

OFFERYNNAU STATUDOL CYMRU

2002 Rhif 1878 (Cy.187)

CYNLLUNIO GWLAD A THREF, CYMRU

**Gorchymyn Cynllunio Gwlad a Thref (Datblygu
Cyffredinol a Ganiateir) (Diwygio) (Cymru) 2002**

Wedi'i wneud - - *18 Gorffennaf 2002*
Yn dod i rym - - *1 Awst 2002*

Mae Cynlliad Cenedlaethol Cymru, drwy arfer y pwerau a roddwyd i'r Ysgrifenydd Gwladol gan adrannau 59, 60, 61(1) a 333(7) o Ddeddf Cynllunio Gwlad a Thref 1990(1), ac sydd bellach yn aferadwy gan Gynulliad Cenedlaethol Cymru(2), drwy hyn yn gwneud y Gorchymyn canlynol:

Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Cynllunio Gwlad a Thref (Datblygu Cyffredinol a Ganiateir) (Diwygio) (Cymru) 2002 ac mae'n dod i rym ar 1 Awst 2002.

(2) Mae'r Gorchymyn hwn yn gymwys i Gymru.

Dehongli

2. Yn y Gorchymyn hwn, ystyr "Gorchymyn 1995" yw Gorchymyn Cynllunio Gwlad a Thref (Datblygu Cyffredinol a Ganiateir) 1995(3) ac mae unrhyw gyfeiriad at Ran 24 yn gyfeiriad at y rhan o Atodlen 2 i Orchymyn 1995 sy'n dwyn y rhif hwnnw.

Diwygiadau i Ran 24: Datblygu gan weithredwyr systemau cod telathrebu

3. Yn lle Rhan 24 rhowch y testun a geir yn yr Atodlen i'r Gorchymyn hwn.

Diddymu a darpariaethau trosiannol

4.—(1) Yn ddarostyngedig i baragraff (2), diddymir drwy hyn erthygl 3 o Orchymyn Cynllunio Gwlad a Thref (Datblygu Cyffredinol a Ganiateir) (Diwygio) 1998(4) ac erthygl 3 o Orchymyn

(1) 1990 p.8.

(2) Trosglwyddwyd swyddogaethau'r Ysgrifenydd Gwladol o dan adrannau 59, 60, 61(1) a 337(7), i'r graddau y maent yn arferadwy mewn perthynas â Chymru, i Gynulliad Cenedlaethol Cymru gan erthygl 2 o Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999, O.S.1999/672 ac Atodlen 1 iddo.

(3) O.S.1995/418; O.S.1998/462 ac O.S.1999/1661 yw'r offerynnau diwygio perthnasol.

(4) O.S.1998/462.

Statws This is the original version (as it was originally made). Dim ond ar ei ffurf wreiddiol y mae'r eitem hon o ddeddfwriaeth ar gael ar hyn o bryd.

Cynllunio Gwlad a Thref (Datblygu Cyffredinol a Ganiateir) (Diwygio) 1999⁽⁵⁾, i'r graddau y maent yn gymwys i Gymru.

(2) Nid yw'r diwygiadau sy'n cael eu gwneud i Orchymyn 1995 gan y Gorchymyn hwn yn gymwys ar gyfer ceisiadau am ddyfarniad ynghylch a yw'n ofynnol i gael cymeradwyaeth o flaen llaw gan yr awdurdod cynllunio lleol am leoliad ac ymddangosiad datblygiad a wnaed cyn i'r Gorchymyn hwn ddod i rym.

Llofnodwyd ar ran Cynulliad Cenedlaethol Cymru o dan adran 66(1) o Ddeddf Llywodraeth Cymru 1998⁽⁶⁾

18 Gorffennaf 2002

John Marek
Dirprwy Lywydd y Cynulliad Cenedlaethol

(5) O.S.1999/1661.

(6) 1998 p.38.

