir yn y dyfodol cyhyd ag y bydd eglwys neu adeilad arall a ddefnyddir (neu a ddefnyddiwyd yn flaenorol) ar gyfer addoliad crefyddol, neu unrhyw ran o adeilad o'r fath, yn parhau arno, a chânt yn benodol alluogi cael cydsyniad ar gyfer defnydd neu ddatblygiad o'r fath (is-adran (5)).

Adran 278 – Darpariaeth bellach ynghylch rheoliadau o dan adrannau 276 a 277

1296. Caiff rheoliadau o dan adran 277(4)(a) wneud darpariaeth o ran symud ymaith weddillion dynol a'u hailgladdu a gwaredu henebion, gosodiadau a ffitiadau o dir (heblaw claddfeydd nas defnyddir) sy'n gysylltiedig ag addoliad crefyddol. Caiff rheoliadau o dan adran 277(4)(b) hefyd wahardd neu gyfyngu ar ddatblygu a defnyddio tir y mae man addoli arno.

1297. Mae rheoliadau o'r fath yn ddarostyngedig i is-adrannau (1) a (2) o'r adran hon. Mae'r rhain yn cynnwys gofyniad i ddarparu rheolaethau dros ddefnyddio a datblygu'r tir yn y dyfodol sy'n debyg i unrhyw reolaethau a fyddai'n cael eu gosod o dan ddeddfwriaeth arall yn absenoldeb y caffaeliad neu'r cyfeddiant.

1298. Cânt hefyd ddarparu ar gyfer cau cofrestrau, gan fod y rhain yn debygol o gynnwys gwybodaeth hanesyddol werthfawr.

1299. Caiff rheoliadau o dan adran 276(3) a 277(4)(a) wneud darpariaeth o ran symud ymaith weddillion dynol a'u hailgladdu a gwaredu henebion o gladdfeydd nas defnyddir a thir arall sy'n gysylltiedig ag addoliad crefyddol. Mae'r rhain yn ddarostyngedig i is-adrannau (4) i (6) o'r adran hon. Rhaid i reoliadau o'r fath ei gwneud yn ofynnol i'r person a chanddo hawlogaeth i'r tir roi cyhoeddusrwydd i unrhyw gynnig i gymryd camau o'r fath. Rhaid i'r rheoliadau alluogi cynrychiolwyr personol neu berthnasau'r ymadawedig i gymryd y camau eu hunain, ar draul y person a chanddo hawlogaeth i'r tir. Rhaid iddynt hefyd ei gwneud yn ofynnol i'r rhai sy'n cymryd y camau gydymffurfio ag unrhyw amodau a osodir gan yr esgob, yn achos tir cysegredig, neu gan Weinidogion Cymru.

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. Ar yr amod y caiff gweddillion dynol eu symud ymaith a'u hailgladdu ac y caiff henebion eu gwaredu yn unol â'r rheoliadau o dan yr adran hon, nid oes angen cael naill ai:

a. yn achos tir cysegredig, hawleb gan yr esgobaeth (oni bai bod y rheoliadau'n darparu fel arall) (is-adran (7)); neu

b. mewn unrhyw achos arall, drwydded gan y Weinyddiaeth Gyfiawnder o dan Ddeddf Claddu 1857 (p. 81) (is-adran (8)).

1301. Y rheoliadau cyfredol a wnaed o dan y pwerau a ailddatgenir yn y ddarpariaeth hon yw Rheoliadau Cynllunio Gwlad a Thref (Eglwysi, Mannau Addoli Crefyddol a Chladdfeydd) 1950 (O.S. 1950/792).

RHAN 11 – PRIFFYRDD

1302. Mae'r Rhan hon yn darparu ar gyfer gwneud gorchmynion:

a. gan Weinidogion Cymru neu awdurdodau cynllunio, i gau neu wyro priffyrdd er mwyn galluogi cynnal datblygiad sydd wedi ei gymeradwyo;

b. gan Weinidogion Cymru, er mwyn galluogi pedestreiddio priffyrdd (heblaw cefnffyrdd a phrif ffyrdd);

c. gan Weinidogion Cymru ac awdurdodau lleol, i gau neu wyro priffyrdd pan fônt yn rhedeg dros dir sydd wedi ei gaffael neu ei gyfeddu at ddibenion cynllunio; a

d. ym mhob achos, i greu neu wella priffyrdd presennol pan fo'n ofynnol o ganlyniad i gau, gwyro neu bedestreiddio priffyrdd.

1303. Yn y cyd-destun hwn, mae "priffordd" yn derm technegol sy'n golygu nid yn unig ffordd neu stryd ond hefyd unrhyw ardal o dir y mae gan aelodau'r cyhoedd yn gyffredinol hawl absoliwt drosto i basio neu ailbasio heb gael eu rhwystro, er mwyn mynd o un man i fan arall. Mae'n cynnwys y briffordd gyfan, neu ran ohoni, heblaw fferi neu ddyfrffordd; mae'n cynnwys unrhyw bont y mae'n mynd drosti ac unrhyw dwnnel y mae'n mynd drwyddo (gweler adran 328 o Ddeddf 1980, a gymhwysir gan adran 408 o'r Ddeddf hon).

1304. Nid yw pwerau awdurdodau cynllunio ac awdurdodau lleol eraill i wneud gorchmynion o dan y Rhan hon ond yn arferadwy mewn perthynas â phriffyrdd sy'n llwybrau cyhoeddus (gweler adrannau 293 a 300). At y diben hwn mae "llwybr cyhoeddus" yn droedffordd, yn llwybr ceffylau neu'n gilffordd gyfyngedig. Mae "llwybr troed" yn briffordd (gan gynnwys llwybr tynnu ar hyd afon neu gamlas) y mae gan aelodau'r cyhoedd hawl tramwy drosto ar droed, ond nid unrhyw hawliau tramwy eraill. Mae "llwybr ceffylau" yn un y mae ganddynt hawl tramwy drosto ar droed neu ar gefn ceffyl (neu'n arwain ceffyl) (adran 329 o Ddeddf 1980). Mae "cilffordd gyfyngedig" yn briffordd y mae ganddynt hawl tramwy drosti hefyd ar feic neu mewn unrhyw gerbyd heblaw un a yrrir yn fecanyddol (adran 48 o Ddeddf Cefn Gwlad a Hawliau Tramwy 2000 (p. 37), a gymhwysir gan adran 302 o'r Ddeddf hon).

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. Disgrifir y weithdrefn ar gyfer gwneud a dirymu gorchmynion o'r fath yn Atodlen 17. Mae Rhan 1 o'r Atodlen yn ymdrin â gorchmynion a wneir gan Weinidogion Cymru. Mae Rhan 2 yn ymdrin â gorchmynion a wneir gan awdurdodau cynllunio neu awdurdodau lleol eraill sydd fel arfer yn ei gwneud yn ofynnol cael cymeradwyaeth Gweinidogion Cymru oni bai nad oes unrhyw wrthwynebiad iddynt.

Pennod 1 – Priffyrdd yr effeithir arnynt gan ddatblygiad

Adran 280 – Cau neu wyro priffordd er mwyn galluogi datblygiad

1306. Pan fo caniatâd cynllunio wedi ei roi i ddatblygu safle, caiff Gweinidogion Cymru wneud gorchymyn o dan adran 280 yn ei chau neu'n ei gwyro pan fo hynny'n angenrheidiol i alluogi'r datblygiad i ddigwydd. Caniateir i'r pŵer hwn hefyd gael ei ddefnyddio i alluogi cau neu wyro priffordd sydd wedi ei chau neu ei gwyro dros dro o dan unrhyw ddeddfiad arall.

1307. Mae Rhan 1 o Atodlen 17 yn nodi'r weithdrefn ar gyfer gwneud gorchymyn o dan yr adran hon.

Adran 281 – Cau neu wyro priffordd sy'n croesi llwybr priffordd newydd neu'n mynd i lwybr priffordd newydd

1308. Pan fo a wnelo'r datblygiad y rhoddwyd caniatâd ar ei gyfer ei hun ag adeiladu neu wella priffordd (y cyfeirir ati yn yr adran hon fel "y brif briffordd") ac y bydd priffordd arall sydd eisoes yn bodoli yn croesi llwybr y brif briffordd neu'n mynd i lwybr y brif briffordd neu pan fydd adeiladu neu wella'r brif briffordd yn effeithio fel arall ar briffordd arall, caiff Gweinidogion Cymru wneud gorchymyn o dan yr adran hon yn cau neu'n gwyro'r briffordd bresennol honno er mwyn sicrhau diogelwch y rhai sy'n defnyddio'r brif briffordd neu i hwyluso llif rhydd traffig ar y briffordd honno. Caniateir i'r pŵer hwn hefyd gael ei ddefnyddio i alluogi cau neu wyro priffordd sydd wedi ei chau neu ei gwyro dros dro o dan unrhyw ddeddfiad arall.

1309. Mae'r weithdrefn ar gyfer gwneud gorchymyn o dan yr adran hon wedi ei nodi yn Rhan 1 o Atodlen 17.

Adran 282 – Y weithdrefn cyn rhoi caniatâd cynllunio

1310. O dan rai amgylchiadau, pan geisiwyd caniatâd cynllunio – fel yr eglurir yn is-adrannau (4) a (5) – nid oes angen aros i ganiatâd gael ei roi cyn dechrau mynd ati i gau neu wyro priffordd. Mewn achos o'r fath, pan fyddai'n bosibl i Weinidogion Cymru wneud gorchymyn o dan adran 280 neu 281 unwaith y rhoddwyd caniatâd, mae is-adran (2) yn eu galluogi i gyhoeddi hysbysiad o dan Ran 1 o Atodlen 17 yn datgan eu bod yn cynnig gwneud gorchymyn o'r fath. Nid yw'r adran hon na Rhan 1 o'r Atodlen yn caniatáu i Weinidogion Cymru wneud y gorchymyn hyd nes bod caniatâd cynllunio wedi ei roi ar gyfer y datblygiad (is-adran (3)).

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. O dan is-adran (4), gellir defnyddio'r weithdrefn hon:

a. pan fo cais am ganiatâd cynllunio ar gyfer y datblygiad perthnasol wedi ei wneud gan adran o'r Llywodraeth, awdurdod lleol, ymgymerwr statudol (gweler Rhan 11) neu gwmni priffyrdd strategol;

b. pan fo cais am ganiatâd wedi ei wneud i awdurdod cynllunio, a'i fod wedi ei alw i mewn gan Weinidogion Cymru i'w benderfynu ganddynt o dan adran 72;

c. pan fo cais wedi bod yn destun apêl iddynt o dan adran 73;

d. pan fo cais am ganiatâd wedi ei wneud yn uniongyrchol i Weinidogion Cymru o dan adran 78 neu 80.

1312. O dan is-adran (5), mae'r weithdrefn hon hefyd yn gymwys:

a. pan fo'r datblygiad i'w gynnal gan awdurdod lleol (fel y'i diffinnir yn adran 408) neu ymgymerwr statudol;

b. yn rhinwedd deddfiad pan fo'n ofynnol i'r datblygiad gael ei awdurdodi gan adran o'r llywodraeth; ac

c. pan wnaed cais am yr awdurdodiad hwnnw, ynghyd â chyfarwyddyd o dan adran 87 yn rhoi caniatâd cynllunio.

Adran 283 – Darpariaeth bellach ynghylch gorchmynion o dan adrannau 280 a 281

1313. Caiff gorchymyn sy'n cau neu'n gwyro priffordd o dan adran 280 neu 281 hefyd ddarparu ar gyfer creu neu wella priffordd arall (is-adran (1)).

1314. Pan fo'r gorchymyn o dan adran 280 – yn dilyn rhoi caniatâd ar gyfer datblygiad heblaw priffordd – caiff ddarparu i'r briffordd sy'n cael ei chreu neu ei gwella gael ei chynnal ar draul y pwrs cyhoeddus. Caiff hefyd bennu pa awdurdod fydd yr awdurdod priffyrdd mewn perthynas â hi a chaiff ddarparu i'r briffordd ddod yn gefnffordd (is-adrannau (2) a (4)). Caiff gorchymyn o dan adran 281 – yn dilyn rhoi caniatâd ar gyfer prif briffordd newydd neu well – wneud darpariaeth debyg naill ai ar gyfer y brif briffordd ei hun neu unrhyw briffordd arall sydd i'w chreu neu ei gwella o dan y gorchymyn (is-adrannau (3) a (4)).

1315. O dan is-adran (5), caiff gorchymyn o dan naill ai adran 280 neu 281 hefyd gynnwys unrhyw ddarpariaethau deilliadol a all fod yn angenrheidiol. Caiff ddarparu i gostau cydymffurfio ag ef gael eu talu yn llawn neu'n rhannol gan Weinidogion Cymru neu'r Ysgrifennydd Gwladol, neu gan unrhyw berson arall. Caiff hefyd gadw hawliau ymgymerwyr statudol mewn perthynas â'u cyfarpar ar neu o dan y priffyrdd perthnasol (megis pibellau a cheblau).

1316. Mae is-adran (6) yn darparu bod pwerau Gweinidogion Cymru o dan adrannau 280 a 281 ar ben eu pwerau o dan unrhyw ddeddfiad arall i gau neu wyro priffyrdd, eu pwerau o dan adran 297 i ddiddymu hawliau tramwy, a'u pwerau o dan Ran 6 o Ddeddf 1981 i ddiddymu hawliau tramwy nad ydynt yn gerbydol.

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.

Adran 284 – Gorchmynion o dan adran 281: cau mynedfeydd preifat
Adran 285 – Digolledi ad pan fo mynedfa breifat yn cael ei chau

1317. Pan roddir caniatâd i adeiladu neu wella priffordd ("y brif briffordd"), a gwneir gorchymyn o dan adran 281 i gau neu wyro priffordd arall, caiff y gorchymyn hwnnw gau unrhyw fynedfa i dir sydd naill ai'n cyffinio â'r brif briffordd ei hun neu'n gyfagos iddi, neu sy'n ffurfio safle'r gwaith priffyrdd (er enghraifft, ar gyfer cytiau safle neu i storio deunyddiau) (adran 284(1)(a) a (b)).

1318. Caiff gorchymyn awdurdodi cau mynedfa pan fo Gweinidogion Cymru wedi eu bodloni naill ai fod mynedfa resymol gyfleus arall ar gael, neu y darperir mynedfa newydd i'r tir, neu nad yw unrhyw fynediad i'r tir yn rhesymol ofynnol (is-adran (2)). Wrth benderfynu beth sy'n gyfleus, rhaid iddynt ystyried yr angen (os oes un) am fynedfa i rannau gwahanol o'r tir, a sut y gellir cyflawni hynny drwy ffyrdd a llwybrau presennol (is-adran (3)).

1319. Pan fo gorchymyn yn awdurdodi awdurdod priffyrdd i gau mynedfa, caiff wneud hynny mewn unrhyw ffordd y mae'n ystyried ei bod yn briodol. Unwaith y bydd hynny wedi digwydd, mae unrhyw un sy'n defnyddio'r fynedfa honno, oni bai ei fod yn arfer hawl tramwy cyhoeddus, yn cyflawni trosedd – y gellir ei chosbi gan ddirwy hyd at Lefel 3 ar y raddfa safonol ar euogfarn ddiannod (yn y llys ynadon) (adran 284(4) i (6)).

1320. Pan fo cau mynedfa drwy orchymyn o dan adran 284 yn lleihau gwerth buddiant person yn y tir, neu'n achosi niwed i fwynhad person o'r tir, mae gan y person hawlogaeth i gael ei ddigolledu gan yr awdurdod priffyrdd o dan adran 285. Rhaid gwneud hawliad am ddigolledi ad o'r fath o fewn 12 mis i'r adeg y daw'r gorchymyn i rym, a phenderfynir ar swm y digolledi ad sy'n daladwy yng ngoleuni unrhyw fynedfa newydd i'r tir sydd wedi ei darparu.

Adran 286 – Pedestreiddio priffordd i wella amwynder
Adran 287 – Dirymu gorchymyn i bedestreiddio priffordd

1321. Mae'r adrannau hyn yn gymwys pan fo awdurdod cynllunio yn mabwysiadu cynnig i wella amwynder rhan o'i ardal a bo'r cynnig yn golygu gorffen hawliau mynediad cerbydol dros briffordd. Gallai hyn ddigwydd pan fo'r awdurdod, er enghraifft, yn cynnig pedestreiddio ardal siopa. Ond ni ellir eu defnyddio pan fo'r briffordd yn gefnffordd neu'n brif ffordd (hynny yw, yn ymarferol, ffordd A).

1322. Ar ôl iddo ymgynghori â'r awdurdod priffyrdd (os nad ef ei hun yw'r awdurdod priffyrdd), caiff yr awdurdod cynllunio wneud cais i Weinidogion Cymru o dan is-adran (2) am orchymyn o dan adran 286 yn diddymu pob hawl i ddefnyddio cerbydau dros y briffordd o dan sylw.

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. Caiff gorchymyn o'r fath (o dan is-adrannau (4) i (6)) gynnwys darpariaeth sy'n caniatáu'r defnydd o'r briffordd gan rai cerbydau penodol neu o dan rai amgylchiadau penodol – er enghraifft, rhoi mynediad i gerbydau brys neu gerbydau casglu gwastraff, neu i gludwyr nwyddau a thrigolion lleol. Ni chaniateir gwneud gorchymyn sy'n cynnwys darpariaeth o'r fath ond ar ôl i Weinidogion Cymru ymgynghori â'r awdurdod cynllunio a (phan fo'n wahanol) yr awdurdod priffyrdd ar gyfer y briffordd (adran 28(4) i (6)). Pan ganiateir defnydd cerbydol o briffordd o dan ddarpariaeth o'r fath, mae hynny'n drech nag unrhyw waharddiad neu gyfyngiad o dan unrhyw ddeddfwriaeth arall (adran 286(7)).

1324. Mae adran 286(8) yn tynnu sylw at Ran 7A o Ddeddf 1980, sy'n galluogi awdurdodau ac eraill i wneud gwaith ar briffordd sydd wedi ei chau i gerbydau drwy orchymyn cynllunio cerddwyr, ac i osod gwrthrychau neu strwythurau arni i roi effaith i'r gorchymyn – i wella amwynder y briffordd a'r ardal gyfagos, ac i ddarparu gwasanaethau a chyfleusterau hamdden a lluniaeth i'r cyhoedd.

1325. Caiff yr awdurdod cynllunio, ar ôl ymgynghori â'r awdurdod priffyrdd pan fo'n briodol, wneud cais i Weinidogion Cymru am orchymyn pellach, o dan adran 287, yn dirymu gorchymyn o dan adran 286. Effaith gorchymyn dirymu o'r fath yw adfer yr holl hawliau a ddiddymwyd gan y gorchymyn gwreiddiol. Ac efallai y bydd rhaid symud ymaith unrhyw rwystrau a gyflwynwyd o dan Ran 7A o Ddeddf 1980 (megis bolardiau neu welyau blodau).

Adran 288 – Darpariaeth bellach ynghylch gorchmynion o dan adrannau 286 a 287
Adran 289 – Digolledia pan bedestreiddir priffordd

1326. O dan adran 288(1), caiff gorchymyn o dan adran 286 neu orchymyn dirymu o dan adran 287 ddarparu ar gyfer creu neu wella priffordd arall. Byddai hyn yn galluogi, er enghraifft, addasu strydoedd ochr canol tref i ddarparu ar gyfer traffig sydd wedi ei ddadleoli o'r brif stryd sydd wedi ei phedestreiddio. Pan fo'r gorchymyn yn gwneud darpariaeth o'r fath, caiff hefyd:

a. darparu i'r briffordd honno fod yn briffordd sydd i'w chynnal ar draul y pwrs cyhoeddus;

b. pennu pa awdurdod fydd yr awdurdod priffyrdd mewn perthynas â'r briffordd sy'n cael ei chreu neu ei newid; ac

c. caiff ddarparu i'r briffordd ddod yn gefnffordd (adran 288(2)).

1327. O dan adran 288(3), caiff gorchymyn o dan naill ai adran 286 neu 287 hefyd gynnwys unrhyw ddarpariaethau deilliadol a all fod yn angenrheidiol. Yn benodol, caiff ddarparu i gostau cydymffurfio ag ef gael eu talu yn llawn neu'n rhannol gan Weinidogion Cymru neu'r Ysgrifennydd Gwladol neu gan unrhyw berson arall. Caiff hefyd ddiogelu hawliau ymgymerwyr statudol mewn perthynas â'u cyfarpar ar neu o dan y priffyrdd perthnasol.

1328. Mae'r weithdrefn ar gyfer gwneud gorchymyn o dan adran 286 neu orchymyn dirymu o dan adran 287 wedi ei nodi yn Rhan 1 o Atodlen 17.

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. Mae adran 288(5) yn darparu bod pwerau Gweinidogion Cymru o dan adrannau 286 a 287 ar ben eu pwerau o dan unrhyw ddeddfiad arall i gau neu wyro priffyrdd, eu pwerau o dan adran 297 i ddiddymu hawliau tramwy, a'u pwerau o dan Ran 6 o Ddeddf 1981 i ddiddymu hawliau tramwy nad ydynt yn gerbydol.

1330. Pan fo gwneud gorchymyn o dan adran 286 yn lleihau gwerth buddiant person mewn tir sydd â mynediad i'r briffordd honno neu'n achosi colled neu ddifrod arall i berson o'r fath, mae gan y person hwnnw hawlogaeth i gael ei ddigolledu gan yr awdurdod cynllunio o dan adran 289. Rhaid gwneud hawliad am ddigolledia o'r fath o fewn 12 mis i'r adeg y daw'r gorchymyn i rym.

Adran 290 – Caffael tir yn orfodol mewn cysylltiad â gorchymyn

1331. Pan fo Gweinidogion Cymru yn gwneud gorchymyn o dan adran 280, 281, 286 neu 287 a bo tir yn ofynnol i greu neu wella priffordd neu at unrhyw ddiben arall sy'n gysylltiedig â'r gorchymyn, cânt gaffael tir yn orfodol neu cânt awdurdodi awdurdod priffyrdd lleol neu gwmni priffyrdd strategol i gaffael y tir yn orfodol (is-adrannau (1) a (2)).

1332. Yn rhinwedd is-adran (3), mae'r weithdrefn gaffael arferol o dan Ddeddf 1981 yn gymwys i gaffaeliad o dan yr adran hon. Caiff rheoliadau o dan is-adran (4) alluogi caffaeliad o'r fath i gael ei ystyried yn yr un achos â'r gorchymyn ei hun; mae'r ddarpariaeth gyfredol a wnaed o dan y pŵer a ailddatgenir yn is-adran (4) wedi ei nodi yn rheoliad 15 o Reoliadau Cyffredinol Cynllunio Gwlad a Thref 1992 (O.S. 1992/1492) ('Rheoliadau Cyffredinol 1992').

Adran 291 – Dod â hawliau ymgymerwyr statudol a gweithredwyr rhwydwaith i ben

1333. Pan fo priffordd wedi ei chau neu ei gwyro gan orchymyn o dan adran 280 neu 281 ("gorchymyn priffordd"), mae is-adran (1) yn darparu bod darpariaethau adrannau 314 a 315 a Rhan 1 o Atodlen 18 yn gymwys gydag addasiadau mewn perthynas â'r briffordd sydd wedi ei chau neu ei gwyro. Mae'r darpariaethau hynny'n ymwneud â hawliau ymgymerwyr statudol yn cael eu gorffen drwy hysbysiad symud ymaith pan fo tir wedi ei gaffael neu ei gyfeddu o dan Ran 10.

1334. O ganlyniad, pan fo gan ymgymerwr statudol hawlogaeth i hawl tramwy dros y tir y mae'r briffordd yn bodoli arno, neu hawl i osod, cadw neu gynnal a chadw ei gyfarpar ar dir o'r fath, neu pan fo ar y tir gyfarpar (megis pibellau neu geblau) sy'n perthyn i'r ymgymerwr, caiff y person a chanddo hawlogaeth i feddu ar y tir gyflwyno hysbysiad symud ymaith i'r ymgymerwr. Hysbysiad yw "hysbysiad symud ymaith" sy'n datgan y bydd rhywfaint neu'r cyfan o'r hawliau hynny'n cael eu diddymu ar ddiwedd cyfnod penodedig, neu'n ei gwneud yn ofynnol i'r cyfarpar gael ei symud ymaith cyn diwedd y cyfnod penodedig (adran 314(1), (3) a (4), a gymhwysir gan adran 291(1)). Rhaid i'r cyfnod a bennir yn yr hysbysiad fod o leiaf 28 o ddiwrnodau (adran 314(5) a (6)).

1335. Yn yr un modd, caiff y person a chanddo hawlogaeth i feddu ar y tir gyflwyno hysbysiad symud ymaith i'r gweithredwr rhwydwaith pan fo gan y gweithredwr hawl tramwy dros dir o'r fath, neu hawl i osod, cadw neu gynnal a chadw cyfarpar arno, neu pan fo ar y tir gyfarpar sydd wedi ei osod at ddiben y rhwydwaith (adran 314(2) i (4)).

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. Dim ond os yw'n angenrheidiol i ddiddymu'r hawl neu i symud ymaith y cyfarpar y caniateir cyflwyno hysbysiad symud ymaith at ddiben cydymffurfio â'r gorchymyn priffyrdd.

1337. Pan gyflwynir hysbysiad symud ymaith o dan adran 314, fel y'i cymhwysir gan yr adran hon, caniateir cyflwyno gwrth-hysbysiad o dan adran 315. Nodir effaith gwrth-hysbysiad, a chanlyniadau peidio â chyflwyno gwrth-hysbysiad, yn adran 315 a Rhan 1 o Atodlen 18 sy'n gymwys i'r un graddau yng nghyd-destun gorchmynion priffyrdd.

1338. Yn rhinwedd is-adran (2), nid yw'r adran hon yn gymwys pan fo cau neu wyro priffordd yn ofynnol er mwyn galluogi mwyngloddio brig, y rhoddwyd caniatâd ar ei gyfer o dan adran 51 o Ddeddf Glo Brig 1958 (p. 69).

Adran 292 – Cyfarpar cyfathrebiadau electronig yr effeithir arno gan orchymyn

1339. Mae is-adrannau (1) i (3) yn ymdrin â'r sefyllfa pan fo priffordd wedi ei chau neu ei gwyro gan orchymyn priffyrdd o dan adran 280 neu 281, neu pan fo'r hawl i ddefnyddio cerbydau ar briffordd wedi ei diddymu gan orchymyn o dan adran 286, ac mae (yn union cyn yr adeg y daw'r gorchymyn i rym) gyfarpar cyfathrebiadau electronig ar neu yn y briffordd.

1340. Yn y senario honno, mae'r gweithredwr rhwydwaith yn parhau i fod â'r un pwerau mewn perthynas â'r cyfarpar â phe na bai'r gorchymyn wedi dod i rym; ond mae gan unrhyw un â buddiant yn y tir perthnasol hawlogaeth i'w gwneud yn ofynnol iddo gael ei newid, ei symud neu ei symud ymaith.

1341. O dan is-adrannau (4) i (6), pan fo gorchymyn o dan adran 280, 281, 286 neu 287 yn darparu ar gyfer gwella priffordd, a bo cyfarpar cyfathrebiadau electronig ar neu yn y briffordd, mae gan yr awdurdod priffyrdd (os nad Gweinidogion Cymru na'r Ysgrifennydd Gwladol ydyw) hawlogaeth i'w gwneud yn ofynnol i'r cyfarpar gael ei newid, ei symud, ei amnewid neu ei symud ymaith. Fodd bynnag, nid yw hynny'n rhoi'r hawlogaeth i'r awdurdod ei gwneud yn ofynnol i'r cyfarpar gael ei newid etc. ar gyfer gwaith mawr (fel y'i diffinnir yn adrannau 86(3), 88(2) ac 91(2) o Ddeddf Ffyrdd Newydd a Gwaith Stryd 1991 (p. 22)).

1342. Pan fo rhaid i gyfarpar gael ei symud ymaith o dan is-adran (3) neu (5), mae is-adran (8) yn cymhwyso Rhan 6 o'r Cod Cyfathrebiadau Electronig (yn Atodlen 3A i Ddeddf Cyfathrebiadau 2003). Mae paragraffau 40 i 44 o'r Cod hwnnw yn galluogi person sydd wedi ei awdurdodi i'w gwneud yn ofynnol i gyfarpar gael ei symud ymaith er mwyn gorfodi gofyniad o'r fath, os oes angen drwy'r llysoedd.

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.

Adran 293 – Cau neu wyro llwybr cyhoeddus er mwyn galluogi datblygiad

1343. Caiff awdurdod cynllunio wneud gorchymyn yn awdurdodi cau neu wyro llwybr cyhoeddus (hynny yw, llwybr troed, llwybr ceffylau neu gilffordd gyfyngedig):

a. pan fo caniatâd cynllunio wedi ei roi ar gyfer datblygiad na ellir ond ei gynnal unwaith y bo'r llwybr cyhoeddus wedi ei gau neu ei wyro (o dan is-adran (1));

b. pan geisiwyd caniatâd cynllunio ar gyfer datblygiad ac, os caiff ei roi, y byddai'n angenrheidiol awdurdodi'r cau neu'r gwyro er mwyn galluogi'r datblygiad (o dan is-adran (2)).

1344. Caiff gorchymyn o dan yr adran hon awdurdodi cau neu wyro llwybr cyhoeddus sydd wedi ei gau dros dro neu ei wyro dros dro o dan unrhyw ddeddfiad arall (is-adran (3)).

1345. O dan is-adran (4), caiff gorchymyn o dan yr adran hon hefyd awdurdodi neu ei gwneud yn ofynnol cynnal gwaith mewn perthynas â'r llwybr cyhoeddus sydd i'w gau neu ei wyro a chaiff ddarparu ar gyfer creu priffordd newydd, neu wella un bresennol, yn ei le. Caiff gadw hawliau ymgymerwr statudol mewn perthynas â'i gyfarpar ar y llwybr cyhoeddus. Yn ogystal, caiff ei gwneud yn ofynnol i unrhyw berson dalu neu gyfrannu tuag at gostau cynnal y gwaith y mae'r gorchymyn yn darparu ar ei gyfer.

Adran 294 – Cadarnhad o orchymyn a wneir gan yr awdurdod cynllunio

1346. Mae'r weithdrefn ar gyfer cadarnhau gorchymyn o dan adran 293, yn cau neu'n gwyro llwybr cyhoeddus, wedi ei nodi yn Rhan 2 o Atodlen 17. Mae hyn yn ei gwneud yn ofynnol rhoi cyhoeddusrwydd i'r gorchymyn ac mae'n rhoi cyfle i wrthwynebu.

1347. Os na wneir unrhyw sylwadau o fewn y cyfnod perthnasol, yna caiff yr awdurdod ei gadarnhau (is-adran (1)(b)). Mewn unrhyw achos arall, caiff Gweinidogion Cymru ei gadarnhau unwaith y byddant wedi ystyried unrhyw sylwadau a wnaed, ond ni chânt wneud hynny oni bai eu bod wedi eu bodloni bod caniatâd cynllunio wedi ei roi ar gyfer y datblygiad o dan sylw (nid dim ond ei geisio) a bod yn wir angen cau'r llwybr cyhoeddus neu ei wyro i alluogi'r caniatâd hwnnw i gael ei weithredu (is-adrannau (1)(a), (2) a (3)).

1348. Bydd y gorchymyn yn pennu'r dyddiad y bydd y llwybr cyhoeddus yn cael ei gau neu ei wyro, na chaniateir iddo fod cyn y dyddiad y cadarnhawyd y gorchymyn (is-adran (4)).

Adran 295 – Cyfarpar cyfathrebiadau electronig yr effeithir arno gan orchymyn

1349. Pan fo awdurdod cynllunio yn gwneud gorchymyn o dan adran 293 yn cau neu'n gwyro llwybr cyhoeddus, a bo ar yr adeg y rhoddir cyhoeddusrwydd i'r gorchymyn gyfarpar (ceblau etc.) ar y tir at ddibenion rhwydwaith cod cyfathrebiadau electronig, rhaid i'r awdurdod hysbysu gweithredwr y rhwydwaith cyn gynted ag y bo'n ymarferol.

1350. O dan is-adran (3), caiff gweithredwr y rhwydwaith barhau i arfer ei bŵer i symud ymaith y cyfarpar ar unrhyw adeg hyd at ddiwedd y cyfnod symud ymaith – hynny yw, y cyfnod o dri mis sy'n dechrau â thrannoeth y diwrnod yr awdurdodir cau neu wyro'r llwybr cyhoeddus (is-adran (9)).

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. Mae is-adran (4) yn darparu os yw'r gweithredwr yn rhoi hysbysiad i'r awdurdod cynllunio cyn diwedd y cyfnod symud ymaith ei fod yn bwriadu symud ymaith y cyfarpar, caiff arfer yr hawl honno yn union ar ôl diwedd y cyfnod symud ymaith.

1352. Fel arall, caiff hysbysu'r awdurdod ei fod yn bwriadu cefnu ar ei holl gyfarpar neu rywfaint ohono. Bydd yn cael ei drin fel pe bai wedi cefnu ar ei holl gyfarpar ar ddiwedd y cyfnod hwnnw os yw wedi methu â naill ai ei symud ymaith neu roi hysbysiad o'i fwriadau (is-adrannau (5) a (6)).

1353. Pan fo gweithredwr y rhwydwaith naill ai'n symud ymaith ei gyfarpar neu'n cefnu arno o dan yr adran hon ac yna'n darparu cyfarpar newydd mewn man arall yn lle hynny (neu yn lle cyfarpar cysylltiedig sydd wedi dod yn ddiwerth), caiff hawlio gan yr awdurdod gost gwneud hynny (is-adran (7)).

1354. Mae gan yr awdurdod hawlogaeth i berchnogaeth unrhyw gyfarpar y cefnwyd arno a chaiff ymdrin ag ef fel y gwêl yn dda (is-adran (8)).

Adran 296 – Cau dros dro neu wyro dros dro ar gyfer gweithio mwynau ar wyneb y tir

1355. Pan fo caniatâd cynllunio wedi ei roi ar gyfer gweithio mwynau ar wyneb y tir, efallai y bydd angen cau neu wyro priffordd fel y gellir cynnal y gwaith, ond dim ond am gyfnod cyfyngedig nes bod y gweithrediadau mwynau wedi dod i ben a bod y tir wedi ei adfer. Yn yr amgylchiadau hynny, mae is-adran (2) yn galluogi Gweinidogion Cymru i wneud gorchymyn o dan adran 280 yn ei gwneud yn ofynnol i briffordd gael ei chau neu ei gwyro am gyfnod penodedig, ac yna ei hadfer.

1356. O dan is-adran (4), caiff yr awdurdod cynllunio yn yr un modd wneud gorchymyn o dan adran 293 yn ei gwneud yn ofynnol i lwybr cyhoeddus gael ei gau neu ei wyro dros dro, ac yna ei adfer.

1357. Caiff gorchymyn a wneir o dan yr adran hon ei gwneud yn ofynnol i berson a fyddai fel arall wedi bod yn ddarostyngedig i unrhyw atebolrwydd am atgyweirio'r briffordd wreiddiol sy'n cael ei chau neu ei gwyro, ysgwyddo atebolrwydd tebyg am unrhyw briffordd sydd i'w darparu am y cyfnod dros dro yn unol â'r gorchymyn (is-adran (5)(a)). Caiff hefyd ei gwneud yn ofynnol i'r briffordd dros dro gael ei symud ymaith ar ddiwedd y cyfnod hwnnw, ac yna i'r briffordd wreiddiol gael ei hadfer a'i chynnal a'i chadw (is-adran (5)(b)). Caiff y gorchymyn hefyd ei gwneud yn ofynnol i swm cyfalaf gael ei dalu ymlaen llaw, er mwyn sicrhau bod arian ar gael ar gyfer y gwaith adfer hwnnw (is-adran (6)).

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)).

Pennod 2 – Dod â hawliau tramwy dros dir a ddelir at ddibenion cynllunio i ben
Adran 297 – Pŵer Gweinidogion Cymru i ddod â hawl tramwy dros dir a ddelir at ddibenion cynllunio i ben
Adran 298 – Caffael tir yn orfodol i ddarparu hawl tramwy arall
Adran 299 – Achosion cydredol yn ymwneud â gorchmynion a chaffaeliadau

1358. Mae'r adrannau hyn yn gymwys pan fo tir wedi ei gaffael neu ei gyfeddu gan awdurdod lleol at ddibenion cynllunio a bod y tir yn cael ei ddal o hyd at y dibenion y cafodd ei gaffael neu ei gyfeddu atynt. Mae tir yn cael ei gaffael neu ei gyfeddu at ddiben cynllunio pan fo'r caffaeliad neu'r cyfeddiad at ddiben:

a. datblygu neu wella'r tir er mwyn gwella llesiant yr ardal – o dan adran 262 neu 263; neu

b. sicrhau cadwraeth adeilad rhestredig neu i hwyluso mynediad i adeilad o'r fath neu'r gwaith o'i reoli, o dan adran 136 o Ddeddf 2023.

1359. Caiff Gweinidogion Cymru wneud gorchymyn o dan adran 297 yn diddymu unrhyw hawl tramwy cyhoeddus ar ei draws, os ydynt wedi eu bodloni bod hawl tramwy arall addas yn bodoli neu y darperir hawl tramwy o'r fath neu nad yw hawl tramwy arall yn ofynnol. Mae'r weithdrefn ar gyfer gwneud gorchymyn o'r fath wedi ei nodi yn Rhan 1 o Atodlen 17.

1360. Pan fo angen tir ychwanegol i ddarparu hawl tramwy arall o dan yr amgylchiadau hynny, caiff Gweinidogion Cymru gaffael tir yn orfodol neu cânt awdurdodi awdurdod priffyrdd lleol neu gwmni priffyrdd strategol i wneud hynny, o dan adran 298. Mae'r weithdrefn arferol o dan Ddeddf 1981 yn gymwys i gaffaeliad o dan yr adran honno.

1361. Caiff rheoliadau o dan adran 299 alluogi un set o achosion i ymdrin ag:

a. y caffaeliad cychwynnol o'r tir o dan Ran 10;

b. diddymu unrhyw hawl tramwy o dan adran 297; ac

c. prynu tir ychwanegol o dan adran 298.

Yn rheoliad 15 o Reoliadau Cyffredinol 1992 y mae'r ddarpariaeth gyfredol.

Adran 300 – Pŵer awdurdod lleol i ddod â hawl tramwy dros lwybr cyhoeddus ar dir a ddelir at ddibenion cynllunio i ben

1362. Mae'r adran hon yn gymwys pan fo tir wedi ei gaffael neu ei gyfeddu gan awdurdod lleol at ddibenion cynllunio a'i fod yn cael ei ddal o hyd gan yr awdurdod at y dibenion y cafodd ei gaffael neu ei gyfeddu atynt. Caiff yr awdurdod wneud gorchymyn o dan is-adran (2) sy'n diddymu unrhyw hawl gyhoeddus dros lwybr cyhoeddus ar dir o'r fath, os yw wedi ei fodloni bod hawl tramwy arall addas yn bodoli neu y darperir hawl o'r fath, neu nad oes angen hawl tramwy arall.

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. Mae'r weithdrefn ar gyfer cadarnhau gorchymyn o dan yr adran hon wedi ei nodi yn Rhan 2 o Atodlen 17. Mae hyn yn ei gwneud yn ofynnol rhoi cyhoeddusrwydd i'r gorchymyn ac mae'n rhoi cyfle i gyflwyno sylwadau. Os na gyflwynir unrhyw sylwadau mewn perthynas â'r gorchymyn o fewn y cyfnod perthnasol, yna caiff yr awdurdod ei gadarnhau (is-adran (3)(b)). Mewn unrhyw achos arall, caiff Gweinidogion Cymru ei gadarnhau unwaith y byddant wedi ystyried unrhyw sylwadau a gyflwynwyd, ond ni chânt wneud hynny oni bai eu bod wedi eu bodloni bod hawl tramwy arall addas yn bodoli, y caiff ei darparu, neu nad yw'n ofynnol (is-adrannau (2)(a) a (4)).

1364. Bydd y gorchymyn yn pennu'r dyddiad y bydd yr hawl tramwy dros y llwybr cyhoeddus yn cael ei diddymu, na chaiff fod cyn y dyddiad y cadarnhawyd y gorchymyn (is-adran (5)).

Adran 301 – Cyfarpar cyfathrebiadau electronig yr effeithir arno gan orchymyn

1365. Pan fo Gweinidogion Cymru yn gwneud gorchymyn o dan adran 297 yn diddymu hawl tramwy cyhoeddus dros dir sydd wedi ei gaffael neu ei gyfeddu, a bo (ar yr adeg y rhoddir cyhoeddusrwydd i'r gorchymyn) gyfarpar ar y tir at ddibenion rhwydwaith cod cyfathrebiadau electronig, rhaid iddynt hysbysu gweithredwr y rhwydwaith cyn gynted ag y bo'n ymarferol (is-adrannau (1) a (3)). Yn yr un modd, rhaid i awdurdod lleol hysbysu'r gweithredwr pan fo'n gwneud gorchymyn o dan adran 300 yn diddymu hawl tramwy cyhoeddus dros lwybr cyhoeddus dros dir o'r fath (is-adrannau (2) a (3)).

