



# Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014

2014 dccc 4

# Social Services and Well-being (Wales) Act 2014

2014 anaw 4

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Lluniwyd Nodiadau Esboniadol yn gymorth i ddeall y Ddeddf hon ac maent ar gael ar wahân.

Explanatory Notes have been produced to assist in the understanding of this Act and are available separately.

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CYNNWYS

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CYFLWYNIAD

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*Termau allweddol*

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3 Ystyr "oedolyn", "plentyn", "gofalwr" ac "anabl"

4 Ystyr "gofal a chymorth"

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# Social Services and Well-being (Wales) Act 2014

2014 anaw 4

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- 185 Oedolion mewn carchar, llety cadw ieuenctid neu lety mechnïaeth etc
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- 189 Methiant darparwr: dyletswydd dros dro ar awdurdod lleol
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- 196 Gorchmynion a rheoliadau
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- 198 Pŵer i wneud darpariaeth ganlyniadol a throsiannol etc
- 199 Cychwyn
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- 194 Ordinary residence
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- 196 Orders and regulations
- 197 General interpretation and index of defined expressions
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Schedule 1 – Contributions towards maintenance of looked after children

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Schedule 3 – Investigation of complaints about privately arranged or funded social care and palliative care



# Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014

Deddf Cynulliad Cenedlaethol Cymru i ddiwygio cyfraith gwasanaethau cymdeithasol; gwneud darpariaeth ynghylch gwella'r canlyniadau llesiant i bobl y mae arnynt angen gofal a chymorth ac i ofalwyr y mae arnynt angen cymorth; gwneud darpariaeth ynghylch cydweithredu a phartneriaeth gan awdurdodau cyhoeddus gyda golwg ar wella llesiant pobl; gwneud darpariaeth ynghylch cwynion sy'n ymwneud â gofal cymdeithasol a gofal lliniarol; ac at ddibenion cysylltiedig. [1 Mai 2014]

**Gan ei fod wedi ei basio gan Gynulliad Cenedlaethol Cymru a chael cydsyniad Ei Mawrhydi, deddfir fel a ganlyn:**

## RHAN 1

### CYFLWYNIAD

#### *Trosolwg*

#### **1 Trosolwg ar y Ddeddf hon**

- (1) Mae 11 Rhan i'r Ddeddf hon.
- (2) Mae'r Rhan hon yn darparu trosolwg ar y Ddeddf gyfan ac yn diffinio rhai termau allweddol.
- (3) Mae Rhan 2 (dyletswyddau cyffredinol) –
  - (a) yn ei gwneud yn ofynnol i bersonau sy'n arfer swyddogaethau o dan y Ddeddf hon geisio hyrwyddo llesiant pobl y mae arnynt angen gofal a chymorth a gofalwyr y mae arnynt angen cymorth (adran 5);



# Social Services and Well-being (Wales) Act 2014

An Act of the National Assembly for Wales to reform social services law; to make provision about improving the well-being outcomes for people who need care and support and carers who need support; to make provision about co-operation and partnership by public authorities with a view to improving the well-being of people; to make provision about complaints relating to social care and palliative care; and for connected purposes. [1 May 2014]

**Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:**

## **PART 1**

### **INTRODUCTION**

#### *Overview*

#### **1 Overview of this Act**

- (1) This Act has 11 Parts.
- (2) This Part provides an overview of the whole Act and defines some key terms.
- (3) Part 2 (general duties) –
  - (a) requires persons exercising functions under this Act to seek to promote the well-being of people who need care and support and carers who need support (section 5);

- (b) yn pennu dyletswyddau hollgyffredinol ar bersonau sy'n arfer swyddogaethau o dan y Ddeddf hon mewn perthynas â phersonau y mae angen gofal a chymorth arnynt neu y gall fod angen gofal a chymorth arnynt, gofalwyr y mae angen cymorth arnynt neu y gall fod angen cymorth arnynt, neu bersonau y mae swyddogaethau yn arferadwy mewn cysylltiad â hwy o dan Ran 6, er mwyn rhoi effaith i egwyddorion allweddol penodol (adran 6);
  - (c) yn ei gwneud yn ofynnol i Weinidogion Cymru ddyroddi datganiad yn pennu'r canlyniadau llesiant sydd i'w sicrhau ar gyfer pobl y mae angen gofal a chymorth arnynt a gofalwyr y mae angen cymorth arnynt a dyroddi cod i helpu i sicrhau'r canlyniadau hynny (adrannau 8 i 13);
  - (d) yn ei gwneud yn ofynnol i awdurdodau lleol asesu'r anghenion am ofal a chymorth, cymorth i ofalwyr a gwasanaethau ataliol yn eu hardaloedd hwy (adran 14);
  - (e) yn ei gwneud yn ofynnol i awdurdodau lleol ddarparu neu drefnu i ddarparu gwasanaethau ataliol (adran 15);
  - (f) yn ei gwneud yn ofynnol i awdurdodau lleol hyrwyddo mentrau cymdeithasol, mentrau cydweithredol, gwasanaethau sy'n cael eu harwain gan ddefnyddwyr a'r trydydd sector wrth ddarparu gofal a chymorth a chymorth i ofalwyr yn eu hardaloedd (adran 16);
  - (g) yn ei gwneud yn ofynnol i awdurdodau lleol ddarparu gwasanaeth sy'n rhoi gwybodaeth a chyngor sy'n ymwneud â gofal a chymorth a chymorth i ofalwyr ac yn cynorthwyo i gael hyd i'r gwasanaeth hwnnw (adran 17);
  - (h) yn ei gwneud yn ofynnol i awdurdodau lleol greu a chynnal cofrestrau o bobl â nam ar eu golwg, pobl â nam ar eu clyw a phobl anabl eraill (adran 18).
- (4) Mae Rhan 3 (asesu anghenion unigolion) yn darparu ar gyfer –
- (a) yr amgylchiadau hynny lle y mae'n rhaid i awdurdod lleol asesu anghenion person am ofal a chymorth neu anghenion gofalwr am gymorth;
  - (b) sut y mae asesiadau i'w cynnal.
- (5) Mae Rhan 4 (diwallu anghenion) yn darparu ar gyfer –
- (a) yr amgylchiadau lle y caiff, neu lle y mae'n rhaid i, awdurdodau lleol ddiwallu anghenion am ofal a chymorth neu gymorth i ofalwyr;
  - (b) sut y mae anghenion i'w diwallu.
- (6) Mae Rhan 5 (codi ffioedd ac asesiadau ariannol) yn darparu ar gyfer –
- (a) yr amgylchiadau y caiff awdurdodau lleol godi ffi odanynt am ddarparu neu am drefnu gofal a chymorth neu gymorth i ofalwyr;
  - (b) yr amgylchiadau y caiff awdurdodau lleol godi ffi odanynt am wasanaethau ataliol ac am ddarparu cynhorthwy;
  - (c) sut y mae ffioedd o'r fath i'w pennu, i'w talu ac i'w gorfodi.
- (7) Mae Rhan 6 (plant sy'n derbyn gofal a phlant sy'n cael eu lletya) –
- (a) yn darparu ar gyfer dehongli'r cyfeiriadau at blentyn neu berson ifanc sy'n derbyn gofal gan awdurdod lleol (adran 74);

- (b) imposes overarching duties on persons exercising functions under this Act in relation to persons who need or may need care and support, carers who need or may need support, or persons in respect of whom functions are exercisable under Part 6, so as to give effect to certain key principles (section 6);
  - (c) requires the Welsh Ministers to issue a statement specifying the well-being outcomes that are to be achieved for people who need care and support and carers who need support and to issue a code to help achieve those outcomes (sections 8 to 13);
  - (d) requires local authorities to assess the needs in their areas for care and support, support for carers and preventative services (section 14);
  - (e) requires local authorities to provide or arrange for the provision of preventative services (section 15);
  - (f) requires the promotion by local authorities of social enterprises, co-operatives, user led services and the third sector in the provision in their areas of care and support and support for carers (section 16);
  - (g) requires the provision by local authorities of a service providing information and advice relating to care and support and support for carers and assistance in accessing it (section 17);
  - (h) requires local authorities to establish and maintain registers of sight-impaired, hearing-impaired and other disabled people (section 18).
- (4) Part 3 (assessing the needs of individuals) provides for –
- (a) the circumstances in which a local authority must assess a person’s needs for care and support or a carer’s needs for support;
  - (b) how assessments are to be carried out.
- (5) Part 4 (meeting needs) provides for –
- (a) the circumstances in which needs for care and support or support for carers may or must be met by local authorities;
  - (b) how needs are to be met.
- (6) Part 5 (charging and financial assessment) provides for –
- (a) the circumstances in which local authorities may charge for providing or arranging care and support or support for carers;
  - (b) the circumstances in which local authorities may charge for preventative services and the provision of assistance;
  - (c) how such charges are to be set, paid and enforced.
- (7) Part 6 (looked after and accommodated children) –
- (a) provides for the interpretation of references to a child or young person looked after by a local authority (section 74);

- (b) yn ei gwneud yn ofynnol i awdurdodau lleol –
    - (i) sicrhau digon o lety yn eu hardaloedd i'r plant y maent yn gofalu amdanynt (adran 75), a
    - (ii) lletya plant heb rieni neu sydd ar goll neu wedi eu gadael neu sydd o dan amddiffyniad yr heddlu neu wedi eu cadw'n gaeth neu ar remánd (adrannau 76 a 77);
  - (c) yn darparu ar gyfer swyddogaethau awdurdodau lleol mewn perthynas â'r plant y maent yn gofalu amdanynt (adrannau 75 i 103, 124 a 125);
  - (d) yn darparu ar gyfer yr amgylchiadau lle y caiff, neu lle y mae'n rhaid i, awdurdodau lleol ddarparu cymorth i bobl ifanc –
    - (i) sy'n gadael, neu sydd wedi gadael, gofal awdurdod lleol;
    - (ii) a oedd gynt yn cael eu lletya mewn sefydliadau penodol;
    - (iii) a oedd gynt yn cael eu maethu;
    - (iv) y mae neu yr oedd gorchmynion gwarcheidiaeth arbennig mewn grym mewn cysylltiad â hwy;
 (adrannau 104 i 118);
  - (e) yn darparu ar gyfer terfynau ar y defnydd o lety diogel i blant sy'n derbyn gofal gan awdurdodau lleol neu awdurdodau lleol yn Lloegr neu blant o ddisgrifiad a bennir mewn rheoliadau (adran 119);
  - (f) yn ei gwneud yn ofynnol i awdurdodau lleol asesu plant sy'n cael eu lletya gan awdurdodau iechyd neu awdurdodau addysg neu mewn cartrefi gofal neu ysbytai annibynnol a darparu ymweliadau a gwasanaethau i'r plant hynny (adrannau 120 i 123);
  - (g) yn cyflwyno Atodlen 1 sy'n gwneud darpariaeth ynghylch cyfraniadau tuag at gynnal plant sy'n derbyn gofal gan awdurdodau lleol.
- (8) Mae Rhan 7 (diogelu) –
- (a) yn ei gwneud yn ofynnol i awdurdodau lleol ymchwilio pan fyddant yn amau bod oedolyn sydd ag anghenion gofal a chymorth yn wynebu risg o gamdriniaeth neu esgeulustod (adran 126);
  - (b) yn darparu ar gyfer gorchmynion amddiffyn a chynorthwyo oedolion er mwyn awdurdodi mynediad i fangre (drwy rym os oes angen) er mwyn galluogi swyddog awdurdodedig awdurdod lleol i asesu a yw oedolyn yn wynebu risg o gamdriniaeth neu esgeulustod ac, os ydyw, beth i'w wneud am y sefyllfa honno (adran 127);
  - (c) yn ei gwneud yn ofynnol i awdurdodau lleol a'u partneriaid perthnasol roi gwybod i'r awdurdod priodol pan fônt yn amau bod pobl efallai yn wynebu risg o gamdriniaeth neu esgeulustod (adrannau 128 a 130);
  - (d) yn datgymhwyso adran 47 o Ddeddf Cymorth Gwladol 1948 (sy'n galluogi awdurdodau lleol i wneud cais am orchymyn llys i symud pobl y mae angen gofal a sylw arnynt o'u cartrefi i ysbytai neu fannau eraill) (adran 129);
  - (e) yn sefydlu Bwrdd Diogelu Annibynnol Cenedlaethol i roi cymorth a chyngor er mwyn sicrhau effeithiolrwydd Byrddau Diogelu (adrannau 132 a 133);



- (b) requires local authorities –
    - (i) to secure sufficient accommodation in their areas for the children they look after (section 75), and
    - (ii) to accommodate children without parents or who are lost or abandoned or are under police protection, detention or on remand (sections 76 and 77);
  - (c) provides for the functions of local authorities in relation to the children they look after (sections 75 to 103, 124 and 125);
  - (d) provides for the circumstances in which local authorities may or must provide support for young people –
    - (i) leaving, or who have left, local authority care;
    - (ii) formerly accommodated in certain establishments;
    - (iii) formerly fostered;
    - (iv) with respect to whom special guardianship orders are or were in force;(sections 104 to 118);
  - (e) provides for limits on the use of secure accommodation for children looked after by local authorities or local authorities in England or children of a description specified in regulations (section 119);
  - (f) requires the assessment by local authorities of children who are accommodated by health authorities or education authorities or in care homes or independent hospitals and the provision of visits and services to those children (sections 120 to 123);
  - (g) introduces Schedule 1 which makes provision about contributions towards the maintenance of children looked after by local authorities.
- (8) Part 7 (safeguarding) –
- (a) requires local authorities to investigate where they suspect that an adult with care and support needs is at risk of abuse or neglect (section 126);
  - (b) provides for adult protection and support orders to authorise entry to premises (if necessary by force) for the purpose of enabling an authorised officer of a local authority to assess whether an adult is at risk of abuse or neglect and, if so, what to do about it (section 127);
  - (c) requires local authorities and their relevant partners to report to the appropriate authority where they suspect that people may be at risk of abuse or neglect (sections 128 and 130);
  - (d) disapplies section 47 of the National Assistance Act 1948 (which enables local authorities to apply for a court order to remove people in need of care and attention from their homes to hospitals or other places) (section 129);
  - (e) establishes a National Independent Safeguarding Board to provide support and advice in order to ensure the effectiveness of Safeguarding Boards (sections 132 and 133);

- (f) yn darparu ar gyfer Byrddau Diogelu i oedolion a phlant ac ar gyfer cyfuno byrddau o'r fath (adrannau 134 i 141).
- (9) Mae Rhan 8 (swyddogaethau gwasanaethau cymdeithasol) –
- (a) yn cyflwyno Atodlen 2, sy'n pennu swyddogaethau gwasanaethau cymdeithasol awdurdodau lleol (adran 143);
  - (b) yn ei gwneud yn ofynnol bod awdurdodau lleol yn penodi cyfarwyddwyr gwasanaethau cymdeithasol ac yn gwneud darpariaeth gysylltiedig (adran 144);
  - (c) yn darparu bod codau ynghylch arfer swyddogaethau gwasanaethau cymdeithasol i'w gwneud gan Weinidogion Cymru (adrannau 145 i 149);
  - (d) yn darparu ar gyfer ymyrraeth gan Weinidogion Cymru yn y modd y mae awdurdod lleol yn arfer ei swyddogaethau gwasanaethau cymdeithasol pan fo'n methu â'u harfer yn gywir (adrannau 150 i 161).
- (10) Mae Rhan 9 (cydweithrediad a phartneriaeth) –
- (a) yn ei gwneud yn ofynnol i awdurdodau lleol wneud trefniadau i hyrwyddo cydweithrediad gyda'u partneriaid perthnasol ac eraill mewn perthynas ag oedolion sydd ag anghenion am ofal a chymorth, gofawyr a phlant (adrannau 162 a 163);
  - (b) yn gosod dyletswydd ar y partneriaid perthnasol i gydweithredu â'r awdurdodau lleol, a darparu gwybodaeth iddynt, at ddiben eu swyddogaethau gwasanaethau cymdeithasol (adran 164);
  - (c) yn gwneud darpariaeth ynghylch hyrwyddo'r broses o integreiddio gofal a chymorth â gwasanaethau iechyd (adran 165);
  - (d) yn darparu ar gyfer trefniadau partneriaeth rhwng awdurdodau lleol a Byrddau Iechyd Lleol er mwyn cyflawni eu swyddogaethau (adrannau 166 i 169);
  - (e) yn grymuso Gweinidogion Cymru i gyfarwyddo awdurdodau lleol i ymrwymo i drefniadau ar y cyd er mwyn darparu gwasanaeth mabwysiadu (adran 170).
- (11) Mae gan Ran 10 (cwynion, sylwadau a gwasanaethau eirioli) dair pennod.
- (12) Mae Pennod 1 yn darparu ar gyfer cwynion a sylwadau am wasanaethau cymdeithasol sy'n cael eu darparu neu eu trefnu gan awdurdodau lleol.
- (13) Mae Pennod 2 yn darparu ar gyfer cwynion i Ombwdsmon Gwasanaethau Cyhoeddus Cymru ynghylch gofal cymdeithasol a gofal lliniarol preifat.
- (14) Mae Pennod 3 yn darparu i wasanaethau eirioli gael eu rhoi ar gael i bobl y mae arnynt anghenion am ofal a chymorth at ddibenion sy'n ymwneud â'u gofal a chymorth.
- (15) Mae Rhan 11 (amrywiol a chyffredinol) –
- (a) yn grymuso Gweinidogion Cymru, awdurdodau lleol a Byrddau Iechyd Lleol i wneud ymchwil, ac yn grymuso Gweinidogion Cymru i'w gwneud yn ofynnol i wybodaeth gael ei rhoi, ynghylch materion sy'n gysylltiedig â swyddogaethau o dan y Ddeddf a materion cysylltiedig eraill (adran 184);
  - (b) yn gwneud darpariaeth ynghylch sut y mae'r Ddeddf hon yn gymwys i bersonau mewn carchar, llety cadw ieuencid neu lety mechnïaeth etc (adrannau 185 i 188);

- (f) provides for Safeguarding Boards for adults and children and for the combination of such boards (sections 134 to 141).
- (9) Part 8 (social services functions) –
- (a) introduces Schedule 2, which specifies the social services functions of local authorities (section 143);
  - (b) requires the appointment of directors of social services by local authorities and makes related provision (section 144);
  - (c) provides for codes about the exercise of social services functions to be made by the Welsh Ministers (sections 145 to 149);
  - (d) provides for intervention by the Welsh Ministers in the exercise of social services functions where a local authority is failing to exercise them properly (sections 150 to 161).
- (10) Part 9 (co-operation and partnership) –
- (a) requires local authorities to make arrangements to promote co-operation with their relevant partners and others in relation to adults with needs for care and support, carers and children (sections 162 and 163);
  - (b) imposes a duty on the relevant partners to co-operate with, and provide information to, the local authorities for the purpose of their social services functions (section 164);
  - (c) makes provision about promoting the integration of care and support with health services (section 165);
  - (d) provides for partnership arrangements between local authorities and Local Health Boards for the discharge of their functions (sections 166 to 169);
  - (e) empowers the Welsh Ministers to direct local authorities to enter into joint arrangements for the provision of an adoption service (section 170).
- (11) Part 10 (complaints, representations and advocacy services) has three chapters.
- (12) Chapter 1 provides for complaints and representations about social services provided or arranged by local authorities.
- (13) Chapter 2 provides for complaints to the Public Services Ombudsman for Wales about private social care and palliative care.
- (14) Chapter 3 provides for advocacy services to be made available to people with needs for care and support for purposes relating to their care and support.
- (15) Part 11 (miscellaneous and general) –
- (a) empowers the Welsh Ministers, local authorities and Local Health Boards to conduct research, and empowers the Welsh Ministers to require information, about matters connected with functions under the Act and other related matters (section 184);
  - (b) makes provision about how this Act applies to persons in prison, youth detention accommodation or bail accommodation etc (sections 185 to 188);

- (c) yn gwneud darpariaeth ynghylch y camau i'w cymryd gan awdurdod lleol pan fo sefydliad neu asiantaeth (o fewn yr ystyr a roddir i "establishment" ac "agency" yn Neddf Safonau Gofal 2000) yn methu â diwallu anghenion yn ardal yr awdurdod oherwydd methiant busnes (adrannau 189 i 191);
  - (d) yn datgymhwyso adran 49 o Ddeddf Cymorth Gwladol 1948 (sy'n caniatáu i awdurdod lleol dalu treuliau a dynnir gan unrhyw un neu rai o'i swyddogion a benodir yn ddirprwy gan y Llys Gwarchod) (adran 192);
  - (e) yn gwneud darpariaeth ynghylch adennill costau rhwng awdurdodau lleol o dan rai amgylchiadau (adran 193);
  - (f) yn darparu ar gyfer ateb cwestiynau ynghylch preswylfa arferol person at ddibenion y Ddeddf hon (adran 194);
  - (g) yn cynnwys y diffiniadau sy'n gymwys at ddibenion y Ddeddf hon yn gyffredinol a mynegai o ymadroddion a ddiffiniwyd (adran 197);
  - (h) yn cynnwys darpariaethau eraill sy'n gymwys yn gyffredinol at ddibenion y Ddeddf hon.
- (16) Mae darpariaethau hefyd ynghylch gwasanaethau cymdeithasol yn y Deddfau a'r Mesurau a restrir yn Atodlen 2.

*Termau allweddol*

**2 Ystyr "llesiant"**

- (1) Mae'r adran hon yn gymwys at ddiben y Ddeddf hon.
- (2) Ystyr "llesiant", o ran person, yw llesiant mewn perthynas ag unrhyw un neu rai o'r canlynol –
  - (a) iechyd corfforol, iechyd meddwl a llesiant emosiynol;
  - (b) amddiffyn rhag camdriniaeth ac esgeulustod;
  - (c) addysg, hyfforddiant a gweithgareddau hamdden;
  - (d) perthnasoedd domestig, teuluol a phersonol;
  - (e) cyfraniad a wneir at y gymdeithas;
  - (f) sicrhau hawliau a hawlogaethau;
  - (g) llesiant cymdeithasol ac economaidd;
  - (h) addasrwydd llety preswyl.
- (3) O ran plentyn, mae "llesiant" hefyd yn cynnwys –
  - (a) datblygiad corfforol, deallusol, emosiynol, cymdeithasol ac ymddygiadol;
  - (b) "lles" fel y diffinnir y term Saesneg cyfatebol "welfare" at ddibenion Deddf Plant 1989.
- (4) O ran oedolyn, mae "llesiant" hefyd yn cynnwys –
  - (a) rheolaeth ar fywyd pob dydd;
  - (b) cymryd rhan mewn gwaith.

- (c) makes provision about the steps to be taken by a local authority where an establishment or agency (within the meaning of the Care Standards Act 2000) becomes unable to meet needs in the authority's area because of business failure (sections 189 to 191);
  - (d) disapplies section 49 of the National Assistance Act 1948 (which allows a local authority to meet expenses incurred by any of its officers appointed by the Court of Protection as a deputy) (section 192);
  - (e) makes provision for the recovery of costs between local authorities in certain circumstances (section 193);
  - (f) provides for the resolution of questions about the ordinary residence of a person for the purposes of this Act (section 194);
  - (g) contains the definitions that apply for the purposes of this Act generally and an index of defined expressions (section 197);
  - (h) contains other provisions which apply generally for the purposes of this Act.
- (16) There are also provisions about social services in the Acts and Measures listed in Schedule 2.

*Key terms*

**2 Meaning of "well-being"**

- (1) This section applies for the purpose of this Act.
- (2) "Well-being", in relation to a person, means well-being in relation to any of the following—
  - (a) physical and mental health and emotional well-being;
  - (b) protection from abuse and neglect;
  - (c) education, training and recreation;
  - (d) domestic, family and personal relationships;
  - (e) contribution made to society;
  - (f) securing rights and entitlements;
  - (g) social and economic well-being;
  - (h) suitability of living accommodation.
- (3) In relation to a child, "well-being" also includes—
  - (a) physical, intellectual, emotional, social and behavioural development;
  - (b) "welfare" as that word is interpreted for the purposes of the Children Act 1989.
- (4) In relation to an adult, "well-being" also includes—
  - (a) control over day to day life;
  - (b) participation in work.

**3 Ystyr “oedolyn”, “plentyn”, “gofalwr” ac “anabl”**

- (1) Mae'r adran hon yn gymwys at ddiben y Ddeddf hon.
- (2) Ystyr “oedolyn” yw person sy'n 18 oed neu drosodd.
- (3) Ystyr “plentyn” yw person dan 18 oed.
- (4) Ystyr “gofalwr” yw person sy'n darparu neu'n bwriadu darparu gofal i oedolyn neu blentyn anabl; ond gweler is-adrannau (7) ac (8) ac adran 187(1).
- (5) Mae person yn “anabl” os oes ganddo anabledd (“*disability*”) at ddibenion Deddf Cydraddoldeb 2010, yn ddarostyngedig i ddarpariaeth a wneir o dan is-adran (6).
- (6) Caiff rheoliadau ddarparu bod person sy'n dod o fewn categori penodedig i'w drin neu i beidio â chael ei drin fel un sy'n anabl at ddibenion y Ddeddf hon.
- (7) Nid yw person yn ofalwr at ddibenion y Ddeddf hon os yw'n darparu neu'n bwriadu darparu gofal—
  - (a) o dan contract neu yn rhinwedd contract, neu
  - (b) fel gwaith gwirfoddol.
- (8) Ond caiff awdurdod lleol drin person fel gofalwr at ddibenion unrhyw un neu rai o'i swyddogaethau o dan y Ddeddf hon os yw'r awdurdod o'r farn bod natur y berthynas rhwng y person sy'n darparu neu'n bwriadu darparu gofal a'r person y mae'r gofal hwnnw yn cael ei ddarparu, neu i'w ddarparu, iddo yn golygu y byddai'n briodol i'r cyntaf gael ei drin fel gofalwr at ddibenion y swyddogaeth honno neu'r swyddogaethau hynny.

**4 Ystyr “gofal a chymorth”**

Mae unrhyw gyfeiriad at ofal a chymorth yn y Ddeddf hon i'w ddehongli fel cyfeiriad at—

- (a) gofal;
- (b) cymorth;
- (c) gofal a chymorth.

**RHAN 2****SWYDDOGAETHAU CYFFREDINOL***Dyletswyddau hollgyffredinol***5 Dyletswydd llesiant**

Rhaid i berson sy'n arfer swyddogaethau o dan y Ddeddf hon geisio hyrwyddo llesiant—

- (a) pobl y mae arnynt angen gofal a chymorth, a
- (b) gofalwyr y mae arnynt angen cymorth.

**3 Meaning of “adult”, “child”, “carer” and “disabled”**

- (1) This section applies for the purposes of this Act.
- (2) “Adult” means a person who is aged 18 or over.
- (3) “Child” means a person who is aged under 18.
- (4) “Carer” means a person who provides or intends to provide care for an adult or disabled child; but see subsections (7) and (8) and section 187(1).
- (5) A person is “disabled” if the person has a disability for the purposes of the Equality Act 2010, subject to provision made under subsection (6).
- (6) Regulations may provide that a person falling within a specified category is or is not to be treated as disabled for the purposes of this Act.
- (7) A person is not a carer for the purposes of this Act if the person provides or intends to provide care –
  - (a) under or by virtue of a contract, or
  - (b) as voluntary work.
- (8) But a local authority may treat a person as a carer for the purposes of any of its functions under this Act if the authority considers that the relationship between the person providing or intending to provide care and the person for whom that care is, or is to be, provided is such that it would be appropriate for the former to be treated as a carer for the purposes of that function or those functions.

**4 Meaning of “care and support”**

Any reference to care and support in this Act is to be construed as a reference to –

- (a) care;
- (b) support;
- (c) both care and support.

**PART 2**

**GENERAL FUNCTIONS**

*Overarching duties*

**5 Well-being duty**

A person exercising functions under this Act must seek to promote the well-being of –

- (a) people who need care and support, and
- (b) carers who need support.

## 6 Dyletswyddau hollgyffredinol eraill: cyffredinol

- (1) Rhaid i berson sy'n arfer swyddogaethau o dan y Ddeddf hon—
  - (a) mewn perthynas ag unigolyn y mae arno anghenion am ofal a chymorth, neu y gall fod arno anghenion am ofal a chymorth,
  - (b) mewn perthynas â gofalwr y mae arno anghenion am gymorth, neu y gall fod arno anghenion am gymorth, neu
  - (c) mewn perthynas ag unigolyn y mae swyddogaethau yn arferadwy mewn cysylltiad ag ef o dan Ran 6 (plant sy'n derbyn gofal etc),
 gydymffurfio â'r dyletswyddau yn is-adran (2).
- (2) Rhaid i'r person—
  - (a) i'r graddau y mae'n rhesymol ymarferol, ganfod barn, dymuniadau a theimladau'r unigolyn a rhoi sylw i'r farn honno, y dymuniadau hynny a'r teimladau hynny,
  - (b) rhoi sylw i bwysigrwydd hyrwyddo a pharchu urddas yr unigolyn,
  - (c) rhoi sylw i nodweddion, diwylliant a chredoau'r unigolyn (gan gynnwys, er enghraifft, iaith), a
  - (d) rhoi sylw i bwysigrwydd darparu cymorth priodol er mwyn galluogi'r unigolyn i gymryd rhan yn y penderfyniadau sy'n effeithio arno i'r graddau sy'n briodol o dan yr amgylchiadau, yn enwedig pan fo gallu'r unigolyn i gyfathrebu wedi ei gyfyngu am unrhyw reswm.
- (3) Rhaid i berson sy'n arfer swyddogaethau o dan y Ddeddf hon mewn perthynas ag oedolyn sy'n dod o fewn is-adran (1)(a), (b) neu (c), yn ogystal, roi sylw i—
  - (a) pwysigrwydd dechrau gyda'r ragdybiaeth mai'r oedolyn sydd yn y sefyllfa orau i farnu llesiant yr oedolyn, a
  - (b) pwysigrwydd hyrwyddo annibyniaeth yr oedolyn pan fo'n bosibl.
- (4) Rhaid i berson sy'n arfer swyddogaethau o dan y Ddeddf hon mewn perthynas â phlentyn sy'n dod o fewn is-adran (1)(a), (b) neu (c), yn ogystal—
  - (a) rhoi sylw i bwysigrwydd hyrwyddo magwraeth y plentyn gan deulu'r plentyn, i'r graddau y mae gwneud hynny yn gyson â hyrwyddo llesiant y plentyn, a
  - (b) pan fo'r plentyn o dan 16 oed, ganfod barn, dymuniadau a theimladau'r personau sydd â chyfrifoldeb rhiant dros y plentyn a rhoi sylw i'r farn honno, y dymuniadau hynny a'r teimladau hynny, i'r graddau y mae gwneud hynny—
    - (i) yn gyson â hyrwyddo llesiant y plentyn, a
    - (ii) yn rhesymol ymarferol.



**6 Other overarching duties: general**

- (1) A person exercising functions under this Act in relation to—
  - (a) an individual who has, or may have, needs for care and support,
  - (b) a carer who has, or may have, needs for support, or
  - (c) an individual in respect of whom functions are exercisable under Part 6 (looked after children etc),must comply with the duties in subsection (2).
- (2) The person must—
  - (a) in so far as is reasonably practicable, ascertain and have regard to the individual's views, wishes and feelings,
  - (b) have regard to the importance of promoting and respecting the dignity of the individual,
  - (c) have regard to the characteristics, culture and beliefs of the individual (including, for example, language), and
  - (d) have regard to the importance of providing appropriate support to enable the individual to participate in decisions that affect him or her to the extent that is appropriate in the circumstances, particularly where the individual's ability to communicate is limited for any reason.
- (3) A person exercising functions under this Act in relation to an adult falling within subsection (1)(a), (b) or (c) must, in addition, have regard to—
  - (a) the importance of beginning with the presumption that the adult is best placed to judge the adult's well-being, and
  - (b) the importance of promoting the adult's independence where possible.
- (4) A person exercising functions under this Act in relation to a child falling within subsection (1)(a), (b) or (c), in addition—
  - (a) must have regard to the importance of promoting the upbringing of the child by the child's family, in so far as doing so is consistent with promoting the well-being of the child, and
  - (b) where the child is under the age of 16, must ascertain and have regard to the views, wishes and feelings of the persons with parental responsibility for the child, in so far as doing so is—
    - (i) consistent with promoting the well-being of the child, and
    - (ii) reasonably practicable.

**7 Dyletswyddau hollgyffredinol eraill: Egwyddorion a Chonfensiwn y Cenhedloedd Unedig**

- (1) Rhaid i berson sy'n arfer swyddogaethau o dan y Ddeddf hon mewn perthynas ag oedolyn sy'n dod o fewn adran 6(1)(a) neu (b) roi sylw dyladwy i Egwyddorion y Cenhedloedd Unedig ar gyfer Pobl Hŷn a fabwysiadwyd gan Gynulliad Cyffredinol y Cenhedloedd Unedig ar 16 Rhagfyr 1991.
- (2) Rhaid i berson sy'n arfer swyddogaethau o dan y Ddeddf hon mewn perthynas â phlentyn sy'n dod o fewn adran 6(1)(a), (b) neu (c) roi sylw dyladwy i Ran 1 o Gonfensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn a fabwysiadwyd ac a agorwyd i'w lofnodi, ei gadarnhau a'i gytuno drwy benderfyniad y Cynulliad Cyffredinol 44/25 dyddiedig 20 Tachwedd 1989 ("y Confensiwn").
- (3) At ddibenion is-adran (2), mae Rhan 1 o'r Confensiwn i'w thrin fel pe bai'n cael effaith—
  - (a) fel a nodir am y tro yn Rhan 1 o'r Atodlen i Fesur Hawliau Plant a Phobl Ifanc (Cymru) 2011, ond
  - (b) yn ddarostyngedig i unrhyw ddatganiad neu neilltuad fel a nodir am y tro yn Rhan 3 o'r Atodlen honno.
- (4) Nid yw is-adran (2) yn gymwys i Weinidogion Cymru (gweler, yn lle hynny, Mesur Hawliau Plant a Phobl Ifanc (Cymru) 2011).

*Canlyniadau Llesiant*

**8 Dyletswydd i ddyroddi datganiad ynghylch y canlyniadau sydd i'w sicrhau**

- (1) Rhaid i Weinidogion Cymru ddyroddi datganiad sy'n ymwneud â Llesiant—
  - (a) pobl yng Nghymru y mae arnynt angen gofal a chymorth, a
  - (b) gofalwyr yng Nghymru y mae arnynt angen cymorth.
- (2) Rhaid dyroddi'r datganiad o fewn 3 blynedd sy'n dechrau ar y dyddiad y mae'r Ddeddf hon yn cael y Cydsyniad Brenhinol.
- (3) Rhaid i'r datganiad bennu'r canlyniadau sydd i'w sicrhau, o ran llesiant y bobl a grybwyllwyd yn is-adran (1), drwy—
  - (a) gofal a chymorth (neu, yn achos gofalwyr, cymorth) a ddarperir gan awdurdodau lleol o dan y Ddeddf hon, a
  - (b) gofal a chymorth (neu, yn achos gofalwyr, cymorth) a ddarperir gan eraill sydd o fath y gellid eu darparu gan awdurdodau lleol o dan y Ddeddf hon.
- (4) Rhaid i'r datganiad hefyd bennu mesurau y mae graddau sicrhau'r canlyniadau hynny i'w hasesu drwy gyfeirio atynt.
- (5) Caiff y datganiad bennu gwahanol ganlyniadau neu fesurau ar gyfer gwahanol gategoriâu o bobl y mae arnynt angen gofal a chymorth (neu, yn achos gofalwyr, cymorth).
- (6) Rhaid i Weinidogion Cymru adolygu'r datganiad yn gyson a chânt ddiwygio'r datganiad pa bryd bynnag y maent yn ystyried ei bod yn briodol gwneud hynny.

**7 Other overarching duties: UN Principles and Convention**

- (1) A person exercising functions under this Act in relation to an adult falling within section 6(1)(a) or (b) must have due regard to the United Nations Principles for Older Persons adopted by the General Assembly of the United Nations on 16 December 1991.
- (2) A person exercising functions under this Act in relation to a child falling within section 6(1)(a), (b) or (c) must have due regard to Part 1 of the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (“the Convention”).
- (3) For the purposes of subsection (2), Part 1 of the Convention is to be treated as having effect—
  - (a) as set out for the time being in Part 1 of the Schedule to the Rights of Children and Young Persons (Wales) Measure 2011, but
  - (b) subject to any declaration or reservation as set out for the time being in Part 3 of that Schedule.
- (4) Subsection (2) does not apply to the Welsh Ministers (see, instead, the Rights of Children and Young Persons (Wales) Measure 2011).

*Well-being outcomes*

**8 Duty to issue a statement of the outcomes to be achieved**

- (1) The Welsh Ministers must issue a statement relating to the well-being of—
  - (a) people in Wales who need care and support, and
  - (b) carers in Wales who need support.
- (2) The statement must be issued within 3 years beginning with the date on which this Act receives Royal Assent.
- (3) The statement must specify the outcomes that are to be achieved, in terms of the well-being of the people mentioned in subsection (1), by means of—
  - (a) care and support (or, in the case of carers, support) provided by local authorities under this Act, and
  - (b) care and support (or, in the case of carers, support) provided by others which is of a kind that could be provided by local authorities under this Act.
- (4) The statement must also specify measures by reference to which the achievement of those outcomes is to be assessed.
- (5) The statement may specify different outcomes or measures for different categories of people who need care and support (or, in the case of carers, support).
- (6) The Welsh Ministers must keep the statement under review and may revise the statement whenever they consider it appropriate to do so.

- (7) Cyn dyroddi neu ddiwygio'r datganiad, rhaid i Weinidogion Cymru ymgynghori ag unrhyw bersonau sy'n briodol yn eu barn hwy.
- (8) Rhaid i Weinidogion Cymru, wrth ddyroddi neu ddiwygio'r datganiad –
  - (a) gosod copi o'r datganiad gerbron Cynulliad Cenedlaethol Cymru, a
  - (b) cyhoeddi'r datganiad ar eu gwefan.

## **9 Pŵer i ddyroddi cod ar gyfer helpu i sicrhau'r canlyniadau**

- (1) Rhaid i Weinidogion Cymru ddyroddi, ac o bryd i'w gilydd ddiwygio, cod i helpu i sicrhau'r canlyniadau a bennir yn y datganiad o dan adran 8.
- (2) Caiff y cod –
  - (a) rhoi canllawiau i unrhyw berson sy'n darparu gofal a chymorth (neu, yn achos gofalwyr, cymorth) o'r math sy'n cael ei ddisgrifio yn adran 8(3), a
  - (b) gosod gofynion ar awdurdodau lleol mewn perthynas â darpariaeth o'r fath honno.
- (3) Mae'r canlynol yn enghreifftiau o'r materion y gellir eu nodi yn y cod –
  - (a) safonau ("safonau ansawdd") sydd i'w sicrhau wrth ddarparu gofal a chymorth (neu, yn achos gofalwyr, cymorth);
  - (b) mesurau ("mesurau perfformiad") y gellir asesu perfformiad o ran sicrhau'r safonau ansawdd hynny drwy gyfeirio atynt;
  - (c) targedau ("targedau perfformiad") sydd i'w bodloni mewn perthynas â'r mesurau perfformiad hynny;
  - (d) camau sydd i'w cymryd mewn cysylltiad â'r safonau, y mesurau a'r targedau hynny.
- (4) Caiff y cod bennu –
  - (a) gwahanol safonau ansawdd ar gyfer –
    - (i) gwahanol categorïau o ofal a chymorth (neu, yn achos gofalwyr, cymorth);
    - (ii) gwahanol categorïau o bobl y mae arnynt angen gofal a chymorth (neu, yn achos gofalwyr, cymorth);
  - (b) gwahanol fesurau perfformiad neu dargedau perfformiad ar gyfer –
    - (i) gwahanol categorïau o ofal a chymorth (neu, yn achos gofalwyr, cymorth);
    - (ii) gwahanol categorïau o bobl sy'n darparu gofal a chymorth (neu, yn achos gofalwyr, cymorth);
  - (c) gwahanol safonau ansawdd, mesurau perfformiad neu dargedau perfformiad i fod yn gymwys ar wahanol adegau.
- (5) Rhaid i Weinidogion Cymru –
  - (a) cyhoeddi ar eu gwefan y cod sydd mewn grym am y tro, a
  - (b) peri i godau nad ydynt bellach mewn grym fod ar gael (ar eu gwefan neu fel arall) i'r cyhoedd.

- (7) Before issuing or revising the statement, the Welsh Ministers must consult such persons as they think fit.
- (8) The Welsh Ministers must, on issuing or revising the statement –
  - (a) lay a copy of the statement before the National Assembly for Wales, and
  - (b) publish the statement on their website.

**9 Power to issue a code to help achieve the outcomes**

- (1) The Welsh Ministers must issue, and from time to time revise, a code to help achieve the outcomes specified in the statement under section 8.
- (2) The code may –
  - (a) give guidance to any person providing care and support (or, in the case of carers, support) of the kind described in section 8(3), and
  - (b) impose requirements on local authorities in relation to provision of that kind.
- (3) The following are examples of the matters which may be set out in the code –
  - (a) standards (“quality standards”) to be achieved in the provision of care and support (or, in the case of carers, support);
  - (b) measures (“performance measures”) by reference to which performance in achieving those quality standards can be assessed;
  - (c) targets (“performance targets”) to be met in relation to those performance measures;
  - (d) steps to be taken in relation to those standards, measures and targets.
- (4) The code may specify –
  - (a) different quality standards for –
    - (i) different categories of care and support (or, in the case of carers, support);
    - (ii) different categories of people who need care and support (or, in the case of carers, support);
  - (b) different performance measures or performance targets for –
    - (i) different categories of care and support (or, in the case of carers, support);
    - (ii) different categories of persons who provide care and support (or, in the case of carers, support);
  - (c) different quality standards, performance measures or performance targets to apply at different times.
- (5) The Welsh Ministers must –
  - (a) publish on their website the code which is for the time being in force, and
  - (b) make available to the public (whether on their website or otherwise) codes which are no longer in force.

**10 Awdurdodau lleol a'r cod**

- (1) Wrth arfer ei swyddogaethau o dan y Ddeddf hon, rhaid i awdurdod lleol –
  - (a) gweithredu'n unol ag unrhyw ofynion perthnasol a osodir arno gan god a ddyroddir o dan adran 9, a
  - (b) rhoi sylw i unrhyw ganllawiau perthnasol sydd wedi eu cynnwys yn y cod hwnnw.
- (2) Pan fo mesurau perfformiad neu dargedau perfformiad wedi eu pennu mewn cod a ddyroddir o dan adran 9, maent i'w trin (i'r graddau y maent yn gymwys i berfformiad awdurdodau lleol wrth iddynt arfer eu swyddogaethau) fel pe baent wedi eu pennu fel dangosyddion perfformiad neu safonau perfformiad yn ôl eu trefn o dan adran 8(1) o Fesur Llywodraeth Leol (Cymru) 2009.

**11 Dyroddi'r cod, ei gymeradwyo a'i ddirymu**

- (1) Cyn dyroddi neu ddiwygio cod o dan adran 9, rhaid i Weinidogion Cymru ymgynghori ag unrhyw bersonau sy'n briodol yn eu barn hwy ynghylch drafft o'r cod (neu'r cod diwygiedig).
- (2) Os bydd Gweinidogion Cymru yn dymuno bwrw ymlaen â'r drafft (gydag addasiadau neu hebddynt) rhaid iddynt osod copi o'r drafft gerbron Cynulliad Cenedlaethol Cymru.
- (3) Os, cyn diwedd y cyfnod o 40 niwrnod, bydd Cynulliad Cenedlaethol Cymru yn penderfynu peidio â chymeradwyo'r drafft, ni chaniateir i Weinidogion Cymru ddyroddi'r cod (neu'r cod diwygiedig) ar ffurf y drafft hwnnw.
- (4) Os na wneir penderfyniad o'r fath cyn diwedd y cyfnod hwnnw –
  - (a) rhaid i Weinidogion Cymru ddyroddi'r cod (neu'r cod diwygiedig) ar ffurf y drafft, a
  - (b) daw'r cod (neu'r cod diwygiedig) i rym ar y dyddiad a bennir drwy orchymyn Gweinidogion Cymru.
- (5) O ran y cyfnod o 40 niwrnod –
  - (a) bydd yn dechrau ar y diwrnod y gosodir y drafft gerbron Cynulliad Cenedlaethol Cymru, a
  - (b) ni fydd yn cynnwys unrhyw amser pan fydd Cynulliad Cenedlaethol Cymru wedi ei ddiddymu neu pan fydd ar doriad am fwy na phedwar diwrnod.
- (6) Nid yw is-adran (3) yn atal drafft newydd o god (neu god diwygiedig) rhag cael ei osod gerbron Cynulliad Cenedlaethol Cymru.
- (7) Caniateir i Weinidogion Cymru ddirymu cod (neu god diwygiedig) a ddyroddir o dan yr adran hon mewn cod pellach neu drwy gyfarwyddyd.
- (8) Rhaid gosod cyfarwyddyd o dan is-adran (7) gerbron Cynulliad Cenedlaethol Cymru.

**12 Pŵer i helpu awdurdodau lleol i gydymffurfio â gofynion y cod**

- (1) Caiff Gweinidogion Cymru wneud unrhyw beth y maent yn ystyried y byddai'n debygol o helpu awdurdod lleol i gydymffurfio â gofynion sy'n cael eu gosod gan god o dan adran 9.

**10 Local authorities and the code**

- (1) In exercising its functions under this Act, a local authority must—
  - (a) act in accordance with any relevant requirements imposed upon it by a code issued under section 9, and
  - (b) have regard to any relevant guidance contained in that code.
- (2) Where performance measures or performance targets are specified in a code issued under section 9, they are to be treated (so far as they apply to the performance of local authorities in exercising their functions) as having been specified as performance indicators or performance standards respectively under section 8(1) of the Local Government (Wales) Measure 2009.

**11 Issue, approval and revocation of the code**

- (1) Before issuing or revising a code under section 9, the Welsh Ministers must consult such persons as they think fit on a draft of the code (or revised code).
- (2) If the Welsh Ministers wish to proceed with the draft (with or without modifications) they must lay a copy of the draft before the National Assembly for Wales.
- (3) If, before the end of the 40 day period, the National Assembly for Wales resolves not to approve the draft, the Welsh Ministers must not issue the code (or revised code) in the form of that draft.
- (4) If no such resolution is made before the end of that period—
  - (a) the Welsh Ministers must issue the code (or revised code) in the form of the draft, and
  - (b) the code (or revised code) comes into force on the date appointed by order of the Welsh Ministers.
- (5) The 40 day period—
  - (a) begins on the day on which the draft is laid before the National Assembly for Wales, and
  - (b) does not include any time during which the National Assembly for Wales is dissolved or is in recess for more than four days.
- (6) Subsection (3) does not prevent a new draft of a code (or revised code) from being laid before the National Assembly for Wales.
- (7) The Welsh Ministers may revoke a code (or revised code) issued under this section in a further code or by direction.
- (8) A direction under subsection (7) must be laid before the National Assembly for Wales.

**12 Power to help local authorities to comply with the code's requirements**

- (1) The Welsh Ministers may do anything which they consider is likely to help a local authority to comply with requirements imposed by a code under section 9.

- (2) Mae'r pŵer o dan is-adran (1) yn cynnwys pŵer i—
- (a) ymrwymo i drefniadau neu gytundebau gydag unrhyw berson;
  - (b) cydweithredu ag unrhyw berson, neu hwyluso neu gyd-gysylltu gweithgareddau unrhyw berson;
  - (c) arfer ar ran unrhyw berson unrhyw un neu rai o'i swyddogaethau;
  - (d) darparu staff, nwyddau, gwasanaethau neu lety i unrhyw berson.
- (3) Oni bai bod Gweinidogion Cymru'n arfer y pŵer o dan is-adran (1) mewn ymateb i gais a wnaed o dan is-adran (4), rhaid iddynt, cyn arfer y pŵer hwnnw, ymgynghori â'r canlynol—
- (a) yr awdurdod lleol y maent yn bwriadu ei gynorthwyo drwy arfer y pŵer, a
  - (b) y personau hynny sy'n ymddangos i Weinidogion Cymru eu bod yn rhanddeiliaid allweddol y byddai arfer y pŵer yn effeithio arnynt.
- (4) Os yw awdurdod lleol yn gofyn iddynt wneud hynny, rhaid i Weinidogion Cymru ystyried p'un ai i arfer eu pŵer o dan is-adran (1).

### 13 **Cyhoeddi gwybodaeth ac adroddiadau**

Caiff Gweinidogion Cymru gyhoeddi—

- (a) gwybodaeth ynghylch y ddarpariaeth o ofal a chymorth (neu yn achos gofalwyr, cymorth) o'r math a ddisgrifir yn adran 8(3), a
- (b) adroddiadau ynghylch y cynnydd a wnaed gan awdurdodau lleol ac eraill tuag at sicrhau—
  - (i) y canlyniadau a bennir mewn datganiad o dan adran 8;
  - (ii) y safonau ansawdd a'r targedau perfformiad (os oes rhai) a bennir mewn cod o dan adran 9.

#### *Trefniadau lleol*

### 14 **Asesu anghenion am ofal a chymorth, cymorth i ofalwyr a gwasanaethau ataliol**

- (1) Rhaid i awdurdod lleol a phob Bwrdd Iechyd Lleol y mae unrhyw ran o'i ardal o fewn ardal yr awdurdod lleol, yn unol â rheoliadau, asesu ar y cyd—
- (a) i ba raddau y mae pobl y mae arnynt angen gofal a chymorth yn ardal yr awdurdod lleol;
  - (b) i ba raddau y mae yna ofalwyr yn ardal yr awdurdod lleol y mae angen cymorth arnynt;
  - (c) i ba raddau y mae yna bobl yn ardal yr awdurdod lleol nad yw eu hanghenion am ofal a chymorth (neu, yn achos gofalwyr, eu hanghenion am gymorth) yn cael eu diwallu (gan yr awdurdod, y Bwrdd neu fel arall);
  - (d) ystod a lefel y gwasanaethau y mae eu hangen i ddiwallu anghenion gofal a chymorth pobl yn ardal yr awdurdod lleol (gan gynnwys anghenion gofalwyr am gymorth);
  - (e) ystod a lefel y gwasanaethau y mae eu hangen i sicrhau'r dibenion yn adran 15(2) (gwasanaethau ataliol) yn ardal yr awdurdod lleol;



- (2) The power under subsection (1) includes power –
  - (a) to enter into arrangements or agreements with any person;
  - (b) to co-operate with, or facilitate or co-ordinate the activities of, any person;
  - (c) to exercise on behalf of any person any functions of that person;
  - (d) to provide staff, goods, services or accommodation to any person.
- (3) Unless the Welsh Ministers are exercising the power under subsection (1) in response to a request made under subsection (4), they must, before exercising that power, consult –
  - (a) the local authority which they propose to assist by the exercise of the power, and
  - (b) those persons who appear to the Welsh Ministers to be key stakeholders affected by the exercise of the power.
- (4) If a local authority asks them to do so, the Welsh Ministers must consider whether to exercise their power under subsection (1).