ATODLEN

Erthygl 3

“PART 24

**DEVELOPMENT BY TELECOMMUNICATIONS
CODE SYSTEM OPERATORS (WALES)**

Class A Permitted Development

A. Development by or on behalf of a telecommunications code system operator for the purpose of the operator’s telecommunication system in, on, over or under land controlled by that operator or in accordance with the operator’s licence, consisting of —

- (a) **the installation, alteration or replacement of any telecommunication apparatus,**
- (b) **the use of land in an emergency for a period not exceeding six months to station and operate moveable telecommunication apparatus required for the replacement of unserviceable telecommunication apparatus, including the provision of moveable structures on the land for the purposes of that use, or**
- (c) **development ancillary to radio equipment housing.**

Development not permitted

A.1 Development is not permitted by Class A(a) if—

- (a) in the case of the installation of apparatus (other than on a building or other structure) the apparatus, excluding any antenna, would exceed a height of 15 metres above ground level;
- (b) in the case of the alteration or replacement of apparatus already installed (other than on a building or other structure), the apparatus, excluding any antenna, would when altered or replaced exceed the height of the existing apparatus or a height of 15 metres above ground level, whichever is the greater;
- (c) in the case of the installation, alteration or replacement of apparatus on a building or other structure, the height of the apparatus (taken by itself) would exceed—
 - (i) 15 metres, where it is installed, or is to be installed, on a building or other structure which is 30 metres or more in height; or
 - (ii) 10 metres in any other case;
- (d) in the case of the installation, alteration or replacement of apparatus on a building or other structure, the highest part of the apparatus when installed, altered or replaced would exceed the height of the highest part of the building or structure by more than—
 - (i) 10 metres, in the case of a building or structure which is 30 metres or more in height;
 - (ii) 8 metres, in the case of a building or structure which is more than 15 metres but less than 30 metres in height; or
 - (iii) 6 metres in any other case;
- (e) in the case of the installation, alteration or replacement of apparatus (other than an antenna) on a mast, the height of the mast would, when the apparatus was installed, altered or replaced, exceed any relevant height limit specified in respect of apparatus in paragraphs A.1(a), (b), (c) and (d), and for the purposes of applying the limit specified in sub-paragraph (c), the words “(taken by itself)” are to be omitted;

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- (f) in the case of the installation, alteration or replacement of any apparatus other than—
 - (i) a mast,
 - (ii) an antenna,
 - (iii) a public call box,
 - (iv) any apparatus which does not project above the level of the surface of the ground, or
 - (v) radio equipment housing,the ground or base area of the structure would exceed 1.5 square metres;
- (g) in the case of the installation, alteration or replacement of an antenna on a building or structure (other than a mast) which is less than 15 metres in height; on a mast located on such a building or structure; or, where the antenna is to be located below a height of 15 metres above ground level, on a building or structure (other than a mast) which is 15 metres or more in height—
 - (i) the antenna is to be located on a wall or roof slope facing a highway which is within 20 metres of the building or structure on which the antenna is to be located;
 - (ii) in the case of dish antennas, the size of any dish would exceed 0.9 metres or the aggregate size of all of the dishes on the building, structure or mast would exceed 1.5 metres, when measured in any dimension;
 - (iii) in the case of antennas other than dish antennas, the development (other than the installation, alteration or replacement of one small antenna) would result in the presence on the building or structure of more than two antenna systems; or
 - (iv) the building or structure is a listed building or a scheduled monument;
- (h) in the case of the installation, alteration or replacement of an antenna on a building or structure (other than a mast) which is 15 metres or more in height, or on a mast located on such a building or structure, where the antenna is located at a height of 15 metres or above, measured from ground level—
 - (i) in the case of dish antennas, the size of any dish would exceed 1.3 metres or the aggregate size of all of the dishes on the building, structure or mast would exceed 3.5 metres, when measured in any dimension;
 - (ii) in the case of antennas other than dish antennas, the development (other than the installation, alteration or replacement of a maximum of two small antennas) would result in the presence on the building or structure of more than three antenna systems; or
 - (iii) the building or structure is a listed building or a scheduled monument;
- (i) in the case of development (other than the installation, alteration or replacement of one small antenna on a dwellinghouse or within the curtilage of a dwellinghouse) on any article 1(5) land or any land which is, or is within, a site of special scientific interest, it would consist of—
 - (i) the installation or alteration of an antenna or of any apparatus which includes or is intended for the support of such an antenna; or
 - (ii) the replacement of such an antenna or such apparatus by an antenna or apparatus which differs from that which is being replaced,unless the development is carried out in an emergency;