1366. Yn y naill achos neu'r llall, caiff y gweithredwr wedyn barhau i arfer ei bŵer i symud ymaith y cyfarpar ar unrhyw adeg hyd at ddiwedd y cyfnod symud ymaith (is-adran (4)) – hynny yw, y cyfnod o dri mis sy'n dechrau â thrannoeth y diwrnod y diddymir yr hawl tramwy (is-adran (10)). Mae is-adran (5) yn darparu os yw'r gweithredwr yn rhoi hysbysiad i'r awdurdod lleol cyn diwedd y cyfnod symud ymaith ei fod yn bwriadu symud ymaith y cyfarpar, caiff arfer yr hawl honno ar ôl diwedd y cyfnod symud ymaith. Fel arall, caiff hysbysu'r awdurdod ei fod yn bwriadu cefnu ar ei holl gyfarpar neu rywfaint ohono; bydd yn cael ei drin fel pe bai wedi cefnu ar ei gyfarpar ar ddiwedd y cyfnod hwnnw os yw wedi methu â naill ai ei symud ymaith neu roi hysbysiad o'i fwriadau (is-adrannau (6) a (7)).

1367. Pan fo gweithredwr y rhwydwaith naill ai'n symud ymaith ei gyfarpar neu'n cefnu arno o dan y weithdrefn hon ac yna'n darparu cyfarpar newydd mewn man arall yn lle hynny (neu yn lle cyfarpar cysylltiedig sydd wedi dod yn ddiwerth), caiff hawlio gan yr awdurdod lleol gost gwneud hynny (is-adran (8)). Mae gan yr awdurdod hawlogaeth i berchnogaeth unrhyw gyfarpar y cefnwyd arno a chaiff ymdrin ag ef fel y gwêl yn dda (is-adran (9)).

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)).

Atodlen 17 – Gorchmynion sy'n ymwneud â phriffyrdd

Rhan 1 – Y weithdrefn ar gyfer gorchmynion a wneir gan Weinidogion Cymru

1368. Mae Rhan 1 o'r Atodlen yn gymwys i orchymyn a wneir gan Weinidogion Cymru o dan Ran 11 o'r Ddeddf hon – hynny yw:

a. gorchymyn o dan adran 280 yn cau neu'n gwyro priffordd er mwyn galluogi datblygiad i ddigwydd;

b. gorchymyn o dan adran 281 yn cau neu'n gwyro priffordd sy'n croesi llwybr priffordd newydd neu'n mynd i lwybr priffordd newydd;

c. gorchymyn o dan adran 286 i ddiddymu hawliau tramwy cerbydol ar briffordd neu orchymyn o dan adran 287 yn dirymu gorchymyn o'r fath; neu

d. gorchymyn o dan adran 297 yn diddymu hawl tramwy dros dir sydd wedi ei gaffael neu ei gyfeddu at ddibenion cynllunio.

1369. Cyn gwneud y gorchymyn, rhaid i Weinidogion Cymru gyhoeddi hysbysiad o'u bwriad mewn papur newydd sy'n cylchredeg yn yr ardal leol ac yn y London Gazette, yn datgan effaith gyffredinol y gorchymyn arfaethedig, lle yn yr ardal leol y gellir gweld drafft yn ddi-dâl ar bob adeg resymol, sut y gellir gwneud gwrthwynebiadau o fewn y cyfnod gwrthwynebu o 28 o ddiwrnodau o leiaf sy'n dechrau â thrannoeth y diwrnod y cyhoeddir yr hysbysiad (paragraff 2).

1370. Ar neu cyn y diwrnod y byddant yn cyhoeddi'r hysbysiad hwnnw, rhaid iddynt gyflwyno copi o'r hysbysiad, ac o'r gorchymyn drafft ei hun, i bob awdurdod lleol perthnasol yn yr ardal (fel y'i diffinnir yn adran 408), unrhyw ymgymerwr statudol perthnasol, a'r perchnogion a'r meddianwyr ar unrhyw dir sydd i fod yn ddarostyngedig i gyfyngiad mynediad o dan adran 284. Rhaid iddynt hefyd arddangos yr hysbysiad mewn safle amlwg ar bob pen i unrhyw briffordd neu hawl tramwy sydd i'w chau, ei gwyro neu ei diddymu (paragraff 3).

1371. Os gwneir gwrthwynebiad i'r gorchymyn gan rywun y mae rhaid i Weinidogion Cymru ei hysbysu o dan baragraff 3, rhaid iddynt gynnal ymchwiliad lleol. Os gwneir gwrthwynebiad gan unrhyw un arall maent yn ystyried y bydd y gorchymyn yn effeithio arno, rhaid i Weinidogion Cymru gynnal ymchwiliad lleol oni bai eu bod wedi eu bodloni, o dan amgylchiadau arbennig yr achos, nad oes angen gwneud hynny. Cyn gwneud gorchymyn, rhaid i Weinidogion Cymru ystyried pob gwrthwynebiad, a phan gynhelir ymchwiliad lleol, adroddiad yr arolygydd. Caiff y gorchymyn terfynol gynnwys addasiadau (paragraff 4).

1372. Mae paragraff 5 yn darparu bod rhaid i orchymyn o dan adran 280, 281, 286 neu 287 fod yn ddarostyngedig i weithdrefn arbennig y Senedd os yw'n ei gwneud yn ofynnol i berson wneud taliadau, a bod y person hwnnw'n gwrthwynebu.

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. Unwaith y bydd y gorchymyn terfynol wedi ei wneud, rhaid cyhoeddi hysbysiad mewn papur newydd sy'n cylchredeg yn yr ardal leol ac yn y London Gazette, yn datgan ei fod wedi ei wneud, a lle y gellir gweld copi yn ddi-dâl ar bob adeg resymol. Rhaid anfon copi o'r hysbysiad hwnnw hefyd, ac o'r gorchymyn ei hun, i bob awdurdod lleol perthnasol ac ymgymerwr statudol, a'r perchnogion a'r meddianwyr ar dir sy'n ddarostyngedig i gyfyngiad mynediad (paragraff 6).

Rhan 2 – Y weithdrefn ar gyfer gorchmynion a wneir gan awdurdodau cynllunio ac awdurdodau lleol eraill

1374. Mae Rhan 2 o'r Atodlen yn gymwys i:

a. gorchymyn a wneir gan awdurdod cynllunio o dan adran 293 yn cau neu'n gwyro llwybr cyhoeddus (llwybr troed, llwybr ceffylau neu gilffordd gyfyngedig; gweler uchod) i alluogi datblygiad i ddigwydd; a

b. gorchymyn a wneir gan awdurdod lleol o dan adran 300 yn diddymu hawl tramwy dros lwybr cyhoeddus ar dir sydd wedi ei gaffael neu ei gyfeddu at ddibenion cynllunio.

1375. Cyfeirir at y gorchmynion hyn gyda'i gilydd fel "public path orders" yn Rheoliadau Cynllunio Gwlad a Thref (Gorchmynion Llwybrau Cyhoeddus) 1993 (O.S. 1993/10) a wnaed o dan y pŵer a ailddatgenir bellach ym mharagraff 19 o'r Atodlen hon. Mae'r Rheoliadau hynny yn rhoi rhagor o fanylion ynghylch y gweithdrefnau sydd i'w dilyn a'r ffurflenni sydd i'w defnyddio.

1376. Unwaith y bydd yr awdurdod yn gwneud gorchymyn, rhaid iddo gyhoeddi hysbysiad bod y gorchymyn wedi ei wneud mewn papur newydd sy'n cylchredeg yn yr ardal leol, yn datgan effaith gyffredinol y gorchymyn arfaethedig, lle yn yr ardal leol y gellir gweld drafft yn ddi-dâl ar bob adeg resymol, lle y gellir cael copïau o'r gorchymyn am dâl rhesymol, a sut y gellir gwneud gwrthwynebiadau ac o fewn pa gyfnod (y mae rhaid iddo fod o leiaf 28 o ddiwrnodau) (paragraff 10).

1377. O leiaf 28 o ddiwrnodau cyn diwedd y cyfnod a bennir fel y cyfnod ar gyfer gwneud gwrthwynebiadau, rhaid i'r awdurdod gyflwyno copi ohono, ac o'r gorchymyn drafft ei hun, i bob awdurdod lleol perthnasol arall yn yr ardal, unrhyw ymgymerwr statudol perthnasol, a'r perchnogion a'r meddianwyr a'r tenantiaid ar unrhyw dir y mae'r gorchymyn yn ymwneud ag ef. Rhaid iddo hefyd gyflwyno copïau i unrhyw bersonau a bennir mewn rheoliadau – mae Atodlen 3 i Reoliadau Cynllunio Gwlad a Thref (Gorchmynion Llwybrau Cyhoeddus) 1993 yn pennu ar hyn o bryd wahanol sefydliadau mannau agored, a chyrff arbenigol megis Cymdeithas Beicwyr Gwlad Cymru. Rhaid iddo hefyd gyflwyno copïau i unrhyw un arall y mae'n ystyried ei fod yn briodol. Yn ogystal, rhaid iddo arddangos hysbysiad mewn lle amlwg ar bob pen i unrhyw lwybr cyhoeddus sydd i'w gau, ei wyro neu ei ddiddymu neu unrhyw hawl tramwy sydd i'w chau, ei gwyro neu ei diddymu, gan gynnwys plan o'r cynnig (paragraff 11). Rhaid i gopïau o'r gorchymyn hefyd gael eu harddangos mewn swyddfeydd llywodraeth leol yn yr ardal ac mewn unrhyw fannau eraill y mae'r awdurdod yn ystyried eu bod yn briodol.

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. Os na chyflwynir unrhyw sylwadau mewn ymateb i'r cyhoeddusrwydd, neu os tynnir yr holl sylwadau o'r fath yn ôl, caiff yr awdurdod gadarnhau'r gorchymyn heb addasiadau, o dan baragraff 12.

1379. Os cyflwynir sylw neu os gwneir gwrthwynebiad mewn perthynas â'r gorchymyn gan awdurdod lleol, rhaid i Weinidogion Cymru (neu arolygydd a benodir ganddynt) gynnal ymchwiliad lleol, ac os gwneir gwrthwynebiad gan unrhyw un arall, rhaid cynnal ymchwiliad lleol neu roi cyfle i'r person a wnaeth y gwrthwynebiad neu a gyflwynodd y sylw gael gwrandawiad gan arolygydd. Yna rhaid i Weinidogion Cymru ystyried adroddiad yr arolygydd sy'n cynnal yr ymchwiliad neu ystyried y sylwadau, cyn cadarnhau'r gorchymyn. Os ydynt yn bwriadu cadarnhau'r gorchymyn yn ddarostyngedig i addasiadau, rhaid iddynt roi cyhoeddusrwydd i'w cynnig a rhoi cyfle i wrthwynebiadau gael eu gwneud ac i ymdrin â hwy (paragraff 13).

1380. Gwneir y penderfyniad, o ran a yw gorchymyn a wneir gan awdurdod o dan Ran 11 i'w gadarnhau gan Weinidogion Cymru, gan arolygydd ar eu rhan, oni bai ei fod mewn categori a bennir mewn rheoliadau i'w benderfynu ganddynt, neu oni bai eu bod yn cyfarwyddo bod y penderfyniad mewn achos penodol i'w wneud ganddynt hwy. Pan fo angen, caiff Gweinidogion Cymru ddirymu penodiad un arolygydd a phenodi arolygydd arall yn ei le (paragraff 14).

1381. Mae paragraff 15 yn gwneud darpariaeth arbennig o ran gorchmynion a wneir gan awdurdodau cynllunio o dan adran 293 mewn achosion sy'n ymwneud ag ymgymerwyr statudol. Ni chaniateir i Weinidogion Cymru gadarnhau gorchymyn os yw'n diddymu hawl tramwy dros dir lle mae cyfarpar sy'n eiddo i ymgymerwr neu a ddefnyddir ganddo, oni bai bod yr ymgymerwr yn cydsynio. Ni chaniateir atal cydsyniad o'r fath yn afresymol a chaniateir ei roi ar delerau rhesymol a gynigir gan yr ymgymerwr i ddiogelu ei fuddiant. Mae cwestiynau ynghylch rhesymoldeb penderfyniad i atal cydsyniad, neu'r telerau y rhoddir cydsyniad yn ddarostyngedig iddynt, i'w penderfynu gan y Gweinidog priodol (gweler adran 308 ynghylch ystyr "Gweinidog priodol"). Mae gorchymyn o dan adran 293 yn ddarostyngedig i weithdrefn arbennig Senedd Cymru os yw ymgymerwr yn ei wrthwynebu (neu'n gwrthwynebu addasiad iddo a gynigir gan Weinidogion Cymru) ar y sail bod y gorchymyn yn cynnig creu hawl tramwy cyhoeddus newydd dros dir a orchuddir gan waith a ddefnyddir gan yr ymgymerwr.

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. Unwaith y bydd gorchymyn wedi ei gadarnhau, rhaid i hysbysiad o'r ffaith hwnnw gael ei gyhoeddi mewn papur newydd sy'n cylchredeg yn yr ardal leol, yn datgan effaith y gorchymyn a lle y gellir gweld copi o'r gorchymyn yn ddi-dâl ar bob adeg resymol, a rhaid ei arddangos ar y safle. Rhaid i'r awdurdod gyflwyno copi o'r hysbysiad i bob person a oedd â hawlogaeth i gael copi o'r hysbysiad cychwynnol o dan baragraff 11 ac sydd wedi gwneud archiad am hysbysiad bod y gorchymyn wedi ei gadarnhau yn y pen draw. Pan fo hynny'n golygu cyflwyno copi o'r hysbysiad i berchnogion a meddianwyr, awdurdodau lleol perthnasol neu ymgymerwyr statudol, rhaid i'r hysbysiad gynnwys copi o'r gorchymyn fel y'i cadarnhawyd. Pan fo'r gorchymyn wedi ei addasu, a'i bod yn ofynnol i'r awdurdod rhoi hysbysiad ei fod wedi ei gadarnhau i bersonau a bennir mewn rheoliadau o dan baragraff 11(2)(d) neu i bersonau eraill y mae'r awdurdod yn ystyried eu bod yn briodol, rhaid i'r awdurdod eto gynnwys copi o'r gorchymyn fel y'i cadarnhawyd gyda'r hysbysiad (paragraff 16). Pan fo Gweinidogion Cymru yn penderfynu peidio â chadarnhau gorchymyn, fodd bynnag, rhaid i'r awdurdod a wnaeth y gorchymyn i ddechrau hysbysu pawb a oedd i gael eu hysbysu am ei wneud (paragraff 17).

1383. Fel arfer bydd gorchymyn yn dod i rym ar y diwrnod y caiff ei gadarnhau neu ar ddiwedd cyfnod sy'n dechrau ar y diwrnod hwnnw. Os yw i ddod i rym ar unrhyw ddyddiad arall, rhaid rhoi cyhoeddusrwydd i'r gorchymyn yn dod i rym yn y wasg leol, o dan baragraff 18.

RHAN 12 - YMGYMERWYR STATUDOL ETC.

1384. Mae'r term "ymgymerwr statudol" yn cwmpasu ystod eang o gyrff, sy'n cyflawni swyddogaethau megis darparu trafnidiaeth, pŵer, cyfathrebiadau, dŵr a charthffosiaeth, o dan wahanol ddarnau o ddeddfwriaeth. Mae union ystyr y term wedi amrywio dros amser; mae'r diffiniad cyfredol wedi ei nodi yn adran 303. Mae rhywfaint o'r ddeddfwriaeth yn cyfeirio at "tir gweithredol" ymgymerwr statudol, a'r "Gweinidog priodol"; diffinnir y rhain yn adrannau 304 i 308.

1385. Yn ogystal, mae'r Cod Cyfathrebiadau Electronig a nodir yn Atodlen 3A i Ddeddf Cyfathrebiadau 2003 yn cael effaith mewn perthynas â chyrff y mae'n cael ei gymhwyso iddynt gan gyfarwyddyd a roddwyd gan y Swyddfa Gyfathrebiadau (Ofcom) o dan adran 106 o'r Ddeddf honno. Cyfeirir at weithredwr rhwydwaith cyfathrebiadau electronig o dan y Cod hwnnw fel arfer yn y Nodiadau hyn fel "gweithredwr rhwydwaith".

1386. Mae gan ymgymerwyr statudol a gweithredwyr rhwydwaith le arbennig yn y system gynllunio:

a. mae rhai o'u gweithrediadau arferol wedi eu heithrio o'r diffiniad o "datblygiad" (adran 6(3)), gellir caniatáu eraill drwy orchymyn datblygu (gweler Gorchymyn 1995);

b. mewn achosion eraill, mae'r rheolau arferol o ran penderfynu cais cynllunio, addasu neu ddirymu caniatâd cynllunio, a gwneud gorchmynion datbarhau a gorchmynion sy'n ymwneud â datblygiad mwynau yn cael eu haddasu i ystyried amgylchiadau penodol ymgymerwyr statudol (adrannau 309 i 313);

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. ceir darpariaethau arbennig o ran eu swyddogaethau mewn perthynas â thir a gaffaelir neu a gyfeddir o dan y Ddeddf hon neu o dan ddeddfwriaeth arall (adrannau 314 i 318);

d. mae ganddynt hawliau arbennig mewn perthynas â digolledi am benderfyniadau penodol sy'n effeithio arnynt (adrannau 319 i 322); ac

e. caiff ymgymerwyr statudol gytuno i gaffael tir sy'n destun hysbysiad prynu, neu gall fod yn ofynnol iddynt wneud hynny (Rhan 3 o Atodlen 12).

Adran 303 – Ystyr "ymgymerwr statudol" ac "ymgymeriad statudol"

1387. Mae is-adran (1) yn diffinio'r term ymgymerwr statudol, drwy gyfeirio at restr neilltuol o gyrff sy'n darparu gwasanaethau amrywiol. Ac mae is-adran (2) yn darparu bod ymgymeriad statudol yn golygu ymgymeriad ymgymerwr statudol, ac eithrio fel y nodir ym mharagraffau (a) i (c) o'r is-adran honno. Ym mhob achos, nid maint na statws cyfreithiol y corff o dan sylw yw'r ffactor allweddol wrth benderfynu a yw corff yn ymgymerwr statudol, ond natur ei weithgarwch.

1388. O dan is-adran (1)(a), mae ymgymerwr statudol yn cynnwys corff sydd wedi ei awdurdodi gan neu o dan ddeddfiad i gyflawni un neu ragor o'r gweithgareddau a ganlyn:

a. ymgymeriad rheilffordd, rheilffordd ysgafn, tramffordd neu drafnidiaeth ffyrdd;

b. ymgymeriad trafnidiaeth ar ddŵr, camlas neu fordwyo mewndirol; neu

c. ymgymeriad doc, harbwr, pier neu oleudy.

1389. Mae is-adran (1)(b) i (d) yn darparu bod ymgymerwr statudol yn cynnwys pob un o'r cyrff a ganlyn:

a. gweithredwr maes awyr perthnasol, a gafodd dystysgrif o dan adran 57A o Ddeddf Meysydd Awyr 1986 (ei ymgymeriad statudol yw'r maes awyr y mae Rhan 5 o'r Ddeddf yn gymwys iddo);

b. yr Awdurdod Hedfan Sifil (AHS); ac

c. corff sy'n dal trwydded o dan Bennod 1 o Ran 1 o Ddeddf Trafnidiaeth 2000 (gwasanaethau traffig awyr) (ei ymgymeriad statudol yw'r ymgymeriad sy'n destun y drwydded).

Mae ystyr "tir gweithredol" mewn perthynas â'r AHS a'r trwyddedeion traffig awyr yn destun adran 305.

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. O dan is-adran (1)(e), mae darparwr gwasanaeth post cyffredinol yn ymgymerwr statudol. Mae darparwr o'r fath yn unrhyw weithredwr post sydd wedi ei ddynodi felly am y tro o dan adran 35 o Ddeddf Gwasanaethau Post 2011 (p. 5) ac sy'n gweithredu o dan Orchymyn Gwasanaethau Post (Gwasanaeth Post Cyffredinol) 2012 (O.S. 2012/936). Darparwr presennol y Deyrnas Unedig yw Grŵp y Post Brenhinol. Mae is-adran (2)(c) mai ymgymeriad statudol corff o'r fath yw ei ymgymeriad i'r graddau y mae hwnnw'n cynnwys darparu gwasanaeth post. Mae ystyr "tir gweithredol" mewn perthynas â darparwr gwasanaeth post cyffredinol yn destun adran 306.

1391. Mae is-adran (1)(f) i (h) yn darparu bod ymgymerwr statudol yn cynnwys pob un o'r cyrff a ganlyn:

a. trwyddedai trydan – hynny yw, deiliad trwydded o dan adran 6 o Ddeddf Trydan 1989 (cynhyrchu, trosglwyddo, dosbarthu, cyflenwi etc. trydan);

b. trawsgludydd nwy – hynny yw, deiliad trwydded o dan adran 7 o Ddeddf Nwy 1986 (p. 44) (trosglwyddo nwy drwy bibellau); ac

c. unrhyw berson sydd wedi ei awdurdodi gan neu o dan Ddeddf i gyflenwi pŵer hydrolig.

1392. O dan is-adran (1)(i), mae ymgymerwyr dŵr ac ymgymerwyr carthffosiaeth, a benodir o dan adran 6 o Ddeddf y Diwydiant Dŵr 1991 (p. 56), yn ymgymerwyr statudol.

1393. Mae Cyfoeth Naturiol Cymru, a sefydlwyd o dan Orchymyn Corff Adnoddau Naturiol Cymru (Sefydlu) 2012 (O.S. 2012/1903 (Cy. 230)), yn ymgymerwr statudol, o dan is-adran (1)(j). Mae Asiantaeth yr Amgylchedd, sy'n gweithredu yn Lloegr yn bennaf ers 2013, yn ymgymerwr statudol at ddibenion y Ddeddf hon i'r graddau y mae ei weithgareddau'n rhychwantu Cymru (gweler is-adran (1)(k)).

Adran 304 – Ystyr "tir gweithredol": ymgymerwyr statudol yn gyffredinol

1394. Mae rhai o'r darpariaethau sy'n ymwneud ag ymgymerwyr statudol yn gymwys yn unig mewn perthynas â gweithgareddau a gynhelir ar eu tir gweithredol. Mae'r adran hon yn darparu'r rheol gyffredinol o ran yr hyn a olygir gan dir gweithredol. Mae'n gymwys i:

a. cyrff y mae eu gweithgareddau'n ymwneud â thrafnidiaeth, dociau a harbyrau;

b. gweithredwyr maes awyr perthnasol;

c. darparwyr a dosbarthwyr trydan, nwy a phŵer hydrolig;

d. ymgymerwyr dŵr ac ymgymerwyr carthffosiaeth; ac

e. CNC ac Asiantaeth yr Amgylchedd.

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.

Mae rheolau ychydig yn wahanol yn gymwys mewn perthynas â'r AHS a thrwyddedeion traffig awyr (gweler adran 305) a darparwyr gwasanaeth post cyffredinol (gweler adran 306).

1395. Y rheol gyffredinol yw mai ystyr "tir gweithredol" yw:

a. unrhyw dir sy'n cael ei ddefnyddio ar hyn o bryd gan ymgymerwr statudol at ddibenion ei ymgymeriad (is-adran (2)(a)); a

b. unrhyw dir a ddelir ar hyn o bryd gan yr ymgymerwr gyda'r bwriad y dylid ei ddefnyddio rywbryd yn y dyfodol at y diben hwnnw (is-adran (2)(b)).

1396. O dan y pennawd cyntaf, byddai tir gweithredol yn cynnwys, er enghraifft, ddarn o briffordd yn cael ei chloddio gan gwmni dŵr (cyhyd â bod y gwaith yn parhau), darn o dir y mae rheilffordd arno a thir y lleolir is-orsaf drydan arno.

1397. O dan yr ail bennawd, tir a ddelir at ddefnydd yn y dyfodol, mae is-adrannau (4) i (6) yn nodi tair senario wahanol. Y gyntaf yw pan fo tir a ddelir gan yr ymgymerwr gyda'r bwriad y dylid ei ddefnyddio rywbryd yn y dyfodol at ddibenion ei ymgymeriad, ar yr amod bod caniatâd cynllunio penodol wedi ei roi ar ryw adeg ar gyfer datblygu'r tir at ddibenion yr ymgymeriad (er enghraifft, ar gyfer adeiladu cyfleuster carthion ar ryw adeg yn y dyfodol) (is-adran (2)(b), (3) a (4)). Ystyr "caniatâd cynllunio penodol" at y diben hwn yw caniatâd sy'n ymwneud yn benodol â'r tir o dan sylw: gweler adran 307.

1398. Yr ail senario yw pan fo tir yn cael ei ddal ar hyn o bryd gan yr ymgymerwr gyda'r bwriad y dylid ei ddefnyddio yn y dyfodol at ddibenion ei ymgymeriad, ond heb i ganiatâd cynllunio penodol gael ei roi ar unrhyw adeg, ar yr amod bod yr ymgymerwr wedi dal y tir ers cyn 6 Rhagfyr 1968, ac ar y dyddiad hwnnw roedd y tir yn dir gweithredol at ddibenion Deddf Cynllunio Gwlad a Thref 1962 (is-adrannau (2)(b), (3) a (5)).

1399. Y drydedd senario yw pan fo tir sy'n cael ei ddal ar hyn o bryd gan yr ymgymerwr at ddefnydd yn y dyfodol at ddiben ei ymgymeriad, ond heb i ganiatâd cynllunio penodol gael ei roi ar unrhyw adeg – ar yr amod ei fod wedi caffael y tir oddi wrth gorff rhagflaenol, a bod y tir yn dir gweithredol cyn dyddiad y trosglwyddiad. Mae hyn yn gymwys i'r canlynol:

a. trosglwyddiad i weithredwr maes awyr o awdurdod lleol, o dan Ran 2 o Ddeddf Meysydd Awyr 1986;

b. trosglwyddiad i drawsgludydd nwy o Gorfforaeth Nwy Prydain, o dan Ran 2 o Ddeddf Nwy 1986;

c. trosglwyddiad i ymgymerwr dŵr neu ymgymerwr carthffosiaeth o awdurdod dŵr o dan adran 4 o Ddeddf Dŵr 1989 (p. 15) neu o ymgymerwr blaenorol o dan Atodlen 8 i'r Ddeddf honno neu o dan adran 10 o Ddeddf y Diwydiant Dŵr 1991; neu

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. trosglwyddiad i Glandŵr Cymru o Fwrdd Dyfrffyrdd Prydain, o dan Ran 1 o Ddeddf Cyrff Cyhoeddus 2011 (p. 24) (is-adrannau (2)(b), (3) a (6)).

1400. Nid yw tir gweithredol, fodd bynnag, yn cynnwys tir sydd, o ran ei natur a'i leoliad, yn gymaradwy â thir yn gyffredinol mewn cyferbyniad â thir sy'n cael ei ddefnyddio gan ymgymerwyr statudol (neu y maent yn dal buddiannau ynddo) at ddiben cyflawni eu hymgymeriadau. Er enghraifft, siopau, swyddfeydd, ystafelloedd arddangos ac anheddau. Ni fyddai ychwaith yn cynnwys tir a ddelir fel buddsoddiad neu gan gronfa bensiwn (is-adran (2)).

1401. Os oes cwestiwn ynghylch a yw tir ymgymerwr statudol yn dir gweithredol, mae'r cwestiwn i'w benderfynu gan y Gweinidog priodol, fel y'i diffinnir yn adran 308.

Adran 305 – Ystyr "tir gweithredol": yr Awdurdod Hedfan Sifil a thrwyddedeion traffig awyr

1402. Mewn perthynas â'r AHS, ystyr tir gweithredol yw:

a. tir y mae'n ei ddefnyddio at ddibenion gweithredu maes glanio neu at ddibenion cysylltiedig; a

b. tir y mae'n ei ddefnyddio at ddiben darparu cyfleusterau ar gyfer rheoli traffig awyr neu gynorthwyo i lywio awyrennau; ac

c. tir y mae'n dal buddiant ynddo at unrhyw un neu ragor o'r dibenion hynny (is-adran (1)).

1403. Caiff rheoliadau o dan is-adran (2) o'r adran hon ychwanegu unrhyw fath penodol o dir at y diffiniad hwnnw, ei addasu neu ei ddileu o'r diffiniad hwnnw. Y rheoliadau cyfredol yw Rheoliadau'r Awdurdod Hedfan Sifil (Tir Gweithredol) 1984 (O.S. 1984/575).

1404. Mewn perthynas â thrwyddedai traffig awyr, ystyr tir gweithredol yw:

a. tir y mae'r trwyddedai, neu gwmni sy'n gysylltiedig ag ef, yn ei ddefnyddio at ddiben cynnal gweithgareddau, a awdurdodir gan ei drwydded; neu

b. tir y mae'r trwyddedai, neu gwmni sy'n gysylltiedig ag ef, yn dal buddiant ynddo at y diben hwnnw.

1405. Os oes cwestiwn ynghylch a yw tir trwyddedai traffig awyr yn dir gweithredol, mae'r cwestiwn i'w benderfynu gan yr Ysgrifennydd Gwladol (is-adran (5)).

Adran 306 – Ystyr "tir gweithredol": darparwyr gwasanaeth post cyffredinol

1406. Mewn perthynas â darparwr gwasanaeth post cyffredinol, ystyr tir gweithredol yw unrhyw dir:

a. a ddefnyddir ganddo at ddiben gweithredu swyddfa ddidoli neu swyddfa ddosbarthu mewn cysylltiad â'r gwasanaeth post y mae'n ei ddarparu; neu

b. y mae'n dal buddiant ynddo at y diben hwnnw (is-adran (1)).

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. Yn ogystal, caiff rheoliadau o dan is-adran (3) i (5) ychwanegu, addasu neu ddileu unrhyw fath penodedig o dir i'r diffiniad hwnnw ar yr amod bod y darparwr yn defnyddio'r tir neu'n dal buddiant ynddo at ryw ddiben sy'n gysylltiedig â'r gwasanaeth post hwnnw. Y rheoliadau cyfredol yw Rheoliadau Tir Gweithredol Swyddfa'r Post 1973 (O.S. 1973/310).

1408. Fodd bynnag, nid yw tir y mae'r darparwr yn dal buddiant ynddo at ddiben gweithredu swyddfa ddidoli neu swyddfa ddosbarthu, ond nad yw'n cael ei ddefnyddio at y diben hwnnw, yn dir gweithredol oni bai:

a. bod caniatâd cynllunio penodol (gweler adran 307) wedi cael ei roi ar ryw adeg ar gyfer datblygu'r tir at y diben hwnnw (is-adrannau (1)(b), (2)(a)); neu

b. bod y buddiant yn y tir wedi cael ei drosglwyddo o'r Swyddfa'r Post i'r darparwr o dan Ddeddf Gwasanaethau Post 2000 (p. 26) ac yr oedd y tir yn dir gweithredol o dan Ddeddf 1990 yn union cyn y trosglwyddiad hwnnw (is-adrannau (1)(b) a (2)(b)).

Adran 307 – Ystyr "tir gweithredol": darpariaeth atodol

1409. At ddiben adrannau 304, 305 a 306, ystyr "caniatâd cynllunio penodol" yw caniatâd sy'n ymwneud yn benodol â'r tir o dan sylw – yn hytrach nag, er enghraifft, caniatâd a roddir gan orchymyn datblygu cyffredinol megis Gorchymyn 1995. Hynny yw, rhaid bod y caniatâd penodol wedi ei roi:

a. gan orchymyn datblygu pan fo'r datblygiad yn cael ei ddisgrifio yn y gorchymyn neu wedi ei gymeradwyo gan Ddeddf neu offeryn gan Senedd Cymru neu Senedd y DU;

b. gan orchymyn datblygu lleol;

c. mewn ymateb i gais o dan Ran 3;

d. gan gyfarwyddyd o dan adran 87 yn dilyn awdurdodiad gan adran o'r llywodraeth); neu

e. pan benderfynir apêl yn erbyn hysbysiad gorfodi o dan adran 133.

Adran 308 – Ystyr "y Gweinidog priodol" etc.

1410. Gall amryw ddarpariaethau yn y Ddeddf hon arwain at gamau yn cael eu cymryd neu eu cynnig a all effeithio ar ofynion gweithredol ymgymerwr statudol. Gall darpariaethau o'r fath arwain at gynnwys y gweinidog neu'r gweinidogion sy'n gyfrifol am yr ymgymeriad o dan sylw – y cyfeirir atynt fel "y Gweinidog priodol" – er mwyn galluogi gofynion gweithredol yr ymgymerwr i gael eu hystyried ochr yn ochr ag ystyriaethau cynllunio arferol. Mae'r adran hon yn pennu pwy yw'r Gweinidog priodol mewn perthynas â phob categori o ymgymerwr.

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. Mewn rhai achosion, rhoddir y cyfrifoldeb dros ymgymerwr statudol penodol i Weinidogion Cymru. Yn yr achosion hynny, maent i arfer eu pwerau a'u dyletswyddau ar eu pennau eu hunain, yn yr un modd ag achosion eraill (is-adrannau (1)(a) a (2)(b)). Mae hyn yn gymwys i:

a. gweithredwyr rheilffyrdd, rheilffyrdd ysgafn, tramffyrdd neu ymgymeriadau trafnidiaeth ffyrdd;

b. gweithredwyr dociau, pierau neu oleudai;

c. gweithredwyr harbyrau heblaw porthladdoedd ymddiriedolaeth a gedwir yn ôl a harbyrau trawsffiniol;

d. gweithredwyr meysydd awyr perthnasol, yr AHS neu drwyddedeion traffig awyr;

e. ymgymerwyr dŵr ac ymgymerwyr carthffosiaeth; ac

f. CNC.

1412. Mewn achosion eraill, un o weinidogion Llywodraeth y Deyrnas Unedig fydd yn gyfrifol am ymgymerwr statudol penodol. Pan fo hyn yn gymwys, mae'r pwerau a'r dyletswyddau a fyddai fel arall yn cael eu harfer gan Weinidogion Cymru yn unig i'w harfer ar y cyd ganddynt hwy a'r Gweinidog priodol – hynny yw, y Gweinidog sy'n gyfrifol am yr ymgymerwr (is-adrannau (1)(b) i (f) a (2)(a)). Y Gweinidog priodol mewn achosion o'r fath yw fel a ganlyn:

Gweithgaredd ymgymerwr statudol	*Y Gweinidog priodol*
Gweithredu trafnidiaeth ar ddŵr, camlesi neu fordwyo mewndirol	yr Ysgrifennydd Gwladol dros Tai, Cymunedau a Llywodraeth Leol
Gweithredu porthladd ymddiriedolaeth a gedwir yn ôl (fel yn adran 32 o Ddeddf Cymru 2017 (p. 4)), neu harbwr trawsffiniol (fel yn adran 34(5) o'r Ddeddf honno)	yr Ysgrifennydd Gwladol dros Drafnidiaeth
Gweithredu gwasanaeth post cyffredinol	yr Ysgrifennydd Gwladol dros Fusnes a Masnach
Cyflenwi trydan, nwy neu bŵer hydrolig	yr Ysgrifennydd Gwladol dros Ddiogeledd Ynni a Sero Net
Asiantaeth yr Amgylchedd	yr Ysgrifennydd Gwladol

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. Mae is-adran (2) yn ymdrin â chyfeiriadau yn y Ddeddf at Weinidogion Cymru a'r Gweinidog priodol. Mae paragraff (a) yn darparu, pan nad Gweinidogion Cymru yw'r Gweinidog priodol, fod cyfeiriad at Gweinidogion Cymru a'r Gweinidog priodol yn gyfeiriad at y Gweinidogion hynny yn gweithredu ar y cyd. Mae paragraff (b) yn darparu, pan mai Gweinidogion Cymru yw'r awdurdod priodol, fod cyfeiriad at "Gweinidogion Cymru a'r Gweinidog priodol" yn gyfeiriad at Weinidogion Cymru yn gweithredu ar eu pennau eu hunain.

1414. Mae is-adran (3) yn ymdrin â chyfeiriadau yn y Ddeddf at adran o'r llywodraeth a'r Gweinidog priodol. Mae paragraff (a) yn darparu, pan nad yr adran o'r llywodraeth yw'r Gweinidog priodol, fod cyfeiriad at yr adran o'r llywodraeth a'r Gweinidog priodol yn gyfeiriad at y rheini yn gweithredu ar y cyd. Mae paragraff (b) yn darparu, pan mai'r adran o'r llywodraeth yw'r awdurdod priodol, fod cyfeiriad at "adran o'r llywodraeth a'r Gweinidog priodol" yn gyfeiriad at yr adran yn gweithredu ar ei phen ei hun.

1415. Os bydd cwestiwn yn codi ynghylch pwy yw'r Gweinidog priodol mewn perthynas ag ymgymerwr statudol, mae'r mater i'w benderfynu gan y Trysorlys (is-adran (4)); ond nid yw hyn yn wir mewn perthynas â'r AHS, trwyddedai traffig awyr neu ddarparwr gwasanaeth post cyffredinol.

Adran 309 – Ceisiadau am ganiatâd cynllunio gan ymgymerwyr statudol

1416. Caiff ymgymerwr statudol wneud cais am ganiatâd cynllunio gweithredol – hynny yw, caniatâd i gynnal datblygiad:

a. ar dir sydd eisoes yn dir gweithredol yr ymgymerwr (gweler adrannau 305 i 307); neu

b. ar dir y mae'r ymgymerwr yn dal buddiant ynddo neu'n cynnig caffael buddiant ynddo, gyda'r bwriad o gyflawni ei ymgymeriad (is-adrannau (7) ac (8)).

1417. Pan fo angen caniatâd cynllunio gweithredol ond nad yw'n cael ei roi gan orchymyn datblygu neu orchymyn datblygu lleol, yn gyffredinol bydd angen i'r ymgymerwr statudol wneud cais i'r awdurdod cynllunio.

1418. Os bydd cais o'r fath yn cael ei alw i mewn gan Weinidogion Cymru i'w benderfynu ganddynt (o dan adran 72), neu pan fo'n destun apêl iddynt (o dan adran 73), caiff Gweinidogion Cymru neu'r Gweinidog priodol (pan fo hynny'n wahanol) roi cyfarwyddyd o dan is-adran (2) i'r ddau ohonynt ymdrin â'r cais neu'r apêl (is-adran (1)(a) a (b)). Yna rhaid iddynt ymdrin â'r cais neu'r apêl ar y cyd, a bydd y Ddeddf wedyn yn gymwys fel pe bai Gweinidogion Cymru wedi ymdrin â'r cais neu'r apêl yn y ffordd arferol (is-adran (5)).

1419. Mae'r un peth yn berthnasol pan fo apêl yn cael ei gwneud gan ymgymerwr statudol yn erbyn hysbysiad gorfodi sy'n ymwneud â chynnal datblygiad y dywedir bod angen caniatâd cynllunio gweithredol ar ei gyfer, ond dim ond i'r graddau y gwneir yr apêl ar y sail y dylid rhoi caniatâd (neu, pan fo caniatâd wedi ei roi, y dylid dileu amod neu gyfyngiad) (is-adrannau (1)(c) a (3)).

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. Pan fo ymgymerwr statudol yn cynnal datblygiad sydd wedi ei awdurdodi gan adran o'r Llywodraeth, caiff yr adran hefyd roi cyfarwyddyd sy'n rhoi caniatâd cynllunio ar gyfer y datblygiad, o dan adran 87(2). Fodd bynnag, pan fo'r adran yn awdurdodi'r datblygiad heb roi cyfarwyddyd o'r fath, bydd angen i'r datblygiad barhau i fod yn destun cais am ganiatâd cynllunio. Yn yr achos hwnnw, os atgyfeirir y cais at Weinidogion Cymru neu os bydd yn mynd i apêl yn y diwedd, ac os bydd cyfarwyddyd wedi ei wneud o dan is-adran (2), bydd y cais wedyn yn ddarostyngedig i ofynion yr adran hon o ran cyd-awdurdodi gan Weinidogion Cymru a'r Gweinidog priodol (is-adrannau (4) a (6)).

1421. Caiff penderfynu cais gan Weinidogion Cymru a'r Gweinidog priodol o dan yr adran hon arwain at hawlogaeth yr ymgymerwr i ddigollediad o dan adran 319(1)(a).

Adran 310 – Rhoi caniatâd cynllunio amodol

1422. Yn gyffredinol, ni ddylid rhoi caniatâd cynllunio gweithredol (gweler adran 309(7)) am gyfnod cyfyngedig – hynny yw, yn ddarostyngedig i amod sy'n ei gwneud yn ofynnol ar ddiwedd cyfnod penodedig symud ymaith adeiladau neu waith a awdurdodir gan y caniatâd, neu ddatbarhau defnydd o'r tir a awdurdodir felly. Gellir rhoi caniatâd o'r fath, fodd bynnag, os yw'r ymgymerwr yn cytuno.