### **13 Publication of information and reports**

The Welsh Ministers may publish –

- (a) information about the provision of care and support (or, in the case of carers, support) of the kind described in section 8(3), and
- (b) reports on the progress made by local authorities and others towards the achievement of –
  - (i) the outcomes specified in a statement under section 8;
  - (ii) the quality standards and performance targets (if any) specified in a code under section 9.

#### *Local arrangements*

### **14 Assessment of needs for care and support, support for carers and preventative services**

- (1) A local authority and each Local Health Board any part of whose area lies within the area of the local authority must, in accordance with regulations, jointly assess –
  - (a) the extent to which there are people in the local authority's area who need care and support;
  - (b) the extent to which there are carers in the local authority's area who need support;
  - (c) the extent to which there are people in the local authority's area whose needs for care and support (or, in the case of carers, support) are not being met (by the authority, the Board or otherwise);
  - (d) the range and level of services required to meet the care and support needs of people in the local authority's area (including the support needs of carers);
  - (e) the range and level of services required to achieve the purposes in section 15(2) (preventative services) in the local authority's area;

- (f) y camau y mae angen eu cymryd i ddarparu'r ystod a'r lefel o wasanaethau a nodir yn unol â pharagraffau (d) ac (e) drwy gyfrwng y Gymraeg.
- (2) Caiff rheoliadau o dan is-adran (1), er enghraifft, ddarparu ar gyfer amseru ac adolygu asesiadau.
- (3) Yn adran 40 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006 (strategaethau iechyd a llesiant) –
- (a) ar ôl is-adran (2) mewnosoder –
- “(2A) The responsible bodies must take into account the most recent assessment under section 14 of the Social Services and Well-being (Wales) Act 2014 (assessment of needs for care and support, support for carers and preventative services) in the formulation or review of the strategy.
- (2B) The responsible bodies must jointly publish the strategy.
- (2C) The Local Health Board (or Boards) responsible for the strategy must submit to the Welsh Ministers any part of the strategy which relates to the health and well-being of carers (and if more than one Board is responsible for the strategy, they must do so jointly).”;
- (b) yn is-adran (6), ar ôl paragraff (g) mewnosoder –
- “(h) the submission of the strategy or a part of the strategy, to the Welsh Ministers (including, for example, the form in which and the time by which the strategy or part is to be submitted).”;
- (c) yn is-adran (9), mewnosoder yn y man priodol –
- ““carer” has the same meaning as in the Social Services and Well-being (Wales) Act 2014.”.
- (4) Yn adran 26 o Ddeddf Plant 2004 (cynlluniau plant a phobl ifanc), ar ôl is-adran (1A) mewnosoder –
- “(1AA) A local authority in Wales must take into account the most recent assessment under section 14 of the Social Services and Well-being (Wales) Act 2014 (assessment of needs for care and support, support for carers and preventative services) in the preparation and review of the plan.”

## 15 **Gwasanaethau ataliol**

- (1) Rhaid i awdurdod lleol ddarparu neu drefnu i ddarparu ystod a lefel o wasanaethau a fydd yn ei farn ef yn sicrhau'r dibenion yn is-adran (2) yn ei ardal.
- (2) Y dibenion yw –
- (a) cyfrannu at atal neu oedi datblygiad anghenion pobl am ofal a chymorth;
- (b) lleihau'r anghenion am ofal a chymorth i bobl y mae arnynt anghenion o'r fath;
- (c) hyrwyddo magwraeth plant gan eu teuluoedd, pan fo hynny'n gyson â llesiant y plant;

- (f) the actions required to provide the range and level of services identified in accordance with paragraphs (d) and (e) through the medium of Welsh.
- (2) Regulations under subsection (1) may, for example, provide for the timing and review of assessments.
- (3) In section 40 of the National Health Service (Wales) Act 2006 (health and well-being strategies) –
  - (a) after subsection (2) insert –
    - “(2A) The responsible bodies must take into account the most recent assessment under section 14 of the Social Services and Well-being (Wales) Act 2014 (assessment of needs for care and support, support for carers and preventative services) in the formulation or review of the strategy.
    - (2B) The responsible bodies must jointly publish the strategy.
    - (2C) The Local Health Board (or Boards) responsible for the strategy must submit to the Welsh Ministers any part of the strategy which relates to the health and well-being of carers (and if more than one Board is responsible for the strategy, they must do so jointly).”;
  - (b) in subsection (6), after paragraph (g) insert –
    - “(h) the submission of the strategy or a part of the strategy, to the Welsh Ministers (including, for example, the form in which and the time by which the strategy or part is to be submitted).”;
  - (c) in subsection (9), insert in the appropriate place –
    - ““carer” has the same meaning as in the Social Services and Well-being (Wales) Act 2014.”.
- (4) In section 26 of the Children Act 2004 (children and young people’s plans), after subsection (1A) insert –
  - “(1AA) A local authority in Wales must take into account the most recent assessment under section 14 of the Social Services and Well-being (Wales) Act 2014 (assessment of needs for care and support, support for carers and preventative services) in the preparation and review of the plan.”

## **15 Preventative services**

- (1) A local authority must provide or arrange for the provision of a range and level of services which it considers will achieve the purposes in subsection (2) in its area.
- (2) The purposes are –
  - (a) contributing towards preventing or delaying the development of people’s needs for care and support;
  - (b) reducing the needs for care and support of people who have such needs;
  - (c) promoting the upbringing of children by their families, where that is consistent with the well-being of children;

- (d) cadw i'r lleiaf posibl yr effaith sydd gan eu hanabledau ar bobl anabl;
  - (e) cyfrannu at atal pobl rhag dioddef gan gamdriniaeth neu esgeulustod;
  - (f) lleihau'r angen am—
    - (i) achosion cyfreithiol am orchmynion gofalu neu oruchwylio o dan Ddeddf Plant 1989,
    - (ii) achosion troseddol yn erbyn plant,
    - (iii) unrhyw achosion teuluol neu achosion cyfreithiol eraill mewn perthynas â phlant a allai arwain at eu rhoi yng ngofal awdurdod lleol, neu
    - (iv) achosion cyfreithiol o dan awdurdodaeth gynhenid yr Uchel Lys mewn perthynas â phlant;
  - (g) annog plant i beidio â throseddu;
  - (h) osgoi'r angen i blant gael eu lleoli mewn llety diogel;
  - (i) galluogi pobl i fyw eu bywydau mewn ffordd mor annibynnol â phosibl.
- (3) Mae'r pethau y gellir eu darparu neu eu trefnu wrth gyflawni'r ddyletswydd yn is-adran (1) yn cynnwys gofal a chymorth (neu yn achos gofalwyr, cymorth) o'r math y mae'n rhaid eu darparu neu y caniateir eu darparu o dan adrannau 35 i 45, ond nid ydynt yn gyfyngedig i'r gofal hwnnw a'r cymorth hwnnw.
- (4) Rhaid i awdurdod lleol, wrth arfer ei swyddogaethau eraill, roi sylw i bwysigrwydd cyflawni'r dibenion yn is-adran (2) yn ei ardal.
- (5) Rhaid i Fwrdd Iechyd Lleol, wrth arfer ei swyddogaethau, roi sylw i bwysigrwydd cyflawni'r dibenion yn is-adran (2) yn ei ardal.
- (6) Wrth gyflawni ei ddyletswydd o dan is-adran (1)—
- (a) rhaid i awdurdod lleol nodi'r gwasanaethau sydd eisoes ar gael yn ei ardal a all helpu i sicrhau'r dibenion yn is-adran (2) ac ystyried cynnwys neu ddefnyddio'r gwasanaethau hynny wrth gyflawni'r ddyletswydd;
  - (b) caiff awdurdod lleol gymryd i ystyriaeth wasanaethau y mae'n barnu y gallai fod yn rhesymol i bersonau eraill eu darparu neu eu trefnu wrth iddo benderfynu beth y dylai ddarparu neu drefnu;
  - (c) rhaid i awdurdod lleol wneud y defnydd gorau o adnoddau'r awdurdod ac yn benodol osgoi darpariaeth a allai beri gwariant anghymesur.
- (7) Nid yw darpariaeth i'w hystyried yn un sy'n peri gwariant anghymesur ond oherwydd bod y ddarpariaeth honno'n ddrutach na darpariaeth gyffelyb.
- (8) Caiff dau neu fwy o awdurdodau lleol gyflawni'r ddyletswydd ar y cyd o dan is-adran (1) mewn perthynas â'u hardal gyfun; a phan fônt yn gwneud hynny—
- (a) mae cyfeiriadau yn yr adran hon at awdurdod lleol i'w darllen fel cyfeiriadau at yr awdurdodau yn gweithredu ar y cyd, a
  - (b) mae cyfeiriadau yn yr adran hon at ardal awdurdod lleol i'w darllen fel cyfeiriadau at yr ardal gyfun.

- (d) minimising the effect on disabled people of their disabilities;
  - (e) contributing towards preventing people from suffering abuse or neglect;
  - (f) reducing the need for –
    - (i) proceedings for care or supervision orders under the Children Act 1989,
    - (ii) criminal proceedings against children,
    - (iii) any family or other proceedings in relation to children which might lead to them being placed in local authority care, or
    - (iv) proceedings under the inherent jurisdiction of the High Court in relation to children;
  - (g) encouraging children not to commit criminal offences;
  - (h) avoiding the need for children to be placed in secure accommodation;
  - (i) enabling people to live their lives as independently as possible.
- (3) The things that may be provided or arranged in discharging the duty under subsection (1) include, but are not limited to, care and support (or in the case of carers, support) of the kind that must or may be provided under sections 35 to 45.
- (4) A local authority must, in the exercise of its other functions, have regard to the importance of achieving the purposes in subsection (2) in its area.
- (5) A Local Health Board must, in the exercise of its functions, have regard to the importance of achieving the purposes in subsection (2) in its area.
- (6) In discharging its duty under subsection (1) a local authority –
- (a) must identify the services already available in the authority's area which may help in achieving the purposes in subsection (2) and consider involving or making use of those services in discharging the duty;
  - (b) may take account of services which the authority considers might reasonably be provided or arranged by other persons in deciding what it should provide or arrange;
  - (c) must make the best use of the authority's resources and in particular avoid provision which might give rise to disproportionate expenditure.
- (7) Provision is not to be considered as giving rise to disproportionate expenditure only because that provision is more expensive than comparable provision.
- (8) Two or more local authorities may jointly discharge the duty under subsection (1) in relation to their combined area; where they do so –
- (a) references in this section to a local authority are to be read as references to the authorities acting jointly, and
  - (b) references in this section to a local authority's area are to be read as references to the combined area.

- (9) Gweler adrannau 46 (eithriad ar gyfer personau sy'n ddarostyngedig i reolaeth fewnfudo), 47 (eithriad ar gyfer darparu gwasanaethau iechyd), 48 (eithriad ar gyfer darparu tai etc) a 49 (cyfyngiadau ar ddarparu taliadau) am eithriad i'r ddyletswydd o dan is-adran (1) a chyfyngiadau ar y modd y caniateir i'r ddyletswydd gael ei chyflawni.

**16 Hyrwyddo mentrau cymdeithasol, mentrau cydweithredol, gwasanaethau sy'n cael eu harwain gan ddefnyddwyr a'r trydydd sector**

- (1) Rhaid i awdurdod lleol hyrwyddo—

- (a) datblygiad mentrau cymdeithasol yn ei ardal i ddarparu gofal a chymorth a gwasanaethau ataliol;
- (b) datblygiad sefydliadau cydweithredol neu drefniadau cydweithredol yn ei ardal i ddarparu gofal a chymorth a gwasanaethau ataliol;
- (c) ymglymiad personau y mae gofal a chymorth neu wasanaethau ataliol i'w darparu ar eu cyfer yn y broses o ddylunio a gweithredu'r ddarpariaeth honno;
- (d) argaeledd gofal a chymorth a gwasanaethau ataliol yn ei ardal gan sefydliadau trydydd sector (p'un a yw'r sefydliadau yn fentrau cymdeithasol neu'n sefydliadau cydweithredol ai peidio).

- (2) Yn yr adran hon—

mae "gofal a chymorth" ("*care and support*") yn cynnwys cymorth i ofalwyr;

ystyr "gwasanaethau ataliol" ("*preventative services*") yw gwasanaethau y mae'r awdurdod lleol o'r farn y byddent yn sicrhau unrhyw un neu rai o'r dibenion yn adran 15(2);

mae "y gymdeithas" ("*society*") yn cynnwys adran o'r gymdeithas;

ystyr "menter gymdeithasol" ("*social enterprise*") yw sefydliad y mae ei weithgareddau yn gyfan gwbl neu'n bennaf yn rhai y gallai person farnu'n rhesymol eu bod yn weithgareddau a gyflawnir er budd y gymdeithas ("ei amcanion cymdeithasol"), ac sydd—

- (a) yn creu'r rhan fwyaf o'i incwm drwy fusnes neu fasnach,
- (b) yn ailfuddsoddi'r rhan fwyaf o'i elw yn ei amcanion cymdeithasol,
- (c) yn annibynnol ar unrhyw awdurdod cyhoeddus, a
- (d) yn cael ei berchenogi, ei lywio a'i reoli mewn ffordd sy'n gyson â'i amcanion cymdeithasol;

ystyr "sefydliad trydydd sector" ("*third sector organisation*") yw sefydliad y gallai person farnu'n rhesymol ei fod yn sefydliad sy'n bodoli'n gyfan gwbl neu'n bennaf i ddarparu buddion i'r gymdeithas.

- (3) At ddibenion yr adran hon, caiff rheoliadau ddarparu—

- (a) bod gweithgareddau o ddisgrifiad penodedig i'w trin neu ddim i'w trin fel gweithgareddau y gallai person farnu'n rhesymol eu bod yn weithgareddau sy'n cael eu chyflawni er budd y gymdeithas;

- (9) See sections 46 (exception for persons subject to immigration control), 47 (exception for provision of health services), 48 (exception for provision of housing etc) and 49 (restrictions on provision of payments) for an exception to the duty under subsection (1) and limitations on the manner in which the duty may be discharged.

## 16 Promoting social enterprises, co-operatives, user led services and the third sector

- (1) A local authority must promote –

- (a) the development in its area of social enterprises to provide care and support and preventative services;
- (b) the development in its area of co-operative organisations or arrangements to provide care and support and preventative services;
- (c) the involvement of persons for whom care and support or preventative services are to be provided in the design and operation of that provision;
- (d) the availability in its area of care and support and preventative services from third sector organisations (whether or not the organisations are social enterprises or co-operative organisations).

- (2) In this section –

“care and support” (*“gofal a chymorth”*) includes support for carers;

“preventative services” (*“gwasanaethau ataliol”*) means services the local authority considers would achieve any of the purposes in section 15(2);

“social enterprise” (*“menter gymdeithasol”*) means an organisation whose activities are wholly or mainly activities which a person might reasonably consider to be activities carried on for the benefit of society (“its social objects”), and which –

- (a) generates most of its income through business or trade,
- (b) reinvests most of its profits in its social objects,
- (c) is independent of any public authority, and
- (d) is owned, controlled and managed in a way that is consistent with its social objects;

“society” (*“y gymdeithas”*) includes a section of society;

“third sector organisation” (*“sefydliad trydydd sector”*) means an organisation which a person might reasonably consider to exist wholly or mainly to provide benefits for society.

- (3) For the purposes of this section, regulations may provide –

- (a) that activities of a specified description are or are not to be treated as activities which a person might reasonably consider to be activities carried on for the benefit of society;

- (b) bod sefydliadau neu drefniadau o ddisgrifiad penodedig i'w trin neu ddim i'w trin fel –
  - (i) mentrau cymdeithasol,
  - (ii) sefydliadau cydweithredol neu drefniadau cydweithredol, neu
  - (iii) sefydliadau trydydd sector;
- (c) ar gyfer yr hyn sydd, neu'r hyn nad yw, neu a gaiff fod, yn gyfystyr ag adran o'r gymdeithas.

## 17 Darparu gwybodaeth, cyngor a chynhorthwy

- (1) Rhaid i awdurdod lleol sicrhau y darperir gwasanaeth i roi i bobl –
  - (a) gwybodaeth a chyngor sy'n ymwneud â gofal a chymorth, a
  - (b) cynhorthwy i gael gafael ar ofal a chymorth.
- (2) Yn is-adran (1)(a), mae "gwybodaeth" yn cynnwys gwybodaeth ariannol (gan gynnwys gwybodaeth am daliadau uniongyrchol), ond nid yw'n gyfyngedig i'r wybodaeth honno.
- (3) Rhaid i'r awdurdod lleol geisio sicrhau bod y gwasanaeth –
  - (a) yn ddigonol i alluogi person i wneud cynlluniau ar gyfer diwallu anghenion am ofal a chymorth a allai godi, a
  - (b) yn darparu gwybodaeth, cyngor a chynhorthwy i berson mewn modd sy'n hygyrch i'r person hwnnw.
- (4) Rhaid i'r gwasanaeth gynnwys, o leiaf, gyhoeddi gwybodaeth a chyngor am y materion a ganlyn –
  - (a) y system y darperir ar ei chyfer gan y Ddeddf hon a'r modd y mae'r system yn gweithredu yn ardal yr awdurdod,
  - (b) y mathau o ofal a chymorth sydd ar gael yn ardal yr awdurdod,
  - (c) sut i gael gafael ar y gofal a'r cymorth sydd ar gael, a
  - (d) sut i leisio pryderon am lesiant person y mae'n ymddangos bod arno anghenion am ofal a chymorth.
- (5) Rhaid i Fwrdd Iechyd Lleol neu Ymddiriedolaeth GIG sy'n darparu gwasanaethau mewn ardal awdurdod lleol, at ddibenion yr adran hon, ddarparu gwybodaeth i'r awdurdod lleol hwnnw am y gofal a'r cymorth y mae'n eu darparu yn ardal yr awdurdod lleol.
- (6) Caiff dau neu fwy o awdurdodau lleol sicrhau ar y cyd fod gwasanaeth yn cael ei ddarparu o dan yr adran hon i'w hardal gyfun; a phan fônt yn gwneud hynny –
  - (a) mae cyfeiriadau yn yr adran hon at awdurdod lleol i'w darllen fel cyfeiriadau at yr awdurdodau yn gweithredu ar y cyd, a
  - (b) mae cyfeiriadau yn yr adran hon at ardal awdurdod lleol i'w darllen fel cyfeiriadau at yr ardal gyfun.
- (7) Yn yr adran hon, mae "gofal a chymorth" yn cynnwys cymorth i ofalwyr.



- (b) that organisations or arrangements of a specified description are or are not to be treated as –
  - (i) social enterprises,
  - (ii) co-operative organisations or arrangements, or
  - (iii) third sector organisations;
- (c) for what does, does not or may constitute a section of society.

**17 Provision of information, advice and assistance**

- (1) A local authority must secure the provision of a service for providing people with –
  - (a) information and advice relating to care and support, and
  - (b) assistance in accessing care and support.
- (2) In subsection (1)(a), “information” includes, but is not limited to, financial information (including information about direct payments).
- (3) The local authority must seek to ensure that the service –
  - (a) is sufficient to enable a person to make plans for meeting needs for care and support that might arise, and
  - (b) provides information, advice and assistance to a person in a manner which is accessible to that person.
- (4) The service must include, as a minimum, the publication of information and advice on the following matters –
  - (a) the system provided for by this Act and how the system operates in the authority’s area,
  - (b) the types of care and support available in the authority’s area,
  - (c) how to access the care and support that is available, and
  - (d) how to raise concerns about the well-being of a person who appears to have needs for care and support.
- (5) A Local Health Board or an NHS Trust providing services in the area of a local authority must, for the purposes of this section, provide that local authority with information about the care and support it provides in the local authority’s area.
- (6) Two or more local authorities may jointly secure the provision of a service under this section for their combined area; and where they do so –
  - (a) references in this section to a local authority are to be read as references to the authorities acting jointly, and
  - (b) references in this section to a local authority’s area are to be read as references to the combined area.
- (7) In this section, “care and support” includes support for carers.

**18 Cofrestrau o bobl â nam ar eu golwg, pobl â nam ar eu clyw a phobl anabl eraill**

- (1) Rhaid i awdurdod lleol lunio a chynnal cofrestr o'r bobl sy'n preswyllo fel arfer yn ardal yr awdurdod ac—
  - (a) sydd â nam ar eu golwg neu nam difrifol ar eu golwg,
  - (b) sydd â nam ar eu clyw neu nam difrifol ar eu clyw, neu
  - (c) sydd â nam ar eu golwg ac ar eu clyw sydd, gyda'i gilydd, yn cael effaith sylweddol ar eu bywydau bob dydd.
- (2) Rhaid i'r gofrestr nodi, mewn cysylltiad â phob person sydd wedi ei gynnwys yn y gofrestr—
  - (a) y paragraff yn is-adran (1) y mae'r person hwnnw yn dod o'i fewn, a
  - (b) amgylchiadau ieithyddol y person.
- (3) Caiff rheoliadau bennu, at ddibenion is-adran (1), categorïau o bobl sydd i'w trin, neu nad ydynt i'w trin, fel pe baent yn dod o fewn paragraff (a), (b) neu (c) o'r is-adran honno.
- (4) Rhaid i awdurdod lleol lunio a chynnal cofrestr o blant y mae is-adran (6) yn gymwys iddynt ac sydd o fewn ardal yr awdurdod lleol.
- (5) Caiff awdurdod lleol lunio a chynnal cofrestr o oedolion y mae is-adran (6) yn gymwys iddynt ac sydd yn preswyllo fel arfer yn ardal yr awdurdod lleol.
- (6) Mae'r is-adran hon yn gymwys i berson—
  - (a) sy'n anabl,
  - (b) nad yw'n anabl ond y mae ganddo nam corfforol neu feddyliol sy'n arwain, neu y mae'r awdurdod yn barnu y gall yn y dyfodol arwain, at anghenion am ofal a chymorth, neu
  - (c) sy'n dod o fewn unrhywategori arall o bersonau y mae'r awdurdod yn barnu ei bod yn briodol ei gynnwys mewn cofrestr o bersonau y mae arnynt, neu y mae'r awdurdod yn ystyried y gall fod arnynt yn y dyfodol, anghenion am ofal a chymorth.
- (7) O ran awdurdod lleol—
  - (a) caiff gategoreiddio pobl sydd wedi eu cynnwys mewn cofrestr o dan is-adran (4) neu (5) fel y gwel yn dda, a
  - (b) rhaid iddo nodi amgylchiadau ieithyddol y bobl hynny yn y gofrestr berthnasol.
- (8) Caniateir i'r cofrestrau a lunnir ac a gedwir o dan yr adran hon gael eu defnyddio wrth arfer swyddogaethau'r awdurdod; er enghraifft, er mwyn—
  - (a) cynllunio'r modd y mae'r awdurdod yn darparu gwasanaethau i ddiwallu anghenion am ofal a chymorth neu gymorth i ofalwyr, a
  - (b) monitro newidiadau dros amser yn nifer y bobl yn ardal yr awdurdod y mae arnynt anghenion am ofal a chymorth a'r mathau o anghenion sydd ganddynt hwy neu eu gofalwyr.

**18 Registers of sight-impaired, hearing-impaired and other disabled people**

- (1) A local authority must establish and maintain a register of the people ordinarily resident in the authority's area who—
  - (a) are sight-impaired or severely sight-impaired,
  - (b) are hearing-impaired or severely hearing-impaired, or
  - (c) have sight and hearing impairments which, in combination, have a significant effect on their day to day lives.
- (2) The register must identify, in respect of each person included in the register—
  - (a) the paragraph in subsection (1) within which that person falls, and
  - (b) the person's linguistic circumstances.
- (3) Regulations may specify, for the purposes of subsection (1), categories of people who are, or are not, to be treated as falling within paragraph (a), (b) or (c) of that subsection.
- (4) A local authority must establish and maintain a register of children to whom subsection (6) applies and who are within the local authority's area.
- (5) A local authority may establish and maintain a register of adults to whom subsection (6) applies and who are ordinarily resident in the local authority's area.
- (6) This subsection applies to a person who—
  - (a) is disabled,
  - (b) is not disabled but has a physical or mental impairment which gives rise, or which the authority considers may in the future give rise, to needs for care and support, or
  - (c) comes within any other category of persons the authority considers appropriate to include in a register of persons who have, or who the authority considers may in the future have, needs for care and support.
- (7) A local authority—
  - (a) may categorise people included in a register under subsection (4) or (5) as it thinks fit, and
  - (b) must identify the linguistic circumstances of those people in the relevant register.
- (8) The registers established and maintained under this section may be used in the exercise of the authority's functions; for example, for the purpose of—
  - (a) planning the provision by the authority of services to meet needs for care and support or support for carers, and
  - (b) monitoring changes over time in the number of people in the authority's area with needs for care and support and the types of needs they or their carers have.

- (9) Nid oes dim yn yr adran hon yn ei gwneud yn ofynnol i awdurdod lleol gynnwys unrhyw berson mewn cofrestr a gedwir o dan yr adran hon oni bai –
- (a) bod y person wedi gwneud cais i gael ei gynnwys yn y gofrestr, neu
  - (b) bod cais i'w gynnwys felly wedi ei wneud ar ran y person.
- (10) Pan fo awdurdod lleol yn cynnwys person mewn cofrestr a gedwir o dan yr adran hon –
- (a) rhaid i'r awdurdod hysbysu'r person ei fod wedi ei gynnwys felly, a
  - (b) os gwneir cais gan y person neu ar ran y person, rhaid i'r awdurdod ddileu o'r gofrestr unrhyw ddata personol (o fewn ystyr "personal data" yn Neddf Diogelu Data 1998) sy'n ymwneud â'r person hwnnw.

### RHAN 3

#### ASESU ANGHENION UNIGOLION

##### *Asesu oedolion*

#### 19 **Dyletswydd i asesu anghenion oedolyn am ofal a chymorth**

- (1) Pan fo'n ymddangos i awdurdod lleol y gall fod ar oedolyn anghenion am ofal a chymorth, rhaid i'r awdurdod asesu –
  - (a) a oes ar yr oedolyn anghenion am ofal a chymorth, a
  - (b) os oes, beth yw'r anghenion hynny.
- (2) Mae'r ddyletswydd o dan is-adran (1) yn gymwys o ran –
  - (a) oedolyn sy'n preswyllo fel arfer yn ardal yr awdurdod, a
  - (b) unrhyw oedolyn arall sydd o fewn ardal yr awdurdod.
- (3) Mae'r ddyletswydd o dan is-adran (1) yn gymwys ni waeth beth yw barn yr awdurdod lleol ar –
  - (a) lefel anghenion yr oedolyn am ofal a chymorth, neu
  - (b) lefel adnoddau ariannol yr oedolyn.
- (4) Wrth wneud asesiad o anghenion o dan yr adran hon, rhaid i'r awdurdod lleol –
  - (a) ceisio canfod y canlyniadau y mae'r oedolyn yn dymuno eu sicrhau mewn bywyd o ddydd i ddydd,
  - (b) asesu a allai darparu –
    - (i) gofal a chymorth,
    - (ii) gwasanaethau ataliol, neu
    - (iii) gwybodaeth, cyngor neu gynhorthwy,
 gyfrannu at sicrhau'r canlyniadau hynny neu fel arall ddiwallu'r anghenion a nodir gan yr asesiad, ac os felly, i ba raddau, ac
  - (c) asesu a allai materion eraill gyfrannu at sicrhau'r canlyniadau hynny neu fel arall ddiwallu'r anghenion hynny, ac os felly, i ba raddau.

- (9) Nothing in this section requires a local authority to include any person in a register maintained under this section unless—
  - (a) the person has applied to be included in the register, or
  - (b) an application to be so included has been made on the person’s behalf.
- (10) Where a local authority includes a person in a register maintained under this section, the authority—
  - (a) must inform the person that he or she has been so included, and
  - (b) if a request is made by the person or on the person’s behalf, must remove from the register any personal data (within the meaning of the Data Protection Act 1998) relating to that person.

### **PART 3**

#### **ASSESSING THE NEEDS OF INDIVIDUALS**

##### *Assessing adults*

#### **19 Duty to assess the needs of an adult for care and support**

- (1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—
  - (a) whether the adult does have needs for care and support, and
  - (b) if the adult does, what those needs are.
- (2) The duty under subsection (1) applies in relation to—
  - (a) an adult who is ordinarily resident in the authority’s area, and
  - (b) any other adult who is within the authority’s area.
- (3) The duty under subsection (1) applies regardless of the local authority’s view of—
  - (a) the level of the adult’s needs for care and support, or
  - (b) the level of the adult’s financial resources.
- (4) In carrying out a needs assessment under this section, the local authority must—
  - (a) seek to identify the outcomes that the adult wishes to achieve in day to day life,
  - (b) assess whether, and if so, to what extent, the provision of—
    - (i) care and support,
    - (ii) preventative services, or
    - (iii) information, advice or assistance,could contribute to the achievement of those outcomes or otherwise meet needs identified by the assessment, and
  - (c) assess whether, and if so, to what extent, other matters could contribute to the achievement of those outcomes or otherwise meet those needs.

- (5) Rhaid i awdurdod lleol, wrth iddo wneud asesiad o anghenion o dan yr adran hon, gynnwys—
- (a) yr oedolyn, a
  - (b) pan fo'n ddichonadwy, unrhyw ofalwr sydd gan yr oedolyn.
- (6) Natur yr asesiad o anghenion sy'n ofynnol gan yr adran hon yw un y mae'r awdurdod lleol yn barnu ei fod yn gymesur o dan yr amgylchiadau, yn ddarostyngedig i unrhyw ofyniad mewn rheoliadau o dan adran 30.

## **20 Gwrthod asesiad o anghenion ar gyfer oedolyn**

- (1) Os yw oedolyn (neu, pan fo'n gymwys, person awdurdodedig) yn gwrthod asesiad o'i anghenion o dan adran 19, nid yw'r ddyletswydd o dan yr adran honno i asesu anghenion yr oedolyn yn gymwys.
- (2) Ond nid yw gwrthodiad o dan is-adran (1) yn rhyddhau awdurdod lleol o'i ddyletswydd o dan adran 19 yn yr achosion a ganlyn—

ACHOS 1 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan yr oedolyn—

- (a) nad oes gan yr oedolyn alluedd i benderfynu a wrthoda gael yr asesiad, ond
- (b) bod person awdurdodedig i wneud y penderfyniad ar ran yr oedolyn;

ACHOS 2 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan yr oedolyn—

- (a) nad oes gan yr oedolyn alluedd i benderfynu a wrthoda gael yr asesiad,
- (b) nad oes person awdurdodedig i wneud y penderfyniad ar ran yr oedolyn, ac
- (c) y byddai cael yr asesiad er lles pennaf yr oedolyn;

ACHOS 3 - mae'r awdurdod lleol yn amau bod yr oedolyn yn cael, neu'n wynebu risg o gael, ei gam-drin neu ei esgeuluso.

- (3) Pan fo awdurdod lleol wedi ei ryddhau o'i ddyletswydd o dan adran 19 drwy wrthodiad o dan yr adran hon, ailymrwymir i'r ddyletswydd—
- (a) os yw'r oedolyn (neu, pan fo'n gymwys, person awdurdodedig) yn gofyn wedyn am asesiad, neu
  - (b) os yw'r awdurdod lleol o'r farn bod anghenion neu amgylchiadau'r oedolyn wedi newid,

(yn ddarostyngedig i unrhyw wrthodiad pellach o dan yr adran hon).

- (4) Yn yr adran hon ystyr "person awdurdodedig" yw person sydd wedi ei awdurdodi o dan Ddeddf Galluedd Meddyliol 2005 (p'un ai yn nhermau cyffredinol neu benodol) i benderfynu a wrthoda asesiad o anghenion ar ran yr oedolyn neu a ofynna am asesiad o anghenion ar ei ran.

- (5) A local authority, in carrying out a needs assessment under this section, must involve—
  - (a) the adult, and
  - (b) where feasible, any carer that the adult has.
- (6) The nature of the needs assessment required by this section is one that the local authority considers proportionate in the circumstances, subject to any requirement in regulations under section 30.

## **20 Refusal of a needs assessment for an adult**

- (1) If an adult (or, where applicable, an authorised person) refuses a needs assessment under section 19, the duty under that section to assess the adult's needs does not apply.
- (2) But a refusal under subsection (1) does not discharge a local authority from its duty under section 19 in the following cases—
  - CASE 1 - the local authority is satisfied, in the case of a refusal given by the adult, that—
    - (a) the adult lacks capacity to decide whether to refuse to have the assessment, but
    - (b) there is an authorised person to make the decision on the adult's behalf;
  - CASE 2 - the local authority is satisfied, in the case of a refusal given by the adult, that—
    - (a) the adult lacks capacity to decide whether to refuse to have the assessment,
    - (b) there is no authorised person to make the decision on the adult's behalf, and
    - (c) having the assessment would be in the adult's best interests;
  - CASE 3 - the local authority suspects that the adult is experiencing or at risk of abuse or neglect.
- (3) Where a local authority has been discharged from its duty under section 19 by a refusal under this section, the duty is re-engaged if—
  - (a) the adult (or, where applicable, an authorised person) subsequently asks for an assessment, or
  - (b) the local authority considers that the adult's needs or circumstances have changed, (subject to any further refusal under this section).
- (4) In this section "authorised person" means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the adult's behalf.

*Asesu plant***21 Dyletswydd i asesu anghenion plentyn am ofal a chymorth**

- (1) Pan fo'n ymddangos i awdurdod lleol y gall fod angen gofal a chymorth ar blentyn yn ychwanegol at, neu yn lle, y gofal a'r cymorth sy'n cael eu darparu gan deulu'r plentyn, rhaid i'r awdurdod asesu—
  - (a) a oes angen gofal a chymorth o'r math hwnnw ar y plentyn, a
  - (b) os oes, beth yw'r anghenion hynny.
- (2) Mae'r ddyletswydd o dan is-adran (1) yn gymwys o ran—
  - (a) plentyn sy'n preswyllo fel arfer yn ardal yr awdurdod, a
  - (b) unrhyw blentyn arall sydd o fewn ardal yr awdurdod.
- (3) Mae'r ddyletswydd o dan is-adran (1) yn gymwys ni waeth beth fo barn yr awdurdod lleol—
  - (a) ar lefel anghenion y plentyn am ofal a chymorth, neu
  - (b) ar lefel adnoddau ariannol y plentyn, rhieni'r plentyn neu unrhyw berson arall a chanddo gyfrifoldeb rhiant dros y plentyn.
- (4) Wrth wneud asesiad o anghenion o dan yr adran hon, rhaid i'r awdurdod lleol—
  - (a) asesu anghenion datblygiadol y plentyn,
  - (b) ceisio canfod y canlyniadau—
    - (i) y mae'r plentyn yn dymuno eu sicrhau, i'r graddau y mae'n barnu ei bod yn briodol o roi sylw i oedran a dealltwriaeth y plentyn,
    - (ii) y mae'r personau a chanddynt gyfrifoldeb rhiant dros y plentyn yn dymuno eu sicrhau mewn perthynas â'r plentyn, i'r graddau y mae'n barnu ei bod yn briodol o roi sylw i'r angen am hyrwyddo llesiant y plentyn, a
    - (iii) y mae personau a bennir mewn rheoliadau (os oes rhai) yn dymuno eu sicrhau mewn perthynas â'r plentyn,
  - (c) asesu a allai darparu—
    - (i) gofal a chymorth,
    - (ii) gwasanaethau ataliol, neu
    - (iii) gwybodaeth, cyngor neu gynhorthwy,
 gyfrannu at sicrhau'r canlyniadau hynny neu fel arall ddiwallu'r anghenion hynny, ac os felly, i ba raddau,
  - (d) asesu a allai materion eraill gyfrannu at sicrhau'r canlyniadau hynny neu fel arall ddiwallu'r anghenion hynny, ac os felly, i ba raddau, ac
  - (e) ystyried unrhyw amgylchiadau eraill sy'n effeithio ar lesiant y plentyn.



*Assessing children*

**21 Duty to assess the needs of a child for care and support**

- (1) Where it appears to a local authority that a child may need care and support in addition to, or instead of, the care and support provided by the child's family, the authority must assess –
  - (a) whether the child does need care and support of that kind, and
  - (b) if the child does, what those needs are.
- (2) The duty under subsection (1) applies in relation to –
  - (a) a child who is ordinarily resident in the authority's area, and
  - (b) any other child who is within the authority's area.
- (3) The duty under subsection (1) applies regardless of the local authority's view of –
  - (a) the level of the child's needs for care and support, or
  - (b) the level of the financial resources of the child or any person with parental responsibility for the child.
- (4) In carrying out a needs assessment under this section, the local authority must –
  - (a) assess the developmental needs of the child,
  - (b) seek to identify the outcomes that –
    - (i) the child wishes to achieve, to the extent it considers appropriate having regard to the child's age and understanding,
    - (ii) the persons with parental responsibility for the child wish to achieve in relation to the child, to the extent it considers appropriate having regard to the need to promote the child's well-being, and
    - (iii) persons specified in regulations (if any) wish to achieve in relation to the child,
  - (c) assess whether, and if so, to what extent, the provision of –
    - (i) care and support,
    - (ii) preventative services, or
    - (iii) information, advice or assistance,could contribute to the achievement of those outcomes or otherwise meet needs identified by the assessment,
  - (d) assess whether, and if so, to what extent, other matters could contribute to the achievement of those outcomes or otherwise meet those needs, and
  - (e) take account of any other circumstances affecting the child's well-being.

- (5) Rhaid i awdurdod lleol, wrth iddo wneud asesiad o anghenion o dan yr adran hon, gynnwys—
  - (a) y plentyn, a
  - (b) unrhyw berson sydd â chyfrifoldeb rhiant dros y plentyn.
- (6) Natur yr asesiad o anghenion sy'n ofynnol gan yr adran hon yw un y mae'r awdurdod lleol yn barnu ei fod yn gymesur o dan yr amgylchiadau, yn ddarostyngedig i unrhyw ofyniad mewn rheoliadau o dan adran 30.
- (7) At ddibenion is-adran (1) rhagdybir bod angen gofal a chymorth ar blentyn anabl yn ychwanegol at, neu yn lle, y gofal a'r cymorth sy'n cael eu darparu gan deulu'r plentyn.
- (8) Nid yw'r adran hon yn gymwys i blentyn sy'n derbyn gofal gan—
  - (a) awdurdod lleol,
  - (b) awdurdod lleol yn Lloegr,
  - (c) awdurdod lleol yn yr Alban, neu
  - (d) ymddiriedolaeth Iechyd a Gofal Cymdeithasol.

## 22 Gwrthod asesiad o anghenion ar gyfer plentyn sy'n 16 neu'n 17 oed

- (1) Os yw plentyn sy'n 16 neu'n 17 oed (neu, pan fo'n gymwys, person awdurdodedig) yn gwrthod asesiad o anghenion o dan adran 21, nid yw'r ddyletswydd o dan yr adran honno i asesu anghenion y plentyn yn gymwys.
- (2) Os yw person sydd â chyfrifoldeb rhiant dros blentyn sy'n 16 neu'n 17 oed yn gwrthod asesiad o anghenion ar gyfer y plentyn hwnnw o dan adran 21 o dan amgylchiadau pan fo'r awdurdod lleol wedi ei fodloni—
  - (a) nad oes gan y plentyn alluedd i benderfynu a wrthoda gael yr asesiad, a
  - (b) nad oes person awdurdodedig i wneud y penderfyniad ar ran y plentyn,
 nid yw'r ddyletswydd o dan yr adran honno i asesu anghenion y plentyn yn gymwys.
- (3) Ond nid yw gwrthodiad o dan is-adran (1) neu (2) yn rhyddhau awdurdod lleol o'i ddyletswydd o dan adran 21 yn yr achosion a ganlyn—

ACHOS 1 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan blentyn, nad oes gan y plentyn alluedd i benderfynu a wrthoda gael yr asesiad;

ACHOS 2 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan berson sydd â chyfrifoldeb rhiant dros y plentyn, nad oes gan y person alluedd i benderfynu a wrthoda'r asesiad;

ACHOS 3 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan berson sydd â chyfrifoldeb rhiant dros y plentyn, na fyddai peidio â chael yr asesiad er lles pennaf y plentyn;

ACHOS 4 - mae'r awdurdod lleol yn amau bod y plentyn yn cael, neu'n wynebu risg o gael, ei gam-drin, ei esgeuluso, neu ei niweidio mewn modd arall.

- (5) A local authority, in carrying out a needs assessment under this section, must involve—
  - (a) the child, and
  - (b) any person with parental responsibility for the child.
- (6) The nature of the needs assessment required by this section is one that the local authority considers proportionate in the circumstances, subject to any requirement in regulations under section 30.
- (7) For the purposes of subsection (1) a disabled child is presumed to need care and support in addition to, or instead of, the care and support provided by the child's family.
- (8) This section does not apply to a child looked after by—
  - (a) a local authority,
  - (b) a local authority in England,
  - (c) a local authority in Scotland, or
  - (d) a Health and Social Care trust.

## **22 Refusal of a needs assessment for a child aged 16 or 17**

- (1) If a child aged 16 or 17 (or, where applicable, an authorised person) refuses a needs assessment under section 21, the duty under that section to assess the child's needs does not apply.
- (2) If a person with parental responsibility for a child aged 16 or 17 refuses a needs assessment for that child under section 21 in circumstances in which the local authority is satisfied that—
  - (a) the child lacks capacity to decide whether to refuse to have the assessment, and
  - (b) there is no authorised person to make the decision on the child's behalf,the duty under that section to assess the child's needs does not apply.
- (3) But a refusal under subsection (1) or (2) does not discharge a local authority from its duty under section 21 in the following cases—
  - CASE 1 - the local authority is satisfied, in the case of a refusal given by a child, that the child lacks capacity to decide whether to refuse to have the assessment;
  - CASE 2 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that the person lacks capacity to decide whether to refuse the assessment;
  - CASE 3 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that not having the assessment would not be in the child's best interests;
  - CASE 4 - the local authority suspects that the child is experiencing or at risk of abuse, neglect or other kinds of harm.

- (4) Pan fo awdurdod lleol wedi ei ryddhau o'i ddyletswydd o dan adran 21 drwy wrthodiad o dan yr adran hon, ailymrwymir i'r ddyletswydd—
- os yw'r plentyn (neu, pan fo'n gymwys, person awdurdodedig) yn gofyn wedyn am asesiad,
  - os yw person sydd â chyfrifoldeb rhiant dros y plentyn yn gofyn wedyn am asesiad o dan yr amgylchiadau a ddisgrifir yn is-adran (2), neu
  - os yw'r awdurdod lleol o'r farn bod anghenion neu amgylchiadau'r plentyn, neu anghenion neu amgylchiadau person sydd â chyfrifoldeb rhiant dros y plentyn, wedi newid,
- (yn ddarostyngedig i unrhyw wrthodiad pellach o dan yr adran hon).
- (5) Yn yr adran hon ystyr "person awdurdodedig" yw person sydd wedi ei awdurdodi o dan Ddeddf Galluedd Meddyliol 2005 (p'un ai yn nhermau cyffredinol neu benodol) i benderfynu a wrthoda asesiad o anghenion ar ran y plentyn neu a ofynna am asesiad o anghenion ar ei ran.

### 23 Gwrthod asesiad o anghenion ar gyfer plentyn o dan 16 oed

- (1) Os yw—
- plentyn o dan 16 oed yn gwrthod asesiad o anghenion o dan adran 21, a
  - yr awdurdod lleol wedi ei fodloni bod gan y plentyn ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch gwrthod yr asesiad,
- nid yw'r ddyletswydd o dan yr adran honno i asesu anghenion y plentyn yn gymwys.
- (2) Os yw person sydd â chyfrifoldeb rhiant dros blentyn o dan 16 oed yn gwrthod asesiad o anghenion ar gyfer y plentyn hwnnw o dan adran 21, nid yw'r ddyletswydd o dan yr adran honno i asesu anghenion y plentyn yn gymwys.
- (3) Ond nid yw gwrthodiad o dan is-adran (1) neu (2) yn rhyddhau awdurdod lleol o'i ddyletswydd o dan adran 21 yn yr achosion a ganlyn—

ACHOS 1 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan berson sydd â chyfrifoldeb rhiant dros y plentyn, nad oes gan y person alluedd i benderfynu a wrthoda'r asesiad;

ACHOS 2 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan berson sydd â chyfrifoldeb rhiant dros y plentyn—

- bod gan y plentyn ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch gwrthod yr asesiad, a
- nad yw'r plentyn yn cytuno â'r gwrthodiad a roddir gan y person sydd â chyfrifoldeb rhiant dros y plentyn;

ACHOS 3 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan berson sydd â chyfrifoldeb rhiant dros y plentyn, y byddai peidio â chael yr asesiad yn anghyson â llesiant y plentyn;

ACHOS 4 - mae'r awdurdod lleol yn amau bod y plentyn yn cael, neu'n wynebu risg o gael, ei gam-drin, ei esgeuluso, neu ei niweidio mewn modd arall.

- (4) Where a local authority has been discharged from its duty under section 21 by a refusal under this section, the duty is re-engaged if –
- (a) the child (or, where applicable, an authorised person) subsequently asks for an assessment,
  - (b) a person with parental responsibility for the child subsequently asks for an assessment in the circumstances described in subsection (2), or
  - (c) the local authority considers that the child’s needs or circumstances, or the needs or circumstances of a person with parental responsibility for the child, have changed,
- (subject to any further refusal under this section).
- (5) In this section “authorised person” means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the child’s behalf.

### **23 Refusal of a needs assessment for a child aged under 16**

- (1) If –
- (a) a child aged under 16 refuses a needs assessment under section 21, and
  - (b) the local authority is satisfied that the child has sufficient understanding to make an informed decision about the refusal of the assessment,
- the duty under that section to assess the child’s needs does not apply.
- (2) If a person with parental responsibility for a child aged under 16 refuses a needs assessment for that child under section 21, the duty under that section to assess the child’s needs does not apply.
- (3) But a refusal under subsection (1) or (2) does not discharge a local authority from its duty under section 21 in the following cases –
- CASE 1 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that the person lacks capacity to decide whether to refuse the assessment;
- CASE 2 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that the child –
- (a) has sufficient understanding to make an informed decision about the refusal of the assessment, and
  - (b) does not agree with the refusal given by the person with parental responsibility for the child;
- CASE 3 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that not having the assessment would be inconsistent with the child’s well-being;
- CASE 4 - the local authority suspects that the child is experiencing or at risk of abuse, neglect or other kinds of harm.

- (4) Pan fo awdurdod lleol wedi ei ryddhau o'i ddyletswydd o dan adran 21 drwy wrthodiad o dan yr adran hon, ailymrwymir i'r ddyletswydd—
- (a) os yw'r plentyn yn gofyn wedyn am asesiad a bod yr awdurdod lleol wedi ei fodloni bod gan y plentyn ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch cael asesiad,
  - (b) os yw person sydd â chyfrifoldeb rhiant dros y plentyn yn gofyn wedyn am asesiad, neu
  - (c) os yw'r awdurdod lleol o'r farn bod anghenion neu amgylchiadau'r plentyn, neu anghenion neu amgylchiadau person sydd â chyfrifoldeb rhiant dros y plentyn, wedi newid,

(yn ddarostyngedig i unrhyw wrthodiad pellach o dan yr adran hon).

*Asesu gofalwyr*

**24 Dyletswydd i asesu anghenion gofalwr am gymorth**

- (1) Pan fo'n ymddangos i awdurdod lleol y gall fod ar ofalwr anghenion am gymorth, rhaid i'r awdurdod asesu—
- (a) a oes ar y gofalwr anghenion am gymorth (neu a yw'n debygol y bydd arno anghenion am gymorth yn y dyfodol), a
  - (b) os oes, beth yw'r anghenion hynny (neu'r anghenion tebygol yn y dyfodol).
- (2) Mae'r ddyletswydd o dan is-adran (1) yn gymwys o ran gofalwr sy'n darparu neu'n bwriadu darparu gofal—
- (a) i oedolyn neu blentyn anabl sy'n preswyllo fel arfer yn ardal yr awdurdod, neu
  - (b) i unrhyw oedolyn arall neu blentyn anabl arall sydd o fewn ardal yr awdurdod.
- (3) Mae'r ddyletswydd o dan is-adran (1) yn gymwys ni waeth beth fo barn yr awdurdod—
- (a) ar lefel anghenion y gofalwr am gymorth, neu
  - (b) ar lefel adnoddau ariannol y gofalwr neu'r person y mae'r gofalwr yn darparu neu'n bwriadu darparu gofal iddo.
- (4) Wrth gynnal asesiad o anghenion o dan yr adran hon, rhaid i'r awdurdod lleol—
- (a) asesu i ba raddau y mae'r gofalwr yn gallu, ac y bydd yn parhau i allu, darparu gofal i'r person y mae'r gofalwr yn darparu neu'n bwriadu darparu gofal iddo,
  - (b) asesu i ba raddau y mae'r gofalwr yn fodlon, ac y bydd yn parhau i fod yn fodlon, gwneud hynny,
  - (c) yn achos gofalwr sy'n oedolyn, ceisio canfod y canlyniadau y mae'r gofalwr yn dymuno eu sicrhau,
  - (d) yn achos gofalwr sy'n blentyn, ceisio canfod y canlyniadau—
    - (i) y mae'r gofalwr yn dymuno eu sicrhau, i'r graddau y mae'r awdurdod lleol yn barnu ei bod yn briodol, o roi sylw i oedran a dealltwriaeth y gofalwr,

- (4) Where a local authority has been discharged from its duty under section 21 by a refusal under this section, the duty is re-engaged if –
- (a) the child subsequently asks for an assessment and the local authority is satisfied that the child has sufficient understanding to make an informed decision about having an assessment,
  - (b) a person with parental responsibility for the child subsequently asks for an assessment, or
  - (c) the local authority considers that the child’s needs or circumstances, or the needs or circumstances of a person with parental responsibility for the child, have changed,
- (subject to any further refusal under this section).