- (j) it would consist of the installation, alteration or replacement of system apparatus within the meaning of section 8(6) of the Road Traffic (Driver Licensing and Information Systems) Act 1989(7) (definitions of driver information systems etc.);
- (k) in the case of the installation of a mast, on a building or structure which is less than 15 metres in height, such a mast would be within 20 metres of a highway;
- (l) in the case of the installation, alteration or replacement of radio equipment housing—
 - (i) the development is not ancillary to the use of any other telecommunication apparatus;
 - (ii) the development would exceed 90 cubic metres or, if located on the roof of a building, the development would exceed 30 cubic metres; or
 - (iii) on any article 1(5) land, or on any land which is, or is within, a site of special scientific interest, the development would exceed 2.5 cubic metres, unless the development is carried out in an emergency;
- (m) in the case of the installation, alteration or replacement on a dwellinghouse or within the curtilage of a dwellinghouse of any telecommunication apparatus, that apparatus—
 - (i) is not a small antenna;
 - (ii) being a small antenna, would result in the presence on that dwellinghouse or within the curtilage of that dwellinghouse of more than one such antenna; or
 - (iii) being a small antenna, is to be located on a roof or on a chimney so that the highest part of the antenna would exceed in height the highest part of that roof or chimney respectively;
- (n) in the case of the installation, alteration or replacement on article 1(5) land of a small antenna on a dwellinghouse or within the curtilage of a dwellinghouse, the antenna is to be located—
 - (i) on a chimney;
 - (ii) on a building which exceeds 15 metres in height; or
 - (iii) on a wall or roof slope which fronts a highway;
- (o) in the case of the installation, alteration or replacement of a small antenna on a building which is not a dwellinghouse or within the curtilage of a dwellinghouse—
 - (i) the building is on article 1(5) land;
 - (ii) the building is less than 15 metres in height, and the development would result in the presence on that building of more than one such antenna; or
 - (iii) the building is 15 metres or more in height, and the development would result in the presence on that building of more than two such antennas.

Conditions

A.2.—(1) Class A(a) and Class A(c) development is permitted subject to the condition that any antenna or supporting apparatus, radio equipment housing or development ancillary to radio equipment housing constructed, installed, altered or replaced on a building in accordance with that permission must, so far as is practicable, be sited so as to minimise its effect on the external appearance of the building.

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(2) Class A(a) and Class A(c) development is permitted subject to the condition that any apparatus or structure provided in accordance with that permission must be removed from the land, building or structure on which it is situated—

- (a) if such development was carried out in an emergency on any article 1(5) land or on any land which is, or is within, a site of special scientific interest, at the expiry of the relevant period, or
- (b) in any other case, as soon as reasonably practicable after it is no longer required for telecommunication purposes,

and such land, building or structure must be restored to its condition before the development took place, or to any other condition as may be agreed in writing between the local planning authority and the developer.

(3) Class A(b) development is permitted subject to the condition that any apparatus or structure provided in accordance with that permission must at the expiry of the relevant period be removed from the land and the land restored to its condition before the development took place.

(4) Class A development—

- (a) on article 1(5) land or land which is, or is within, a site of special scientific interest, or
- (b) on any other land and consisting of the construction, installation, alteration or replacement of a mast; or of an antenna on a building or structure (other than a mast) where the antenna (including any supporting structure) would exceed the height of the building or structure at the point where it is installed or to be installed by 4 metres or more; or of a public call box; or of radio equipment housing with a volume in excess of 2.5 cubic metres; or of development ancillary to radio equipment housing—

is permitted subject, except in case of emergency, to the conditions set out in A.3.