Adran 311 – Addasu neu ddirymu caniatâd cynllunio

1423. Pan fo caniatâd cynllunio gweithredol (gweler adran 309) wedi ei roi i ymgymerwr statudol naill ai gan Weinidogion Cymru a'r Gweinidog priodol yn gweithredu ar y cyd, neu gan Weinidogion Cymru ar eu pennau eu hunain, a bo'r awdurdod cynllunio yn gwneud gorchymyn yn addasu'r caniatâd hwnnw, rhaid i'r gorchymyn gael ei gadarnhau gan Weinidogion Cymru a'r Gweinidog priodol yn gweithredu ar y cyd (Atodlen 7, wedi ei haddasu gan baragraff (a)). Fel y nodir ym mharagraff 1413 uchod, mae adran 308(2) yn darparu pan mai Gweinidogion Cymru yw'r Gweinidog priodol mewn perthynas ag ymgymerwr, fod cyfeiriad at Weinidogion Cymru a'r Gweinidog priodol yn gyfeiriad at Weinidogion Cymru yn gweithredu ar eu pennau eu hunain.

1424. Fel arall, pan wneir gorchymyn – pa un ai gan yr awdurdod cynllunio, neu gan Weinidogion Cymru, neu ganddynt hwy a'r Gweinidog priodol yn gweithredu ar y cyd – yn addasu neu'n dirymu unrhyw ganiatâd cynllunio gweithredol (pwy bynnag y rhoddwyd y caniatâd ganddo), mae'r gorchymyn i'w wneud a, phan fo hynny'n angenrheidiol, ei gadarnhau yn unol â'r weithdrefn a nodir yn Atodlen 7, ac eithrio bod cyfeiriadau yn yr Atodlen honno at Weinidogion Cymru i'w cymryd fel pe baent yn gyfeiriadau atynt hwy a'r Gweinidog priodol yn gweithredu ar y cyd (paragraff (b)).

1425. Gall gwneud neu gadarnhau gorchymyn gan Weinidogion Cymru a'r Gweinidog priodol o dan yr adran hon arwain at hawlogaeth yr ymgymerwr i ddigollediad o dan adran 319(1)(b).

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).

Adran 312 – Gorchmynion datbarhau, gorchmynion gwahardd a gorchmynion diogelu

1426. Caniateir i orchymyn datbarhau gael ei wneud mewn perthynas â thir gweithredol ymgymerwr statudol, naill ai gan yr awdurdod cynllunio, neu gan Weinidogion Cymru, neu ganddynt hwy a'r Gweinidog priodol yn gweithredu ar y cyd. Pan fo hyn yn digwydd, bydd y gorchymyn yn cael ei wneud, ei gadarnhau a'i orfodi yn unol â'r weithdrefn a nodir yn adrannau 206 a 207 ac Atodlenni 14 a 15, ac eithrio bod cyfeiriadau yn y darpariaethau hynny at Weinidogion Cymru i'w cymryd fel pe baent yn gyfeiriadau atynt hwy a'r Gweinidog priodol yn gweithredu ar y cyd (paragraff (b)). Fel y nodir ym mharagraff 1413 uchod, mae adran 308(2) yn darparu pan mai Gweinidogion Cymru yw'r Gweinidog priodol mewn perthynas ag ymgymerwr, fod cyfeiriad at Weinidogion Cymru a'r Gweinidog priodol yn gyfeiriad at Weinidogion Cymru yn gweithredu ar eu pennau eu hunain.

1427. Mae'r un peth yn wir am wneud gorchymyn gwahardd neu orchymyn diogelu mewn perthynas â gweithrediadau mwyngloddio neu waredu gwastraff mwynau ar dir gweithredol. Bydd gorchmynion o'r fath yn cael eu gwneud, eu cadarnhau a'u gorfodi yn unol â'r weithdrefn a nodir yn adrannau 206 a 297 ac Atodlen 15, wedi eu haddasu er mwyn cyfeirio at Weinidogion Cymru a'r Gweinidog priodol yn gweithredu ar y cyd (paragraffau (a) a (b)).

Adran 313 – Arddangos hysbysebion ar dir gweithredol

1428. Pan fo arddangos hysbysebion yn ffurfio datblygiad a bo'n cydymffurfio â rheoliadau hysbysebion o dan Ran 8 (hynny yw, bod ganddo fudd cydsyniad o dan y rheoliadau neu nad oes ei angen), caiff ei drin fel pe bai wedi cael caniatâd cynllunio o dan adran 229.

1429. Fodd bynnag, pan na fo arddangosiad yn cydymffurfio â'r rheoliadau, bydd angen caniatâd cynllunio ar ei gyfer. Yn y senario honno, pan fo'r arddangosiad ar dir gweithredol ymgymerwr statudol, mae'r gweithdrefnau cynllunio arferol yn Rhannau 3 a 4 yn gymwys – ond yn rhinwedd yr adran hon ni fydd angen i'r Gweinidog priodol (pan nad Gweinidogion Cymru ydyw) fod yn rhan o hynny.

1430. Nid yw adrannau 309 i 312 (ceisiadau am ganiatâd cynllunio, rhoi caniatâd amodol, addasu neu ddirymu caniatâd, a gorchmynion datbarhau) yn gymwys i arddangos hysbysebion ar dir gweithredol.

Adran 314 – Hysbysiadau symud ymaith: dod â hawliau dros dir etc. ymgymerwyr statudol a gweithredwyr rhwydwaith i ben

1431. Mae'r adran hon yn ymdrin â hawliau ymgymerwyr statudol a gweithredwyr rhwydwaith dros dir a fu'n destun "caffaeliad perthnasol" (gweler adran 274(1) am hyn). Mae hefyd yn ymdrin â hawliau ymgymerwyr a gweithredwyr dros dir a fu'n destun "cyfeddiant perthnasol" (fel y'i diffinnir yn adran 274(2)).

1432. Cyfeirir at y corff sy'n dal y tir o ganlyniad i gaffaeliad neu gyfeddiant o'r fath yn y Nodiadau sy'n ymwneud â'r Rhan hon o'r Ddeddf fel 'yr awdurdod caffael'.

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. Pan fo gan ymgymerwr statudol hawlogaeth i hawl tramwy dros dir o'r fath, neu hawl i osod, cadw neu gynnal a chadw cyfarpar arno, at ddiben cyflawni ei ymgymeriad, neu pan fo cyfarpar ar y tir (megis pibellau neu geblau) sy'n eiddo i'r ymgymerwr at ddiben ei ymgymeriad, caiff yr awdurdod caffael gyflwyno hysbysiad symud ymaith i'r ymgymerwr. Hysbysiad yw "hysbysiad symud ymaith" sy'n datgan y bydd rhywfaint neu'r cyfan o'r hawliau hynny'n cael eu diddymu ar ddiwedd cyfnod penodedig neu yn ei gwneud yn ofynnol i'r cyfarpar gael ei symud ymaith cyn diwedd y cyfnod penodedig neu'r ddau (is-adrannau (1), (3) a (4)).

1434. Yn yr un modd, caiff yr awdurdod gyflwyno hysbysiad symud ymaith i weithredwr rhwydwaith:

a. pan fo'r gweithredwr wedi cael hawl tramwy dros dir o'r fath (gan neu yn unol â'r Cod Cyfathrebiadau Electronig), neu hawl i osod, cadw neu gynnal a chadw cyfarpar arno; neu

b. pan fo cyfarpar ar y tir wedi ei osod at ddiben y rhwydwaith.

1435. Ni chaiff yr awdurdod caffael ond cyflwyno hysbysiad symud ymaith os yw'n ystyried ei bod yn angenrheidiol i'r hawl gael ei diddymu neu i'r cyfarpar gael ei symud ymaith at ddiben cynnal y datblygiad y caffaelwyd neu y cyfeddwyd y tir gyda golwg ar ei gynnal. A rhaid i'r cyfnod a bennir yn yr hysbysiad fod o leiaf 28 o ddiwrnodau (is-adrannau (5) a (6)).

Adran 315 – Hysbysiadau symud ymaith: tynnu'n ôl neu gymryd effaith
Rhan 1 o Atodlen 18

1436. O dan adran 315(2), pan fo hysbysiad symud ymaith wedi ei gyflwyno i ymgymerwr statudol neu weithredwr rhwydwaith o dan adran 314, ac na chyflwynir gwrth-hysbysiad o dan yr adran hon, caiff unrhyw hawl y mae'r hysbysiad yn ymwneud â hi ei diddymu ar ddiwedd y cyfnod a bennir yn yr hysbysiad. Os yw'r hysbysiad hwnnw yn ei gwneud yn ofynnol symud y cyfarpar ymaith, ac nad yw hynny wedi ei wneud erbyn diwedd y cyfnod a bennir, caiff yr awdurdod caffael symud y cyfarpar ymaith o'r tir a'i waredu sut bynnag y mae'n ystyried ei bod yn briodol.

1437. Fodd bynnag, os yw'r ymgymerwr yn gwrthwynebu rhywfaint neu'r cyfan o ofynion yr hysbysiad, caiff gyflwyno gwrth-hysbysiad i'r awdurdod o fewn 28 o ddiwrnodau, gan ddatgan y rhesymau dros ei wrthwynebiad (adran 315(1)).

1438. Pan gyflwynir gwrth-hysbysiad, caiff yr awdurdod caffael dynnu'r hysbysiad symud ymaith yn ôl (is-adrannau (3)(a) a (4)(a)). Nid yw hynny'n ei atal rhag cyflwyno hysbysiad symud ymaith arall (is-adran (5)).

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. Pan fo'r awdurdod caffael yn awdurdod lleol neu'n ymgymerwr statudol, ac nad yw'n dymuno tynnu'r hysbysiad symud ymaith yn ôl mewn ymateb i wrth-hysbysiad, caiff wneud cais i Weinidogion Cymru (neu i Weinidogion Cymru a'r Gweinidog priodol, pan fo hynny'n wahanol) am orchymyn sy'n ymgorffori telerau'r hysbysiad symud ymaith, gydag addasiadau neu hebddynt (is-adran (3)(b)). O dan baragraff 1 o Atodlen 18, rhaid iddynt roi cyfle i'r ymgymerwr i wrthwynebu gwneud gorchymyn o'r fath; a phan wneir gwrthwynebiad, rhaid iddynt ganiatáu i'r ymgymerwr a'r awdurdod caffael gael gwrandawiad; ac yna cânt wneud y gorchymyn – naill ai yn ôl cais gan yr awdurdod neu fel arall. Mae awdurdod lleol yn y cyd-destun hwn yn cynnwys awdurdod lleol yn Lloegr ac awdurdod parc cenedlaethol ar gyfer parc cenedlaethol yn Lloegr (gweler is-adran (9)).

1440. O dan is-adran (4)(b), pan mai adran o'r llywodraeth yw'r awdurdod caffael, caiff hi (neu hi a'r Gweinidog priodol, pan fo hynny'n wahanol) wneud gorchymyn sy'n ymgorffori telerau'r hysbysiad symud ymaith, gydag addasiadau neu hebddynt. Cyn gwneud hynny, rhaid iddynt roi cyfle i'r ymgymerwr statudol i wrthwynebu drafft o'r gorchymyn, a phan wneir gwrthwynebiad, rhaid iddynt ganiatáu i'r ymgymerwr neu i'r gweithredwr gael gwrandawiad. Yna cânt wneud y gorchymyn naill ai fel y nodir yn y drafft neu fel arall (paragraff 2 Atodlen 18).

1441. Mae'r un weithdrefn yn gymwys pan gyflwynir hysbysiad symud ymaith i weithredwr rhwydwaith (is-adrannau (1) i (4); paragraffau 1 a 2 o Ran 1 o Atodlen 18). Fodd bynnag, yn yr achos hwn, mae cyfeiriadau at "y Gweinidog priodol" yn gyfeiriad at yr Ysgrifennydd Gwladol dros Wyddoniaeth, Arloesi a Thechnoleg.

1442. Pan wneir gorchymyn mewn ymateb i wrth-hysbysiad, caiff unrhyw hawl y mae'r gorchymyn yn ymwneud ag ef ei ddiddymu ar ddiwedd y cyfnod a bennir ynddo. Os yw'r gorchymyn yn ei gwneud yn ofynnol symud cyfarpar ymaith, ac na chydymffurfiwyd â hynny erbyn diwedd y cyfnod a bennir, caiff yr awdurdod caffael symud y cyfarpar ymaith a'i waredu (is-adran (6)).

Adran 316 – Pwerau ymgymerwyr statudol neu weithredwyr rhwydwaith i fynd ar dir er mwyn symud ymaith neu ail-leoli cyfarpar

1443. Mae'r adran hon yn gymwys pan fo tir wedi bod yn destun caffaeliad perthnasol neu gyfeddiant perthnasol (gweler y diffiniad o'r termau hynny yn adran 274), ac mae datblygiad i'w gynnal ar y tir a fydd yn effeithio ar gyfarpar sy'n eiddo i ymgymerwr statudol neu weithredwr rhwydwaith (is-adrannau (1) a (2)). Byddai hyn yn berthnasol pan fo, er enghraifft, adeilad newydd i'w adeiladu ar ben dwythell cebl sy'n bodoli eisoes.

1444. Pan fo'r ymgymerwr neu'r gweithredwr yn honni bod hyn yn ei gwneud yn ofynnol symud ymaith neu ail-leoli'r cyfarpar am resymau technegol neu resymau eraill sy'n gysylltiedig â chyflawni ei ymgymeriad, neu ddarparu ei rwydwaith, caiff gyflwyno i'r awdurdod caffael hysbysiad o dan is-adran (3), gan hawlio'r hawl i fynd ar y tir a symud ymaith neu ail-leoli'r cyfarpar. Rhaid cyflwyno hysbysiad o'r fath i'r awdurdod caffael heb fod yn hwyrach nag 21 o ddiwrnodau ar ôl dechrau'r datblygiad (is-adran (4)).

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. Pan fo'r awdurdod caffael yn gwrthwynebu rhywfaint neu'r cyfan o ddarpariaethau'r hysbysiad, caiff gyflwyno gwrth-hysbysiad o dan is-adran (5), gan ddatgan y rhesymau dros ei wrthwynebiad. Yna caiff yr ymgymerwr neu'r gweithredwr dynnu'r hysbysiad a gyflwynwyd ganddo o dan is-adran (3) yn ôl. Fel arall, caiff wneud cais i Weinidogion Cymru (neu i Weinidogion Cymru a'r Gweinidog priodol, pan fo hynny'n wahanol) am orchymyn sy'n ymgorffori telerau'r hysbysiad, gydag addasiadau neu hebddynt (is-adran (7)). Pan gyflwynir gwrth-hysbysiad i weithredwr, y Gweinidog priodol yw'r Ysgrifennydd Gwladol dros Wyddoniaeth, Arloesi a Thechnoleg (is-adran (9)).

1446. Pan fo'r ymgymerwr neu'r gweithredwr wedi cyflwyno hysbysiad o dan is-adran (3), ac nad oes gwrth-hysbysiad wedi ei gyflwyno, neu pan fo gorchymyn wedi ei wneud o dan is-adran (7), yna caiff arfer yr hawliau a bennir yn yr hysbysiad neu'r gorchymyn. Neu caiff yr awdurdod caffael drwy drefniant arfer yr hawliau hynny o dan oruchwyliaeth yr ymgymerwr neu'r gweithredwr (is-adrannau (6) a (8)).

Adran 317 – Gorchmynion i estyn neu addasu swyddogaethau ymgymerwyr statudol

Rhan 2 o Atodlen 18

1447. Mae'r adran hon yn gymwys pan fo ymgymerwr statudol, awdurdod lleol neu adran o'r llywodraeth yn cyflwyno sylwadau i Weinidogion Cymru a'r Gweinidog priodol (gweler adran 308) fod angen addasu neu estyn pwerau a dyletswyddau'r ymgymerwr, i sicrhau y bydd gwasanaethau megis trafnidiaeth, dŵr, nwy a thrydan yn cael eu darparu'n foddhaol ar dir sydd i'w gaffael, ei gyfeddu neu ei ddatblygu. Os byddant wedi eu bodloni gan sylwadau o'r fath, caniateir iddynt wneud gorchymyn o dan is-adran (2).

1448. Caiff ymgymerwr statudol gyflwyno sylwadau i Weinidogion Cymru (neu iddynt hwy ac i'r Gweinidog priodol, pan fo hynny'n wahanol) i addasu neu estyn ei swyddogaethau, fel y cânt eu darparu'n briodol at unrhyw ddiben y caniateir cynnal caffaeliad perthnasol ar ei gyfer (is-adran (1)(a)(i)). Caiff ymgymerwr hefyd gyflwyno sylwadau i addasu neu estyn ei swyddogaethau pan fo hynny'n angenrheidiol yn dilyn:

a. penderfyniad ar gais i roi neu wrthod caniatâd yn ymwneud â thir yr oedd yn ei ddefnyddio at ddibenion yr ymgymeriad, neu yr oedd ganddo fuddiant ynddo at y dibenion hynny;

b. addasu neu ddirymu caniatâd o'r fath;

c. gwneud gorchymyn datbarhau mewn perthynas â thir o'r fath;

d. caffaeliad perthnasol o dir o'r fath; neu

e. bod hawl dros dir o'r fath wedi ei golli yn rhinwedd hysbysiad a gyflwynwyd o dan adran 314 neu orchymyn o dan adran 315.

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. Yn ogystal, caiff awdurdod lleol neu adran o'r llywodraeth gyflwyno sylwadau i Weinidogion Cymru (neu iddynt hwy ac i'r Gweinidog priodol, pan fo hynny'n wahanol) i addasu neu estyn swyddogaethau ymgymerwr statudol, er mwyn ei alluogi i estyn y gwasanaethau y mae'n eu darparu, neu i ddarparu rhai newydd, at unrhyw ddiben y mae gan yr awdurdod sy'n cyflwyno'r sylwadau hawlogaeth i wneud caffaeliad perthnasol ar ei gyfer (is-adran (1)(b)).

1450. Mewn ymateb i sylwadau o dan y naill ddarpariaeth neu'r llall, caiff Gweinidogion Cymru (neu Weinidogion Cymru a'r Gweinidog priodol, pan fo hynny'n wahanol) wneud gorchymyn yn addasu neu'n estyn swyddogaethau'r ymgymerwr (is-adran (2)). Caiff gorchymyn o'r fath, ymysg pethau eraill, roi pŵer i'r ymgymerwr i gaffael tir, naill ai'n orfodol neu drwy gytundeb, ac i godi adeiladau ac adeiladu gwaith (a chymhwyso Deddfau a rheoliadau perthnasol fel sy'n ofynnol) (is-adran (5)(a) a (b)).

1451. Os yw'r gorchymyn yn darparu i wasanaethau gael eu darparu neu eu hestyn, caiff hefyd ddarparu ar gyfer rhoi effaith i drefniadau ariannol, i'w cytuno gan yr ymgymerwr ac awdurdod lleol neu Weinidogion Cymru – neu i'w benderfynu fel y'i pennir yn y gorchymyn (is-adran (5)(c)).

1452. Pan fo hyn yn arwain at wneud taliad gan yr awdurdod lleol perthnasol (A) i'r ymgymerwr, a phan fo'r trefniant gwasanaethau diwygiedig o fudd i awdurdod arall (B), caiff Gweinidogion Cymru gyfarwyddo awdurdod B i wneud cyfraniad y maent yn ystyried ei fod yn rhesymol tuag at y costau y mae awdurdod A yn mynd iddynt o dan y gorchymyn (is-adran (7)).

1453. Rhaid i'r corff sy'n cyflwyno sylwadau o ran gwneud gorchymyn gyhoeddi hysbysiad o'r sylwadau hynny, ac – os caiff ei gyfarwyddo i wneud hynny gan Weinidogion Cymru (neu ganddynt hwy a'r Gweinidog priodol, pan fo hynny'n wahanol) rhaid iddo anfon copi o'r hysbysiad hwnnw at y rhai a bennir yn eu cyfarwyddyd. Rhaid i'r hysbysiad fod ar y ffurf a chynnwys y manylion a bennir a rhaid iddo ddatgan y caniateir gwneud gwrthwynebiadau i wneud gorchymyn i Weinidogion Cymru (neu iddynt hwy a'r Gweinidog priodol, pan fo hynny'n wahanol). Rhaid gwneud gwrthwynebiad yn y modd (ac o fewn yr amserlen) a bennir yn yr hysbysiad a rhaid iddo gynnwys datganiad o'r sail y mae'n cael ei wneud arni (paragraffau 3 a 4 o Atodlen 18).

1454. Mae paragraff 5 o Atodlen 18 yn nodi'r weithdrefn pan fo gwrthwynebiad yn cael ei wneud. Caiff Gweinidogion Cymru (neu Weinidogion Cymru a'r Gweinidog priodol, pan fo hynny'n wahanol) benderfynu peidio â gwneud y gorchymyn, neu cânt addasu'r gorchymyn arfaethedig i ymdrin â'r gwrthwynebiad. Wrth benderfynu a ddylid gwneud y gorchymyn, rhaid iddynt ystyried y datganiad a wnaed gyda'r gwrthwynebiad gwreiddiol, a chânt ei gwneud yn ofynnol i'r gwrthwynebydd wneud datganiad pellach.

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. Os ydynt yn ystyried bod y gwrthwynebiad yn ymwneud â mater y gellir ymdrin ag ef drwy ddyfarnu digollediad, cânt ddiystyru'r gwrthwynebiad (paragraff 5(4)). Os ydynt, yng ngoleuni datganiadau'r gwrthwynebydd, yn penderfynu bod ganddynt ddigon o wybodaeth i ymdrin â'r mater – neu os gofynnwyd am ddatganiad pellach ond nad yw'n dod – cânt benderfynu gwneud y gorchymyn (paragraff 5(5)). Yn yr achos pan na fo paragraff 5(4) na 5(5) yn gymwys, rhaid i Weinidogion Cymru (neu Weinidogion Cymru a'r Gweinidog priodol, pan fo hynny'n wahanol) gynnig gwrandawiad i'r gwrthwynebydd; ac os bydd y gwrthwynebydd yn manteisio ar y cynnig, rhaid iddo ei estyn i'r corff a wnaeth y sylwadau gwreiddiol, ac unrhyw un arall sy'n briodol. Cânt hefyd gynnal ymchwiliad ar unrhyw adeg os ydynt yn ystyried bod un yn ofynnol.

1456. Yn rhinwedd paragraff 6 o'r Atodlen, pan fo gorchymyn wedi ei wneud gan Weinidogion Cymru ac un o Weinidogion y Goron, gan addasu pwerau'r ymgymerwr, mae'n ddarostyngedig i weithdrefn arbennig Senedd Cymru a gweithdrefn arbennig Senedd y Deyrnas Unedig. Pan wneir gorchymyn o'r fath gan Weinidogion Cymru yn unig, mae'n ddarostyngedig i weithdrefn arbennig Senedd Cymru.

Adran 318 – Gorchmynion i ryddhau ymgymerwyr statudol o rwymedigaethau anymarferol

Rhan 3 o Atodlen 18

1457. Mae'r adran hon yn gymwys pan fo ymgymerwr statudol yn cyflwyno sylwadau i'r Gweinidog priodol (gweler adran 308) ei bod yn anymarferol iddo fodloni ei rwymedigaethau oherwydd gweithred neu ddigwyddiad a nodir yn is-adran (4). Caiff y Gweinidog priodol, os y'i bodlonir gan sylwadau o'r fath, wneud gorchymyn o dan is-adran (2), yn rhyddhau'r ymgymerwr o'i rwymedigaethau yn rhannol neu'n gyfan gwbl.

1458. Rhaid i'r ymgymerwr os yw'r Gweinidog priodol yn cyfarwyddo iddo wneud hynny gyhoeddi hysbysiad o'i sylwadau, ac anfon copi o'r hysbysiad hwnnw at y rhai a bennir yn eu cyfarwyddyd. Rhaid i'r hysbysiad fod ar y ffurf a chynnwys y manylion a bennir yn y cyfarwyddyd a rhaid iddo ddatgan y caniateir gwrthwynebu gwneud gorchymyn i'r Gweinidog priodol, yn y modd a bennir. Rhaid i wrthwynebiad o'r fath gael ei wneud yn y ffordd, ac o fewn y cyfnod, a bennir yn yr hysbysiad a rhaid iddo gynnwys datganiad o'r sail y mae'n cael ei wneud arni (paragraffau 7 ac 8 o Atodlen 18).

1459. Mae paragraff 9 o'r Atodlen yn nodi'r weithdrefn pan fo gwrthwynebiad yn cael ei wneud. Caiff y Gweinidog priodol benderfynu peidio â gwneud y gorchymyn neu caiff addasu'r gorchymyn arfaethedig i ymdrin â'r gwrthwynebiad. Fel arall, rhaid i'r Gweinidog ystyried y datganiad a wnaed gyda'r gwrthwynebiad gwreiddiol a chaiff ei gwneud yn ofynnol i'r gwrthwynebydd wneud datganiad pellach.

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. Os yw'r Gweinidog yn ystyried bod y gwrthwynebiad yn ymwneud â mater y gellir ymdrin ag ef drwy ddyfarnu digolledi ad, caniateir ei ddiystyru. Os, yng ngoleuni datganiadau'r gwrthwynebydd, yw'n ymddangos bod digon o wybodaeth – neu os gofynnwyd am ddatganiad pellach ond nad yw'n dod – caiff y Gweinidog benderfynu a fydd yn gwneud y gorchymyn ai peidio. Mewn unrhyw achos arall, rhaid cynnig gwrandawiad i'r gwrthwynebydd; ac os bydd y gwrthwynebydd yn manteisio ar y cynnig, rhaid gwneud yr un cynnig i'r ymgymerwr o dan sylw, ac i unrhyw un arall sy'n briodol. Caniateir cynnal ymchwiliad ar unrhyw adeg hefyd os ymddengys bod hynny'n ofynnol.

1461. Yn rhinwedd paragraff 10, pan fo gorchymyn wedi ei wneud gan Weinidogion Cymru, gan ryddhau'r ymgymerwr o'i rwymedigaethau, mae'n ddarostyngedig i weithdrefn arbennig Senedd Cymru. Pan wneir gorchymyn o'r fath gan un o Weinidogion y Goron, mae'n ddarostyngedig i weithdrefn arbennig Senedd y Deyrnas Unedig oni bai ei fod wedi ei dynnu'n ôl o'r blaen.

1462. Yna rhaid i'r Gweinidog priodol gyhoeddi hysbysiad ar unwaith o dan baragraff 11 yn datgan bod y gorchymyn wedi ei wneud ac yn enwi man lle y gellir edrych arno; a rhaid iddo gyflwyno copi o'r hysbysiad i unrhyw un sydd wedi gwrthwynebu'r gorchymyn ac unrhyw un arall sy'n briodol. O dan baragraff 12, mae'r gorchymyn wedyn yn cymryd effaith ar y diwrnod y cyhoeddir yr hysbysiad – oni bai ei fod yn ddarostyngedig i weithdrefn arbennig Senedd y Deyrnas Unedig, neu'n destun gorchymyn interim a wneir yn ystod her yr Uchel Lys o dan adran 377.

Adran 319 – Yr hawl i ddigolledi ad am effeithiau penderfyniadau cynllunio a gorchmynion penodol

1463. Mae'r adran hon yn gymwys pan fo Gweinidogion Cymru a'r Gweinidog priodol yn gwrthod cais gan ymgymerwr statudol (neu ei roi yn ddarostyngedig i amodau) am ganiatâd cynllunio i gynnal datblygiad ar ei dir gweithredol:

a. a fyddai fel arfer yn cael ei ganiatáu gan orchymyn datblygu neu orchymyn datblygu lleol ond am gyfarwyddyd o dan y gorchymyn hwnnw; a

b. nad yw wedi ei awdurdodi gan:
   i. Deddf gan Senedd Cymru neu gan Senedd y Deyrnas Unedig; neu
   ii. offeryn a gymeradwywyd gan Senedd Cymru neu Senedd y Deyrnas Unedig (neu offeryn sy'n ddarostyngedig i weithdrefn arbennig yn Senedd Cymru neu Senedd y Deyrnas Unedig),

pan fo'r Ddeddf neu'r offeryn yn nodi'n benodol natur y datblygiad a'r safle y caiff ei gynnal arno.

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. Pan fo'r ymgymerwr yn dioddef colled neu ddifrod oherwydd y penderfyniad fel yr eglurir yn fanylach yn adran 321, mae ganddo hawlogaeth i ddigollediad gan yr awdurdod cynllunio ar gyfer yr ardaloedd sy'n cynnwys y tir. Rhaid gwneud hawliad am ddigollediad o'r fath o fewn 12 mis i benderfynu'r cais (is-adran (2)). Ond nid yw digollediad yn daladwy pan fo'r golled neu'r difrod yn deillio yn unig o ganlyniad i osod amodau terfyn amser ynghylch y dyddiad erbyn pryd y mae rhaid dechrau datblygiad neu'r dyddiad erbyn pryd y mae rhaid ceisio cymeradwyaeth ar gyfer materion a gadwyd yn ôl, neu o ran y dyddiad erbyn pryd y mae rhaid i ddatblygiad mwynau ddod i ben (is-adran (5)(b)).

1465. Mae'r adran hon hefyd yn gymwys pan fo gorchymyn sy'n addasu neu'n dirymu caniatâd cynllunio a roddwyd i'r ymgymerwr i gynnal datblygiad ar ei dir gweithredol yn cael ei wneud (a, phan fo angen, ei gadarnhau), yn unol ag adrannau 102 a 311 (is-adran (1)(b)). Yn yr achos hwn, pan fo'r ymgymerwr yn dioddef colled neu ddifrod oherwydd y gorchymyn, mae ganddo hawlogaeth i ddigollediad gan yr awdurdod o dan adran 321; a rhaid gwneud hawliad o fewn 12 mis i'r adeg y mae'r gorchymyn yn dod i rym (is-adrannau (1)(b) a (2)).

1466. Ond nid yw'r hawl i ddigollediad o dan yr adran hon (o dan y naill sefyllfa neu'r llall) yn gymwys pan fo'r ymgymerwr wedi caffael y tir o dan sylw ers 7 Ionawr 1947, os oedd Gweinidogion Cymru a'r Gweinidog priodol wedi cynnwys cyfarwyddyd i'r perwyl hwnnw o dan is-adran (3) wrth iddynt benderfynu'r cais neu wneud y gorchymyn. Ni chânt ond gwneud cyfarwyddyd o'r fath pan fônt yn ystyried, o roi sylw i natur, lleoliad a datblygiad presennol y tir ac unrhyw dir cyfagos, ac i unrhyw ystyriaethau perthnasol eraill, ei bod yn afresymol y dylai digollediad fod yn daladwy (is-adran (4)).

Adran 320 – Hawliau i ddigollediad am ddod â hawliau dros dir i ben etc.

1467. Pan gyflwynir hysbysiad symud ymaith o dan adran 314, ac y daw i rym o dan adran 315, caiff ddiddymu hawliau ymgymerwr statudol dros dir penodol, neu caiff ei gwneud yn ofynnol i'r ymgymerwr symud rhywfaint o'i gyfarpar ymaith o'r tir. Pan fo hynny'n achosi colled neu ddifrod i ymgymerwr, fel yr eglurir yn fanylach yn adran 321, mae ganddo hawlogaeth i hawlio digollediad gan yr awdurdod caffael, o dan is-adran (1).

1468. Yn yr un modd, caiff hysbysiad symud ymaith ddiddymu hawliau gweithredwr rhwydwaith neu ei gwneud yn ofynnol i'r gweithredwr symud rhywfaint o'i gyfarpar ymaith o'r tir. Pan fo hynny'n achosi colled neu ddifrod i'r gweithredwr, mae ganddo hawlogaeth i hawlio digollediad gan yr awdurdod caffael, o dan is-adran (2).

1469. Pan fo tir yn cael ei ddatblygu ar ôl ei gaffael neu ei gyfeddu, caiff hynny arwain at ymgymerwr yn gorfod symud ymaith neu ail-leoli ei gyfarpar am resymau technegol neu weithredol. Pan fo cyfarpar ymgymerwr statudol yn cael ei symud ymaith neu ai ail-leoli o dan adran 316(6) neu (7), caiff yr ymgymerwr hawlio digollediad gan yr awdurdod caffael o dan is-adran (3).

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).

Adran 321 – Asesu digolledia

1470. Mae'r adran hon yn galluogi meintioli swm y digolledia sy'n daladwy i ymgymerwr statudol neu weithredwr rhwydwaith o dan amgylchiadau amrywiol. Yn gyntaf, mae'n gymwys:

a. pan fo gan ymgymerwr hawlogaeth i ddigolledia o dan adran 319(1), 320(1) neu 320(3); a

b. pan fo gan ymgymerwr hawlogaeth i ddigolledia am golled neu ddifrod a ddioddefir o ganlyniad i orchymyn datbarhau, gorchymyn gwahardd, neu orchymyn diogelu, a wnaed (a, phan fo angen, a gadarnhawyd) mewn perthynas â'i dir gweithredol, yn unol ag adrannau 206 a 211 ac Atodlen 15.

1471. Yn ail, mae'r adran hon fel arfer yn gymwys pan fo tir ymgymerwr yn cael ei brynu'n orfodol heb i'r Gweinidog priodol ddyroddi tystysgrif o dan adran 16(2) o Ddeddf 1981 ei fod yn dir gweithredol y caniateir ei brynu heb unrhyw niwed i gyflawni'r ymgymeriad (neu dystysgrif o dan baragraff 3(2) o Atodlen 3 i'r Ddeddf honno yn achos hawl dros dir o'r fath). Yn yr achos hwn, fodd bynnag, caiff yr ymgymerwr ddewis i'r digolledia gael ei asesu ar sail arall, o dan adran 322.

1472. Yn drydydd, mae'r adran hon yn gymwys i alluogi meintioli swm y digolledia sy'n daladwy i weithredwr rhwydwaith, pan fo gan y gweithredwr hawlogaeth i ddigolledia o dan adran 320(2).

1473. O dan is-adran (3), swm y digolledia sy'n daladwy o dan yr adran hon yw'r cyfanred o dri swm:

a. y swm a wariwyd yn rhesymol wrth gaffael tir, darparu cyfarpar, codi adeiladau, neu waith sy'n angenrheidiol i addasu gweithrediad yr ymgymerwr neu'r gweithredwr yng ngoleuni'r amgylchiadau sydd wedi newid sy'n arwain at yr hawlogaeth i ddigolledia (cyfeirir at hyn fel 'addasiad busnes');

b. y swm priodol am golli elw; ac

c. pan fo'r digolledia yn daladwy (o dan adran 320(1) neu (2)) mewn cysylltiad â gofyniad i symud cyfarpar ymaith, y swm yr aed iddo'n rhesymol wrth gydymffurfio â'r gofyniad, wedi ei leihau yn ôl gwerth y cyfarpar ar ôl ei symud ymaith.

1474. Mae is-adran (4) yn egluro beth yw ystyr "y swm priodol am golli elw". Pan wneir addasiad busnes, mae hyn yn cyfeirio at gyfanred:

a. y gostyngiad amcangyfrifedig yn y derbyniadau net sy'n deillio o'r amgylchiadau sydd wedi newid sy'n arwain at yr hawlogaeth i ddigolledia, yn ystod y cyfnod hyd nes y gwneir yr addasiad; a

b. swm yr ymddengys ei fod yn ddigolledia rhesymol am y gostyngiad amcangyfrifedig yn y derbyniadau net yn y cyfnod ar ôl i'r addasiad gael ei wneud, i'r graddau y gellir priodoli'r gostyngiad hwnnw yn uniongyrchol i gynnal yr addasiad.

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.

Pan na wneir addasiad busnes, mae'n cyfeirio at y swm yr ymddengys ei fod yn ddigolledia rhesymol am unrhyw ostyngiad amcangyfrifedig yn y derbyniadau net sy'n deillio'n uniongyrchol o'r amgylchiadau hynny sydd wedi newid. Mae ystyr 'derbyniadau net' wedi ei egluro yn is-adran (8).

1475. Pan wneir addasiad busnes, mae is-adran (5) yn darparu bod y swm a gyfrifir yn unol ag is-adran (3) yn cael ei leihau gan swm priodol (os o gwbl) sy'n adlewyrchu unrhyw enillion sy'n deillio o ganlyniad i'r amgylchiadau hynny sydd wedi newid, i'r graddau nad yw'r enillion hynny eisoes wedi ystyried:

a. gwerth unrhyw eiddo sy'n parhau i fod yn eiddo i'r ymgymerwr neu'r gweithredwr cod ond nad oes ei angen mwyach ar gyfer ei weithrediadau;

b. unrhyw gynnydd mewn derbyniadau net sy'n deillio o'r addasiad; ac

c. unrhyw gynnydd yng ngwerth cyfalaf unrhyw eiddo a gedwir ac sy'n parhau i gael ei ddefnyddio gan yr ymgymerwr, ac y gellir ei briodoli'n uniongyrchol i'r addasiad, ond gan ystyried hefyd unrhyw leihad ar gyfer cynnydd mewn derbyniadau net.

1476. Pan fo tir yn cael ei ddatblygu ar ôl caffael neu gyfeddu, caiff yr awdurdod caffael fynd ati ei hun i wneud y gwaith sydd ei angen i symud ymaith neu ail-leoli cyfarpar ymgymerwr am resymau technegol neu weithredol, gan ddibynnu ar ei bwerau o dan adran 316(8). Pan fo hynny'n digwydd, mae unrhyw ddigolledia sy'n daladwy gan yr awdurdod caffael o dan adran 320(3) yn cael ei ostwng yn ôl swm sy'n hafal i'r gost wirioneddol yr aeth yr awdurdod iddi wrth wneud y gwaith hwnnw (is-adran (7)).

Adran 322 – Pŵer ymgymerwyr statudol i eithrio adran 321

1477. Pan fo tir ymgymerwr statudol yn cael ei brynu'n orfodol, asesir swm y digolledia sy'n daladwy fel arfer o dan adran 321. Fodd bynnag pan fo'r caffaeliad gorfodol o dan orchymyn prynu gorfodol sydd wedi ei gadarnhau neu ei wneud heb dystysgrif y Gweinidog priodol, caiff ymgymerwr ddewis o dan is-adran (1) cael asesiad o'r swm ar y sail arferol a fyddai'n gymwys fel arall – hynny yw, yn bennaf o dan Ddeddf 1961 ar sail y rheolau (heblaw rheol (5) yn adran 5 o'r Ddeddf honno, sy'n ymwneud ag adfer cyfatebol).

1478. O dan is-adran (3) a (4), mae dewis o'r fath i'w wneud drwy hysbysiad a roddir gan yr ymgymerwr i'r awdurdod caffael o fewn dau fis i gyflwyno hysbysiad i drafod telerau; a chaiff y dewis ymwneud â rhywfaint neu'r cyfan o'r tir sydd i'w gaffael. Pan fo dewis o'r fath wedi ei wneud, mae'r digolledia i'w asesu yn unol â hynny (is-adran (2)).

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)).

RHAN 13 – TIR O DAN FALLTOD

1479. Pan fo awdurdod cyhoeddus yn caffael tir ar gyfer prosiect, gan ddefnyddio pwerau caffael gorfodol neu drwy gytundeb, mae digolledi yn daladwy ar sail sydd wedi ei gynllunio i adlewyrchu'r hyn a fyddai gwerth marchnadol presennol y tir pe na fyddai'r prosiect yn bod. A phan fo penderfyniad cynllunio yn gwneud tir yn dda i ddim, caiff y perchnogion ei gwneud yn ofynnol i'r awdurdod cynllunio gaffael y tir, a thalu digolledi – ar sail debyg. Fodd bynnag, mewn rhai achosion caniateir nodi tir mewn cynllun datblygu neu mewn rhyw ffordd arall yn dir y mae'n debygol y bydd ei angen ar gyfer prosiect cyhoeddus, ond efallai nid am ychydig. Neu caiff fod yn ddarostyngedig i orchymyn o ryw fath sy'n galluogi caffael y tir at ddiben o'r fath, sydd wedi ei wneud ond nad yw wedi arwain eto at gyflwyno hysbysiad i drafod telerau.

1480. Yn y naill senario neu'r llall, ni fydd fawr o ddiben i berchnogion y tir geisio caniatâd cynllunio ar gyfer datblygiad ar unrhyw ffurf arall, gan y byddai'n debygol o gael ei wrthod; ond hyd nes y caiff y tir ei gaffael, bydd ei werth marchnadol wedi lleihau, os oes ganddo unrhyw werth marchnadol o gwbl. Ac mae'n bosibl na fydd y prosiect o dan sylw byth yn digwydd mewn gwirionedd.

1481. Er mwyn sicrhau nad yw perchnogion yn cael eu trin yn annheg yn sgil hynny, cyflwynodd Deddf 1959 weithdrefn (ar sail y darpariaethau hysbysiad prynu, ond yn ehangach ei chwmpas) sy'n galluogi perchnogion ar dir o'r fath i gyflwyno hysbysiad malltod i'r awdurdod priodol, sef yr awdurdod a allai gaffael y tir rywbryd. Mae gan yr awdurdod hwnnw hawlogaeth i wrthwynebu'r hysbysiad; efallai y bydd rhaid i'r mater gael ei ddatrys gan yr Uwch Dribiwnlys wedyn. Os cadarnheir yr hysbysiad, neu os na wneir gwrthwynebiad, bernir bod yr awdurdod wedi ei awdurdodi i gaffael y tir yn orfodol – hynny yw, fel arfer o dan y deddfiad sy'n rhoi'r hawlogaeth iddo wneud hynny – a thelir digolledi wedyn yn unol â hynny.