*Assessing carers*

**24 Duty to assess the needs of a carer for support**

- (1) Where it appears to a local authority that a carer may have needs for support, the authority must assess –
- (a) whether the carer does have needs for support (or is likely to do so in the future), and
  - (b) if the carer does, what those needs are (or are likely to be in the future).
- (2) The duty under subsection (1) applies in relation to a carer who is providing or intends to provide care for –
- (a) an adult or disabled child who is ordinarily resident in the authority’s area, or
  - (b) any other adult or disabled child who is within the authority’s area.
- (3) The duty under subsection (1) applies regardless of the authority’s view of –
- (a) the level of the carer’s needs for support, or
  - (b) the level of the financial resources of the carer or the person for whom the carer provides or intends to provide care.
- (4) In carrying out a needs assessment under this section, the local authority must –
- (a) assess the extent to which the carer is able, and will continue to be able, to provide care for the person for whom the carer provides or intends to provide care,
  - (b) assess the extent to which the carer is willing, and will continue to be willing, to do so,
  - (c) in the case of a carer who is an adult, seek to identify the outcomes that the carer wishes to achieve,
  - (d) in the case of a carer who is a child, seek to identify the outcomes that –
    - (i) the carer wishes to achieve, to the extent it considers appropriate having regard to the carer’s age and understanding,

- (ii) y mae'r personau sydd â chyfrifoldeb rhiant dros y gofalwr yn dymuno eu sicrhau mewn perthynas â'r gofalwr i'r graddau y mae'r awdurdod lleol yn barnu ei bod yn briodol, o roi sylw i'r angen am hyrwyddo llesiant y gofalwr, a
  - (iii) y mae personau a bennir mewn rheoliadau (os oes rhai) yn dymuno eu sicrhau mewn perthynas â'r gofalwr,
- (e) asesu a allai darparu –
- (i) cymorth,
  - (ii) gwasanaethau ataliol, neu
  - (iii) gwybodaeth, cyngor neu gynhorthwy,
- gyfrannu at sicrhau'r canlyniadau hynny neu fel arall ddiwallu'r anghenion a nodir gan yr asesiad, ac os felly, i ba raddau, ac
- (f) asesu a allai materion eraill gyfrannu at sicrhau'r canlyniadau hynny neu fel arall ddiwallu'r anghenion hynny, ac os felly, i ba raddau.
- (5) Rhaid i awdurdod lleol, wrth iddo gynnal asesiad o anghenion o dan yr adran hon, roi sylw i'r materion a ganlyn –
- (a) a yw'r gofalwr yn gweithio neu'n dymuno gwneud hynny,
  - (b) a yw'r gofalwr yn cymryd rhan, neu'n dymuno cymryd rhan, mewn gweithgareddau addysg, hyfforddiant neu unrhyw weithgaredd hamdden, ac
  - (c) yn achos gofalwr sy'n blentyn –
    - (i) anghenion datblygiadol y plentyn, a
    - (ii) a yw'n briodol i'r plentyn ddarparu'r gofal (neu unrhyw ofal) yng ngoleuni'r anghenion hynny.
- (6) Rhaid i awdurdod lleol, wrth iddo wneud asesiad o anghenion o dan yr adran hon, gynnwys –
- (a) y gofalwr, a
  - (b) pan fo'n ddichonadwy, y person y mae'r gofalwr yn darparu neu'n bwriadu darparu gofal iddo.
- (7) Natur yr asesiad o anghenion sy'n ofynnol gan yr adran hon yw un y mae'r awdurdod lleol yn barnu ei fod yn gymesur o dan yr amgylchiadau, yn ddarostyngedig i unrhyw ofyniad mewn rheoliadau o dan adran 30.

## 25 Gwrthod asesiad o anghenion ar gyfer gofalwr sy'n oedolyn

- (1) Os yw gofalwr sy'n oedolyn (neu, pan fo'n gymwys, person awdurdodedig) yn gwrthod asesiad o anghenion o dan adran 24, nid yw'r ddyletswydd o dan yr adran honno i asesu anghenion y gofalwr yn gymwys.



- (ii) the persons with parental responsibility for the carer wish to achieve in relation to the carer, to the extent it considers appropriate having regard to the need to promote the carer's well-being, and
    - (iii) persons specified in regulations (if any) wish to achieve in relation to the carer,
  - (e) assess whether, and if so, to what extent, the provision of –
    - (i) support,
    - (ii) preventative services, or
    - (iii) information, advice or assistance,could contribute to the achievement of those outcomes or otherwise meet needs identified by the assessment, and
  - (f) assess whether, and if so, to what extent, other matters could contribute to the achievement of those outcomes or otherwise meet those needs.
- (5) A local authority, in carrying out a needs assessment under this section, must have regard to –
- (a) whether the carer works or wishes to do so,
  - (b) whether the carer is participating in or wishes to participate in education, training or any leisure activity, and
  - (c) in the case of a carer who is a child –
    - (i) the developmental needs of the child, and
    - (ii) whether it is appropriate for the child to provide the care (or any care) in light of those needs.
- (6) A local authority, in carrying out a needs assessment under this section, must involve –
- (a) the carer, and
  - (b) where feasible, the person for whom the carer provides or intends to provide care.
- (7) The nature of the needs assessment required by this section is one that the local authority considers proportionate in the circumstances, subject to any requirement in regulations under section 30.

## **25 Refusal of a needs assessment for an adult carer**

- (1) If a carer who is an adult (or, where applicable, an authorised person) refuses a needs assessment under section 24, the duty under that section to assess the carer's needs does not apply.

- (2) Ond nid yw gwrthodiad o dan is-adran (1) yn rhyddhau awdurdod lleol o'i ddyletswydd o dan adran 24 yn yr achosion a ganlyn—

ACHOS 1 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan y gofalwr—

- (a) nad oes gan y gofalwr alluedd i benderfynu a wrthoda gael yr asesiad, ond
- (b) bod person awdurdodedig i wneud y penderfyniad ar ran y gofalwr;

ACHOS 2 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan y gofalwr—

- (a) nad oes gan y gofalwr alluedd i benderfynu a wrthoda gael yr asesiad,
- (b) nad oes person awdurdodedig i wneud y penderfyniad ar ran y gofalwr, ac
- (c) y byddai cael yr asesiad er lles pennaf y gofalwr.

- (3) Pan fo awdurdod lleol wedi ei ryddhau o'i ddyletswydd o dan adran 24 drwy wrthodiad o dan yr adran hon, ailymrwymir i'r ddyletswydd—

- (a) os yw'r gofalwr (neu, pan fo'n gymwys, person awdurdodedig) yn gofyn wedyn am asesiad, neu
- (b) os yw'r awdurdod lleol o'r farn bod anghenion neu amgylchiadau'r gofalwr wedi newid,

(yn ddarostyngedig i unrhyw wrthodiad pellach o dan yr adran hon).

- (4) Yn yr adran hon ystyr "person awdurdodedig" yw person sydd wedi ei awdurdodi o dan Ddeddf Galluedd Meddyliol 2005 (p'un ai yn nhermau cyffredinol neu benodol) i benderfynu a wrthoda asesiad o anghenion ar ran y gofalwr neu a ofynna am asesiad o anghenion ar ei ran.

## **26 Gwrthod asesiad o anghenion ar gyfer gofalwr sy'n 16 neu'n 17 oed**

- (1) Os yw gofalwr sy'n 16 neu'n 17 oed (neu, pan fo'n gymwys, person awdurdodedig) yn gwrthod asesiad o anghenion o dan adran 24, nid yw'r ddyletswydd o dan yr adran honno i asesu anghenion y gofalwr yn gymwys.

- (2) Os yw person sydd â chyfrifoldeb rhiant dros ofalwr sy'n 16 neu'n 17 oed yn gwrthod asesiad o anghenion ar gyfer y gofalwr o dan adran 24 o dan amgylchiadau pan fo'r awdurdod lleol wedi ei fodloni—

- (a) nad oes gan y gofalwr alluedd i benderfynu a wrthoda gael yr asesiad, a
- (b) nad oes person awdurdodedig i wneud y penderfyniad ar ran y gofalwr,

nid yw'r ddyletswydd o dan yr adran honno i asesu anghenion y gofalwr yn gymwys.

- (3) Ond nid yw gwrthodiad o dan is-adran (1) neu (2) yn rhyddhau awdurdod lleol o'i ddyletswydd o dan adran 24 yn yr achosion a ganlyn—

ACHOS 1 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan y gofalwr, nad oes gan y gofalwr alluedd i benderfynu a wrthoda gael yr asesiad;

ACHOS 2 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan berson sydd â chyfrifoldeb rhiant dros y gofalwr, nad oes gan y person alluedd i benderfynu a wrthoda'r asesiad;

- (2) But a refusal under subsection (1) does not discharge a local authority from its duty under section 24 in the following cases –
- CASE 1 - the local authority is satisfied, in the case of a refusal given by the carer, that –
- (a) the carer lacks capacity to decide whether to refuse to have the assessment, but
  - (b) there is an authorised person to make the decision on the carer’s behalf;
- CASE 2 - the local authority is satisfied, in the case of a refusal given by the carer, that –
- (a) the carer lacks capacity to decide whether to refuse to have the assessment,
  - (b) there is no authorised person to make the decision on the carer’s behalf, and
  - (c) having the assessment would be in the carer’s best interests.
- (3) Where a local authority has been discharged from its duty under section 24 by a refusal under this section, the duty is re-engaged if –
- (a) the carer (or, where applicable, an authorised person) subsequently asks for an assessment, or
  - (b) the local authority considers that the carer’s needs or circumstances have changed, (subject to any further refusal under this section).
- (4) In this section “authorised person” means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the carer’s behalf.

**26 Refusal of a needs assessment for a carer aged 16 or 17**

- (1) If a carer aged 16 or 17 (or, where applicable, an authorised person) refuses a needs assessment under section 24, the duty under that section to assess the carer’s needs does not apply.
- (2) If a person with parental responsibility for a carer aged 16 or 17 refuses a needs assessment for the carer under section 24 in circumstances in which the local authority is satisfied that –
- (a) the carer lacks capacity to decide whether to refuse to have the assessment, and
  - (b) there is no authorised person to make the decision on the carer’s behalf,
- the duty under that section to assess the carer’s needs does not apply.
- (3) But a refusal under subsection (1) or (2) does not discharge a local authority from its duty under section 24 in the following cases –
- CASE 1 - the local authority is satisfied, in the case of a refusal given by the carer, that the carer lacks capacity to decide whether to refuse to have the assessment;
- CASE 2 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that the person lacks capacity to decide whether to refuse the assessment;

ACHOS 3 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan berson sydd â chyfrifoldeb rhiant dros y gofalwr, na fyddai peidio â chael yr asesiad er lles pennaf y gofalwr.

- (4) Pan fo awdurdod lleol wedi ei ryddhau o'i ddyletswydd o dan adran 24 drwy wrthodiad o dan yr adran hon, ailymrwymir i'r ddyletswydd –
- (a) os yw'r gofalwr (neu, pan fo'n gymwys, person awdurdodedig) yn gofyn wedyn am asesiad,
  - (b) os yw person sydd â chyfrifoldeb rhiant dros y gofalwr yn gofyn wedyn am asesiad o dan yr amgylchiadau a ddisgrifir yn is-adran (2), neu
  - (c) os yw'r awdurdod lleol o'r farn bod anghenion neu amgylchiadau'r gofalwr, neu anghenion neu amgylchiadau person sydd â chyfrifoldeb rhiant dros y gofalwr, wedi newid,
- (yn ddarostyngedig i unrhyw wrthodiad pellach o dan yr adran hon).
- (5) Yn yr adran hon ystyr "person awdurdodedig" yw person sydd wedi ei awdurdodi o dan Ddeddf Galluedd Meddyliol 2005 (p'un ai yn nhermau cyffredinol neu benodol) i benderfynu a wrthoda asesiad o anghenion ar ran y gofalwr neu a ofynna am asesiad o anghenion ar ei ran.

## **27 Gwrthod asesiad o anghenion ar gyfer gofalwr o dan 16 oed**

- (1) Os yw –
- (a) gofalwr o dan 16 oed yn gwrthod asesiad o anghenion o dan adran 24, a
  - (b) yr awdurdod lleol wedi ei fodloni bod gan y gofalwr ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch gwrthod yr asesiad,
- nid yw'r ddyletswydd o dan yr adran honno i asesu anghenion y gofalwr yn gymwys.
- (2) Os yw person sydd â chyfrifoldeb rhiant dros ofalwr o dan 16 oed yn gwrthod asesiad o anghenion ar gyfer y gofalwr o dan adran 24, nid yw'r ddyletswydd o dan yr adran honno i asesu anghenion y gofalwr yn gymwys.
- (3) Ond nid yw gwrthodiad o dan is-adran (1) neu (2) yn rhyddhau awdurdod lleol o'i ddyletswydd o dan adran 24 yn yr achosion a ganlyn –

ACHOS 1 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan berson sydd â chyfrifoldeb rhiant dros y gofalwr, nad oes gan y person alluedd i benderfynu a wrthoda'r asesiad;

ACHOS 2 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan berson sydd â chyfrifoldeb rhiant dros y gofalwr –

- (a) bod gan y gofalwr ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch gwrthod yr asesiad, a
- (b) nad yw'r gofalwr yn cytuno â'r gwrthodiad a roddir gan y person sydd â chyfrifoldeb rhiant dros y gofalwr;

ACHOS 3 - mae'r awdurdod lleol wedi ei fodloni, yn achos gwrthodiad a roddir gan berson sydd â chyfrifoldeb rhiant dros y gofalwr, y byddai peidio â chael yr asesiad yn anghyson â llesiant y gofalwr.

CASE 3 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that not having the assessment would not be in the carer's best interests.

- (4) Where a local authority has been discharged from its duty under section 24 by a refusal under this section, the duty is re-engaged if—
- (a) the carer (or, where applicable, an authorised person) subsequently asks for an assessment,
  - (b) a person with parental responsibility for the carer subsequently asks for an assessment in the circumstances described in subsection (2), or
  - (c) the local authority considers that the carer's needs or circumstances, or the needs or circumstances of a person with parental responsibility for the carer, have changed,
- (subject to any further refusal under this section).
- (5) In this section "authorised person" means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the carer's behalf.

## **27 Refusal of a needs assessment for a carer aged under 16**

- (1) If—
- (a) a carer aged under 16 refuses a needs assessment under section 24, and
  - (b) the local authority is satisfied that the carer has sufficient understanding to make an informed decision about the refusal of the assessment,
- the duty under that section to assess the carer's needs does not apply.
- (2) If a person with parental responsibility for a carer aged under 16 refuses a needs assessment for the carer under section 24, the duty under that section to assess the carer's needs does not apply.
- (3) But a refusal under subsection (1) or (2) does not discharge a local authority from its duty under section 24 in the following cases—
- CASE 1 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that the person lacks capacity to decide whether to refuse the assessment;
- CASE 2 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that the carer—
- (a) has sufficient understanding to make an informed decision about the refusal of the assessment, and
  - (b) does not agree with the refusal given by the person with parental responsibility for the carer;
- CASE 3 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that not having the assessment would be inconsistent with the carer's well-being.

- (4) Pan fo awdurdod lleol wedi ei ryddhau o'i ddyletswydd o dan adran 24 drwy wrthodiad o dan yr adran hon, ailymrwymir i'r ddyletswydd—
- (a) os yw'r gofalwr yn gofyn wedyn am asesiad a bod yr awdurdod lleol wedi ei fodloni bod gan y gofalwr ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch cael asesiad,
  - (b) os yw person sydd â chyfrifoldeb rhiant dros y gofalwr yn gofyn wedyn am asesiad, neu
  - (c) os yw'r awdurdod lleol o'r farn bod anghenion neu amgylchiadau'r gofalwr, neu anghenion neu amgylchiadau person sydd â chyfrifoldeb rhiant dros y gofalwr, wedi newid,

(yn ddarostyngedig i unrhyw wrthodiad pellach o dan yr adran hon).

*Materion atodol*

**28 Cyfuno asesiadau o anghenion ar gyfer gofalwr a pherson y gofelir amdano**

- (1) Pan fo gan berson, y mae'n ymddangos bod arno angen gofal a chymorth, ofalwr, caiff awdurdod lleol gyfuno—
- (a) asesiad o anghenion y person o dan adran 19 neu 21, a
  - (b) asesiad o anghenion y gofalwr o dan adran 24,
- ond mae hyn yn ddarostyngedig i is-adrannau (2) i (4).
- (2) Ni chaiff awdurdod lleol gyfuno asesiad o anghenion ar gyfer oedolyn (p'un ai o dan adran 19 neu 24) ag asesiad o anghenion ar gyfer person arall oni bai—
- (a) bod yr oedolyn (neu, pan fo'n gymwys, person awdurdodedig) yn rhoi cydsyniad dilys, neu
  - (b) y caniateir i'r gofyniad i gael cydsyniad dilys gael ei hepgor.
- (3) Ni chaiff awdurdod lleol gyfuno asesiad o anghenion ar gyfer plentyn sy'n 16 neu'n 17 oed (p'un ai o dan adran 21 neu 24) ag asesiad o anghenion ar gyfer person arall oni bai—
- (a) bod y plentyn (neu, pan fo'n gymwys, person awdurdodedig) yn rhoi cydsyniad dilys,
  - (b) bod person sydd â chyfrifoldeb rhiant dros y plentyn yn rhoi cydsyniad dilys o dan amgylchiadau pan fo'r awdurdod lleol wedi ei fodloni—
    - (i) nad oes gan y plentyn alluedd i benderfynu a gydsynia i'r asesiadau o anghenion gael eu cyfuno, a
    - (ii) nad oes person awdurdodedig i wneud y penderfyniad ar ran y plentyn, neu
  - (c) y caniateir i'r gofyniad i gael cydsyniad dilys gael ei hepgor.
- (4) Ni chaiff awdurdod lleol gyfuno asesiad o anghenion ar gyfer plentyn o dan 16 oed (p'un ai o dan adran 21 neu 24) ag asesiad o anghenion ar gyfer person arall oni bai—
- (a) bod y plentyn neu berson sydd â chyfrifoldeb rhiant dros y plentyn yn rhoi cydsyniad dilys, neu
  - (b) y caniateir i'r gofyniad i gael cydsyniad dilys gael ei hepgor.

- (4) Where a local authority has been discharged from its duty under section 24 by a refusal under this section, the duty is re-engaged if –
- (a) the carer subsequently asks for an assessment and the local authority is satisfied that the carer has sufficient understanding to make an informed decision about having an assessment,
  - (b) a person with parental responsibility for the carer subsequently asks for an assessment, or
  - (c) the local authority considers that the carer's needs or circumstances, or the needs or circumstances of a person with parental responsibility for the carer, have changed,
- (subject to any further refusal under this section).

*Supplementary*

**28 Combining needs assessments for a carer and a cared for person**

- (1) Where a person who appears to need care and support has a carer, a local authority may combine –
- (a) the person's needs assessment under section 19 or 21, and
  - (b) the carer's needs assessment under section 24,
- but this is subject to subsections (2) to (4).
- (2) A local authority may not combine a needs assessment for an adult (whether under section 19 or 24) with a needs assessment for another person unless –
- (a) the adult (or, where applicable, an authorised person) gives valid consent, or
  - (b) the requirement for valid consent may be dispensed with.
- (3) A local authority may not combine a needs assessment for a child aged 16 or 17 (whether under section 21 or 24) with a needs assessment for another person unless –
- (a) the child (or, where applicable, an authorised person) gives valid consent,
  - (b) a person with parental responsibility for the child gives valid consent in circumstances in which the local authority is satisfied that –
    - (i) the child lacks capacity to decide whether to consent to the combining of the needs assessments, and
    - (ii) there is no authorised person to make the decision on the child's behalf, or
  - (c) the requirement for valid consent may be dispensed with.
- (4) A local authority may not combine a needs assessment for a child aged under 16 (whether under section 21 or 24) with a needs assessment for another person unless –
- (a) the child or a person with parental responsibility for the child gives valid consent, or
  - (b) the requirement for valid consent may be dispensed with.

- (5) Mae cydsyniad a roddir o dan is-adran (2), (3) neu (4) yn ddilys ac eithrio yn yr achosion a ganlyn—

ACHOS 1 - mae'r awdurdod lleol wedi ei fodloni, yn achos cydsyniad a roddir gan oedolyn neu blentyn sy'n 16 neu'n 17 oed, nad oes gan yr oedolyn neu'r plentyn alluedd i gydsynio i'r asesiadau o anghenion gael eu cyfuno;

ACHOS 2 - mae'r awdurdod lleol wedi ei fodloni, yn achos cydsyniad a roddir gan blentyn o dan 16 oed, nad oes gan y plentyn ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch cyfuno'r asesiadau o anghenion;

ACHOS 3 - mae'r awdurdod lleol wedi ei fodloni, yn achos cydsyniad a roddir gan berson sydd â chyfrifoldeb rhiant dros blentyn o dan 16 oed mewn perthynas ag asesiad o anghenion y plentyn—

- (a) bod gan y plentyn ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch cyfuno'r asesiadau o anghenion, a
- (b) nad yw'r plentyn yn cytuno â'r cydsyniad a roddir gan y person sydd â chyfrifoldeb rhiant.

- (6) Caiff awdurdod lleol hepgor y gofyniad i gael cydsyniad dilys yn yr achosion a ganlyn—

ACHOS 1 - mae'r awdurdod lleol wedi ei fodloni, o ran asesiad o anghenion oedolyn—

- (a) nad oes unrhyw berson a gaiff roi cydsyniad dilys, a
- (b) y byddai cyfuno'r asesiadau o anghenion er lles pennaf yr oedolyn;

ACHOS 2 - mae'r awdurdod lleol wedi ei fodloni, o ran asesiad o anghenion plentyn sy'n 16 neu'n 17 oed—

- (a) nad oes gan y plentyn alluedd i roi cydsyniad dilys,
- (b) nad oes person awdurdodedig a gaiff roi cydsyniad dilys ar ran y plentyn, ac
- (c) y byddai cyfuno'r asesiadau o anghenion er lles pennaf y plentyn;

ACHOS 3 - mae'r awdurdod lleol wedi ei fodloni, o ran asesiad o anghenion plentyn o dan 16 oed—

- (a) nad oes gan y plentyn ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch cyfuno'r asesiadau o anghenion, a
- (b) y byddai cyfuno'r asesiadau o anghenion yn gyson â llesiant y plentyn.

- (7) Yn yr adran hon ystyr "person awdurdodedig" yw person sydd wedi ei awdurdodi o dan Ddeddf Galluedd Meddyliol 2005 (p'un ai yn gyffredinol neu yn benodol) i benderfynu a gydsynia ar ran yr oedolyn neu'r plentyn i'r asesiadau o anghenion gael eu cyfuno.

## 29 Cyfuno asesiadau o anghenion ac asesiadau eraill

- (1) Pan fo'n ymddangos bod gan berson y mae'n ymddangos bod arno angen cymorth fel gofalwr anghenion am ofal a chymorth yn ei hawl ei hun hefyd, caiff awdurdod lleol gyfuno asesiad o anghenion ar gyfer y person hwnnw o dan adran 24 ag asesiad o anghenion ar gyfer y person hwnnw o dan adran 19 neu 21.



- (5) Consent given under subsection (2), (3) or (4) is valid except in the following cases –
- CASE 1 - the local authority is satisfied, in the case of consent given by an adult or a child aged 16 or 17, that the adult or child lacks capacity to consent to the combination of the needs assessments;
- CASE 2 - the local authority is satisfied, in the case of consent given by a child aged under 16, that the child does not have sufficient understanding to make an informed decision about the combination of the needs assessments;
- CASE 3 - the local authority is satisfied, in the case of consent given by a person with parental responsibility for a child aged under 16 in relation to the child's needs assessment, that the child –
- (a) has sufficient understanding to make an informed decision about the combination of the needs assessments, and
  - (b) does not agree with the consent given by the person with parental responsibility.
- (6) A local authority may dispense with the requirement for valid consent in the following cases –
- CASE 1 - the local authority is satisfied, with regard to the needs assessment of an adult, that –
- (a) there is no person who may give valid consent, and
  - (b) combining the needs assessments would be in the adult's best interests;
- CASE 2 - the local authority is satisfied, with regard to the needs assessment of a child aged 16 or 17, that –
- (a) the child lacks capacity to give valid consent,
  - (b) there is no authorised person who may give valid consent on the child's behalf, and
  - (c) combining the needs assessments would be in the child's best interests;
- CASE 3 - the local authority is satisfied, with regard to the needs assessment of a child aged under 16, that –
- (a) the child does not have sufficient understanding to make an informed decision about the combination of the needs assessments, and
  - (b) combining the needs assessments would be consistent with the child's well-being.
- (7) In this section "authorised person" means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to consent to the combination of the needs assessments on the adult or child's behalf.

## **29 Combining needs assessments and other assessments**

- (1) Where a person who appears to need support as a carer also appears to have needs for care and support in his or her own right, a local authority may combine a needs assessment for that person under section 24 with a needs assessment for that person under section 19 or 21.

- (2) Caiff awdurdod lleol wneud asesiad o anghenion ar gyfer person yr un pryd ag y mae ef neu gorff arall yn gwneud asesiad arall o dan unrhyw ddeddfiad mewn perthynas â'r person hwnnw.
- (3) At ddibenion is-adran (2) –
  - (a) caiff yr awdurdod lleol wneud yr asesiad arall ar ran y corff arall neu ar y cyd ag ef, neu
  - (b) os yw'r corff arall eisoes wedi trefnu i'r asesiad arall gael ei wneud ar y cyd â pherson arall, caiff yr awdurdod lleol wneud yr asesiad arall ar y cyd â'r corff arall a'r person arall hwnnw.

### 30 Rheoliadau ynghylch asesu

- (1) Rhaid i reoliadau wneud darpariaeth am wneud asesiadau o anghenion.
- (2) Rhaid i reoliadau o dan yr adran hon wneud darpariaeth ar gyfer adolygu asesiadau o anghenion, a chaniateir iddynt, er enghraifft, bennu –
  - (a) y personau a gaiff ofyn am adolygiad o asesiad (ar eu rhan hwy eu hunain neu ar ran person arall);
  - (b) o dan ba amgylchiadau –
    - (i) y caiff awdurdod lleol wrthod cydymffurfio â chais am adolygiad o asesiad, a
    - (ii) na chaiff awdurdod lleol wrthod gwneud hynny.
- (3) Caiff rheoliadau o dan yr adran hon hefyd, er enghraifft, ddarparu ar gyfer –
  - (a) personau pellach y mae'n rhaid i awdurdod lleol eu cynnwys wrth iddo wneud asesiad o dan adran 19, 21 neu 24;
  - (b) y ffordd y mae asesiad i'w wneud, a chan bwy a phryd;
  - (c) cofnodi canlyniadau asesiad;
  - (d) yr ystyriaethau y mae awdurdod lleol i roi sylw iddynt wrth gyflawni asesiad;
  - (e) pwerau i ddarparu gwybodaeth at ddibenion asesu.

### 31 Rhan 3: dehongli

Yn y Rhan hon –

ystyr “gwasanaethau ataliol” (“*preventative services*”) yw gwasanaethau y gellir eu darparu yn rhinwedd adran 15;

ystyr “gwybodaeth, cyngor neu gynhorthwy” (“*information, advice or assistance*”) yw gwybodaeth, cyngor neu gynhorthwy y gellir eu darparu yn rhinwedd adran 17.

- (2) A local authority may carry out a needs assessment for a person at the same time as it or another body carries out another assessment under any enactment in relation to that person.
- (3) For the purposes of subsection (2) –
  - (a) the local authority may carry out the other assessment on behalf of or jointly with the other body, or
  - (b) if the other body has already arranged for the other assessment to be carried out jointly with another person, the local authority may carry out the other assessment jointly with the other body and that other person.

### 30 Regulations about assessment

- (1) Regulations must make provision about carrying out needs assessments.
- (2) Regulations under this section must make provision for the review of needs assessments, and may, for example, specify –
  - (a) the persons who may request a review of an assessment (on their own behalf or on behalf of another person);
  - (b) the circumstances in which a local authority –
    - (i) may refuse to comply with a request for a review of an assessment, and
    - (ii) may not refuse to do so.
- (3) Regulations under this section may also, for example, provide for –
  - (a) further persons whom a local authority must involve in carrying out an assessment under section 19, 21 or 24;
  - (b) the way in which an assessment is to be carried out, by whom and when;
  - (c) the recording of the results of an assessment;
  - (d) the considerations to which a local authority is to have regard in carrying out an assessment;
  - (e) powers to provide information for the purposes of assessment.

### 31 Part 3: interpretation

In this Part –

“information, advice or assistance” (*“gwybodaeth, cyngor neu gynhorthwy”*) means information, advice or assistance that may be provided by virtue of section 17;

“preventative services” (*“gwasanaethau ataliol”*) means services that may be provided by virtue of section 15.

**RHAN 4****DIWALLU ANGHENION***Penderfynu beth i'w wneud ar ôl asesiad o anghenion***32 Dyfarnu cymhwystra ac ystyried beth i'w wneud i ddiwallu anghenion**

- (1) Pan fo awdurdod lleol wedi ei fodloni, ar sail asesiad o anghenion, bod ar berson anghenion am ofal a chymorth neu, os gofalwr yw'r person, bod arno anghenion am gymorth, rhaid i'r awdurdod –
  - (a) dyfarnu a oes unrhyw un neu rai o'r anghenion yn bodloni'r meini prawf cymhwystra;
  - (b) os nad yw'r anghenion yn bodloni'r meini prawf cymhwystra, ddyfarnu a yw'n angenrheidiol diwallu'r anghenion, serch hynny, i amddiffyn y person –
    - (i) rhag cael ei gam-drin neu ei esgeuluso, neu rhag risg o gael ei gam-drin neu ei esgeuluso (os oedolyn yw'r person);
    - (ii) rhag cael ei gam-drin neu ei esgeuluso, neu rhag risg o gael ei gam-drin neu ei esgeuluso, neu rhag cael, neu rhag risg o gael, ei niweidio mewn modd arall (os plentyn yw'r person);
  - (c) dyfarnu a yw'r anghenion yn galw am arfer unrhyw swyddogaeth sydd ganddo o dan y Ddeddf hon neu Rannau 4 neu 5 o Ddeddf Plant 1989, i'r graddau y mae'r swyddogaeth yn berthnasol i'r person hwnnw;
  - (d) ystyried a fyddai darparu unrhyw beth y gellir ei ddarparu yn rhinwedd adran 15 (gwasanaethau ataliol) neu 17 (gwybodaeth, cyngor a chynhorthwy) neu unrhyw beth arall a all fod ar gael yn y gymuned o fudd i'r person.
- (2) Os yw awdurdod lleol yn dyfarnu bod rhaid i unrhyw anghenion gael eu diwallu, neu eu bod i'w diwallu, o dan adrannau 35 i 45, rhaid i'r awdurdod –
  - (a) ystyried yr hyn y gellid ei wneud i ddiwallu'r anghenion hynny;
  - (b) ystyried a fyddai'n gosod ffi am wneud y pethau hynny, ac os felly, dyfarnu swm y ffi honno (gweler Rhan 5).
- (3) Rhaid i reoliadau wneud darpariaeth ynghylch cyflawni'r ddyletswydd o dan is-adran (1)(a).
- (4) Mae anghenion yn bodloni'r meini prawf cymhwystra os ydynt –
  - (a) o ddisgrifiad a bennir mewn rheoliadau, neu
  - (b) yn rhan o gyfuniad o anghenion o ddisgrifiad a bennir felly.
- (5) Caiff y rheoliadau, er enghraifft, ddisgrifio anghenion drwy gyfeirio at –
  - (a) yr effaith y mae'r anghenion yn ei chael ar y person o dan sylw;
  - (b) amgylchiadau'r person.

## **PART 4**

### **MEETING NEEDS**

#### *Deciding what to do following needs assessment*

#### **32 Determination of eligibility and consideration of what to do to meet needs**

- (1) Where a local authority is satisfied, on the basis of a needs assessment, that a person has needs for care and support or, if the person is a carer, needs for support, the authority must—
  - (a) determine whether any of the needs meet the eligibility criteria;
  - (b) if the needs do not meet the eligibility criteria, determine whether it is nevertheless necessary to meet the needs in order to protect the person from—
    - (i) abuse or neglect or a risk of abuse or neglect (if the person is an adult);
    - (ii) abuse or neglect or a risk of abuse or neglect, or other harm or a risk of such harm (if the person is a child);
  - (c) determine whether the needs call for the exercise of any function it has under this Act or Parts 4 or 5 of the Children Act 1989, in so far as the function is relevant to that person;
  - (d) consider whether the person would benefit from the provision of anything that may be provided by virtue of section 15 (preventative services) or 17 (information, advice and assistance) or anything else that may be available in the community.
- (2) If a local authority determines that any needs must be met, or are to be met, under sections 35 to 45, the authority must—
  - (a) consider what could be done to meet those needs;
  - (b) consider whether it would impose a charge for doing those things, and if so, determine the amount of that charge (see Part 5).
- (3) Regulations must make provision about the discharge of the duty under subsection (1)(a).
- (4) Needs meet the eligibility criteria if they—
  - (a) are of a description specified in regulations, or
  - (b) form part of a combination of needs of a description so specified.
- (5) The regulations may, for example, describe needs by reference to—
  - (a) the effect that the needs have on the person concerned;
  - (b) the person's circumstances.

**33 Y weithdrefn ar gyfer rheoliadau o dan adran 32**

- (1) Cyn gwneud rheoliadau o dan adran 32(3) neu (4), rhaid i Weinidogion Cymru gymryd y camau a ganlyn.
- (2) Rhaid i Weinidogion Cymru ymgynghori ar y rheoliadau drafft arfaethedig â'r canlynol—
  - (a) unrhyw bersonau y mae'n ymddangos iddynt fod y rheoliadau yn debygol o effeithio arnynt,
  - (b) unrhyw sefydliadau y mae'n ymddangos iddynt eu bod yn cynrychioli buddiannau personau y mae'r rheoliadau yn debygol o effeithio arnynt, ac
  - (c) unrhyw bersonau eraill y maent yn ystyried eu bod yn briodol.
- (3) Rhaid i Weinidogion Cymru—
  - (a) rhoi cyfnod o 12 wythnos o leiaf i'r personau hynny i gyflwyno sylwadau ar y rheoliadau drafft arfaethedig,
  - (b) ystyried unrhyw sylwadau a gyflwynir o fewn y cyfnod hwnnw, ac
  - (c) cyhoeddi crynodeb o'r sylwadau hynny.
- (4) Rhaid i Weinidogion Cymru osod drafft o'r rheoliadau gerbron Cynulliad Cenedlaethol Cymru.
- (5) O ran y rheoliadau drafft a osodir o dan is-adran (4)—
  - (a) rhaid iddynt fynd gyda datganiad gan Weinidogion Cymru yn rhoi manylion unrhyw wahaniaethau rhwng y rheoliadau drafft yr ymgynghorwyd arnynt o dan is-adran (2) a'r rheoliadau drafft a osodir o dan is-adran (4), a
  - (b) ni chaniateir iddynt gael eu cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru yn unol ag adran 196(6) tan ar ôl i'r cyfnod o 60 niwrnod, yn dechrau ar y diwrnod y gosodir y rheoliadau drafft, ddod i ben.

**34 Sut i ddiwallu anghenion**

- (1) Mae'r canlynol yn enghreifftiau o'r ffyrdd y caiff awdurdod lleol ddiwallu anghenion o dan adrannau 35 i 45—
  - (a) drwy drefnu bod person heblaw'r awdurdod yn darparu rhywbeth;
  - (b) drwy ddarparu rhywbeth ei hun;
  - (c) drwy ddarparu rhywbeth, neu drwy drefnu i rywbeth gael ei ddarparu, i berson ac eithrio'r person ag anghenion am ofal a chymorth (neu gymorth yn achos gofalwr).
- (2) Mae'r canlynol yn enghreifftiau o'r hyn y gellir ei ddarparu neu ei drefnu i ddiwallu anghenion o dan adrannau 35 i 45—
  - (a) llety mewn cartref gofal, cartref plant neu fangre o ryw fath arall;
  - (b) gofal a chymorth gartref neu yn y gymuned;
  - (c) gwasanaethau, nwyddau a chyfleusterau;
  - (d) gwybodaeth a chyngor;

**33 Procedure for regulations under section 32**

- (1) Before making regulations under section 32(3) or (4), the Welsh Ministers must carry out the following steps.
- (2) The Welsh Ministers must consult –
  - (a) such persons as appear to them likely to be affected by the regulations,
  - (b) such organisations as appear to them to represent the interests of persons likely to be affected by the regulations, and
  - (c) such other persons as they consider appropriate,on the proposed draft regulations.
- (3) The Welsh Ministers must –
  - (a) allow those persons a period of at least 12 weeks to submit comments on the proposed draft regulations,
  - (b) consider any comments submitted within that period, and
  - (c) publish a summary of those comments.
- (4) The Welsh Ministers must lay a draft of the regulations before the National Assembly for Wales.
- (5) Draft regulations laid under subsection (4) –
  - (a) must be accompanied by a statement of the Welsh Ministers giving details of any differences between the draft regulations consulted on under subsection (2) and the draft regulations laid under subsection (4), and
  - (b) may not be approved by a resolution of the National Assembly for Wales in accordance with section 196(6) until after the expiry of the period of 60 days beginning with the day on which the draft regulations are laid.

**34 How to meet needs**

- (1) The following are examples of the ways in which a local authority may meet needs under sections 35 to 45 –
  - (a) by arranging for a person other than the authority to provide something;
  - (b) by itself providing something;
  - (c) by providing something, or by arranging for something to be provided, to a person other than the person with needs for care and support (or, in the case of a carer, support).
- (2) The following are examples of what may be provided or arranged to meet needs under sections 35 to 45 –
  - (a) accommodation in a care home, children’s home or premises of some other type;
  - (b) care and support at home or in the community;
  - (c) services, goods and facilities;
  - (d) information and advice;

- (e) cwnsela ac eiriolaeth;
  - (f) gwaith cymdeithasol;
  - (g) taliadau (gan gynnwys taliadau uniongyrchol);
  - (h) cymhorthion ac addasiadau;
  - (i) therapi galwedigaethol.
- (3) Pan fo awdurdod lleol yn diwallu anghenion person o dan adrannau 35 i 45 drwy ddarparu neu drefnu gofal a chymorth yng nghartref y person, rhaid i'r awdurdod lleol fodloni ei hun bod unrhyw ymweliadau â chartref y person at y diben hwnnw yn ddigon hir i roi i'r person y gofal a'r cymorth sydd ei angen i ddiwallu'r anghenion dan sylw.
- (4) Rhaid i gôd a ddyroddir o dan adran 145 gynnwys canllawiau ynghylch hyd ymweliadau â chartref person at y diben o roi gofal a chymorth.
- (5) Gweler adrannau 47 (eithriad ar gyfer darparu gwasanaethau iechyd), 48 (eithriad ar gyfer darparu tai etc) a 49 (cyfyngiadau ar ddarparu taliadau) ar gyfer cyfyngiadau ar yr hyn y caniateir ei ddarparu neu ei drefnu i ddiwallu anghenion am ofal a chymorth a'r ffordd y caniateir ei ddarparu neu ei drefnu.

*Diwallu anghenion gofal a chymorth oedolion*

**35 Dyletswydd i ddiwallu anghenion gofal a chymorth oedolyn**

- (1) Rhaid i awdurdod lleol ddiwallu anghenion oedolyn am ofal a chymorth os caiff ei fodloni bod amodau 1, 2 a 3 wedi eu cyflawni (ond gweler is-adran (6)).
- (2) Amod 1 yw –
- (a) bod yr oedolyn yn preswyllo fel arfer yn ardal yr awdurdod lleol, neu
  - (b) nad oes gan yr oedolyn breswylfa sefydlog a'i fod o fewn ardal yr awdurdod.
- (3) Amod 2 yw –
- (a) bod yr anghenion yn bodloni'r meini prawf cymhwysra, neu
  - (b) bod yr awdurdod lleol yn barnu ei bod yn angenrheidiol diwallu'r anghenion er mwyn amddiffyn yr oedolyn rhag cael ei gam-drin neu ei esgeuluso neu rhag risg o gael ei gam-drin neu ei esgeuluso.
- (4) Amod 3 yw –
- (a) nad oes unrhyw ffi yn cael ei chodi am y gofal a'r cymorth y mae eu hangen i ddiwallu'r anghenion hynny, neu
  - (b) bod ffi yn cael ei chodi am y gofal a'r cymorth hwnnw ond –
    - (i) bod yr awdurdod lleol wedi ei fodloni ar sail asesiad ariannol bod adnoddau ariannol yr oedolyn ar neu islaw'r terfyn ariannol,
    - (ii) bod yr awdurdod lleol wedi ei fodloni ar sail asesiad ariannol bod adnoddau ariannol yr oedolyn uwchlaw'r terfyn ariannol ond bod yr oedolyn, serch hynny, yn gofyn i'r awdurdod ddiwallu ei anghenion, neu



- (e) counselling and advocacy;
  - (f) social work;
  - (g) payments (including direct payments);
  - (h) aids and adaptations;
  - (i) occupational therapy.
- (3) Where a local authority is meeting a person's needs under sections 35 to 45 by providing or arranging care and support at the person's home, the local authority must satisfy itself that any visits to the person's home for that purpose are of sufficient length to provide the person with the care and support required to meet the needs in question.
- (4) A code issued under section 145 must include guidelines as to the length of visits to a person's home for the purpose of providing care and support.
- (5) See sections 47 (exception for provision of health services), 48 (exception for provision of housing etc) and 49 (restrictions on provision of payments) for limitations on what may be provided or arranged to meet needs for care and support and the way in which it may be provided or arranged.

*Meeting care and support needs of adults*

**35 Duty to meet care and support needs of an adult**

- (1) A local authority must meet an adult's needs for care and support if it is satisfied that conditions 1, 2 and 3 are met (but see subsection (6)).
- (2) Condition 1 is that the adult is –
- (a) ordinarily resident in the local authority's area, or
  - (b) of no settled residence and within the authority's area.
- (3) Condition 2 is that –
- (a) the needs meet the eligibility criteria, or
  - (b) the local authority considers it necessary to meet the needs in order to protect the adult from abuse or neglect or a risk of abuse or neglect.
- (4) Condition 3 is that –
- (a) there is no charge for the care and support needed to meet those needs, or
  - (b) there is a charge for that care and support but –
    - (i) the local authority is satisfied on the basis of a financial assessment that the adult's financial resources are at or below the financial limit,
    - (ii) the local authority is satisfied on the basis of a financial assessment that the adult's financial resources are above the financial limit but the adult nonetheless asks the authority to meet his or her needs, or

- (iii) bod yr awdurdod lleol wedi ei fodloni nad oes gan yr oedolyn alluedd i drefnu ar gyfer darparu gofal a chymorth ac nad oes unrhyw berson sydd wedi ei awdurdodi i wneud trefniadau o'r fath o dan Ddeddf Galluedd Meddyliol 2005 neu sydd fel arall mewn sefyllfa i wneud hynny ar ran yr oedolyn.

- (5) I gael ystyr "asesiad ariannol" a "terfyn ariannol" gweler Rhan 5.
- (6) Nid yw'r ddyletswydd o dan is-adran (1) yn gymwys i anghenion oedolyn i'r graddau y mae'r awdurdod lleol wedi ei fodloni bod yr anghenion hynny yn cael eu diwallu gan ofalwr.

### **36 Pŵer i ddiwallu anghenion gofal a chymorth oedolyn**

- (1) Caiff awdurdod lleol ddiwallu anghenion oedolyn am ofal a chymorth os yw'r oedolyn—
  - (a) yn ardal yr awdurdod lleol, neu
  - (b) yn preswyllo fel arfer yn ardal yr awdurdod, ond y tu allan i'w ardal.
- (2) Os yw awdurdod lleol yn diwallu o dan is-adran (1) anghenion oedolyn sy'n preswyllo fel arfer mewn ardal awdurdod lleol arall, rhaid iddo hysbysu'r awdurdod lleol y mae'r oedolyn yn preswyllo fel arfer yn ei ardal ei fod yn gwneud hynny.
- (3) Mae gan awdurdod lleol bŵer i ddiwallu anghenion o dan yr adran hon p'un a yw wedi cwblhau asesiad o anghenion ai peidio yn unol â Rhan 3 neu asesiad ariannol yn unol â Rhan 5.

#### *Diwallu anghenion plant am ofal a chymorth*

### **37 Dyletswydd i ddiwallu anghenion gofal a chymorth plentyn**

- (1) Rhaid i awdurdod lleol ddiwallu anghenion plentyn am ofal a chymorth os caiff ei fodloni bod amodau 1 a 2, ac unrhyw amodau a bennir mewn rheoliadau, wedi eu cyflawni (ond gweler is-adrannau (5) a (6)).
- (2) Amod 1 yw bod y plentyn yn ardal yr awdurdod lleol.
- (3) Amod 2 yw—
  - (a) bod yr anghenion yn bodloni'r meini prawf cymhwysra, neu
  - (b) bod yr awdurdod lleol yn barnu ei bod yn angenrheidiol diwallu'r anghenion er mwyn amddiffyn y plentyn—
    - (i) rhag cael, neu rhag risg o gael, ei gam-drin neu ei esgeuluso, neu
    - (ii) rhag cael, neu rhag risg o gael, ei niweidio mewn modd arall.
- (4) Os yw'r awdurdod lleol wedi ei hysbysu am blentyn o dan adran 120(2)(a), rhaid iddo drin y plentyn fel un sydd o fewn ei ardal at ddibenion yr adran hon.
- (5) Nid yw'r ddyletswydd o dan is-adran (1) yn gymwys i anghenion plentyn i'r graddau y mae'r awdurdod lleol wedi ei fodloni bod yr anghenion hynny yn cael eu diwallu gan deulu'r plentyn neu ofalwr.
- (6) Nid yw'r adran hon yn gymwys i blentyn sy'n derbyn gofal gan—
  - (a) awdurdod lleol,

- (iii) the local authority is satisfied that the adult lacks capacity to arrange for the provision of care and support and there is no person authorised to make such arrangements under the Mental Capacity Act 2005 or otherwise in a position to do so on the adult's behalf.
- (5) For the meaning of "financial assessment" and "financial limit" see Part 5.
- (6) The duty under subsection (1) does not apply to an adult's needs to the extent that the local authority is satisfied that those needs are being met by a carer.

### **36 Power to meet care and support needs of adult**

- (1) A local authority may meet an adult's needs for care and support if the adult is –
  - (a) within the local authority's area, or
  - (b) ordinarily resident in the authority's area, but outside its area.
- (2) If a local authority meets the needs of an adult who is ordinarily resident in the area of another local authority under subsection (1), it must notify the local authority in whose area the adult is ordinarily resident that it is doing so.
- (3) A local authority has the power to meet needs under this section whether or not it has completed a needs assessment in accordance with Part 3 or a financial assessment in accordance with Part 5.

#### *Meeting care and support needs of children*

### **37 Duty to meet care and support needs of a child**

- (1) A local authority must meet a child's needs for care and support if it is satisfied that conditions 1 and 2, and any conditions specified in regulations, are met (but see subsections (5) and (6)).
- (2) Condition 1 is that the child is within the local authority's area.
- (3) Condition 2 is that –
  - (a) the needs meet the eligibility criteria, or
  - (b) the local authority considers it necessary to meet the needs in order to protect the child from –
    - (i) abuse or neglect or a risk of abuse or neglect, or
    - (ii) other harm or a risk of such harm.
- (4) If the local authority has been notified about a child under section 120(2)(a), it must treat the child as being within its area for the purposes of this section.
- (5) The duty under subsection (1) does not apply to a child's needs to the extent that the local authority is satisfied that those needs are being met by the child's family or a carer.
- (6) This section does not apply to a child who is looked after by –
  - (a) a local authority,

- (b) awdurdod lleol yn Lloegr,
- (c) awdurdod lleol yn yr Alban, neu
- (d) ymddiriedolaeth Iechyd a Gofal Cymdeithasol.

### 38 **Pŵer i ddiwallu anghenion gofal a chymorth plentyn**

- (1) Caiff awdurdod lleol ddiwallu anghenion plentyn am ofal a chymorth os yw'r plentyn—
  - (a) o fewn ardal yr awdurdod lleol, neu
  - (b) yn preswyllo fel arfer o fewn ardal yr awdurdod, ond y tu allan i'w ardal, (ond gweler is-adran (4)).
- (2) Os yw awdurdod lleol yn diwallu o dan is-adran (1) anghenion plentyn sy'n preswyllo fel arfer o fewn ardal awdurdod lleol arall, rhaid iddo hysbysu'r awdurdod lleol y mae'r plentyn yn preswyllo fel arfer yn ei ardal ei fod yn gwneud hynny.
- (3) Mae gan awdurdod lleol bŵer i ddiwallu anghenion o dan yr adran hon p'un a yw wedi cwblhau asesiad ai peidio o anghenion yn unol â Rhan 3 neu asesiad ariannol yn unol â Rhan 5.
- (4) Nid yw'r adran hon yn gymwys i blentyn sy'n derbyn gofal gan—
  - (a) awdurdod lleol,
  - (b) awdurdod lleol yn Lloegr,
  - (c) awdurdod lleol yn yr Alban, neu
  - (d) ymddiriedolaeth Iechyd a Gofal Cymdeithasol.

### 39 **Dyletswydd i gadw cyswllt â'r teulu**

- (1) Mae'r adran hon yn gymwys i blentyn—
  - (a) sydd o fewn ardal awdurdod lleol,
  - (b) y mae'r awdurdod lleol o'r farn bod ganddo anghenion am ofal a chymorth yn ychwanegol at y gofal a'r cymorth sy'n cael eu darparu gan deulu'r plentyn,
  - (c) sy'n byw ar wahân i'w deulu, a
  - (d) nad yw'n derbyn gofal gan yr awdurdod lleol.
- (2) Os yw'r awdurdod lleol o'r farn ei bod yn angenrheidiol gwneud hynny er mwyn hyrwyddo llesiant y plentyn, rhaid iddo gymryd unrhyw gamau sy'n rhesymol ymarferol er mwyn—
  - (a) galluogi'r plentyn i fyw gyda'i deulu, neu
  - (b) hyrwyddo cyswllt rhwng y plentyn a'i deulu.

*Diwallu anghenion gofalwr am gymorth*

### 40 **Dyletswydd i ddiwallu anghenion gofalwr sy'n oedolyn am gymorth**

- (1) Rhaid i awdurdod lleol ddiwallu anghenion gofalwr sy'n oedolyn am gymorth os caiff ei fodloni bod amodau 1, 2 a 3, ac unrhyw amodau a bennir mewn rheoliadau, wedi eu cyflawni.

- (b) a local authority in England,
- (c) a local authority in Scotland, or
- (d) a Health and Social Care trust.

### **38 Power to meet care and support needs of a child**

- (1) A local authority may meet a child's needs for care and support if the child is –
  - (a) within the local authority's area, or
  - (b) ordinarily resident in the authority's area, but outside its area,  
(but see subsection (4)).
- (2) If a local authority meets the needs of a child who is ordinarily resident in the area of another local authority under subsection (1), it must notify the local authority in whose area the child is ordinarily resident that it is doing so.
- (3) A local authority has the power to meet needs under this section whether or not it has completed a needs assessment in accordance with Part 3 or a financial assessment in accordance with Part 5.
- (4) This section does not apply to a child who is looked after by –
  - (a) a local authority,
  - (b) a local authority in England,
  - (c) a local authority in Scotland, or
  - (d) a Health and Social Care trust.

### **39 Duty to maintain family contact**

- (1) This section applies to a child –
  - (a) who is within the area of a local authority,
  - (b) whom the local authority considers has needs for care and support in addition to the care and support provided by the child's family,
  - (c) who is living apart from the child's family, and
  - (d) who is not looked after by the local authority.
- (2) If the local authority considers it necessary in order to promote the well-being of the child, it must take such steps as are reasonably practicable to –
  - (a) enable the child to live with the child's family, or
  - (b) promote contact between the child and the child's family.

*Meeting support needs of a carer*

### **40 Duty to meet support needs of an adult carer**

- (1) A local authority must meet the needs for support of a carer who is an adult if it is satisfied that conditions 1, 2 and 3, and any conditions specified in regulations, are met.