A.3.—(1) The developer must give notice of the proposed development to any person (other than the developer) who is an owner of the land to which the development relates, or a tenant, before making the application required by paragraph (3)—

- (a) by serving a developer's notice on every such person whose name and address is known to the developer; and
- (b) where the developer has taken reasonable steps to ascertain the names and addresses of every such person, but has been unable to do so, by local advertisement.

(2) Where the proposed development consists of the installation of a mast within 3 kilometres of the perimeter of an aerodrome, the developer must notify the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, as appropriate, before making the application required by paragraph (3).

(3) Before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required to the siting and appearance of the development.

(4) The application must be accompanied—

- (a) by a written description of the proposed development and a plan indicating its proposed location together with any fee required to be paid; and
- (b) if the development involves the construction or installation of one or more antennas, by a written declaration that the equipment and installation to which the application relates is so designed that it will, when constructed or installed, operate, having regard to its location and the manner in which it has been constructed or installed, in full compliance with the requirements of the radio frequency public exposure

- guidelines of the International Commission on Non-ionising Radiation Protection, as expressed in the EU Council recommendation of 12 July 1999⁽⁸⁾ on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz); and
- (c) where paragraph (1) applies, by evidence that the requirements of paragraph (1) have been satisfied; and
 - (d) where paragraph (2) applies, by evidence that the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, as the case may be, has been notified of the proposal.
- (5) Subject to paragraphs (7)(c) and (d), upon receipt of the application under paragraph (4) the local planning authority must—
- (a) for development which, in their opinion, falls within a category set out in the table of article 10 of the Procedure Order, consult the authority or person mentioned in relation to that category, except where—
 - (i) the local planning authority are the authority so mentioned; or
 - (ii) the authority or person so mentioned has advised the local planning authority that they do not wish to be consulted,and must give the consultees at least 14 days within which to comment;
 - (b) in the case of development which does not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated or which would affect a right of way to which Part III of the Wildlife and Countryside Act 1981⁽⁹⁾ (public rights of way) applies, must give notice of the proposed development, in the appropriate form set out in Schedule 3 to the Procedure Order—
 - (i) by site display in at least one place on or near the land to which the application relates for not less than 21 days, and
 - (ii) by local advertisement;
 - (c) in the case of development which does not fall within paragraph (b) but which involves development carried out on a site having an area of 1 hectare or more, must give notice of the proposed development, in the appropriate form set out in Schedule 3 to the Procedure Order—
 - (i) (a) by site display in at least one place on or near the land to which the application relates for not less than 21 days, or
 - (b) by serving notice on any adjoining owner or occupier, and
 - (ii) by local advertisement;
 - (d) in the case of development which does not fall within (b) or (c), must give notice of the proposed development, in the appropriate form set out in Schedule 3 to the Procedure Order—
 - (i) by site display in at least one place on or near the land to which the application relates for not less than 21 days, or
 - (ii) by serving the notice on any adjoining owner or occupier.
- (6) The local planning authority must take into account any representations made to them as a result of consultations or notices given under A.3, when determining the application made under paragraph (3).
- (7) The development must not be begun before the occurrence of one of the following—

⁽⁸⁾ 1999/519/EC

⁽⁹⁾ 1981 c. 69.