1482. Mae'r darpariaethau hynny wedi eu cario ymlaen yn y Rhan hon o'r Ddeddf.

1483. Yn y Rhan hon, ceir cyfeiriadau at "hysbysiad i drafod telerau" yn cael ei gyflwyno neu'n cael ei drin fel pe bai wedi ei gyflwyno. Mewn gweithdrefn prynu gorfodol arferol, cais ffurfiol yw hysbysiad i drafod telerau (o dan adran 5 o Ddeddf 1965) sy'n datgan y rhoddwyd pwerau i awdurdod i gaffael darn o dir, ei fod bellach yn barod i ddechrau negodiadau ar gyfer prynu'r tir ac yn gwahodd y derbynnydd i gytuno ar y digolledi sy'n daladwy. Os na ellir penderfynu swm y digolledi drwy gytundeb, bydd yn cael ei benderfynu gan yr Uwch Dribiwnlys (o dan adran 6 o Ddeddf 1965).

Adran 323 – Termau allweddol

1484. Yn rhinwedd is-adran (1), defnyddir y term "tir o dan falltod" yn y Ddeddf i gyfeirio at dir sy'n dod o fewn un neu ragor o'r 29 o gategorïau o dir a bennir yn Rhan 1 o Atodlen 19. Mae pob un yn cyfeirio at dir sydd wedi ei nodi mewn math penodol o gynllun, gorchymyn, penderfyniad neu ddatganiad polisi, neu sydd wedi ei glustnodi mewn rhyw ffordd arall ar gyfer ei gaffael yn y dyfodol.

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. Mae is-adran (2) yn egluro, pan fo hereditament neu uned amaethyddol yn dir yn un o'r categorïau hynny:

a. y gall fod modd i berson sydd â buddiant cymhwysol yn y tir gyflwyno hysbysiad malltod i'r awdurdod priodol, o dan adran 324;

b. y gall fod modd i gynrychiolwyr personol person a oedd â buddiant cymhwysol yn y tir cyn iddo farw gyflwyno hysbysiad malltod i'r awdurdod priodol o dan adran 346; ac

c. y gall fod modd i forgeisai sydd â hawlogaeth i feddu ar y tir gyflwyno hysbysiad malltod i'r awdurdod priodol o dan adran 348.

1486. Ym mhob achos, nid yw'r ffaith bod tir yn dod o fewn un neu ragor o'r 29 o gategorïau yn ddigonol; rhaid bodloni amodau penodol eraill hefyd cyn y caniateir cyflwyno hysbysiad (gweler adrannau 324(3), 346(3) a 348(3)).

1487. Diffinnir "hereditament" (gan adran 359) fel "hereditament perthnasol" at ddibenion Deddf Cyllid Llywodraeth Leol 1988. Yn syml, uned o eiddo yw hereditament sy'n cael ei meddiannu ar wahân neu sy'n gallu cael ei meddiannu ar wahân, ac sy'n agored i dalu ardreth neu sy'n gallu dod yn agored i dalu ardreth.

1488. Diffinnir "buddiant cymhwysol" mewn hereditament, at y diben hwn, yn is-adrannau (3)(a), (4) a (5) fel:

a. buddiant perchen-feddiannydd preswyl ar hereditament; neu

b. buddiant perchen-feddiannydd amhreswyl ar yr hereditament y mae ei werth blynyddol yn llai na swm a bennir mewn rheoliadau (£36,000 ar hyn o bryd; gweler erthygl 2 o Orchymyn Cynllunio Gwlad a Thref (Darpariaethau Malltod) (Cymru) 2019 (O.S. 2019/1018 (Cy. 178)).

1489. Diffinnir y termau "perchen-feddiannydd" a "perchen-feddiannydd preswyl" ar hereditament ym mharagraffau 31, 32, a 34 o Atodlen 19, a diffinnir y term "gwerth blynyddol" ym mharagraff 35 (is-adran (6)).

1490. Diffinnir "uned amaethyddol" yn adran 408, i gynnwys anheddau cysylltiedig. Ystyr "buddiant cymhwysol" mewn uned amaethyddol, ar gyfer y Rhan hon, yw buddiant perchen-feddiannydd ar uned amaethyddol neu ran o uned o'r fath (is-adran (3)(b)). Diffinnir "perchen-feddiannydd" ar uned amaethyddol ym mharagraffau 33 a 34 o Atodlen 19.

1491. Mae adran 335 yn rhoi rhagor o fanylion ynghylch cyflwyno hysbysiad malltod sy'n ceisio caffael uned amaethyddol gyfan neu ran ohoni pan na fo ond rhan o'r tir sydd i'w gaffael yn un o'r categorïau yn Rhan 1 o Atodlen 19.

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.

Atodlen 19 – Tir o dan falltod

Rhan 1 – Categorïau tir o dan falltod

1492. Mae'r Atodlen hon yn nodi 29 o gategorïau o dir sy'n cael arwain at hawlogaeth i gyflwyno hysbysiad malltod.

1493. Mae categorïau 1 i 4 yn ymwneud â thir y tynnwyd sylw ato mewn gwahanol gynlluniau fel tir sy'n addas ar gyfer swyddogaethau cyhoeddus, hynny yw ar gyfer swyddogaethau adran o'r llywodraeth, awdurdod lleol neu ymgymerwr statudol, neu ar gyfer darparu rhwydwaith cod cyfathrebiadau electronig neu wasanaeth cyfathrebiadau electronig cyhoeddus:

a. Mae Categori 1 yn dir a nodir gan gynllun datblygu strategol neu gynllun datblygu lleol (o dan Ran 2 o'r Ddeddf) sydd wrthi'n cael ei archwilio neu sydd wedi ei fabwysiadu neu ei gymeradwyo, ac yn dir a nodir gan ddiwygiad i gynllun o'r fath sy'n cael ei archwilio neu sydd wedi ei fabwysiadu neu ei gymeradwyo (paragraff 1);

b. Mae Categori 2 yn dir a nodir gan y FfDC (o dan Ran 2) neu gan ddiwygiad i'r FfDC sydd wedi ei osod gerbron y Senedd neu sydd wedi ei gyhoeddi (paragraff 2);

c. Mae Categori 3 yn dir a nodir gan unrhyw gynllun arall a gymeradwywyd gan awdurdod cynllunio at ddiben arfer ei bwerau o dan Ran 3 (caniatâd cynllunio) neu Bennod 1 o Ran 6 (rhwymedigaethau cynllunio) (paragraff 3); a

d. Mae Categori 4 yn dir y mae awdurdod cynllunio wedi penderfynu ei ddiogelu ar gyfer datblygiad ar gyfer swyddogaethau cyhoeddus, neu'n dir y mae Gweinidogion Cymru neu'r Ysgrifennydd Gwladol wedi cyfarwyddo ei ddiogelu ar gyfer datblygiad o'r fath (paragraff 4).

1494. Os yw tir o fewn Categorïau 1 neu 2, yna nid yw Categori 12 yn gymwys (paragraff 12(2)).

1495. Mae Categorïau 5 i 7 yn cynnwys tir sydd mewn ardal sydd wedi ei chlustnodi'n dref newydd neu'n ardal datblygu trefol:

a. Mae Categori 5 yn dir mewn ardal a ddisgrifir fel safle tref newydd mewn gorchymyn y rhoddwyd cyhoeddusrwydd iddo o dan Atodlen 1 i Ddeddf Trefi Newydd 1981 (paragraff 5);

b. Mae Categori 6 yn dir mewn ardal a ddynodir yn safle tref newydd drwy orchymyn sydd wedi dod i rym o dan adran 1 o'r Ddeddf honno (paragraff 6); ac

c. Mae Categori 7 yn dir mewn ardal a ddynodir yn ardal datblygu trefol, pa un a yw'r gorchymyn wedi dod i rym ai peidio, o dan adran 134 o Ddeddf Llywodraeth Leol, Cynllunio a Thir 1980 (paragraff 7).

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. Mae Categorïau 8 i 11 yn ymwneud â thir mewn gwahanol fathau o ardal adnewyddu, a ddynodir o dan ddeddfwriaeth tai:

a. Mae Categori 8 yn dir mewn ardal y datganwyd ei bod yn ardal glirio o dan adran 289 o Ddeddf Tai 1985 (paragraff 8); ac mae Categori 9 yn dir cyfagos y mae awdurdod tai lleol wedi penderfynu ei brynu o dan adran 290 o'r Ddeddf honno (paragraff 9);
b. Mae Categori 10 yn dir y mae awdurdod tai yn cynnig ei gaffael gan ddefnyddio ei bwerau o dan Ran 7 o Ddeddf Llywodraeth Leol a Thai 1989 (p. 42) (ardaloedd adnewyddu) (paragraff 10); ac

c. Mae Categori 11 yn dir a nodir mewn gwybodaeth a gyhoeddwyd o dan adran 257 o Ddeddf Tai 1985 y mae awdurdod tai yn cynnig ei gaffael (ardaloedd gwella cyffredinol) (paragraff 11).

1497. Mae Categorïau 12 i 17 yn ymwneud â thir sydd ei angen at wahanol ddibenion priffyrdd:

a. Mae Categori 12 yn dir a nodir mewn cynllun datblygu sy'n dir sydd wedi ei neilltuo ar gyfer adeiladu priffordd newydd, neu ar gyfer gwella priffordd bresennol (paragraff 12). Nid yw hyn yn gymwys i dir o fewn Categorïau 1 i 4;

b. Mae Categori 13 yn dir ar neu gerllaw llinell priffordd newydd neu briffordd sydd wedi ei gwella fel y'i nodir mewn gorchymyn neu orchymyn drafft o dan Ran 2 o Ddeddf 1980, neu dir sydd ei angen at ddiben y briffordd newydd neu y gwnaed gwelliannau iddi, gan gynnwys lliniaru ei heffeithiau (paragraff 13);

c. Mae Categori 14 yn dir sy'n ffurfio rhan o briffordd y mae awdurdod priffyrdd lleol yn cynnig ei hadeiladu, ei newid neu ei gwella, a nodir ar gynllun a gymeradwywyd gan yr awdurdod hwnnw (paragraff 14); ac mae Categori 15 yn dir sy'n ffurfio rhan o briffordd y cynigir ei hadeiladu, ei gwella neu ei newid gan Weinidogion Cymru, yr Ysgrifennydd Gwladol neu gwmni priffyrdd strategol fel y rhoddwyd hysbysiad ohono i'r awdurdod cynllunio (paragraff 15);

d. Mae Categori 16 yn dir y mae'r awdurdod priffyrdd yn cynnig ei gaffael o dan adran 246 o Ddeddf 1980 (paragraff 16); ac mae Categori 17 yn dir y mae Gweinidogion Cymru, yr Ysgrifennydd Gwladol, neu gwmni priffyrdd strategol yn cynnig ei gaffael o dan adran 246 o'r Ddeddf honno (paragraff 17).

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. Mae Categorïau 18 i 27 yn ymwneud â thir sydd wedi ei glustnodi ar gyfer ei brynu'n orfodol, pan na fo'r broses gaffael wedi ei chwblhau eto:

a. Mae Categori 18 yn dir sydd wedi ei awdurdodi i'w brynu'n orfodol mewn deddfiad arbennig (hynny yw, Deddf gan y Senedd neu Ddeddf gan Senedd y Deyrnas Unedig, neu offeryn sydd wedi dod yn weithredol ar ôl bod yn ddarostyngedig i weithdrefn arbennig yn Senedd Cymru neu Senedd y Deyrnas Unedig ac sy'n nodi'r tir yn benodol ac yn awdurdodi ei gaffael yn orfodol), neu sydd o fewn terfynau'r gwyriad y gellid arfer y pwerau prynu gorfodol a roddir drwy ddeddfiad o'r fath o'i fewn (paragraff 18);

b. Mae Categori 19 yn dir (neu'n hawl dros dir) sy'n ddarostyngedig i orchymyn prynu gorfodol sydd wedi dod i rym, ond pan na fo hysbysiad i drafod telerau wedi ei gyflwyno eto (paragraff 19); ac mae Categori 20 yn dir sy'n ddarostyngedig i orchymyn prynu gorfodol y mae Gweinidogion Cymru neu un o Weinidogion y Goron wedi llunio drafft ohono neu sydd wedi ei gyflwyno iddynt (er enghraifft, gan awdurdod lleol) i'w gadarnhau (paragraff 20);

c. Mae Categori 21 yn dir sydd wedi ei awdurdodi i'w brynu'n orfodol drwy orchymyn o dan Ddeddf Trafnidiaeth a Gweithfeydd 1992, neu sydd o fewn terfynau'r gwyriad y gellid arfer pwerau a roddir drwy orchymyn o'r fath o'i fewn (paragraff 21); ac mae Categori 22 yn dir sydd wedi ei gynnig ar gyfer ei brynu'n orfodol drwy orchymyn o dan y Ddeddf honno, drwy gael ei gynnwys mewn cais o dan y Ddeddf honno neu orchymyn drafft (paragraff 22);

d. Mae Categori 23 yn dir sydd wedi ei awdurdodi i'w brynu'n orfodol drwy orchymyn cydsyniad seilwaith o dan Ddeddf 2024 neu sydd o fewn terfynau'r gwyriad y gellid arfer y pwerau a roddir drwy orchymyn o'r fath o'i fewn (paragraff 23); ac mae Categori 24 yn dir sydd wedi ei gynnig ar gyfer ei brynu'n orfodol o dan orchymyn o'r fath, drwy gael ei gynnwys mewn cais o dan y Ddeddf honno (paragraff 24);

e. Mae Categori 25 yn dir sydd wedi ei awdurdodi i'w brynu'n orfodol drwy orchymyn cydsyniad datblygu o dan Ddeddf 2008, neu sydd o fewn terfynau'r gwyriad y gellid arfer y pwerau a roddir gan orchymyn o'r fath o'i fewn (paragraff 25); ac mae Categori 26 yn dir sydd wedi ei gynnig ar gyfer ei brynu'n orfodol o dan orchymyn o'r fath, drwy gael ei gynnwys mewn cais o dan y Ddeddf honno (paragraff 26); ac

f. Mae Categori 27 yn dir sydd wedi ei awdurdodi i'w brynu'n orfodol o dan unrhyw ddeddfiad, pan fo'r awdurdod caffael wedi ei awdurdodi i gymryd meddiant dros dro ohono o dan adran 18(2) o Ddeddf Cynllunio Cymdogaeth 2017 (p. 20) (paragraff 27).

1499. Mae Categori 28 yn dir a nodir ar gyfer datblygiad mewn datganiad polisi seilwaith o dan Ddeddf 2024 (paragraff 28). Ac mae Categori 29 yn dir y nodir ei fod yn addas ar gyfer datblygiad mewn datganiad polisi cenedlaethol o dan Ddeddf 2008 (paragraff 29).

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).

Rhan 2 – Ystyr "perchen-feddiannydd", "perchen-feddiannydd preswyl" a "gwerth blynyddol"

1500. Ystyr perchen-feddiannydd ar hereditament yw person sy'n meddiannu'r cyfan neu ran sylweddol ohono, yn rhinwedd buddiant rhydd-ddaliadol neu les cyfnod penodol sydd ag o leiaf dair blynedd yn weddill ar y diwrnod perthnasol (hynny yw, y diwrnod y cyflwynir hysbysiad malltod o dan adran 324), ac sydd wedi ei feddiannu ar y sail honno am o leiaf y chwe mis sy'n dod i ben ar y diwrnod hwnnw (paragraffau 31(a) a 34).

1501. Pan fo'r cyfan neu ran sylweddol o hereditament heb ei feddiannu, ac wedi bod heb ei feddiannu am gyfnod o lai na 12 mis sy'n dod i ben ar y diwrnod perthnasol (neu'r cyfnod hirach hwnnw sy'n ofynnol pan fo anghytundeb ynghylch pwy yw'r awdurdod priodol; gweler paragraff 43(5)(c)), y perchen-feddiannydd yw person a'i meddiannodd ar y sail honno am y chwe mis sy'n dod i ben yn union cyn y cyfnod pan nad oedd wedi ei feddiannu (paragraffau 31(b) a 34).

1502. Ystyr perchen-feddiannydd preswyl ar hereditament yw unigolyn (yn hytrach na chorff corfforedig) sy'n meddiannu'r cyfan neu ran sylweddol ohono fel annedd am y cyfnod perthnasol a ddisgrifir yng Nghategori 31 (paragraff 32).

1503. Ystyr perchen-feddiannydd ar uned amaethyddol yw person sydd, wrth ddal naill ai buddiant rhydd-ddaliadol yn yr uned neu les cyfnod penodol sydd ag o leiaf dair blynedd yn weddill ar y diwrnod perthnasol ar gyfer y cyfan o'r uned honno neu ran ohoni:

a. yn meddiannu'r cyfan o'r uned, ac sydd wedi ei meddiannu'n barhaus am y chwe mis o leiaf sy'n dod i ben ar y diwrnod perthnasol (hynny yw, y diwrnod y cyflwynir hysbysiad malltod o dan adran 324); neu

b. wedi meddiannu'r cyfan o'r uned yn barhaus am gyfnod o chwe mis o leiaf sy'n dod i ben heb fod yn hwy na blwyddyn cyn y diwrnod perthnasol (paragraffau 33 a 34).

1504. Pan fo partneriaeth yn meddiannu hereditament neu uned amaethyddol at ddibenion busnes, mae i'w thybio mai'r bartneriaeth sy'n meddiannu'r hereditament neu'r uned ac nid unrhyw un neu ragor o'r partneriaid yn unigol, ac mae'r diffiniadau o'r term perchen-feddiannydd ym mharagraffau 32 a 34 o Atodlen 19 i'w darllen yn unol â hynny. Pan fydd partneriaeth wedi cyflwyno hysbysiad malltod, mae'n parhau i gael effaith er gwaethaf unrhyw newid dilynol yn yr aelodaeth (adran 351).

1505. Pan fo hereditament wedi ei gynnwys ar restr ardrethu annomestig leol a luniwyd o dan Ddeddf Cyllid Llywodraeth Leol 1988 ac nad yw'n cynnwys unrhyw eiddo domestig nac unrhyw eiddo sydd wedi ei esemptio rhag ardrethu annomestig, gwerth blynyddol yr hereditament yw'r gwerth a ddangosir ar y rhestr fel ei werth ardrethol (paragraff 35(1)(a) a (2) o'r Atodlen hon).

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. Pan mai eiddo domestig yw hereditament, ni chaiff ei gynnwys ar restr ardrethu annomestig leol. Yn yr achos hwnnw, bydd gwerth blynyddol yr hereditament, neu'r gwerth y gellir ei briodoli i'r rhan anardrethol ohono, yn hafal i 5% o'r digollediad a fyddai'n daladwy pe bai'n cael ei gaffael yn orfodol (â meddiant gwag) yn unol â'r rheolau arferol o dan Ran 2 o Ddeddf 1961. Os mai eiddo sydd wedi ei esemptio rhag ardrethu am unrhyw reswm arall yw'r hereditament, ei werth blynyddol fydd y gwerth a fyddai ganddo pe na bai wedi ei esemptio. Yn y naill achos neu'r llall, y gwerth fydd y gwerth a ardystir gan y swyddog prisio a benodir o dan Ddeddf Cyllid Llywodraeth Leol 1988 ar gyfer yr ardal sy'n cynnwys yr hereditament (paragraff 35(1)(b), (4) a (5) o'r Atodlen hon).

1507. Pan fo hereditament wedi ei gynnwys ar restr ardrethu, ond mae'n cynnwys eiddo sydd wedi ei esemptio rhag ardrethu, ei werth blynyddol fydd swm:

a. y gwerth a ddangosir ar y rhestr ar gyfer yr hereditament hwnnw; a

b. gwerth y rhan anardrethol o'r hereditament sydd wedi ei gyfrifo yn unol â'r uchod (paragraff 35(1)(a) a (3)).

Rhan 3 – Ystyr "yr awdurdod priodol"

1508. Y rheol gyffredinol yw mai'r awdurdod priodol yw'r awdurdod sydd â hawlogaeth i gaffael buddiant yn y tir (neu hawl dros dir o'r fath) yn y categori perthnasol, neu sy'n cynnig gwneud hynny, neu sydd wedi ei awdurdodi i gymryd meddiant dros dro o'r tir (paragraff 37). Fodd bynnag, mae hynny'n ddarostyngedig i ddarpariaethau penodol sy'n ymwneud â thir mewn categorïau penodol.

1509. Mewn perthynas â thir sy'n dod o fewn Categorïau 5 i 7 (tir sydd mewn ardal sydd wedi ei chlustnodi'n dref newydd neu'n ardal datblygu trefol), Gweinidogion Cymru yw'r awdurdod priodol, hyd nes y sefydlir corfforaeth ddatblygu ar gyfer y dref newydd neu'r ardal datblygu trefol o dan sylw (paragraffau 38 a 39).

1510. Mewn perthynas â thir yng Nghategori 27, yr awdurdod priodol yw'r awdurdod sydd wedi ei awdurdodi i gymryd meddiant dros dro o'r tir (paragraff 37(1)(b)).

1511. Mewn perthynas â Chategori 28 (tir a nodir ar gyfer datblygiad mewn datganiad polisi seilwaith), Gweinidogion Cymru fydd yr awdurdod priodol yn gyffredinol, ac mewn perthynas â Chategori 29 (tir y nodir ei fod yn addas ar gyfer datblygiad mewn datganiad polisi cenedlaethol), yr Ysgrifennydd Gwladol fydd hwnnw yn gyffredinol. Fodd bynnag, yn y naill achos neu'r llall, pan fo'r datganiad polisi yn nodi ymgymerwr statudol fel yr asiantaeth briodol i gynnal y datblygiad, yr ymgymerwr hwnnw fydd yr awdurdod priodol (paragraffau 40 ac 41).

1512. Mae paragraff 42 yn darparu, mewn perthynas â hysbysiad malltod o dan adran 335 sy'n ymwneud ag uned amaethyddol sy'n cynnwys ardaloedd yr effeithir arnynt ac ardaloedd nad effeithir arnynt o'r uned, y penderfynir yr awdurdod priodol ar gyfer yr ardal nad effeithir arni drwy dybio bod yr ardal nad effeithir arni yn rhan o'r ardal yr effeithir arni. Er enghraifft, os yw'r rhan o'r uned yr effeithir arni yng Nghategori 5 (mewn safle tref newydd), yr awdurdod priodol ar gyfer yr uned gyfan fydd Gweinidogion Cymru, fel pe bai'r ardal nad effeithir arni hefyd o fewn safle'r dref newydd.

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. O dan baragraff 43(1) a (2), mae Gweinidogion Cymru i ymdrin â chwestiynau ynghylch:

a. pa un ai'r awdurdod priodol yw Gweinidogion Cymru, yr Ysgrifennydd Gwladol, awdurdod priffyrdd strategol neu awdurdod priffyrdd lleol;

b. pa un o ddau awdurdod lleol neu ragor yw'r awdurdod priodol;

c. pa un ai'r awdurdod priodol, mewn perthynas â thir yng Nghategori 28 (tir a nodir mewn datganiad polisi seilwaith), yw Gweinidogion Cymru neu ymgymerwr statudol, neu pa un o ddau ymgymerwr neu ragor.

1514. O dan baragraff 43(3) a (4), mae'r Ysgrifennydd Gwladol i ymdrin â chwestiynau ynghylch pa un ai'r awdurdod priodol, mewn perthynas â thir yng Nghategori 29 (tir a nodir mewn datganiad polisi cenedlaethol), yw'r Ysgrifennydd Gwladol neu ymgymerwr statudol, neu pa un o ddau ymgymerwr neu ragor ydyw.

1515. Pan fo cwestiwn wedi ei atgyfeirio at Weinidogion Cymru neu'r Ysgrifennydd Gwladol, o dan baragraff 43, am benderfyniad o dan y darpariaethau hyn, bydd unrhyw oedi o ganlyniad yn cael ei ystyried wrth benderfynu cyfnodau penodol o amser (o dan adran 325(3) neu 348(3)(d)(ii) neu baragraff 31(b) neu 33(b) o'r Atodlen hon).

Rhan 4 – Ystyr "y deddfiad priodol"

1516. O dan baragraff 45 y deddfiad priodol yw, yn gyffredinol, y deddfiad sy'n darparu ar gyfer caffael yn orfodol dir yn y categori perthnasol yn Rhan 1 o'r Atodlen hon. Mae hynny'n ddarostyngedig, fodd bynnag, i'r darpariaethau ym mharagraffau 46 i 59 o'r Atodlen hon sy'n gymwys mewn achosion penodol.

1517. Er mwyn i dir fod o fewn Categorïau 1 i 3 yn Rhan 1 o'r Atodlen hon, bydd wedi ei ddyrannu mewn cynllun datblygu perthnasol, yr FfDC neu ryw gynllun arall a gymeradwywyd ar gyfer cyflawni swyddogaethau cyhoeddus, hynny yw swyddogaethau adran o'r llywodraeth, awdurdod lleol, ymgymerwr statudol, neu ddarparwr rhwydwaith. Bydd tir yng Nghategori 4 wedi ei ddiogelu ar gyfer swyddogaethau o'r fath (drwy benderfyniad gan yr awdurdod cynllunio neu gyfarwyddyd i awdurdod gan Weinidogion Cymru). Mae paragraff 46 yn darparu, yn unrhyw un o'r achosion hyn, mai'r deddfiad priodol fydd y deddfiad sy'n darparu ar gyfer caffael tir yn orfodol ar gyfer cyflawni'r swyddogaeth a nodir yn y cynllun, y penderfyniad neu'r cyfarwyddyd.

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. Pan fo tir yng Nghategorïau 5 i 9, 19, 20, neu 23 i 29, mae paragraffau 47 i 55 yn darparu y bydd y deddfiad priodol fel a ganlyn:

Categori yn Rhan 1 o Atodlen 19	*Deddfiad priodol*
Categorïau 5 a 6 (tir mewn ardal tref newydd)	adran 353(1) (hyd nes y sefydlir corfforaeth ddatblygu)
Categori 7 (tir mewn ardal datblygu trefol)	adran 354(1) (hyd nes y sefydlir corfforaeth ddatblygu)
Categorïau 8 a 9 (tir mewn ardal glirio)	adran 290 o Ddeddf Tai 1985
Categorïau 19 ac 20 (tir a nodir mewn gorchymyn prynu gorfodol)	y deddfiad sy'n awdurdodi'r pryniant gorfodol (neu a fyddai'n ei awdurdodi os caiff y gorchymyn ei gadarnhau)
Categorïau 23 a 24 (tir a nodir mewn gorchymyn cydsyniad seilwaith)	y gorchymyn cydsyniad seilwaith (neu'r gorchymyn y gwneir cais amdano)
Categorïau 25 a 26 (tir a nodir mewn gorchymyn cydsyniad datblygu)	y gorchymyn cydsyniad datblygu (neu'r gorchymyn y gwneir cais amdano)
Categori 27 (tir a nodir ar gyfer meddiant dros dro)	yr offeryn o dan adran 19 o Ddeddf Cynllunio Cymdogaeth 2017 sy'n awdurdodi'r meddiant dros dro
Categori 28 (tir a nodir mewn datganiad polisi seilwaith)	adran 355
Categori 29 (tir a nodir mewn datganiad polisi cenedlaethol)	adran 356

1519. Pan fo tir wedi ei nodi yn dir sydd i'w gaffael at ddibenion priffyrdd, y deddfiad priodol yw'r deddfiad sy'n galluogi'r awdurdod priffyrdd i gaffael y tir o dan sylw, neu a fyddai'n ei alluogi i wneud hynny unwaith y bydd y gorchymyn neu'r cynllun perthnasol o dan Ddeddf 1980 wedi dod yn weithredol neu y bydd y cynlluniau angenrheidiol wedi eu gwneud a'u cymeradwyo (paragraff 56).

1520. Mae paragraff 57 yn darparu, mewn perthynas â hysbysiad malltod o dan adran 335(2) sy'n ymwneud ag uned amaethyddol, sy'n cynnwys ardaloedd yr effeithir arnynt ac ardaloedd nad effeithir arnynt o'r uned, y penderfynir y deddfiad priodol ar gyfer yr ardal nad effeithir arni drwy dybio bod yr ardal nad effeithir arni yn rhan o'r ardal yr effeithir arni. Er enghraifft, os yw rhan o'r uned yng Nghategori 5, fel tir sydd mewn safle tref newydd, adran 353(1) fydd y deddfiad priodol ar gyfer yr uned gyfan.

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. Pan fyddai, yn unol â darpariaethau eraill Rhan 4 o'r Atodlen hon, ddau neu ragor o ddeddfiadau priodol mewn perthynas â darn o dir, y deddfiad priodol yw'r un y mae'n fwyaf tebygol, yn yr holl amgylchiadau, y byddai'r tir yn cael ei gaffael odano (paragraff 58).

1522. Os bydd cwestiwn yn codi ynghylch y deddfiad priodol mewn achos penodol, mae paragraff 59 yn darparu ei fod i'w ddatrys fel a ganlyn:

a. os yw'r awdurdod priodol yn adran o'r llywodraeth heblaw Gweinidogion Cymru, mae'r cwestiwn i'w atgyfeirio at Weinidog perthnasol y Goron;

b. os yw'r awdurdod priodol yn ymgymerwr statudol, mae i'w atgyfeirio at y Gweinidog priodol (gweler y diffiniad yn adran 308);

c. ym mhob achos arall, mae i'w atgyfeirio at Weinidogion Cymru.

Adran 324 – Hysbysiad sy'n ei gwneud yn ofynnol prynu tir o dan falltod

1523. O dan is-adrannau (1) i (3), caiff person sydd â buddiant cymhwysol mewn hereditament neu uned amaethyddol gyflwyno hysbysiad malltod i awdurdod priodol, ar y ffurf a ragnodir mewn rheoliadau, os:

a. yw'r cyfan neu ran o'r hereditament neu'r uned amaethyddol yn dir yn un neu ragor o'r categorïau yn Rhan 1 o Atodlen 1; a

b. yw un o'r amodau canlynol yn is-adran (3)(c) yn gymwys:
   i. bod y person wedi ceisio gwerthu'r buddiant hwnnw, ac nad oedd yn gallu gwneud hynny (ac eithrio, o bosibl, am bris gostyngol) am fod y tir yn un neu ragor o'r categorïau hynny;
   ii. bod y tir o fewn Categori 18, 19, 21, 23, 25 neu 27 yn Rhan 1 o Atodlen 1, sef tir sydd wedi ei nodi ar gyfer ei brynu'n orfodol mewn deddfiad arbennig, gorchymyn prynu gorfodol, gorchymyn o dan Ddeddf Trafnidiaeth a Gweithfeydd 1992, gorchymyn cydsyniad seilwaith, neu orchymyn cydsyniad datblygu, neu sydd wedi ei awdurdodi ar gyfer meddiant dros dro o dan Ddeddf Cynllunio Cymdogaeth 2017 – pan fo'r pwerau caffael gorfodol yn parhau'n arferadwy; neu
   iii. bod y tir o fewn Categori 24 neu 26, sef tir sydd wedi ei nodi ar gyfer ei gaffael mewn cais am gydsyniad seilwaith neu orchymyn cydsyniad datblygu.

1524. Sylwer bod y mater o bwy yw'r "awdurdod priodol" wedi ei nodi yn Rhan 3 o Atodlen 19. Ac mae adran 323 yn nodi'r diffiniadau o'r termau "hereditament" ac "uned amaethyddol".

1525. Yn rhinwedd is-adran (5), rhaid cyflwyno'r hysbysiad malltod yn ymwneud â'r cyfan o fuddiant y person yn yr hereditament neu'r uned, hyd yn oed os yw'r buddiant hwnnw'n ymwneud â rhan yn unig o'r hereditament neu'r uned. Er enghraifft, os yw person yn berchen ar gaeau A a B, a bod gorchymyn prynu gorfodol wedi nodi caeau A, B ac C ar gyfer eu prynu'n orfodol, rhaid i'r person hwnnw gyflwyno hysbysiad ar gyfer cae A a chae B.

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. Mae ffurf hysbysiad malltod wedi ei rhagnodi ar hyn o bryd yn Atodlen 2 i Reoliadau Cyffredinol 1992.

Adran 325 – Gwrth-hysbysiad yn gwrthwynebu hysbysiad malltod

1527. Pan fo person wedi cyflwyno hysbysiad malltod i'r awdurdod priodol o dan adran 324, caiff yr awdurdod gyflwyno gwrth-hysbysiad i'r person hwnnw (y cyfeirir ato yn y Rhan hon fel "yr hawlydd") o dan yr adran hon. Rhaid cyflwyno gwrth-hysbysiad o fewn dau fis i'r diwrnod y cyflwynwyd yr hysbysiad malltod (is-adran (3)); er y caniateir estyn y cyfnod hwnnw o ddau fis hyd nes y bydd unrhyw anghytundeb ynghylch pwy yw'r awdurdod priodol wedi ei ddatrys (gweler paragraff 43(5)(a) o Atodlen 19).

1528. Pan fo hawlydd yn marw ar ôl cyflwyno hysbysiad malltod, rhaid cyflwyno'r gwrth-hysbysiad i gynrychiolwyr personol yr hawlydd (adran 345).

1529. Rhaid i wrth-hysbysiad nodi ar ba seiliau y mae'r awdurdod yn gwrthwynebu'r hysbysiad malltod a rhaid i'r seiliau hynny fod yn un neu ragor o'r rhai a bennir yn adran 326 neu, os yw'n berthnasol, adran 336(3), 347(1) neu 349(1). Mae ffurf gwrth-hysbysiad wedi ei rhagnodi ar hyn o bryd yn Atodlen 2 i Reoliadau Cyffredinol 1992.

Adran 326 – Seiliau gwrthwynebiad i hysbysiad malltod
Adran 327 – Seiliau gwrthwynebiad: darpariaeth bellach

1530. Mae adran 326 yn nodi saith sail y caiff awdurdod priodol wrthwynebu hysbysiad malltod arnynt. Cyfeirir atynt yn y Rhan hon fel Sail 1 i Sail 7. Ymdrinnir â Sail 8 ychwanegol, sy'n ymwneud â thir amaethyddol, yn adran 336.

1531. Sail 1 yw nad yw unrhyw ran o'r hereditament neu'r uned amaethyddol y mae'r hysbysiad yn ymwneud ag ef neu hi yn unrhyw un o'r categorïau o dir o dan falltod a ddisgrifir yn Rhan 1 o Atodlen 19.

1532. Sail 2 yw nad yw'r awdurdod yn cynnig gwneud unrhyw un neu ragor o'r canlynol wrth arfer ei bwerau i gaffael tir:

a. caffael buddiant mewn unrhyw ran o'r hereditament, neu unrhyw ardal o uned amaethyddol sydd yn un o'r categorïau hynny o dir ("yr ardal yr effeithir arni" fel y'i diffinnir yn adran 359);

b. yn achos tir o fewn Categori 27, cymryd meddiant dros dro o unrhyw ran o'r hereditament neu'r ardal yr effeithir arni;

c. pan fo'r deddfiad priodol yn rhoi pŵer i gaffael hawliau dros dir, gaffael buddiant mewn unrhyw ran o'r hereditament neu'r ardal; neu

d. caffael unrhyw hawl dros unrhyw ran o'r hereditament neu'r ardal.

1533. Yn rhinwedd adran 327(2), ni chaniateir gwrthwynebu ar Sail 2 pan fo'r tir o fewn categori 28 neu 29 (tir a nodir ar gyfer datblygiad mewn datganiad polisi seilwaith o dan Ddeddf 2024 neu ddatganiad polisi cenedlaethol o dan Ddeddf 2008).

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. Sail 3 yw bod yr awdurdod priodol yn cynnig caffael buddiant mewn rhan o'r hereditament, neu ran o'r ardal yr effeithir arni o uned amaethyddol, fel y'i pennir yn y gwrth-hysbysiad, ond nad yw'n cynnig:

a. caffael buddiant mewn unrhyw ran arall o'r hereditament neu'r ardal yr effeithir arni o'r uned;

b. pan fo'r deddfiad priodol yn rhoi pŵer i gaffael hawliau dros dir, gaffael buddiant mewn unrhyw ran arall o'r hereditament neu'r ardal; nac

c. caffael unrhyw hawl dros unrhyw ran arall o'r hereditament neu'r ardal.

1535. Sail 4 yw nad yw'r awdurdod yn cynnig o fewn y cyfnod perthnasol, sef o'r diwrnod y cyflwynwyd y gwrth-hysbysiad gan gynnwys y cyfnod y mae'r cynllun yn cael effaith ynddo, neu unrhyw gyfnod hwy a bennir yn y gwrth-hysbysiad, gwneud unrhyw un neu ragor o'r canlynol:

a. caffael buddiant mewn unrhyw ran o'r hereditament, neu unrhyw ran o'r ardal yr effeithir arni o uned amaethyddol;

b. pan fo'r deddfiad priodol yn rhoi pŵer i gaffael hawliau dros dir, gaffael buddiant mewn unrhyw ran o'r hereditament neu'r ardal; nac

c. caffael unrhyw hawl dros unrhyw ran o'r hereditament neu'r ardal.

1536. Y cyfnod y mae cynllun yn cael effaith ynddo fydd y cyfnod a bennir o dan adran 19(5), oni bai bod y cynllun wedi ei fabwysiadu cyn 4 Ionawr 2016, ac os felly bydd yn 15 mlynedd o ddyddiad y gwrth-hysbysiad (gweler paragraff 11(2) o Atodlen 5 i'r Ddeddf Darpariaethau Canlyniadol).

1537. Gellir dibynnu ar Sail 4 mewn perthynas â thir sy'n dod o fewn Categori 1, 2 neu 12 (tir a nodir mewn cynllun datblygu perthnasol neu yn yr FfDC, neu mewn diwygiad o un ohonynt, gan gynnwys tir a nodir mewn cynllun datblygu at ddibenion priffyrdd). Ni ellir dibynnu arni, fodd bynnag, os yw'r tir hefyd yng Nghategori 13, 14 neu 15 (tir sy'n ofynnol ar gyfer prosiect priffyrdd, fel y'i nodir mewn gorchymyn neu orchymyn drafft o dan Ran 2 o Ddeddf 1980, neu a nodir ar gynllun a gymeradwywyd gan yr awdurdod priffyrdd lleol, neu y rhoddwyd hysbysiad amdano i'r awdurdod cynllunio) (adran 326(4) a (5)). Ni chaniateir dibynnu ar Sail 4 ychwaith os yw Sail 2 (dim bwriad i gaffael y tir na'r hawliau drosto ar unrhyw adeg) yn cael ei chodi (gweler adran 327(1)).

1538. Sail 5 yw, ar y diwrnod y cyflwynwyd yr hysbysiad malltod, nad oedd gan yr hawlydd hawlogaeth i fuddiant yn unrhyw ran o'r tir yr oedd yr hysbysiad yn ymwneud ag ef. Sail 6 yw, am resymau a nodir yn y gwrth-hysbysiad, nad buddiant cymhwysol oedd buddiant yr hawlydd yn y tir. A Sail 7 yw nad yw unrhyw un o'r amodau yn adran 324(3)(c) wedi ei fodloni (adran 326(6) i (8)).

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)).

Adran 328 – Gwrth-hysbysiad pellach pan fo cynigion penodol yn dod i rym

1539. Mae categorïau 1, 2 a 13 yn Rhan 1 o Atodlen 19 yn cyfeirio (ymhlith pethau eraill) at dir y nodir ei fod yn destun cynnig datblygol mewn cynllun datblygu neu ddogfen arall. Pan gyflwynir hysbysiad malltod mewn achos o'r fath, a bo'r ddogfen berthnasol yna'n dod i rym, mae'r adran hon yn caniatáu i'r awdurdod priodol ystyried y mater eto ac, os yw'n briodol, gyflwyno i'r hawlydd (neu, pan fo'n berthnasol, gynrychiolwyr personol yr hawlydd) wrth-hysbysiad pellach, o dan is-adran (2).

1540. Mae hyn yn gymwys:

a. pan gyflwynwyd hysbysiad malltod mewn perthynas â thir yng Nghategori 1 a nodwyd ar gyfer swyddogaethau cyhoeddus mewn cynllun datblygu (neu ddiwygiad i gynllun o'r fath) sy'n cael ei archwilio, a bod y cynllun (neu'r diwygiad) bellach wedi ei fabwysiadu neu ei gymeradwyo;

b. pan gyflwynwyd hysbysiad mewn perthynas â thir yng Nghategori 2 a nodwyd ar gyfer swyddogaethau cyhoeddus yn yr FfDC (neu ddiwygiad i'r FfDC) sydd wedi ei osod ar ffurf ddrafft gerbron y Senedd, a bod y fersiwn derfynol o'r FfDC (neu'r diwygiad) bellach wedi ei chyhoeddi; neu

c. pan gyflwynwyd hysbysiad malltod mewn perthynas â thir a nodwyd ar gyfer prifforddd arfaethedig mewn gorchymyn neu gynllun sydd wedi ei gyflwyno i Weinidogion Cymru i'w gadarnhau, neu sydd wedi ei lunio ganddynt, a bod y gorchymyn neu'r cynllun bellach yn dod yn weithredol (is-adran (1)).