- (2) Amod 1 yw bod y person y gofelir amdano gan y gofalwr –
- (a) yn oedolyn –
    - (i) sy'n preswyllo fel arfer yn ardal yr awdurdod lleol, neu
    - (ii) nad oes ganddo breswylfa sefydlog ac sydd o fewn ardal yr awdurdod, neu
  - (b) yn blentyn anabl sydd o fewn ardal yr awdurdod.
- (3) Amod 2 yw bod anghenion y gofalwr yn bodloni'r meini prawf cymhwysra.
- (4) Amod 3 –
- (a) i'r graddau y mae diwallu anghenion y gofalwr yn golygu darparu cymorth i'r gofalwr –
    - (i) yw nad oes ffi yn cael ei chodi o dan adran 59 am ddiwallu'r anghenion hynny, neu
    - (ii) i'r graddau y mae ffi yn cael ei chodi, yw bod adran 41(1) neu (2) yn gymwys;
  - (b) i'r graddau y mae diwallu anghenion y gofalwr yn golygu darparu gofal a chymorth i oedolyn y mae'r gofalwr yn gofalu amdano –
    - (i) yw nad oes ffi yn cael ei chodi o dan adran 59 am ddiwallu'r anghenion hynny a bod adran 41(7), (8) neu (9) yn gymwys, neu
    - (ii) i'r graddau y mae ffi yn cael ei chodi, yw bod adran 41(3) neu (4) yn gymwys;
  - (c) i'r graddau y mae diwallu anghenion y gofalwr yn golygu darparu gofal a chymorth i blentyn anabl sy'n 16 neu'n 17 oed y mae'r gofalwr yn gofalu amdano –
    - (i) yw nad oes ffi yn cael ei chodi o dan adran 59 am ddiwallu'r anghenion hynny a bod adran 41(7), (8) neu (10) yn gymwys, neu
    - (ii) i'r graddau y mae ffi yn cael ei chodi, yw bod adran 41(5) neu (6) yn gymwys;
  - (d) i'r graddau y mae diwallu anghenion y gofalwr yn golygu darparu gofal a chymorth i blentyn anabl o dan 16 oed y mae'r gofalwr yn gofalu amdano –
    - (i) yw nad oes ffi yn cael ei chodi o dan adran 59 am ddiwallu'r anghenion hynny a bod adran 41(12) neu (13) yn gymwys, neu
    - (ii) i'r graddau y mae ffi yn cael ei chodi, yw bod adran 41(5) neu (6) yn gymwys.

**41 Dyletswydd i ddiwallu anghenion gofalwr sy'n oedolyn am gymorth: materion atodol**

- (1) Mae'r is-adran hon yn gymwys os yw'r awdurdod lleol wedi ei fodloni ar sail asesiad ariannol fod adnoddau ariannol y gofalwr ar neu islaw'r terfyn ariannol.
- (2) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni ar sail asesiad ariannol fod adnoddau ariannol y gofalwr uwchlaw'r terfyn ariannol, a

- (2) Condition 1 is that the person cared for by the carer is –
  - (a) an adult who is –
    - (i) ordinarily resident in the local authority's area, or
    - (ii) of no settled residence and within the authority's area, or
  - (b) a disabled child who is within the authority's area.
- (3) Condition 2 is that the carer's needs meet the eligibility criteria.
- (4) Condition 3 is that –
  - (a) in so far as meeting the carer's needs involves the provision of support to the carer –
    - (i) there is not a charge under section 59 for meeting those needs, or
    - (ii) in so far as there is a charge, section 41(1) or (2) applies;
  - (b) in so far as meeting the carer's needs involves the provision of care and support to an adult cared for by the carer –
    - (i) there is not a charge under section 59 for meeting those needs and section 41(7), (8) or (9) applies, or
    - (ii) in so far as there is a charge, section 41(3) or (4) applies;
  - (c) in so far as meeting the carer's needs involves the provision of care and support to a disabled child aged 16 or 17 who is cared for by the carer –
    - (i) there is not a charge under section 59 for meeting those needs and section 41(7), (8) or (10) applies, or
    - (ii) in so far as there is a charge, section 41(5) or (6) applies;
  - (d) in so far as meeting the carer's needs involves the provision of care and support to a disabled child aged under 16 who is cared for by the carer –
    - (i) there is not a charge under section 59 for meeting those needs and section 41(12) or (13) applies, or
    - (ii) in so far as there is a charge, section 41(5) or (6) applies.

**41 Duty to meet support needs of an adult carer: supplementary**

- (1) This subsection applies if the local authority is satisfied on the basis of a financial assessment that the carer's financial resources are at or below the financial limit.
- (2) This subsection applies if –
  - (a) the local authority is satisfied on the basis of a financial assessment that the carer's financial resources are above the financial limit, and

- (b) os yw'r gofalwr, serch hynny, yn gofyn i'r awdurdod ddiwallu'r anghenion o dan sylw.
- (3) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni ar sail asesiad ariannol fod adnoddau ariannol yr oedolyn y mae'r gofalwr yn gofalu amdano ar neu islaw'r terfyn ariannol, a
- (b) os yw is-adran (7), (8) neu (9) yn gymwys.
- (4) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni ar sail asesiad ariannol fod adnoddau ariannol yr oedolyn y mae'r gofalwr yn gofalu amdano uwchlaw'r terfyn ariannol, a
- (b) os yw is-adran (7), (8) neu (9) yn gymwys.
- (5) Mae'r is-adran hon yn gymwys –
- (a) mewn cysylltiad ag oedolyn y mae'r awdurdod lleol yn credu y byddai'n gosod ffi arno am ddarparu gofal a chymorth i'r plentyn anabl y mae'r gofalwr yn gofalu amdano, os yw'r awdurdod lleol wedi ei fodloni ar sail asesiad ariannol na fyddai'n rhesymol ymarferol i'r oedolyn dalu unrhyw swm am y gofal a'r cymorth, a
- (b) naill ai –
- (i) os yw is-adran (7), (8) neu (10) yn gymwys, yn achos plentyn anabl sy'n 16 neu'n 17 oed, neu
- (ii) os yw is-adran (12) neu (13) yn gymwys, yn achos plentyn anabl o dan 16 oed.
- (6) Mae'r is-adran hon yn gymwys –
- (a) mewn cysylltiad ag oedolyn y mae'r awdurdod lleol yn credu y byddai'n gosod ffi arno am ddarparu gofal a chymorth i'r plentyn anabl y mae'r gofalwr yn gofalu amdano, os yw'r awdurdod lleol wedi ei fodloni ar sail asesiad ariannol y byddai'n rhesymol ymarferol i'r oedolyn –
- (i) talu'r ffi safonol am y gofal a'r cymorth, neu
- (ii) talu unrhyw swm arall am y gofal a'r cymorth,
- (b) os nad yw'r oedolyn yn gwrthwynebu i'r gofal a'r cymorth gael eu darparu, ac
- (c) naill ai –
- (i) os yw is-adran (7), (8) neu (10) yn gymwys, yn achos plentyn anabl sy'n 16 neu'n 17 oed, neu
- (ii) os yw is-adran (12) neu (13) yn gymwys, yn achos plentyn anabl o dan 16 oed.
- (7) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni bod gan y person y mae'r gofalwr yn gofalu amdano alluedd i benderfynu p'un ai i gael yr anghenion o dan sylw wedi eu diwallu drwy ddarparu gofal a chymorth i'r person hwnnw, a



- (b) the carer nonetheless asks the authority to meet the needs in question.
- (3) This subsection applies if –
  - (a) the local authority is satisfied on the basis of a financial assessment that the financial resources of the adult cared for by the carer are at or below the financial limit, and
  - (b) subsection (7), (8) or (9) applies.
- (4) This subsection applies if –
  - (a) the local authority is satisfied on the basis of a financial assessment that the financial resources of the adult cared for by the carer are above the financial limit, and
  - (b) subsection (7), (8) or (9) applies.
- (5) This subsection applies if –
  - (a) in respect of an adult upon whom the local authority thinks it would impose a charge for the provision of care and support to the disabled child cared for by the carer, the local authority is satisfied on the basis of a financial assessment that it would not be reasonably practicable for the adult to pay any amount for the care and support, and
  - (b) either –
    - (i) subsection (7), (8) or (10) applies, in the case of a disabled child aged 16 or 17, or
    - (ii) subsection (12) or (13) applies, in the case of a disabled child aged under 16.
- (6) This subsection applies if –
  - (a) in respect of an adult upon whom the local authority thinks it would impose a charge for the provision of care and support to the disabled child cared for by the carer, the local authority is satisfied on the basis of a financial assessment that it would be reasonably practicable for the adult –
    - (i) to pay the standard charge for the care and support, or
    - (ii) to pay any other amount for the care and support,
  - (b) the adult does not object to the provision of the care and support, and
  - (c) either –
    - (i) subsection (7), (8) or (10) applies, in the case of a disabled child aged 16 or 17, or
    - (ii) subsection (12) or (13) applies, in the case of a disabled child aged under 16.
- (7) This subsection applies if –
  - (a) the local authority is satisfied that the person cared for by the carer has capacity to decide whether to have the needs in question met by the provision of care and support to that person, and

- (b) os yw'r person yn cytuno i gael yr anghenion hynny wedi eu diwallu yn y modd hwnnw.
- (8) Mae'r is-adran hon yn gymwys os yw person awdurdodedig yn cytuno, ar ran y person y mae'r gofalwr yn gofalu amdano, i gael yr anghenion o dan sylw wedi eu diwallu drwy ddarparu gofal a chymorth i'r person hwnnw.
- (9) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni nad oes gan yr oedolyn y mae'r gofalwr yn gofalu amdano alluedd i benderfynu p'un ai i gael yr anghenion o dan sylw wedi eu diwallu drwy ddarparu gofal a chymorth i'r oedolyn hwnnw,
- (b) os nad oes person awdurdodedig i wneud y penderfyniad ar ran yr oedolyn, ac
- (c) os yw'r awdurdod lleol wedi ei fodloni ei bod er lles pennaf yr oedolyn i gael yr anghenion hynny wedi eu diwallu yn y modd hwnnw.
- (10) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni nad oes gan y plentyn anabl y mae'r gofalwr yn gofalu amdano alluedd i benderfynu p'un ai i gael yr anghenion o dan sylw wedi eu diwallu drwy ddarparu gofal a chymorth i'r plentyn hwnnw,
- (b) os nad oes person awdurdodedig i wneud y penderfyniad ar ran y plentyn, ac
- (c) os nad oes gwrthwynebiad wedi ei wneud gan berson sydd â chyfrifoldeb rhiant dros y plentyn i gael yr anghenion hynny wedi eu diwallu yn y modd hwnnw.
- (11) Caiff yr awdurdod lleol ddiystyru gwrthwynebiad at ddibenion is-adran (10)(c) os yw wedi ei fodloni na fyddai er lles pennaf y plentyn anabl.
- (12) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni bod gan y plentyn anabl y mae'r gofalwr yn gofalu amdano ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch cael yr anghenion o dan sylw wedi eu diwallu drwy ddarparu gofal a chymorth i'r plentyn hwnnw, a
- (b) os yw'r plentyn yn cytuno i gael yr anghenion hynny wedi eu diwallu yn y modd hwnnw.
- (13) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni nad oes gan y plentyn anabl y mae'r gofalwr yn gofalu amdano ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch cael yr anghenion o dan sylw wedi eu diwallu drwy ddarparu gofal a chymorth i'r plentyn hwnnw, a
- (b) os nad oes gwrthwynebiad wedi ei wneud gan berson sydd â chyfrifoldeb rhiant dros y plentyn i gael yr anghenion hynny wedi eu diwallu yn y modd hwnnw.
- (14) Caiff yr awdurdod lleol ddiystyru gwrthwynebiad at ddibenion is-adran (13)(b) os yw wedi ei fodloni na fyddai'n gyson â llesiant y plentyn anabl.
- (15) Yn yr adran hon –
- mae i "ffi safonol" ("*standard charge*") yr ystyr a roddir gan adran 63(3);

- (b) the person agrees to have those needs met in that way.
- (8) This subsection applies if an authorised person agrees, on behalf of the person cared for by the carer, to have the needs in question met by the provision of care and support to that person.
- (9) This subsection applies if –
- (a) the local authority is satisfied that the adult cared for by the carer lacks capacity to decide whether to have the needs in question met by the provision of care and support to that adult,
  - (b) there is no authorised person to make the decision on the adult’s behalf, and
  - (c) the local authority is satisfied that it is in the adult’s best interests to have those needs met in that way.
- (10) This subsection applies if –
- (a) the local authority is satisfied that the disabled child cared for by the carer lacks capacity to decide whether to have the needs in question met by the provision of care and support to that child,
  - (b) there is no authorised person to make the decision on the child’s behalf, and
  - (c) no objection has been made by a person with parental responsibility for the child to having those needs met in that way.
- (11) The local authority may disregard an objection for the purposes of subsection (10)(c) if it is satisfied that it would not be in the disabled child’s best interests.
- (12) This subsection applies if –
- (a) the local authority is satisfied that the disabled child cared for by the carer has sufficient understanding to make an informed decision about having the needs in question met by the provision of care and support to that child, and
  - (b) the child agrees to have those needs met in that way.
- (13) This subsection applies if –
- (a) the local authority is satisfied that the disabled child cared for by the carer does not have sufficient understanding to make an informed decision about having the needs in question met by the provision of care and support to that child, and
  - (b) no objection has been made by a person with parental responsibility for the child to having those needs met in that way.
- (14) The local authority may disregard an objection for the purposes of subsection (13)(b) if it is satisfied that it would not be consistent with the disabled child’s well-being.
- (15) In this section –
- “authorised person” (“*person awdurdodedig*”) means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide on behalf of the person cared for by the carer whether to have the needs in question met by the provision of care and support to that person;

ystyr “person awdurdodedig” (“*authorised person*”) yw person sydd wedi ei awdurdodi o dan Ddeddf Galluedd Meddyliol 2005 (p’un ai yn nhermau cyffredinol neu benodol) i benderfynu ar ran y person y mae’r gofalwr yn gofalu amdano p’un ai i gael yr anghenion o dan sylw wedi eu diwallu drwy ddarparu gofal a chymorth i’r person hwnnw.

(16) I gael ystyr “asesiad ariannol” a “terfyn ariannol” gweler Rhan 5.

#### 42 Dyletswydd i ddiwallu anghenion gofalwr sy’n blentyn am gymorth

- (1) Rhaid i awdurdod lleol ddiwallu anghenion gofalwr sy’n blentyn am gymorth os caiff ei fodloni bod amodau 1, 2 a (pan fo’n gymwys) 3, ac unrhyw amodau a bennir mewn rheoliadau, wedi eu cyflawni.
- (2) Amod 1 yw bod y person y gofelir amdano gan y gofalwr—
  - (a) yn oedolyn—
    - (i) sy’n preswyllo fel arfer yn ardal yr awdurdod lleol, neu
    - (ii) nad oes ganddo breswylfa sefydlog ac sydd o fewn ardal yr awdurdod, neu
  - (b) yn blentyn anabl sydd o fewn ardal yr awdurdod.
- (3) Amod 2 yw bod anghenion y gofalwr yn bodloni’r meini prawf cymhwysra.
- (4) Amod 3—
  - (a) i’r graddau y mae diwallu anghenion y gofalwr yn golygu darparu gofal a chymorth i oedolyn y mae’r gofalwr yn gofalu amdano—
    - (i) yw nad oes ffi o dan adran 59 am ddiwallu’r anghenion hynny a bod adran 41(5), (6) neu (7) yn gymwys, neu
    - (ii) i’r graddau y mae ffi yn cael ei chodi, yw bod adran 41(1) neu (2) yn gymwys;
  - (b) i’r graddau y mae diwallu anghenion y gofalwr yn golygu darparu gofal a chymorth i blentyn anabl sy’n 16 neu’n 17 oed y mae’r gofalwr yn gofalu amdano—
    - (i) yw nad oes ffi yn cael ei chodi o dan adran 59 am ddiwallu’r anghenion hynny a bod adran 41(5), (6) neu (8) yn gymwys, neu
    - (ii) i’r graddau y mae ffi yn cael ei chodi, yw bod adran 41(3) neu (4) yn gymwys;
  - (c) i’r graddau y mae diwallu anghenion y gofalwr yn golygu darparu gofal a chymorth i blentyn anabl o dan 16 oed y mae’r gofalwr yn gofalu amdano—
    - (i) yw nad oes ffi yn cael ei chodi o dan adran 59 am ddiwallu’r anghenion hynny a bod adran 41(10) neu (11) yn gymwys, neu
    - (ii) i’r graddau y mae ffi yn cael ei chodi, yw bod adran 41(3) neu (4) yn gymwys.

“standard charge” (“*ffi safonol*”) has the meaning given by section 63(3).

(16) For the meaning of “financial assessment” and “financial limit” see Part 5.

#### **42 Duty to meet support needs of a child carer**

- (1) A local authority must meet the needs for support of a carer who is a child if it is satisfied that conditions 1, 2 and (where applicable) 3, and any conditions specified in regulations, are met.
- (2) Condition 1 is that the person cared for by the carer is—
  - (a) an adult who is—
    - (i) ordinarily resident in the local authority’s area, or
    - (ii) of no settled residence and within the authority’s area, or
  - (b) a disabled child who is within the authority’s area.
- (3) Condition 2 is that the carer’s needs meet the eligibility criteria.
- (4) Condition 3 is that—
  - (a) in so far as meeting the carer’s needs involves the provision of care and support to an adult cared for by the carer—
    - (i) there is not a charge under section 59 for meeting those needs and section 41(5), (6) or (7) applies, or
    - (ii) in so far as there is a charge, section 41(1) or (2) applies;
  - (b) in so far as meeting the carer’s needs involves the provision of care and support to a disabled child aged 16 or 17 who is cared for by the carer—
    - (i) there is not a charge under section 59 for meeting those needs and section 41(5), (6) or (8) applies, or
    - (ii) in so far as there is a charge, section 41(3) or (4) applies;
  - (c) in so far as meeting the carer’s needs involves the provision of care and support to a disabled child aged under 16 who is cared for by the carer—
    - (i) there is not a charge under section 59 for meeting those needs and section 41(10) or (11) applies, or
    - (ii) in so far as there is a charge, section 41(3) or (4) applies.

- 43 Dyletswydd i ddiwallu anghenion gofalwr sy'n blentyn am gymorth: materion atodol**
- (1) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni ar sail asesiad ariannol fod adnoddau ariannol yr oedolyn y mae'r gofalwr yn gofalu amdano ar neu islaw'r terfyn ariannol, a
  - (b) os yw is-adran (5), (6) neu (7) yn gymwys.
- (2) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni ar sail asesiad ariannol fod adnoddau ariannol yr oedolyn y mae'r gofalwr yn gofalu amdano yn uwch na'r terfyn ariannol, a
  - (b) os yw is-adran (5), (6) neu (7) yn gymwys.
- (3) Mae'r is-adran hon yn gymwys –
- (a) mewn cysylltiad ag oedolyn y mae'r awdurdod lleol yn credu y byddai'n gosod ffi arno am ddarparu gofal a chymorth i'r plentyn anabl y mae'r gofalwr yn gofalu amdano, os yw'r awdurdod lleol wedi ei fodloni ar sail asesiad ariannol na fyddai'n rhesymol ymarferol i'r oedolyn dalu unrhyw swm am y gofal a'r cymorth, a
  - (b) naill ai –
    - (i) os yw is-adran (5), (6) neu (8) yn gymwys, yn achos plentyn anabl sy'n 16 neu'n 17 oed, neu
    - (ii) os yw is-adran (10) neu (11) yn gymwys, yn achos plentyn anabl o dan 16 oed.
- (4) Mae'r is-adran hon yn gymwys –
- (a) mewn cysylltiad ag oedolyn y mae'r awdurdod lleol yn credu y byddai'n gosod ffi arno am ddarparu gofal a chymorth i'r plentyn anabl y mae'r gofalwr yn gofalu amdano, os yw'r awdurdod lleol wedi ei fodloni ar sail asesiad ariannol y byddai'n rhesymol ymarferol i'r oedolyn –
    - (i) talu'r ffi safonol am y gofal a'r cymorth, neu
    - (ii) talu unrhyw swm arall am y gofal a'r cymorth,
  - (b) os nad yw'r oedolyn yn gwrthwynebu i'r gofal a'r cymorth gael eu darparu, ac
  - (c) naill ai –
    - (i) os yw is-adran (5), (6) neu (8) yn gymwys, yn achos plentyn anabl sy'n 16 neu'n 17 oed, neu
    - (ii) os yw is-adran (10) neu (11) yn gymwys, yn achos plentyn anabl o dan 16 oed.
- (5) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni bod gan y person y mae'r gofalwr yn gofalu amdano alluedd i benderfynu p'un ai i gael yr anghenion o dan sylw wedi eu diwallu drwy ddarparu gofal a chymorth i'r person hwnnw, a

**43 Duty to meet support needs of a child carer: supplementary**

- (1) This subsection applies if—
  - (a) the local authority is satisfied on the basis of a financial assessment that the financial resources of the adult cared for by the carer are at or below the financial limit, and
  - (b) subsection (5), (6) or (7) applies.
- (2) This subsection applies if—
  - (a) the local authority is satisfied on the basis of a financial assessment that the financial resources of the adult cared for by the carer are above the financial limit, and
  - (b) subsection (5), (6) or (7) applies.
- (3) This subsection applies if—
  - (a) in respect of an adult upon whom the local authority thinks it would impose a charge for the provision of care and support to the disabled child cared for by the carer, the local authority is satisfied on the basis of a financial assessment that it would not be reasonably practicable for the adult to pay any amount for the care and support, and
  - (b) either—
    - (i) subsection (5), (6) or (8) applies, in the case of a disabled child aged 16 or 17, or
    - (ii) subsection (10) or (11) applies, in the case of a disabled child aged under 16.
- (4) This subsection applies if—
  - (a) in respect of an adult upon whom the local authority thinks it would impose a charge for the provision of care and support to the disabled child cared for by the carer, the local authority is satisfied on the basis of a financial assessment that it would be reasonably practicable for the adult—
    - (i) to pay the standard charge for the care and support, or
    - (ii) to pay any other amount for the care and support,
  - (b) the adult does not object to the provision of the care and support, and
  - (c) either—
    - (i) subsection (5), (6) or (8) applies, in the case of a disabled child aged 16 or 17, or
    - (ii) subsection (10) or (11) applies, in the case of a disabled child aged under 16.
- (5) This subsection applies if—
  - (a) the local authority is satisfied that the person cared for by the carer has capacity to decide whether to have the needs in question met by the provision of care and support to that person, and

- (b) os yw'r person yn cytuno i gael yr anghenion hynny wedi eu diwallu yn y modd hwnnw.
- (6) Mae'r is-adran hon yn gymwys os yw person awdurdodedig yn cytuno, ar ran y person y mae'r gofalwr yn gofalu amdano, i gael yr anghenion o dan sylw wedi eu diwallu drwy ddarparu gofal a chymorth i'r person hwnnw.
- (7) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni nad oes gan yr oedolyn y mae'r gofalwr yn gofalu amdano alluedd i benderfynu p'un ai i gael yr anghenion o dan sylw wedi eu diwallu drwy ddarparu gofal a chymorth i'r oedolyn hwnnw,
- (b) os nad oes person awdurdodedig i wneud y penderfyniad ar ran yr oedolyn, ac
- (c) os yw'r awdurdod lleol wedi ei fodloni ei bod er lles pennaf yr oedolyn i gael yr anghenion hynny wedi eu diwallu yn y modd hwnnw.
- (8) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni nad oes gan y plentyn anabl y mae'r gofalwr yn gofalu amdano alluedd i benderfynu p'un ai i gael yr anghenion o dan sylw wedi eu diwallu drwy ddarparu gofal a chymorth i'r plentyn hwnnw,
- (b) os nad oes person awdurdodedig i wneud y penderfyniad ar ran y plentyn, ac
- (c) os nad oes gwrthwynebiad wedi ei wneud gan berson sydd â chyfrifoldeb rhiant dros y plentyn i gael yr anghenion hynny wedi eu diwallu yn y modd hwnnw.
- (9) Caiff yr awdurdod lleol ddiystyru gwrthwynebiad at ddibenion is-adran (8)(c) os yw wedi ei fodloni na fyddai er lles pennaf y plentyn anabl.
- (10) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni bod gan y plentyn anabl y mae'r gofalwr yn gofalu amdano ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch cael yr anghenion o dan sylw wedi eu diwallu drwy ddarparu gofal a chymorth i'r plentyn hwnnw, a
- (b) os yw'r plentyn yn cytuno i gael yr anghenion hynny wedi eu diwallu yn y modd hwnnw.
- (11) Mae'r is-adran hon yn gymwys –
- (a) os yw'r awdurdod lleol wedi ei fodloni nad oes gan y plentyn anabl y mae'r gofalwr yn gofalu amdano ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch cael yr anghenion o dan sylw wedi eu diwallu drwy ddarparu gofal a chymorth i'r plentyn hwnnw, a
- (b) os nad oes gwrthwynebiad wedi ei wneud gan berson sydd â chyfrifoldeb rhiant dros y plentyn i gael yr anghenion hynny wedi eu diwallu yn y modd hwnnw.
- (12) Caiff yr awdurdod lleol ddiystyru gwrthwynebiad at ddibenion is-adran (11)(b) os yw wedi ei fodloni na fyddai'n gyson â llesiant y plentyn anabl.
- (13) Yn yr adran hon –
- mae i "ffi safonol" ("*standard charge*") yr ystyr a roddir gan adran 63(3);



- (b) the person agrees to have those needs met in that way.
- (6) This subsection applies if an authorised person agrees, on behalf of the person cared for by the carer, to have the needs in question met by the provision of care and support to that person.
- (7) This subsection applies if –
- (a) the local authority is satisfied that the adult cared for by the carer lacks capacity to decide whether to have the needs in question met by the provision of care and support to that adult,
  - (b) there is no authorised person to make the decision on the adult’s behalf, and
  - (c) the local authority is satisfied that it is in the adult’s best interest to have those needs met in that way.
- (8) This subsection applies if –
- (a) the local authority is satisfied that the disabled child cared for by the carer lacks capacity to decide whether to have the needs in question met by the provision of care and support to that child,
  - (b) there is no authorised person to make the decision on the child’s behalf, and
  - (c) no objection has been made by a person with parental responsibility for the child to having those needs met in that way.
- (9) The local authority may disregard an objection for the purposes of subsection (8)(c) if it is satisfied that it would not be in the disabled child’s best interests.
- (10) This subsection applies if –
- (a) the local authority is satisfied that the disabled child cared for by the carer has sufficient understanding to make an informed decision about having the needs in question met by the provision of care and support to that child, and
  - (b) the child agrees to have those needs met in that way.
- (11) This subsection applies if –
- (a) the local authority is satisfied that the disabled child cared for by the carer does not have sufficient understanding to make an informed decision about having the needs in question met by the provision of care and support to that child, and
  - (b) no objection has been made by a person with parental responsibility for the child to having those needs met in that way.
- (12) The local authority may disregard an objection for the purposes of subsection (11)(b) if it is satisfied that it would not be consistent with the disabled child’s well-being.
- (13) In this section –
- “authorised person” (“*person awdurdodedig*”) means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide on behalf of the person cared for by the carer whether to have the needs in question met by the provision of care and support to that person;

ystyr “person awdurdodedig” (“*authorised person*”) yw person sydd wedi ei awdurdodi o dan Ddeddf Galluedd Meddyliol 2005 (p’un ai yn nhermau cyffredinol neu benodol) i benderfynu ar ran y person y mae’r gofalwr yn gofalu amdano p’un ai i gael yr anghenion o dan sylw wedi eu diwallu drwy ddarparu gofal a chymorth i’r person hwnnw.

(14) I gael ystyr “asesiad ariannol” a “terfyn ariannol” gweler Rhan 5.

#### 44 **Darpariaeth atodol ynghylch y dyletswyddau i ddiwallu anghenion gofalwr**

- (1) Mae’r adran hon yn gymwys mewn perthynas â’r dyletswyddau o dan adrannau 40 a 42.
- (2) Caiff diwallu rhai neu bob un o anghenion gofalwr am gymorth olygu darparu gofal a chymorth i’r person y mae’r gofalwr yn gofalu amdano, hyd yn oed pan na fo unrhyw ddyletswydd i ddiwallu anghenion y person am y gofal a’r cymorth hwnnw o dan adran 35 neu 37.
- (3) Pan fo’n ofynnol i awdurdod lleol drwy adran 40 neu 42 ddiwallu rhai neu bob un o anghenion gofalwr am gymorth, ond nad yw’n ddichonadwy iddo wneud hynny drwy ddarparu gofal a chymorth i’r person y mae’r gofalwr yn gofalu amdano, rhaid iddo, i’r graddau y mae’n ddichonadwy iddo wneud hynny, ganfod rhyw fodd arall o wneud hynny.

#### 45 **Pŵer i ddiwallu anghenion gofalwr am gymorth**

- (1) Caiff awdurdod lleol ddiwallu anghenion gofalwr am gymorth os yw’r person y mae’r gofalwr yn gofalu amdano –
  - (a) o fewn ardal yr awdurdod lleol, neu
  - (b) yn preswyllo fel arfer yn ardal yr awdurdod, ond y tu allan i’w ardal.
- (2) Mae gan awdurdod lleol bŵer i ddiwallu anghenion o dan yr adran hon p’un a yw wedi cwblhau asesiad ai peidio o anghenion yn unol â Rhan 3 neu asesiad ariannol yn unol â Rhan 5.

*Diwallu anghenion: eithriadau a chyfyngiadau*

#### 46 **Eithriad ar gyfer personau sy’n ddarostyngedig i reolaeth fewnfudo**

- (1) Ni chaiff awdurdod lleol ddiwallu anghenion gofal a chymorth oedolyn y mae adran 115 o Ddeddf Mewnfudo a Lloches 1999 (“Deddf 1999”) (gwahardd rhag budd-daliadau) yn gymwys iddo a’r unig reswm y mae ei anghenion am ofal a chymorth wedi codi yw –
  - (a) oherwydd bod yr oedolyn yn ddiymgeledd, neu
  - (b) oherwydd effeithiau corfforol bod yn ddiymgeledd, neu oherwydd yr effeithiau o’r math hwnnw a ragwelir.
- (2) At ddibenion is-adran (1), mae adran 95(2) i (7) o Ddeddf 1999 yn gymwys ond mae’r cyfeiriadau yn adran 95(4) a (5) o’r Ddeddf honno at yr Ysgrifennydd Gwladol i’w darllen fel cyfeiriadau at yr awdurdod lleol o dan sylw.

“standard charge” (“*ffi safonol*”) has the meaning given by section 63(3).

- (14) For the meaning of “financial assessment” and “financial limit” see Part 5.

**44 Supplementary provision about the duties to meet carer’s needs**

- (1) This section applies in relation to the duties under sections 40 and 42.
- (2) Meeting some or all of a carer’s needs for support may involve the provision of care and support to the person cared for by the carer, even where there would be no duty to meet the person’s needs for that care and support under section 35 or 37.
- (3) Where a local authority is required by section 40 or 42 to meet some or all of a carer’s needs for support, but it does not prove feasible for it to do so by providing care and support to the person cared for by the carer, it must, so far as it is feasible to do so, identify some other way in which to do so.

**45 Power to meet support needs of a carer**

- (1) A local authority may meet a carer’s needs for support if the person cared for by the carer is—
  - (a) within the local authority’s area, or
  - (b) ordinarily resident in the authority’s area, but outside its area.
- (2) A local authority has the power to meet needs under this section whether or not it has completed a needs assessment in accordance with Part 3 or a financial assessment in accordance with Part 5.

*Meeting needs: exceptions and restrictions*

**46 Exception for persons subject to immigration control**

- (1) A local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 (“the 1999 Act”) (exclusion from benefits) applies and whose needs for care and support have arisen solely—
  - (a) because the adult is destitute, or
  - (b) because of the physical effects, or anticipated physical effects, of being destitute.
- (2) For the purposes of subsection (1), section 95(2) to (7) of the 1999 Act applies but with the references in section 95(4) and (5) of that Act to the Secretary of State being read as references to the local authority in question.

- (3) Ond, hyd nes cychwyn adran 44(6) o Ddeddf Cenedligrwydd, Mewnfudo a Lloches 2002, mae is-adran (2) i gael effaith fel pe bai'n darllen fel a ganlyn –

“(2) For the purposes of subsection (1), section 95(3) and (5) to (8) of, and paragraph 2 of Schedule 8 to, the 1999 Act apply but with references in section 95(5) and (7) and that paragraph to the Secretary of State being read as references to the local authority in question.”

- (4) Mae'r cyfeiriad yn is-adran (1) at ddiwallu anghenion oedolyn am ofal a chymorth yn cynnwys cyfeiriad at wneud hynny er mwyn diwallu anghenion gofalwr am gymorth.

#### **47 Eithriad ar gyfer darparu gwasanaethau gofal iechyd**

- (1) Ni chaiff awdurdod lleol ddiwallu anghenion person am ofal a chymorth (gan gynnwys anghenion gofalwr am gymorth) o dan adrannau 35 i 45 drwy ddarparu neu drwy drefnu i ddarparu gwasanaeth neu gyfleuster y mae'n ofynnol ei ddarparu o dan ddeddfiad iechyd, oni bai y byddai gwneud hynny yn gysylltiedig â gwneud rhywbeth arall i ddiwallu anghenion o dan yr adrannau hynny, neu'n ategol at wneud hynny.
- (2) Ni chaiff awdurdod lleol sicrhau gwasanaethau neu gyfleusterau i berson o dan adran 15 (gwasanaethau ataliol) y mae'n ofynnol eu darparu o dan ddeddfiad iechyd, oni bai y byddai gwneud hynny'n gysylltiedig â sicrhau, neu'n ategol at sicrhau, gwasanaeth neu gyfleuster arall i'r person hwnnw o dan yr adran honno.
- (3) Caiff rheoliadau bennu –
- mathau o wasanaethau neu gyfleusterau y caniateir, er gwaethaf is-adrannau (1) a (2), eu darparu neu eu trefnu gan awdurdod lleol, neu amgylchiadau y caniateir i wasanaethau neu gyfleusterau o'r fath gael eu darparu neu eu trefnu ynddynt;
  - mathau o wasanaethau neu gyfleusterau na chaniateir iddynt gael eu darparu neu eu trefnu gan awdurdod lleol, neu amgylchiadau na chaniateir i wasanaethau neu gyfleusterau o'r fath gael eu darparu neu eu trefnu ynddynt;
  - gwasanaethau neu gyfleusterau, neu ddull ar gyfer dyfarnu gwasanaethau neu gyfleusterau, y mae eu darparu i'w drin, neu i'w beidio â'i drin, fel pe bai'n gysylltiedig neu'n ategol at ddibenion is-adran (1) neu (2).
- (4) Ni chaiff awdurdod lleol ddiwallu anghenion person am ofal a chymorth (gan gynnwys anghenion gofalwr am gymorth) o dan adrannau 35 i 45 drwy ddarparu neu drwy drefnu i ddarparu gofal nyrsio gan nyrs gofrestredig.
- (5) Ni chaiff awdurdod lleol sicrhau'r ddarpariaeth o ofal nyrsio gan nyrs gofrestredig wrth gyflawni ei ddyletswyddau o dan adran 15.
- (6) Ond caiff awdurdod lleol, er gwaethaf is-adrannau (1), (2), (4) a (5), drefnu i lety ynghyd â gofal nyrsio gan nyrs gofrestredig gael eu darparu –
- os yw'r awdurdod wedi cael cydsyniad i drefnu'r ddarpariaeth o ofal nyrsio gan –
    - pa Fwrdd Iechyd Lleol bynnag sy'n ofynnol o dan reoliadau, yn achos llety yng Nghymru, yr Alban neu Ogledd Iwerddon, neu
    - pa gorff iechyd Seisnig bynnag sy'n ofynnol o dan reoliadau, yn achos llety yn Lloegr, neu

- (3) But, until the commencement of section 44(6) of the Nationality, Immigration and Asylum Act 2002, subsection (2) is to have effect as if it read as follows –

“(2) For the purposes of subsection (1), section 95(3) and (5) to (8) of, and paragraph 2 of Schedule 8 to, the 1999 Act apply but with references in section 95(5) and (7) and that paragraph to the Secretary of State being read as references to the local authority in question.”

- (4) The reference in subsection (1) to meeting an adult’s needs for care and support includes a reference to doing so in order to meet a carer’s needs for support.

#### **47 Exception for provision of health services**

- (1) A local authority may not meet a person’s needs for care and support (including a carer’s needs for support) under sections 35 to 45 by providing or arranging for the provision of a service or facility which is required to be provided under a health enactment, unless doing so would be incidental or ancillary to doing something else to meet needs under those sections.
- (2) A local authority may not secure services or facilities for a person under section 15 (preventative services) that are required to be provided under a health enactment, unless doing so would be incidental or ancillary to securing another service or facility for that person under that section.
- (3) Regulations may specify –
- (a) types of services or facilities which may, despite subsections (1) and (2), be provided or arranged by a local authority, or circumstances in which such services or facilities may be so provided or arranged;
  - (b) types of services or facilities which may not be provided or arranged by a local authority, or circumstances in which such services or facilities may not be so provided or arranged;
  - (c) services or facilities, or a method for determining services or facilities, the provision of which is, or is not, to be treated as incidental or ancillary for the purposes of subsection (1) or (2).
- (4) A local authority may not meet a person’s needs for care and support (including a carer’s needs for support) under sections 35 to 45 by providing or arranging for the provision of nursing care by a registered nurse.
- (5) A local authority may not secure the provision of nursing care by a registered nurse in discharging its duty under section 15.
- (6) But a local authority may, despite subsections (1), (2), (4) and (5), arrange for the provision of accommodation together with nursing care by a registered nurse –
- (a) if the authority has obtained consent for it to arrange for the provision of the nursing care from –
    - (i) whichever Local Health Board regulations require, in the case of accommodation in Wales, Scotland or Northern Ireland, or
    - (ii) whichever English health body regulations require, in the case of accommodation in England, or

- (b) mewn achos brys a lle bo'r trefniadau'n rhai dros dro.
- (7) Mewn achos y mae is-adran (6)(b) yn gymwys iddo, rhaid i'r awdurdod lleol geisio cael y cydsyniad a grybwyllwyd yn is-adran (6)(a) cyn gynted ag y bo'n ddichonadwy ar ôl i'r trefniadau dros dro gael eu gwneud.
- (8) Caiff rheoliadau ei gwneud yn ofynnol bod awdurdod lleol –
- (a) yn gwneud trefniadau mewn cysylltiad â datrys anghydfodau rhwng yr awdurdod a chorff iechyd ynghylch p'un a yw'n ofynnol darparu gwasanaeth neu gyfleuster ai peidio o dan ddeddfiad iechyd;
- (b) yn cymryd rhan yn y modd a bennir mewn prosesau ar gyfer asesu anghenion person am ofal iechyd a phenderfynu sut y dylid diwallu'r anghenion hynny.
- (9) Nid oes dim yn yr adran hon yn effeithio ar yr hyn y caiff awdurdod lleol ei wneud o dan Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006, gan gynnwys ymrwymo i drefniadau o dan reoliadau a wneir o dan adran 33 o'r Ddeddf honno (trefniadau â chyrrff GIG).
- (10) Yn yr adran hon –
- ystyr "corff iechyd" (*"health body"*) yw –
- (a) Bwrdd Iechyd Lleol;
- (b) grŵp comisiynu clinigol;
- (c) Bwrdd Comisiynu'r Gwasanaeth Iechyd Gwladol;
- (d) Bwrdd Iechyd a gyfansoddwyd o dan adran 2 o Ddeddf y Gwasanaeth Iechyd Gwladol (Yr Alban) 1978;
- (e) Bwrdd Iechyd Arbennig a gyfansoddwyd o dan yr adran honno;
- (f) ymddiriedolaeth Iechyd a Gofal Cymdeithasol;
- ystyr "corff iechyd Seisnig" (*"English health body"*) yw –
- (a) grŵp comisiynu clinigol;
- (b) Bwrdd Comisiynu'r Gwasanaeth Iechyd Gwladol;
- ystyr "deddfiad iechyd" (*"health enactment"*) yw –
- (a) Deddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006;
- (b) Deddf y Gwasanaeth Iechyd Gwladol 2006;
- (c) Deddf y Gwasanaeth Iechyd Gwladol (Yr Alban) 1978;
- (d) Gorchymyn Iechyd a Gwasanaethau Cymdeithasol Personol (Gogledd Iwerddon) 1972 (O.S. 1972/1265 (N.I. 14));
- (e) Deddf (Diwygio) Iechyd a Gofal Cymdeithasol (Gogledd Iwerddon) 2009;
- ystyr "gofal nyrsio" (*"nursing care"*) yw gwasanaeth sy'n cynnwys naill ai darparu gofal neu gynllunio, goruchwyllo neu ddirprwyo'r gwaith o ddarparu gofal, ond nid yw'n cynnwys gwasanaeth nad oes angen iddo, o ran ei natur a'r amgylchiadau y mae i'w ddarparu ynddynt, gael ei ddarparu gan nyrs gofrestredig.

- (b) in an urgent case and where the arrangements are temporary.
- (7) In a case to which subsection (6)(b) applies, the local authority must seek to obtain the consent mentioned in subsection (6)(a) as soon as is feasible after the temporary arrangements are made.
- (8) Regulations may require a local authority –
- (a) to make arrangements in connection with the resolution of disputes between the authority and a health body about whether or not a service or facility is required to be provided under a health enactment;
  - (b) to be involved in the manner specified in processes for assessing a person's needs for health care and deciding how those needs should be met.
- (9) Nothing in this section affects what a local authority may do under the National Health Service (Wales) Act 2006, including entering into arrangements under regulations made under section 33 of that Act (arrangements with NHS bodies).
- (10) In this section –
- an “English health body” (*“corff iechyd Seisnig”*) means –
- (a) a clinical commissioning group;
  - (b) the National Health Service Commissioning Board;
- a “health body” (*“corff iechyd”*) means –
- (a) a Local Health Board;
  - (b) a clinical commissioning group;
  - (c) the National Health Service Commissioning Board;
  - (d) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;
  - (e) a Special Health Board constituted under that section;
  - (f) a Health and Social Care trust;
- a “health enactment” (*“deddfiad iechyd”*) means –
- (a) the National Health Service (Wales) Act 2006;
  - (b) the National Health Service Act 2006;
  - (c) the National Health Service (Scotland) Act 1978;
  - (d) the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14));
  - (e) the Health and Social Care (Reform) Act (Northern Ireland) 2009;
- “nursing care” (*“gofal nyrsio”*) means a service which involves either the provision of care or the planning, supervision or delegation of the provision of care, but does not include a service which, by its nature and in the circumstances in which it is to be provided, does not need to be provided by a registered nurse.

**48 Eithriad ar gyfer darparu tai etc**

Ni chaiff awdurdod lleol ddiwallu anghenion oedolyn am ofal a chymorth (gan gynnwys anghenion gofalwr am gymorth) o dan adrannau 35 i 45 na chyflawni ei ddyletswydd o dan adran 15 drwy wneud unrhyw beth y mae'n ofynnol i'r awdurdod lleol hwnnw neu awdurdod lleol arall ei wneud o dan –

- (a) Deddf Tai 1996, neu
- (b) unrhyw ddeddfiad arall a bennir mewn rheoliadau.

**49 Cyfyngiadau ar ddarparu taliadau**

- (1) Ni chaiff awdurdod lleol ddarparu taliadau i ddiwallu anghenion person am ofal a chymorth neu anghenion gofalwr am gymorth o dan adrannau 35 i 45 oni bai –
  - (a) bod y taliadau'n rhai uniongyrchol (gweler adrannau 50 i 53),
  - (b) bod yr awdurdod o'r farn –
    - (i) bod anghenion y person yn rhai brys, a
    - (ii) na fyddai'n rhesymol ymarferol i ddiwallu'r anghenion hynny mewn unrhyw ffordd arall,
  - (c) bod y taliadau'n cael eu darparu o dan gontract neu yn rhinwedd contract, neu
  - (d) bod y taliadau'n cael eu darparu mewn amgylchiadau a bennir mewn rheoliadau.
- (2) Ni chaiff awdurdod lleol ddarparu taliadau wrth gyflawni ei ddyletswydd o dan adran 15(1) oni bai –
  - (a) bod yr awdurdod o'r farn –
    - (i) y byddai'r taliadau'n sicrhau un neu fwy o'r dibenion a grybwyllwyd yn adran 15(2), a
    - (ii) na fyddai'n rhesymol ymarferol sicrhau'r diben hwnnw neu'r dibenion hynny mewn unrhyw ffordd arall,
  - (b) bod y taliadau'n cael eu darparu o dan gontract, neu yn rhinwedd contract, sy'n ymwneud â darparu gwasanaethau ar gyfer ardal yr awdurdod, neu
  - (c) bod y taliadau'n cael eu darparu mewn amgylchiadau a bennir mewn rheoliadau.

*Taliadau uniongyrchol***50 Taliadau uniongyrchol i ddiwallu anghenion oedolyn**

- (1) Caiff rheoliadau ei gwneud yn ofynnol neu ganiatáu i awdurdod lleol wneud taliadau i berson tuag at y gost o ddiwallu anghenion oedolyn am ofal a chymorth o dan adran 35 neu 36.
- (2) Ond ni chaiff rheoliadau o dan is-adran (1) ei gwneud yn ofynnol bod taliadau o'r fath yn cael eu gwneud na chaniatáu hynny oni chaiff amod 1 neu 2 ei fodloni.
- (3) Amod 1 yw –
  - (a) bod y taliadau i'w gwneud i'r oedolyn y mae arno anghenion am ofal a chymorth ("A"),



**48 Exception for provision of housing etc**

A local authority may not meet an adult's needs for care and support (including a carer's needs for support) under sections 35 to 45 or discharge its duty under section 15 by doing anything which that authority or another local authority is required to do under –

- (a) the Housing Act 1996, or
- (b) any other enactment specified in regulations.

**49 Restrictions on provision of payments**

- (1) A local authority may not provide payments to meet a person's needs for care and support or a carer's needs for support under sections 35 to 45 unless –
  - (a) the payments are direct payments (see sections 50 to 53),
  - (b) the authority considers –
    - (i) that the person's needs are urgent, and
    - (ii) that it would not be reasonably practicable to meet those needs in any other way,
  - (c) the payments are provided under or by virtue of a contract, or
  - (d) the payments are provided in circumstances specified in regulations.
- (2) A local authority may not provide payments in the discharge of its duty under section 15(1) unless –
  - (a) the authority considers –
    - (i) that the payments would achieve one or more of the purposes mentioned in section 15(2), and
    - (ii) that it would not be reasonably practicable to achieve that purpose or those purposes in any other way,
  - (b) the payments are provided under or by virtue of a contract which relates to the provision of services for the authority's area, or
  - (c) the payments are provided in circumstances specified in regulations.

*Direct payments***50 Direct payments to meet an adult's needs**

- (1) Regulations may require or allow a local authority to make payments to a person towards the cost of meeting an adult's needs for care and support under section 35 or 36.
- (2) But regulations under subsection (1) may not require or allow such payments to be made unless condition 1 or 2 is met.
- (3) Condition 1 is that –
  - (a) the payments are to be made to the adult who has needs for care and support ("A"),

- (b) bod gan A, neu y mae'r awdurdod lleol yn credu bod gan A, alluedd i gydsynio bod y taliadau'n cael eu gwneud,
  - (c) bod yr awdurdod lleol wedi ei fodloni—
    - (i) bod gwneud y taliadau yn ffordd briodol o ddiwallu anghenion A, a
    - (ii) bod gan A allu i reoli'r taliadau (naill ai ar ei ben ei hun neu gyda'r cymorth sydd ar gael i A), a
  - (d) bod A wedi cydsynio i'r taliadau gael eu gwneud.
- (4) Amod 2 yw —
- (a) nad oes gan yr oedolyn y mae arno anghenion am ofal a chymorth ("A"), neu y mae'r awdurdod lleol yn credu nad oes ganddo, y galluedd i gydsynio bod y taliadau'n cael eu gwneud,
  - (b) bod y taliadau i'w gwneud i berson ("P") ar wahân i A,
  - (c) bod P yn berson addas,
  - (d) bod yr awdurdod lleol wedi ei fodloni—
    - (i) bod gwneud y taliadau'n ffordd briodol o ddiwallu anghenion A,
    - (ii) bod gan P allu i reoli'r taliadau (naill ai ar ei ben ei hun neu gyda'r cymorth sydd ar gael i P), a
    - (iii) y bydd P yn gweithredu er lles pennaf A wrth reoli'r taliadau, ac
  - (e) bod y cydsyniad angenrheidiol wedi ei gael i wneud y taliadau i P.
- (5) At ddibenion is-adran (4)(c), mae P yn "berson addas" —
- (a) os yw P wedi ei awdurdodi o dan Ddeddf Galluedd Meddyliol 2005 (p'un ai yn nhermau cyffredinol neu benodol) i wneud penderfyniadau ynghylch anghenion A am ofal a chymorth,
  - (b) lle nad yw P wedi ei awdurdodi fel a grybwyllwyd ym mharagraff (a), os yw person sydd wedi ei awdurdodi felly yn cytuno gyda'r awdurdod lleol fod P yn addas i gael taliadau tuag at y gost o ddiwallu anghenion A am ofal a chymorth, neu
  - (c) lle nad yw P wedi ei awdurdodi fel a grybwyllwyd ym mharagraff (a) ac nad oes unrhyw berson sydd wedi ei awdurdodi felly, os yw'r awdurdod lleol o'r farn bod P yn addas i gael taliadau o'r math hwnnw.
- (6) At ddibenion is-adran (4)(e), ystyr "cydsyniad angenrheidiol" yw —
- (a) cydsyniad P, a
  - (b) pan fo P yn berson addas yn rhinwedd is-adran (5)(b), cydsyniad person sydd wedi ei awdurdodi o dan Ddeddf Galluedd Meddyliol 2005 (p'un ai yn nhermau cyffredinol neu benodol) i wneud penderfyniadau ynghylch anghenion A am ofal a chymorth.
- (7) Cyfeirir at daliad o dan yr adran hon yn y Ddeddf hon fel "taliad uniongyrchol".

- (b) A has, or the local authority believes that A has, capacity to consent to the making of the payments,
  - (c) the local authority is satisfied that –
    - (i) making the payments is an appropriate way of meeting A’s needs, and
    - (ii) A is capable of managing the payments (either by himself or herself or with the support that is available to A), and
  - (d) A has consented to the making of the payments.
- (4) Condition 2 is that –
- (a) the adult who has needs for care and support (“A”) does not have, or the local authority believes that A does not have, capacity to consent to the making of the payments,
  - (b) the payments are to be made to a person (“P”) other than A,
  - (c) P is a suitable person,
  - (d) the local authority is satisfied that –
    - (i) making the payments is an appropriate way of meeting A’s needs,
    - (ii) P is capable of managing the payments (either by himself or herself or with the support that is available to P), and
    - (iii) P will act in A’s best interests in managing the payments, and
  - (e) the necessary consent has been obtained to make the payments to P.
- (5) For the purposes of subsection (4)(c), P is a “suitable person” –
- (a) if P is authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about A’s needs for care and support,
  - (b) where P is not authorised as mentioned in paragraph (a), if a person who is so authorised agrees with the local authority that P is suitable to receive payments towards the cost of meeting A’s needs for care and support, or
  - (c) where P is not authorised as mentioned in paragraph (a) and there is no person who is so authorised, if the local authority considers that P is suitable to receive payments of that kind.
- (6) For the purposes of subsection (4)(e), the “necessary consent” means –
- (a) the consent of P, and
  - (b) where P is a suitable person by virtue of subsection (5)(b), the consent of a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about A’s needs for care and support.
- (7) A payment under this section is referred to in this Act as a “direct payment”.