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- (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;
 - (b) where the local planning authority gives the applicant written notice that such prior approval is required, the giving of that approval to the applicant, in writing, within a period of 56 days beginning with the date on which they received the application;
 - (c) where the local planning authority gives the applicant written notice that such prior approval is required, the expiry of a period of 56 days beginning with the date on which the local planning authority received the application without the local planning authority notifying the applicant, in writing, that such approval is given or refused; or
 - (d) the expiry of a period of 56 days beginning with the date on which the local planning authority received the application without the local planning authority notifying the applicant, in writing, of their determination as to whether such prior approval is required.
- (8) The development must, except to the extent that the local planning authority otherwise agree in writing, be carried out—
- (a) where prior approval has been given as mentioned in paragraph (7)(b) in accordance with the details approved;
 - (b) in any other case, in accordance with the details submitted with the application.
- (9) The development must be begun—
- (a) where prior approval has been given as mentioned in paragraph (7)(b), not later than the expiration of five years beginning with the date on which the approval was given;
 - (b) in any other case, not later than the expiration of five years beginning with the date on which the local planning authority were given the information referred to in paragraph (4).
- (10) In a case of emergency, development is permitted by Class A subject to the condition that the operator must give written notice to the local planning authority of such development as soon as possible after the emergency begins.

Interpretation of Class A

A.4 For the purposes of Class A—

“aerodrome operator” means the person for the time being having the management of an aerodrome or, in relation to a particular aerodrome, the management of that aerodrome;

“antenna system” means a set of antennas installed on a building or structure and operated by a single telecommunications code system operator in accordance with the operator’s licence;

“development ancillary to radio equipment housing” means the construction, installation, alteration or replacement of structures, equipment or means of access which are ancillary to and reasonably required for the purposes of the radio equipment housing;

“development in accordance with a licence” means development carried out by an operator in pursuance of a right conferred on that operator under the telecommunications code, and in accordance with any conditions, relating to the application of that code by the terms of the operator’s licence;

“developer’s notice” means a notice signed and dated by or on behalf of the developer and containing—

- (i) the name of the developer;

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- (ii) the address or location of the proposed development;
- (iii) a description of the proposed development (including its siting and appearance and the height of any mast);
- (iv) a statement that the developer will apply to the local planning authority for a determination as to whether the prior approval of the authority will be required to the siting and appearance of the development;
- (v) the name and address of the local planning authority to whom the application will be made;
- (vi) a statement that the application must be available for public inspection at the offices of the local planning authority during usual office hours;
- (vii) a statement that any person who wishes to make representations about the siting and appearance of the proposed development may do so in writing to the local planning authority;
- (viii) the date by which any such representations should be received by the local planning authority, being a date not less than 14 days from the date of the notice; and
- (ix) the address to which such representations should be made.

“land controlled by the operator” means land occupied by the operator in right of a freehold interest or a leasehold interest under a lease granted for a term of not less than 10 years;

“local advertisement” means by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated;

“mast” means a radio mast or a radio tower;

“owner” means any person who is the estate owner in respect of the fee simple, or who is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired;

“Procedure Order” means the Town and Country Planning (General Development Procedure) Order 1995(10);

“relevant period” means a period which expires—

- (i) six months from the commencement of the construction, installation, alteration or replacement of any apparatus or structure permitted by Class A(a) or Class A(c) or from the commencement of the use permitted by Class A(b), as the case may be, or
- (ii) when the need for such apparatus, structure or use ceases,

whichever occurs first;

“site display” means by the posting of the notice by firm affixture to some object, sited and displayed in such a way as to be easily visible and legible by members of the public;

“small antenna” means an antenna which—

- (i) is for use in connection with a telephone system operating on a point to fixed multi-point basis;
- (ii) does not exceed 50 centimetres in any linear measurement; and
- (iii) does not, in two-dimensional profile, have an area exceeding 1,591 square centimetres,

and any calculation for the purposes of (ii) and (iii) must exclude any feed element, reinforcing rim mountings and brackets;

(10) S.I. 1995/419.

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“telecommunication apparatus” means apparatus falling within the definition of that term in paragraph 1 of Schedule 2 to the Telecommunications Act 1984(11) (“the 1984 Act”) (the telecommunications code), and includes radio equipment housing;

“the telecommunications code” means the code contained in Schedule 2 to the 1984 Act;

“telecommunications code system operator” means a person who has been granted a licence under section 7 of the 1984 Act (power to license systems) which applies the telecommunications code to that person in pursuance of section 10 of that Act (the telecommunications code);

“telecommunications system” has the meaning assigned to that term by section 4(1) of the 1984 Act (meaning of “telecommunication system” and related expressions);

“tenant” means the tenant of an agricultural holding any part of which is comprised in the land to which the application relates.”.