1541. O dan is-adrannau (2) a (3), caiff y gwrth-hysbysiad pellach bennu seiliau gwahanol i'r gwrthwynebiad a bydd yn cymryd lle'r gwrth-hysbysiad gwreiddiol. Rhaid ei gyflwyno o fewn dau fis i'r adeg y caiff y cynllun datblygu perthnasol ei fabwysiadu neu ei gymeradwyo, y cyhoeddir yr FfDC neu y daw'r gorchymyn neu'r cynllun yn weithredol.

1542. Yn rhinwedd is-adran (4), nid yw'r hawl i gyflwyno gwrth-hysbysiad pellach yn gymwys pan fo gwrth-hysbysiad cynharach wedi ei dynnu'n ôl, neu pan fo'r Uwch Dribiwnlys wedi penderfynu o dan adran 329 pa un ai i'w gadarnhau ai peidio.

Adran 329 – Atgyfeirio gwrthwynebiad i'r Uwch Dribiwnlys: cyffredinol

1543. Pan fo hawlydd yn cyflwyno hysbysiad malltod o dan adran 324, a bo'r awdurdod priodol yn ei wrthwynebu drwy gyflwyno gwrth-hysbysiad o dan adran 325, caiff yr hawlydd atgyfeirio'r gwrthwynebiad i'r Uwch Dribiwnlys (is-adran (1)).

1544. Pan gyflwynir gwrth-hysbysiad pellach o dan adran 328, caiff yr hawlydd atgyfeirio hwnnw hefyd at yr Uwch Dribiwnlys, pa un a atgyfeiriwyd y gwrth-hysbysiad gwreiddiol ai peidio (is-adran (2)). Rhaid i'r Uwch Dribiwnlys ystyried y materion yn yr hysbysiad malltod a seiliau'r gwrthwynebiad yn y gwrth-hysbysiad (is-adran (3)).

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. Pan wneir y gwrthwynebiad ar Sail 2, 3 neu 4 (yn fras, ar y sail nad yw'r awdurdod priodol yn cynnig caffael unrhyw ran neu'r cyfan o'r tir o dan sylw neu hawl drosto, neu nad yw'n cynnig gwneud hynny o fewn cyfnod penodedig), mae is-adran (4) yn ei gwneud yn ofynnol i'r Tribiwnlys wrthod y gwrthwynebiad oni bai bod yr awdurdod yn gallu dangos bod sail dda i'r gwrthwynebiad, hynny yw, nid oes rhaid i'r hawlydd ddangos ei fod yn ddi-sail.

1546. Pan fo'r gwrthwynebiad ar Sail 3 (nad yw'r awdurdod ond yn cynnig caffael rhan benodedig o'r tir), mae is-adran (5) yn ei gwneud yn ofynnol i'r Tribiwnlys ei wrthod oni bod y Tribiwnlys wedi ei fodloni:

a. mewn achos sy'n ymwneud â thŷ, adeilad neu ffatri, y gellir caffael y rhan benodedig heb niwed sylweddol i'r tŷ, yr adeilad neu'r ffatri;

b. mewn achos sy'n ymwneud â pharc domestig neu ardd ddomestig, y gellir caffael y rhan benodedig heb effeithio'n ddifrifol ar amwynder neu gyfleustra'r tŷ.

1547. Mae is-adran (6) yn gymwys pan wneir gwrthwynebiad ar unrhyw sail arall: nad yw'r tir o dan sylw yn dod o fewn unrhyw un o'r categorïau o dir a ddisgrifir yn Rhan 1 o Atodlen 19 (Sail 1); nad oedd gan yr hawlydd hawlogaeth i fuddiant yn unrhyw ran o'r tir yr oedd yn ymwneud ag ef (Sail 5); nad buddiant cymhwysol oedd buddiant yr hawlydd yn y tir (Sail 6); nad oes unrhyw un o'r amodau yn adran 324(3)(c) wedi ei fodloni (Sail 7); neu, mewn perthynas ag uned amaethyddol, y gellir yn rhesymol ffermio'r ardal nad effeithir arni ar wahân, naill ai ar ei phen ei hun neu gyda thir perthnasol arall (Sail 8 - gweler adran 336). Rhaid i'r Tribiwnlys gadarnhau gwrthwynebiad ar unrhyw un o'r seiliau hyn, oni bai bod yr hawlydd yn gallu dangos nad oes sail dda iddo.

1548. Pan fo'r Tribiwnlys yn gwrthod y gwrthwynebiad i hysbysiad malltod, rhaid iddo gadarnhau'r hysbysiad. A phan fo'n cadarnhau'r gwrthwynebiad, ond ar Sail 3 (bod yr awdurdod ond yn cynnig caffael rhan benodedig o'r tir) yn unig, rhaid iddo gadarnhau'r hysbysiad mewn perthynas â'r rhan benodedig o'r hereditament neu'r ardal yr effeithir arni, ond nid fel arall. Yn y naill achos neu'r llall, rhaid i'r Tribiwnlys roi cyfarwyddydau o ran y dyddiad y bernir bod hysbysiad i drafod telerau wedi ei gyflwyno o dan adran 331 neu 332.

Adran 330 – Effaith gwrthwynebiad pan na fo atgyfeiriad wedi ei wneud i'r Uwch Dribiwnlys

1549. Pan wneir gwrthwynebiad i hysbysiad malltod, ac nad oes atgyfeiriad wedi ei wneud i'r Uwch Dribiwnlys o fewn y terfyn amser o ddau fis, mae'r hawlydd i'w drin fel pe bai wedi tynnu'r hysbysiad malltod yn ôl.

Adran 331 – Effaith hysbysiad malltod
Adran 332 – Hysbysiad malltod mewn cysylltiad â rhan o hereditament neu uned

1550. Mae adran 331 yn gymwys pan fo hysbysiad malltod wedi ei gyflwyno, ac nad oes gwrth-hysbysiad wedi ei gyflwyno. Mae hefyd yn gymwys pan fo gwrth-hysbysiad wedi ei gyflwyno ond wedi cael ei dynnu'n ôl neu ei wrthod gan yr Uwch Dribiwnlys.

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. Pan fo hyn yn digwydd, mae adran 331(2) yn darparu bod yr awdurdod priodol i'w drin fel pe bai wedi ei awdurdodi i gaffael buddiant yr hawlydd yn yr hereditament neu, yn achos uned amaethyddol, i gaffael buddiant yr hawlydd yn yr ardal yr effeithir arni (sef y rhan o'r uned sy'n dir o dan falltod yn un o'r categorïau yn Rhan 1 o Atodlen 1). Bernir hefyd fod yr awdurdod wedi cyflwyno hysbysiad i drafod telerau i'r hawlydd mewn cysylltiad â'r buddiant hwnnw ddeufis ar ôl y dyddiad y cyflwynwyd yr hysbysiad malltod neu, pan fo gwrthwynebiad i'r hysbysiad wedi ei wneud ond wedi ei wrthod, ar y dyddiad a bennir gan yr Uwch Dribiwnlys o dan adran 329(9) (adran 331(3) a (4)).

1552. Mae adran 332(1) i (3) yn gymwys pan fo'r hawlydd yn cyflwyno hysbysiad malltod, a bo gwrthwynebiad yn cael ei wneud iddo ar Sail 3 (nad yw'r awdurdod priodol ond yn cynnig caffael buddiant mewn rhan benodedig o'r tir), a naill ai:

a. bo'r hawlydd yn derbyn cynnig yr awdurdod i gaffael buddiant yn y rhan o'r hereditament neu'r ardal yr effeithir arni a bennir yn y gwrth-hysbysiad, ac yn tynnu'n ôl yr hysbysiad malltod mewn perthynas â gweddill y tir; neu

b. bo'r Tribiwnlys yn cadarnhau'r hysbysiad malltod mewn perthynas â'r rhan honno o'r hereditament neu'r ardal yr effeithir arni.

1553. Pan fo hyn yn digwydd, mae adran 332(4) yn darparu bod yr awdurdod priodol yn cael ei drin fel pe bai wedi ei awdurdodi i gaffael buddiant yr hawlydd yn y rhan benodedig o'r hereditament neu'r ardal yr effeithir arni. Bernir hefyd fod yr awdurdod wedi cyflwyno hysbysiad i drafod telerau (a eglurir ym mharagraff 1483 uchod) i'r hawlydd mewn cysylltiad â'r buddiant hwnnw neu, pan fo gwrthwynebiad i'r hysbysiad malltod wedi ei wneud gan yr awdurdod ond wedi ei wrthod gan yr hawlydd a'i atgyfeirio i'r Uwch Dribiwnlys, ar y dyddiad a bennir gan y Tribiwnlys o dan adran 329(9).

Adran 333 – Effaith ar bwerau caffael gorfodol pan na fo bwriad i gaffael
Adran 334 – Effaith ar bwerau caffael gorfodol pan fwriedir caffael rhan

1554. Pan gyflwynir hysbysiad malltod, gall arwain at yr awdurdod priodol yn ei wrthwynebu ar y sail nad yw'r awdurdod yn cynnig caffael buddiant yr hawlydd yn y tir o dan sylw (Sail 2) neu nad yw'n cynnig caffael buddiant yr hawlydd yn y cyfnod perthnasol (Sail 4).

1555. Yn unol â hynny, pan fo hyn yn digwydd, a bo'r gwrthwynebiad yn cael ei atgyfeirio i'r Uwch Dribiwnlys a'i gadarnhau, neu na fo'r gwrthwynebiad yn cael ei atgyfeirio i'r Tribiwnlys, mae adran 333 yn darparu nad yw pŵer yr awdurdod i gaffael y buddiant o dan sylw (neu, pan fo'n briodol, i gymryd meddiant dros dro o'r tir) yn cael unrhyw effaith mewn perthynas â'r tir a bennir yn y gwrth-hysbysiad.

1556. Yn yr un modd, pan gyflwynir hysbysiad malltod, a bo'r awdurdod priodol yn ei wrthwynebu ar y sail nad yw ond yn cynnig caffael buddiant yr hawlydd mewn rhan o dir o dan sylw (Sail 3), a bo gwrthwynebiad o'r fath yn cael ei gadarnhau gan yr Uwch Dribiwnlys neu na fo'n cael ei atgyfeirio iddo, mae adran 334 yn darparu nad yw pŵer yr awdurdod i gaffael buddiant yr hawlydd yng ngweddill y tir yn cael unrhyw effaith.

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.

Adran 335 – Gofyniad i brynu rhannau o unedau amaethyddol nad effeithir arnynt gan falltod

1557. Pan fo hawlydd yn berchen ar fuddiant mewn uned amaethyddol gyfan neu ran ohoni, ni chaniateir cyflwyno hysbysiad malltod ond mewn cysylltiad â'r cyfan o'r buddiant hwnnw (adran 324(5)). Ond gall fod rhan o'r tir y mae gan yr hawlydd fuddiant ynddo yn un neu ragor o'r categorïau o dir o dan falltod yn Rhan 1 o Atodlen 1 ("yr ardal yr effeithir arni"), a rhan o'r tir hwnnw ddim yn un neu ragor o'r categorïau hynny ("yr ardal nad effeithir arni").

1558. Yn yr achos hwnnw, o dan is-adran (2), caiff yr hawlydd gynnwys yn yr hysbysiad malltod hawliad na ellir yn rhesymol ffermio'r ardal nad effeithir arni naill ai ar ei phen ei hun neu ar y cyd â thir perthnasol arall, sef naill ai gweddill yr uned amaethyddol honno neu unrhyw dir arall y mae'r hawlydd yn berchen arno neu'n ei feddiannu. Bydd yr hysbysiad wedyn yn ei gwneud yn ofynnol i'r awdurdod priodol brynu buddiant yr hawlydd yn yr uned gyfan, neu yn y rhan gyfan o'r uned y mae'r hysbysiad yn ymwneud â hi.

1559. Mae paragraffau 42 a 57 o Atodlen 19 yn darparu, mewn perthynas â hysbysiad malltod o dan yr adran hon sy'n ymwneud ag uned amaethyddol gyfan neu ran ohoni, gan gynnwys ardaloedd yr effeithir arnynt ac ardaloedd nad effeithir arnynt o'r uned, y penderfynir yr awdurdod priodol a'r deddfiad priodol ar gyfer yr ardal nad effeithir arni drwy dybio bod yr ardal nad effeithir arni yn rhan o'r ardal yr effeithir arni.

Adran 336 – Sail gwrthwynebiad ychwanegol i hysbysiad malltod sy'n cynnwys gofyniad i brynu ardal nad effeithir arni

1560. Pan fo hawlydd yn cyflwyno hysbysiad malltod o dan adran 335 sy'n ymwneud â'r ardal yr effeithir arni ar dir yr hawlydd yn ogystal â'r ardal nad effeithir arni, caiff yr awdurdod priodol wrthwynebu'r hysbysiad ar Sail 8: sef y gellir yn rhesymol ffermio'r ardal nad effeithir arni naill ai ar ei phen ei hun neu ar y cyd â thir perthnasol arall (is-adrannau (1) i (3)).

1561. Os gwneir gwrthwynebiad i hysbysiad o'r fath ar Sail 3 (bod yr awdurdod yn cynnig prynu rhan o'r tir y mae gan yr hawlydd fuddiant ynddo), rhaid gwneud gwrthwynebiad hefyd ar Sail 8 (is-adran (4)).

1562. Mae adran 336(5) yn cymhwyso Sail 8 i adrannau 337 i 340, 347 a 349.

Adran 337 – Yr Uwch Dribiwnlys: gwrthwynebiad i hysbysiad malltod sy'n cynnwys gofyniad i brynu ardal nad effeithir arni

1563. Caniateir atgyfeirio gwrthwynebiad i hysbysiad malltod ar Sail 8 i'r Uwch Dribiwnlys, fel gydag unrhyw wrthwynebiad arall. Os yw'r Tribiwnlys yn cadarnhau gwrthwynebiad i hysbysiad ar Sail 8 yn unig, mae hynny'n gyfystyr â chanfod y gellir yn rhesymol ffermio'r ardal nad effeithir arni naill ai ar ei phen ei hun neu ar y cyd â thir perthnasol arall. Yn yr achos hwnnw, rhaid iddo gadarnhau'r hysbysiad malltod mewn cysylltiad â'r ardal yr effeithir arni ond nid mewn cysylltiad â'r ardal nad effeithir arni (is-adran (1)).

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. Os yw'r awdurdod priodol yn gwrthwynebu hysbysiad malltod a gyflwynir mewn cysylltiad ag uned amaethyddol o dan adran 335 ar Sail 3, bydd hynny ar y sail ei fod yn cynnig caffael rhan o'r tir y mae gan yr hawlydd fuddiant ynddo, ond nid unrhyw ran arall. Yn rhinwedd adran 336(4), rhaid iddo hefyd wrthwynebu ar Sail 8 (y gellir yn rhesymol ffermio gweddill y tir hwnnw naill ai ar ei ben ei hun neu ar y cyd â thir perthnasol arall). Yn yr achos hwn:

a. rhaid i'r Tribiwnlys drin y rhan o'r ardal yr effeithir arni nad yw wedi ei phennu yng ngwrth-hysbysiad yr awdurdod fel "tir perthnasol arall" at ddibenion adran 335(3) (gweler is-adran (3));

b. ni chaiff y Tribiwnlys gadarnhau'r gwrthwynebiad ar Sail 3 oni bai ei fod hefyd yn cadarnhau'r gwrthwynebiad ar Sail 8 (is-adran (4)); ac

c. os yw'r Tribiwnlys yn cadarnhau'r gwrthwynebiad ar Sail 3 ac ar Sail 8, ond nid ar unrhyw seiliau eraill, rhaid iddo gadarnhau'r hysbysiad malltod mewn perthynas â'r rhan o dir yr hawlydd y mae'r awdurdod yn cynnig caffael buddiant ynddi, ond nid mewn perthynas ag unrhyw ran arall o'r ardal yr effeithir arni na mewn perthynas â'r ardal nad effeithir arni (is-adran (5)).

1565. Pan fo'r Tribiwnlys yn cadarnhau hysbysiad malltod mewn perthynas â'r ardal yr effeithir arni (o dan is-adran (1)) neu mewn perthynas â rhan o'r ardal yr effeithir arni (o dan is-adran (5)), rhaid iddo bennu'r dyddiad y mae hysbysiad i drafod telerau (a eglurir ym mharagraff 5) i'w drin fel pe bai wedi ei gyflwyno.

Adran 338 – Effaith hysbysiad malltod sy'n cynnwys gofyniad i brynu ardal nad effeithir arni

1566. Pan fo hysbysiad malltod yn cynnwys gofyniad i brynu'r ardal nad effeithir arni o uned amaethyddol ac nad oes unrhyw wrth-hysbysiad wedi ei gyflwyno, neu fod unrhyw wrth-hysbysiad a gyflwynwyd wedi ei dynnu'n ôl neu wedi ei wrthod gan yr Uwch Dribiwnlys, trinnir yr awdurdod priodol fel pe bai wedi ei awdurdodi i gaffael buddiant yr hawlydd yn yr uned amaethyddol (sef yr ardal yr effeithir arni a'r ardal nad effeithir arni). Bernir hefyd fod yr awdurdod wedi cyflwyno hysbysiad i drafod telerau i'r hawlydd mewn cysylltiad â'r buddiant hwnnw ddeufis ar ôl y dyddiad y cyflwynwyd yr hysbysiad malltod neu, pan fo gwrthwynebiad i'r hysbysiad wedi ei wneud ond wedi ei wrthod, ar y dyddiad a bennir gan yr Uwch Dribiwnlys o dan adran 337(6). Dyma effaith adran 331(2), fel y'i cymhwysir gan adran 338(2).

1567. Mewn achos o'r fath, nid yw adran 320 yn gymwys, yn rhinwedd adran 338(3).

Adran 339 – Effaith hysbysiad malltod pan fo hawliad mewn cysylltiad ag ardal nad effeithir arni yn cael ei dynnu'n ôl neu ei wrthod

1568. Pan fo hysbysiad malltod yn cynnwys gofyniad i brynu'r ardal nad effeithir arni o uned amaethyddol, a bo'r awdurdod priodol yn ei wrthwynebu ar Sail 8, caiff yr hawlydd benderfynu peidio ag atgyfeirio'r gwrthwynebiad i'r Uwch Dribiwnlys o fewn y terfyn amser perthnasol ond, yn lle hynny, dynnu'r hysbysiad yn ôl mewn perthynas â'r ardal nad effeithir arni (is-adran (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. Yn yr achos hwnnw, trinnir yr awdurdod fel pe bai wedi ei awdurdodi i gaffael yn orfodol fuddiant yr hawlydd yn yr ardal yr effeithir arni (ond nid yn yr ardal nad effeithir arni) (is-adran (3)(a)), ac fel pe bai wedi cyflwyno hysbysiad i drafod telerau (a eglurir ym mharagraff 1483 uchod) naill ai:

a. ar ddyddiad hysbysiad tynnu'n ôl yr hawlydd (is-adran (4)(a)); neu

b. pan fo'r Uwch Dribiwnlys yn cadarnhau gwrthwynebiad i hysbysiad malltod ar Sail 8 yn unig o dan adran 337(1), ond yn cadarnhau'r hysbysiad malltod mewn perthynas â'r ardal yr effeithir arni, ar y diwrnod a bennir mewn cyfarwyddydau a roddir gan y Tribiwnlys o dan is-adran 337(6) (is-adrannau (2), (3) a (4)(b)).

Adran 340 – Effaith hysbysiad malltod pan fo hawliad mewn cysylltiad ag ardal nad effeithir arni a rhan o ardal yr effeithir arni yn cael ei dynnu'n ôl neu ei wrthod

1570. Pan fo hysbysiad malltod yn arwain at wrthwynebiad ar Sail 3 a Sail 8, ond nid ar unrhyw sail arall, caiff yr hawlydd benderfynu peidio ag atgyfeirio'r gwrthwynebiad i'r Uwch Dribiwnlys o fewn y terfyn amser perthnasol ond, yn lle hynny, gyflwyno hysbysiad i'r awdurdod priodol:

a. yn derbyn ei gynnig i gaffael buddiant mewn rhan o'r ardal yr effeithir arni; a
b. yn tynnu'n ôl yr hysbysiad malltod mewn perthynas â gweddill yr ardal yr effeithir arni a'r ardal nad effeithir arni.

1571. Trinnir yr awdurdod fel pe bai wedi ei awdurdodi i gaffael yn orfodol fuddiant yr hawlydd yn y rhan o'r ardal yr effeithir arni a bennir yn y gwrth-hysbysiad (ond nid yng ngweddill yr ardal yr effeithir arni, nac yn yr ardal nad effeithir arni), ac fel pe bai wedi cyflwyno hysbysiad i drafod telerau ar y dyddiad y cyflwynodd hysbysiad i'r awdurdod (is-adran (3)(a) a (b)).

1572. Mae'r un peth yn gymwys pan fo'r Uwch Dribiwnlys yn cadarnhau gwrthwynebiad i hysbysiad malltod ar Sail 3 a Sail 8 ond nid ar unrhyw sail arall, o dan adran 337(5), ond yn cadarnhau'r hysbysiad malltod mewn perthynas â'r rhan o'r ardal yr effeithir arni a bennir yn y gwrth-hysbysiad. Yn yr achos hwnnw bernir bod yr hysbysiad i drafod telerau wedi ei gyflwyno yn unol â'r cyfarwyddyd gan y Tribiwnlys o dan is-adran 337(6) (is-adrannau (2), (3) a (4)(b)).

Adran 341 – Tynnu hysbysiad malltod yn ôl

1573. Pan fo hawlydd yn cyflwyno hysbysiad malltod a gadarnheir yn gyfan gwbl neu'n rhannol, bydd hynny'n arwain at farnu bod hysbysiad i drafod telerau (a eglurir ym mharagraff 1483 uchod) wedi ei gyflwyno, o dan adran 331(2)(b), 332(4)(b), 339(3)(b) neu 340(3)(b). Yna caiff yr hawlydd gyflwyno hawliad am ddigolledi, o dan Ddeddf 1961. Os na chytunir ar swm y digolledi, yr Uwch Dribiwnlys fydd yn penderfynu'r swm.

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. Pan fydd y Tribiwnlys wedi penderfynu swm y digolledíad, bydd gan yr hawlydd chwe wythnos i dynnu'r hysbysiad malltod yn ôl (is-adran (1)). Os yw'r hawlydd yn tynnu'r hysbysiad yn ôl cyn hynny, bernir bod yr awdurdod wedi tynnu yr hysbysiad i drafod telerau yn ôl, ond nid yw'n agored i dalu digolledíad mewn cysylltiad â'r tynnu'n ôl hwnnw (is-adran (3)).

1575. Fodd bynnag, ni all yr hawlydd dynnu'r hysbysiad malltod yn ôl pan fydd yr hawl mynediad wedi ei arfer (is-adran (2)).

Adran 342 – Digolledíad: achosion pan fo'r posibilrwydd o ganiatâd cynllunio i'w anwybyddu

1576. Mae swm y digolledíad sy'n daladwy am gaffael yn orfodol fuddiant mewn tir yn seiliedig fel arfer ar werth ar y farchnad agored, a fydd yn ei dro yn cynnwys elfen o'r hyn y cyfeirir ato weithiau fel 'gwerth gobaith' – y gwerth sy'n deillio o'r posibilrwydd y caiff caniatâd cynllunio ei roi yn y dyfodol ar gyfer datblygiad. Mae adran 14A o Ddeddf 1961 yn galluogi awdurdod caffael i gynnwys mewn gorchymyn prynu gorfodol ddarpariaeth sy'n darparu bod y gwerth gobaith hwn yn cael ei ddiystyru wrth asesu digolledíad.

1577. Mae'r adran hon yn gymwys pan fo gorchymyn prynu gorfodol mewn grym sy'n cynnwys darpariaeth o'r fath, ac sy'n arwain at gyflwyno hysbysiad malltod sy'n dod i rym, ynghyd â hysbysiad tybiedig i drafod telerau (a eglurir ym mharagraff 1483 uchod) o dan adran 331 neu 332. Bydd hynny yn ei dro yn arwain at gaffael y buddiant yn ddarostyngedig i'r gorchymyn, ac mae is-adran (2) yn darparu y caiff y digolledíad sy'n daladwy am gaffaeliad o'r fath ei asesu yn unol ag adran 14A, fel nad yw gwerth gobaith i'w ystyried.

Adran 343 – Digolledíad: adeiladau rhestredig y mae angen eu hatgyweirio

1578. Pan fo angen atgyweirio adeilad rhestredig, caiff awdurdod cynllunio gyflwyno hysbysiad atgyweirio i'w berchnogion o dan adran 138 o Ddeddf 2023. Pan na fo'r gwaith a bennir yn yr hysbysiad wedi ei gynnal, caniateir awdurdodi'r awdurdod i gaffael yr adeilad yn orfodol, o dan adran 137. Pan fo'r awdurdod yn ystyried y caniatawyd i'r adeilad fynd i gyflwr gwael yn fwriadol, caiff gynnwys yn y gorchymyn prynu gorfodol gyfarwyddyd ar gyfer digolledíad isafol (o dan adran 140 o'r Ddeddf honno) sy'n ei gwneud yn ofynnol diystyru unrhyw bosibilrwydd o gael caniatâd cynllunio neu gydsyniad adeilad rhestredig (heblaw ar gyfer gwaith atgyweirio) wrth asesu'r digolledíad sy'n daladwy.

1579. Mae'r adran hon yn gymwys pan fo gorchymyn prynu gorfodol mewn grym sy'n ymwneud â thir y mae adeilad rhestredig arno, sy'n cynnwys cyfarwyddyd ar gyfer digolledíad isafol. Pan fo hynny'n arwain at gyflwyno hysbysiad malltod sy'n dod i rym, gan arwain at gaffael buddiant yn y tir, mae is-adran (2) yn darparu y caiff y digolledíad sy'n daladwy ei asesu yn unol ag adran 140 o Ddeddf 2023.

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.

Adran 344 – Digolledi ad: hysbysiad malltod sy'n cynnwys hawliad mewn cysylltiad ag ardal nad effeithir arni

1580. Mae'r adran hon yn gymwys pan ddaw hysbysiad malltod mewn perthynas ag uned amaethyddol i rym, gan arwain at:

a. caffael buddiant yn yr ardal nad effeithir arni o'r uned; neu

b. pan fo'r awdurdod priodol wedi gwrthwynebu'r hysbysiad ar Sail 3, gaffael buddiant yng ngweddill yr ardal yr effeithir arni.

1581. Yn yr achos hwnnw, mae'r digolledi ad am y caffaeliad sy'n deillio o hynny i'w asesu heb roi sylw i unrhyw bosibilrwydd y byddai caniatâd cynllunio yn cael ei roi yn y dyfodol ar gyfer unrhyw ddatblygiad o'r tir, a chan anwybyddu unrhyw ddatblygiad nad yw wedi ei gynnal eto o dan ganiatâd sydd eisoes wedi ei roi.

Adran 345 – Pwerau cynrychiolwyr personol mewn cysylltiad â hysbysiad malltod a gyflwynwyd cyn marwolaeth

Adran 346 – Pŵer cynrychiolydd personol i gyflwyno hysbysiad malltod

1582. O dan adran 345, os bydd person sydd wedi cyflwyno hysbysiad malltod o dan adran 324 yn marw, bydd cynrychiolwyr y person (hynny yw, ysgutorion neu weinyddwyr ystâd y person) yn dod yn gyfrifol am gyflawni rôl y person hwnnw fel "hawlydd" mewn perthynas â phrosesu'r hysbysiad. Yn dibynnu ar y cam a gyrhaeddwyd yn y broses, rhaid cyflwyno unrhyw wrth-hysbysiad iddynt o dan adran 325 neu 328; cânt atgyfeirio'r mater i'r Uwch Dribiwnlys o dan adran 329 neu benderfynu peidio â gwneud hynny (o dan adran 330 neu 332); a chânt dynnu'r hysbysiad yn ôl, o dan adran 339, 340 neu 341.

1583. Pan fo person yn marw heb iddo gyflwyno hysbysiad malltod, caiff cynrychiolwyr y person eu hunain gyflwyno hysbysiad malltod i'r awdurdod priodol o dan adran 346, ar ran ystad y person, ar y ffurf a ragnodir mewn rheoliadau, os:

a. yn union cyn iddo farw, oedd gan y person yr hyn a fyddai wedi bod bryd hynny'n fuddiant cymhwysol mewn hereditament neu uned amaethyddol, y mae'r cyfan neu ran ohono neu ohoni yn dir yn un neu ragor o'r categorïau o dir o dan falltod yn Rhan 1 o Atodlen 19;

b. oes o leiaf un person (yn hytrach nag endid corfforedig) sydd â hawlogaeth i etifeddu'r buddiant hwnnw; ac

c. yw un o'r amodau canlynol (yn is-adran (3)(d)) yn gymwys:
   i. bod y cynrychiolydd personol wedi ceisio gwerthu'r buddiant hwnnw, ac nid oedd yn gallu gwneud hynny (ac eithrio, o bosibl, am bris gostyngol) am fod y tir yn un neu ragor o'r categorïau yn Rhan 1 o Atodlen 1;

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. bod y tir yng Nghategori 18, 19, 21, 23, 25 neu 27 yn Rhan 1 o Atodlen 19, sef tir sydd wedi ei nodi ar gyfer ei brynu'n orfodol mewn deddfiad arbennig neu un o amryw fathau o orchymyn, pan fo'r pwerau caffael gorfodol yn parhau i fod yn arferadwy; neu

iii. bod y tir yng Nghategori 24 neu 26 yn Rhan 1 o Atodlen 19, sef tir sydd wedi ei nodi ar gyfer ei gaffael mewn cais am gydsyniad seilwaith neu orchymyn cydsyniad datblygu.

1584. Yn rhinwedd adran 346(5), fel gyda hysbysiad o dan adran 324, rhaid cyflwyno'r hysbysiad malltod mewn cysylltiad â'r cyfan o fuddiant yr ymadawedig yn yr hereditament neu'r uned. Mae ffurf hysbysiad malltod cynrychiolydd personol wedi ei rhagnodi ar hyn o bryd yn Atodlen 2 i Reoliadau Cyffredinol 1992.

Adran 347 – Seiliau gwrthwynebiad i hysbysiad malltod a gyflwynir gan gynrychiolydd personol

1585. Caiff yr awdurdod priodol wrthwynebu hysbysiad malltod a gyflwynir gan gynrychiolydd personol o dan adran 346 ar unrhyw un neu ragor o'r seiliau a ganlyn:

a. Seiliau 1 i 4, a ddisgrifir uchod mewn perthynas ag adrannau 326 a 327;

b. Seiliau sy'n debyg i Seiliau 5 i 7, sef:
   i. ar y diwrnod y cyflwynwyd yr hysbysiad malltod, nad cynrychiolydd personol yr ymadawedig oedd yr hawlydd;
   ii. nad oedd gan yr ymadawedig hawlogaeth, yn union cyn iddo farw, i fuddiant yn unrhyw ran o'r tir yr oedd yr hysbysiad yn ymwneud ag ef;
   iii. am resymau a nodir yn y gwrth-hysbysiad, nad buddiant cymhwysol oedd buddiant yr ymadawedig yn y tir yn union cyn iddo farw;
   iv. nad yw unrhyw un o'r amodau yn adran 346(3)(d) wedi ei fodloni;
   v. nid oes gan unrhyw unigolyn hawlogaeth lesiannol i'r buddiant yn y tir; ac

c. Sail 8, fel y'i disgrifir mewn perthynas ag adran 336 (tir amaethyddol).

Adran 348 – Pŵer morgeisai i gyflwyno hysbysiad malltod

1586. Y trydydd math o hysbysiad malltod yw un y caniateir ei gyflwyno gan forgeisai sydd â hawlogaeth, yn rhinwedd pŵer sydd wedi dod yn arferadwy, i werthu buddiant mewn hereditament neu uned amaethyddol a fyddai'n rhoi meddiant gwag ar unwaith. Mae hyn yn galluogi'r morgeisai i gymryd lle'r morgeisiwr (is-adrannau (1) a (3)(b)).

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. Caiff morgeisai o'r fath gyflwyno hysbysiad malltod i'r awdurdod priodol o dan yr adran hon, ar y ffurf a ragnodir mewn rheoliadau, os:

a. gallai'r morgeisiwr gyflwyno hysbysiad malltod o dan adran 324 ar yr un dyddiad â'r hysbysiad a gyflwynwyd gan y morgeisai, neu os gallai fod wedi gwneud hynny ar unrhyw adeg yn ystod y chwe mis blaenorol (neu unrhyw gyfnod hwy sy'n angenrheidiol i allu datrys anghytundeb ynghylch pwy yw'r awdurdod priodol: gweler paragraff 43(5)(b) o Atodlen 19);

b. yw'r cyfan neu ran o'r hereditament neu'r uned yn dir yn un neu ragor o'r categorïau o dir o dan falltod yn Rhan 1 o Atodlen 19; ac

c. yw un o'r amodau a ganlyn (yn is-adran (3)(c)) yn gymwys:
   i. bod y person wedi ceisio gwerthu'r buddiant hwnnw, ac nid oedd yn gallu gwneud hynny (ac eithrio, o bosibl, am bris gostyngol) am fod y tir mewn un neu ragor o'r categorïau yn Rhan 1 o Atodlen 1;
   ii. bod y tir yng Nghategori 18, 19, 21, 23, 25 neu 27 yn Rhan 1 o Atodlen 19, sef tir sydd wedi ei nodi ar gyfer ei brynu'n orfodol mewn deddfiad arbennig neu un o amryw fathau o orchymyn, pan fo'r pwerau caffael gorfodol yn parhau i fod yn arferadwy; neu
   iii. bod y tir yng Nghategori 24 neu 26 yn Rhan 1 o Atodlen 19, sef tir sydd wedi ei nodi ar gyfer ei gaffael mewn cais am gydsyniad seilwaith neu orchymyn cydsyniad datblygu.

1588. Yn rhinwedd is-adran (5), rhaid cyflwyno'r hysbysiad malltod mewn cysylltiad â'r cyfan o fuddiant yr ymadawedig yn yr hereditament neu'r uned. Mae ffurf hysbysiad malltod morgeisai wedi ei rhagnodi yn Atodlen 2 i Reoliadau Cyffredinol 1992.

Adran 349 – Seiliau gwrthwynebiad i hysbysiad malltod a gyflwynir gan forgeisai

1589. Caiff yr awdurdod priodol wrthwynebu hysbysiad malltod a gyflwynir gan forgeisai o dan adran 348 ar unrhyw un neu ragor o'r seiliau a ganlyn:

a. Seiliau 1 i 4, a ddisgrifir uchod mewn perthynas ag adrannau 326 a 327;

b. Seiliau sy'n debyg i Seiliau 5 i 7, sef:
   i. nad oedd gan yr hawlydd, ar y diwrnod y cyflwynwyd yr hysbysiad malltod, unrhyw fuddiant fel morgeisai yn unrhyw ran o'r tir yr oedd yr hysbysiad yn ymwneud ag ef;
   ii. am resymau a nodir yn y gwrth-hysbysiad, nad oedd gan yr hawlydd fel morgeisai bŵer a oedd wedi dod yn arferadwy (ar y dyddiad y cyflwynwyd yr hysbysiad malltod) i werthu buddiant yn yr hereditament neu'r uned amaethyddol a fyddai'n rhoi meddiant gwag ar unwaith;
   iii. na allai'r morgeisiwr fod wedi cyflwyno hysbysiad malltod o dan adran 324 ar y dyddiad hwnnw, neu ar unrhyw adeg yn ystod y chwe mis blaenorol (fel y'i hestynnir os oes angen);
   iv. nad yw unrhyw un o'r amodau yn adran 348(3)(c) wedi ei fodloni; ac

c. Sail 8, a ddisgrifir mewn perthynas ag adran 336 (tir amaethyddol).

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).

Adran 350 – Gwahardd cyflwyno hysbysiadau cydamserol o dan adrannau 324, 346 a 348

1590. Mae is-adran (1) yn darparu, pan fo hysbysiad malltod wedi ei gyflwyno gan forgeisai mewn cysylltiad â'r cyfan neu ran o hereditament neu uned amaethyddol o dan adran 348, a'i fod yn parhau mewn grym, na chaniateir cyflwyno hysbysiad gan unrhyw un arall sydd â hawlogaeth i fuddiant yn y tir (o dan adran 324) na chan ei gynrychiolwyr personol (o dan adran 346) (is-adran (1)). Yn yr un modd, mae is-adran (2) yn darparu na chaiff morgeisai gyflwyno hysbysiad o dan adran 348 pan fo hysbysiad o dan adran 324 neu 346 yn parhau mewn grym.

1591. At y dibenion hyn mae hysbysiad sydd wedi ei gyflwyno yn parhau mewn grym hyd nes:

a. y caiff ei dynnu'n ôl neu ei drin felly (gweler adrannau 330 a 341);

b. y bo gwrthwynebiad wedi ei wneud, a bo'r cyfnod ar gyfer atgyfeirio'r gwrthwynebiad i'r Uwch Dribiwnlys o dan adran 329 wedi dod i ben ac nad oes unrhyw atgyfeiriad wedi ei wneud; neu

c. y bo gwrthwynebiad wedi ei wneud, ac wedi ei atgyfeirio i'r Uwch Dribiwnlys, a bo'r gwrthwynebiad wedi ei gadarnhau.

Adran 351 – Partneriaethau: darpariaeth arbennig

1592. Pan fo hereditament neu uned amaethyddol wedi ei feddiannu neu ei meddiannu gan bartneriaeth at ddibenion busnes, mae i'w thybio bod yr hereditament neu'r uned wedi ei feddiannu neu ei meddiannu gan y bartneriaeth ac nid gan unrhyw un neu ragor o'r partneriaid unigol (is-adran (1)), ac mae'r diffiniadau o "perchen-feddiannydd" ym mharagraffau 31 a 33 o Ran 2 o Atodlen 19 i'w darllen yn unol â hynny (is-adran (2)). Pan fydd hysbysiad malltod wedi ei gyflwyno gan bartneriaeth, mae'n parhau i gael effaith er gwaethaf unrhyw newid dilynol yn yr aelodaeth (is-adran (3)).

Adran 352 – Pŵer Gweinidogion Cymru i gaffael tir a nodir gan Fframwaith Datblygu Cenedlaethol Cymru

1593. Pan fo hysbysiad malltod wedi ei gyflwyno mewn perthynas â buddiant mewn tir yng Nghategori 2 yn Rhan 1 o Atodlen 19 – tir a ddyrennir ar gyfer swyddogaethau cyhoeddus yn yr FfDC – caiff Gweinidogion Cymru ei gaffael.

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.

Adran 353 – Pŵer Gweinidogion Cymru i gaffael tir yr effeithir arno gan orchymyn sy'n ymwneud â thref newydd
Adran 354 – Pŵer Gweinidogion Cymru i gaffael tir yr effeithir arno gan orchymyn sy'n ymwneud ag ardal datblygu trefol

1594. Pan fo hysbysiad malltod wedi ei gyflwyno mewn perthynas â buddiant mewn tir

a. yng Nghategori 5 neu 6 yn Rhan 1 o Atodlen 19 (tir sydd wedi ei gynnwys mewn ardal tref newydd arfaethedig);

b. yng Nghategori 7 (tir yn ardal corfforaeth datblygu trefol arfaethedig),

caiff Gweinidogion Cymru ei gaffael hyd nes y sefydlir naill ai corfforaeth ddatblygu ar gyfer tref newydd, neu gorfforaeth datblygu trefol ar gyfer ardal datblygu trefol. Hyd nes y bydd un o'r rhain yn digwydd, caiff Gweinidogion Cymru waredu'r buddiant fel y gwelant yn dda. Os ydynt yn berchen ar y buddiant o hyd pan sefydlir y gorfforaeth berthnasol, fodd bynnag, rhaid iddynt ei drosglwyddo i'r gorfforaeth honno (adrannau 353(1) a (2), 354(1) a (2)).

1595. Pan gaffaelir buddiant mewn tir yng Nghategori 5 (mewn ardal tref newydd arfaethedig) neu Gategori 7 (mewn ardal datblygu trefol) o dan hysbysiad malltod, mae digolledia yn daladwy ar y sail bod y gorchymyn dynodi perthnasol eisoes wedi dod i rym (adrannau 353(3) a 354(3)).

Adran 355 – Pŵer Gweinidogion Cymru i gaffael tir a nodir mewn datganiad polisi seilwaith
Adran 356 – Pŵer yr Ysgrifennydd Gwladol i gaffael tir a nodir mewn datganiad polisi cenedlaethol

1596. Pan fo hysbysiad malltod wedi ei gyflwyno mewn perthynas â thir yng Nghategori 28 yn Rhan 1 o Atodlen 19 – tir a nodir mewn datganiad polisi seilwaith o dan Ddeddf 2024 – caiff Gweinidogion Cymru ei gaffael (adran 355).

1597. Pan fo hysbysiad malltod wedi ei gyflwyno mewn perthynas â thir yng Nghategori 29 – tir a nodir mewn datganiad polisi cenedlaethol o dan Ddeddf 2008 – caiff yr Ysgrifennydd Gwladol ei gaffael (adran 356).