**51 Taliadau uniongyrchol i ddiwallu anghenion plentyn**

- (1) Caiff rheoliadau ei gwneud yn ofynnol neu ganiatáu i awdurdod lleol wneud taliadau i berson tuag at y gost o ddiwallu anghenion plentyn am ofal a chymorth o dan adran 37, 38 neu 39.
- (2) Ond ni chaiff rheoliadau o dan is-adran (1) ei gwneud yn ofynnol bod taliadau o'r fath yn cael eu gwneud na chaniatáu hynny oni chaiff amodau 1 i 4 eu bodloni.
- (3) Amod 1 yw bod y taliadau i'w gwneud i berson ("P") sydd –
  - (a) yn berson â chyfrifoldeb rhiant dros blentyn y mae arno anghenion am ofal a chymorth, neu
  - (b) yn blentyn y mae arno anghenion am ofal a chymorth.
- (4) Amod 2 yw –
  - (a) pan fo P yn oedolyn neu'n blentyn 16 neu 17 oed, bod gan P, neu fod yr awdurdod lleol yn credu bod gan P, alluedd i gydsynio bod y taliadau yn cael eu gwneud;
  - (b) pan fo P yn blentyn o dan 16 oed, bod yr awdurdod lleol wedi ei fodloni bod gan P ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch cael taliadau uniongyrchol.
- (5) Amod 3 yw bod yr awdurdod lleol wedi ei fodloni –
  - (a) bod gwneud y taliadau yn ffordd briodol o ddiwallu anghenion y plentyn,
  - (b) y caiff llesiant y plentyn ei ddiogelu a'i hyrwyddo drwy i'r taliadau gael eu gwneud, ac
  - (c) bod gan P allu i reoli'r taliadau (naill ai ar ei ben ei hun neu gyda'r cymorth sydd ar gael i P).
- (6) Amod 4 yw bod P wedi cydsynio bod y taliadau'n cael eu gwneud.
- (7) Cyfeirir at daliad o dan yr adran hon yn y Ddeddf hon fel "taliad uniongyrchol".

**52 Taliadau uniongyrchol i ddiwallu anghenion gofalwr**

- (1) Caiff rheoliadau ei gwneud yn ofynnol neu ganiatáu i awdurdod lleol wneud taliadau i berson tuag at y gost o ddiwallu anghenion gofalwr am gymorth o dan adran 40, 42 neu 45.
- (2) Ond ni chaiff rheoliadau o dan is-adran (1) ei gwneud yn ofynnol i daliadau o'r fath gael eu gwneud neu ganiatáu iddynt gael eu gwneud oni chaiff amodau 1 i 4 eu cyflawni.
- (3) Amod 1 yw bod y taliadau i'w gwneud i'r gofalwr y mae arno anghenion am gymorth ("C").
- (4) Amod 2 yw –
  - (a) pan fo C yn oedolyn neu'n blentyn 16 neu 17 oed, bod gan C, neu fod yr awdurdod lleol yn credu bod gan C, alluedd i gydsynio bod y taliadau yn cael eu gwneud;

**51 Direct payments to meet a child's needs**

- (1) Regulations may require or allow a local authority to make payments to a person towards the cost of meeting a child's needs for care and support under section 37, 38 or 39.
- (2) But regulations under subsection (1) may not require or allow payments to be made unless conditions 1 to 4 are met.
- (3) Condition 1 is that the payments are to be made to a person ("P") who is –
  - (a) a person with parental responsibility for a child who has needs for care and support, or
  - (b) a child who has needs for care and support.
- (4) Condition 2 is that –
  - (a) where P is an adult or a child aged 16 or 17, P has, or the local authority believes that P has, capacity to consent to the making of the payments;
  - (b) where P is a child aged under 16, the local authority is satisfied that P has sufficient understanding to make an informed decision about receiving direct payments.
- (5) Condition 3 is that the local authority is satisfied that –
  - (a) making the payments is an appropriate way of meeting the child's needs,
  - (b) the well-being of the child will be safeguarded and promoted by the making of the payments, and
  - (c) P is capable of managing the payments (either by himself or herself or with the support that is available to P).
- (6) Condition 4 is that P has consented to the making of the payments.
- (7) A payment under this section is referred to in this Act as a "direct payment".

**52 Direct payments to meet a carer's needs**

- (1) Regulations may require or allow a local authority to make payments to a person towards the cost of meeting a carer's needs for support under section 40, 42 or 45.
- (2) But regulations under subsection (1) may not require or allow payments to be made unless conditions 1 to 4 are met.
- (3) Condition 1 is that the payments are to be made to the carer who has needs for support ("C").
- (4) Condition 2 is that –
  - (a) where C is an adult or a child aged 16 or 17, C has, or the local authority believes that C has, capacity to consent to the making of the payments;

- (b) pan fo C yn blentyn o dan 16 oed, bod yr awdurdod lleol wedi ei fodloni bod gan C ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch cael taliadau uniongyrchol.
- (5) Amod 3 yw bod yr awdurdod lleol wedi ei fodloni –
  - (a) bod gwneud y taliadau yn ffordd briodol o ddiwallu anghenion C, a
  - (b) bod gan C allu i reoli'r taliadau (naill ai ar ei ben ei hun neu gyda'r cymorth sydd ar gael i C).
- (6) Amod 4 yw bod C wedi cydsynio bod y taliadau'n cael eu gwneud.
- (7) Cyfeirir at daliad o dan yr adran hon yn y Ddeddf hon fel "taliad uniongyrchol".

### 53 Taliadau uniongyrchol: darpariaeth bellach

- (1) Caiff rheoliadau o dan adran 50, 51 neu 52 hefyd wneud darpariaeth ynghylch y materion canlynol (ymhlith pethau eraill) –
  - (a) y dull y mae symiau'r taliadau uniongyrchol i'w dyfarnu;
  - (b) gwneud taliadau uniongyrchol fel taliadau gros neu fel arall fel taliadau net;
  - (c) dyfarnu –
    - (i) adnoddau ariannol personau penodedig, a
    - (ii) y swm (os oes un) a fyddai'n rhesymol ymarferol i'r personau hynny ei dalu ar ffurf ad-daliad (yn achos taliadau gros) neu gyfraniad (yn achos taliadau net);
  - (d) materion y caiff awdurdod lleol, neu y mae'n rhaid iddo, roi sylw iddynt wrth wneud penderfyniad o fath penodedig ynghylch taliadau uniongyrchol;
  - (e) amodau y caiff awdurdod lleol, neu y mae'n rhaid iddo, eu gosod a'r amodau na chaniateir iddo eu gosod, mewn perthynas â thaliadau uniongyrchol;
  - (f) camau y caiff awdurdod lleol, neu y mae'n rhaid iddo, eu cymryd cyn, neu ar ôl, gwneud dyfarniad o fath penodedig ynghylch taliadau uniongyrchol;
  - (g) cymorth y mae'n rhaid i awdurdod lleol ei ddarparu neu ei drefnu ar gyfer personau y mae'n gwneud taliadau uniongyrchol iddynt;
  - (h) achosion neu amgylchiadau lle y caiff awdurdod lleol weithredu fel asiant ar ran person y mae taliadau uniongyrchol yn cael eu gwneud iddo;
  - (i) amodau y disodlir odanynt ddyletswydd neu bŵer awdurdod lleol i ddiwallu anghenion person am ofal a chymorth, neu anghenion gofawlwr am gymorth, drwy wneud taliadau uniongyrchol, ac i ba raddau y disodlir y ddyletswydd honno neu'r pŵer hwnnw;
  - (j) achosion neu amgylchiadau lle na chaiff awdurdod lleol wneud, neu lle y caniateir iddo beidio â gwneud, taliadau i berson neu mewn perthynas â pherson;
  - (k) achosion neu amgylchiadau lle y mae'n rhaid i berson, neu lle y caiff person, nad yw bellach heb alluedd, neu y mae'r awdurdod lleol yn credu nad yw'r oedolyn hwnnw bellach heb alluedd, i gydsynio bod taliadau uniongyrchol yn cael eu gwneud, gael ei drin, serch hynny, at ddibenion adrannau 50 i 52 fel pe na bai ganddo'r galluedd i wneud hynny;

- (b) where C is a child aged under 16, the local authority is satisfied that C has sufficient understanding to make an informed decision about receiving direct payments.
- (5) Condition 3 is that the local authority is satisfied that –
  - (a) making the payments is an appropriate way of meeting C’s needs, and
  - (b) C is capable of managing the payments (either by himself or herself or with the support that is available to C).
- (6) Condition 4 is that C has consented to the making of the payments.
- (7) A payment under this section is referred to in this Act as a “direct payment”.

**53 Direct payments: further provision**

- (1) Regulations under section 50, 51 or 52 may also make provision about the following matters (among other matters) –
  - (a) the manner in which the amounts of the direct payments are to be determined;
  - (b) the making of direct payments as gross payments or alternatively as net payments;
  - (c) the determination of –
    - (i) the financial resources of specified persons, and
    - (ii) the amount (if any) that it would be reasonably practicable for those persons to pay by way of reimbursement (in the case of gross payments) or contribution (in the case of net payments);
  - (d) matters to which a local authority may or must have regard when making a decision of a specified type about direct payments;
  - (e) conditions which a local authority may or must attach, and conditions which it must not attach, in relation to direct payments;
  - (f) steps which a local authority may or must take before, or after, making a decision of a specified type about direct payments;
  - (g) support which a local authority must provide or arrange for persons to whom it makes direct payments;
  - (h) cases or circumstances in which a local authority may act as an agent on behalf of a person to whom direct payments are made;
  - (i) conditions subject to which, and the extent to which, a local authority’s duty or power to meet a person’s needs for care and support or a carer’s needs for support is displaced by the making of direct payments;
  - (j) cases or circumstances in which a local authority must not, or is allowed not to, make payments to a person or in relation to a person;
  - (k) cases or circumstances in which a person who no longer lacks, or who the local authority believes no longer lacks, capacity to consent to the making of direct payments must or may nonetheless be treated for the purposes of sections 50 to 52 as lacking capacity to do so;

- (l) achosion neu amgylchiadau lle y caiff, neu y mae'n rhaid i, awdurdod lleol sy'n gwneud taliadau uniongyrchol adolygu'r arfer o wneud y taliadau hynny;
  - (m) achosion neu amgylchiadau lle y caiff, neu y mae'n rhaid i, awdurdod lleol sy'n gwneud taliadau uniongyrchol—
    - (i) terfynu'r arfer o wneud y taliadau hynny;
    - (ii) ei gwneud yn ofynnol i'r cyfan neu ran o daliad uniongyrchol gael ei addalu;
  - (n) adennill unrhyw swm sy'n ddyledus i awdurdod lleol mewn cysylltiad â gwneud taliadau uniongyrchol.
- (2) Yn is-adran (1)(b) ac (c) —
- ystyr "taliadau gros" yw taliadau uniongyrchol —
- (a) a wneir ar raddfa y mae'r awdurdod lleol yn amcangyfrif ei bod yn gyfatebol i'r gost resymol o sicrhau bod y gofal a'r cymorth (neu, yn achos gofalwyr, y cymorth), y mae'r taliadau'n cael eu gwneud mewn perthynas â hwy, yn cael eu darparu, ond
  - (b) y caniateir eu gwneud yn ddarostyngedig i'r amod bod person a bennir mewn rheoliadau yn talu i'r awdurdod, ar ffurf ad-daliad, swm neu symiau a ddyfernir o dan y rheoliadau;
- ystyr "taliadau net" yw taliadau uniongyrchol —
- (a) a wneir ar y sail y bydd person a bennir mewn rheoliadau yn talu swm neu symiau a bennir o dan y rheoliadau drwy gyfraniad tuag at y gost o sicrhau'r ddarpariaeth o ofal a chymorth (neu, yn achos gofalwyr, y cymorth) y gwneir y taliadau mewn perthynas â hwy, a
  - (b) a wneir yn unol â hynny ar raddfa islaw'r raddfa y mae'r awdurdod lleol yn amcangyfrif ei bod yn gyfatebol i'r gost resymol o sicrhau'r ddarpariaeth o'r gofal a'r cymorth hwnnw (neu, yn achos gofalwyr, y cymorth hwnnw) i adlewyrchu'r cyfraniad a wneir gan y person hwnnw.
- (3) Caiff rheoliadau o dan adran 50, 51 neu 52 wneud darpariaeth mewn perthynas â thaliadau uniongyrchol sy'n cyfateb i'r ddarpariaeth a wneir gan, neu y caniateir ei gwneud o dan, adrannau 59 i 67 neu adran 73.
- (4) At ddibenion is-adran (3), mae'r ddarpariaeth yn cyfateb i'r ddarpariaeth honno a wneir gan neu o dan adrannau 59 i 67 neu adran 73 os yw, mewn perthynas ag ad-daliadau neu gyfraniadau, yn gwneud darpariaeth sydd, ym marn Gweinidogion Cymru, yn cael effaith gyfatebol i'r ddarpariaeth a wneir gan neu o dan yr adrannau hynny mewn perthynas â ffioedd ar gyfer darparu neu drefnu ar gyfer darparu gofal a chymorth (neu gymorth, yn achos gofalwyr) i ddiwallu anghenion person.
- (5) Rhaid i reoliadau o dan adran 50, 51 neu 52 ei gwneud yn ofynnol i awdurdod lleol gymryd camau penodedig i alluogi personau perthnasol i wneud dewisiadau deallus ynghylch y defnydd o daliadau uniongyrchol.
- (6) Yn is-adran (5) ystyr "personau perthnasol" yw personau y mae rhaid cael eu cydsyniad i wneud taliadau uniongyrchol o dan reoliadau a wneir o dan adran 50, 51 neu 52.



- (l) cases or circumstances in which a local authority making direct payments may or must review the making of those payments;
  - (m) cases or circumstances in which a local authority making direct payments may or must—
    - (i) terminate the making of those payments;
    - (ii) require the repayment of the whole or part of a direct payment;
  - (n) the recovery of any amount due to a local authority in connection with the making of direct payments.
- (2) In subsection (1)(b) and (c) —
- “gross payments” means direct payments —
- (a) which are made at a rate that the local authority estimates to be equivalent to the reasonable cost of securing the provision of the care and support (or, in the case of carers, the support) in respect of which the payments are made, but
  - (b) which may be made subject to the condition that a person specified in regulations pays to the authority, by way of reimbursement, an amount or amounts determined under the regulations;
- “net payments” means direct payments —
- (a) which are made on the basis that a person specified in regulations will pay an amount or amounts determined under the regulations by way of contribution towards the cost of securing the provision of the care and support (or, in the case of carers, the support) in respect of which the payments are made, and
  - (b) which are accordingly made at a rate below the rate the local authority estimates to be equivalent to the reasonable cost of securing the provision of that care and support (or, in the case of carers, that support) so as to reflect the contribution to be made by that person.
- (3) Regulations under section 50, 51 or 52 may make provision in relation to direct payments which corresponds to the provision which is made by, or may be made under, sections 59 to 67 or section 73.
- (4) For the purposes of subsection (3), provision corresponds to that which is made by or under sections 59 to 67 or section 73 if it makes, in relation to reimbursements or contributions, provision which is in the opinion of the Welsh Ministers equivalent in effect to the provision made by or under those sections in relation to charges for providing or arranging the provision of care and support (or, in the case of carers, support) to meet a person’s needs.
- (5) Regulations under section 50, 51 or 52 must require a local authority to take specified steps to enable relevant persons to make informed choices about the use of direct payments.
- (6) In subsection (5) “relevant persons” means persons whose consent must be obtained to the making of direct payments under regulations made under section 50, 51 or 52.

- (7) Rhaid i reoliadau o dan adran 51 bennu, pan fo taliadau uniongyrchol yn cael eu gwneud i berson sy'n cael budd-dal sy'n dod o fewn categori penodedig –
  - (a) bod rhaid i'r taliadau gael eu gwneud ar raddfa y mae'r awdurdod lleol yn amcangyfrif ei bod yn gyfatebol i'r gost resymol o sicrhau bod y gofal a'r cymorth, y mae'r taliadau yn cael eu gwneud mewn cysylltiad â hwy, yn cael eu darparu, a
  - (b) na chaniateir iddynt gael eu gwneud yn ddarostyngedig i unrhyw amod sy'n ei gwneud yn ofynnol i berson dalu unrhyw swm i'r awdurdod ar ffurf ad-daliad.
- (8) Yn is-adran (7) mae "budd-dal" yn cynnwys unrhyw lwfans, taliad, credyd neu fenthyciad.
- (9) Caiff person y mae awdurdod lleol yn gwneud taliad uniongyrchol iddo, yn ddarostyngedig i reoliadau a wneir o dan adran 50, 51 neu 52, ddefnyddio'r taliad i brynu gofal a chymorth (neu, yn achos gofalwr, gymorth) gan unrhyw berson (gan gynnwys, ymhlith eraill, yr awdurdod a wnaeth y taliad).
- (10) Caiff awdurdod lleol osod ffi resymol am y ddarpariaeth o ofal a chymorth (neu, yn achos gofalwr, gymorth) i ddiwallu anghenion y mae taliad uniongyrchol wedi ei wneud mewn cysylltiad â hwy.

### *Cynlluniau*

#### **54 Cynlluniau gofal a chymorth a chynlluniau cymorth**

- (1) Pan fo'n ofynnol i awdurdod lleol ddiwallu anghenion person o dan adran 35 neu 37, rhaid iddo lunio a chynnal cynllun gofal a chymorth mewn perthynas â'r person hwnnw.
- (2) Pan fo'n ofynnol i awdurdod lleol ddiwallu anghenion gofalwr o dan adran 40 neu 42, rhaid iddo lunio a chynnal cynllun cymorth mewn perthynas â'r gofalwr hwnnw.
- (3) Rhaid i awdurdod lleol adolygu'n gyson gynlluniau y mae'n eu cynnal o dan yr adran hon.
- (4) Pan fo awdurdod lleol wedi ei fodloni bod amgylchiadau'r person y mae cynllun yn ymwneud ag ef wedi newid mewn ffordd sy'n effeithio ar y cynllun, rhaid i'r awdurdod –
  - (a) gwneud unrhyw asesiadau y mae'n barnu eu bod yn briodol, a
  - (b) diwygio'r cynllun.
- (5) Rhaid i reoliadau wneud darpariaeth ynghylch –
  - (a) sut y mae cynlluniau o dan yr adran hon i gael eu llunio;
  - (b) yr hyn y mae cynllun i'w gynnwys;
  - (c) adolygu a diwygio cynlluniau.
- (6) Rhaid i reoliadau o dan is-adran (5)(c) bennu, yn benodol –
  - (a) y personau a gaiff ofyn am adolygiad o gynllun (ar eu rhan hwy eu hunain neu ar ran person arall);
  - (b) o dan ba amgylchiadau –
    - (i) y caiff awdurdod lleol wrthod cydymffurfio â chais am adolygiad o gynllun, a

- (7) Regulations under section 51 must specify that where direct payments are made to a person who receives a benefit falling within a specified category, the payments –
  - (a) must be made at a rate that the local authority estimates to be equivalent to the reasonable cost of securing the provision of the care and support in respect of which the payments are made, and
  - (b) must not be made subject to any condition that requires a person to pay any amount to the authority by way of reimbursement.
- (8) In subsection (7) “benefit” includes any allowance, payment, credit or loan.
- (9) A person to whom a local authority makes a direct payment may, subject to regulations made under section 50, 51 or 52, use the payment to purchase care and support (or, in the case of a carer, support) from any person (including, among others, the authority which made the payment).
- (10) A local authority may impose a reasonable charge for the provision of care and support (or, in the case of a carer, support) to meet needs in respect of which a direct payment has been made.

*Plans*

**54 Care and support plans and support plans**

- (1) Where a local authority is required to meet the needs of a person under section 35 or 37, it must prepare and maintain a care and support plan in relation to that person.
- (2) Where a local authority is required to meet the needs of a carer under section 40 or 42, it must prepare and maintain a support plan in relation to that carer.
- (3) A local authority must keep under review the plans that it maintains under this section.
- (4) Where a local authority is satisfied that the circumstances of the person to whom a plan relates have changed in a way that affects the plan, the authority must –
  - (a) carry out such assessments as it considers appropriate, and
  - (b) revise the plan.
- (5) Regulations must make provision about –
  - (a) how plans under this section are to be prepared;
  - (b) what a plan is to contain;
  - (c) the review and revision of plans.
- (6) Regulations under subsection (5)(c) must specify, in particular –
  - (a) the persons who may request a review of a plan (on their own behalf or on behalf of another person);
  - (b) the circumstances in which a local authority –
    - (i) may refuse to comply with a request for a review of a plan, and

- (ii) na chaiff awdurdod lleol wrthod gwneud hynny.
- (7) Wrth lunio, adolygu neu ddiwygio cynllun o dan yr adran hon, rhaid i awdurdod lleol gynnwys –
- yn achos cynllun gofal a chymorth sy'n ymwneud ag oedolyn, yr oedolyn a, phan fo'n ddichonadwy, unrhyw ofalwr sydd gan yr oedolyn;
  - yn achos cynllun gofal a chymorth sy'n ymwneud â phlentyn, y plentyn ac unrhyw berson sydd â chyfrifoldeb rhiant dros y plentyn;
  - yn achos cynllun cymorth sy'n ymwneud â gofalwr, y gofalwr a, phan fo'n ddichonadwy, y person y mae'r gofalwr yn darparu neu'n bwriadu darparu gofal iddo.
- (8) Caiff yr awdurdod lleol –
- llunio, adolygu neu ddiwygio cynllun o dan yr adran hon yr un pryd ag y mae ef neu gorff arall yn llunio, adolygu neu ddiwygio dogfen arall yn achos y person o dan sylw, a
  - cynnwys y ddogfen arall yn y cynllun.

## 55 Rheoliadau ynghylch cynlluniau gofal a chymorth a chynlluniau cymorth

Caiff rheoliadau o dan adran 54(5), er enghraifft –

- ei gwneud yn ofynnol i gynlluniau fod ar ffurf benodedig;
- ei gwneud yn ofynnol bod cynlluniau'n cynnwys pethau penodedig;
- gwneud darpariaeth ynghylch personau pellach y mae'n rhaid i awdurdod lleol eu cynnwys yn y broses o lunio, adolygu neu ddiwygio cynlluniau;
- ei gwneud yn ofynnol i gynlluniau gael eu llunio, eu hadolygu neu eu diwygio gan bersonau penodedig;
- rhoi swyddogaethau i bersonau a bennir yn y rheoliadau mewn cysylltiad â llunio, adolygu neu ddiwygio cynlluniau;
- pennu personau y mae'n rhaid darparu copïau ysgrifenedig o gynllun iddynt (gan gynnwys mewn achosion penodedig, darparu copïau heb gydsyniad y person y mae'r cynllun yn ymwneud ag ef);
- pennu amgylchiadau pellach y mae'n rhaid i gynlluniau gael eu hadolygu odanynt.

*Materion atodol*

## 56 Hygludedd gofal a chymorth

- (1) Pan fo awdurdod lleol ("yr awdurdod anfon") yn cael ei hysbysu gan neu ar ran person y mae arno ddyletswydd o dan adran 35 neu 37 i ddiwallu anghenion am ofal a chymorth mewn cysylltiad ag ef fod y person hwnnw'n mynd i symud i ardal awdurdod lleol arall ("yr awdurdod derbyn"), ac y mae'r awdurdod wedi ei fodloni bod y symud yn debyg o ddigwydd, rhaid iddo –
- hysbysu'r awdurdod derbyn ei fod wedi ei fodloni felly, a

- (ii) may not refuse to do so.
- (7) When preparing, reviewing or revising a plan under this section, a local authority must involve –
  - (a) in the case of a care and support plan relating to an adult, the adult and, where feasible, any carer that the adult has;
  - (b) in the case of a care and support plan relating to a child, the child and any person with parental responsibility for the child;
  - (c) in the case of a support plan relating to a carer, the carer and, where feasible, the person for whom the carer provides or intends to provide care.
- (8) The local authority may –
  - (a) prepare, review or revise a plan under this section at the same time as it or another body is preparing, reviewing or revising another document in the case of the person concerned, and
  - (b) include the other document in the plan.

## **55 Regulations about care and support plans and support plans**

Regulations under section 54(5) may, for example –

- (a) require plans to be in a specified form;
- (b) require plans to contain specified things;
- (c) make provision about further persons whom a local authority must involve in the preparation, review or revision of plans;
- (d) require plans to be prepared, reviewed or revised by specified persons;
- (e) confer functions on persons specified in the regulations in connection with the preparation, review or revision of plans;
- (f) specify persons to whom written copies of a plan must be provided (including, in specified cases, the provision of copies without the consent of the person to whom the plan relates);
- (g) specify further circumstances in which plans must be reviewed.

### *Supplementary*

## **56 Portability of care and support**

- (1) Where a local authority (“the sending authority”) is notified by or on behalf of a person in respect of whom it has a duty under section 35 or 37 to meet needs for care and support that the person is going to move to the area of another local authority (“the receiving authority”), and it is satisfied that the move is likely to happen, it must –
  - (a) notify the receiving authority that it is so satisfied, and

- (b) darparu'r canlynol i'r awdurdod derbyn—
  - (i) copi o'r cynllun gofal a chymorth sydd wedi ei lunio ar gyfer y person, a
  - (ii) unrhyw wybodaeth arall sy'n ymwneud â'r person ac, os oes gan y person ofalwr, unrhyw wybodaeth arall sy'n ymwneud â'r gofalwr y bydd yr awdurdod derbyn yn gofyn amdani.
- (2) Pan fo'r awdurdod derbyn yn cael ei hysbysu gan neu ar ran person y mae ar yr awdurdod anfon ddyletswydd o dan adran 35 neu 37 i ddiwallu anghenion am ofal a chymorth mewn cysylltiad ag ef fod y person yn mynd i symud i ardal yr awdurdod derbyn, a bod yr awdurdod derbyn wedi ei fodloni bod y symud yn debyg o ddigwydd, rhaid iddo—
  - (a) hysbysu'r awdurdod anfon ei fod wedi ei fodloni felly,
  - (b) darparu i'r person, ac os oes gan y person ofalwr, y gofalwr, unrhyw wybodaeth y mae'n barnu ei bod yn briodol,
  - (c) os plentyn yw'r person, darparu i'r personau sydd â chyfrifoldeb rhiant dros y plentyn unrhyw wybodaeth sy'n briodol ym marn yr awdurdod, a
  - (d) asesu'r person o dan adran 19 (os yw'r person yn oedolyn) neu 21 (os yw'r person yn blentyn), gan roi sylw penodol i unrhyw newid yn anghenion y person am ofal a chymorth sy'n deillio o'r symud.
- (3) Os yw'r awdurdod derbyn, ar y diwrnod y mae'r person yn symud i'w ardal, yn dal heb gyflawni'r asesiad sy'n ofynnol gan is-adran (2)(d), neu y mae wedi gwneud felly ond y mae'n dal heb gymryd y camau eraill sy'n ofynnol gan y Rhan hon neu Ran 5, rhaid iddo ddiwallu anghenion y person am ofal a chymorth yn unol â'r cynllun gofal a chymorth a luniwyd gan yr awdurdod anfon, i'r graddau y bydd hynny'n rhesymol ymarferol.
- (4) Wrth gynnal yr asesiad sy'n ofynnol gan is-adran (2)(d), rhaid i'r awdurdod derbyn roi sylw i'r cynllun gofal a chymorth a ddarperir o dan is-adran (1)(b).
- (5) Mae'r awdurdod derbyn yn ddarostyngedig i'r ddyletswydd o dan is-adran (3) hyd nes y bydd wedi—
  - (a) cyflawni'r asesiad sy'n ofynnol gan is-adran (2)(d), a
  - (b) cymryd y camau eraill sy'n ofynnol o dan y Rhan hon neu Ran 5.
- (6) Caiff rheoliadau—
  - (a) pennu camau y mae'n rhaid i awdurdod lleol eu cymryd i'w fodloni ei hun mewn cysylltiad â'r materion a grybwyllwyd yn is-adrannau (1) a (2);
  - (b) pennu materion y mae'n rhaid i awdurdod derbyn roi sylw iddynt wrth benderfynu sut i gydymffurfio â'r ddyletswydd o dan is-adran (3);
  - (c) pennu achosion pan na fo'r dyletswyddau o dan is-adran (1), (2) neu (3) yn gymwys iddynt.
- (7) Mae cyfeiriad yn yr adran hon at symud i ardal yn gyfeiriad at symud i'r ardal honno gyda golwg ar breswyllo fel arfer yno.

- (b) provide the receiving authority with—
  - (i) a copy of the care and support plan prepared for the person, and
  - (ii) such other information relating to the person and, if the person has a carer, such other information relating to the carer as the receiving authority may request.
- (2) Where the receiving authority is notified by or on behalf of a person in respect of whom the sending authority has a duty under section 35 or 37 to meet needs for care and support that the person is going to move to the receiving authority's area, and the receiving authority is satisfied that the move is likely to happen, it must—
  - (a) notify the sending authority that it is so satisfied,
  - (b) provide the person and, if the person has a carer, the carer with such information as it considers appropriate,
  - (c) if the person is a child, provide the persons with parental responsibility for the child with such information as it considers appropriate, and
  - (d) assess the person under section 19 (if the person is an adult) or 21 (if the person is a child), having regard in particular to any change in the person's needs for care and support arising from the move.
- (3) If, on the day the person moves to its area, the receiving authority has yet to carry out the assessment required by subsection (2)(d), or has done so but has yet to carry out the other steps required by this Part or Part 5, it must meet the person's needs for care and support in accordance with the care and support plan prepared by the sending authority, in so far as that is reasonably practicable.
- (4) In carrying out the assessment required by subsection (2)(d), the receiving authority must have regard to the care and support plan provided under subsection (1)(b).
- (5) The receiving authority is subject to the duty under subsection (3) until it has—
  - (a) carried out the assessment required by subsection (2)(d), and
  - (b) taken the other steps required under this Part or Part 5.
- (6) Regulations may—
  - (a) specify steps which a local authority must take to satisfy itself in respect of the matters mentioned in subsections (1) and (2);
  - (b) specify matters to which a receiving authority must have regard in deciding how to comply with the duty under subsection (3);
  - (c) specify cases in which the duties under subsection (1), (2) or (3) do not apply.
- (7) A reference in this section to moving to an area is a reference to moving to that area with a view to becoming ordinarily resident there.

**57 Achosion pan fo person yn mynegi ei fod yn ffafrio llety penodol****(1) Caiff rheoliadau ddarparu –**

- (a) pan fo awdurdod lleol yn mynd i ddiwallu anghenion o dan adrannau 35 i 38 neu adrannau 40 i 45 drwy ddarparu neu drefnu i ddarparu llety o fath penodedig ar gyfer person,
- (b) pan fo'r person o dan sylw, neu berson o ddisgrifiad penodedig, yn mynegi ei fod yn ffafrio llety penodol o'r math hwnnw, ac
- (c) pan fo amodau penodedig wedi eu bodloni,

bod yn rhaid i'r awdurdod lleol ddarparu, neu drefnu i ddarparu, y llety sy'n cael ei ffafrio.

**(2) Caiff y rheoliadau ei gwneud yn ofynnol i'r person o dan sylw neu berson o ddisgrifiad penodedig dalu rhywfaint neu'r cyfan o'r gost ychwanegol (os oes un) am y llety sy'n cael ei ffafrio mewn achosion neu amgylchiadau penodedig.****(3) Yn is-adran (2) ystyr "cost ychwanegol" yw'r gwahaniaeth rhwng –**

- (a) y gost o ddarparu neu drefnu i ddarparu'r llety sy'n cael ei ffafrio, a
- (b) y gost y byddai'r awdurdod lleol fel arfer yn disgwyl ei thynnu wrth ddarparu neu wrth drefnu i ddarparu llety addas o'r math hwnnw i ddiwallu anghenion y person o dan sylw.

**58 Gwarchod eiddo personau y gofelir amdanynt i ffwrdd o'u cartrefi****(1) Mae'r adran hon yn gymwys –**

- (a) pan fo anghenion gofal a chymorth person yn cael eu diwallu o dan adran 35, 36, 37 neu 38 mewn ffordd sy'n cynnwys darparu llety neu ei dderbyn i ysbyty (neu'r ddau), a
- (b) pan fo'n ymddangos i awdurdod lleol bod perygl o golli neu ddifrodi eiddo symudol y person yn ardal yr awdurdod –
  - (i) am nad yw'r person yn gallu (p'un ai'n barhaol neu dros dro) gwarchod yr eiddo na delio â'r eiddo, a
  - (ii) am nad oes trefniadau addas wedi eu gwneud neu'n cael eu gwneud.

**(2) Rhaid i'r awdurdod lleol gymryd camau rhesymol i atal neu i leihau'r golled neu'r difrod.****(3) At ddibenion cyflawni'r ddyletswydd honno, caiff yr awdurdod lleol –**

- (a) ar bob adeg resymol ac ar ôl rhoi hysbysiad rhesymol, fynd i mewn i unrhyw fangre yr oedd y person yn byw ynddi yn union cyn bod llety yn cael ei ddarparu iddo neu cyn iddo gael ei dderbyn i ysbyty, a
- (b) cymryd unrhyw gamau eraill y mae'n barnu eu bod yn rhesymol angenrheidiol er mwyn atal neu leihau colled neu ddifrod.



**57 Cases where a person expresses preference for particular accommodation**

- (1) Regulations may provide that where –
  - (a) a local authority is going to meet needs under sections 35 to 38 or sections 40 to 45 by providing or arranging for the provision of accommodation of a specified type for a person,
  - (b) the person concerned, or a person of a specified description, expresses a preference for particular accommodation of that type, and
  - (c) specified conditions are met,the local authority must provide or arrange for the provision of the preferred accommodation.
- (2) The regulations may require the person concerned or a person of a specified description to pay some or all of the additional cost (if any) of the preferred accommodation in specified cases or circumstances.
- (3) In subsection (2) “additional cost” means the difference between –
  - (a) the cost of providing or arranging the provision of the preferred accommodation, and
  - (b) the cost that the local authority would usually expect to incur in providing or arranging the provision of suitable accommodation of that type to meet the needs of the person concerned.

**58 Protecting property of persons being cared for away from home**

- (1) This section applies where –
  - (a) a person is having needs for care and support met under section 35, 36, 37 or 38 in a way that involves the provision of accommodation or admission to hospital (or both), and
  - (b) it appears to a local authority that there is a danger of loss or damage to movable property of the person’s in the authority’s area because –
    - (i) the person is unable (whether permanently or temporarily) to protect or deal with the property, and
    - (ii) no suitable arrangements have been or are being made.
- (2) The local authority must take reasonable steps to prevent or mitigate the loss or damage.
- (3) For the purpose of discharging that duty, the local authority –
  - (a) may at all reasonable times and on reasonable notice enter any premises which the person was living in immediately before being provided with accommodation or admitted to hospital, and
  - (b) may take any other steps which it considers reasonably necessary for preventing or mitigating loss or damage.

- (4) Rhaid i'r awdurdod lleol sicrhau bod y gofynion a ganlyn wedi eu bodloni cyn cymryd unrhyw gamau o dan is-adran (3)(a) neu (b)–

ACHOS 1 - pan fo'r awdurdod lleol wedi ei fodloni bod y person–

- (a) yn oedolyn neu'n blentyn 16 neu 17 oed a chanddo alluedd i gydsynio i'r camau gael eu cymryd, neu
- (b) yn blentyn o dan 16 oed a chanddo ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch a gydsynia i'r camau gael eu cymryd,

rhaid i'r awdurdod lleol gael cydsyniad y person i'r camau gael eu cymryd;

ACHOS 2 - pan fo'r awdurdod lleol wedi ei fodloni bod y person yn oedolyn nad oes ganddo alluedd i gydsynio i'r camau gael eu cymryd–

- (a) rhaid i'r awdurdod lleol gael cydsyniad i'r camau gael eu cymryd a'r cydsyniad hwnnw gan berson sydd wedi ei awdurdodi o dan Ddeddf Galluedd Meddyliol 2005 (p'un ai yn nhermau cyffredinol neu benodol) i roi cydsyniad ar ran yr oedolyn, os oes unrhyw berson wedi ei awdurdodi felly, neu
- (b) os nad oes unrhyw berson wedi ei awdurdodi felly, rhaid i'r awdurdod lleol fod wedi ei fodloni y byddai cymryd y camau er lles pennaf yr oedolyn;

ACHOS 3 - pan fo'r awdurdod lleol wedi ei fodloni bod y person yn blentyn 16 neu 17 oed nad oes ganddo alluedd i gydsynio i'r camau gael eu cymryd–

- (a) rhaid i'r awdurdod lleol gael cydsyniad i'r camau gael eu cymryd a'r cydsyniad hwnnw gan berson sydd wedi ei awdurdodi o dan Ddeddf Galluedd Meddyliol 2005 (p'un ai yn nhermau cyffredinol neu benodol) i roi cydsyniad ar ran y plentyn, os oes unrhyw berson wedi ei awdurdodi felly, neu
- (b) os nad oes unrhyw berson wedi ei awdurdodi felly, rhaid i'r awdurdod lleol gael cysyniad i'r camau gael eu cymryd a'r cydsyniad hwnnw gan berson â chyfrifoldeb rhiant dros y plentyn;

ACHOS 4 - pan fo'r awdurdod lleol wedi ei fodloni bod y person yn blentyn o dan 16 oed nad oes ganddo ddealltwriaeth ddigonol i wneud penderfyniad deallus ynghylch a gydsynia i'r camau gael eu cymryd, rhaid i'r awdurdod lleol gael cydsyniad i'r camau gael eu cymryd a'r cydsyniad hwnnw gan berson â chyfrifoldeb rhiant dros y plentyn.

- (5) Rhaid i'r awdurdod lleol gymryd camau rhesymol i gael unrhyw gydsyniad y gall fod ei angen o dan is-adran (4).
- (6) Pan na all yr awdurdod lleol sicrhau bod y gofynion yn is-adran (4) wedi eu bodloni, mae dyletswydd yr awdurdod lleol o dan is-adran (2) yn peidio â bod yn gymwys.
- (7) Pan fo awdurdod lleol yn bwriadu arfer y pŵer o dan is-adran (3)(a) neu (b), rhaid i'r swyddog y mae'n ei awdurdodi i wneud hynny ddarparu, os gofynnir iddo wneud hynny, ddogfennaeth ddilys yn nodi'r awdurdodiad i wneud hynny.

- (4) The local authority must ensure that the following requirements are satisfied before taking any steps under subsection (3)(a) or (b) –

CASE 1 - where the local authority is satisfied that the person is –

- (a) an adult or a child aged 16 or 17 who has capacity to consent to the taking of the steps, or
- (b) a child aged under 16 who has sufficient understanding to make an informed decision about whether to consent to the taking of the steps,

the local authority must obtain the person's consent to the taking of the steps;

CASE 2 - where the local authority is satisfied that the person is an adult who lacks capacity to consent to the taking of the steps –

- (a) the local authority must obtain consent to the taking of the steps from a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to give consent on the adult's behalf, if any person is so authorised, or
- (b) if there is no person so authorised, the local authority must be satisfied that the taking of the steps would be in the adult's best interests;

CASE 3 - where the local authority is satisfied that the person is a child aged 16 or 17 who lacks capacity to consent to the taking of the steps –

- (a) the local authority must obtain consent to the taking of the steps from a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to give consent on the child's behalf, if any person is so authorised, or
- (b) if there is no person so authorised, the local authority must obtain consent to the taking of the steps from a person with parental responsibility for the child;

CASE 4 - where the local authority is satisfied that the person is a child aged under 16 who does not have sufficient understanding to make an informed decision about whether to consent to the taking of the steps, the local authority must obtain consent to the taking of the steps from a person with parental responsibility for the child.

- (5) The local authority must take reasonable steps to obtain any consent which may be needed under subsection (4).
- (6) Where the local authority is unable to ensure that the requirements in subsection (4) are satisfied, the local authority's duty under subsection (2) ceases to apply.
- (7) Where a local authority is proposing to exercise the power under subsection (3)(a) or (b), the officer it authorises to do so must, upon request, produce valid documentation setting out the authorisation to do so.

- (8) Mae person sydd, heb esgus rhesymol, yn rhwystro arfer y pŵer o dan is-adran (3)(a) neu (b)–
  - (a) yn cyflawni trosedd, a
  - (b) yn agored, o'i gollfarnu'n ddiannod, i ddirwy heb fod yn fwy na lefel 4 ar y raddfa safonol.
- (9) Caiff awdurdod lleol adennill unrhyw dreuliau rhesymol y mae'n eu tynnu o dan yr adran hon mewn perthynas ag eiddo symudol oedolyn oddi wrth yr oedolyn hwnnw.
- (10) Gellir adennill yn ddiannod fel dyled sifil swm y gellir ei adennill o dan is-adran (9) (ond nid yw hynny'n effeithio ar unrhyw ddull arall o'i adennill).

## RHAN 5

### CODI FFIOEDD AC ASESIADAU ARIANNOL

#### *Codi ffioedd am ddiwallu anghenion*

#### 59 Pŵer i osod ffioedd

- (1) Caiff awdurdod lleol ei gwneud yn ofynnol i berson dalu ffi i'r awdurdod am ddarparu neu drefnu i ddarparu gofal a chymorth neu (yn achos gofalwr) cymorth o dan adrannau 35 i 45 i ddiwallu anghenion person.
- (2) Caiff ffi a osodir o dan is-adran (1) gwmpasu dim mwy na'r gost y mae'r awdurdod lleol yn ei thynnu wrth ddiwallu'r anghenion y mae'r ffi yn gymwys iddynt.
- (3) Ond pan fo awdurdod lleol yn diwallu anghenion am fod adran 35(4)(b)(ii), 36, 38, 41(2), (4) neu (6)(a)(i), 43(2) neu (4)(a)(i) neu 45 yn gymwys, caiff ei gwneud yn ofynnol i berson dalu ffi i'r awdurdod (yn ychwanegol at unrhyw ffi a osodir o dan is-adran (1)) am sefydlu'r trefniadau ar gyfer diwallu'r anghenion hynny.
- (4) Mae pŵer awdurdod lleol i osod ffi o dan yr adran hon yn ddarostyngedig i'r canlynol—
  - (a) y ddarpariaeth a wneir mewn rheoliadau o dan adran 61 neu 62 (os oes rhai), a
  - (b) dyletswyddau'r awdurdod o dan adrannau 63, 66 a 67 (os ydynt yn gymwys).

#### 60 Personau y caniateir i ffioedd gael eu gosod arnynt

- (1) Mae'r adran hon yn disgrifio'r personau y caniateir i ffioedd gael eu gosod arnynt o dan adran 59.
- (2) Caniateir i ffi am ddarparu neu drefnu i ddarparu gofal a chymorth i ddiwallu anghenion oedolyn, neu ar gyfer sefydlu'r trefniadau ar gyfer y gofal a'r cymorth hwnnw, gael ei gosod ar yr oedolyn hwnnw.
- (3) Caniateir i ffi am ddarparu neu drefnu i ddarparu gofal a chymorth i ddiwallu anghenion plentyn, neu ar gyfer sefydlu'r trefniadau ar gyfer y gofal a'r cymorth hwnnw, gael ei gosod—
  - (a) pan fo'r gofal a chymorth yn cael eu darparu i blentyn, ar oedolyn sydd â chyfrifoldeb rhiant dros y plentyn hwnnw;

- (8) A person who, without reasonable excuse, obstructs the exercise of the power under subsection (3)(a) or (b) –
  - (a) commits an offence, and
  - (b) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) A local authority may recover whatever reasonable expenses it incurs under this section in relation to an adult's movable property from that adult.
- (10) An amount recoverable under subsection (9) is recoverable summarily as a civil debt (but this does not affect any other method of recovery).

## PART 5

### CHARGING AND FINANCIAL ASSESSMENT

#### *Charging for meeting needs*

#### **59 Power to impose charges**

- (1) A local authority may require a person to pay a charge to the authority for providing or arranging the provision of care and support or (in the case of a carer) support under sections 35 to 45 to meet a person's needs.
- (2) A charge imposed under subsection (1) may cover only the cost that the local authority incurs in meeting the needs to which the charge applies.
- (3) But where a local authority is meeting needs because section 35(4)(b)(ii), 36, 38, 41(2), (4) or (6)(a)(i), 43(2) or (4)(a)(i) or 45 applies, it may require a person to pay a charge to the authority (in addition to any charge imposed under subsection (1)) for putting in place the arrangements for meeting those needs.
- (4) A local authority's power to impose a charge under this section is subject to –
  - (a) the provision made in regulations under section 61 or 62 (if any), and
  - (b) its duties under sections 63, 66 and 67 (if applicable).

#### **60 Persons upon whom charges may be imposed**

- (1) This section describes the persons upon whom charges may be imposed under section 59.
- (2) A charge for providing or arranging the provision of care and support to meet an adult's needs, or for putting in place the arrangements for that care and support, may be imposed on that adult.
- (3) A charge for providing or arranging the provision of care and support to meet a child's needs, or for putting in place the arrangements for that care and support, may be imposed –
  - (a) where the care and support is provided to a child, on an adult with parental responsibility for that child;

- (b) pan fo anghenion y plentyn am ofal a chymorth yn cael eu diwallu drwy ddarparu rhywbeth i oedolyn, ar yr oedolyn hwnnw.
- (4) Caniateir i ffi am ddarparu neu drefnu i ddarparu cymorth i ddiwallu anghenion gofalwr, neu am sefydlu'r trefniadau ar gyfer y cymorth hwnnw, gael ei gosod –
  - (a) pan fo'r cymorth yn cael ei ddarparu i ofalwr sy'n oedolyn, ar y gofalwr hwnnw;
  - (b) pan fo'r cymorth yn cael ei ddarparu i ofalwr sy'n blentyn, ar oedolyn sydd â chyfrifoldeb rhiant dros y gofalwr hwnnw;
 ond mae hyn yn ddarostyngedig i is-adran (5).
- (5) Pan fo anghenion gofalwr am gymorth yn cael eu diwallu drwy ddarparu gofal a chymorth i berson y mae'r gofalwr yn darparu, neu'n bwriadu darparu, gofal iddo, nid yw is-adran (4) yn gymwys; caniateir i ffi am ddarparu, neu drefnu i ddarparu, y cymorth hwnnw, neu am sefydlu'r trefniadau ar gyfer y cymorth hwnnw, gael ei gosod yn lle hynny –
  - (a) pan fo anghenion y gofalwr am gymorth yn cael eu diwallu drwy ddarparu gofal a chymorth i oedolyn, ar yr oedolyn hwnnw;
  - (b) pan fo anghenion y gofalwr am gymorth yn cael eu diwallu drwy ddarparu gofal a chymorth i blentyn, ar oedolyn sydd â chyfrifoldeb rhiant dros y plentyn hwnnw.

## 61 Rheoliadau ynghylch arfer pŵer i osod ffi

- (1) Caiff rheoliadau wneud darpariaeth ar gyfer ac mewn cysylltiad ag arfer pŵer i osod ffi o dan adran 59.
- (2) Caiff y rheoliadau (ymhlith pethau eraill) wneud darpariaeth am swm y ffi y caniateir ei gosod o dan adran 59(1); a chaiff y rheoliadau (gan ddibynnu ar adran 196(2)) wneud hynny drwy, er enghraifft –
  - (a) pennu uchafswm y caniateir ei osod am ofal a chymorth, neu (yn achos gofalwyr) gymorth, o fath penodedig neu gyfuniad penodedig o bethau o'r fath, neu fformiwla neu ddull i ddyfarnu'r uchafswm hwnnw;
  - (b) ei gwneud yn ofynnol i awdurdod lleol bennu ffi am ofal a chymorth, neu (yn achos gofalwyr) gymorth, o fath penodedig neu gyfuniad penodedig o bethau o'r fath drwy gyfeirio at gyfnod amser penodedig;
  - (c) pennu, yn achos ffi y cyfeiriwyd ati ym mharagraff (b), uchafswm y caniateir ei osod, neu fformiwla neu ddull i benderfynu'r uchafswm hwnnw.
- (3) Caiff y rheoliadau (ymhlith pethau eraill) wneud darpariaeth am swm y ffi y caniateir ei gosod o dan adran 59(3); a chaiff y rheoliadau (gan ddibynnu ar adran 196(2)) wneud hynny, er enghraifft, drwy bennu uchafswm y caniateir ei osod am sefydlu trefniadau –
  - (a) mewn amgylchiadau penodedig, neu
  - (b) ar gyfer personau o ddisgrifiad penodedig.

- (b) where the child's needs for care and support are being met by the provision of something to an adult, on that adult.
- (4) A charge for providing or arranging the provision of support to meet a carer's needs, or for putting in place the arrangements for that support, may be imposed –
  - (a) where the support is provided to a carer who is an adult, on that carer;
  - (b) where the support is provided to a carer who is a child, on an adult with parental responsibility for that carer;but this is subject to subsection (5).
- (5) Where a carer's needs for support are met by the provision of care and support to a person for whom the carer provides or intends to provide care, subsection (4) does not apply; a charge for providing or arranging the provision of that support, or for putting in place the arrangements for that support, may instead be imposed –
  - (a) where the carer's needs for support are met by the provision of care and support to an adult, on that adult;
  - (b) where the carer's needs for support are met by the provision of care and support to a child, on an adult with parental responsibility for that child.

#### **61 Regulations about the exercise of a power to impose a charge**

- (1) Regulations may make provision for and in connection with the exercise of a power to impose a charge under section 59.
- (2) The regulations may (among other things) make provision about the amount of the charge which may be imposed under section 59(1); and the regulations may (in reliance on section 196(2)) do so, for example, by –
  - (a) specifying a maximum amount which may be imposed for care and support or (in the case of carers) support of a specified type or for a specified combination of such things, or a formula or method for determining that maximum amount;
  - (b) requiring a local authority to fix a charge for care and support or (in the case of carers) support of a specified type or for a specified combination of such things by reference to a specified period of time;
  - (c) specifying, in the case of a charge referred to in paragraph (b), a maximum amount which may be imposed, or a formula or method for determining that maximum amount.
- (3) The regulations may also (among other things) make provision about the amount of the charge which may be imposed under section 59(3); and the regulations may (in reliance on section 196(2)) do so, for example, by specifying a maximum amount which may be imposed for putting arrangements in place –
  - (a) in specified circumstances, or
  - (b) for persons of a specified description.

**62 Rheoliadau yn datgymhwyso pŵer i osod ffi**

Caiff rheoliadau ddatgymhwyso pŵer awdurdod lleol i osod ffi o dan adran 59(1) neu (3) (ac felly cânt ei gwneud yn ofynnol i awdurdod lleol ddiwallu anghenion o dan adrannau 35 i 45 yn rhad ac am ddim); a chaiff y rheoliadau (gan ddibynnu ar adran 196(2)) ei gwneud yn ofynnol i awdurdod lleol wneud hynny, er enghraifft, pan fo'r gofal a'r cymorth, neu (yn achos gofalwyr) y cymorth—

- (a) o fath penodedig;
- (b) yn cael ei ddarparu neu ei drefnu o dan amgylchiadau penodedig;
- (c) yn cael ei ddarparu i bersonau o ddisgrifiad penodedig, neu'n cael ei drefnu ar eu cyfer;
- (d) yn cael ei ddarparu neu ei drefnu am gyfnod penodedig yn unig.