EXPLANATORY NOTE

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

Mae'r Gorchymyn hwn, sy'n gymwys i Gymru, yn diwygio Gorchymyn Cynllunio Gwlad a Thref (Datblygu Cyffredinol a Ganiateir) 1995, mewn perthynas â hawliau datblygu a ganiateir ar gyfer rhai ffurfiau ar ddatblygu telathrebu. Lle bo'r hawliau hynny yn gymwys nid oes angen cais penodol am ganiatâd cynllunio.

Mae Erthygl 3 o'r Gorchymyn hwn a'r Atodlen yn amnewid Rhan 24 o Atodlen 2 i Orchymyn 1995 â fersiwn sydd wedi'i ddiwygio a'i gydgrynhoi, sy'n gymwys i Gymru, ac yn rhoi'r hawliau datblygu hynny a ganiateir.

Y prif newidiadau yw:

- (a) cyflwyno (Amod A.3(4)(b)) gofyniad bod gyda phob cais i awdurdod cynllunio lleol yng Nghymru am ganiatâd cynllunio ar gyfer datblygu sy'n cynnwys adeiladu neu osod un neu fwy o antenâu er mwyn gweithredu system telathrebu ddatganiad ysgrifenedig bod pob cyfarpar a gosodiad y mae'r cais yn perthyn iddynt wedi'u cynllunio fel y byddant, ar ôl cael eu hadeiladu neu'u gosod yn gweithio yn y fath fodd ag i gydymffurfio'n llawn â gofynion canllawiau'r Comisiwn Cydwladol ar Amddiffyn rhag Ymbelydredd Anïoneiddio ar ddatguddio'r cyhoedd i amlerau radio; a
- (b) cyflwyno gweithdrefn ddiwygiedig ar gyfer cymeradwyo o flaen llaw.

Mae'r weithdrefn ddiwygiedig ar gyfer cymeradwyo o flaen llaw yn gymwys i ddatblygu ar dir erthygl 1(5) neu ar dir sy'n safle o ddiddordeb gwyddonol arbennig, neu sydd o fewn safle o'r fath, neu lle bo'r datblygu yn cynnwys adeiladu, gosod, newid neu amnewid: mast; neu antenna ar adeilad neu strwythur lle byddai'r teimlydd yn 4 metr neu fwy yn uwch na'r adeilad neu strwythur; neu blwch ffôn cyhoeddus; neu amgaead cyfarpar radio y mae ei gyfaint yn fwy na 2.5 metr ciwbig; neu ddatblygu sy'n atodol i amgaead cyfarpar radio.

Mae'n ofynnol i'r datblygwr hysbysu perchennog y tir y mae'r datblygiad arfaethedig yn ymwneud ag ef ac unrhyw denant amaethyddol, cyn gwneud cais am gymeradwyaeth o flaen llaw.

(11) 1984 c. 12; section 10 was amended by S.I. 1997/2930.

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Mae'n ofynnol, hefyd, i'r awdurdod cynllunio lleol, ar ôl i gais o'r fath ddod i law, ymgynghori â phersonau ac awdurdodau penodol, i ddyroddi hysbysiadau penodol ac i ystyried, pan fyddant yn dyfarnu ar y cais, y sylwadau a gafwyd ganddynt.

Estynnir y cyfnod pryd y mae'n rhaid i'r awdurdod cynllunio lleol ddyfarnu ar y cais o 28 diwrnod i 56 diwrnod. Os methant wneud hynny cyn diwedd y cyfnod hwnnw (neu os dyfarnant nad oes angen cymeradwyaeth neu y dylid rhoi cymeradwyaeth) gall y datblygu fynd yn ei flaen.

Mae mân newidiadau eraill yn cael eu gwneud i Ran 24, a hynny'n bennaf at bwrpas eglurdeb.