Adran 357 – Dim tynnu'n ôl hysbysiad i drafod telerau y bernir ei fod wedi ei gyflwyno o dan y Rhan hon

1598. Pan gyflwynir hysbysiad i drafod telerau yn ystod pryniant gorfodol, gall yr awdurdod caffael ei dynnu'n ôl o dan adran 31 o Ddeddf 1961. Ond pan fernir bod hysbysiad i drafod telerau wedi ei gyflwyno, oherwydd derbyn neu gadarnhau hysbysiad malltod o dan adran 331, 332, 339 neu 340, ni all yr awdurdod priodol sydd i brynu'r tir ei dynnu'n ôl. Fodd bynnag, pan fo hysbysiad malltod yn cael ei dynnu'n ôl ei hun o dan adran 341, bernir wedyn fod yr hysbysiad i drafod telerau wedi ei dynnu'n ôl.

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.

Adran 358 – Cymorth i gaffael eiddo pan fo gwrthwynebiad ar Sail 4

1599. Pan wneir gwrthwynebiad i hysbysiad malltod drwy wrth-hysbysiad ar Sail 4 – nad yw'r awdurdod cynllunio yn cynnig caffael tir a nodir mewn cynllun datblygu perthnasol neu yn yr FfCD, na hawliau dros dir o'r fath, o fewn cyfnod y cynllun – caiff awdurdod lleol roi cymorth ariannol i berson i'w alluogi i gaffael y tir neu'r hawliau.

1600. Caniateir rhoi arian blaenswm o dan yr adran hon yn ddarostyngedig i amodau a chaiff ei gyfyngu i dir sydd â gwerth blynyddol sy'n llai na'r swm a bennir mewn rheoliadau a wneir mewn perthynas ag adran 323(5)(b) – £36,000 ar hyn o bryd (gweler erthygl 2 o Orchymyn Cynllunio Gwlad a Thref (Darpariaethau Malltod) (Cymru) 2019.

RHAN 14 – GWEINYDDU A DILYSRWYDD

Pennod 1 - Arfer swyddogaethau awdurdodau cynllunio

Adran 360 – Ffioedd a thaliadau am arfer swyddogaethau gan awdurdodau cynllunio

1601. O dan is-adran (1), caiff Gweinidogion Cymru wneud rheoliadau sy'n ei gwneud yn ofynnol i ffi gael ei thalu i awdurdod cynllunio am arfer unrhyw un neu ragor o'i swyddogaethau (megis penderfynu cais cynllunio). Cânt hefyd ei gwneud yn ofynnol i ffi gael ei thalu pan fo awdurdod yn gwneud rhywbeth sy'n cynorthwyo wrth arfer swyddogaethau o'r fath (megis ymgymryd â thrafodaethau rhagarweiniol â darpar geisydd am ganiatâd cynllunio).

1602. O dan is-adran (3), caiff rheoliadau o dan yr adran hon ddarparu ar gyfer manylion y gyfundrefn ffioedd – gan gynnwys pryd y mae rhaid talu ffi, pwy sydd i'w thalu, y swm sydd i'w dalu (ac unrhyw ostyngiadau neu esemptiadau o dan amgylchiadau penodol), a phryd y mae rhaid ad-dalu ffi.

1603. Y rheoliadau cyfredol a wnaed o dan y pwerau a ailddatgenir yn y ddarpariaeth hon yw Rheoliadau 2015, sy'n ei gwneud yn ofynnol i ffioedd gael eu talu mewn cysylltiad â materion amrywiol, gan gynnwys:

a. ceisiadau am wasanaethau cyn gwneud cais (gweler adran 53);

b. ceisiadau am dystysgrif cyfreithlondeb (gweler adrannau 156 a 157);

c. ceisiadau am ganiatâd cynllunio;

d. ceisiadau am gymeradwyaeth ar gyfer manylion sy'n ofynnol o dan orchymyn datblygu (gweler adran 44(4)) neu o dan amod caniatâd cynllunio (gweler adran 67(1)(b)); ac

e. ceisiadau am ganiatâd o dan y rheoliadau hysbysebion (gweler adran 222).

1604. Mae'r ffi sy'n daladwy ym mhob achos fel y mae wedi ei nodi yn y ddogfen *Ffioedd ceisiadau cynllunio*, a luniwyd gan Weinidogion Cymru o dan reoliad 2ZA o Reoliadau 2015 ac a gyhoeddwyd ar wefan Llywodraeth Cymru.

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. Mae is-adran (2) yn eithrio swyddogaethau awdurdod cynllunio o dan Ddeddf 2023 (gweler adran 167 o'r Ddeddf honno sy'n darparu ar gyfer gwneud rheoliadau mewn cysylltiad â ffioedd ar gyfer cyflawni swyddogaethau o dan y Ddeddf honno).

1606. Caiff rheoliadau o dan yr adran hon ganiatáu ar gyfer taliadau yn ogystal â ffioedd

1607. Gallai rheoliadau o dan yr adran hon, er enghraifft, alluogi Gweinidogion Cymru i ganiatáu i awdurdod lleol sefydlu ei gyfundrefn gostau ei hun ar gyfer rhai swyddogaethau sy'n ymwneud â chais cynllunio neu godi tâl mewn cysylltiad â'r costau y mae'n mynd iddynt wrth negodi rhwymedigaeth gynllunio.

1608. Wrth i awdurdodau cynllunio ei gwneud yn ofynnol i ffi gael ei thalu neu i dâl gael ei dalu, nid y diben yw eu galluogi i wneud elw. Mae is-adran (4) yn sicrhau, pan fo rheoliadau'n caniatáu i awdurdodau osod eu lefelau codi tâl eu hunain, eu bod i sicrhau, gan ystyried un flwyddyn gydag un arall, nad yw'r ffioedd na'r taliadau a geir yn fwy na chost cyflawni'r gwasanaeth o dan sylw.

1609. Caiff ffi hefyd fod yn daladwy i awdurdod cynllunio mewn cysylltiad â gwneud apêl yn erbyn hysbysiad gorfodi gan ddibynnu ar sail (a) (gweler adran 131(2)); mae hyn yn rhinwedd rheoliadau a wneir o dan adran 364(4).

Adran 361 – Pŵer i'w gwneud yn ofynnol i swyddogaethau gael eu harfer gan bwyllgorau, is-bwyllgorau neu swyddogion
Adran 362 – Maint a chyfansoddiad pwyllgorau sydd i arfer swyddogaethau

1610. Caiff Gweinidogion Cymru wneud rheoliadau o dan adran 361 sy'n ei gwneud yn ofynnol i awdurdod cynllunio ddirprwyo swyddogaethau sy'n ymwneud â cheisiadau a wneir o dan neu yn rhinwedd y Ddeddf hon ac sy'n pennu telerau trefniadau dirprwyo o'r fath.

1611. Caniateir iddynt hefyd wneud rheoliadau o dan adran 362 ynghylch maint unrhyw bwyllgor neu is-bwyllgor o'r awdurdod y dirprwyir swyddogaeth gynllunio iddo, a phwy sydd ar y pwyllgor hwnnw. Mae'r adran yn datgymhwyso paragraff 43 o Atodlen 12 i Ddeddf 1972, gyda'r canlyniad y gall trafodion fod yn annilys os oes sedd wag ar bwyllgor neu is-bwyllgor. Y rheoliadau sydd mewn grym ar hyn o bryd yw Rheoliadau Maint a Chyfansoddiad Pwyllgorau Awdurdodau Cynllunio Lleol (Cymru) 2017 (O.S. 2017/459 (Cy. 97)).

1612. Mae Adran 362 hefyd yn atal awdurdod cynllunio rhag dirprwyo swyddogaeth berthnasol i bwyllgor neu is-bwyllgor nad yw'n bodloni'r gofynion ynghylch maint a chyfansoddiad.

Adran 363 – Trefniadau ar gyfer arfer swyddogaethau: atodol

1613. Mae'r adran hon yn addasu adrannau 361 a 362 o ran eu cymhwyso i achos pan fo awdurdodau cynllunio yn arfer eu swyddogaethau ar y cyd, o dan adran 101(5) o Ddeddf 1972.

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.

Pennod 2 – Achosion gerbron Gweinidogion Cymru

1614. Mae nifer o ddarpariaethau yn y Ddeddf sy'n dyrannu swyddogaethau i Weinidogion Cymru – er enghraifft, penderfynu mathau amrywiol o geisiadau ac apelau, cadarnhau gorchmynion a wneir gan awdurdodau cynllunio a chyrff eraill, a gweithredu yn lle'r awdurdod cynllunio. Mae swyddogaethau o'r fath yn cael eu harfer, fel arfer gan arolygydd sy'n gweithredu ar ran Gweinidogion Cymru, ar ôl cynnal ymchwiliad neu wrandawiad, neu ar sail cyfnewid sylwadau ysgrifenedig.

1615. Mae'r Bennod hon yn cynnwys darpariaethau cyffredinol sy'n gymwys mewn achosion o'r fath – gan gynnwys y ffioedd sy'n daladwy gan y partïon i achosion o'r fath, penodi arolygwyr, dewis y weithdrefn sydd i'w mabwysiadu (ymchwiliad, gwrandawiad, neu sylwadau ysgrifenedig), y weithdrefn sydd i'w dilyn ym mhob achos, cyflwyno tystiolaeth, a chostau Gweinidogion Cymru a'r partïon.

Adran 364 – Ffioedd a thaliadau am geisiadau ac apelau i Weinidogion Cymru

1616. Caiff rheoliadau o dan yr adran hon ei gwneud yn ofynnol i ffi gael ei thalu neu i dâl gael ei dalu i Weinidogion Cymru mewn cysylltiad â swyddogaethau amrywiol a gyflawnir ganddynt o dan y Ddeddf.

1617. O dan is-adran (1), caiff rheoliadau o'r fath ei gwneud yn ofynnol i ffi gael ei thalu neu i dâl gael ei dalu i Weinidogion Cymru mewn cysylltiad â chais am ganiatâd cynllunio a wneir, neu y bwriedir ei wneud, iddynt o dan adran 78, yn hytrach nag i'r awdurdod cynllunio. Caiff rheoliadau o'r fath hefyd ddarparu ar gyfer talu ffi neu dâl pan wneir cais i Weinidogion Cymru am gymeradwyaeth ar gyfer materion a gadwyd yn ôl (o dan adran 78) neu pan wneir cais cysylltiedig iddynt o dan adran 80. Fel gyda ffioedd sy'n daladwy i awdurdodau cynllunio o dan adran 360, caiff rheoliadau o'r fath ddarparu i ffi gael ei thalu neu i dâl gael ei dalu i Weinidogion Cymru mewn cysylltiad ag unrhyw beth a wneir ganddynt sy'n ddeilliadol i benderfynu ceisiadau o'r fath.

1618. O dan is-adran (2), caiff rheoliadau ei gwneud yn ofynnol i ffi gael ei thalu i Weinidogion Cymru mewn cysylltiad â chais am ganiatâd cynllunio a wneir iddynt o dan adran 85 mewn cysylltiad â datblygiad brys y Goron.

1619. O dan is-adran (3), caiff rheoliadau ei gwneud yn ofynnol i ffi gael ei thalu i Weinidogion Cymru mewn cysylltiad ag unrhyw apêl a wneir iddynt o dan y Ddeddf.

1620. Yn ychwanegol at unrhyw ffi sy'n daladwy o dan is-adran (3), mae is-adrannau (4) a (5) yn galluogi rheoliadau i'w gwneud yn ofynnol i ffi gael ei thalu naill ai i Weinidogion Cymru neu i'r awdurdod cynllunio (neu'r ddau) mewn cysylltiad ag apêl iddynt yn erbyn hysbysiad gorfodi sy'n dibynnu ar y sail yn adran 131(2)(a) (mewn cysylltiad â'r materion y pennir yn yr hysbysiad gorfodi eu bod yn ffurfio tor rheolaeth gynllunio, y dylai caniatâd cynllunio gael ei roi neu y dylai amod mewn caniatâd cynllunio gael ei ddileu).

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. Fel gyda ffioedd sy'n daladwy i awdurdodau cynllunio, caiff rheoliadau o dan yr adran hon ddarparu ar gyfer manylion y drefn ffioedd – gan gynnwys pryd y mae rhaid talu ffi neu dâl, pwy sydd i'w thalu neu i'w dalu, y swm sydd i'w dalu (ac unrhyw ostyngiadau neu esemptiadau o dan amgylchiadau penodol), effaith methu â thalu, a phryd y mae rhaid i ffi gael ei had-dalu (is-adran (6)). Cânt hefyd ddarparu i ffi sy'n daladwy i Weinidogion Cymru gael ei throsglwyddo i berson neu gorff arall o dan amgylchiadau penodol (is-adran (6)(g)).

1622. Rhoddir pwerau eraill gan y Ddeddf sy'n galluogi Gweinidogion Cymru i wneud darpariaeth ynghylch ffioedd neu daliadau o dan amgylchiadau penodol. Nid yw'r adran hon yn cyfyngu ar unrhyw un o'r pwerau hynny (is-adran (7)).

Adran 365 – Penderfynu apêl gan arolygydd

Atodlen 20, paragraffau 4 i 6

1623. Pan gyflwynwyd y system gynllunio gyntaf, roedd pob apêl yn cael ei phenderfynu gan yr Ysgrifennydd Gwladol (ac yng Nghymru yn ddiweddarach gan Weinidogion Cymru yn dilyn datganoli'r system gynllunio); ond dros y degawdau olynol mae'r pŵer i benderfynu apelau mewn categorïau amrywiol wedi ei drosglwyddo'n raddol i arolygwyr. Mae'r adran hon yn adlewyrchu'r arfer gyfredol, yn yr ystyr bod is-adran (1) yn darparu i arolygwyr benderfynu bron pob apêl o dan y Ddeddf, yn hytrach na Gweinidogion Cymru.

1624. Yr arfer yn y gorffennol oedd cyfeirio at bersonau o'r fath, a oedd wedi eu penodi gan Weinidogion Cymru, mewn deddfwriaeth sylfaenol ac is-ddeddfwriaeth fel 'personau a benodir gan Weinidogion Cymru' neu'n syml fel 'personau penodedig'; ond yr arfer ers sawl blwyddyn yw cyfeirio atynt yn ymarferol yn syml fel 'arolygwyr', ac mae'r Ddeddf hon yn mabwysiadu'r term hwnnw.

1625. Gweinidogion Cymru fydd yn penderfynu apêl eu hunain o hyd, fodd bynnag, os yw'n dod o fewn y naill neu'r llall o'r categorïau a ganlyn:

a. apêl sydd o fath a bennir mewn rheoliadau (is-adran (3)(a)); neu

b. apêl a fu'n destun cyfarwyddyd penodol gan Weinidogion Cymru ei bod i'w phenderfynu ganddynt (is-adran (3)(b)).

1626. Gwneir cyfarwyddydau o dan is-adran (3)(b) fesul achos. Mae paragraff 4(2) o Atodlen 20 yn darparu bod rhaid i gyfarwyddyd o'r fath ddatgan y rhesymau pam y'i gwneir a bod rhaid iddo gael ei gyflwyno i'r arolygydd (os oes un) a benodir i benderfynu'r apêl (paragraff (4)(2)(a)). Rhaid iddo hefyd gael ei gyflwyno i'r apelydd, i'r awdurdod cynllunio perthnasol, ac – yn achos apêl o dan adran 73 yn erbyn penderfyniad awdurdod ar gais (neu ei fethiant i wneud penderfyniad o'r fath) – i unrhyw un sydd wedi cyflwyno sylwadau ar y cais y mae rhaid i'r awdurdod eu hystyried (paragraff 4(2)(b) i (d)). Rhaid rhoi cyfle i bersonau y cyflwynwyd cyfarwyddyd iddynt o dan baragraff 4(2)(b) i (d) i gyflwyno sylwadau newydd, pan fo'r rhesymau dros y cyfarwyddyd yn codi materion newydd nad yw'r personau hynny wedi cyflwyno sylwadau arnynt. Dyma'r unig amgylchiadau pa fo rhaid i Weinidogion Cymru roi cyfle i unrhyw un i gyflwyno sylwadau newydd neu i addasu neu dynnu'n ôl sylwadau a gyflwynwyd eisoes (paragraff 4(3) a (4)).

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. Pan fo Gweinidogion Cymru yn adennill awdurdodaeth i benderfynu apêl drwy roi cyfarwyddyd o dan is-adran (3)(b), cânt ystyried unrhyw adroddiad a wneir iddynt gan arolygydd a benodwyd yn flaenorol i'w phenderfynu (paragraff 4(5) o Atodlen 20).

1628. Ar unrhyw adeg cyn i'r apêl gael ei phenderfynu, caiff Gweinidogion Cymru ddirymu cyfarwyddyd o dan is-adran (3)(b), drwy wneud cyfarwyddyd pellach y mae rhaid iddo ddatgan y rhesymau pam y'i gwneir. Rhaid iddo gael ei gyflwyno i bawb y cyflwynwyd y cyfarwyddyd gwreiddiol iddynt. Rhaid i'r cyfarwyddyd pellach hwnnw benodi arolygydd i benderfynu'r apêl, a bydd y mater wedyn yn mynd yn ei flaen fel pe na bai unrhyw gyfarwyddyd wedi ei roi – ac eithrio y bydd unrhyw beth a wnaed eisoes gan neu ar ran Gweinidogion Cymru (gan gynnwys unrhyw drefniadau ynghylch cynnal ymchwiliad neu wrandawiad) yn cael ei drin fel pe bai wedi ei wneud gan yr arolygydd newydd ei benodi (paragraff 5 o Atodlen 20).

1629. Fel y pennir yn is-adran (2), nid yw'r adran hon yn gymwys i apelau yn erbyn hysbysiad nad yw cais yn ddilys (o dan adran 61). Fodd bynnag, gwneir darpariaeth debyg gan adran 62(4) i (6) mewn perthynas ag apelau o'r fath sy'n cael eu penderfynu gan arolygydd oni bai bod Gweinidogion Cymru wedi gwneud cyfarwyddyd mai hwy ddylai benderfynu apêl ddilysu benodol.

1630. Nid yw'r adran yn gymwys ychwaith i unrhyw apêl o dan y rheoliadau ASC (is-adran (2)).

1631. Yn rhinwedd is-adran (4), mae penderfyniad arolygydd ar apêl i'w drin fel pe bai'n benderfyniad Gweinidogion Cymru.

1632. Mae paragraff 6(1) o Atodlen 20 yn darparu, pan fydd arolygydd wedi penderfynu apêl, nad yw'n bosibl herio'r penderfyniad hwnnw yn yr Uchel Lys ar y sail y dylai fod wedi ei wneud gan Weinidogion Cymru.

1633. Mae paragraff 6(2) o Atodlen 20 yn darparu bod gweithredoedd a phenderfyniadau arolygydd i'w trin fel swyddogaethau Llywodraeth Cymru at ddibenion Deddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2019 (dccc 3); ac mae Atodlen 3 i'r Ddeddf honno yn darparu bod Llywodraeth Cymru yn "awdurdod rhestredig" at ddibenion y Ddeddf honno. Y canlyniad yw y gallai camweinyddu honedig gan arolygwyr wrth gyflawni eu swyddogaethau, neu fethiant ganddynt i ddarparu gwasanaethau perthnasol, neu fethiant ganddynt i ddarparu gwasanaethau o'r fath, fod yn destun cwyn i'r Ombwdsmon Gwasanaethau Cyhoeddus (gweler adran 11 o'r Ddeddf honno).

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).

Atodlen 20, paragraffau 1 i 3

1634. Mae paragraffau 1 i 3 o'r Atodlen hon yn cynnwys rhagor o fanylion ynghylch penderfynu apelau gan arolygwyr, fel y darperir ar ei gyfer gan adran 365. Mae paragraff 1(1) yn darparu bod gan arolygydd mewn achos o'r fath yr un pwerau a dyletswyddau'n gyffredinol â Gweinidogion Cymru, heblaw:

a. swyddogaethau a roddir i Weinidogion Cymru gan adran 365 a'r Atodlen hon, megis penodi arolygydd arall, neu roi cyfarwyddyd bod rhaid i Weinidogion Cymru benderfynu apêl, neu ddirymu cyfarwyddyd o'r fath; neu
b. gwneud rheoliadau.

1635. Effaith gyfun paragraff 1(2) a (3) o'r Atodlen hon yw pan fo unrhyw ddeddfiad (ac eithrio adran 365 neu'r Atodlen hon) sy'n ymwneud ag apêl yn cyfeirio at Weinidogion Cymru, a phan fo apêl i'w phenderfynu gan arolygydd, bod y cyfeiriad hwnnw i'w ddeall fel pe bai'n gyfeiriad at yr arolygydd. Er enghraifft, mae adran 366(2) i'w darllen fel pe bai'n dweud: *"Rhaid i'r [arolygydd] ym mhob achos benderfynu'r weithdrefn ar gyfer ystyried [apêl] y mae'r adran hon yn gymwys [iddi]"*; ac mae adran 77(6) i'w darllen fel pe bai'n dweud bod *"penderfyniad [arolygydd] ar apêl yn derfynol"*.

1636. Mae paragraff 2 yn darparu y caiff arolygydd gynnal ymchwiliad neu wrandawiad, pan fo penderfyniad wedi ei wneud bod apêl i'w phenderfynu yn y ffordd honno. Mae costau ymchwiliad neu wrandawiad o'r fath i'w talu gan Weinidogion Cymru yn gyffredinol, yn ddarostyngedig i adran 372. Caiff Gweinidogion Cymru neu'r arolygydd benodi asesydd i gynorthwyo'r arolygydd ar faterion penodol, ni waeth pa weithdrefn a ddefnyddir i benderfynu'r apêl.

1637. Ar unrhyw adeg cyn i apêl gael ei phenderfynu gan arolygydd, caiff Gweinidogion Cymru ddirymu penodiad yr arolygydd a phenodi arolygydd arall i barhau'r achos, o dan baragraff 3. Mae hyn yn galluogi, er enghraifft, arolygydd newydd i gael ei benodi pan fo arolygydd yn sâl neu os nad yw'n gallu nac yn fodlon parhau i weithredu am unrhyw reswm arall. Pan wneir penodiad newydd o'r fath, rhaid dechrau ystyried o'r newydd yr apêl, ac unrhyw ymchwiliad neu wrandawiad sy'n ymwneud â hi – ond nid oes angen rhoi cyfle i'r bobl hynny sydd wedi cyflwyno sylwadau ar yr apêl i addasu eu sylwadau na'u tynnu'n ôl na chyflwyno sylwadau o'r newydd.

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.

Adran 366 – Dewis o ymchwiliad, gwrandawiad neu weithdrefn ysgrifenedig ar gyfer apelau a cheisiadau

1638. Mae'r adran hon yn darparu i benderfyniad gael ei wneud gan Weinidogion Cymru ynghylch y weithdrefn sy'n llywodraethu achosion mewn cysylltiad ag:

a. cais a wneir yn uniongyrchol i Weinidogion Cymru (ac eithrio'r rhai a wneir o dan Ran 11 neu 12);

b. cais a wneir i awdurdod cynllunio ac a elwir i mewn gan Weinidogion Cymru i'w benderfynu ganddynt; ac

c. unrhyw apêl o dan y Ddeddf hon ac eithrio un yn erbyn penderfyniad gan awdurdod ynghylch dilysrwydd cais (y mae rhaid ymdrin ag ef drwy sylwadau ysgrifenedig: gweler adran 62(3) neu o dan reoliadau ASC).

1639. Ym mhob un o'r sefyllfaoedd a grybwyllir uchod, rhaid penderfynu bod yr achos sy'n ymwneud â'r cais neu'r apêl i'w ystyried mewn ymchwiliad lleol, neu mewn gwrandawiad, neu ar sail sylwadau ysgrifenedig (is-adran (3)).

1640. Caniateir amrywio'r rhestr o gategorïau o achos y mae'r adran yn gymwys iddynt drwy reoliadau o dan is-adran (10).

1641. Rhaid gwneud y penderfyniad, o dan is-adran (4), o fewn y cyfnod a bennir mewn rheoliadau – chwe wythnos ar hyn o bryd, fel y rhagnodir yn rheoliad 13 o Reoliadau Ceisiadau Atgyfeiriedig 2017. Caniateir amrywio'r penderfyniad hwnnw ar unrhyw adeg cyn i'r achos perthnasol ddod i ben, drwy ddyroddi penderfyniad pellach (o dan is-adran (5)).

1642. Rhaid hysbysu'r ceisydd neu'r apelydd a'r awdurdod cynllunio perthnasol am benderfyniad (neu benderfyniad pellach) ynghylch gweithdrefn (is-adran (6)).

1643. Pan wneir cais yn uniongyrchol i Weinidogion Cymru o dan adran 78, rhaid hefyd hysbysu unrhyw un y mae Gweinidogion Cymru yn ystyried ei fod yn cynrychioli partïon, heblaw'r ceisydd a'r awdurdod, sydd â buddiant mewn achos, am y penderfyniad ynghylch gweithdrefn. Mae'r un peth yn gymwys hefyd i gais cysylltiedig a wneir o dan adran 80.

1644. Mae'n ofynnol i Weinidogion Cymru gyhoeddi'r meini prawf y byddant yn eu cymhwyso wrth wneud penderfyniadau ynghylch gweithdrefn o dan yr adran hon (is-adran (9)). Mae'r meini prawf cyfredol yn Atodiad 01 i'r *Canllaw Gweithdrefnol* sydd wedi ei gyhoeddi ar wefan PEDW.

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.

Adran 367 – Gofynion gweithdrefnol ar gyfer apelau, ceisiadau ac achosion eraill

1645. Mae is-adran (1)(a) yn darparu ar gyfer gwneud rheoliadau i lywodraethu gweithdrefn mewn cysylltiad ag unrhyw gais, unrhyw apêl neu unrhyw atgyfeiriad a wneir i neu at Weinidogion Cymru – pa un a yw wedi ei benderfynu neu ei phenderfynu yn dilyn ymchwiliad neu wrandawiad neu ar sail sylwadau ysgrifenedig. Gan ddibynnu ar y pŵer a ailddatgenir yn adran 367, gwnaeth Gweinidogion Cymru Reoliadau Ceisiadau Atgyfeiriedig 2017 sy'n gymwys i'r gweithdrefnau a ganlyn o dan y Ddeddf hon:

a. ceisiadau am ganiatâd cynllunio, a atgyfeirir atynt o dan adran 72;

b. apelau yn erbyn penderfyniadau awdurdodau cynllunio ar geisiadau am ganiatâd cynllunio, neu yn erbyn methiant awdurdod i benderfynu cais o'r fath, o dan adran 73;

c. apelau yn erbyn penderfyniadau awdurdodau cynllunio ar geisiadau am gydsyniad, neu yn erbyn methiant awdurdod i benderfynu cais o'r fath, o dan reoliadau hysbysebion a wneir o dan adrannau 221 a 224;

d. apelau yn erbyn penderfyniadau awdurdodau cynllunio ar geisiadau am gydsyniad, neu yn erbyn methiant awdurdod i benderfynu cais o'r fath, o dan reoliadau coed a wneir o dan adrannau 237 a 241(7);

e. apelau yn erbyn penderfyniadau awdurdodau cynllunio ar geisiadau am dystysgrif cyfreithlondeb, neu yn erbyn methiant awdurdod i benderfynu cais o'r fath, o dan adran 160;

f. apelau yn erbyn hysbysiadau gorfodi, o dan adran 131;

g. apelau yn erbyn hysbysiadau ailblannu coed, o dan adran 254; ac
h. apelau yn erbyn hysbysiadau cynnal a chadw tir, o dan adran 215.

1646. Gwnaed rheoliadau hefyd mewn perthynas ag apelau i Weinidogion Cymru yn erbyn penderfyniadau awdurdodau cynllunio ynghylch dilysrwydd cais cynllunio: gweler Rheoliadau Cynllunio Gwlad a Thref (Gweithdrefn Apelau Dilysu) (Cymru) 2016 (O.S. 2016/60 (Cy. 30)).

1647. Caniateir i reoliadau o dan is-adran (1)(b) gael eu gwneud i lywodraethu gweithdrefn mewn cysylltiad ag unrhyw ymchwiliad arall neu unrhyw wrandawiad arall a gynhelir gan Weinidogion Cymru (neu gan arolygwyr ar eu rhan), megis y rheini a gynhelir o dan adran 368.

1648. Caiff rheoliadau o dan is-adran (1) reoleiddio'r weithdrefn mewn ymchwiliad neu wrandawiad, neu'r broses o gyflwyno sylwadau ysgrifenedig – a chânt hefyd reoleiddio'r weithdrefn sy'n arwain at achosion o'r fath ac sy'n eu dilyn (is-adran (2)).

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. Cânt hefyd ymdrin (o dan is-adran (3)) â'r weithdrefn sydd i'w dilyn pan roddir y gorau i ymchwiliad neu wrandawiad, neu pan fo Gweinidogion Cymru yn galw i mewn i'w benderfynu fater sydd eisoes wedi ei osod ar waith gan arolygydd, neu pan fo mater yn cael ei alw i mewn a'i drosglwyddo yn ôl i arolygydd yn dilyn hynny. Yn benodol, cânt ddarparu ar gyfer yr hyn sydd i'w wneud ym mhob achos mewn perthynas â chamau a gymerir cyn y newid.

1650. Caiff rheoliadau o'r fath ddarparu terfynau amser y mae rhaid i bartïon gyflwyno sylwadau a thystiolaeth ddogfennol ynddynt a chânt alluogi Gweinidogion Cymru neu'r arolygydd i osod terfynau amser o'r fath mewn perthynas ag achos penodol. Cânt hefyd alluogi penderfynwyr i beidio ag ystyried deunydd a gyflwynir y tu allan i'r terfyn amser (gweler, er enghraifft, reoliad 12 o Reoliadau Ceisiadau Atgyfeiriedig 2017); ac i fynd ymlaen i wneud penderfyniad er na chyflwynwyd unrhyw sylwadau o fewn y terfyn amser pan fônt yn ystyried bod ganddynt ddigon o ddeunydd ger eu bron.

1651. Caiff y rheoliadau hefyd reoleiddio'r amgylchiadau pan ganiateir rhoi cyfarwyddydau a gorchmynion ynghylch costau (is-adran (5)). Nid yw'r rheoliadau cyfredol yn gwneud unrhyw ddarpariaeth o'r fath.

1652. Yn ogystal, cânt ddarparu na chaniateir codi mater ar ôl pwynt penodol yn yr achos, oni bai na ellid bod wedi ei godi'n flaenorol (is-adran (6)). Mae hyn er mwyn atal un o'r partïon rhag cyflwyno ar y funud olaf fater y gellid bod wedi ei godi ar y dechrau, gan amddifadu partïon eraill o gyfle i ymateb yn briodol.

Adran 368 – Pŵer Gweinidogion Cymru i gynnal ymchwiliad lleol

1653. Yn ogystal â phenderfynu ceisiadau ac apelau, mae nifer o swyddogaethau eraill o dan y Ddeddf a ddyrennir i Weinidogion Cymru – er enghraifft, cadarnhau cynlluniau a gorchmynion amrywiol a wneir gan awdurdodau cynllunio a chyrff eraill (gweler adran 26 ac Atodlenni 6, 7, 14 a 15) neu weithredu yn lle'r awdurdod cynllunio (gweler adrannau 29, 72, 102, 206 a 208). Mae'r adran hon yn eu galluogi i beri i ymchwiliad gael ei gynnal at ddiben cyflawni unrhyw un neu ragor o'r swyddogaethau hynny. Nid yw'r adran yn gymwys i Bennod 2 o Ran 6 (ardoll seilwaith cymunedol).

1654. Yn ymarferol, cynhelir ymchwiliadau o'r fath gan arolygwyr fel arfer a chânt eu trefnu gan PEDW. Gellir darparu ar gyfer y weithdrefn sydd i'w dilyn cyn, yn ystod ac ar ôl ymchwiliad o'r fath drwy reoliadau a wneir o dan adran 367(1)(b). Bydd darpariaethau adrannau 369 i 373 yn gymwys hefyd.

Adran 369 – Pŵer person sy'n cynnal ymchwiliad i wneud tystiolaeth yn ofynnol

1655. Mae'r adran hon yn gymwys i bob ymchwiliad a gynhelir o dan unrhyw ddarpariaeth yn y Ddeddf – sef y rheini sy'n ymwneud ag apelau cynllunio a gorfodi yn fwyaf cyffredin, ond hefyd ymholiadau eraill a gynhelir o dan adran 368.

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. Mae is-adrannau (1)(a) a (3) yn galluogi'r person sy'n cynnal ymchwiliad lleol o dan y Ddeddf (a fydd fel arfer yn arolygydd a benodir gan Weinidogion Cymru) i ddyroddi gwŷs sy'n ei gwneud yn ofynnol i berson fod yn bresennol mewn ymchwiliad sydd ar ddod – ar yr amod bod treuliau angenrheidiol y person ar gyfer bod yn bresennol yn cael eu talu neu eu cynnig. O dan is-adran (1)(b) caniateir dyroddi gwŷs sy'n ei gwneud yn ofynnol i berson ddangos unrhyw ddogfen benodedig sy'n ymwneud â mater o dan sylw yn yr ymchwiliad – ond nid teitl tir (ac eithrio yn achos tir sy'n eiddo i awdurdod lleol) (is-adran (4)).

1657. Pan ddyroddir gwŷs, a bod person yn gwrthod neu'n methu'n fwriadol â chydymffurfio ag ef, mae hynny'n drosedd o dan is-adran (5)(a). Pan fo person yn newid, yn atal, yn cuddio neu'n dinistrio'n fwriadol ddogfen sy'n ofynnol, neu sy'n debygol o fod yn ofynnol, mewn ymchwiliad, mae hynny hefyd yn drosedd, o dan is-adran (5)(b).

1658. O dan is-adrannau (6) a (7), mae'r ddwy drosedd o dan is-adran (5) yn droseddau y gellir eu rhoi ar brawf yn ddiannod (yn y llys ynadon), ac maent i'w cosbi ar euogfarn drwy ddirwy hyd at Lefel 3 ar y raddfa safonol neu uchafswm y cyfnod yn y carchar (sef 6 mis ar hyn o bryd). Bydd adran 281 o Ddeddf Cyfiawnder Troseddol 2003 yn cynyddu uchafswm y cyfnod yn y carchar i 51 o wythnosau, pan fydd wedi ei dwyn i rym.

1659. O dan is-adran (2), caiff y person sy'n cynnal ymchwiliad gymryd tystiolaeth ar lw a chaiff weinyddu llwon. Gall y pŵer hwn fod yn ddefnyddiol pan fo tystiolaeth ffeithiol sy'n cael ei herio, er enghraifft mewn achosion gorfodi.

Adran 370 – Mynediad i dystiolaeth mewn ymchwiliad
Adran 371 – Talu cynrychiolydd a benodir pan fo mynediad i dystiolaeth wedi ei gyfyngu

1660. Fel arfer, mewn ymchwiliad lleol o dan y Ddeddf hon, rhaid clywed tystiolaeth lafar yn gyhoeddus, a rhaid sicrhau bod tystiolaeth ddogfennol ar gael i'r cyhoedd edrych arni (adran 370(1)).

1661. Fodd bynnag, caniateir gosod y rheol honno o'r neilltu, o dan adran 370(2) a (3), pan fo Gweinidogion Cymru neu'r Ysgrifennydd Gwladol (yr "awdurdod gweinidogol") yn ystyried y byddai rhoi tystiolaeth yn gyhoeddus:

a. yn arwain at ddatgelu gwybodaeth sy'n effeithio ar ddiogelwch gwladol, neu ddiogelwch unrhyw dir neu unrhyw eiddo; a

b. yn erbyn y buddiant cenedlaethol.

1662. Gall hyn fod yn gymwys, er enghraifft, pan fo ymchwiliad cynllunio yn ymwneud â thir sydd yn union gyfagos i orsaf filwrol.

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. Mewn achosion o'r fath, caiff yr awdurdod gweinidogol gyfarwyddo mai dim ond person a bennir yn y cyfarwyddyd (neu bersonau o gymeriad a bennir yn y modd hwn) sy'n cael clywed neu edrych ar dystiolaeth o gymeriad penodedig. Pan fo'r awdurdod gweinidogol yn ystyried rhoi cyfarwyddyd o'r fath, neu ar unrhyw adeg ar ôl iddo roi un, caiff y Cwnsler Cyffredinol benodi person ("cynrychiolydd a benodir") i gynrychioli buddiannau'r bobl hynny a gaiff eu hatal rhag clywed neu edrych ar y dystiolaeth (adran 370(4) a (5)).

1664. Caiff rheoliadau o dan adran 370(6) ddarparu ar gyfer y weithdrefn mewn cysylltiad â rhoi cyfarwyddyd o'r fath, ac o ran swyddogaethau cynrychiolydd a benodir. Gwnaed Rheoliadau Cynllunio (Cyfarwyddiadau Diogelwch Gwladol a Chynrychiolwyr Penodedig) (Cymru) 2006 (O.S. 2006/1387 (Cy. 137)) gan ddibynnu ar y pŵer a ailddatgenir yn yr adran hon.

1665. Pan fo'r Cwnsler Cyffredinol yn penodi cynrychiolydd a benodir o dan adran 370, caiff yr awdurdod gweinidogol gyfarwyddo bod ffioedd a threuliau'r cynrychiolydd yn cael eu talu gan berson y mae'n ystyried ei fod (neu y byddai wedi bod) â buddiant yn yr ymchwiliad mewn perthynas â diogelwch gwladol, neu ddiogelwch unrhyw dir neu unrhyw eiddo ("y person cyfrifol") (adran 371(1) i (3)). Os na all y cynrychiolydd a benodir a'r person cyfrifol gytuno ar swm y ffioedd neu'r treuliau, rhaid i'r swm gael ei benderfynu gan yr awdurdod gweinidogol a roddodd y cyfarwyddyd (adran 371(4)). Rhaid i'r awdurdod gweinidogol ardystio'r swm y cytunir arno neu a benderfynir; yna caiff y cynrychiolydd a benodir adennill y swm hwnnw oddi wrth y person cyfrifol, fel dyled os oes angen (adran 371(5) a (6)).

Adran 372 – Talu costau Gweinidogion Cymru

1666. Pan wneir cais neu apêl i Weinidogion Cymru, neu pan gaiff cais ei atgyfeirio atynt – pa un a ymdrinnir ag ef neu hi drwy ymchwiliad, gwrandawiad neu sylwadau ysgrifenedig – bydd Gweinidogion Cymru yn mynd i gostau. Byddant hefyd yn mynd i gostau pan fônt (neu pan fo arolygydd) yn cynnal unrhyw fath arall o ymchwiliad neu wrandawiad o dan y Ddeddf neu o dan unrhyw reoliadau odano. O dan rai amgylchiadau, caiff Gweinidogion Cymru (neu'r arolygydd) benderfynu y dylai un neu ragor o'r partïon i'r achos dalu costau Gweinidogion Cymru.

1667. Pan fo hyn yn digwydd, caiff Gweinidogion Cymru (neu'r arolygydd) gyfarwyddo bod y ceisydd, yr apelydd, yr awdurdod cynllunio, neu ryw barti arall i'r ymchwiliad yn talu rhan neu'r cyfan o'u costau (is-adran (1)). Mae'r costau y caniateir eu hadennill yn y modd hwn yn cynnwys:

a. costau'r achos ei hun gan gynnwys cyfraniad tuag at gostau cyffredinol (a gorbenion) Llywodraeth Cymru;

b. costau yr eir iddynt mewn cysylltiad ag ymchwiliad neu wrandawiad nad yw'n digwydd (is-adran (3)).

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. Caiff rheoliadau o dan is-adran (4) bennu swm dyddiol safonol ar gyfer costau Gweinidogion Cymru neu arolygwyr ar gyfer categorïau penodol o achos. Mae'r costau hynny yn cynnwys swm dyddiol mewn perthynas â'r gwaith gwirioneddol o ymdrin â'r achos, costau cysylltiedig (megis teithio, a chynhaliaeth), costau person a benodir i gynorthwyo, megis asesydd arbenigol, a chostau cyfreithiol cysylltiedig.

1669. Nid yw'r adran yn gymwys i achosion o dan reoliadau ASC (is-adran (7)).

Adran 373 – Gorchmynion sy'n ymwneud â chostau partïon

1670. Pan wneir cais neu apêl i Weinidogion Cymru, neu pan atgyfeirir cais atynt – pa un a ymdrinnir ag ef neu hi drwy ymchwiliad, gwrandawiad neu sylwadau ysgrifenedig – bydd y partïon (hynny yw, y ceisydd, yr apelydd, yr awdurdod cynllunio, ac eraill) yn mynd i gostau. A byddant hefyd yn mynd i gostau pan fo Gweinidogion Cymru yn cynnal ymchwiliad neu wrandawiad o dan unrhyw ddarpariaethau eraill yn y Ddeddf neu odani.

1671. Y rheol arferol yw bod partïon yn talu eu costau eu hunain, ond caiff Gweinidogion Cymru (neu, yn amlach, arolygwyr) wneud gorchymyn o dan is-adran (2) ynghylch un parti yn talu'r cyfan neu ran o'r costau yr eir iddynt gan barti arall. Ni fydd hynny ond yn digwydd pan fo'r parti y gorchmynnwyd iddo dalu'r costau wedi ymddwyn yn afresymol mewn perthynas â'r achos, a phan fo ymddygiad y parti hwnnw wedi achosi i'r parti arall fynd i wariant diangen neu wariant a wastraffwyd (is-adran (3)). Mae hyn yn cwmpasu'r egwyddor sydd wedi arwain arolygwyr ers amser maith mewn perthynas ag apelau cynllunio, a fynegwyd yn fwyaf diweddar yn rhan 2 o'r Atodiad i Adran 12 o'r *Llawlyfr Rheoli Datblygu* (sydd ar gael ar wefan Llywodraeth Cymru).