**63 Dyletswydd i gynnal asesiad ariannol**

- (1) Mae'r adran hon yn gymwys mewn perthynas â pherson y mae awdurdod lleol yn credu y byddai'n gosod ffi arno o dan adran 59, pe bai'n diwallu anghenion person am ofal a chymorth neu anghenion gofalwr am gymorth.
- (2) Rhaid i'r awdurdod lleol asesu lefel adnoddau ariannol y person er mwyn dyfarnu a fyddai'n rhesymol ymarferol i'r person dalu'r ffi safonol (ond mae hynny'n ddarostyngedig i adran 65).
- (3) Yn y Rhan hon ystyr "ffi safonol" yw'r swm y byddai awdurdod lleol yn ei godi o dan adran 59 pe na châi unrhyw ddyfarniad ei wneud o dan adran 66 ynghylch gallu person i dalu'r swm hwnnw.
- (4) Cyfeirir at asesiad o dan yr adran hon yn y Ddeddf hon fel "asesiad ariannol".

**64 Rheoliadau am asesiadau ariannol**

- (1) Rhaid i reoliadau wneud darpariaeth ar gyfer cynnal asesiadau ariannol ac mewn perthynas â'u cynnal.
- (2) Rhaid i'r rheoliadau wneud darpariaeth ar gyfer—
  - (a) cyfrifo incwm;
  - (b) cyfrifo cyfalaf.
- (3) Caiff y rheoliadau wneud darpariaeth hefyd ar gyfer y materion canlynol (ymhlith materion eraill)—
  - (a) trin, neu beidio â thrin, symiau o fath penodedig fel incwm neu fel cyfalaf;
  - (b) achosion neu amgylchiadau lle y mae person i'w drin fel un a chanddo adnoddau ariannol sy'n uwch na lefel benodedig (a'r rhain yn achosion neu'n amgylchiadau a all gynnwys, er enghraifft, achosion lle y mae'r person sy'n cael ei asesu wedi methu â darparu i'r awdurdod lleol, pan ofynnwyd iddo wneud hynny, wybodaeth neu ddogfennau sydd ym meddiant y person neu o dan ei reolaeth);
  - (c) achosion neu amgylchiadau lle y mae'n rhaid neu y caniateir i asesiad ariannol newydd gael ei gynnal.



**62 Regulations disapplying a power to impose a charge**

Regulations may disapply a local authority's power to impose a charge under section 59(1) or (3) (and so may require a local authority to meet needs under sections 35 to 45 free of charge); the regulations may (in reliance on section 196(2) require a local authority to do so where, for example, the care and support, or (in the case of carers) the support –

- (a) is of a specified type;
- (b) is provided or arranged in specified circumstances;
- (c) is provided to, or arranged for, persons of a specified description;
- (d) is provided or arranged for a specified period only.

**63 Duty to carry out a financial assessment**

- (1) This section applies in relation to a person on whom a local authority thinks it would impose a charge under section 59, were it to meet a person's needs for care and support or a carer's needs for support.
- (2) The local authority must assess the level of the person's financial resources in order to determine whether it would be reasonably practicable for the person to pay the standard charge (but this is subject to section 65).
- (3) In this Part "standard charge" means the amount that a local authority would charge under section 59 if no determination were made under section 66 as to a person's ability to pay that amount.
- (4) An assessment under this section is referred to in this Act as a "financial assessment".

**64 Regulations about financial assessments**

- (1) Regulations must make provision for and in connection with carrying out financial assessments.
- (2) The regulations must make provision for –
  - (a) calculating income;
  - (b) calculating capital.
- (3) The regulations may also make provision for the following matters (among other matters) –
  - (a) the treatment, or non-treatment, of amounts of a specified type as income or as capital;
  - (b) cases or circumstances in which a person is to be treated as having financial resources which exceed a specified level (which may include, for example, cases in which the person being assessed has failed to provide to a local authority, upon request, information or documents in the person's possession or under the person's control);
  - (c) cases or circumstances in which a new financial assessment must or may be carried out.

**65 Rheoliadau'n datgymhwyso'r ddyletswydd i gynnal asesiad ariannol**

Caiff rheoliadau wneud darpariaeth am amgylchiadau lle nad yw'n ofynnol i awdurdod lleol (er gwaethaf adran 63) gynnal asesiad ariannol.

**66 Dyfarniad ynghylch gallu person i dalu ffi**

- (1) Pan fo awdurdod lleol wedi cynnal asesiad ariannol—
  - (a) rhaid i'r awdurdod ddyfarnu, yng ngoleuni'r asesiad, a fyddai'n rhesymol ymarferol i'r person a aseswyd dalu'r ffi safonol am y gofal a'r cymorth neu (yn achos gofalwyr) y cymorth y byddai ffi'n cael ei gosod arno mewn cysylltiad â hwy neu ef, a
  - (b) os yw'r awdurdod yn dyfarnu na fyddai'n rhesymol ymarferol i'r person a aseswyd dalu'r ffi safonol, rhaid i'r awdurdod ddyfarnu'r swm (os oes un) y byddai'n rhesymol ymarferol i'r person hwnnw ei dalu am y gofal a'r cymorth hwnnw neu'r cymorth hwnnw.
- (2) Yn yr adran hon ystyr "y person a aseswyd" yw'r person y mae ei adnoddau ariannol wedi eu hasesu o dan adran 63.
- (3) Rhaid i reoliadau wneud darpariaeth am wneud dyfarniadau o dan is-adran (1).
- (4) Rhaid i'r rheoliadau ei gwneud yn ofynnol i awdurdod lleol benderfynu, mewn achos lle y mae adnoddau ariannol person (p'un ai incwm, cyfalaf, neu gyfuniad o'r ddau) yn uwch na lefel benodedig, y byddai'n rhesymol ymarferol i'r person hwnnw dalu'r ffi safonol.
- (5) Cyfeirir at y lefel a bennir at ddibenion is-adran (4) yn y Ddeddf hon fel "y terfyn ariannol".
- (6) Caiff y rheoliadau ei gwneud yn ofynnol i awdurdod lleol ddyfarnu na fyddai'n rhesymol ymarferol i'r person a aseswyd dalu unrhyw swm am y gofal a'r cymorth neu (yn achos gofalwyr) y cymorth a fyddai'n lleihau incwm neu gyfalaf y person islaw lefelau penodedig; a chaiff y rheoliadau, (gan ddibynnu ar adran 196(2)) bennu lefelau gwahanol—
  - (a) ar gyfer incwm ac ar gyfer cyfalaf,
  - (b) ar gyfer amgylchiadau gwahanol, ac
  - (c) ar gyfer disgrifiadau gwahanol o bersonau.
- (7) Caiff y rheoliadau wneud darpariaeth hefyd (ymhlith pethau eraill) am achosion neu amgylchiadau lle y mae'n rhaid i awdurdod lleol, neu lle y caiff, ddisodli dyfarniad â dyfarniad newydd.
- (8) Mae dyfarniad o dan is-adran (1) yn cael effaith o ddyddiad y mae'r awdurdod lleol yn barnu ei fod yn rhesymol (a chaniateir iddo fod yn ddyddiad cyn yr un y gwnaed y dyfarniad arno); ond mae hynny'n ddarostyngedig i unrhyw ddarpariaeth a wneir mewn rheoliadau o dan is-adran (9).
- (9) Caiff rheoliadau wneud darpariaeth ynglŷn â'r dyddiad y mae dyfarniad o dan is-adran (1) i gael effaith ohono (a chaiff gynnwys darpariaeth i ddyfarniad gael effaith o ddyddiad cyn yr un pan gafodd ei wneud).

**65 Regulations disapplying the duty to carry out a financial assessment**

Regulations may make provision about circumstances in which a local authority is not required (despite section 63) to carry out a financial assessment.

**66 Determination as to a person's ability to pay a charge**

- (1) Where a local authority has carried out a financial assessment –
  - (a) the authority must determine, in light of the assessment, whether it would be reasonably practicable for the assessed person to pay the standard charge for the care and support or (in the case of carers) the support in respect of which a charge would be imposed on that person, and
  - (b) if the authority determines that it would not be reasonably practicable for the assessed person to pay the standard charge, the authority must determine the amount (if any) that it would be reasonably practicable for that person to pay for that care and support or that support.
- (2) In this section “the assessed person” means the person whose financial resources have been assessed under section 63.
- (3) Regulations must make provision about the making of determinations under subsection (1).
- (4) The regulations must require a local authority to determine, in a case where the assessed person's financial resources (whether income, capital, or a combination of both) exceed a specified level, that it would be reasonably practicable for that person to pay the standard charge.
- (5) The level specified for the purposes of subsection (4) is referred to in this Act as “the financial limit”.
- (6) The regulations may require a local authority to determine that it would not be reasonably practicable for the assessed person to pay any amount for the care and support or (in the case of carers) the support that would reduce the person's income or capital below specified levels; and the regulations may, (in reliance on section 196(2)) specify different levels –
  - (a) for income and for capital,
  - (b) for different circumstances, and
  - (c) for different descriptions of persons.
- (7) The regulations may also (among other things) make provision about cases or circumstances in which a local authority must or may replace a determination with a new determination.
- (8) A determination under subsection (1) has effect from a date that the local authority considers reasonable (which may be a date before that on which the determination was made); but this is subject to any provision made in regulations under subsection (9).
- (9) Regulations may make provision as to the date from which a determination under subsection (1) is to have effect (and may include provision for a determination to have effect from a date before that on which it was made).

- (10) Pan fo dyfarniad yn disodli dyfarniad sy'n bodoli eisoes, mae'r dyfarniad sy'n bodoli eisoes yn parhau i gael effaith hyd nes y bydd y dyfarniad newydd yn cael effaith.
- (11) At ddibenion is-adran (10), mae dyfarniad yn disodli dyfarniad sy'n bodoli eisoes os yw'n ymwneud â'r un person a'r un gofal a chymorth neu (yn achos gofalwyr) yr un cymorth.

#### 67 **Dyletswydd i roi effaith i ddyfarniad ynghylch gallu i dalu ffi**

- (1) Rhaid i awdurdod lleol roi effaith i ddyfarniad o dan adran 66 wrth osod ffioedd o dan adran 59.
- (2) Ond caiff rheoliadau wneud darpariaeth ynghylch amgylchiadau lle nad yw'r ddyletswydd o dan is-adran (1) yn gymwys.

#### 68 **Cytundebau ar daliadau gohiriedig**

- (1) Caiff rheoliadau bennu ym mha achosion neu o dan ba amgylchiadau neu amodau y caiff awdurdod lleol, neu y mae'n rhaid i awdurdod lleol, ymrwymo i gytundeb ar daliadau gohiriedig gyda pherson y mae'n ofynnol iddo (neu y mae'n mynd i fod yn ofynnol iddo) dalu ffi o dan adran 59.
- (2) Mae cytundeb ar daliad gohiriedig yn gytundeb –
  - (a) y mae'r awdurdod lleol yn cytuno odano i beidio â'i gwneud yn ofynnol i swm gofynnol y person gael ei dalu tan yr amser sy'n cael ei bennu yn y rheoliadau neu ei ddyfarnu'n unol â hwy, a
  - (b) y mae'r person yn cytuno odano i roi i'r awdurdod lleol arwystl dros fuddiant y person yn ei gartref i sicrhau bod swm gofynnol y person yn cael ei dalu.
- (3) Swm gofynnol y person yw'r hyn o'r ffi y mae'n ofynnol i'r person (neu y mae'n mynd i fod yn ofynnol iddo) ei dalu o dan adran 59 ag a bennir yn y rheoliadau neu a ddyfernir yn unol â hwy.
- (4) Caiff y rheoliadau ei gwneud yn ofynnol neu ganiatáu i'r awdurdod lleol godi –
  - (a) llog ar swm gofynnol y person;
  - (b) unrhyw swm cysylltiedig â chostau gweinyddol yr awdurdod lleol a bennir yn y rheoliadau neu a ddyfernir yn unol â hwy;
  - (c) llog ar swm a godir o dan baragraff (b).
- (5) Caiff y rheoliadau ddarparu bod y llog y cyfeiriwyd ato yn is-adran (4)(a) i'w godi drwy gyfrwng rhwymedigaeth yn y cytundeb ar daliad gohiriedig ac i'w drin yn yr un ffordd â swm gofynnol y person.
- (6) Caiff y rheoliadau –
  - (a) pennu costau sydd, neu nad ydynt, i'w hystyried yn gostau gweinyddol at ddibenion is-adran (4)(b);
  - (b) darparu bod swm y cyfeiriwyd ato yn is-adran (4)(b) neu fod llog y cyfeiriwyd ato yn is-adran (4)(c) i'w godi drwy gyfrwng rhwymedigaeth yn y cytundeb ar daliad gohiriedig ac i'w drin yn yr un ffordd â swm gofynnol y person.
- (7) Ni chaiff yr awdurdod lleol godi llog o dan reoliadau a wneir o dan is-adran (4) yn ôl cyfradd sy'n uwch na'r gyfradd a bennir yn y rheoliadau neu a ddyfernir yn unol â hwy.

- (10) Where a determination replaces an existing determination, the existing determination continues to have effect until the new determination has effect.
- (11) For the purposes of subsection (10), a determination replaces an existing determination if it relates to the same person and the same care and support or (in the case of carers) support.

**67 Duty to give effect of determination as to ability to pay a charge**

- (1) A local authority must give effect to a determination under section 66 in imposing charges under section 59.
- (2) But regulations may make provision about circumstances in which the duty under subsection (1) does not apply.

**68 Deferred payment agreements**

- (1) Regulations may specify cases or circumstances in which, or conditions subject to which, a local authority may or must enter into a deferred payment agreement with a person who is required (or is going to be required) to pay a charge under section 59.
- (2) A deferred payment agreement is an agreement under which—
  - (a) the local authority agrees not to require payment of the person's required amount until the time specified in or determined in accordance with the regulations, and
  - (b) the person agrees to give the local authority a charge over the person's interest in his or her home to secure payment of the person's required amount.
- (3) The person's required amount is so much of the charge that the person is required (or is going to be required) to pay under section 59 as is specified in or determined in accordance with the regulations.
- (4) The regulations may require or permit the local authority to charge—
  - (a) interest on the person's required amount;
  - (b) such amount relating to the local authority's administrative costs as is specified in or determined in accordance with the regulations;
  - (c) interest on an amount charged under paragraph (b).
- (5) The regulations may provide for interest referred to in subsection (4)(a) to be charged by means of an obligation in the deferred payment agreement and to be treated in the same way as the person's required amount.
- (6) The regulations may—
  - (a) specify costs which are, or which are not, to be regarded as administrative costs for the purposes of subsection (4)(b);
  - (b) provide for an amount referred to in subsection (4)(b) or for interest referred to in subsection (4)(c) to be charged by means of an obligation in the deferred payment agreement and to be treated in the same way as the person's required amount.
- (7) The local authority may not charge interest under regulations made under subsection (4) at a rate that exceeds the rate specified in or determined in accordance with the regulations.

- (8) Rhaid i'r rheoliadau wneud darpariaeth ynghylch hyd y cytundeb ac ar gyfer ei derfynu gan y naill barti neu'r llall; rhaid i'r rheoliadau, ymhlith pethau eraill, alluogi'r person i'w derfynu a therfynu'r arwystl y mae'n rhoi effaith iddo drwy –
- (a) hysbysu'r awdurdod lleol, a
  - (b) talu i'r awdurdod y swm llawn y mae'r person yn atebol i'w dalu mewn cysylltiad â swm gofynnol y person ac unrhyw swm a godir o dan reoliadau a wneir yn rhinwedd is-adran (4).
- (9) Caiff y rheoliadau wneud darpariaeth am hawliau a rhwymedigaethau'r awdurdod lleol a'r person pan fo'r person yn gwaredu'r buddiant y mae'r cytundeb yn ymwneud ag ef ac yn caffael buddiant mewn eiddo arall yng Nghymru neu Loegr; caiff y rheoliadau, er enghraifft, wneud darpariaeth –
- (a) i'r awdurdod lleol beidio â'i gwneud yn ofynnol i'r symiau y cyfeiriwyd atynt yn is-adran (8)(b) gael eu talu tan yr amser a bennir yn y rheoliadau neu a ddyfernir yn unol â hwy, a
  - (b) i'r person roi i'r awdurdod lleol arwystl dros ei fuddiant yn yr eiddo arall.
- (10) Mae cyfeiriad at gartref person yn gyfeiriad at yr eiddo y mae'r person yn ei feddiannu fel ei unig neu brif breswylfa; ac mae cyfeiriad at fuddiant person mewn eiddo yn gyfeiriad at fuddiant cyfreithiol neu lesiannol y person yn yr eiddo hwnnw.
- (11) Caiff rheoliadau gymhwyso'r adran hon, gydag addasiadau neu hebddynt, er mwyn galluogi person i gytuno i roi arwystl dros fuddiant y person mewn eiddo yng Nghymru neu Loegr yr oedd yn arfer ei ddefnyddio fel ei unig neu brif breswylfa.

*Codi ffi am wasanaethau ataliol a chynhorthwy*

**69 Codi ffi am wasanaethau ataliol a chynhorthwy**

- (1) Caiff rheoliadau wneud darpariaeth ynghylch ffioedd –
- (a) am wasanaethau a ddarperir o dan adran 15;
  - (b) am gynhorthwy a ddarperir o dan adran 17.
- (2) Ond ni chaniateir i'r rheoliadau wneud darpariaeth –
- (a) sy'n galluogi gosod ffi am wasanaethau neu gynhorthwy y mae ffi wedi ei gosod mewn cysylltiad â hwy o dan adran 59,
  - (b) sy'n galluogi ffi i gwmpasu unrhyw beth ac eithrio'r gost a dynnir wrth ddarparu'r gwasanaethau neu'r cynhorthwy y mae'r ffi yn ymwneud â hwy, neu
  - (c) sy'n galluogi gosod ffi ar blentyn.

*Gorfodi dyledion*

**70 Adennill costau, llog etc**

- (1) Gellir adennill unrhyw swm sy'n ddyledus i awdurdod lleol o dan y Rhan hon gan yr awdurdod fel dyled sy'n ddyledus iddo.

- (8) The regulations must make provision about the duration of the agreement and for its termination by either party; the regulations must, among other things, enable the person to terminate it and the charge to which it gives effect by –
- (a) giving the local authority notice, and
  - (b) paying the authority the full amount for which the person is liable with respect to the person's required amount and any amount charged under regulations made by virtue of subsection (4).
- (9) The regulations may make provision as to the rights and obligations of the local authority and the person where the person disposes of the interest to which the agreement relates and acquires an interest in another property in Wales or England; the regulations may, for example, make provision –
- (a) for the local authority not to require payment of the amounts referred to in subsection (8)(b) until a time specified in or determined in accordance with the regulations, and
  - (b) for the person to give the local authority a charge over his or her interest in the other property.
- (10) A reference to a person's home is a reference to the property which the person occupies as his or her only or main residence; and a reference to a person's interest in a property is a reference to the person's legal or beneficial interest in that property.
- (11) Regulations may apply this section, with or without modifications, for the purpose of enabling a person to agree to give a charge over the person's interest in a property in Wales or England which he or she used to occupy as his or her only or main residence.

*Charging for preventative services and assistance*

**69 Charging for preventative services and assistance**

- (1) Regulations may make provision about charges for –
- (a) services provided under section 15;
  - (b) assistance provided under section 17.
- (2) But the regulations may not make provision –
- (a) which enables a charge to be imposed for services or assistance in respect of which a charge has been imposed under section 59,
  - (b) which enables a charge to cover anything other than the cost incurred in providing the services or assistance to which the charge relates, or
  - (c) which enables a charge to be imposed on a child.

*Enforcement of debts*

**70 Recovery of charges, interest etc**

- (1) Any amount due to a local authority under this Part is recoverable by the authority as a debt due to it.

- (2) Ond nid yw is-adran (1) yn gymwys mewn achos lle y gellid ymrwymo i gytundeb ar daliadau gohiriedig, yn unol â rheoliadau o dan adran 68, oni bai –
- (a) bod yr awdurdod lleol wedi ceisio ymrwymo i gytundeb o'r fath â'r person y mae'r swm yn ddyledus ganddo, a
  - (b) bod y person hwnnw wedi gwrthod.
- (3) Gellir adennill yn ddiannod fel dyled sifil swm y gellir ei adennill gan awdurdod lleol o dan is-adran (1) (ond nid yw hynny'n effeithio ar unrhyw ddull arall o'i adennill).
- (4) Gellir adennill swm o dan yr adran hon o fewn chwe blynedd i'r dyddiad y daw'r swm yn ddyledus i'r awdurdod lleol.
- (5) Pan fo person a grybwyllir yn is-adran (6) yn camliwio neu'n methu â datgelu (p'un ai'n dwyllodrus neu fel arall) i awdurdod lleol unrhyw ffaith o bwys mewn cysylltiad â darpariaethau'r Rhan hon, mae'r symiau canlynol yn ddyledus i'r awdurdod gan y person hwnnw –
- (a) unrhyw wariant a dynnir gan yr awdurdod o ganlyniad i'r camliwio neu'r methiant, a
  - (b) unrhyw swm y gellir ei adennill o dan yr adran hon ac nad yw'r awdurdod wedi ei adennill o ganlyniad i'r camliwio neu'r methiant.
- (6) Y personau yw –
- (a) oedolyn –
    - (i) y mae'n ymddangos i'r awdurdod lleol y mae arno anghenion am ofal a chymorth neu (yn achos gofalwr) am gymorth o dan Ran 3, a
    - (ii) y mae ganddo'r galluedd i ddeall p'un a allai ffaith fod o bwys mewn cysylltiad â darpariaethau'r Rhan hon;
  - (b) oedolyn –
    - (i) y darperir rhywbeth iddo er mwyn diwallu anghenion person arall am ofal a chymorth neu (yn achos gofalwr) am gymorth o dan Ran 3, a
    - (ii) y mae ganddo'r galluedd i ddeall p'un a allai ffaith fod o bwys mewn cysylltiad â darpariaethau'r Rhan hon;
  - (c) oedolyn o ddisgrifiad a bennir mewn rheoliadau mewn perthynas â gofal a chymorth, neu (yn achos gofalwr) cymorth, ac y mae'n ymddangos i'r awdurdod lleol bod angen y gofal a'r cymorth hwnnw, neu'r cymorth hwnnw, ar –
    - (i) plentyn, neu
    - (ii) oedolyn nad oes ganddo'r galluedd i ddeall p'un a allai ffaith fod o bwys mewn cysylltiad â darpariaethau'r Rhan hon.
- (7) Gellir adennill y costau rhesymol a dynnir gan awdurdod lleol wrth adennill neu wrth geisio ag adennill swm sy'n ddyledus iddo o dan y Rhan hon gan yr awdurdod fel dyled sy'n ddyledus iddo; ac mae is-adran (3) yn gymwys i adennill y costau hynny fel petaent yn symiau y mae is-adran (1) yn gymwys iddynt.
- (8) Caiff rheoliadau –
- (a) gwneud darpariaeth ar gyfer dyfarnu'r dyddiad y daw swm yn ddyledus i awdurdod lleol at ddibenion yr adran hon;



- (2) But subsection (1) does not apply in a case where a deferred payment agreement could be entered into, in accordance with regulations under section 68, unless –
  - (a) the local authority has sought to enter into such an agreement with the person from whom the amount is due, and
  - (b) that person has refused.
- (3) An amount recoverable by a local authority under subsection (1) is recoverable summarily as a civil debt (but this does not affect any other method of recovery).
- (4) An amount is recoverable under this section within six years of the date on which the amount becomes due to the local authority.
- (5) Where a person mentioned in subsection (6) misrepresents or fails to disclose (whether fraudulently or otherwise) to a local authority any material fact in connection with the provisions of this Part, the following amounts are due to the authority from that person –
  - (a) any expenditure incurred by the authority as a result of the misrepresentation or failure, and
  - (b) any amount recoverable under this section which the authority has not recovered as a result of the misrepresentation or failure.
- (6) The persons are –
  - (a) an adult –
    - (i) who appears to the local authority to have needs for care and support or (in the case of a carer) support under Part 3, and
    - (ii) who has capacity to understand whether a fact may be material in connection with the provisions of this Part;
  - (b) an adult –
    - (i) to whom something is provided in order to meet another person’s needs for care and support or (in the case of a carer) support under Part 3, and
    - (ii) who has capacity to understand whether a fact may be material in connection with the provisions of this Part;
  - (c) an adult of a description specified in regulations in relation to care and support or (in the case of a carer) support which appears to the local authority to be needed by –
    - (i) a child, or
    - (ii) an adult who does not have capacity to understand whether a fact may be material in connection with the provisions of this Part.
- (7) The reasonable costs incurred by a local authority in recovering or seeking to recover an amount due to it under this Part are recoverable by the authority as a debt due to it; and subsection (3) applies to the recovery of those costs as if they were amounts to which subsection (1) applies.
- (8) Regulations may –
  - (a) make provision for determining the date on which an amount becomes due to a local authority for the purposes of this section;

- (b) pennu achosion neu amgylchiadau lle na all awdurdod lleol adennill o dan yr adran hon swm sy'n ddyledus iddo o dan y Rhan hon;
- (c) pennu achosion neu amgylchiadau lle y caiff awdurdod lleol godi llog ar swm (gan gynnwys unrhyw gostau y gellid eu hadennill o dan is-adran (7)) sy'n ddyledus iddo o dan y Rhan hon;
- (d) pan ellir codi llog, ddarparu –
  - (i) bod rhaid iddo gael ei godi yn ôl cyfradd sy'n uwch na'r gyfradd a bennir mewn rheoliadau neu a ddyfernir yn unol â hwy;
  - (ii) na chaniateir ei godi yn ôl cyfradd sy'n uwch na'r gyfradd a bennir mewn rheoliadau neu a ddyfernir yn unol â hwy.

## 71 Creu arwystl dros fuddiant mewn tir

- (1) Pan fo person –
  - (a) yn methu â thalu i awdurdod lleol swm y gallai'r awdurdod ei adennill o dan y Rhan hon, a
  - (b) yn meddu ar fuddiant cyfreithiol neu lesiannol mewn tir yng Nghymru neu Loegr,

caiff yr awdurdod lleol greu arwystl o blaid yr awdurdod hwnnw dros fuddiant y person yn y tir i sicrhau bod y swm hwnnw'n cael ei dalu.
- (2) Pan fo gan y person fuddiannau mewn mwy nag un parcel o dir, caiff yr awdurdod lleol greu arwystl dros ba un bynnag o'r buddiannau hynny y mae'n ei ddewis.
- (3) Caiff yr arwystl fod mewn cysylltiad ag unrhyw swm y gallai'r awdurdod lleol ei adennill o dan y Rhan hon; ond mae hynny'n ddarostyngedig i is-adran (4).
- (4) Pan fo'r arwystl yn cael ei greu dros fuddiant cyd-denant ecwitiol mewn tir, ni chaniateir i swm yr arwystl fod yn fwy na gwerth y buddiant a fyddai gan y person yn y tir pe bai'r gyd-denantiaeth yn cael ei hollti (ond nid yw creu'r arwystl yn hollti'r gyd-denantiaeth).
- (5) Pan fo cyd-denant ecwitiol mewn tir y mae ei fuddiant yn y tir yn ddarostyngedig i arwystl o dan yr adran hon yn marw, mae buddiant y personau canlynol mewn tir yn dod yn ddarostyngedig i arwystl –
  - (a) os oes unrhyw cyd-denantiaid sy'n goroesi, eu buddiannau yn y tir;
  - (b) os yw'r tir wedi ei freinio mewn un person, neu y mae hawl gan un person i gael y tir wedi ei freinio ynddo ef, buddiant y person hwnnw yn y tir.
- (6) Ni chaniateir i swm yr arwystl sydd wedi ei greu o dan is-adran (5) fod yn fwy na swm yr arwystl yr oedd buddiant y cyd-denant ymadawedig yn ddarostyngedig iddo.
- (7) Rhaid i arwystl o dan yr adran hon gael ei greu gan ddatganiad ysgrifenedig a wneir gan yr awdurdod lleol.
- (8) Mae arwystl o dan yr adran hon, ac eithrio ffi dros fuddiant cyd-denant ecwitiol mewn tir –
  - (a) yn achos tir anghofrestredig, yn bridiant tir Dosbarth B o fewn ystyr adran 2 o Ddeddf Pridiannau Tir 1972;

- (b) specify cases or circumstances in which an amount due to a local authority under this Part is not recoverable by it under this section;
- (c) specify cases or circumstances in which a local authority may charge interest on an amount (including any costs recoverable by the authority under subsection (7)) due to it under this Part;
- (d) where interest is chargeable, provide that it –
  - (i) must be charged at a rate that exceeds the rate specified in or determined in accordance with the regulations;
  - (ii) may not be charged at a rate that exceeds the rate specified in or determined in accordance with the regulations.

## **71 Creation of a charge over an interest in land**

- (1) Where a person –
  - (a) fails to pay to a local authority an amount that is recoverable by the authority under this Part, and
  - (b) has a legal or beneficial interest in land in Wales or England,the local authority may create a charge in its favour over the person's interest in the land to secure payment of that amount.
- (2) Where the person has interests in more than one parcel of land, the local authority may create the charge over whichever one of those interests it chooses.
- (3) The charge may be in respect of any amount that is recoverable by the local authority under this Part; but this is subject to subsection (4).
- (4) Where the charge is created over the interest of an equitable joint tenant in land, the amount of the charge must not exceed the value of the interest that the person would have in the land if the joint tenancy were severed (but the creation of the charge does not sever the joint tenancy).
- (5) On the death of an equitable joint tenant in land whose interest in the land is subject to a charge under this section, the following persons' interests in land become subject to a charge –
  - (a) if there are surviving joint tenants, their interests in the land;
  - (b) if the land vests in one person, or one person is entitled to have it vested in himself or herself, that person's interest in the land.
- (6) The amount of the charge created under subsection (5) must not exceed the amount of the charge to which the interest of the deceased joint tenant was subject.
- (7) A charge under this section must be created by a declaration in writing made by the local authority.
- (8) A charge under this section, other than a charge over the interest of an equitable joint tenant in land –
  - (a) in the case of unregistered land, is a Class B land charge within the meaning of section 2 of the Land Charges Act 1972;

- (b) yn achos tir cofrestredig, yn arwystl cofrestradwy sy'n dod yn weithredol fel arwystl drwy gyfrwng morgais cyfreithiol.
- (9) Pan fo swm yn destun arwystl dros fuddiant person mewn tir o dan yr adran hon, caniateir codi llog ar y swm hwnnw o'r diwrnod y mae'r person a grybwyllwyd yn is-adran (1) yn marw.
- (10) Cyfradd y llog y gellir ei godi o dan is-adran (9) yw –
  - (a) cyfradd a bennir mewn rheoliadau neu a ddyfernir yn unol â hwy, neu
  - (b) os nad oes rheoliadau wedi eu gwneud, cyfradd a ddyfernir gan yr awdurdod lleol.

## 72 Trosglwyddo asedau i osgoi ffioedd

- (1) Mae'r adran hon yn gymwys mewn achos pan fo anghenion person ("P") wedi eu diwallu neu'n cael eu diwallu gan awdurdod lleol o dan adrannau 35 i 42 neu adran 45 a phan fo –
  - (a) person ("y trosglwyddwr") (a gaiff fod yn P ond nid oes rhaid iddo) wedi trosglwyddo ased i berson arall ("trosglwyddai"),
  - (b) y trosglwyddiad wedi ei wneud gyda'r bwriad o osgoi ffioedd am ddiwallu anghenion P, ac
  - (c) naill ai'r gydnabyddiaeth ar gyfer y trosglwyddiad yn llai na gwerth yr ased neu na fo unrhyw gydnabyddiaeth ar gyfer y trosglwyddiad.
- (2) Mae'r trosglwyddai yn atebol i dalu i'r awdurdod lleol swm sy'n hafal i'r gwahaniaeth rhwng –
  - (a) y swm y byddai'r awdurdod wedi ei godi ar y trosglwyddwr pe na bai'r ased wedi ei drosglwyddo, a
  - (b) y swm a gododd ar y trosglwyddwr mewn gwirionedd.
- (3) Ond nid yw'r trosglwyddai yn atebol i dalu i'r awdurdod lleol swm sy'n fwy na'r budd a ddaw i'r trosglwyddai o'r trosglwyddiad.
- (4) Pan fo ased wedi ei drosglwyddo i fwy nag un trosglwyddai, mae atebolrwydd pob trosglwyddai yn gymesur â'r budd a ddaw i'r trosglwyddai hwnnw o'r trosglwyddiad.
- (5) Yn yr adran hon ystyr "ased" yw unrhyw beth y caniateir ei ystyried at ddibenion asesiad ariannol.
- (6) Gwerth ased (ac eithrio arian parod) yw'r swm a geid pe bai'r ased wedi ei werthu ar y farchnad agored gan werthwr bodlon adeg y trosglwyddiad, gan ddidynnu ar gyfer –
  - (a) swm unrhyw lyffethair ar yr ased, a
  - (b) swm rhesymol mewn cysylltiad â threuliau'r gwerthiant.
- (7) Caiff rheoliadau bennu achosion neu amgylchiadau pan na fo atebolrwydd o dan is-adran (2) yn codi.

- (b) in the case of registered land, is a registrable charge taking effect as a charge by way of legal mortgage.
- (9) Where an amount is charged over a person's interest in land under this section, interest is chargeable upon that amount from the day on which the person mentioned in subsection (1) dies.
- (10) The rate of interest chargeable under subsection (9) is –
  - (a) a rate specified in or determined in accordance with regulations, or
  - (b) if no regulations are made, a rate determined by the local authority.

## **72 Transfer of assets to avoid charges**

- (1) This section applies in a case where the needs of a person ("P") have been or are being met by a local authority under sections 35 to 42 or section 45 and where –
  - (a) a person ("the transferor") (who may be P but need not be so) has transferred an asset to another person (a "transferee"),
  - (b) the transfer was undertaken with the intention of avoiding charges for having P's needs met, and
  - (c) either the consideration for the transfer was less than the value of the asset or there was no consideration for the transfer.
- (2) The transferee is liable to pay to the local authority an amount equal to the difference between –
  - (a) the amount the authority would have charged the transferor were it not for the transfer of the asset, and
  - (b) the amount it did in fact charge the transferor.
- (3) But the transferee is not liable to pay to the authority an amount which exceeds the benefit accruing to the transferee from the transfer.
- (4) Where an asset has been transferred to more than one transferee, the liability of each transferee is in proportion to the benefit accruing to that transferee from the transfer.
- (5) In this section "asset" means anything which may be taken into account for the purposes of a financial assessment.
- (6) The value of an asset (other than cash) is the amount which would have been realised if it had been sold on the open market by a willing seller at the time of the transfer, with a deduction for –
  - (a) the amount of any encumbrance on the asset, and
  - (b) a reasonable amount in respect of the expenses of the sale.
- (7) Regulations may specify cases or circumstances in which liability under subsection (2) does not arise.

*Adolygiadau***73 Adolygiadau sy'n ymwneud â chodi ffioedd**

- (1) Rhaid i reoliadau wneud darpariaeth ar gyfer adolygu, neu'n gysylltiedig ag adolygu –
  - (a) ffioedd a osodir o dan adran 59,
  - (b) dyfarniadau a wneir o dan adran 66, a
  - (c) penderfyniadau sy'n ymwneud ag atebolrwydd trosglwyddai i dalu swm i awdurdod lleol o dan adran 72.
- (2) Caiff y rheoliadau wneud (ymhlith pethau eraill) ddarpariaeth ynghylch y canlynol –
  - (a) y personau a gaiff ofyn am adolygiad (ar eu rhan hwy eu hunain neu ar ran person arall);
  - (b) o dan ba amgylchiadau ac ym mha fodd y caniateir gofyn am adolygiad;
  - (c) o fewn pa gyfnod y mae'n rhaid i gais gael ei wneud;
  - (d) y weithdrefn sydd i'w dilyn, a'r camau sydd i'w cymryd, mewn cysylltiad ag adolygiad;
  - (e) y disgrifiad o'r personau a gaiff wneud penderfyniad yn dilyn yr adolygiad;
  - (f) effaith penderfyniad o'r math hwnnw.

**RHAN 6****PLANT SY'N DERBYN GOFAL A PHLANT SY'N CAEL EU LLETYA***Dehongli***74 Plentyn neu berson ifanc sy'n derbyn gofal gan awdurdod lleol**

- (1) Yn y Ddeddf hon, mae cyfeiriad at blentyn sy'n derbyn gofal gan awdurdod lleol yn gyfeiriad at blentyn –
  - (a) sydd yn ei ofal, neu
  - (b) y mae llety wedi ei ddarparu iddo gan yr awdurdod wrth i'r awdurdod arfer unrhyw un neu rai o'r swyddogaethau sy'n swyddogaethau gwasanaethau cymdeithasol, ac eithrio swyddogaethau o dan adran 15, Rhan 4, neu adran 109, 114 neu 115.
- (2) Yn is-adran (1) ystyr "llety" yw llety a ddarperir am gyfnod parhaus o fwy na 24 awr.
- (3) Yn y Rhan hon, mae cyfeiriad at berson ifanc sy'n derbyn gofal gan awdurdod lleol yn gyfeiriad at berson ifanc sy'n derbyn gofal gan yr awdurdod tra bo'n blentyn neu at berson ifanc a oedd yn derbyn gofal gan yr awdurdod tra oedd yn blentyn.

*Reviews*

**73 Reviews relating to charging**

- (1) Regulations must make provision for and in connection with the review of—
  - (a) charges imposed under section 59,
  - (b) determinations made under section 66, and
  - (c) decisions relating to the liability of a transferee to pay an amount to a local authority under section 72.
- (2) The regulations may (among other things) make provision about—
  - (a) the persons who may request a review (on their own behalf or on behalf of another person);
  - (b) the circumstances and the manner in which a review may be requested;
  - (c) the period within which a request must be made;
  - (d) the procedure to be followed, and the steps to be taken, in connection with a review;
  - (e) the description of persons who may make a decision following the review;
  - (f) the effect of a decision of that kind.

**PART 6**

**LOOKED AFTER AND ACCOMMODATED CHILDREN**

*Interpretation*

**74 Child or young person looked after by a local authority**

- (1) In this Act, a reference to a child who is looked after by a local authority is a reference to a child who is—
  - (a) in its care, or
  - (b) provided with accommodation by the authority in the exercise of any functions which are social services functions, apart from functions under section 15, Part 4, or section 109, 114 or 115.
- (2) In subsection (1), “accommodation” means accommodation which is provided for a continuous period of more than 24 hours.
- (3) In this Part, a reference to a young person being looked after by a local authority is a reference to a young person being looked after by the authority while he or she is or was a child.

*Dyletswyddau lletya*

- 75 Dyletswydd gyffredinol awdurdod lleol i sicrhau digon o lety i blant sy'n derbyn gofal**
- (1) Rhaid i awdurdod lleol gymryd camau sy'n sicrhau, i'r graddau y mae'n rhesymol ymarferol, ei fod yn gallu darparu i'r plant a grybwyllir yn is-adran (2) lety sydd –
    - (a) o fewn ardal yr awdurdod, a
    - (b) yn diwallu anghenion y plant hynny.
  - (2) Y plant y cyfeirir atynt yn is-adran (1) yw'r rhai –
    - (a) y mae'r awdurdod lleol yn gofalu amdanynt,
    - (b) nad yw'r awdurdod yn gallu gwneud trefniadau mewn cysylltiad â hwy o dan adran 81(2), ac
    - (c) y mae natur eu hamgylchiadau yn golygu y byddai'n gyson â llesiant y plant i lety sydd yn ardal yr awdurdod gael ei ddarparu iddynt.
  - (3) Wrth gyflawni ei ddyletswydd o dan is-adran (1), rhaid i'r awdurdod lleol roi sylw i fantais cael –
    - (a) nifer o ddarparwyr llety yn ei ardal sydd, ym marn yr awdurdod, yn ddigon iddo gyflawni ei ddyletswydd, a
    - (b) ystod o lety yn ei ardal a allai ddiwallu anghenion gwahanol ac sydd, ym marn yr awdurdod, yn ddigon iddo gyflawni ei ddyletswydd.
  - (4) Yn yr adran hon ystyr "darparwyr llety" yw –
    - (a) rhieni maeth awdurdod lleol, a
    - (b) cartrefi plant.
- 76 Llety i blant sydd heb rieni, neu blant sydd ar goll neu sydd wedi eu gadael etc**
- (1) Rhaid i awdurdod lleol ddarparu llety i unrhyw blentyn yn ei ardal yr ymddengys i'r awdurdod bod angen llety arno oherwydd –
    - (a) nad oes unrhyw berson sydd â chyfrifoldeb rhiant dros y plentyn,
    - (b) bod y plentyn ar goll neu wedi cael ei adael, neu
    - (c) bod y person sydd wedi bod yn gofalu am y plentyn yn cael ei atal (p'un ai yn barhaol ai peidio, ac am ba reswm bynnag) rhag darparu llety neu ofal addas i'r plentyn.
  - (2) Pan fo awdurdod lleol yn darparu llety o dan is-adran (1) i blentyn sy'n preswyllo fel arfer mewn ardal awdurdod lleol arall, caiff yr awdurdod lleol arall hwnnw gymryd drosodd y gwaith o ddarparu llety i'r plentyn o fewn –
    - (a) tri mis o gael ei hysbysu'n ysgrifenedig bod llety'n cael ei ddarparu i'r plentyn, neu
    - (b) unrhyw gyfnod hirach arall a bennir.



*Accommodation duties*

**75 General duty of local authority to secure sufficient accommodation for looked after children**

- (1) A local authority must take steps that secure, so far as reasonably practicable, that the local authority is able to provide the children mentioned in subsection (2) with accommodation that –
  - (a) is within the authority’s area, and
  - (b) meets the needs of those children.
- (2) The children referred to in subsection (1) are those –
  - (a) that the local authority is looking after,
  - (b) in respect of whom the authority is unable to make arrangements under section 81(2), and
  - (c) whose circumstances are such that it would be consistent with their well-being for them to be provided with accommodation that is in the authority’s area.
- (3) In discharging its duty under subsection (1), the local authority must have regard to the benefit of having –
  - (a) a number of accommodation providers in its area that is, in the authority’s opinion, sufficient to discharge its duty, and
  - (b) a range of accommodation in its area capable of meeting different needs that is, in its opinion, sufficient to discharge its duty.
- (4) In this section “accommodation providers” means –
  - (a) local authority foster parents, and
  - (b) children’s homes.

**76 Accommodation for children without parents or who are lost or abandoned etc**

- (1) A local authority must provide accommodation for any child within its area who appears to the authority to require accommodation as a result of –
  - (a) there being no person who has parental responsibility for the child,
  - (b) the child being lost or having been abandoned, or
  - (c) the person who has been caring for the child being prevented (whether or not permanently, and for whatever reason) from providing the child with suitable accommodation or care.
- (2) Where a local authority provides accommodation under subsection (1) for a child who is ordinarily resident in the area of another local authority, that other local authority may take over the provision of accommodation for the child within –
  - (a) three months of being notified in writing that the child is being provided with accommodation, or
  - (b) such other longer period as may be specified.

- (3) Rhaid i awdurdod lleol ddarparu llety i unrhyw blentyn yn ei ardal sydd wedi cyrraedd 16 oed ac y byddai llesiant y plentyn hwnnw, ym marn yr awdurdod, yn debygol o gael ei andwyo'n ddifrifol os na fyddai'r awdurdod yn darparu llety iddo.
- (4) Ni chaniateir i awdurdod lleol ddarparu llety o dan yr adran hon i unrhyw blentyn os bydd unrhyw berson yn gwrthwynebu a hwnnw –
  - (a) yn berson sydd â chyfrifoldeb rhiant dros y plentyn, a
  - (b) yn fodlon ac yn gallu –
    - (i) darparu llety i'r plentyn, neu
    - (ii) trefnu bod llety yn cael ei ddarparu i'r plentyn.
- (5) Caiff unrhyw berson sydd â chyfrifoldeb rhiant dros blentyn symud y plentyn ar unrhyw adeg o lety a ddarperir gan neu ar ran awdurdod lleol o dan yr adran hon.
- (6) Nid yw is-adrannau (4) a (5) yn gymwys tra bo unrhyw berson –
  - (a) y mae gorchymyn preswyllo o'i blaid ef mewn grym mewn cysylltiad â'r plentyn,
  - (b) sy'n warcheidwad arbennig i'r plentyn, neu
  - (c) sydd â gofal am y plentyn yn rhinwedd gorchymyn a wnaed wrth arfer awdurdodaeth gynhenid yr Uchel Lys mewn cysylltiad â phlant,

yn cytuno bod y plentyn yn derbyn gofal mewn llety a ddarperir gan, neu ar ran, yr awdurdod lleol.
- (7) Pan fo mwy nag un person o'r math a grybwyllwyd yn is-adran (6), rhaid i bob un ohonynt fod yn gytûn.
- (8) Nid yw is-adrannau (4) a (5) yn gymwys pan fo plentyn sydd wedi cyrraedd 16 oed yn cytuno bod llety'n cael ei ddarparu iddo o dan yr adran hon.

**77 Llety i blant sy'n cael eu hamddiffyn gan yr heddlu, neu sydd o dan gadwad neu ar remând etc**

- (1) Rhaid i awdurdod lleol wneud darpariaeth ar gyfer derbyn a rhoi llety i blant sy'n cael eu symud o'u cartrefi neu sy'n cael eu cadw oddi yno o dan Ran 5 o Ddeddf Plant 1989.
- (2) Rhaid i awdurdod lleol dderbyn plant, a darparu llety i blant –
  - (a) sy'n cael eu hamddiffyn gan yr heddlu ac y gofynnir iddo eu derbyn o dan adran 46(3)(f) o Ddeddf Plant 1989;
  - (b) y gofynnir iddo eu derbyn o dan adran 38(6) o Ddeddf yr Heddlu a Thystiolaeth Droseddol 1984;
  - (c) os yr awdurdod lleol yw'r awdurdod dynodedig mewn cysylltiad â hwy a bod y plant hynny –
    - (i) wedi eu remandio i lety a ddarperir gan neu ar ran awdurdod lleol yn rhinwedd paragraff 4 o Atodlen 1 neu baragraff 6 o Atodlen 8 i Ddeddf Pwerau Llysoedd Troseddol (Dedfrydu) 2000 (torri etc gorchmynion atgyfeirio a gorchmynion gwneud iawn);
    - (ii) wedi eu remandio i lety a ddarperir gan neu ar ran awdurdod lleol yn rhinwedd paragraff 21 o Atodlen 2 i Ddeddf Cyfiawnder Troseddol a Mewnfudo 2008 (torri etc gorchmynion adsefydlu ieuencid);

- (3) A local authority must provide accommodation for any child within its area who has reached the age of 16 and whose well-being the authority considers is likely to be seriously prejudiced if it does not provide the child with accommodation.
- (4) A local authority may not provide accommodation under this section for any child if any person objects who –
  - (a) has parental responsibility for the child, and
  - (b) is willing and able to –
    - (i) provide accommodation for the child, or
    - (ii) arrange for accommodation to be provided for the child.
- (5) Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of a local authority under this section.
- (6) Subsections (4) and (5) do not apply while any person –
  - (a) in whose favour a residence order is in force with respect to the child,
  - (b) who is a special guardian of the child, or
  - (c) who has care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children,agrees to the child being looked after in accommodation provided by or on behalf of the local authority.
- (7) Where there is more than one such person as is mentioned in subsection (6), all of them must agree.
- (8) Subsections (4) and (5) do not apply where a child who has reached the age of 16 agrees to being provided with accommodation under this section.

**77 Accommodation for children in police protection or detention or on remand etc**

- (1) A local authority must make provision for the reception and accommodation of children who are removed or kept away from home under Part 5 of the Children Act 1989.
- (2) A local authority must receive, and provide accommodation for, children –
  - (a) in police protection whom it is requested to receive under section 46(3)(f) of the Children Act 1989;
  - (b) whom it is requested to receive under section 38(6) of the Police and Criminal Evidence Act 1984;
  - (c) with respect to whom it is the designated authority and who are –
    - (i) remanded to accommodation provided by or on behalf of a local authority by virtue of paragraph 4 of Schedule 1 or paragraph 6 of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 (breach etc of referral orders and reparation orders);
    - (ii) remanded to accommodation provided by or on behalf of a local authority by virtue of paragraph 21 of Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach etc of youth rehabilitation orders);

- (iii) wedi eu remandio i lety a ddarperir gan neu ar ran awdurdod lleol yn rhinwedd paragraff 10 o'r Atodlen i Ddeddf Troseddau Stryd 1959 (torri gorchmynion o dan adran 1(2A) o'r Ddeddf honno);
  - (iv) yn destun gorchymyn adsefydlu ieuencid sy'n gosod gofyniad preswyllo awdurdod lleol neu yn destun gorchymyn adsefydlu ieuencid â maethu.
- (3) Yn is-adran (2), mae gan y termau isod yr un ystyr â'r termau Saesneg cyfatebol yn Rhan 1 o Ddeddf Cyfiawnder Troseddol a Mewnfudo 2008 (gweler adran 7 o'r Ddeddf honno) –
- “gofyniad preswyllo awdurdod lleol” (“*local authority residence requirement*”);
  - “gorchymyn adsefydlu ieuencid” (“*youth rehabilitation order*”);
  - “gorchymyn adsefydlu ieuencid â maethu” (“*youth rehabilitation order with fostering*”).
- (4) Mae is-adran (5) yn gymwys –
- (a) pan fo plentyn –
    - (i) wedi ei symud o dan Ran 5 o Ddeddf Plant 1989, neu
    - (ii) wedi ei gadw'n gaeth o dan adran 38 o Ddeddf yr Heddlu a Thystiolaeth Droseddol 1984, a
  - (b) pan nad yw'r plentyn yn cael llety a ddarperir –
    - (i) gan awdurdod lleol, neu
    - (ii) mewn ysbyty a freiniwyd yng Ngweinidogion Cymru, Ymddiriedolaeth GIG, Ymddiriedolaeth Sefydledig GIG neu'r Ysgrifennydd Gwladol, neu sydd fel arall wedi ei roi ar gael yn unol â threfniadau a wnaed gan Fwrdd Iechyd Lleol, Ymddiriedolaeth GIG, Ymddiriedolaeth Sefydledig GIG, Gweinidogion Cymru, yr Ysgrifennydd Gwladol, Bwrdd Comisiynu'r Gwasanaeth Iechyd Gwladol neu grŵp comisiynu clinigol.
- (5) Gellir adennill unrhyw gostau rhesymol a dynnwyd wrth roi llety i'r plentyn oddi wrth yr awdurdod lleol y mae'r plentyn yn preswyllo fel arfer yn ei ardal.