1672. Caiff rheoliadau a wneir o dan adran 367(5)(b) bennu'r amgylchiadau pan fo modd gwneud gorchymyn am gostau (is-adran (4)).

1673. Nid yw'r adran yn gymwys i achosion o dan reoliadau ASC (is-adran (5)).

Pennod 3 – Dilysrwydd cynlluniau, penderfyniadau a gorchmynion

1674. Gall penderfyniadau cynllunio gan awdurdodau cynllunio a Gweinidogion Cymru fod yn destun her yn y llysoedd. Mae adrannau 374 i 377 yn darparu na chaniateir herio cynlluniau, penderfyniadau na gorchmynion penodol – gan gynnwys penderfyniad i roi caniatâd cynllunio neu i ddileu amod mewn caniatâd cynllunio neu gyfyngiad arno wrth benderfynu apêl yn erbyn hysbysiad gorfodi – ond drwy adolygiad statudol ac na chaniateir eu herio drwy unrhyw achos cyfreithiol arall.

1675. Caniateir herio dilysrwydd cynllun, penderfyniad neu orchymyn perthnasol ar y sail:

a. nad yw o fewn y pwerau priodol; neu

b. y methwyd â chydymffurfio â gofyniad gweithdrefnol a bod y methiant hwnnw wedi cael effaith andwyol sylweddol ar y ceisydd.

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. Gellir canfod bod y cynllun, y penderfyniad neu'r gorchymyn y tu hwnt i'r pwerau priodol nid yn unig drwy gyfeirio at y pwerau a'r gofynion a nodir yn y Ddeddf, ond hefyd, er enghraifft, oherwydd bod y penderfynwr wedi ymddwyn yn afresymegol, neu wedi ystyried materion amherthnasol, neu wedi methu ag ystyried materion perthnasol.

1677. Nid yw her o'r fath yn gyfle pellach i ystyried rhinweddau cynllunio'r cynllun, y penderfyniad neu'r gorchymyn sy'n cael ei herio.

1678. Mae adrannau 378 a 379 yn ei gwneud yn ofynnol i reolau llys ddarparu mecanwaith i bersonau a chanddynt un neu ragor o fuddiannau i herio:

a. penderfyniadau (ac eithrio penderfyniadau i roi caniatâd cynllunio neu i ddileu amod mewn caniatâd cynllunio neu gyfyngiad arno) a wneir gan Weinidogion Cymru ar apelau yn ymwneud â hysbysiadau gorfodi; a

b. penderfyniadau a wneir ganddynt ar apelau yn ymwneud â hysbysiadau cynnal a chadw tir ac amnewid coed.

1679. Mae penderfyniadau penodol a wneir gan arolygydd yn hytrach na Gweinidogion Cymru yn cael eu trin fel penderfyniadau gan Weinidogion Cymru (gweler, er enghraifft, adrannau 365(4) a 83(4)). Mae adrannau 375, 376, 378 a 379 felly yr un mor berthnasol i heriau i benderfyniadau a wneir gan arolygwyr mewn achosion o'r fath.

1680. Ni chaniateir dwyn achos o dan y Bennod hon ond gyda chaniatâd y llys.

1681. Pan fo penderfyniad cynllunio y tu hwnt i gwmpas y Bennod hon – er enghraifft, penderfyniad gan awdurdod cynllunio i roi caniatâd cynllunio – caniateir ei herio drwy gais am adolygiad barnwrol o dan Ran 54 o'r Rheolau Trefniadaeth Sifil.

Adran 374 – Adolygiad statudol o gynlluniau datblygu

1682. Mae'r adran hon yn darparu na chaniateir herio'r FfDC, cynllun datblygu strategol na chynllun datblygu lleol (neu unrhyw adolygiad o fframwaith neu gynllun o'r fath) ond drwy adolygiad statudol o dan yr adran hon ac na chaniateir ei herio drwy unrhyw achos cyfreithiol arall (is-adrannau (1) a (2)).

1683. Caiff person a dramgwyddir gan y cynllun o dan sylw wneud cais i'r Uchel Lys am adolygiad statudol (is-adran (3)). Yn ddibynnol ar amgylchiadau'r achos unigol, gall person a dramgwyddir, er enghraifft, fod yn barti a gyflwynodd wrthwynebiadau neu sylwadau fel rhan o'r weithdrefn a ragflaenodd y cynllun sy'n cael ei herio.

1684. Caniateir herio cynllun perthnasol ar y sail:

a. nad yw o fewn y pwerau a roddir gan Ran 2; neu

b. na chydymffurfiwyd â gofyniad sy'n ymwneud â'i gyhoeddi, ei fabwysiadu neu ei gymeradwyo (is-adran (4)).

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. Ni chaniateir gwneud cais am adolygiad statudol ond gyda chaniatâd yr Uchel Lys (is-adran (5)). Rhaid i'r cais am ganiatâd gael ei wneud cyn diwedd 6 wythnos sy'n dechrau â thrannoeth y dyddiad perthnasol a nodir yn is-adran (6). Ni chaiff y Llys estyn y terfyn amser hwn.

1686. O dan is-adrannau (7) ac (8), mae gan yr Uchel Lys bwerau i wneud gorchymyn interim sy'n atal dros dro weithrediad y cynllun pan fydd yn ystyried naill ai'r cais am ganiatâd neu'r cais o sylwedd.

1687. Mae is-adrannau (9) a (10) yn gymwys pan fo'r llys wedi ei fodloni:

a. bod y cynllun y tu hwnt i'r pwerau priodol; neu

b. y bu methiant i gydymffurfio â gofynion gweithdrefnol a bod y methiant wedi cael effaith andwyol sylweddol ar fuddiannau'r ceisydd.

1688. Mewn achos o'r fath, mae gan y llys bŵer i ddiddymu'r cynllun a'i anfon yn ôl at y person sydd â swyddogaeth sy'n ymwneud â'i lunio, ei gyhoeddi, ei fabwysiadu neu ei gymeradwyo. Os caiff y cynllun ei anfon yn ôl, mae gan y llys y pŵer i roi cyfarwyddydau o dan is-adrannau (11) a (12).

1689. Caiff y llys arfer ei bwerau o dan is-adrannau (7) i (12) naill ai mewn perthynas â'r cynllun cyfan neu mewn perthynas â rhyw ran ohono; a naill ai'n gyffredinol neu mewn perthynas ag eiddo'r ceisydd yn unig (is-adran (13)).

Adran 375 – Dilysrwydd penderfyniadau a gorchmynion penodol

1690. Mae'r adran hon yn darparu na chaniateir herio penderfyniadau penodol a wneir gan Weinidogion Cymru a gorchmynion penodol ond drwy adolygiad statudol o dan y weithdrefn a nodir yn adran 376 ac na chaniateir eu herio drwy unrhyw achos cyfreithiol arall (is-adran (1)). Rhestrir y penderfyniadau o dan sylw yn is-adran (2) a rhestrir y gorchmynion yn is-adran (3).

Adran 376 – Cais am adolygiad statudol o benderfyniad neu orchymyn

1691. Mae adran 376 yn darparu y caiff person a dramgwyddir gan benderfyniad neu orchymyn a restrir yn adran 375(2) neu (3) wneud cais i'r Uchel Lys am adolygiad statudol o'r penderfyniad neu'r gorchymyn (is-adran (1)). Yn ddibynnol ar amgylchiadau'r achos unigol, gall personau a dramgwyddir gynnwys y perchennog neu'r meddiannydd, y ceisydd neu'r apelydd, neu ryw barti arall a gyflwynodd wrthwynebiadau neu sylwadau fel rhan o'r weithdrefn a ragflaenodd y penderfyniad neu'r gorchymyn sy'n cael ei herio. Caiff yr awdurdod sy'n ymwneud yn uniongyrchol â'r penderfyniad neu'r gorchymyn, fel y'i diffinnir yn is-adran (9), wneud cais am adolygiad statudol hefyd.

1692. Caniateir herio penderfyniad neu orchymyn perthnasol ar y sail:

a. nad yw o fewn y pwerau priodol; neu

b. y bu methiant i gydymffurfio â gofyniad mewn perthynas ag ef (is-adran (2)).

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. Yn rhinwedd is-adran (3), ni chaniateir gwneud cais am adolygiad statudol o dan yr adran hon ond gyda chaniatâd yr Uchel Lys. Rhaid i'r cais am ganiatâd gael ei wneud cyn diwedd 6 wythnos sy'n dechrau â thrannoeth y dyddiad perthnasol a nodir yn is-adran (4). Ni chaiff y Llys estyn y terfynau amser hyn.

1694. O dan is-adrannau (5) a (6)(a), mae gan yr Uchel Lys bwerau i wneud gorchymyn interim sy'n atal dros dro weithrediad y penderfyniad neu'r gorchymyn y mae'r cais (neu'r cais arfaethedig) yn ymwneud ag ef. Nid yw'r pwerau hyn yn gymwys pan fo'r her yn her i orchymyn diogelu coed neu orchymyn diogelu coetir (is-adran (8)(a)).

1695. Caiff y llys ddiddymu'r penderfyniad neu'r gorchymyn pan fo wedi ei fodloni:

a. nad yw'r penderfyniad neu'r gorchymyn o fewn y pwerau priodol; neu

b. y bu methiant i gydymffurfio â gofyniad gweithdrefnol, a bod y methiant hwnnw wedi cael effaith andwyol sylweddol ar fuddiannau'r ceisydd (is-adran (6)(b)).

1696. Pan fo'r her yn her i orchymyn o dan y rheoliadau rheolaethu hysbysebion sy'n dynodi ardal rheolaeth arbennig, caiff y Llys atal dros dro neu ddiddymu'r gorchymyn yn gyfan gwbl neu'n rhannol (is-adran (7)). Pan fo'r her yn her i orchymyn diogelu coed neu orchymyn diogelu coetir, mae gan y Llys y pŵer pan wneir penderfyniad terfynol i ddiddymu'r gorchymyn yn gyfan gwbl neu'n rhannol (is-adran (8)).

Adran 377 – Adolygiad statudol o orchmynion sy'n ymwneud â phriffyrdd ac ymgymerwyr statudol

1697. Ni chaniateir herio'r gorchmynion a ganlyn ond gan adolygiad statudol o dan yr adran hon:

a. gorchymyn o dan Ran 11 (cau neu wyro priffordd neu ddiddymu hawl tramwy cyhoeddus);

b. gorchymyn o dan adran 318 sy'n rhyddhau ymgymerwr statudol rhag rhwymedigaethau anymarferol (is-adran (2)).

1698. Ni chaniateir i orchmynion o'r fath gael eu herio fel arall mewn unrhyw achos cyfreithiol arall (is-adran (1)).

1699. Caiff person a dramgwyddir gan orchymyn o'r fath wneud cais i'r Uchel Lys am adolygiad statudol o'r gorchymyn (is-adran (3)). Gellid gwneud cais gan berchnogion ar dir sy'n gyfagos i briffordd sydd i'w chau, er enghraifft.

1700. Caniateir herio gorchymyn ar y sail:

a. nad yw o fewn y pwerau priodol; neu

b. na chydymffurfiwyd â gofyniad gweithdrefnol (is-adran (4)).

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. Yn rhinwedd is-adran (5), ni chaniateir gwneud cais am adolygiad statudol o dan yr adran hon ond gyda chaniatâd yr Uchel Lys. Rhaid i'r cais am ganiatâd gael ei wneud cyn diwedd 6 wythnos sy'n dechrau â thrannoeth y diwrnod y cyhoeddir yr hysbysiad perthnasol (fel y'i diffinnir yn is-adran (10)) am y tro cyntaf (is-adran (6)). Ni chaiff y Llys estyn y terfyn amser.

1702. O dan is-adrannau (7) ac (8)(a), mae gan yr Uchel Lys bwerau i wneud gorchymyn interim sy'n atal dros dro weithrediad y gorchymyn y mae'r cais (neu'r cais arfaethedig) yn ymwneud ag ef wrth ystyried naill ai'r cais am ganiatâd neu'r cais o sylwedd.

1703. Caiff y Llys ddiddymu'r gorchymyn os yw wedi ei fodloni:

a. nad yw'r gorchymyn o fewn y pwerau priodol; neu

b. y bu methiant i gydymffurfio â gofyniad gweithdrefnol a bod y methiant hwnnw wedi cael effaith andwyol sylweddol ar fuddiannau'r ceisydd (is-adran (8)(b)).

1704. Caiff y Llys arfer ei bwerau o dan is-adrannau (7) ac (8) naill ai mewn perthynas â'r gorchymyn cyfan neu mewn perthynas â rhyw ran ohono; a naill ai'n gyffredinol neu mewn perthynas ag eiddo'r ceisydd yn unig (is-adran (9)).

Adran 378 – Apêl yn erbyn penderfyniad sy'n ymwneud â hysbysiad gorfodi

1705. Mae'r adran hon yn ei gwneud yn ofynnol i reolau llys ddarparu mecanwaith i bersonau a chanddynt un neu ragor o fuddiannau (gweler is-adran (3)) i herio penderfyniadau a wneir gan Weinidogion Cymru mewn achosion ar apelau sy'n ymwneud â hysbysiadau gorfodi. O dan is-adran (1), rhaid i'r rheolau ddarparu naill ai:

a. y caiff personau a chanddynt un neu ragor o fuddiannau apelio i'r Uchel Lys (yn ymarferol, byddai'r Llys Cynllunio, sef llys arbenigol o fewn yr Uchel Lys, yn ymdrin â'r apelau, ac mae'r rheolau wedi eu cynnwys yn Rhan 54 o'r Rheolau Trefniadaeth Sifil a Chyfarwyddyd Ymarfer 54D a wneir gan y Pwyllgor Rheolau Trefniadaeth Sifil); neu

b. y caiff fod yn ofynnol i Weinidogion Cymru ddatgan a llofnodi achos i gael barn yr Uchel Lys (yn ymarferol, byddai hyn yn ei gwneud yn ofynnol i Weinidogion Cymru ofyn i'r Llys Cynllunio am ei ddyfarniad ynghylch a wnaethant benderfynu'r apêl yn briodol); Noder bod darpariaeth ynghylch apelau drwy achos a ddatgenir wedi ei chynnwys yng Nghyfarwyddyd Ymarfer 52E a wneir gan y Pwyllgor Rheolau Trefniadaeth Sifil.

1706. Nid yw'r adran hon yn gymwys i heriau i benderfyniadau apêl gorfodi sy'n rhoi caniatâd cynllunio neu'n dileu amod mewn caniatâd cynllunio neu gyfyngiad arno (is-adran (2)). Ni chaniateir herio'r penderfyniadau hyn ond o dan adran 376 (adolygiad statudol).

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. Ni chaniateir dwyn achos yn yr Uchel Lys o dan yr adran hon ond gyda chaniatâd y Llys (is-adran (9)); rhaid gwneud cais am ganiatâd o'r fath, o dan Gyfarwyddyd Ymarfer 54D, o fewn 28 o ddiwrnodau ar ôl i'r hysbysiad o'r penderfyniad gael ei roi i'r ceisydd). At hynny, ni chaniateir dwyn apêl o'r Uchel Lys i'r Llys Apêl ond gyda chaniatâd yr Uchel Lys neu'r Llys Apêl (is-adran (10)).

1708. O dan is-adrannau (6) a (7), mae gan yr Uchel Lys a'r Llys Apêl y pŵer i orchymyn bod yr hysbysiad gorfodi i barhau i gael effaith – yn gyfan gwbl neu'n rhannol – hyd nes y penderfynir yr achos llys yn derfynol, a hyd nes y bo Gweinidogion Cymru wedi ailbenderfynu'r mater. Caniateir gwneud gorchymyn o'r fath ar ba delerau bynnag y mae'r Llys yn ystyried eu bod yn briodol, gan gynnwys gofyniad i'r awdurdod cynllunio roi ymgymeriad ynghylch iawndal.

1709. Mae is-adran (8) yn gwneud darpariaeth ynghylch materion eraill y caniateir eu cynnwys yn Rheolau'r Llys. Mae hyn yn cynnwys darpariaeth ynghylch pwerau'r Uchel Lys neu'r Llys Apêl i drosglwyddo'r mater i Weinidogion Cymru i'w ailbenderfynu (gweler Cyfarwyddyd Ymarfer 54D).

1710. O dan is-adran (4) caiff Gweinidogion Cymru atgyfeirio cwestiwn cyfreithiol sy'n codi yn ystod achos gorfodi o dan adran 131 i'r Uchel Lys drwy achos a ddatgenir, ac o dan is-adran (5) caniateir apelio yn erbyn penderfyniad gan yr Uchel Lys ar achos a ddatgenir o dan is-adran (4) i'r Llys Apêl o dan adran 16 o Ddeddf Uwchlysoedd 1981 (p. 54).

Adran 379 – Apêl yn erbyn penderfyniad sy'n ymwneud â hysbysiad cynnal a chadw tir neu hysbysiad amnewid coed

1711. Mae'r adran hon yn gwneud darpariaeth ynghylch heriau gan bersonau a chanddynt un neu ragor o fuddiannau (gweler is-adran (3)) i benderfyniadau ar apelau yn erbyn hysbysiadau cynnal a chadw tir a hysbysiadau amnewid coed. Caiff heriau o'r fath eu trin yn yr un modd â'r rhai o dan adran 378 mewn perthynas â hysbysiadau gorfodi – ac eithrio nad oes pŵer tebyg i'r un yn adran 378(6) a (7) yn yr adran hon. Pan fo penderfyniad ar apêl yn erbyn hysbysiad cynnal a chadw tir neu hysbysiad amnewid coed yn cael ei herio o dan yr adran hon, nid yw'n cael unrhyw effaith hyd nes y penderfynir yr her yn derfynol a, phan fo hynny'n briodol, hyd nes y bo'r apêl wedi ei hailbenderfynu (is-adran (4)).

Pennod 4 – Cywiro penderfyniadau Gweinidogion Cymru

1712. Mae'r Bennod hon yn ailddatgan y darpariaethau yn Neddf 2004 sy'n galluogi cywiro gwallau penodol (y cyfeirir atynt fel gwallau cywiradwy) mewn dogfennau penderfyniad penodol. Mae'n diffinio termau allweddol, yn nodi'r pŵer i gywiro gwallau ac yn egluro effaith penderfyniad pa un ai i gywiro gwall ai peidio.

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.

Adran 380 – Ystyr "dogfen penderfyniad" a "gwall cywiradwy"

1713. Mae'r adran hon yn diffinio termau allweddol, gydag is-adran (2) yn darparu bod y pŵer cywiro yn arferadwy mewn perthynas â dogfen penderfyniad sy'n cofnodi:

a. penderfyniad gan Weinidogion Cymru o'r math a restrir yn adran 375(2);

b. penderfyniad ganddynt ar apêl yn erbyn hysbysiad gorfodi, hysbysiad cynnal a chadw tir neu hysbysiad amnewid coed; ac

c. penderfyniad o unrhyw fath arall a bennir mewn rheoliadau. (Os gwneir rheoliadau sy'n pennu disgrifiad o benderfyniad, rhaid iddynt hefyd wneud darpariaeth ar gyfer cwestiynu dilysrwydd hysbysiad cywiro (gweler adran 382(5).)

Gweler y nodyn ym mharagraff 1679 uchod mewn perthynas â phenderfyniadau a wneir gan arolygydd yn lle Gweinidogion Cymru.

1714. Ni ellir ond arfer y pŵer cywiro mewn perthynas â gwallau cywiradwy – hynny yw, gwallau (gan gynnwys hepgoriadau) mewn dogfen penderfyniad nad ydynt yn rhan o unrhyw resymau a roddir dros y penderfyniad (is-adran (3)).

Adran 381 – Pŵer i gywiro gwallau cywiradwy mewn dogfennau penderfyniad

1715. Mae'r adran hon yn nodi'r weithdrefn y mae rhaid i Weinidogion Cymru ei dilyn i gywiro gwallau mewn dogfen penderfyniad berthnasol.

1716. Mae'r weithdrefn yn dechrau pan fo Gweinidogion Cymru, cyn diwedd y cyfnod adolygu, yn cael cais ysgrifenedig i gywiro gwall neu, ar eu liwt eu hunain, yn ysgrifennu at y ceisydd i egluro bod y ddogfen penderfyniad yn cynnwys camgymeriad y mae Gweinidogion Cymru yn ystyried ei gywiro (is-adran (2)).

1717. Diffinnir y cyfnod adolygu drwy gyfeirio at y cyfnod y mae rhaid gwneud cais i'r llys am ganiatâd i ddwyn achos o dan adran 376, 378 neu 379 – ac nid oes gwahaniaeth a wneir unrhyw gais o'r fath mewn gwirionedd. Y cyfnod yw:

a. chwe wythnos mewn perthynas â dogfen penderfyniad sy'n cofnodi penderfyniad o fath a restrir yn adran 375(2) (y rhan fwyaf o benderfyniadau gan Weinidogion Cymru mewn perthynas â cheisiadau ac apelau amrywiol) (is-adran (4)(a); a gweler adran 376(4)); a

b. pedair wythnos mewn perthynas â dogfen penderfyniad sy'n cofnodi penderfyniad ar apêl yn erbyn hysbysiad gorfodi (ac eithrio penderfyniad i roi caniatâd cynllunio neu ddileu amod), hysbysiad cynnal a chadw tir, neu orchymyn diogelu coed neu orchymyn diogelu coetir (is-adran (4)(b) ac (c); a gweler y Rheolau Trefniadaeth Sifil, Cyfarwyddyd Ymarfer 54D, paragraff 6.1).

1718. Rhaid hysbysu'r awdurdod cynllunio hefyd fod cais i wneud cywiriad wedi dod i law, neu fod Gweinidogion Cymru yn ystyried gwneud cywiriad (is-adran (3)).

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. O dan is-adrannau (5) a (6), cyn gynted â phosibl ar ôl i Weinidogion Cymru gywiro gwall neu benderfynu peidio â chywiro gwall, rhaid iddynt ddyroddi hysbysiad cywiro – sydd naill ai'n nodi'r cywiriad y maent wedi ei wneud neu'n rhoi hysbysiad nad ydynt yn gwneud unrhyw gywiriad. Mae is-adran (7) yn pennu i bwy y mae rhaid cyflwyno'r hysbysiad cywiro.

1720. Mae is-adran (8) yn darparu y caniateir i'r swyddogaethau o dan yr adran hon gael eu harfer gan arolygydd os gwnaed y penderfyniad gwreiddiol gan arolygydd.

Adran 382 – Effaith a dilysrwydd hysbysiad cywiro

1721. Mae'r adran hon yn nodi statws penderfyniadau cywiredig ac anghywiredig.

1722. Bydd penderfyniad cywiredig yn cael ei drin fel pe bai wedi ei wneud ar y dyddiad y gwneir y cywiriad perthnasol, a bydd y cyfnod statudol ar gyfer herio'r penderfyniad cywiredig yn dechrau o'r dyddiad hwnnw (is-adran (1)).

1723. Felly, nid yw'r amser a gymerir i gywiro'r penderfyniad yn cael effaith andwyol ar unrhyw berson sy'n dymuno herio'r penderfyniad. Os nad yw Gweinidogion Cymru yn cywiro penderfyniad, bydd y penderfyniad gwreiddiol yn sefyll ac ni fydd hyn yn effeithio ar y cyfnod statudol ar gyfer herio (is-adran (2)).

1724. Yn rhinwedd is-adran (6), ni chaniateir cwestiynu hysbysiad cywiro mewn unrhyw achos cyfreithiol ac eithrio fel y darperir gan yr adran hon. Hynny yw, yn yr un modd ag y gellir herio'r penderfyniad y mae'r hysbysiad yn ymwneud ag ef o dan adran 376, 378 neu 379.

RHAN 15 – CYFFREDINOL

1725. Mae'r Rhan olaf o'r Ddeddf yn cynnwys darpariaethau sy'n ymdrin â materion amrywiol sydd eu hangen i sicrhau bod gweddill y Ddeddf yn gweithredu'n briodol.

1726. Mae'r system gynllunio yn dibynnu ar sicrhau bod penderfynwyr yn gallu cael gafael ar wybodaeth gywir. Yn unol â hynny, mae'r grŵp cyntaf o adrannau yn eu galluogi i wneud gwybodaeth yn ofynnol am fuddiannau mewn tir a gweithgareddau sy'n digwydd yno (adrannau 383 a 385), ac i fynd ar dir pan fo angen (adrannau 386 i 389).

1727. Mae'r Ddeddf yn gwneud darpariaeth ynghylch nifer o droseddau. Mae adran 390 yn egluro sut y mae'r rhain yn gweithio yn achos troseddau a gyflawnir gan gyrff corfforedig.

1728. Ymdrinnir â'r gweithdrefnau ar gyfer hawlio digolledi yn adrannau 391 i 394). Ac mae adran 395 yn galluogi cyfraniadau i gael eu gwneud tuag at gostau awdurdodau lleol. Mae'r Ddeddf yn cynnwys nifer o gyfeiriadau at ddogfennau a ffurflenni; mae adrannau 396 i 400 yn darparu ar gyfer eu ffurf a'u cynnwys, a sut y maent i'w cyflwyno.

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. Mae'r grŵp nesaf o adrannau yn egluro sut y mae'r Ddeddf yn gweithredu mewn rhai achosion arbennig:

a. i ddatblygiad gan y Goron neu sy'n effeithio ar dir y Goron (adrannau 401 i 403);

b. i ddatblygiad sy'n effeithio ar adeiladau hanesyddol (adran 404); ac

c. i dir sy'n perthyn i awdurdodau cynllunio, Gweinidogion Cymru, a thir Eglwys Loegr, ac i ddatblygiad a wneir gan awdurdodau cynllunio a Gweinidogion Cymru (adrannau 405 a 406).

1730. Yn gyffredinol, mae manylion penodol y system gynllunio i'w cael mewn is-ddeddfwriaeth. Mae adran 407 yn ymdrin ag arfer pwerau i wneud rheoliadau.

1731. Mae adran 408 yn cynnwys diffiniadau o eiriau ac ymadroddion a geir yn y Ddeddf – naill ai diffiniad llawn neu gyfeiriad at ble y gellir dod o hyd i ddiffiniad llawn – a darpariaethau cyffredinol eraill i helpu i ddehongli'r Ddeddf.

1732. Mae adrannau 409 a 410 yn darparu ar gyfer y Ddeddf yn dod i rym a'i henw byr.

Adran 383 – Pŵer i gyflwyno hysbysiad gwybodaeth
Adran 384 – Troseddau o fethu â chydymffurfio â hysbysiad gwybodaeth
Adran 385 – Gwybodaeth am fuddiannau yn nhir y Goron

1733. Mae'r adran hon yn galluogi awdurdodau lleol a Gweinidogion Cymru, at ddiben eu galluogi i wneud gorchymyn neu ddyroddi neu gyflwyno hysbysiad neu ddogfen arall, i gyflwyno hysbysiad gwybodaeth i'r meddianwyr ar unrhyw dir, ac i'r rhai sy'n cael rhent mewn cysylltiad ag unrhyw dir (adran 383(1) a (5)).

1734. Caiff hysbysiad o'r fath ofyn am fanylion buddiant y derbynyddion yn y tir, yr hyn y mae'n cael ei ddefnyddio ar ei gyfer, a chan bwy, a phryd y dechreuodd y defnydd hwnnw (neu unrhyw weithgareddau ar y tir) (adran 383(2) a (3)).

1735. Caiff yr hysbysiad ei gwneud yn ofynnol i'r wybodaeth benodedig gael ei rhoi o fewn 21 o ddiwrnodau ar ôl ei gyflwyno, neu o fewn unrhyw gyfnod hwy a bennir ynddo neu a ganiateir gan yr awdurdod (adran 383(4)).

1736. O dan adran 384, mae methu â chydymffurfio â hysbysiad o'r fath heb esgus rhesymol yn drosedd, y gellir ei chosbi ar euogfarn ddiannod (yn y llys ynadon) drwy ddirwy hyd at Lefel 3 ar y raddfa safonol. Mae hefyd yn drosedd i berson ddarparu gwybodaeth y mae'n gwybod ei bod yn anwir neu'n gamarweiniol mewn modd perthnasol. Mae person a euogfernir yn agored i dalu dirwy (ac nid oes terfyn ar swm y ddirwy y caiff y llys ei gosod).

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. Pan fo buddiant yn nhir y Goron naill ai'n fuddiant y Goron neu'n fuddiant Dugiaeth (fel yr eglurir yn adran 401), nid yw'n bosibl cyflwyno hysbysiad gwybodaeth o dan adran 383 mewn perthynas â buddiant o'r fath. Yn hytrach, o dan adran 385, caiff Gweinidogion Cymru ofyn i awdurdod priodol y Goron (gweler adran 401(6)) ddarparu'r wybodaeth a allai fod yn ofynnol gan hysbysiad o'r fath, i'r graddau y mae o fewn gwybodaeth yr awdurdod ac y gall wneud hynny heb achosi tor diogelwch na thor diogelwch gwladol. Mae'r archiad i'w wneud at ddiben galluogi Gweinidogion Cymru neu awdurdod lleol i wneud gorchymyn neu gyflwyno hysbysiad o dan neu yn rhinwedd y Ddeddf (ac eithrio mewn perthynas a'i darpariaethau ynghylch ASC ym Mhennod 2 o Ran 6).

1738. Mae'r pwerau cyffredinol o dan adrannau 383 a 385 yn ychwanegol at y pŵer penodol sydd ar gael i awdurdod cynllunio i gyflwyno hysbysiad ymchwilio am orfodi, o dan adran 114, i'w alluogi i benderfynu a ddylid cymryd camau gorfodi.

Adran 386 – Pwerau i fynd ar dir

1739. Caiff unrhyw un sydd wedi ei awdurdodi'n ysgrifenedig gan CBC neu Weinidogion Cymru fynd ar unrhyw dir i gynnal arolwg ohono mewn cysylltiad â llunio, diwygio, mabwysiadu neu gymeradwyo cynllun datblygu strategol, a chaiff unrhyw un sydd wedi ei awdurdodi felly gan awdurdod cynllunio neu Weinidogion Cymru wneud hynny mewn cysylltiad â llunio, diwygio, mabwysiadu neu ddileu cynllun datblygu lleol (is-adrannau (1) a (2)).

1740. O dan is-adrannau (3) a (5), caiff unrhyw un sydd wedi ei awdurdodi'n ysgrifenedig gan awdurdod cynllunio neu Weinidogion Cymru fynd ar unrhyw dir:

a. i gynnal arolwg o'r tir mewn cysylltiad â chais cynllunio neu unrhyw un neu ragor o'r ceisiadau eraill a grybwyllir yn is-adran (4) sy'n ymwneud â'r tir neu unrhyw dir arall (megis yr eiddo sy'n cyffinio â'r tir); neu

b. i gynnal arolwg o unrhyw dir mewn cysylltiad â chynnig i wneud unrhyw un neu ragor o'r gorchmynion neu i ddyroddi unrhyw un neu ragor o'r hysbysiadau a grybwyllir yn is-adran (6), neu i asesu a gydymffurfiwyd ag unrhyw orchymyn neu hysbysiad o'r fath.

1741. Pan fo awdurdod yn bwriadu symud ymaith boster neu blacard anawdurdodedig o dan adran 231, caiff person a awdurdodir gan yr awdurdod fynd i dir preifat pan fo angen gwneud hynny pe bai'n amhosibl arfer y pŵer heb fynd ar y tir (is-adran (7)).

1742. Pan fo hawliad am ddigolledia wedi ei wneud i awdurdod cynllunio, o dan unrhyw un neu ragor o'r darpariaethau a restrir yn is-adran (8), caiff swyddog prisio o Gyllid a Thollau EF neu berson sydd wedi ei awdurdodi'n ysgrifenedig gan yr awdurdod fynd ar unrhyw dir er mwyn cynnal arolwg ohono, neu i amcangyfrif ei werth. Pan fyddai'r digolledia yn daladwy gan Weinidogion Cymru o dan adran 152 neu 320(3), caiff person sydd wedi ei awdurdodi'n ysgrifenedig ganddynt hwy neu swyddog prisio fynd ar y tir at y diben hwnnw.

1743. Mae'r pwerau mynediad cyffredinol o dan yr adran hon yn ychwanegol at yr amrywiol bwerau penodol eraill o dan y Ddeddf hon, megis adrannau 116 a 141 i fynd ar dir at ddibenion gorfodi.

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.

Adran 387 – Pwerau mynediad: cwmpas a chyfyngiadau

1744. Caniateir i'r pŵer i fynd ar dir o dan adran 386 gael ei arfer ar unrhyw adeg resymol. Ond rhaid i'r rhai sy'n arfer y pŵer mynediad, os yw'n ofynnol iddynt wneud hynny gan neu ar ran unrhyw feddiannydd, ddangos tystiolaeth o'u hawl i wneud hynny a datgan diben mynd ar y tir (is-adrannau (1) a (3)). Pan fo'r tir o dan sylw wedi ei feddiannu, rhaid rhoi o leiaf 24 awr o rybudd i bawb sy'n ei feddiannu (is-adran (2)).

1745. Mae'r pŵer o dan adran 386 i fynd ar dir yn cynnwys pŵer i chwilio a thurio i benderfynu natur yr isbridd neu i benderfynu a oes unrhyw fwynau yn bresennol. Pan fo'r rhai sy'n mynd ar dir sydd wedi ei feddiannu yn cynnig cynnal gweithrediadau o'r fath, rhaid iddynt grybwyll hyn wrth hysbysu'r meddianwyr (is-adrannau (4), (5) a (6)). Pan fo'r tir yn perthyn i ymgymerwr statudol, a bo'r ymgymerwr yn gwrthwynebu cynnal gweithrediadau o'r fath ar y sail y byddant yn amharu'n ddifrifol ar ei ymgymeriad, ni chaniateir bwrw ymlaen â'r gwaith oni bai ei fod wedi ei awdurdodi gan y gweinidog priodol.

Adran 388 – Pwerau mynediad: troseddau a digolledi

1746. Pan fo personau yn arfer pŵer i fynd ar dir o dan adran 386, mae'n drosedd eu rhwystro'n fwriadol ac mae unrhyw un a geir yn euog o drosedd o'r fath yn agored ar euogfarn ddiannod (yn y llys ynadon) i ddirwy nad yw'n uwch na Lefel 3 ar y raddfa safonol (is-adrannau (1) i (3)).

1747. Pan fo personau o'r fath yn achosi unrhyw ddifrod i dir neu eiddo wrth arfer y pwerau mynediad neu wrth gynnal arolwg ohono (gan gynnwys chwilio a thurio am fwynau etc.), caiff unrhyw un sy'n dioddef y difrod gael digolledi oddi wrth y person a awdurdododd y mynediad.

1748. Os yw personau o'r fath yn cael ac yn datgelu gwybodaeth gyfrinachol yn ymwneud â phrosesau gweithgynhyrchu neu gyfrinachau masnach at ddibenion heblaw'r rhai y cawsant eu hawdurdodi i fynd ar y tir atynt, maent yn euog o drosedd. Byddent yn agored ar euogfarn ddiannod i dalu dirwy (ac nid oes terfyn ar swm y ddirwy y caiff y llys ei gosod) neu ar euogfarn ar ddditiad i hyd at ddwy flynedd yn y carchar.

Adran 389 – Pwerau i fynd ar dir y Goron

1749. Ni chaniateir arfer pwerau mynediad o dan adran 386 mewn perthynas â thir y Goron oni bai bod y rhai sy'n ceisio mynediad yn cael cytundeb:

a. rhywun yr ymddengys iddynt fod ganddo hawlogaeth i roi cytundeb o'r fath; neu

b. awdurdod priodol y Goron (gweler adran 401(6)).

1750. Pan geir cytundeb o'r fath, nid yw arfer y pwerau mynediad yn ddarostyngedig i'r darpariaethau yn adrannau 387 a 388.

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.

Adran 390 – Troseddau gan gyrff corfforedig

1751. Mae'r Ddeddf yn cynnwys nifer o droseddau ac mae'r adran hon yn gymwys pan fo trosedd o'r fath wedi ei chyflawni gan gorff corfforedig a gellir profi ei bod:

a. wedi ei chyflawni gyda chydsyniad neu ymoddefiad uwch-swyddog i'r corff (hynny yw, cyfarwyddwr, rheolwr, ysgrifennydd, neu berson arall â rôl debyg) neu rywun a oedd yn ymhonni ei fod yn uwch-swyddog; neu

b. i'w phriodoli i esgeulustod person o'r fath.

Pan reolir materion y corff gan ei aelodau, ystyr "cyfarwyddwr" yw aelod o'r corff.

1752. Mewn achos o'r fath, gall yr uwch-swyddog neu berson (yn ogystal â'r corff corfforedig) gael ei erlyn am y drosedd.

Adran 391 – Gwneud hawliadau am ddigolledi
Adran 392 – Penderfynu hawliadau digolledi gan yr Uwch Dribiwnlys

1753. Mae darpariaethau yn y Ddeddf sy'n darparu ar gyfer y posibilrwydd o wneud hawliad am ddigolledi o dan rai amgylchiadau:

a. pan fo caniatâd cynllunio wedi ei dynnu'n ôl, ei addasu neu ei ddirymu (o dan adrannau 105 i 109);

b. pan fo hysbysiad stop dros dro neu hysbysiad stop wedi ei dynnu'n ôl neu ei wrthdroi (o dan adran 124 neu 152);

c. pan fo gorchymyn datbarhau, gorchymyn gwahardd neu orchymyn diogelu wedi ei wneud (o dan adran 211 neu 212);

d. pan fo difrod wedi ei achosi gan y rhai sy'n arfer pŵer i fynd ar dir (o dan adran 118, 261 neu 388);

e. pan fo mynedfa breifat wedi ei chau gan orchymyn priffyrdd neu pan fo prifforddwedi ei phedestreiddio (o dan adran 285 neu 289);

f. pan fo penderfyniadau cynllunio yn effeithio ar fuddiannau ymgymerwyr statudol (o dan adran 319 neu 320).

1754. Rhoddir manylion ynghylch gwneud hawliad mewn amgylchiadau o'r fath mewn rheoliadau o dan adran 391(1)(a); ar hyn o bryd Rheoliadau Cyffredinol 1992 yn darparu bod rhaid gwneud hawliad yn ysgrifenedig a'i anfon neu ei ddanfon i'r awdurdod cynllunio.

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. Mae'r darpariaethau digolledi unigol, a restrir yn y paragraffau uchod, yn nodi mai'r cyfnod y mae rhaid gwneud hawliad am ddigolledi ynddo yw 12 mis fel rheol o ddyddiad y penderfyniad neu'r gorchymyn perthnasol. Caiff Gweinidogion Cymru estyn y cyfnod hwn mewn achos penodol. Caniateir gwneud hyn cyn neu ar ôl i'r cyfnod o 12 mis ddod i ben, ynghyd â mwy nag unwaith (adran 391(2) a (3)). Caniateir gwneud darpariaeth bellach ynghylch y terfynau amser drwy reoliadau (adran 391(1)(b)), fel y'u nodir yn Rheoliadau Cyffredinol 1992 ar hyn o bryd.

1756. O dan adran 392, mae unrhyw anghydfod ynghylch y digolledi sy'n daladwy i'w atgyfeirio i'r Uwch Dribiwnlys i ymdrin ag ef. Ar hyn o bryd bydd y weithdrefn fel y darperir ar ei chyfer gan y rheolau yn Rheolau Trefniadaeth y Tribiwnlysoedd (Tribiwnlys Uwch) (Siambr Tiroedd) 2010 (O.S. 2010/2600 (Cyfr. 15)). Mae costau atgyfeiriad o'r fath i'w hasesu yn unol ag adran 29 o Ddeddf Tribiwnlysoedd, Llysoedd a Gorfodaeth 2007 (p. 15) ac adran 4 o Ddeddf 1961, er bod cyfeiriadau yn adran 4 at "the acquiring authority" i'w trin fel pe baent at yr awdurdod y mae digolledi yn cael ei hawlio oddi wrtho (adran 392(2)).

Adran 393 – Digolledi am ddibrisiant yng ngwerth tir

1757. Wrth asesu digolledi am gaffael buddiant mewn tir yn orfodol, caiff yr hawliad am ddigolledi ymwneud â'r dibrisiant yng ngwerth y buddiant yn y tir hwnnw, neu gynnwys yr elfen honno. Mewn achos o'r fath, cyfrifir y digolledi sy'n daladwy yn unol â'r rheolau prisio sy'n gymwys i'r digolledi sy'n daladwy am gaffael tir yn orfodol, o dan adran 5 o Ddeddf 1961 (is-adran (1)).

1758. Mae is-adran (2) yn gymwys pan fo buddiant yn ddarostyngedig i forgais. Caiff y morgeisiwr wneud hawliad am ddigolledi; mae'r digolledi sy'n daladwy mewn cysylltiad â dibrisiant yng ngwerth y buddiant sy'n ddarostyngedig i'r morgais i'w asesu gan anwybyddu bodolaeth y morgais. Caiff morgeisai hefyd wneud hawliad mewn cysylltiad â'r buddiant sy'n ddarostyngedig i'r morgais ond ni chaiff hawlio mewn cysylltiad â buddiant y morgeisai ei hun. Telir unrhyw ddigolledi sy'n daladwy i'r morgeisai (pan fo mwy nag un morgeisai, y morgeisai cyntaf), y mae rhaid iddo ei gymhwyso fel pe bai'n enillion gwerthu – gan leihau swm y benthyciad sy'n weddill.

Adran 394 – Pŵer i addasu darpariaethau digolledi mewn perthynas â mwynau

1759. Caiff rheoliadau wneud darpariaeth arbennig ynghylch yr hawlogaeth i ddigolledi mewn cysylltiad â gwneud gorchymyn o dan adran 102 yn addasu caniatâd cynllunio ar gyfer datblygiad mwynau, neu pan wneir gorchymyn datbarhau mewn perthynas â gweithrediadau mwyngloddio neu ddyddodi gwastraff mwynau, neu orchymyn gwahardd neu orchymyn diogelu.

1760. Caiff rheoliadau o'r fath ddarparu i adrannau 106, 107 a 211 (sy'n ymdrin â'r hawlogaeth i ddigolledi mewn achosion o'r fath) ac adrannau 319, 321 a 393 fod yn gymwys mewn perthynas â datblygiad mwynau yn ddarostyngedig i addasiadau. Er enghraifft, cânt bennu amgylchiadau pan na fo digolledi yn daladwy, neu'r sail y mae i'w asesu arni.

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. Cyn gwneud rheoliadau o'r fath, rhaid i Weinidogion Cymru ymgynghori â rhanddeiliaid sy'n cynrychioli personau sy'n cynnal gweithrediadau mwyngloddio, perchnogion ar fuddiannau mewn tir sy'n cynnwys mwynau a'r rhai sydd â buddiannau mewn tir sy'n cynnwys mwynau, ac awdurdodau cynllunio.

Adran 395 – Cyfraniadau tuag at gostau yr eir iddynt gan awdurdodau

1762. Caiff awdurdod lleol neu ymgymerwr statudol gyfrannu tuag at y costau y mae awdurdod cynllunio, awdurdod priffyrdd lleol, CBC neu awdurdod lleol arall yn mynd iddynt wrth arfer swyddogaeth o dan neu yn rhinwedd y Ddeddf hon, ac eithrio darpariaethau sy'n ymwneud ag ASC ym Mhennod 2 o Ran 6 o'r Ddeddf hon (is-adran (1)).

1763. O dan is-adran (2) caiff awdurdod lleol gyfrannu tuag at gostau y mae awdurdod priffyrdd lleol yn mynd iddynt i wella neu adeiladu ffordd at ddiben darparu hawl tramwy cyhoeddus yn lle un a ddiddymir gan orchymyn o dan adran 297 neu 300.

1764. Gall fod yn ofynnol i awdurdod cynllunio, awdurdod priffyrdd lleol neu awdurdod lleol arall dalu digollediad o ganlyniad i unrhyw beth a wneir o dan neu yn rhinwedd y Ddeddf hon, ac eithrio'r darpariaethau sy'n ymwneud ag ASC o dan Bennod 2 o Ran 6 o'r Ddeddf hon. Er enghraifft, addasu neu ddirymu caniatâd cynllunio (o dan adran 102), neu wneud gorchymyn datbarhau (o dan adran 206) neu orchymyn gwahardd neu orchymyn diogelu (o dan adran 208). Pan fo hyn yn codi am fod y peth wedi ei wneud yn gyfan gwbl neu'n rhannol er budd gwasanaeth a ddarperir gan Weinidogion Cymru, cânt gyfrannu tuag at dalu'r digollediad hwnnw (is-adran (4)(a)). Pan fo awdurdod lleol arall wedi cael budd o ganlyniad i'r peth a wnaed, caiff Gweinidogion Cymru gyfarwyddo'r awdurdod sydd wedi cael y budd i wneud cyfraniad rhesymol tuag at y digollediad a delir gan yr awdurdod arall (is-adran (4)(b)).

1765. O dan is-adrannau (5) a (6) caiff un o Weinidogion y Goron neu adran o lywodraeth y Deyrnas Unedig gyfrannu tuag at dalu digollediad a delir gan awdurdod, pan fo'r atebolrwydd i dalu digollediad yn deillio o wneud penderfyniad neu orchymyn o dan Rannau 3 i 9 o'r Ddeddf (ac eithrio un ym Mhennod 2 o Ran 6) er budd gwasanaeth:

a. a ddarperir gan un o Weinidogion y Goron neu adran o'r llywodraeth; a

b. a gyllidir gan arian a ddarperir gan Lywodraeth y DU.

1766. Mae is-adran (7) yn cadarnhau nad yw pwerau awdurdodau lleol i wneud cyfraniadau ariannol o dan yr adran hon yn cyfyngu ar eu pwerau (o dan adrannau 274 a 275 o Ddeddf 1980) i gyfrannu tuag at gostau awdurdodau priffyrdd sy'n ymwneud â llwybrau cyhoeddus.

Adran 396 – Ffurf ar ddogfennau awdurdod lleol

1767. Mae nifer o fathau o ddogfennau y mae awdurdodau cynllunio ac awdurdodau lleol eraill wedi eu hawdurdodi i'w cyflwyno, i'w gwneud neu i'w dyroddi, neu y mae'n ofynnol iddynt wneud hynny, o dan neu yn rhinwedd darpariaethau amrywiol yn y Ddeddf. Mae'r adran hon yn galluogi Gweinidogion Cymru i ragnodi drwy reoliadau ffurf a chynnwys dogfennau o'r fath.

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.

Adran 397 – Pwerau i wneud darpariaeth ynghylch ffurflenni ceisiadau ac apelau

1768. Mewn gwahanol leoedd, mae'r Ddeddf yn cynnwys pŵer i reoliadau neu orchymyn datblygu ddarparu ar gyfer ffurf cais, hysbysiad o apêl, neu ddogfen sydd i'w chyflenwi gan geisydd neu apelydd. Gweler, er enghraifft, adran 56(3) (cais am ganiatâd cynllunio), adran 158(2) (cais am dystysgrif cyfreithlondeb), ac adrannau 74(2) a 160(4) (apelau).

1769. Mae'r adran hon yn darparu bod pŵer o'r fath yn caniatáu neu'n ei gwneud yn ofynnol defnyddio ffurflen a gyhoeddir neu a ddarperir gan Weinidogion Cymru neu unrhyw berson neu gorff arall.

Adran 398 – Cyflwyno hysbysiadau a dogfennau eraill: cyffredinol

1770. Mae'r Ddeddf yn cynnwys llawer o ddarpariaethau sy'n ei gwneud yn ofynnol neu'n awdurdodi cyflwyno hysbysiad neu ddogfen arall i berson, neu sy'n galluogi rheoliadau i wneud darpariaeth o'r fath. Er enghraifft, rhaid i reoliadau o dan adran 58(1) ei gwneud yn ofynnol i geisydd am ganiatâd cynllunio roi hysbysiad o'r cais i berchnogion ar y tir o dan sylw; mae adran 60(2) yn ei gwneud yn ofynnol i awdurdod cynllunio roi hysbysiad i geisydd am ganiatâd pan fo'n ystyried nad yw cais yn ddilys; mae adran 120(5) yn caniatáu i awdurdod gyflwyno copi o hysbysiad stop dros dro i wahanol bersonau; ac mae adran 129(4) yn ei gwneud yn ofynnol iddo gyflwyno copi o hysbysiad gorfodi i wahanol bersonau.

1771. Mae is-adran (2) yn sefydlu'r rheol sylfaenol o ran sut y gellir cyflwyno dogfen yn ddilys i berson. Mae'n gymwys yn union yr un modd pan fo hysbysiad i'w roi i berson. Mae hyn yn ddarostyngedig i unrhyw ddarpariaeth benodol – naill ai yn y Ddeddf neu mewn rheoliadau odano – sy'n sefydlu rheol wahanol (is-adran (7)).

1772. O dan is-adran (2)(a) i (c), caniateir cyflwyno dogfen drwy ei rhoi â llaw i'r person – neu, yn achos corff corfforedig, i ysgrifennydd neu glerc y corff. Neu caniateir ei gadael ym man preswylio arferol y person neu ym man preswylio hysbys diwethaf y person (neu yn y cyfeiriad a roddir gan y person at y diben hwn). Neu caniateir ei hanfon at y person (neu ysgrifennydd neu glerc corff corfforedig), gan ddefnyddio gwasanaeth post cofrestredig neu wasanaeth danfon cofnodedig, ym man preswylio arferol y person neu ym man preswylio hysbys diwethaf y person (neu yn y cyfeiriad a roddir gan y person).

1773. O dan is-adrannau (2)(d), (3) a (4), pan fo person wedi rhoi cyfeiriad e-bost neu gyfeiriad arall ar gyfer cyflwyno gan ddefnyddio cyfathrebiadau electronig, caniateir cyflwyno'r ddogfen yn electronig i'r person yn y cyfeiriad hwnnw, ar yr amod y gall y person gyrchu'r ddogfen (fel nad oes angen cyfrinair arni er enghraifft), a'i bod yn ddarllenadwy, ac y gellir ei chadw i gyfeirio ati yn ddiweddarach. Pan ddefnyddir yr opsiwn hwn, a bod y ddogfen yn dod i law y tu allan i oriau busnes arferol y person, bydd yn cael ei thrin fel pe bai wedi ei chyflwyno ar y diwrnod gwaith nesaf.

1774. Fodd bynnag, ni chaniateir defnyddio cyfathrebiadau electronig ar gyfer cyflwyno gwahanol fathau o hysbysiadau a gorchmynion, yn bennaf y rhai sy'n ymwneud â chamau gorfodi, a restrir yn is-adran (5). Rhaid i'r rheini gael eu cyflwyno ar ffurf copi caled.

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. Yn ogystal, mae is-adran (6) yn tynnu sylw at adran 233 o Ddeddf 1972. Mae'r adran honno'n gwneud darpariaeth sy'n debyg i'r adran hon o'r Ddeddf, ond yn ogystal mae'n darparu ar gyfer:

a. dogfen sydd i'w chyflwyno i bartneriaeth drwy gael ei chyflwyno i bartner neu i'r person sydd â rheolaeth dros y busnes partneriaeth neu sy'n ei reoli (adran 233(3)(b)); a

b. dogfen sydd i'w chyflwyno i gwmni neu bartneriaeth sy'n cyflawni busnes y tu allan i'r Deyrnas Unedig drwy gael ei chyflwyno iddo neu iddi yn ei brif swyddfa neu ei phrif swyddfa yn y Deyrnas Unedig (adran 233(4)).

Adran 399 – Cyflwyno dogfennau i bersonau sydd â buddiant mewn tir neu sy'n meddiannu tir

1776. Pan fo dogfen i'w chyflwyno i berson am fod ganddo fuddiant mewn darn o dir, mae is-adran (2) yn caniatáu iddi gael ei chyfeirio at "perchennog" y tir (rhaid disgrifio'r tir), pan na ellir darganfod enw'r person ar ôl gwneud ymholiadau rhesymol a'i chyflwyno yn unol ag adran 398. A phan fydd i'w chyflwyno i berson fel meddiannydd ar y tir, mae is-adran (3) yn caniatáu iddi gael ei chyfeirio at "y meddiannydd" a'i chyflwyno yn unol â hynny.

1777. O dan is-adrannau (4) a (5), pan fo dogfen i'w chyflwyno i berson am fod ganddo fuddiant mewn tir ac ni ellir canfod cyfeiriad arferol y person na'i gyfeiriad hysbys diwethaf ar ôl gwneud ymholiadau rhesymol, ac nid yw wedi rhoi cyfeiriad ar gyfer cyflwyno, os yw'r ddogfen wedi ei marcio fel cyfathrebiad pwysig sy'n effeithio ar eiddo'r person, gellir ei chyflwyno drwy ei gadael yn nwylo person sy'n byw neu'n gweithio ar y tir, neu drwy ei gosod yn sownd mewn lle gweladwy wrth adeilad neu wrthrych ar y tir. Fel arall, gellir ei hanfon drwy wasanaeth post cofrestredig neu wasanaeth danfon cofnodedig, a chaiff ei thrin fel pe bai wedi ei chyflwyno'n briodol os na chaiff ei dychwelyd fel dogfen nas danfonwyd.

Adran 400 – Cyflwyno dogfennau i'r Goron

1778. Pan fo cyflwyno dogfen i'r Goron yn ofynnol neu wedi ei awdurdodi, o dan neu yn rhinwedd y Ddeddf, nid yw adrannau 398 na 399 yn gymwys; yn hytrach, rhaid cyflwyno'r ddogfen i awdurdod priodol y Goron (gweler adran 401(6)).

Adran 401 – Diffiniadau sy'n ymwneud â'r Goron

1779. Ers mis Mehefin 2006, mae deddfwriaeth gynllunio wedi bod yn gymwys mewn egwyddor i dir y Goron ac i ddatblygiad gan neu ar ran y Goron yn union fel y mae'n gymwys mewn unrhyw achos arall. Fodd bynnag, mae ei chymhwyso yn ddarostyngedig i rai addasiadau sydd wedi eu cynnwys mewn lleoedd priodol drwy gydol y Ddeddf hon. Mae'r adran hon yn darparu diffiniadau o rai termau penodol a ddefnyddir yn y darpariaethau sy'n nodi'r addasiadau hynny.

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. Mae is-adrannau (2) i (4) yn darparu mai ystyr "tir y Goron" yw tir y mae ynddo naill ai:

a. "buddiant y Goron" – hynny yw, buddiant sy'n perthyn i'w Fawrhydi yn hawl y Goron neu yn hawl Ei ystadau preifat (gweler Deddf Ystadau Preifat y Goron 1862 (p. 37)), neu fuddiant sy'n perthyn i adran o'r llywodraeth neu sy'n cael ei ddal mewn ymddiriedolaeth ar gyfer Ei Fawrhydi at ddibenion adran o'r llywodraeth; neu

b. "buddiant Dugiaeth" – hynny yw, buddiant sy'n perthyn i'w Fawrhydi yn hawl Dugiaeth Caerhirfryn, neu fuddiant sy'n perthyn i Ddugiaeth Cernyw.

1781. Mae "y Goron" i'w drin fel pe bai'n cynnwys Comisiwn y Senedd (is-adran (7)).

1782. Ystyr "buddiant preifat" yn nhir y Goron yw buddiant nad yw'n fuddiant y Goron nac yn fuddiant Dugiaeth (is-adran (5)). Byddai'n cynnwys, er enghraifft, fuddiant lesddaliadol person sy'n meddiannu ar dŷ neu siop ar dir y mae adran o'r llywodraeth yn digwydd bod yn berchen arno.

1783. Mae is-adran (6) yn egluro pwy sydd i'w ystyried yn "awdurdod priodol y Goron" mewn perthynas â phob un o'r gwahanol gategorïau o dir y Goron. Yn benodol, pan fo tir yn perthyn i adran o'r llywodraeth (gan gynnwys Comisiwn y Senedd), yr adran honno yw awdurdod priodol y Goron. Pan fo cwestiwn ynghylch pwy yw awdurdod priodol y Goron mewn perthynas ag unrhyw dir, mae'r cwestiwn i'w ddatrys gan y Trysorlys, y mae ei benderfyniad yn derfynol (is-adran (8)).

Adran 402 – Cynrychiolaeth buddiant y Goron a buddiant Dugiaeth mewn tir
Adran 403 – Camau gorfodi mewn perthynas â thir y Goron

1784. Mae adran 402 yn darparu, pan fo'r Ddeddf (neu reoliadau a wneir o dan y Ddeddf) yn ei gwneud yn ofynnol i rywbeth gael ei wneud, neu'n awdurdodi rhywbeth i gael ei wneud, gan berchennog ar fuddiant mewn tir neu mewn perthynas â pherchennog o'r fath, gan gynnwys buddiant fel meddiannydd ar y tir yn unig, pan fo'r buddiant yn fuddiant y Goron neu'n fuddiant Dugiaeth, rhaid i'r peth gael ei wneud gan awdurdod priodol y Goron ar gyfer y tir neu mewn perthynas â'r awdurdod hwnnw.

1785. Mae adran 403 yn ymdrin yn benodol â chamau gorfodi mewn perthynas â thir y Goron. Mae is-adran (5), fodd bynnag, yn darparu nad yw'r gofyniad i gael cytundeb awdurdod priodol y Goron yn gymwys mewn perthynas â dyroddi neu gyflwyno unrhyw hysbysiad neu wneud gorchymyn (er enghraifft, caiff awdurdod cynllunio gyflwyno hysbysiad stop dros dro, dyroddi hysbysiad gorfodi, a dyroddi neu gyflwyno unrhyw hysbysiad arall neu wneud unrhyw orchymyn). Fodd bynnag, o dan is-adrannau (1) i (4), ni chaiff fynd ar y tir, dwyn achos cyfreithiol, gwneud cais i'r llys, na chymryd unrhyw gamau eraill mewn cysylltiad â gorfodi gofyniad neu waharddiad gan neu o dan y Ddeddf, oni bai ei fod wedi cael cytundeb awdurdod priodol y Goron yn gyntaf – a gall y cyfryw gytundeb fod yn ddarostyngedig i amodau.

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.

Adran 404 – Adeiladau rhestredig a nodweddion o ddiddordeb pensaernïol neu hanesyddol arbennig

1786. Rhaid i Weinidogion Cymru gadw rhestr o adeiladau o ddiddordeb pensaernïol neu hanesyddol arbennig, o dan adran 76 o Ddeddf 2023. Mae'r ddyletswydd hon hefyd yn gymwys i adeiladau rhestredig yn Lloegr. Mae adran 404(1) yn gosod dyletswydd ar awdurdodau cynllunio sy'n gymwys pan fônt yn ystyried a ddylid rhoi caniatâd cynllunio ar gyfer datblygiad sy'n effeithio ar adeilad rhestredig neu ei osodiad pan eu bod:

a. yn gwneud gorchymyn datblygu lleol (o dan adran 45);

b. yn penderfynu cais am ganiatâd (o dan adran 67); neu

c. yn gwneud gorchymyn datbarhau (o dan adran 207).

1787. Mae'r ddyletswydd hefyd yn cael ei gosod ar Weinidogion Cymru pryd bynnag y maent yn ystyried a ddylid rhoi caniatâd ar gyfer datblygiad o'r fath pan eu bod:

a. yn gwneud gorchymyn datblygu (o dan adran 44);

b. yn penderfynu cais am ganiatâd (o dan adran 72), neu apêl yn deillio o benderfyniad awdurdod ar gais o'r fath (o dan adran 76);

c. yn penderfynu apêl yn erbyn hysbysiad gorfodi (o dan adran 133);

d. yn cadarnhau hysbysiad prynu (o dan baragraff 6 o Atodlen 12); neu

e. yn gwneud gorchymyn datbarhau (o dan adran 207) neu'n cadarnhau gorchymyn (o dan Atodlen 14).

1788. Y ddyletswydd yw rhoi sylw arbennig i ddymunoldeb diogelu – hynny yw, cadw'n ddiogel rhag niwed – yr adeilad rhestredig a'i osodiad.

1789. Wrth arfer y pwerau a roddir iddo o dan adrannau 266 i 268 o'r Ddeddf hon, sy'n ymwneud â chyfeddu, datblygiad a gwaredu tir at ddibenion cynllunio, rhaid i awdurdod lleol roi sylw i ddymunoldeb diogelu nodweddion o ddiddordeb pensaernïol neu hanesyddol arbennig, ac yn benodol adeiladau rhestredig (is-adran (3)).

1790. Mae'r dyletswyddau o dan yr adran hon i'w harfer ochr yn ochr â'r ddyletswydd debyg, a osodir ar Weinidogion Cymru ac ar awdurdodau cynllunio gan adran 160 o Ddeddf 2023 wrth gyflawni unrhyw swyddogaeth o dan y Ddeddf hon mewn perthynas ag adeilad neu dir arall mewn ardal gadwraeth: sef, i roi sylw arbennig i ddymunoldeb diogelu a gwella cymeriad a golwg yr ardal honno.

1791. Mae canllawiau ar arfer y dyletswyddau hyn i'w gweld yn TAN 24 Llywodraeth Cymru: *Yr Amgylchedd Hanesyddol* (2017), ar ei gwefan.

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.

Adran 405 – Datblygiad gan awdurdodau cynllunio a Gweinidogion Cymru a thir sy'n perthyn iddynt

1792. Yn gyffredinol, gweinyddir y rheolaethau o dan y Ddeddf hon gan awdurdodau cynllunio a Gweinidogion Cymru. Felly, mae'n briodol bod gweithdrefnau ychydig yn wahanol pan fo datblygiad i'w gynnal gan yr awdurdod cynllunio neu Weinidogion Cymru eu hunain, neu pan fo penderfyniadau cynllunio yn ymwneud â thir y mae gan yr awdurdod neu Weinidogion Cymru fuddiant ynddo, er mwyn lleihau'r siawns o unrhyw wrthdaro buddiannau canfyddedig.

1793. Caiff rheoliadau o dan yr adran hon ddarparu bod cymhwyso rhai o ddarpariaethau'r Ddeddf yn ddarostyngedig i addasiadau priodol fel eu bod yn gweithredu'n foddhaol mewn achosion o'r fath. Y darpariaethau o dan sylw, a restrir yn is-adran (2), yw:

a. Rhan 3 (caniatâd cynllunio) (ac eithrio Pennod 8 (datblygiad ag awdurdodiad y llywodraeth));

b. Pennod 1 o Ran 6 (rhwymedigaethau cynllunio);

c. Pennod 1 o Ran 7 (gorchmynion datbarhau, gorchmynion gwahardd a gorchmynion diogelu); a

d. Rhan 9 (diogelu coed a choetiroedd).

1794. Yn benodol, caiff y rheoliadau ei gwneud yn ofynnol i awdurdodau cynllunio neu Weinidogion Cymru ymdrin â cheisiadau mewn rhai achosion o'r fath, o bosibl drwy gyfrwng gweithdrefnau gwahanol (is-adran (4)). Cânt hefyd, mewn perthynas â chais sy'n ymwneud â datblygiad gan awdurdod cynllunio neu sy'n ymwneud â thir y mae gan awdurdod cynllunio fuddiant ynddo, wneud darpariaeth sy'n gyfwerth â'r hyn a wneir drwy reoliadau o dan adrannau 58 a 63, sy'n ymdrin â'r cyhoeddusrwydd ar gyfer ceisiadau cynllunio a'r gweithdrefnau ar gyfer ymdrin â hwy (is-adran (6)). At hynny, cânt gymhwyso'r darpariaethau a wneir o dan adrannau 58 a 63 yn unig, gydag addasiadau.

Adran 406 – Tir Eglwys Loegr

1795. Yn gyffredinol, trosglwyddwyd tir yng Nghymru a oedd ar un adeg yn ddarostyngedig i awdurdodaeth Eglwys Loegr i'r Eglwys yng Nghymru ym 1920 ac mae bob amser wedi bod yn ddarostyngedig i'r system gynllunio yn union fel unrhyw dir arall. Ond mae rhai eglwysi a mynwentydd yng Nghymru, yn agos at y ffin â Lloegr, sydd o fewn esgobaeth o Eglwys Loegr o hyd; cyfeirir atynt yn yr adran hon fel tir Eglwys Loegr. Mae cyfraith gynllunio bob amser wedi trin tir o'r fath ychydig yn wahanol, oherwydd trefniadaeth weinyddol yr Eglwys honno.

1796. Mae rhydd-ddaliad tir Eglwys Loegr wedi ei ddal gan y deiliad (ficer neu reithor) yn rhinwedd y swydd. Fodd bynnag, pan fo'r Ddeddf yn caniatáu cyflwyno hysbysiad neu ddogfen arall i berchennog ar dir o'r fath, neu'n ei gwneud yn ofynnol gwneud hynny, rhaid cyflwyno copi hefyd i'r Bwrdd Cyllid Esgobaethol perthnasol (is-adran (1)). Pan nad oes deiliad, am fod swydd yn wag, mae'r tir i'w drin fel pe bai'n perthyn i'r Bwrdd at ddibenion ei gaffael yn orfodol o dan Ran 10 (is-adran (2)).

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. Pan fo digolledia i'w dalu i berchennog tir Eglwys Loegr, rhaid talu'r arian i'r Bwrdd Cyllid Esgobaethol a'i gymhwyso ganddo fel pe bai'n enillion gwerthiant (is-adran (3)). Pan fo digolledia i'w adennill gan y perchennog (o dan Atodlen 10), caiff y Bwrdd Cyllid priodol gymhwyso unrhyw arian neu unrhyw warannau a ddelir ganddo (is-adran (4)).

1798. O dan adran 156 o Ddeddf 2023 caiff rheoliadau ddarparu bod adeiladau crefyddol a ddefnyddir at ddibenion crefyddol wedi eu heithrio o'r angen i gael cydsyniad adeilad rhestredig. Nid oes eithriad eglwysig cyfatebol rhag rheolaeth gynllunio o dan y Ddeddf hon, fodd bynnag.

Adran 407 – Rheoliadau

1799. Darperir ar gyfer llawer o'r darpariaethau manylach sy'n llywodraethu gweithrediad y system gynllunio mewn rheoliadau a wneir o dan y Ddeddf hon, yn hytrach nag yn y Ddeddf ei hun. Yn gyffredinol, mae'r pŵer i wneud rheoliadau o'r fath yn arferadwy gan Weinidogion Cymru (is-adran (1)). A chaniateir defnyddio'r pŵer hwnnw i wneud darpariaethau gwahanol at ddibenion gwahanol (er enghraifft, mewn meysydd gwahanol neu fathau o feysydd), ac i wneud darpariaeth ddeilliadol, darpariaeth atodol, darpariaeth ganlyniadol, darpariaeth drosiannol neu ddarpariaeth arbed (is-adran (3)).

1800. Yn gyffredinol, rhaid i reoliadau o dan y Ddeddf hon gael eu gwneud drwy offeryn statudol Cymreig, ac eithrio'r rhai a wneir o dan adran 306 gan fod y rhain i'w gwneud drwy offeryn statudol. Mae rheoliadau, yn gyffredinol, yn ddarostyngedig i weithdrefn annilysu'r Senedd (gweler adran 37E o Ddeddf Deddfwriaeth (Cymru) 2019). Fodd bynnag, mae rhai rheoliadau mwy arwyddocaol, a restrir yn is-adran (7) – gan gynnwys y rhai sy'n diwygio unrhyw ddarpariaeth mewn deddfwriaeth sylfaenol (gweler is-adran (10) am hyn) – yn ddarostyngedig i weithdrefn gymeradwyo'r Senedd (gweler adran 37C o Ddeddf 2019).

1801. Mae'r rheoliadau o dan adran 306 a grybwyllir uchod yn ymwneud â darparwyr gwasanaethau post cyffredinol; mae'r rheoliadau hynny i'w gwneud fel offeryn statudol gan Weinidogion Cymru a'r Ysgrifennydd Gwladol dros Fusnes a Masnach yn gweithredu ar y cyd (is-adrannau (2) a (9)(a)). Mae rheoliadau o'r fath yn ddarostyngedig i weithdrefn gymeradwyo'r Senedd a rhaid eu gosod hefyd ar ffurf ddrafft gerbron dau Dŷ Senedd y Deyrnas Unedig a'u cymeradwyo ganddynt (is-adran (9)(b) ac (c)).

1802. Mae darpariaeth o ran gwneud gorchmynion datblygu wedi ei nodi yn adran 44.

Adran 408 – Dehongli

1803. Mae Rhan 1 o'r Ddeddf yn cynnwys y diffiniadau o dermau allweddol a ddefnyddir drwy gydol y Ddeddf. Mae'r diffiniadau o "datblygiad", "newid sylweddol yn y defnydd o dir", a "gweithrediadau", ynghyd â thermau cysylltiedig, yn destun Pennod 2 o'r Rhan honno. Mae'r diffiniad o "awdurdod cynllunio" yn destun Pennod 3 o'r Rhan honno. Ac mae diffiniadau yn ymwneud â'r Goron yn destun adran 401, yn y Rhan hon. Mae is-adran (1) yn unol â hynny yn cyfeirio at y darpariaethau hynny.

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. Mewn achosion eraill, pan ddefnyddir term yn bennaf (ond nid yn unig) mewn Pennod benodol neu Ran benodol o'r Ddeddf, fe'i diffinnir yno – er mwyn bod mor hygyrch â phosibl – ac mae'r adran hon yn cyfeirio at y diffiniad hwnnw yn unig. Mae adran 112 yn diffinio "tor rheolaeth gynllunio" a "cymryd cam gorfodi", ynghyd ag ymadroddion eraill a ddefnyddir mewn cysylltiad â gorfodi, a ddefnyddir yn bennaf yn Rhan 4; mae adran 155 yn diffinio "cyfreithlon", ac ymadroddion eraill sy'n ymwneud â chyfreithlondeb, a ddefnyddir yn bennaf yn Rhan 5; ac mae adran 221(5) yn diffinio "hysbyseb", a ddefnyddir yn bennaf yn Rhan 8. Mae adrannau agoriadol Rhan 12 (adrannau 303 i 308) yn egluro'r dehongliad o "ymgymerwr statudol" ac "ymgymeriad statudol", ynghyd â'r termau cysylltiedig "Gweinidog priodol" a "tir gweithredol".

1805. Mae is-adran (1) hefyd yn cynnwys diffiniadau o ymadroddion cyffredinol, yn ymwneud yn bennaf â thir, a ddefnyddir ar wahanol adegau drwy gydol y Ddeddf hon. Gall y diffiniad ym mhob achos fod yn ehangach, yn gulach, neu'n fwy penodol yn syml, na'r ystyr a roddir i'r term mewn defnydd cyffredin.

1806. Fel y nodir uchod, eglurir ystyr y term "awdurdod cynllunio" yn Rhan 1. Mae is-adran (1) yn diffinio'r termau cysylltiedig "awdurdod priffyrdd" ac "awdurdod priffyrdd lleol". Mae'r "awdurdod lleol" mwy cyffredinol a ddefnyddir ar wahanol adegau yn y Ddeddf hon hefyd yn cael ei ddiffinio yn yr is-adran hon i gynnwys cyrff mewn nifer o gategorïau. Mae'r is-adran hefyd yn rhoi esboniad o'r term "cyd-bwyllgor corfforedig" a gyflwynwyd gan Ddeddf Llywodraeth Leol ac Etholiadau (Cymru) 2021.

1807. Mae'r diffiniad o "Cymru" ar gyfer y Ddeddf hon yn fwy cyfyng na'r diffiniad a gymhwysir yn gyffredinol a geir yn Neddf Deddfwriaeth (Cymru) 2019, gan ei fod yn cynnwys ardal gyfun y siroedd a'r bwrdeistrefi sirol, ond nid y môr cyfagos iddynt.

1808. Yn ogystal â'r termau a ddiffinnir yn yr adran hon, dim ond mewn un Bennod benodol neu Ran benodol o'r Ddeddf y defnyddir rhai ymadroddion eraill ac felly fe'u diffinnir yno. Mae'r enghreifftiau'n cynnwys y termau "gweithrediadau peirianneg" a "mynedfa" a geir yn unig ym Mhennod 2 o Ran 1 ac felly fe'u diffinnir yn adrannau 3 a 4. Dim ond ym Mhennod 2 o Ran 9 y defnyddir y term "ardal gadwraeth" ac fe'i diffinnir yn unol â hynny yn adran 247.

1809. Yn rhinwedd is-adran (2), mae'r ymadrodd "ar dir" yn y Ddeddf hon (ac eithrio yn Rhan 11) i'w ddehongli yn unol ag ystyr "mewn tir, ar dir, dros dir neu o dan dir". Mae hyn yn ystyried y ffaith, er enghraifft, fod gweithrediadau adeiladu fel arfer yn rhannol islaw lefel y ddaear ac yn rhannol uwchlaw lefel y ddaear – ac yn wir gall newid lefel y ddaear.

1810. Mae is-adran (3) yn ymwneud â'r gwahanol ddarpariaethau yn y Ddeddf sy'n ei gwneud yn ofynnol i awdurdod cynllunio neu Weinidogion Cymru, wrth arfer swyddogaeth "roi sylw i'r cynllun datblygu ar gyfer ardal ac unrhyw ystyriaethau perthnasol eraill" – ac iddynt wneud eu penderfyniad yn unol â'r cynllun datblygu oni bai bod ystyriaethau perthnasol eraill yn dangos fel arall. Fel y nodir mewn perthynas ag adran 66 o'r Ddeddf, yn y Saesneg mae i'r term "relevant consideration" yr un ystyr â'r term "material consideration" a ddefnyddiwyd mewn Deddfau cynllunio blaenorol.

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. Mae is-adran (3)(a) yn ei gwneud yn glir, wrth arfer unrhyw un neu ragor o'r swyddogaethau hynny, fod yr ystyriaethau y mae rhaid i'r awdurdod cynllunio neu Weinidogion Cymru roi sylw iddynt yn cynnwys polisïau cenedlaethol sy'n ymwneud â datblygiad tir a defnydd o dir a ddyroddir gan Weinidogion Cymru, i'r graddau y maent yn berthnasol i arfer y swyddogaeth o dan sylw. Byddai polisïau o'r fath yn cynnwys *Polisi Cynllunio Cymru* a'r gyfres o TANs a gyhoeddwyd gan Lywodraeth Cymru.

1812. Wrth arfer unrhyw swyddogaeth o'r fath, rhaid i'r awdurdod cynllunio neu Weinidogion Cymru hefyd roi sylw i ystyriaethau sy'n ymwneud â'r defnydd o'r Gymraeg, i'r graddau y maent yn berthnasol (is-adran (3)(b)). Ceir cyngor cyfredol ar hyn yn TAN 20, *Cynllunio a'r Gymraeg* (2017).

1813. Y swyddogaethau y mae is-adran (3) yn ymwneud â hwy yw:

a. penderfynu cais am ganiatâd cynllunio neu gymeradwyaeth ar gyfer materion a gadwyd yn ôl (o dan adran 66);

b. penderfynu apêl yn dilyn cais o'r fath (o dan adran 77);

c. gwneud gorchymyn sy'n addasu neu'n dirymu caniatâd cynllunio (o dan adran 102);

d. dyroddi hysbysiad rhybuddio am orfodi (o dan adran 119) neu hysbysiad gorfodi (o dan adran 128 neu 144);

e. penderfynu a ddylid rhoi caniatâd cynllunio mewn ymateb i apêl yn erbyn hysbysiad gorfodi (o dan adran 133) neu hysbysiad prynu (o dan paragraff 6 o Atodlen 12); ac

f. gwneud gorchymyn datbarhau (o dan adran 206).

1814. Mae is-adran (4), fodd bynnag, yn pwysleisio nad yw is-adran (3) yn effeithio ar a yw'r ystyriaethau y mae'n eu crybwyll, neu unrhyw ystyriaethau eraill, yn berthnasol i arfer y swyddogaeth o dan sylw. Nid yw'n effeithio ychwaith ar y pwys y mae rhaid ei roi ar unrhyw ystyriaeth y mae'r penderfynwr wedi rhoi sylw iddi; rhaid i hynny fod yn fater i'r penderfynwr bob amser.

1815. Mae is-adran (1) yn egluro bod "penderfyniad cynllunio" yn golygu penderfyniad ar gais am ganiatâd cynllunio a wneir o dan y Ddeddf. Mae is-adrannau (5) a (6) yn egluro sut mae hyn yn gymwys mewn achosion pan fo apêl.

1816. Pan fo'r awdurdod yn penderfynu gwrthod caniatâd neu ei roi yn ddarostyngedig i amodau, a bod hwnnw'n destun apêl, caiff Gweinidogion Cymru (neu arolygydd ar eu rhan) benderfynu gwrthod yr apêl a chadarnhau penderfyniad yr awdurdod. Yn yr achos hwnnw mae'r penderfyniad yn dal i fod yn un yr awdurdod ei hun (nid penderfyniad Gweinidogion Cymru i'w gadarnhau) (is-adran (5)(b)). A dyddiad y penderfyniad yw dyddiad penderfyniad yr awdurdod, nid dyddiad y penderfyniad dilynol ar apêl (is-adran (6)(a)).

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. Pan fo Gweinidogion Cymru yn caniatáu'r apêl (yn llawn neu'n rhannol) fodd bynnag, cânt roi caniatâd, yn ddarostyngedig i amodau – yn diddymu penderfyniad yr awdurdod i'w wrthod – neu cânt roi caniatâd yn ddarostyngedig i amodau sy'n wahanol i'r rhai a osodwyd gan yr awdurdod. Yn y naill achos neu'r llall, y penderfyniad yw penderfyniad Gweinidogion Cymru, nid penderfyniad yr awdurdod (is-adran (5)(a)). Fodd bynnag, yma hefyd, dyddiad y penderfyniad yw dyddiad penderfyniad gwreiddiol yr awdurdod (er y bydd digwyddiadau wedi mynd yn drech nag ef i raddau) (is-adran (6)(a)).

1818. Pan na fo'r awdurdod yn gwneud unrhyw benderfyniad erbyn diwedd y cyfnod perthnasol (hynny yw, y cyfnod a ragnodir yn y rheoliadau, neu'r cyfnod estynedig hwnnw y cytunwyd arno), a bod apêl, gwneir penderfyniad gan Weinidogion Cymru yn y pen draw. Mewn sefyllfa o'r fath, penderfyniad Gweinidogion Cymru fydd hwnnw wedyn, ond dyddiad y penderfyniad fydd y dyddiad y daeth y cyfnod perthnasol i ben (is-adran (6)(b)).

1819. Bydd is-adrannau (5) a (6) yn berthnasol wrth gyfrifo:

a. y cyfnod y mae rhaid i'r datblygiad a ganiateir gan ganiatâd cynllunio ddechrau ynddo (o dan adran 93 neu 94), a'r cyfnod y mae rhaid i ddatblygiad mwynau orffen ar ei ddiwedd (o dan Atodlen 5);

b. y dyddiad adolygu ar gyfer safle mwyngloddio nad oes unrhyw ganiatadau mwynau cyn-1948 arno a nas dangosir mewn rhestr o dan Ddeddf 1995 (gweler Atodlen 9, Tabl 3, rhes 3); ac

c. y cyfnod y caniateir i hysbysiad prynu gael ei gyflwyno ynddo, o dan baragraff 4 o Atodlen 12. Yn yr achos hwn rhaid eu darllen ochr yn ochr â pharagraffau 4(3) a 10(2) o'r Atodlen honno sy'n darparu bod y penderfyniad perthnasol i'w drin fel petai wedi ei wneud ar y dyddiad y mae Gweinidogion Cymru yn penderfynu apêl neu, pan fo'n berthnasol, y dyddiad y diddymir eu penderfyniad.

Adran 409 – Dod i rym

1820. Yn gyffredinol, bydd y Ddeddf yn dod i rym ar ddyddiadau sydd i'w pennu gan Weinidogion Cymru mewn un neu ragor o orchmynion (a wneir drwy offeryn statudol Cymreig). Caiff gorchmynion o'r fath wneud darpariaethau trosiannol neu ddarpariaethau arbed sy'n gysylltiedig â dod i rym.

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. Daeth y darpariaethau a ganlyn i rym ar 28 Ebrill 2026, drannoeth y diwrnod y cafodd y Ddeddf y Cydsyniad Brenhinol:

a. yr adran hon;

b. adrannau 1, 2 a 42, sy'n cyflwyno'r Ddeddf a Rhan 3;

c. adran 407, sy'n ymwneud â gwneud rheoliadau;

d. adran 408, yr adran ddehongli gyffredinol; ac

e. adran 410, yr enw byr.

Adran 410 – Enw byr

1822. Mae adran 410 yn nodi enw byr y Ddeddf, y gellir ei ddefnyddio wrth enwi'r Ddeddf ac wrth gyfeirio ati. Caniateir defnyddio naill ai enw Cymraeg neu enw Saesneg y Ddeddf, gan gynnwys fel cyfeiriad mewn deddfiadau eraill.

COFNOD Y TRAFODION YN Y SENEDD

1823. Mae'r tabl a ganlyn yn nodi'r dyddiadau ar gyfer pob cyfnod o hynt y Ddeddf drwy'r Senedd. Gellir cael Cofnod y Trafodion a rhagor o wybodaeth am hynt y Ddeddf hon ar wefan Senedd Cymru ar: **Bil Cynllunio (Cymru)**

Cyfnod	*Dyddiad*
Cyflwynwyd	15 Medi 2025
Yr Ystyriaeth Gychwynnol - Dadl	16 Rhagfyr 2025
Ystyriaeth Fanwl gan y Pwyllgor	19 Ionawr 2026
Y Cyfnod Terfynol	10 Mawrth 2026
Y Cydsyniad Brenhinol	27 Ebrill 2026

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Argraffwyd a chyhoeddwyd yn y DU gan Y Llyfrfa Cyf dan awdurdod a goruchwyliaeth Saul Nassé, Rheolwr Llyfrfa Ei Fawrhydi ac Argraffydd y Brenin ar gyfer Cymru.

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

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