*Dyletswyddau awdurdodau lleol mewn perthynas â'r plant sy'n derbyn gofal*

## 78 Prif ddyletswydd awdurdod lleol mewn perthynas â phlentyn sy'n derbyn gofal

- (1) Rhaid i awdurdod lleol sy'n gofalu am unrhyw blentyn –
- (a) diogelu a hyrwyddo llesiant y plentyn, a
  - (b) defnyddio gwasanaethau sydd ar gael i blant, y mae eu rhieni eu hunain yn gofalu amdanynt, mewn modd sy'n ymddangos yn rhesymol i'r awdurdod yn achos y plentyn.
- (2) Mae dyletswydd awdurdod lleol o dan is-adran (1)(a) i ddiogelu a hyrwyddo llesiant plentyn sy'n derbyn gofal ganddynt yn cynnwys, er enghraifft –
- (a) dyletswydd i hyrwyddo cyrhaeddiad addysgol y plentyn;

- (iii) remanded to accommodation provided by or on behalf of a local authority by virtue of paragraph 10 of the Schedule to the Street Offences Act 1959 (breach of orders under section 1(2A) of that Act);
  - (iv) the subject of a youth rehabilitation order imposing a local authority residence requirement or a youth rehabilitation order with fostering.
- (3) In subsection (2), the following terms have the same meanings as in Part 1 of the Criminal Justice and Immigration Act 2008 (see section 7 of that Act) –
  - “local authority residence requirement”;
  - “youth rehabilitation order”;
  - “youth rehabilitation order with fostering”.
- (4) Subsection (5) applies where –
  - (a) a child has been –
    - (i) removed under Part 5 of the Children Act 1989, or
    - (ii) detained under section 38 of the Police and Criminal Evidence Act 1984, and
  - (b) the child is not being provided with accommodation –
    - (i) by a local authority, or
    - (ii) in a hospital vested in the Welsh Ministers, an NHS Trust, an NHS Foundation Trust or the Secretary of State, or otherwise made available pursuant to arrangements made by a Local Health Board, an NHS Trust, an NHS Foundation Trust, the Welsh Ministers, the Secretary of State, the National Health Service Commissioning Board or a clinical commissioning group.
- (5) Any reasonable expenses of accommodating the child are recoverable from the local authority in whose area the child is ordinarily resident.

*Duties of local authorities in relation to looked after children*

**78 Principal duty of a local authority in relation to looked after children**

- (1) A local authority looking after any child must –
  - (a) safeguard and promote the child’s well-being, and
  - (b) make such use of services available for children cared for by their own parents as appears to the authority reasonable in the child’s case.
- (2) The duty of a local authority under subsection (1)(a) to safeguard and promote the well-being of a child looked after by it includes, for example –
  - (a) a duty to promote the child’s educational achievement;

- (b) dyletswydd –
  - (i) i asesu, o bryd i'w gilydd, a oes gan y plentyn anghenion am ofal a chymorth sy'n bodloni'r meini prawf cymhwysra a nodwyd o dan adran 32, a
  - (ii) os oes ar y plentyn anghenion sy'n bodloni'r meini prawf cymhwysra, i ddiwallu, o leiaf, yr anghenion hynny.
- (3) Cyn gwneud unrhyw benderfyniad mewn cysylltiad â phlentyn y mae'n gofalu amdano, neu'n bwriadu gofalu amdano, rhaid i awdurdod lleol (yn ogystal â'r materion a nodir yn adrannau 6(2) a (4) a 7(2) (dyletswyddau hollgyffredinol eraill), roi sylw i –
  - (a) barn, dymuniadau a theimladau unrhyw berson y mae ei farn, ei ddymuniadau a'i deimladau yn berthnasol ym marn yr awdurdod;
  - (b) argyhoeddiad crefyddol, tarddiad hiliol, a chefnidir diwylliannol ac ieithyddol y plentyn.
- (4) Os yr ymddengys i awdurdod lleol ei bod yn angenrheidiol iddo, er mwyn amddiffyn aelodau o'r cyhoedd rhag niwed difrifol, arfer ei bwerau mewn cysylltiad â phlentyn y mae'n gofalu amdano mewn modd nad yw efallai yn gyson â'i ddyletswyddau o dan yr adran hon neu adran 6, caiff wneud hynny.

#### 79 **Darparu llety i blant mewn gofal**

Pan fo plentyn yng ngofal awdurdod lleol, rhaid i'r awdurdod ddarparu llety i'r plentyn.

#### 80 **Cynnal plant sy'n derbyn gofal**

Rhaid i awdurdod lleol sy'n gofalu am blentyn gynnal y plentyn mewn agweddau eraill ar wahân i ddarparu llety ar ei gyfer.

#### 81 **Y ffyrdd y mae plant sy'n derbyn gofal i'w lletya a'u cynnal**

- (1) Mae'r adran hon yn gymwys pan fo awdurdod lleol yn gofalu am blentyn ("C").
- (2) Rhaid i awdurdod lleol wneud trefniadau i C fyw gyda pherson sy'n dod o fewn is-adran (3), ond mae hyn yn ddarostyngedig i is-adrannau (4) ac (11).
- (3) Mae person ("P") yn dod o fewn yr is-adran hon –
  - (a) os P yw rhiant C,
  - (b) os nad P yw rhiant C ond y mae ganddo gyfrifoldeb rhiant dros C, neu
  - (c) mewn achos pan fo C yng ngofal yr awdurdod lleol ac yr oedd gorchymyn preswyllo mewn grym mewn cysylltiad ag C yn union cyn y gwnaed y gorchymyn gofal, os oedd P yn berson y gwnaed y gorchymyn preswyllo o'i blaid.
- (4) Nid yw is-adran (2) yn ei gwneud yn ofynnol i awdurdod lleol wneud trefniadau o'r math a grybwyllwyd yn yr is-adran honno os byddai gwneud hynny –
  - (a) yn anghyson â llesiant C, neu
  - (b) yn gam na fyddai'n rhesymol ymarferol.

- (b) a duty –
  - (i) to assess from time to time whether the child has care and support needs which meet the eligibility criteria set under section 32, and
  - (ii) if the child has needs which meet the eligibility criteria, to at least meet those needs.
- (3) Before making any decision with respect to a child whom it is looking after, or proposing to look after, a local authority must (in addition to the matters set out in sections 6(2) and (4) and 7(2) (other overarching duties)) have regard to –
  - (a) the views, wishes and feelings of any person whose views, wishes and feelings the authority considers to be relevant;
  - (b) the child’s religious persuasion, racial origin and cultural and linguistic background.
- (4) If it appears to a local authority that it is necessary, for the purpose of protecting members of the public from serious injury, to exercise its powers with respect to a child whom it is looking after in a manner which may not be consistent with its duties under this section or section 6, it may do so.

**79 Provision of accommodation for children in care**

When a child is in the care of a local authority, the authority must provide the child with accommodation.

**80 Maintenance of looked after children**

A local authority must maintain a child it is looking after in other respects apart from the provision of accommodation.

**81 Ways in which looked after children are to be accommodated and maintained**

- (1) This section applies where a local authority is looking after a child (“C”).
- (2) The local authority must make arrangements for C to live with a person who falls within subsection (3), but this is subject to subsections (4) and (11).
- (3) A person (“P”) falls within this subsection if –
  - (a) P is a parent of C,
  - (b) P is not a parent of C but has parental responsibility for C, or
  - (c) in a case where C is in the care of the local authority and there was a residence order in force with respect to C immediately before the care order was made, P was a person in whose favour the residence order was made.
- (4) Subsection (2) does not require the local authority to make arrangements of the kind mentioned in that subsection if doing so –
  - (a) would not be consistent with C’s well-being, or
  - (b) would not be reasonably practicable.

- (5) Os nad yw awdurdod lleol yn gallu gwneud trefniadau o dan is-adran (2), rhaid iddo leoli C yn y lleoliad mwyaf priodol sydd ar gael, yn ei farn ef (ond mae hyn yn ddarostyngedig i is-adran (11)).
- (6) Yn is-adran (5) ystyr “lleoliad” yw –
- lleoliad gydag unigolyn sy’n berthynas, yn ffrind neu’n berson arall sy’n gysylltiedig ag C ac sydd hefyd yn rhiant maeth awdurdod lleol,
  - lleoliad gyda rhiant maeth awdurdod lleol nad yw’n dod o fewn paragraff (a),
  - lleoliad mewn cartref plant, neu
  - yn ddarostyngedig i adran 82, lleoliad yn unol â threfniadau eraill sy’n cydymffurfio ag unrhyw reoliadau a wneir at ddibenion yr adran hon.
- (7) Wrth benderfynu ar y lleoliad mwyaf priodol ar gyfer C o dan is-adran (5), rhaid i awdurdod lleol, yn ddarostyngedig i ddarpariaethau eraill y Rhan hon (yn enwedig, i’w ddyletswyddau o dan adran 78) –
- rhoi blaenoriaeth uwch i leoliad sy’n dod o fewn paragraff (a) o is-adran (6) na’r hyn a roddir i leoliadau sy’n dod o fewn paragraffau eraill yr is-adran honno,
  - cydymffurfio â gofynion is-adran (8), i’r graddau y mae hynny’n rhesymol ymarferol o dan holl amgylchiadau achos C, ac
  - cydymffurfio ag is-adran (9) oni bai nad yw hynny’n rhesymol ymarferol.
- (8) Rhaid i awdurdod lleol sicrhau –
- bod y lleoliad yn caniatáu i C fyw gerllaw cartref C;
  - nad yw’r lleoliad yn amharu ar addysg na hyfforddiant C;
  - os oes gan C frawd neu chwaer sydd hefyd yn derbyn llety gan yr awdurdod lleol, bod y lleoliad yn galluogi i C fyw gyda’r brawd neu’r chwaer;
  - os yw C yn anabl, bod y llety a ddarperir yn addas i anghenion penodol C.
- (9) Rhaid i’r lleoliad, o ran ei natur, olygu bod llety’n cael ei ddarparu i C o fewn ardal yr awdurdod lleol.
- (10) Mae is-adran (11) yn gymwys pan –
- bo’r awdurdod lleol wedi ei fodloni y dylai C gael ei leoli ar gyfer ei fabwysiadu ac yn bwriadu lleoli C i’w fabwysiadu gyda darpar fabwysiadydd penodol (“A”),
  - bo asiantaeth fabwysiadu wedi dyfarnu bod A yn addas i fabwysiadu plentyn, ac
  - na fo’r awdurdod lleol wedi ei awdurdodi i leoli C ar gyfer ei fabwysiadu.
- (11) Rhaid i’r awdurdod lleol leoli C gydag A oni bai y byddai’n fwy priodol yn ei farn –
- i wneud trefniadau er mwyn i C fyw gyda pherson sy’n dod o fewn is-adran (3), neu
  - i leoli C mewn lleoliad o ddisgrifiad a grybwyllwyd yn is-adran (6).
- (12) At ddibenion is-adran (10) –
- mae i “asiantaeth fabwysiadu” yr ystyr a roddir i “adoption agency” gan adran 2 o Ddeddf Mabwysiadu a Phlant 2002;



- (5) If the local authority is unable to make arrangements under subsection (2), it must place C in the placement that is, in its opinion, the most appropriate placement available (but this is subject to subsection (11)).
- (6) In subsection (5) “placement” means –
  - (a) placement with an individual who is a relative, friend or other person connected with C and who is also a local authority foster parent,
  - (b) placement with a local authority foster parent who does not fall within paragraph (a),
  - (c) placement in a children’s home, or
  - (d) subject to section 82, placement in accordance with other arrangements that comply with any regulations made for the purposes of this section.
- (7) In determining the most appropriate placement for C under subsection (5), the local authority must, subject to the other provisions of this Part (in particular, to its duties under section 78) –
  - (a) give preference to a placement falling within paragraph (a) of subsection (6) over placements falling within the other paragraphs of that subsection,
  - (b) comply, so far as is reasonably practicable in all the circumstances of C’s case, with the requirements of subsection (8), and
  - (c) comply with subsection (9) unless it is not reasonably practicable to do so.
- (8) The local authority must ensure that the placement is such that –
  - (a) it allows C to live near C’s home;
  - (b) it does not disrupt C’s education or training;
  - (c) if C has a sibling for whom the local authority is also providing accommodation, it enables C and the sibling to live together;
  - (d) if C is disabled, the accommodation provided is suitable to C’s particular needs.
- (9) The placement must be such that C is provided with accommodation within the local authority’s area.
- (10) Subsection (11) applies where –
  - (a) the local authority is satisfied that C ought to be placed for adoption and proposes to place C for adoption with a particular prospective adopter (“A”),
  - (b) an adoption agency has determined that A is suitable to adopt a child, and
  - (c) the local authority is not authorised to place C for adoption.
- (11) The local authority must place C with A, unless in its opinion it would be more appropriate –
  - (a) to make arrangements for C to live with a person falling within subsection (3), or
  - (b) to place C in a placement of a description mentioned in subsection (6).
- (12) For the purposes of subsection (10) –
  - (a) “adoption agency” has the meaning given by section 2 of the Adoption and Children Act 2002;

- (b) nid yw awdurdod lleol wedi ei awdurdodi i leoli C ar gyfer ei fabwysiadu ond os yw wedi ei awdurdodi i wneud hynny o dan—
  - (i) adran 19 o'r Ddeddf honno (lleoli plant gyda chydsyniad rhiant), neu
  - (ii) gorchymyn lleoli a wneir o dan adran 21 o'r Ddeddf honno.
- (13) Caiff yr awdurdod lleol ddyfarnu—
  - (a) telerau unrhyw drefniadau y mae'n eu gwneud o dan is-adran (2) mewn perthynas ag C (gan gynnwys telerau o ran talu), a
  - (b) y telerau ar gyfer gosod C gyda rhiant maeth awdurdod lleol o dan is-adran (5) neu gyda darpar fabwysiadydd o dan is-adran (11) (gan gynnwys telerau o ran talu ond yn ddarostyngedig i unrhyw orchymyn a wneir o dan adran 49 o Ddeddf Plant 2004).

## 82 Adolygu achos plentyn cyn gwneud trefniadau amgen o ran llety

- (1) Pan fo awdurdod lleol yn darparu llety i blentyn ("C") ac eithrio yn unol â threfniadau sy'n dod o fewn adran 81(6)(d), ni chaniateir iddo wneud trefniadau o'r fath ar gyfer C oni bai ei fod wedi penderfynu gwneud hynny o ganlyniad i adolygiad o achos C a gwblhawyd yn unol â rheoliadau a wneir o dan adran 102 (adolygu achosion ac ymchwiliadau i sylwadau).
- (2) Ond nid yw is-adran (1) yn rhwystro awdurdod lleol rhag gwneud trefniadau ar gyfer C o dan adran 81(6)(d) os yw wedi ei fodloni bod angen, er mwyn diogelu llesiant C—
  - (a) gwneud trefniadau o'r fath, a
  - (b) gwneud hynny ar frys.

## 83 Cynlluniau gofal a chymorth

- (1) Pan fo plentyn yn dod yn un sy'n derbyn gofal gan awdurdod lleol, rhaid i unrhyw gynllun gofal a chymorth a lunnir o dan adran 54 mewn perthynas â'r plentyn hwnnw gael—
  - (a) ei adolygu, a
  - (b) ei gynnal o dan yr adran hon.
- (2) Pan fo plentyn nad oes ganddo gynllun gofal a chymorth o dan adran 54 yn dod yn un sy'n derbyn gofal gan awdurdod lleol, rhaid i'r awdurdod lleol lunio a chynnal cynllun gofal a chymorth mewn perthynas â'r plentyn hwnnw.
- (3) Rhaid i awdurdod lleol barhau i adolygu'n gyson y cynlluniau y mae'n eu cynnal o dan yr adran hon.
- (4) Pan fo awdurdod lleol wedi ei fodloni bod amgylchiadau'r plentyn y mae cynllun yn ymwneud ag ef wedi newid mewn ffordd sy'n effeithio ar y cynllun, rhaid i'r awdurdod—
  - (a) gwneud unrhyw asesiadau y mae'n barnu eu bod yn briodol, a
  - (b) diwygio'r cynllun.
- (5) Rhaid i reoliadau wneud darpariaeth ynghylch—
  - (a) sut y mae cynlluniau o dan yr adran hon i'w paratoi;

- (b) a local authority is authorised to place C for adoption only if it has been authorised to do so under –
  - (i) section 19 of that Act (placing children with parental consent), or
  - (ii) a placement order made under section 21 of that Act.

(13) The local authority may determine –

- (a) the terms of any arrangements it makes under subsection (2) in relation to C (including terms as to payment), and
- (b) the terms on which it places C with a local authority foster parent under subsection (5) or with a prospective adopter under subsection (11) (including terms as to payment but subject to any order made under section 49 of the Children Act 2004).

## **82 Review of child’s case before making alternative arrangements for accommodation**

- (1) Where a local authority is providing accommodation for a child (“C”) other than in accordance with arrangements falling within section 81(6)(d), it must not make such arrangements for C unless it has decided to do so in consequence of a review of C’s case carried out in accordance with regulations made under section 102 (review of cases and inquiries into representations).
- (2) But subsection (1) does not prevent a local authority making arrangements for C under section 81(6)(d) if it is satisfied that in order to safeguard C’s well-being it is necessary –
  - (a) to make such arrangements, and
  - (b) to do so as a matter of urgency.

## **83 Care and support plans**

- (1) Where a child becomes looked after by a local authority, any care and support plan prepared under section 54 in relation to that child must be –
  - (a) reviewed, and
  - (b) maintained under this section.
- (2) Where a child who does not have a care and support plan under section 54 becomes looked after by a local authority, the local authority must prepare and maintain a care and support plan in relation to that child.
- (3) A local authority must keep under review the plans that it maintains under this section.
- (4) Where a local authority is satisfied that the circumstances of the child to whom a plan relates have changed in a way that affects the plan, the authority must –
  - (a) carry out such assessments as it considers appropriate, and
  - (b) revise the plan.
- (5) Regulations must make provision about –
  - (a) how plans under this section are to be prepared;

- (b) pa bethau y mae'n rhaid i gynllun eu cynnwys;
  - (c) adolygu a diwygio cynlluniau.
- (6) Rhaid i reoliadau o dan is-adran (5)(c) bennu, yn benodol –
- (a) y personau a gaiff ofyn am adolygiad o gynllun (ar eu rhan hwy eu hunain neu ar ran person arall);
  - (b) o dan ba amgylchiadau –
    - (i) y caiff awdurdod lleol wrthod cydymffurfio â chais am adolygiad o gynllun, a
    - (ii) na chaiff awdurdod lleol wrthod gwneud hynny.
- (7) Wrth lunio, adolygu neu ddiwygio cynllun o dan yr adran hon, rhaid i awdurdod lleol gynnwys y plentyn y mae'r cynllun yn ymwneud ag ef ac unrhyw berson sydd â chyfrifoldeb rhiant dros y plentyn.
- (8) Caiff yr awdurdod lleol –
- (a) llunio, adolygu neu ddiwygio cynllun o dan yr adran hon yr un pryd ag y mae ef neu gorff arall yn llunio, adolygu neu ddiwygio dogfen arall yn achos y plentyn o dan sylw, a
  - (b) cynnwys y ddogfen arall yn y cynllun.
- (9) Caniateir i unrhyw ran o gynllun a gynhelir o dan yr adran hon sy'n bodloni'r gofynion a osodir gan neu o dan adran 31A o Ddeddf Plant 1989 gael ei thrin at ddibenion y Ddeddf honno fel cynllun a lunnir o dan adran 31A o'r Ddeddf honno.

#### **84 Rheoliadau ynghylch cynlluniau gofal a chymorth**

Caiff rheoliadau o dan adran 83, er enghraifft –

- (a) ei gwneud yn ofynnol bod cynlluniau ar ffurf benodedig;
- (b) ei gwneud yn ofynnol bod cynlluniau yn cynnwys pethau penodedig;
- (c) gwneud darpariaeth ynghylch personau pellach y mae'n rhaid i awdurdod lleol eu cynnwys yn y broses o lunio, adolygu neu ddiwygio cynlluniau;
- (d) ei gwneud yn ofynnol bod cynlluniau'n cael eu llunio, eu hadolygu neu eu diwygio gan bersonau penodedig;
- (e) rhoi swyddogaethau i bersonau a bennir yn y rheoliadau mewn cysylltiad ag adolygu neu ddiwygio cynlluniau;
- (f) pennu personau y mae'n rhaid darparu copïau ysgrifenedig o gynllun ar eu cyfer (gan gynnwys, mewn achosion penodedig, darparu copïau heb gydsyniad y person y mae'r cynllun yn ymwneud ag ef);
- (g) pennu'r amgylchiadau pellach y mae'n rhaid adolygu'r cynlluniau odanynt.

#### **85 Cyfraniadau tuag at gynhaliaeth plant sy'n derbyn gofal**

Mae Atodlen 1 yn gwneud darpariaeth ynghylch cyfraniadau tuag at gynhaliaeth plant sy'n derbyn gofal gan awdurdodau lleol.

- (b) what a plan is to contain;
  - (c) the review and revision of plans.
- (6) Regulations under subsection (5)(c) must specify, in particular –
- (a) the persons who may request a review of a plan (on their own behalf or on behalf of another person);
  - (b) the circumstances in which a local authority –
    - (i) may refuse to comply with a request for a review of a plan, and
    - (ii) may not refuse to do so.
- (7) When preparing, reviewing or revising a plan under this section, a local authority must involve the child to whom the plan relates and any person with parental responsibility for the child.
- (8) The local authority may –
- (a) prepare, review or revise a plan under this section at the same time as it or another body is preparing, reviewing or revising another document – in the case of the child concerned, and
  - (b) include the other document in the plan.
- (9) Any part of a plan maintained under this section which meets the requirements imposed by or under section 31A of the Children Act 1989 may be treated for the purposes of that Act as a plan prepared under section 31A of that Act.

**84 Regulations about care and support plans**

Regulations under section 83 may, for example –

- (a) require plans to be in a specified form;
- (b) require plans to contain specified things;
- (c) make provision about further persons whom a local authority must involve in the preparation, review or revision of plans;
- (d) require plans to be prepared, reviewed or revised by specified persons;
- (e) confer functions on persons specified in the regulations in connection with the review or revision of plans;
- (f) specify persons to whom written copies of a plan must be provided (including, in specified cases, the provision of copies without the consent of the person to whom the plan relates);
- (g) specify further circumstances in which plans must be reviewed.

**85 Contributions towards maintenance of looked after children**

Schedule 1 makes provision about contributions towards the maintenance of children looked after by local authorities.

**86 Cartrefi plant sy'n cael eu darparu, eu cyfarparu a'u cynnal gan Weinidogion Cymru**

Pan fo awdurdod lleol yn lleoli plentyn y mae'n gofalu amdano mewn cartref plant y mae Gweinidogion Cymru yn ei ddarparu, ei gyfarparu ac yn ei gynnal o dan adran 82(5) o Ddeddf Plant 1989, rhaid iddo wneud hynny ar y telerau a ddyfernir o bryd i'w gilydd gan Weinidogion Cymru.

*Rheoliadau ynghylch plant sy'n derbyn gofal*

**87 Rheoliadau ynghylch plant sy'n derbyn gofal**

Caiff rheoliadau wneud darpariaeth bellach ynghylch plant sy'n derbyn gofal gan awdurdodau lleol.

**88 Rheoliadau ynghylch amodau lle y caniateir i blentyn sydd mewn gofal fyw gyda rhiant etc**

Caiff rheoliadau o dan adran 87, er enghraifft, osod gofynion ar awdurdod lleol ynghylch—

- (a) gwneud unrhyw benderfyniad i ganiatáu i blentyn sydd yn ei ofal i fyw gydag unrhyw berson sy'n dod o fewn adran 81(3) (gan gynnwys gofynion o ran y rheini y mae'n rhaid ymgynghori â hwy cyn gwneud y penderfyniad a'r rheini y mae'n rhaid eu hysbysu pan fydd y penderfyniad wedi ei wneud);
- (b) goruchwyllo neu gynnal ymchwiliad meddygol ar y plentyn o dan sylw;
- (c) symud y plentyn, o dan y fath amgylchiadau a gaiff eu pennu mewn rheoliadau, o ofal y person y rhoddwyd caniatâd i'r plentyn fyw gydag ef;
- (d) y cofnodion sydd i'w cadw gan yr awdurdod lleol.

**89 Rheoliadau ynghylch lleoliadau o'r math a grybwyllir yn adran 81(6)(d)**

- (1) Caiff rheoliadau o dan adran 87, er enghraifft, wneud darpariaeth ynghylch lleoliadau o'r math a grybwyllwyd yn adran 81(6)(d).
- (2) Caiff rheoliadau o dan is-adran (1), er enghraifft, wneud darpariaeth ynghylch—
  - (a) y personau sydd i'w hysbysu am unrhyw drefniadau arfaethedig;
  - (b) y cyfleoedd y mae personau o'r fath i'w cael er mwyn cyflwyno sylwadau mewn perthynas â'r trefniadau arfaethedig;
  - (c) y personau sydd i'w hysbysu am unrhyw newidiadau arfaethedig yn y trefniadau;
  - (d) y cofnodion sydd i'w cadw gan awdurdodau lleol;
  - (e) goruchwyliaeth gan awdurdodau lleol ar unrhyw drefniadau a wneir.

**90 Rheoliadau ynghylch lleoliadau y tu allan i ardal**

Caiff rheoliadau o dan adran 87, er enghraifft, osod gofynion y mae'n rhaid i awdurdod lleol gydymffurfio â hwy—

- (a) cyn i blentyn sy'n derbyn gofal ganddynt dderbyn llety mewn man y tu allan i ardal yr awdurdod, neu

**86 Children's homes provided, equipped and maintained by the Welsh Ministers**

Where a local authority places a child it is looking after in a children's home provided, equipped and maintained by the Welsh Ministers under section 82(5) of the Children Act 1989, it must do so on such terms as the Welsh Ministers may from time to time determine.

*Regulations about looked after children***87 Regulations about looked after children**

Regulations may make further provision about children looked after by local authorities.

**88 Regulations about conditions under which a child in care is allowed to live with a parent etc**

Regulations under section 87 may, for example, impose requirements on a local authority as to—

- (a) the making of any decision to allow a child in its care to live with any person falling within section 81(3) (including requirements as to those who must be consulted before the decision is made and those who must be notified when it has been made);
- (b) the supervision or medical examination of the child concerned;
- (c) the removal of the child, in such circumstances as may be specified in regulations, from the care of the person with whom the child has been allowed to live;
- (d) the records to be kept by the local authority.

**89 Regulations about placements of a kind mentioned in section 81(6)(d)**

- (1) Regulations under section 87 may, for example, make provision as to placements of the kind mentioned in section 81(6)(d).
- (2) Regulations under subsection (1) may, for example, make provision as to—
  - (a) the persons to be notified of any proposed arrangements;
  - (b) the opportunities such persons are to have to make representations in relation to the arrangements proposed;
  - (c) the persons to be notified of any proposed changes in the arrangements;
  - (d) the records to be kept by local authorities;
  - (e) the supervision by local authorities of any arrangements made.

**90 Regulations about placements out of area**

Regulations under section 87 may, for example, impose requirements that a local authority must comply with—

- (a) before a child looked after by it is provided with accommodation at a place outside the area of the authority, or

- (b) os yw llesiant y plentyn yn gofyn bod llety o'r fath yn cael ei ddarparu'n syth, o fewn unrhyw gyfnod penodedig wedi i'r llety hwnnw gael ei ddarparu.

**91 Rheoliadau ynghylch osgoi amharu ar addysg**

- (1) Caiff rheoliadau o dan adran 87 osod, er enghraifft, gofynion y mae'n rhaid i awdurdod lleol gydymffurfio â hwy cyn gwneud unrhyw benderfyniad sy'n ymwneud â lleoliad plentyn os yw yng nghyfnod allweddol pedwar.
- (2) Mae plentyn "yng nghyfnod allweddol pedwar" os yw'n ddisgybl yng nghyfnod allweddol pedwar ("*the fourth key stage*") at ddibenion Rhan 7 o Ddeddf Addysg 2002 (gweler adran 103 o'r Ddeddf honno).

**92 Rheoliadau ynghylch lleoli plant gyda rhieni maeth awdurdod lleol a darpar fabwysiadwyr**

- (1) Caiff rheoliadau o dan adran 87, er enghraifft, wneud darpariaeth—
- (a) ynglŷn â llesiant plant a leolir gyda rhieni maeth awdurdod lleol neu ddarpar fabwysiadwyr;
- (b) ynghylch y trefniadau sydd i'w gwneud gan awdurdodau lleol mewn cysylltiad ag iechyd ac addysg plant o'r fath;
- (c) ynghylch y cofnodion sydd i'w cadw gan awdurdodau lleol;
- (d) i sicrhau, lle bynnag y bo hynny'n bosibl, bod y rhiant maeth awdurdod lleol neu'r darpar fabwysiadydd y lleolir y plentyn gydag ef—
- (i) o'r un argyhoeddiad crefyddol â'r plentyn, neu
- (ii) yn ymgymryd â magu'r plentyn yn unol â'r argyhoeddiad crefyddol hwnnw;
- (e) i sicrhau y bydd y plant sydd wedi eu lleoli gyda rhieni maeth awdurdod lleol neu ddarpar fabwysiadwyr, a'r mangreoedd lle y maent wedi eu lletya, yn cael eu goruchwyllo a'u harolygu gan awdurdod lleol ac y bydd y plant yn cael eu symud o'r mangreoedd hynny os yw'n ymddangos bod hynny'n angenrheidiol i'w llesiant.
- (2) Yn yr adran hon ystyr "darpar fabwysiadydd" yw person y lleolir y plentyn gydag ef o dan adran 81(11).

**93 Rheoliadau sy'n darparu ar gyfer cymeradwyo rhieni maeth awdurdod lleol**

- (1) Caiff rheoliadau o dan adran 87 wneud darpariaeth, er enghraifft—
- (a) ar gyfer sicrhau nad yw plentyn yn cael ei leoli gyda rhiant maeth awdurdod lleol oni bai bod y person hwnnw wedi cael ei gymeradwyo am y tro fel rhiant maeth awdurdod lleol gan yr awdurdod lleol a bennir;
- (b) sy'n sefydlu gweithdrefn sy'n caniatáu i unrhyw berson, y gwnaed dyfarniad cymhwysol mewn cysylltiad ag ef, wneud cais o dan y weithdrefn honno am adolygiad o'r dyfarniad hwnnw gan banel a benodwyd gan Weinidogion Cymru.



- (b) if the child's well-being requires the immediate provision of such accommodation, within such period of the accommodation being provided as may be specified.

**91 Regulations about the avoidance of disruption in education**

- (1) Regulations under section 87 may, for example, impose requirements that a local authority must comply with before making any decision concerning a child's placement if he or she is in the fourth key stage.
- (2) A child is "in the fourth key stage" if the child is a pupil in the fourth key stage for the purposes of Part 7 of the Education 2002 (see section 103 of that Act).

**92 Regulations about the placing of children with local authority foster parents and prospective adopters**

- (1) Regulations under section 87 may, for example, make provision –
  - (a) with regard to the well-being of children placed with local authority foster parents or prospective adopters;
  - (b) as to the arrangements to be made by local authorities in connection with the health and education of such children;
  - (c) as to the records to be kept by local authorities;
  - (d) for securing that where possible the local authority foster parent or prospective adopter with whom a child is to be placed –
    - (i) is of the same religious persuasion as the child, or
    - (ii) gives an undertaking that the child will be brought up in that religious persuasion;
  - (e) for securing that children placed with local authority foster parents or prospective adopters, and the premises in which they are accommodated, will be supervised and inspected by a local authority and that the children will be removed from those premises if their well-being appears to require it.
- (2) In this section "prospective adopter" means a person with whom a child is placed under section 81(11).

**93 Regulations providing for approval of local authority foster parents**

- (1) Regulations under section 87 may, for example, make provision –
  - (a) for securing that a child is not placed with a local authority foster parent unless that person is for the time being approved as a local authority foster parent by such local authority as may be specified;
  - (b) establishing a procedure under which any person in respect of whom a qualifying determination has been made may apply to the Welsh Ministers for a review of that determination by a panel constituted by the Welsh Ministers.

- (2) Mae dyfarniad yn ddyfarniad cymhwysol—
  - (a) os yw'n ymwneud â chwestiwn ynghylch a ddylai person gael ei gymeradwyo, neu a ddylai barhau i gael ei gymeradwyo, fel rhiant maeth awdurdod lleol, a
  - (b) os yw o ddisgrifiad a bennir.
- (3) Caiff rheoliadau a wneir o dan is-adran (1)(b) gynnwys darpariaeth o ran—
  - (a) dyletswyddau a phwerau panel;
  - (b) gweinyddiaeth a gweithdrefnau panel;
  - (c) penodi aelodau panel (gan gynnwys nifer, neu unrhyw gyfyngiad ar nifer, yr aelodau y caniateir i'w penodi, ac unrhyw amodau ar gyfer eu penodi);
  - (d) talu ffioedd i aelodau panel;
  - (e) dyletswyddau unrhyw berson mewn cysylltiad ag adolygiad a gynhelir o dan y rheoliadau;
  - (f) monitro unrhyw adolygiadau o'r fath.
- (4) Caiff rheoliadau a wneir yn rhinwedd is-adran (3)(e) osod dyletswydd i dalu i Weinidogion Cymru y cyfryw swm y mae Gweinidogion Cymru yn ei ddyfarnu; ond ni chaniateir gosod dyletswydd o'r fath ar berson sydd wedi gwneud cais i gael adolygiad o ddyfarniad cymhwysol.
- (5) Rhaid i Weinidogion Cymru sicrhau, drwy gymryd un flwyddyn ariannol gydag un arall, nad yw agregiad y symiau sy'n dod yn daladwy iddynt o dan reoliadau a wneir yn rhinwedd is-adran (4) y tu hwnt i'r gost o gyflawni eu swyddogaethau adolygu annibynnol.
- (6) Caiff Gweinidogion Cymru wneud trefniant gyda sefydliad lle y bydd y sefydliad hwnnw'n cyflawni swyddogaethau adolygu annibynnol ar eu rhan.
- (7) Os yw Gweinidogion Cymru yn gwneud trefniant o'r fath gyda sefydliad, rhaid i'r sefydliad gyflawni ei swyddogaethau o dan y trefniant yn unol ag unrhyw gyfarwyddyd cyffredinol neu arbennig a roddir gan Weinidogion Cymru.
- (8) Caiff y trefniant gynnwys darpariaeth bod y sefydliad yn derbyn taliadau gan Weinidogion Cymru.
- (9) Rhaid i daliadau a wneir gan Weinidogion Cymru yn unol â darpariaeth o'r fath gael eu cymryd i ystyriaeth wrth benderfynu (at ddiben is-adran (5)) y gost i Weinidogion Cymru o gyflawni eu swyddogaethau adolygu annibynnol.
- (10) O ran cyfarwyddyd o dan is-adran (7)—
  - (a) rhaid iddo fod yn ysgrifenedig;
  - (b) caniateir iddo gael ei amrywio neu ei ddirymu drwy gyfarwyddyd diweddarach.
- (11) Yn yr adran hon—

ystyr "blwyddyn ariannol" ("*financial year*") yw cyfnod o ddeuddeng mis sy'n dod i ben ar 31 Mawrth;

mae "sefydliad" ("*organisation*") yn cynnwys yr Ysgrifennydd Gwladol, corff cyhoeddus a sefydliad preifat neu wirfoddol;

- (2) A determination is a qualifying determination if –
  - (a) it relates to the issue of whether a person should be approved, or should continue to be approved, as a local authority foster parent, and
  - (b) it is of a specified description.
- (3) Regulations made under subsection (1)(b) may include provision as to –
  - (a) the duties and powers of a panel;
  - (b) the administration and procedures of a panel;
  - (c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for their appointment);
  - (d) the payment of fees to members of a panel;
  - (e) the duties of any person in connection with a review conducted under the regulations;
  - (f) the monitoring of any such reviews.
- (4) Regulations made by virtue of subsection (3)(e) may impose a duty to pay to the Welsh Ministers such amount as the Welsh Ministers may determine; but such a duty may not be imposed upon a person who has applied for a review of a qualifying determination.
- (5) The Welsh Ministers must secure that, taking one financial year with another, the aggregate of the amounts which become payable to them under regulations made by virtue of subsection (4) does not exceed the cost to them of performing their independent review functions.
- (6) The Welsh Ministers may make an arrangement with an organisation under which independent review functions are performed by the organisation on their behalf.
- (7) If the Welsh Ministers make such an arrangement with an organisation, the organisation must perform their functions under the arrangement in accordance with any general or specific direction given by the Welsh Ministers.
- (8) The arrangement may include provision for payments to be made to the organisation by the Welsh Ministers.
- (9) Payments made by the Welsh Ministers in accordance with such provision are to be taken into account in determining (for the purpose of subsection (5)) the cost to the Welsh Ministers of performing their independent review functions.
- (10) A direction under subsection (7) –
  - (a) must be in writing;
  - (b) may be varied or revoked by a later direction.
- (11) In this section –

“financial year” (*“blwyddyn ariannol”*) means a period of twelve months ending with 31 March;

“independent review function” (*“swyddogaeth adolygu annibynnol”*) means a function conferred or imposed on the Welsh Ministers by regulations made by virtue of subsection (1)(b);

ystyr “swyddogaeth adolygu annibynnol” (“*independent review function*”) yw swyddogaeth a roddir neu a osodir ar Weinidogion Cymru drwy reoliadau a wneir yn rhinwedd is-adran (1)(b).

#### 94 Rheoliadau ynghylch trefniadau asiantaeth

Caiff rheoliadau o dan adran 87 wneud darpariaeth, er enghraifft, o ran yr amgylchiadau lle y caiff awdurdod lleol wneud trefniadau bod dyletswyddau a osodwyd arno gan y rheoliadau yn cael eu cyflawni ar ei ran.

#### *Cyswllt ac ymweliadau*

#### 95 Hyrwyddo a chynnal cyswllt rhwng plentyn a theulu

- (1) Pan fo plentyn yn derbyn gofal gan awdurdod lleol, rhaid i'r awdurdod, oni bai nad yw hynny'n rhesymol ymarferol neu yn gyson â llesiant y plentyn, hyrwyddo cyswllt rhwng y plentyn a—
  - (a) rhieni'r plentyn,
  - (b) unrhyw berson nad yw'n rhiant i'r plentyn ond sydd â chyfrifoldeb rhiant dros y plentyn, ac
  - (c) unrhyw berthynas, ffrind neu unrhyw berson arall sy'n gysylltiedig â'r plentyn.
- (2) Pan fo plentyn yn derbyn gofal gan awdurdod lleol, rhaid i'r awdurdod lleol gymryd unrhyw gamau sy'n rhesymol ymarferol i sicrhau bod y personau canlynol yn cael eu hysbysu'n rheolaidd am y man lle y mae'r plentyn yn cael ei letya—
  - (a) rhieni'r plentyn;
  - (b) unrhyw berson nad yw'n rhiant i'r plentyn ond sydd â chyfrifoldeb rhiant dros y plentyn.
- (3) Rhaid i bob person a grybwyllwyd yn is-adran (2)(a) neu (b) sicrhau bod yr awdurdod yn cael ei hysbysu'n rheolaidd am ei gyfeiriad.
- (4) Pan fo awdurdod lleol (“yr awdurdod derbyn”) yn cymryd drosodd y gwaith o ddarparu llety i blentyn oddi wrth awdurdod lleol arall (“yr awdurdod trosglwyddo”) o dan adran 76—
  - (a) rhaid i'r awdurdod derbyn (pan fo hynny'n rhesymol ymarferol) hysbysu—
    - (i) rhieni'r plentyn, a
    - (ii) unrhyw berson nad yw'n rhiant i'r plentyn ond sydd â chyfrifoldeb rhiant dros y plentyn,
  - (b) mae is-adran (2) yn gymwys i'r awdurdod trosglwyddo, yn ogystal â'r awdurdod derbyn, hyd nes y bydd o leiaf un o'r personau a grybwyllwyd ym mharagraff (a) neu (b) o'r is-adran honno wedi cael ei hysbysu am y newid, ac
  - (c) nid yw is-adran (3) yn ei gwneud yn ofynnol i unrhyw berson hysbysu'r awdurdod derbyn am ei gyfeiriad hyd nes y bydd y person hwnnw wedi cael ei hysbysu o dan baragraff (a).

“organisation” (“*sefydliad*”) includes the Secretary of State, a public body and a private or voluntary organisation.

#### **94 Regulations about agency arrangements**

Regulations under section 87 may, for example, make provision as to the circumstances in which a local authority may make arrangements for duties imposed on it by the regulations to be discharged on its behalf.

#### *Contact and visits*

#### **95 Promotion and maintenance of contact between child and family**

- (1) Where a child is being looked after by a local authority, the authority must, unless it is not reasonably practicable or consistent with the child’s well-being, promote contact between the child and –
  - (a) the child’s parents,
  - (b) any person who is not a parent of the child but who has parental responsibility for the child, and
  - (c) any relative, friend or other person connected with the child.
- (2) Where a child is being looked after by a local authority, the authority must take such steps as are reasonably practicable to secure that the following persons are kept informed of where the child is being accommodated –
  - (a) the child’s parents;
  - (b) any person who is not a parent of the child but who has parental responsibility for the child.
- (3) Every person mentioned in subsection (2)(a) or (b) must secure that the authority is kept informed of his or her address.
- (4) Where a local authority (“the receiving authority”) takes over the provision of accommodation for a child from another local authority (“the transferring authority”) under section 76 –
  - (a) the receiving authority must (where reasonably practicable) inform –
    - (i) the child’s parents, and
    - (ii) any person who is not a parent of the child but who has parental responsibility for the child,
  - (b) subsection (2) applies to the transferring authority, as well as to the receiving authority, until at least one of the persons mentioned in paragraph (a) or (b) of that subsection has been informed of the change, and
  - (c) subsection (3) does not require any person to inform the receiving authority of his or her address until that person has been informed under paragraph (a).

- (5) Nid oes dim yn yr adran hon sy'n ei gwneud yn ofynnol i awdurdod lleol hysbysu person am y man lle y mae plentyn, ac eithrio plentyn o dan 16 oed sy'n cael ei letya o dan adran 76, os oes gan yr awdurdod sail resymol dros gredu y byddai hysbysu'r person yn peryglu llesiant y plentyn.
- (6) Mae unrhyw berson sy'n methu â chydymffurfio, heb esgus rhesymol, ag is-adran (3) yn euog o drosedd ac yn atebol o'i gollfarnu'n ddiannod i ddirwy nad yw'n uwch na lefel 2 ar y raddfa safonol.

**96 Ymweliadau'r teulu â'r plant neu ymweliadau â'r teulu gan blant: treuliau**

- (1) Mae'r paragraff hwn yn gymwys –
  - (a) pan fo plentyn yn derbyn gofal gan awdurdod lleol, a
  - (b) pan fo'r amodau a grybwyllir yn is-adran (4) wedi eu bodloni.
- (2) Caiff yr awdurdod wneud taliadau mewn perthynas â theithio, cynhaliaeth neu dreuliau eraill a dynnir gan y personau canlynol wrth ymweld â'r plentyn –
  - (a) rhiant i'r plentyn,
  - (b) unrhyw berson nad yw'n rhiant i'r plentyn ond sydd â chyfrifoldeb rhiant dros y plentyn, neu
  - (c) unrhyw berthynas, ffrind neu berson arall sy'n gysylltiedig â'r plentyn.
- (3) Caiff yr awdurdod wneud taliadau i'r plentyn, neu i unrhyw berson ar ran y plentyn, mewn cysylltiad â theithio, cynhaliaeth neu dreuliau eraill a dynnir gan y plentyn neu ar ei ran wrth iddo ymweld â'r personau a grybwyllwyd ym mharagraffau (a) i (c) o is-adran (2).
- (4) Yr amodau yw –
  - (a) ei bod yn ymddangos i'r awdurdod na fyddai'n bosib cynnal yr ymweliad o dan sylw fel arall heb galedi ariannol gormodol, a
  - (b) bod yr amgylchiadau yn cyfiawnhau gwneud y taliadau.

**97 Dyletswydd awdurdod lleol i sicrhau ymweliadau a chyswllt â phlant sy'n derbyn gofal a phlant eraill**

- (1) Mae'r adran hon yn gymwys i –
  - (a) plentyn sy'n derbyn gofal gan awdurdod lleol;
  - (b) plentyn a fu'n derbyn gofal gan awdurdod lleol ond nid yw bellach yn derbyn gofal gan yr awdurdod o ganlyniad i amgylchiadau a bennwyd mewn rheoliadau;
  - (c) plentyn sy'n dod o fewn categori a bennir mewn rheoliadau.
- (2) Rhaid i reoliadau sy'n pennu categori at ddiben is-adran (1)(c) hefyd bennu'r awdurdod lleol y mae'n rhaid iddo gyflawni'r dyletswyddau a osodir gan neu o dan yr adran hon mewn perthynas â phlentyn sy'n dod o fewn y categori penodedig.
- (3) Rhaid i awdurdod lleol –
  - (a) sicrhau bod person sy'n cynrychioli'r awdurdod ("cynrychiolydd") yn ymweld â phlentyn y mae'r adran hon yn gymwys iddo;

- (5) Nothing in this section requires a local authority to inform a person of the whereabouts of a child, other than a child aged under 16 who is being accommodated under section 76, if the authority has reasonable cause to believe that informing the person would prejudice the child's well-being.
- (6) Any person who fails, without reasonable excuse, to comply with subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

**96 Family visits to or by children: expenses**

- (1) This paragraph applies where –
  - (a) a child is being looked after by a local authority, and
  - (b) the conditions mentioned in subsection (4) are satisfied.
- (2) The authority may make payments in respect of travelling, subsistence or other expenses incurred by the following persons in visiting the child –
  - (a) a parent of the child,
  - (b) any person who is not a parent of the child but who has parental responsibility for the child, or
  - (c) any relative, friend or other person connected with the child.
- (3) The authority may make payments to the child, or to any person on the child's behalf, in respect of travelling, subsistence or other expenses incurred by or on behalf of the child in visiting the persons mentioned in paragraphs (a) to (c) of subsection (2).
- (4) The conditions are that –
  - (a) it appears to the authority that the visit in question could not otherwise be made without undue financial hardship, and
  - (b) the circumstances warrant the making of the payments.

**97 Duty of local authority to ensure visits to, and contact with, looked after children and other children**

- (1) This section applies to –
  - (a) a child looked after by a local authority;
  - (b) a child who was looked after by a local authority but who has ceased to be looked after by the authority as a result of circumstances specified in regulations;
  - (c) a child who falls within a category specified in regulations.
- (2) Regulations specifying a category for the purpose of subsection (1)(c) must also specify the local authority which must discharge the duties imposed by or under this section in relation to a child who falls within the specified category.
- (3) The local authority must –
  - (a) ensure that a child to whom this section applies is visited by a representative of the authority ("a representative");

- (b) trefnu bod cyngor a chymorth arall priodol ar gael i blentyn y mae'r adran hon yn gymwys iddo.
- (4) O ran y dyletswyddau a osodwyd gan is-adran (3) –
  - (a) maent i'w cyflawni yn unol ag unrhyw reoliadau a wneir at ddibenion yr adran hon;
  - (b) maent yn ddarostyngedig i unrhyw ofyniad a osodir gan neu o dan ddeddfiad sy'n gymwys i'r man lle y mae'r plentyn y mae'r adran hon yn gymwys iddo yn cael ei letya.
- (5) Caiff rheoliadau o dan yr adran hon at ddibenion is-adran (4)(a) wneud darpariaeth am –
  - (a) amllder yr ymweliadau;
  - (b) yr amgylchiadau pan fo'n rhaid i gynrychiolydd ymweld â'r plentyn y mae'r adran hon yn gymwys iddo;
  - (c) swyddogaethau cynrychiolydd.
- (6) Wrth ddewis cynrychiolydd, rhaid i awdurdod lleol fodloni ei hun bod gan y person a ddewiswyd y sgiliau a'r profiad angenrheidiol i gyflawni swyddogaethau cynrychiolydd.

## **98 Ymwelwyr annibynnol ar gyfer plant sy'n derbyn gofal**

- (1) Rhaid i awdurdod lleol sy'n gofalu am blentyn benodi person annibynnol i fod yn ymwelydd ar gyfer y plentyn os –
  - (a) yw'r plentyn yn dod o fewn categori a bennwyd mewn rheoliadau, neu
  - (b) mewn unrhyw achos arall, yr ymddengys i'r awdurdod y byddai gwneud hynny'n fuddiol i'r plentyn.
- (2) Rhaid i berson a benodir o dan yr adran hon ymweld â'r plentyn, ymgyfeillio ag ef a'i gynghori.
- (3) Y mae hawlogaeth gan berson a benodir o dan yr adran hon i adennill oddi wrth yr awdurdod penodi unrhyw dreuliau rhesymol a dynnir gan y person hwnnw at ddibenion ei swyddogaethau o dan yr adran hon.
- (4) Daw penodiad person fel ymwelydd yn unol â'r adran hon i ben –
  - (a) os yw'r plentyn bellach wedi peidio â derbyn gofal gan yr awdurdod lleol,
  - (b) os bydd y person yn ymddiswyddo drwy roi hysbysiad ysgrifenedig i'r awdurdod penodi, neu
  - (c) os bydd yr awdurdod yn rhoi hysbysiad ysgrifenedig i'r person ei fod wedi terfynu'r penodiad.
- (5) Nid yw dod â phenodiad o'r fath i ben yn effeithio ar unrhyw ddyletswydd o dan yr adran hon i wneud penodiad pellach.
- (6) Pan fo awdurdod lleol yn cynnig penodi ymwelydd ar gyfer plentyn o dan yr adran hon, ni chaniateir gwneud y penodiad –
  - (a) os yw'r plentyn yn ei wrthwynebu, a



- (b) arrange for appropriate advice and other support to be available to a child to whom this section applies.
- (4) The duties imposed by subsection (3) –
  - (a) are to be discharged in accordance with any regulations made for the purposes of this section;
  - (b) are subject to any requirement imposed by or under an enactment applicable to the place in which the child to whom this section applies is accommodated.
- (5) Regulations under this section may, for the purposes of subsection (4)(a), make provision about –
  - (a) the frequency of visits;
  - (b) circumstances in which a child to whom this section applies must be visited by a representative;
  - (c) the functions of a representative.
- (6) In choosing a representative, a local authority must satisfy itself that the person chosen has the necessary skills and experience to perform the functions of a representative.

## **98 Independent visitors for looked after children**

- (1) A local authority looking after a child must appoint an independent person to be the child's visitor if –
  - (a) the child falls within a category specified in regulations, or
  - (b) in any other case, it appears to the authority that it would be in the child's interests to do so.
- (2) A person appointed under this section must visit, befriend and advise the child.
- (3) A person appointed under this section is entitled to recover from the appointing authority any reasonable expenses incurred by that person for the purposes of that person's functions under this section.
- (4) A person's appointment as a visitor in pursuance of this section comes to an end if –
  - (a) the child ceases to be looked after by the local authority,
  - (b) the person resigns the appointment by giving notice in writing to the appointing authority, or
  - (c) the authority gives the person notice in writing that it has terminated the appointment.
- (5) The ending of such an appointment does not affect any duty under this section to make a further appointment.
- (6) Where a local authority proposes to appoint a visitor for a child under this section, the appointment must not be made if –
  - (a) the child objects to it, and

- (b) os yw'r awdurdod yn fodlon bod gan y plentyn ddealltwriaeth ddigonol i wneud gwrthwynebiad deallus.
- (7) Pan fo ymwelydd wedi cael ei benodi i'r plentyn o dan yr adran hon, rhaid i awdurdod lleol ddod â'r penodiad i ben—
  - (a) os yw'r plentyn yn gwrthwynebu bod y penodiad yn parhau, a
  - (b) os yw'r awdurdod yn fodlon bod gan y plentyn ddealltwriaeth ddigonol i wneud gwrthwynebiad deallus.
- (8) Os yw'r awdurdod lleol yn rhoi effaith i wrthwynebiad plentyn o dan is-adran (6) neu (7) a'r gwrthwynebiad yw bod unrhyw un yn cael ei benodi'n ymwelydd ar ei gyfer, nid oes yn rhaid i'r awdurdod gynnig penodi person arall o dan is-adran (1) hyd nes y bydd y gwrthwynebiad wedi ei dynnu yn ôl.
- (9) Caiff rheoliadau wneud darpariaeth o ran yr amgylchiadau lle y mae person i'w ystyried at ddibenion yr adran hon fel un sy'n annibynnol ar yr awdurdod penodi.

*Adolygu achosion***99 Penodi swyddog adolygu annibynnol**

- (1) Os yw awdurdod lleol yn gofalu am blentyn, rhaid iddo benodi unigolyn i fod yn swyddog adolygu annibynnol ar achos y plentyn hwnnw.
- (2) Rhaid gwneud y penodiad cychwynnol o dan is-adran (1) cyn i achos y plentyn gael ei adolygu gyntaf yn unol â rheoliadau a wneir o dan adran 102.
- (3) Os yw swydd wag yn codi mewn perthynas ag achos plentyn, rhaid i'r awdurdod lleol wneud penodiad arall o dan is-adran (1) cyn gynted ag y bo'n ymarferol.
- (4) Rhaid i'r person a benodir ddod o fewn categori o bersonau a bennir mewn rheoliadau.

**100 Swyddogaethau'r swyddog adolygu annibynnol**

- (1) Rhaid i'r swyddog adolygu annibynnol—
  - (a) monitro'r modd y mae'r awdurdod lleol yn cyflawni ei swyddogaethau mewn perthynas ag achos y plentyn;
  - (b) cymryd rhan, yn unol â rheoliadau, mewn unrhyw adolygiad ar achos y plentyn;
  - (c) sicrhau bod unrhyw ddymuniaidau a theimladau canfyddedig y plentyn ynglŷn â'r achos yn cael eu hystyried yn briodol gan yr awdurdod lleol;
  - (d) cyflawni unrhyw swyddogaeth arall a bennir mewn rheoliadau.
- (2) Rhaid i swyddogaethau swyddog adolygu annibynnol gael eu cyflawni—
  - (a) yn y modd a bennir mewn rheoliadau, a
  - (b) gan roi sylw i unrhyw ganllawiau y bydd yr awdurdod hwnnw yn ei gyhoeddi mewn perthynas â chyflawni'r swyddogaethau hynny.
- (3) Os bydd y swyddog adolygu annibynnol o'r farn ei bod hi'n briodol gwneud hynny, caniateir i achos y plentyn gael ei atgyfeirio gan y swyddog hwnnw at un o swyddogion achosion teuluol Cymru.

- (b) the authority is satisfied that the child has sufficient understanding to make an informed objection.
- (7) Where a visitor has been appointed for a child under this section, the local authority must terminate the appointment if –
  - (a) the child objects to its continuing, and
  - (b) the authority is satisfied that the child has sufficient understanding to make an informed objection.
- (8) If the local authority gives effect to a child's objection under subsection (6) or (7) and the objection is to having anyone as the child's visitor, the authority does not have to propose to appoint another person under subsection (1) until the objection is withdrawn.
- (9) Regulations may provide for the circumstances in which a person is to be regarded for the purposes of this section as being independent of the appointing local authority.

*Review of cases*

**99 Appointment of independent reviewing officer**

- (1) If a local authority is looking after a child, it must appoint an individual as the independent reviewing officer for that child's case.
- (2) The initial appointment under subsection (1) must be made before the child's case is first reviewed in accordance with regulations made under section 102.
- (3) If a vacancy arises in respect of a child's case, the local authority must make another appointment under subsection (1) as soon as is practicable.
- (4) An appointee must fall within a category of persons specified in regulations.

**100 Functions of the independent reviewing officer**

- (1) The independent reviewing officer must –
  - (a) monitor the performance by the local authority of its functions in relation to the child's case;
  - (b) participate, in accordance with regulations, in any review of the child's case;
  - (c) ensure that any ascertained wishes and feelings of the child concerning the case are given due consideration by the local authority;
  - (d) perform any other function specified in regulations.
- (2) An independent reviewing officer's functions must be performed –
  - (a) in such manner as may be specified in regulations, and
  - (b) having regard to such guidance as that authority may issue in relation to the discharge of those functions.
- (3) If the independent reviewing officer considers it appropriate to do so, the child's case may be referred by that officer to a Welsh family proceedings officer.

- (4) Os nad yw'r swyddog adolygu annibynnol yn swyddog i'r awdurdod lleol, mae'n ddyletswydd ar yr awdurdod –
- (a) i gydweithredu â'r unigolyn hwnnw, a
  - (b) i gymryd unrhyw gamau rhesymol y bydd ar yr unigolyn hwnnw eu hangen i alluogi swyddogaethau'r unigolyn hwnnw o dan yr adran hon i gael eu cyflawni yn foddhaol.

### 101 Achosion a atgyfeirir

- (1) Mewn perthynas â phlant yr atgyfeirir eu hachosion at swyddogion achosion teuluol Cymru o dan adran 100(3), caiff yr Arglwydd Ganghellor drwy reoliadau –
  - (a) estyn unrhyw swyddogaethau sydd gan swyddogion achosion teuluol Cymru mewn perthynas ag achosion teuluol (o fewn ystyr "family proceedings" yn adran 12 o Ddeddf Cyfiawnder Troseddol a Gwasanaethau Llysoedd 2000) i achosion eraill;
  - (b) ei gwneud yn ofynnol bod unrhyw swyddogaethau sydd gan swyddogion achosion teuluol Cymru yn cael eu cyflawni yn y modd a bennir gan y rheoliadau.
- (2) Nid yw'r pŵer i wneud rheoliadau o dan yr adran hon yn arferadwy heb gydsyniad Gweinidogion Cymru.

### 102 Adolygu achosion ac ymchwilio i sylwadau

- (1) Caiff rheoliadau ei gwneud yn ofynnol i achos bob plentyn sy'n derbyn gofal gan awdurdod lleol gael ei adolygu yn unol â darpariaethau'r rheoliadau.
- (2) Ymhlith pethau eraill, caiff y rheoliadau ddarparu ar gyfer –
  - (a) y modd y mae pob achos i'w adolygu;
  - (b) yr ystyriaethau y mae hi'n ofynnol i'r awdurdod lleol roi sylw iddynt wrth adolygu pob achos;
  - (c) pryd y mae gofyn i bob achos gael ei adolygu am y tro cyntaf a pha mor aml y bydd adolygiadau dilynol i'w cynnal;
  - (d) ei gwneud yn ofynnol i'r awdurdod, cyn iddo gynnal unrhyw adolygiad, geisio barn –
    - (i) y plentyn,
    - (ii) rhieni'r plentyn,
    - (iii) unrhyw berson nad yw'n rhiant i'r plentyn ond sydd â chyfrifoldeb rhiant drosto, a
    - (iv) unrhyw berson arall y mae'r awdurdod yn ystyried bod ei farn yn berthnasol,

gan gynnwys, yn benodol, farn y personau hynny mewn perthynas ag unrhyw fater penodol sydd i'w ystyried yn ystod yr adolygiad;

- (4) If the independent reviewing officer is not an officer of the local authority, it is the duty of the authority –
  - (a) to co-operate with that individual, and
  - (b) to take such reasonable steps as that individual may require to enable that individual's functions under this section to be performed satisfactorily.

**101 Referred cases**

- (1) In relation to children whose cases are referred to Welsh family proceedings officers under section 100(3), the Lord Chancellor may by regulations –
  - (a) extend any functions of the Welsh family proceedings officers in respect of family proceedings (within the meaning of section 12 of the Criminal Justice and Court Services Act 2000) to other proceedings;
  - (b) require any functions of the Welsh family proceedings officers to be performed in the manner specified by the regulations.
- (2) The power to make regulations under this section is exercisable only with the consent of the Welsh Ministers.

**102 Review of cases and inquiries into representations**

- (1) Regulations may require the case of each child who is being looked after by a local authority to be reviewed in accordance with the provisions of the regulations.
- (2) The regulations may, among other things, make provision –
  - (a) as to the manner in which each case is to be reviewed;
  - (b) as to the considerations to which the local authority is to have regard in reviewing each case;
  - (c) as to the time when each case is first to be reviewed and the frequency of subsequent reviews;
  - (d) requiring the authority, before conducting any review, to seek the views of –
    - (i) the child,
    - (ii) the child's parents,
    - (iii) any person who is not a parent of the child but who has parental responsibility for the child, and
    - (iv) any other person whose views the authority considers to be relevant, including, in particular, the views of those persons in relation to any particular matter which is to be considered in the course of the review;

- (e) ei gwneud yn ofynnol i'r awdurdod, yn achos plentyn sydd o dan ei ofal –
  - (i) adolygu'n gyson y cynllun o dan adran 31A o Ddeddf Plant 1989 (gorchmynion gofal: cynlluniau gofal) ar gyfer y plentyn ac, os yw'r awdurdod o'r farn bod angen newid o ryw fath, i ddiwygio'r cynllun, neu wneud cynllun newydd yn unol â hynny, a
  - (ii) ystyried a ddylid gwneud cais i ddiddymu'r gorchymyn gofal;
- (f) ei gwneud yn ofynnol, yn achos plentyn mewn llety a ddarperir gan neu ar ran yr awdurdod –
  - (i) os nad oes cynllun ar gyfer gofal y plentyn yn y dyfodol, i'r awdurdod lunio un,
  - (ii) os oes cynllun o'r fath ar gyfer y plentyn, i'r awdurdod ei adolygu'n gyson ac, os yw o'r farn bod angen newid o ryw fath, iddo ddiwygio'r cynllun neu wneud cynllun newydd yn unol â hynny, a
  - (iii) ystyried a yw'r llety yn unol â gofynion y Rhan hon;
- (g) ei gwneud yn ofynnol i'r awdurdod roi gwybod i'r plentyn, i'r graddau y bo'n rhesymol ymarferol, am unrhyw gamau y caiff ef neu hi gymryd o dan y Ddeddf hon neu Ddeddf Plant 1989;
- (h) ei gwneud yn ofynnol i'r awdurdod wneud trefniadau, gan gynnwys trefniadau gydag unrhyw gyrff eraill sy'n darparu gwasanaethau ac y mae'n barnu bod y cyrff hynny yn briodol, i weithredu unrhyw benderfyniad y mae'n bwriadu ei wneud yn ystod yr adolygiad neu yn ganlyniad iddo;
- (i) ei gwneud yn ofynnol i'r awdurdod hysbysu'r canlynol am fanylion canlyniad yr adolygiad ac am unrhyw benderfyniad a gymerwyd ganddo o ganlyniad i'r adolygiad –
  - (i) y plentyn,
  - (ii) rhieni'r plentyn,
  - (iii) unrhyw berson nad yw'n rhiant i'r plentyn ond sydd â chyfrifoldeb rhiant drosto, a
  - (iv) unrhyw berson arall y dylid, yn ei farn ef, ei hysbysu;
- (j) ei gwneud yn ofynnol i'r awdurdod fonitro'r trefniadau a wnaed ganddo gyda golwg ar sicrhau ei fod yn cydymffurfio â'r rheoliadau.

*Gadael gofal, llety a maethu*

### 103 Ymgyfeillio â phlant sy'n derbyn gofal, eu cynghori a'u cynorthwyo

Rhaid i awdurdod lleol sy'n gofalu am blentyn ei gynghori a'i gynorthwyo ac ymgyfeillio ag ef gyda golwg ar hyrwyddo llesiant y plentyn pan fydd wedi peidio â gofalu amdano.

### 104 Pobl ifanc sydd â'r hawlogaeth i gael cymorth o dan adrannau 105 i 115

- (1) Mae gan y categorïau o berson ifanc a ddiffinnir yn is-adran (2) yr hawlogaeth i gael cymorth yn unol ag adrannau 105 i 115.

- (e) requiring the authority, in the case of a child who is in its care –
  - (i) to keep the plan under section 31A of the Children Act 1989 (care orders: care plans) for the child under review and, if it is of the opinion that some change is required, to revise the plan or make a new plan accordingly, and
  - (ii) to consider whether an application should be made to discharge the care order;
- (f) requiring the authority, in the case of a child in accommodation provided by or on behalf of the authority –
  - (i) if there is no plan for the future care of the child, to prepare one,
  - (ii) if there is such a plan for the child, to keep it under review and, if it is of the opinion that some change is required, to revise the plan or make a new plan accordingly, and
  - (iii) to consider whether the accommodation accords with the requirements of this Part;
- (g) requiring the authority to inform the child, so far as is reasonably practicable, of any steps the child may take under this Act or the Children Act 1989;
- (h) requiring the authority to make arrangements, including arrangements with other bodies which provide services and which it considers appropriate, to implement any decision which it proposes to make in the course, or as a result, of the review;
- (i) requiring the authority to notify details of the result of the review and of any decision taken by it in consequence of the review to –
  - (i) the child,
  - (ii) the child's parents,
  - (iii) any person who is not a parent of the child but who has parental responsibility for the child, and
  - (iv) any other person whom it thinks ought to be notified;
- (j) requiring the authority to monitor the arrangements which it has made with a view to ensuring that it complies with the regulations.

*Leaving care, accommodation and fostering*

**103 Befriending, advising and assisting looked after children**

A local authority looking after a child must advise, assist and befriend the child with a view to promoting the child's well-being when it has ceased to look after the child.

**104 Young people entitled to support under sections 105 to 115**

- (1) The categories of young person defined in subsection (2) are entitled to support in accordance with sections 105 to 115.

## (2) Yn y Ddeddf hon –

ystyr “person ifanc categori 1” yw plentyn –

- (a) sy’n 16 neu’n 17 oed,
- (b) sy’n derbyn gofal gan awdurdod lleol, ac
- (c) sydd wedi bod yn derbyn gofal gan awdurdod lleol neu awdurdod lleol yn Lloegr am gyfnod penodedig, neu gyfnodau sy’n cyfateb, gyda’i gilydd, i gyfnod penodedig, a ddechreuodd ar ôl i’r plentyn gyrraedd oedran penodedig, ac a ddaeth i ben ar ôl i’r plentyn gyrraedd 16 oed;

ystyr “person ifanc categori 2” yw plentyn –

- (a) sy’n 16 neu’n 17 oed,
- (b) nad yw’n derbyn gofal gan awdurdod lleol neu awdurdod lleol yn Lloegr, ac
- (c) a oedd, yn union cyn i’r gofal a ddarparwyd iddo ddod i ben, yn berson ifanc categori 1;

ystyr “person ifanc categori 3” yw person sy’n 18 oed neu drosodd –

- (a) sydd wedi bod yn berson ifanc categori 2 (ac a fyddai’n parhau i fod felly pe bai o dan 18 oed), neu
- (b) a oedd yn derbyn gofal gan awdurdod lleol pan gyrhaeddodd 18 oed ac a oedd, yn union cyn i’r gofal a ddarparwyd iddo ddod i ben, yn berson ifanc categori 1;

ystyr “person ifanc categori 4” yw person –

- (a) sy’n berson ifanc categori 3 y mae’r dyletswyddau o dan adrannau 105, 106, 107(3) a (10) a 110 wedi peidio â bod yn gymwys iddo (gweler adran 111),
- (b) sydd wedi hysbysu’r awdurdod lleol cyfrifol ei fod yn dilyn, neu ei fod yn dymuno dilyn, rhaglen addysg neu hyfforddiant, ac
- (c) sydd heb gyrraedd 25 oed neu unrhyw oedran is a bennir;

ystyr “person ifanc categori 5” yw person –

- (a) sydd wedi cyrraedd 16 oed ond heb gyrraedd 21 oed eto,
- (b) y mae gorchymyn gwarcheidiaeth arbennig mewn grym mewn cysylltiad ag ef (neu os yw wedi cyrraedd 18 oed, yr oedd mewn grym pan gyrhaeddodd yr oedran hwnnw), ac
- (c) a oedd, yn union cyn gwneud y gorchymyn hwnnw, yn derbyn gofal gan awdurdod lleol;

ystyr “person ifanc categori 6” yw person, ac eithrio person ifanc categori 5 –

- (a) a oedd, ar unrhyw adeg ar ôl cyrraedd 16 oed ond tra oedd yn dal yn blentyn, yn derbyn gofal neu wedi ei letya neu ei faethu ond nad yw’n derbyn gofal nac yn cael ei letya na’i faethu mwyach,
- (b) os oedd wedi ei letya neu ei faethu felly, sydd bellach o fewn Cymru, ac
- (c) sydd heb gyrraedd 21 oed eto.



(2) In this Act –

“category 1 young person” means a child who –

- (a) is aged 16 or 17,
- (b) is being looked after by a local authority, and
- (c) has been looked after by a local authority or a local authority in England for a specified period, or periods amounting in all to a specified period, which began after the child reached a specified age and ended after the child reached the age of 16;

“category 2 young person” means a child who –

- (a) is aged 16 or 17,
- (b) is not being looked after by a local authority or a local authority in England, and
- (c) immediately before ceasing to be looked after, was a category 1 young person;

“category 3 young person” means a person aged 18 or over who –

- (a) has been a category 2 young person (and would continue to be so if he or she were under the age of 18), or
- (b) was being looked after by a local authority when he or she reached the age of 18 and, immediately before ceasing to be looked after, was a category 1 young person;

“category 4 young person” means a person who –

- (a) is a category 3 young person towards whom the duties under sections 105, 106, 107(3) and (10) and 110 have ceased to apply (see section 111),
- (b) has informed the responsible local authority that he or she is pursuing, or wishes to pursue, a programme of education or training, and
- (c) has not reached the age of 25 or any lower age specified;

“category 5 young person” means a person –

- (a) who has reached the age of 16 but has not yet reached the age of 21,
- (b) with respect to whom a special guardianship order is in force (or, if the young person has reached the age of 18, was in force when he or she reached that age), and
- (c) who was, immediately before the making of that order, looked after by a local authority;

“category 6 young person” means a person, other than a category 5 young person, who –

- (a) at any time after reaching the age of 16 but while still a child was, but is no longer, looked after, accommodated or fostered,
- (b) if so accommodated or fostered, is now within Wales, and
- (c) has not yet reached the age of 21.

- (3) Yn y diffiniad o “person ifanc categori 6”, ystyr “yn derbyn gofal, wedi ei letya neu ei faethu” yw –
- (a) yn derbyn gofal gan awdurdod lleol (heb fod yn derbyn gofal wedyn gan awdurdod lleol yn Lloegr),
  - (b) wedi ei letya gan neu ar ran sefydliad gwirfoddol,
  - (c) wedi ei letya mewn cartref preifat i blant,
  - (d) wedi ei letya am gyfnod olynol o dri mis o leiaf –
    - (i) gan neu ar ran Bwrdd Iechyd Lleol neu Awdurdod Iechyd Arbennig,
    - (ii) gan neu ar ran grŵp comisiynu clinigol neu Fwrdd Comisiynu'r Gwasanaeth Iechyd Gwladol,
    - (iii) gan neu ar ran awdurdod lleol wrth arfer swyddogaethau addysg,
    - (iv) gan neu ar ran awdurdod lleol yn Lloegr wrth arfer swyddogaethau addysg,
    - (v) mewn unrhyw gartref gofal neu ysbyty annibynnol, neu
    - (vi) mewn unrhyw lety a ddarperir gan neu ar ran Ymddiriedolaeth GIG neu gan neu ar ran Ymddiriedolaeth Sefydledig GIG, neu
  - (e) wedi ei faethu yn breifat (o fewn ystyr adran 66 o Ddeddf Plant 1989).
- (4) Mae is-adran (3)(d) yn gymwys hyd yn oed os dechreuodd y cyfnod o dri mis a grybwyllwyd yno cyn i'r plentyn gyrraedd 16 oed.
- (5) Yn y Ddeddf hon ystyr “awdurdod lleol cyfrifol” ac “awdurdod lleol sy'n gyfrifol” yw –
- (a) mewn perthynas â pherson ifanc categori 1, yr awdurdod lleol sy'n gofalu am y plentyn;
  - (b) mewn perthynas â pherson ifanc categori 2, categori 3 neu categori 4, yr awdurdod lleol a fu'n gofalu am y person hwnnw olaf;
  - (c) mewn perthynas â pherson ifanc categori 5, awdurdod lleol a ddyfernir yn unol â rheoliadau;
  - (d) mewn perthynas â pherson ifanc categori 6 sy'n dod o fewn y categori hwnnw yn rhinwedd paragraff (a) o is-adran (3), yr awdurdod lleol a fu'n gofalu am y person hwnnw olaf;
  - (e) mewn perthynas â pherson ifanc categori 6 sy'n dod o fewn y categori hwnnw yn rhinwedd unrhyw baragraff arall o'r is-adran honno, yr awdurdod lleol y mae'r person o fewn ei ardal.
- (6) Caiff rheoliadau, at ddibenion unrhyw un neu rai o'r pwerau neu'r dyletswyddau o dan adrannau 105 i 115 –
- (a) pennu categorïau ychwanegol o bersonau;
  - (b) pennu categorïau o bersonau nad ydynt i'w trin fel rhai sy'n dod o fewn categori o berson ifanc a grybwyllwyd yn is-adran (1);
  - (c) gwneud darpariaeth ar gyfer dyfarnu pa awdurdod lleol fydd yr awdurdod lleol sy'n gyfrifol at ddibenion categori a bennwyd o dan baragraff (a).

- (3) In the definition of “category 6 young person”, “looked after, accommodated or fostered” means –
- (a) looked after by a local authority (without subsequently being looked after by a local authority in England),
  - (b) accommodated by or on behalf of a voluntary organisation,
  - (c) accommodated in a private children’s home,
  - (d) accommodated for a consecutive period of at least three months –
    - (i) by or on behalf of a Local Health Board or Special Health Authority,
    - (ii) by or on behalf of a clinical commissioning group or the National Health Service Commissioning Board,
    - (iii) by or on behalf of a local authority in the exercise of education functions,
    - (iv) by or on behalf of a local authority in England in the exercise of education functions,
    - (v) in any care home or independent hospital, or
    - (vi) in any accommodation provided by or on behalf of an NHS Trust or by or on behalf of an NHS Foundation Trust, or
  - (e) privately fostered (within the meaning of section 66 of the Children Act 1989).
- (4) Subsection (3)(d) applies even if the period of three months mentioned there began before the child reached the age of 16.
- (5) In this Act “responsible local authority” means –
- (a) in relation to a category 1 young person, the local authority which looks after the child;
  - (b) in relation to a category 2, category 3 or category 4 young person, the local authority which last looked after that person;
  - (c) in relation to category 5 young person, a local authority determined in accordance with regulations;
  - (d) in relation to a category 6 young person falling within that category by virtue of paragraph (a) of subsection (3), the local authority which last looked after that person;
  - (e) in relation to a category 6 young person falling within that category by virtue of any other paragraph of that subsection, the local authority within whose area the person is.
- (6) Regulations may, for the purposes of any of the powers or duties under sections 105 to 115 –
- (a) specify additional categories of persons;
  - (b) specify categories of persons who are not to be treated as falling within a category of young person mentioned in subsection (1);
  - (c) make provision for determining which local authority is to be the responsible local authority for the purpose of a category specified under paragraph (a).

**105 Cadw mewn cysylltiad**

- (1) Rhaid i'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 2 neu categori 3 gymryd camau rhesymol i gadw mewn cysylltiad â'r person hwnnw p'un a yw'r person o fewn ei ardal ai peidio.
- (2) Os yw'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 2 neu categori 3 wedi colli cyswllt â'r person hwnnw, rhaid iddo –
  - (a) ystyried sut i ailsefydlu'r cyswllt hwnnw, a
  - (b) cymryd camau rhesymol i wneud hynny.
- (3) Yn achos person ifanc categori 2, rhaid i'r awdurdod lleol cyfrifol gyflawni ei ddyletswyddau o dan is-adran (2) heb unrhyw oedi a pharhau i gymryd camau rhesymol i ailsefydlu'r cyswllt hyd nes y bydd yn llwyddo.
- (4) Yn achos person ifanc categori 3, mae'r dyletswyddau o dan is-adrannau (1) a (2) yn ddarostyngedig i adran 111.
- (5) Rhaid i'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 6 sy'n dod o fewn y categori hwnnw yn rhinwedd adran 104(3)(a) gymryd camau rhesymol i gysylltu â'r person ifanc ar yr adegau hynny y mae'n eu hystyried yn briodol gyda golwg ar gyflawni ei swyddogaethau o dan adran 115.

**106 Cynghorwyr personol**

- (1) Rhaid i'r awdurdod lleol sy'n gyfrifol drefnu bod gan berson a grybwyllir yn is-adran (2) gynghorydd personol.
- (2) Y personau yw –
  - (a) person ifanc categori 1;
  - (b) person ifanc categori 2;
  - (c) person ifanc categori 3;
  - (d) person ifanc categori 4.
- (3) Mae'r ddyletswydd o dan is-adran (1) –
  - (a) yn achos person ifanc categori 3, yn ddarostyngedig i adran 111;
  - (b) yn achos person ifanc categori 4, yn ddarostyngedig i adran 113.
- (4) Mae cynghorwyr personol a benodir o dan neu yn rhinwedd y Rhan hon i gael unrhyw swyddogaethau a bennir mewn rheoliadau.

**107 Asesiadau a chynlluniau llwybr: cyffredinol**

- (1) Rhaid i'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 1 gynnal asesiad o anghenion y person ifanc gyda golwg ar ddyfarnu pa gyngor a chymorth arall y byddai'n briodol iddo eu darparu i'r person ifanc o dan y Rhan hon –
  - (a) tra bo'r awdurdod yn dal i ofalu amdano, a
  - (b) wedi iddo roi'r gorau i ofalu amdano.

**105 Keeping in touch**

- (1) The responsible local authority for a category 2 or category 3 young person must take reasonable steps to keep in touch with that person, whether the person is within its area or not.
- (2) If the responsible local authority for a category 2 or category 3 young person has lost touch with that person it must –
  - (a) consider how to re-establish contact, and
  - (b) take reasonable steps to do so.
- (3) In the case of a category 2 young person, the responsible local authority must discharge its duty under subsection (2) without delay and continue to take reasonable steps to re-establish contact until it succeeds.
- (4) In the case of a category 3 young person, the duties under subsections (1) and (2) are subject to section 111.
- (5) The responsible local authority for a category 6 young person falling within that category by virtue of section 104(3)(a) must take reasonable steps to contact the young person at such times as it thinks appropriate with a view to discharging its functions under section 115.

**106 Personal advisers**

- (1) The responsible local authority for a person mentioned in subsection (2) must arrange for that person to have a personal adviser.
- (2) The persons are –
  - (a) a category 1 young person;
  - (b) a category 2 young person;
  - (c) a category 3 young person;
  - (d) a category 4 young person.
- (3) The duty under subsection (1) –
  - (a) in the case of a category 3 young person, is subject to section 111;
  - (b) in the case of a category 4 young person, is subject to section 113.
- (4) Personal advisers appointed under or by virtue of this Part are to have such functions as may be specified in regulations.

**107 Pathway assessments and plans: general**

- (1) The responsible local authority for a category 1 young person must carry out an assessment of the young person's needs with a view to determining what advice and other support it would be appropriate for it to provide to the young person under this Part –
  - (a) while it is still looking after the young person, and
  - (b) after it ceases to look after the young person.

- (2) Rhaid i'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 2 neu gategori 3 nad oes ganddo gynllun llwybr eisoes, gynnal asesiad o anghenion y person ifanc gyda golwg ar ddyfarnu pa gyngor a chymorth arall y byddai'n briodol iddo eu darparu i'r person ifanc o dan y Rhan hon.
- (3) Ar ôl cynnal asesiad o dan is-adran (1) neu (2), rhaid i'r awdurdod lleol lunio cynllun llwybr a'i gynnal cyhyd ag y bydd y person ifanc yn dod o fewn categori 1, 2 neu 3 (ond gweler is-adran (12)).
- (4) Rhaid i'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 4 gynnal asesiad o anghenion y person ifanc gyda golwg ar ddyfarnu pa gyngor a chymorth arall (os oes cyngor a chymorth arall) y byddai'n briodol iddo eu darparu i'r person ifanc o dan y Rhan hon.
- (5) Wrth gynnal asesiad o dan is-adran (4), caiff yr awdurdod lleol ystyried unrhyw ddyletswydd a all fod ganddo i wneud taliad i'r person ifanc o dan adran 112(2).
- (6) Ar ôl cynnal asesiad o dan is-adran (4), rhaid i'r awdurdod lleol lunio cynllun llwybr.
- (7) Mae cynllun llwybr yn gynllun sy'n nodi –
  - (a) yn achos cynllun ar gyfer person ifanc categori 1 –
    - (i) y cyngor a'r cymorth arall y mae'r awdurdod lleol yn bwriadu eu darparu i'r person ifanc o dan y Rhan hon, tra bydd yn gofalu amdano ac wedi hynny, a
    - (ii) pryd y byddai, o bosibl, yn rhoi'r gorau i ofalu amdano;
  - (b) yn achos cynllun ar gyfer person ifanc categori 2, categori 3 neu gategori 4, y cyngor a'r cymorth arall y mae'r awdurdod lleol yn bwriadu eu darparu i'r person ifanc o dan y Rhan hon;
  - (c) unrhyw faterion eraill (os oes rhai) a bennir mewn rheoliadau.
- (8) Caiff rheoliadau wneud darpariaeth o ran asesiadau at ddibenion yr adran hon.
- (9) Caiff y rheoliadau, er enghraifft, wneud darpariaeth ynglŷn â'r canlynol –
  - (a) y personau y dylid ymgynghori â hwy mewn perthynas ag asesiad;
  - (b) sut mae asesiad i'w gynnal, gan bwy a phryd;
  - (c) cofnodi canlyniadau asesiad;
  - (d) yr ystyriaethau y mae'r awdurdod lleol i roi sylw iddynt wrth gynnal asesiad.
- (10) Rhaid i'r awdurdod lleol adolygu'r cynllun llwybr yn gyson (ond gweler is-adrannau (12) a (13)).
- (11) Caiff yr awdurdod lleol gynnal asesiad neu adolygiad o dan yr adran hon ar yr un adeg ag unrhyw asesiad neu adolygiad arall o anghenion y person ifanc.
- (12) Yn achos person ifanc categori 3, mae'r dyletswyddau o dan is-adrannau (3) a (10) yn ddarostyngedig i adran 111.
- (13) Yn achos person ifanc categori 4, mae'r ddyletswydd o dan is-adran (10) yn ddarostyngedig i adran 113.

- (2) The responsible local authority for a category 2 or category 3 young person who does not already have a pathway plan must carry out an assessment of the young person's needs with a view to determining what advice and other support it would be appropriate for it to provide to the young person under this Part.
- (3) After conducting an assessment under subsection (1) or (2), the local authority must prepare a pathway plan and maintain it for as long as the young person falls within category 1, 2 or 3 (but see subsection (12)).
- (4) The responsible local authority for a category 4 young person must carry out an assessment of the young person's needs with a view to determining what advice and other support (if any) it would be appropriate for it to provide to the young person under this Part.
- (5) In conducting an assessment under subsection (4), the local authority may take into account any duty that it may have to make a payment to the young person under section 112(2).
- (6) After conducting an assessment under subsection (4), the local authority must prepare a pathway plan.
- (7) A pathway plan is a plan setting out –
  - (a) in the case of a plan for a category 1 young person –
    - (i) the advice and other support which the local authority intends to provide for the young person under this Part, both while it is looking after the young person and later, and
    - (ii) when it might cease to look after the young person;
  - (b) in the case of a plan for a category 2, category 3 or category 4 young person, the advice and other support which the local authority intends to provide for the young person under this Part;
  - (c) such other matters (if any) as may be specified in regulations.
- (8) Regulations may make provision as to assessments for the purposes of this section.
- (9) The regulations may, for example, make provision about –
  - (a) the persons who are to be consulted in relation to an assessment;
  - (b) the way in which an assessment is to be carried out, by whom and when;
  - (c) the recording of the results of an assessment;
  - (d) the considerations to which the local authority are to have regard in carrying out an assessment.
- (10) The local authority must keep the pathway plan under regular review (but see subsections (12) and (13)).
- (11) The local authority may carry out an assessment or review under this section at the same time as any other assessment or review of the young person's needs.
- (12) In the case of a category 3 young person, the duties under subsections (3) and (10) are subject to section 111.
- (13) In the case of a category 4 young person, the duty under subsection (10) is subject to section 113.

**108 Asesiadau a chynlluniau llwybr: trefniadau byw ôl-18**

- (1) Rhaid i'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 1 sydd wedi ei leoli gyda rhiant maeth awdurdod lleol gydymffurfio ag is-adran (2) wrth—
  - (a) cynnal asesiad mewn perthynas â'r person ifanc o dan adran 107(1),
  - (b) llunio a chynnal cynllun llwybr ar gyfer y person ifanc o dan adran 107(3), neu
  - (c) adolygu cynllun llwybr y person ifanc o dan adran 107(10).
- (2) Rhaid i'r awdurdod lleol cyfrifol ganfod a yw'r person ifanc a'i riant maeth awdurdod lleol yn dymuno gwneud trefniant byw ôl-18.
- (3) Mae "trefniant byw ôl-18" yn drefniant—
  - (a) pan fo person ifanc categori 3—
    - (i) sydd o dan 21 oed, a
    - (ii) a oedd yn derbyn gofal gan awdurdod lleol pan gyrhaeddodd 18 oed ac a oedd, yn union cyn i'r gofal a ddarparwyd iddo ddod i ben, yn berson ifanc categori 1, a
  - (b) pan fo person ("cyn-riant maeth") a oedd yn rhiant maeth awdurdod lleol i'r person ifanc yn union cyn i'r gofal a ddarparwyd iddo ddod i ben,  
yn parhau i fyw gyda'i gilydd ar ôl i'r gofal a ddarparwyd i'r person ifanc ddod i ben.
- (4) Pan fo'r person ifanc a'i riant maeth awdurdod lleol yn dymuno gwneud trefniant byw ôl-18, rhaid i'r awdurdod lleol cyfrifol ddarparu cyngor a chymorth arall er mwyn hwyluso'r trefniant.
- (5) Nid yw is-adran (4) yn gymwys os yw'r awdurdod lleol cyfrifol o'r farn y byddai gwneud trefniant byw ôl-18 rhwng y person ifanc a'i riant maeth awdurdod lleol yn anghyson â llesiant y person ifanc.
- (6) Caiff rheoliadau wneud darpariaeth ynghylch—
  - (a) y personau y mae'n rhaid darparu gwybodaeth iddynt ynghylch trefniadau byw ôl-18;
  - (b) y modd y mae'n rhaid i'r wybodaeth honno gael ei darparu.

**109 Cymorth ar gyfer pobl ifanc categori 2**

- (1) Rhaid i'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 2 ddiogelu a hyrwyddo llesiant y person hwnnw ac, oni chaiff ei fodloni nad yw'n ofynnol i lesiant y person, cynorthwyo'r person drwy—
  - (a) cynnal y person,
  - (b) darparu llety addas i'r person, neu ei gynnal mewn llety o'r fath, ac
  - (c) darparu cymorth o unrhyw ddisgrifiadau eraill a bennir mewn rheoliadau.
- (2) Caiff cymorth o dan is-adran (1) fod ar ffurf da neu mewn arian parod.
- (3) Caiff rheoliadau wneud darpariaeth ynghylch ystyr "llety addas" ac yn benodol ynghylch addasrwydd landlordiaid neu ddarparwyr llety eraill.



**108 Pathway assessments and plans: post-18 living arrangements**

- (1) The responsible local authority for a category 1 young person who has been placed with a local authority foster parent must comply with subsection (2) when –
  - (a) carrying out an assessment in relation to the young person under section 107(1),
  - (b) preparing and maintaining a pathway plan for the young person under section 107(3), or
  - (c) reviewing the young person’s pathway plan under section 107(10).
- (2) The responsible local authority must ascertain whether the young person and his or her local authority foster parent wish to make a post-18 living arrangement.
- (3) A “post-18 living arrangement” is an arrangement under which –
  - (a) a category 3 young person –
    - (i) who is under the age of 21, and
    - (ii) who was being looked after by a local authority when he or she reached the age of 18 and, immediately before ceasing to be looked after, was a category 1 young person, and
  - (b) a person (a “former foster parent”) who was the young person’s local authority foster parent immediately before he or she ceased to be looked after,  
continue to live together after the young person has ceased to be looked after.
- (4) Where the young person and his or her local authority foster parent wish to make a post-18 living arrangement, the responsible local authority must provide advice and other support in order to facilitate the arrangement.
- (5) Subsection (4) does not apply if the responsible local authority considers that the making of a post-18 living arrangement between the young person and his or her local authority foster parent would not be consistent with the young person’s well-being.
- (6) Regulations may make provision about –
  - (a) the persons to whom information about post-18 living arrangements must be provided;
  - (b) the manner in which that information must be provided.

**109 Support for category 2 young people**

- (1) The responsible local authority for a category 2 young person must safeguard and promote that person’s well-being and, unless it is satisfied that the person’s well-being does not require it, support the person by –
  - (a) maintaining the person,
  - (b) providing the person with, or maintaining the person in, suitable accommodation, and
  - (c) providing support of such other descriptions as may be specified in regulations.
- (2) Support under subsection (1) may be in kind or in cash.
- (3) Regulations may make provision about the meaning of “suitable accommodation” and in particular about the suitability of landlords or other providers of accommodation.

- (4) Mae adran 78(3) yn gymwys mewn perthynas ag unrhyw benderfyniad gan awdurdod lleol at ddibenion yr adran hon fel y bo'n gymwys mewn perthynas â phenderfyniadau y cyfeiriwyd atynt yn yr adran honno.

### 110 Cymorth ar gyfer pobl ifanc categori 3

- (1) Rhaid i'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 3 roi cymorth i'r person ifanc hwnnw drwy –
- cyfrannu, i'r graddau y bo'n ofynnol i lesiant y person ifanc, at dreuliau a dynnir gan y person ifanc wrth iddo fyw yn agos i'r man lle y mae, neu y bydd, yn cael ei gyflogi neu yn chwilio am waith cyflogedig;
  - cyfrannu, i'r graddau y bo'n ofynnol i lesiant ac anghenion addysg neu hyfforddiant y person ifanc, at dreuliau a dynnir gan y person ifanc wrth iddo fyw yn agos i'r man lle y mae, neu y bydd, yn derbyn addysg neu hyfforddiant;
  - gwneud grant i'r person ifanc, i'r graddau y bo'n ofynnol i lesiant ac anghenion addysg neu hyfforddiant y person ifanc, i'w alluogi i dalu treuliau sy'n gysylltiedig â'i addysg neu ei hyfforddiant;
  - gwneud unrhyw beth arall sy'n briodol yn ei farn ef, i'r graddau y bo'n ofynnol i lesiant y person ifanc.
- (2) Yn ogystal, rhaid i'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 3 sydd â threfniant byw ôl-18 –
- monitro'r trefniant, a
  - os yw'r awdurdod o'r farn bod y trefniant yn gyson â llesiant y person ifanc, ddarparu cyngor a chymorth arall i'r person ifanc a'r cyn-riant maeth gyda golwg ar gynnal y trefniant.
- (3) Yn is-adran (2) mae i "trefniant byw ôl-18" yr ystyr a roddir iddo gan adran 108 ac mae i "cyn-riant maeth" yr un ystyr ag sydd iddo yn y diffiniad hwnnw.
- (4) Gall y cymorth a roddir o dan is-adran (1)(d) a (2)(b) fod ar ffurf da neu mewn arian parod.
- (5) Pan fo cymorth yn cael ei ddarparu i gyn-riant maeth o dan is-adran (2)(b), rhaid i'r cymorth gynnwys cymorth ariannol.
- (6) Rhaid i'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 3 sy'n dilyn addysg uwch yn unol â'i gynllun llwybr dalu'r swm perthnasol i'r person ifanc hwnnw.
- (7) Mae'r ddyletswydd o dan is-adran (6) yn ychwanegol at ddyletswydd yr awdurdod lleol cyfrifol o dan is-adran (1).
- (8) Mae is-adran (9) yn gymwys pan fo'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 3 wedi ei fodloni –
- bod y person ifanc mewn addysg bellach neu uwch lawnamser,
  - bod y person ifanc yn cael cymorth o dan is-adran (1)(b) neu (c) neu wedi cael taliad o dan is-adran (6), ac
  - bod angen llety ar y person ifanc yn ystod gwyliau am nad yw llety yn ystod y tymor ar gael.

- (4) Section 78(3) applies in relation to any decision by a local authority for the purposes of this section as it applies in relation to the decisions referred to in that section.

### **110 Support for category 3 young people**

- (1) The responsible local authority for a category 3 young person must support that young person by –
- (a) contributing, to the extent that the young person’s well-being requires it, to expenses incurred by the young person in living near the place where he or she is, or will be, employed or seeking employment;
  - (b) contributing, to the extent that the young person’s well-being and educational or training needs require it, to expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training;
  - (c) making a grant to the young person, to the extent that the young person’s well-being and educational or training needs require it, to enable him or her to meet expenses connected with his or her education or training;
  - (d) doing anything else it considers appropriate, to the extent that the young person’s well-being requires it.
- (2) The responsible local authority for a category 3 young person who has a post-18 living arrangement must, in addition –
- (a) monitor the arrangement, and
  - (b) if the authority considers that the arrangement is consistent with the young person’s well-being, provide advice and other support to the young person and the former foster parent with a view to maintaining the arrangement.
- (3) In subsection (2) “post-18 living arrangement” has the meaning given by section 108 and “former foster parent” has the same meaning as in that definition.
- (4) The support given under subsection (1)(d) and (2)(b) may be in kind or in cash.
- (5) Where support is provided to a former foster parent under subsection (2)(b), the support must include financial support.
- (6) The responsible local authority for a category 3 young person who pursues higher education in accordance with his or her pathway plan must pay the relevant amount to that young person.
- (7) The duty under subsection (6) is in addition to the responsible local authority’s duty under subsection (1).
- (8) Subsection (9) applies where the responsible local authority for a category 3 young person is satisfied that the young person –
- (a) is in full-time further or higher education,
  - (b) is being given support under subsection (1)(b) or (c) or has received a payment under subsection (6), and
  - (c) needs accommodation during a vacation because term-time accommodation is not available.

- (9) Rhaid i'r awdurdod cyfrifol—
  - (a) darparu llety addas i'r person ifanc yn ystod y gwyliau, neu
  - (b) talu digon i'r person ifanc i sicrhau llety o'r fath.
- (10) Mae'r dyletswyddau o dan yr adran hon yn ddarostyngedig i adran 111.

#### 111 Dyletswyddau yn dod i ben mewn perthynas â phobl ifanc categori 3

- (1) Mae dyletswyddau awdurdod lleol cyfrifol tuag at berson ifanc categori 3 yn dod i ben pan fydd y person ifanc yn cyrraedd 21 oed, ac eithrio o dan yr amgylchiadau a nodir yn is-adran (2).
- (2) Pan fo cynllun llwybr person ifanc categori 3 yn nodi rhaglen addysg neu hyfforddiant sy'n estyn y tu hwnt i'r dyddiad y bydd y person ifanc yn cyrraedd 21 oed—
  - (a) mae'r dyletswyddau o dan adran 110(1)(b) ac (c), (6) a (9) yn parhau hyd nes bod y person ifanc yn peidio â dilyn y rhaglen, a
  - (b) mae'r dyletswyddau o dan adrannau 105, 106 ac 107(3) a (10) yn parhau'n gydredol â'r dyletswyddau hynny ac yn dod i ben ar yr un pryd.
- (3) At ddibenion is-adran (2)(a), rhaid i'r awdurdod lleol cyfrifol ddiystyru unrhyw amhariad ar raglen addysg neu hyfforddiant y mae'r person ifanc yn ei dilyn os yw wedi ei fodloni y bydd y person ifanc yn ailgydio yn y rhaglen cyn gynted ag y bo'n rhesymol ymarferol.

#### 112 Cymorth ar gyfer pobl ifanc categori 4

- (1) Rhaid i'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 4 roi cymorth i'r person ifanc hwnnw, i'r graddau y bo'n ofynnol i'w anghenion addysg neu hyfforddiant, drwy—
  - (a) cyfrannu at dreuliau a dynnir gan y person ifanc wrth iddo fyw yn agos i'r man lle y mae, neu y bydd, yn derbyn addysg neu hyfforddiant;
  - (b) gwneud grant i'r person ifanc i'w alluogi i dalu treuliau sy'n gysylltiedig â'i addysg neu ei hyfforddiant.
- (2) Rhaid i'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 4 sy'n dilyn addysg uwch yn unol â'i gynllun llwybr dalu'r swm perthnasol i'r person ifanc hwnnw.
- (3) Mae'r ddyletswydd o dan is-adran (2) yn ychwanegol at ddyletswydd yr awdurdod lleol cyfrifol o dan is-adran (1).
- (4) Pan fo awdurdod lleol sy'n gyfrifol am berson ifanc categori 4 wedi ei fodloni bod y person ifanc mewn addysg bellach neu uwch lawnamser a bod arno angen llety yn ystod gwyliau am nad yw llety yn ystod y tymor ar gael, rhaid iddo—
  - (a) darparu llety addas i'r person ifanc yn ystod y gwyliau, neu
  - (b) talu digon i'r person ifanc i sicrhau llety o'r fath.
- (5) Caiff yr awdurdod lleol sy'n gyfrifol am berson ifanc categori 4 ystyried ei ddyletswydd o dan is-adran (2) wrth asesu angen y person ifanc o dan adran 107(4) ac wrth gyflawni ei ddyletswyddau o dan is-adrannau (1) a (4).
- (6) Mae'r dyletswyddau o dan yr adran hon yn ddarostyngedig i adran 113.

- (9) The responsible authority must –
  - (a) provide the young person with suitable accommodation during the vacation, or
  - (b) pay the young person enough to secure such accommodation.
- (10) The duties under this section are subject to section 111.

**111 Cessation of duties in relation to category 3 young people**

- (1) A responsible local authority's duties towards a category 3 young person cease when the young person reaches the age of 21, except in the circumstances set out in subsection (2).
- (2) Where the category 3 young person's pathway plan sets out a programme of education or training which extends beyond the date on which he or she reaches the age of 21 –
  - (a) the duties under section 110(1)(b) and (c), (6) and (9) continue until the young person ceases to pursue that programme, and
  - (b) the duties under sections 105, 106 and 107(3) and (10) continue concurrently with those duties and cease at the same time.
- (3) For the purposes of subsection (2)(a), the responsible local authority must disregard any interruption in the young person's pursuance of a programme of education or training if it is satisfied that the young person will resume the programme as soon as is reasonably practicable.

**112 Support for category 4 young people**

- (1) The responsible local authority for a category 4 young person must support that young person, to the extent that his or her educational or training needs require it, by –
  - (a) contributing to expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training;
  - (b) making a grant to the young person to enable him or her to meet expenses connected with his or her education or training.
- (2) The responsible local authority for a category 4 young person who pursues higher education in accordance with his or her pathway plan must pay the relevant amount to that young person.
- (3) The duty under subsection (2) is in addition to the responsible local authority's duty under subsection (1).
- (4) Where the responsible local authority for a category 4 young person is satisfied that the young person is in full-time further or higher education and needs accommodation during a vacation because term-time accommodation is not available, it must –
  - (a) provide the young person with suitable accommodation during the vacation, or
  - (b) pay the young person enough to secure such accommodation.
- (5) The responsible local authority for a category 4 young person may take its duty under subsection (2) into account in assessing the young person's need under section 107(4) and in discharging its duties under subsections (1) and (4).
- (6) The duties under this section are subject to section 113.

**113 Dyletswyddau yn dod i ben mewn perthynas â phobl ifanc categori 4**

- (1) Mae dyletswyddau awdurdod lleol cyfrifol tuag at berson ifanc categori 4 yn dod i ben pan fydd y person ifanc yn peidio â dilyn rhaglen addysg neu hyfforddiant yn unol â'i gynllun llwybr.
- (2) At ddibenion is-adran (1), caiff yr awdurdod lleol cyfrifol ddiystyru unrhyw amhariad ar raglen addysg neu hyfforddiant y mae'r person ifanc yn ei dilyn os yw wedi ei fodloni y bydd y person ifanc yn ailgydio yn y rhaglen cyn gynted ag y bo'n rhesymol ymarferol.

**114 Cymorth ar gyfer pobl ifanc categori 5 a phobl ifanc a fu gynt yn bobl ifanc categori 5**

- (1) Rhaid i'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 5 ystyried a fodlonwyd yr amodau yn is-adran (2) mewn perthynas â'r person ifanc.
- (2) Yr amodau yw –
  - (a) bod ar y person angen cymorth o fath y gall yr awdurdod ei roi o dan yr adran hon, a
  - (b) bod yr awdurdod lleol wedi ei fodloni nad oes gan y person yr oedd yn derbyn gofal ganddo y cyfleusterau angenrheidiol i'w gynghori neu ymgyfeillio ag ef.
- (3) Os yw'r amodau wedi eu bodloni rhaid i'r awdurdod lleol gynghori'r person ifanc ac ymgyfeillio ag ef a chaiff roi cymorth i'r person hwnnw yn y modd a ddisgrifir yn is-adran (4).
- (4) Caiff y cymorth gael ei roi –
  - (a) ar ffurf da;
  - (b) drwy gyfrannu at dreuliau a dynnir gan y person ifanc wrth iddo fyw'n agos at i'r man lle y mae, neu y bydd, yn cael ei gyflogi neu'n chwilio am waith;
  - (c) drwy gyfrannu at dreuliau a dynnir gan y person ifanc wrth iddo fyw'n agos i'r lle y mae, neu y bydd, yn derbyn addysg neu hyfforddiant;
  - (d) drwy roi grant i'r person ifanc i'w alluogi i dalu treuliau sy'n gysylltiedig â'i addysg neu ei hyfforddiant;
  - (e) drwy ddarparu llety, os na chaniateir i gymorth gael ei roi mewn cysylltiad â'r llety o dan baragraffau (b) i (d);
  - (f) mewn arian parod.
- (5) Caiff awdurdod lleol hefyd roi cymorth yn y modd a ddisgrifir ym mharagraffau (c) a (d) o is-adran (4) i berson ifanc –
  - (a) sydd o dan 25 oed, a
  - (b) a fyddai'n berson ifanc categori 5 pe bai o dan 21 oed.
- (6) Pan fo awdurdod lleol yn rhoi cymorth yn y modd a ddisgrifir yn is-adran (4)(c) neu (d) caiff ddiystyru unrhyw amhariad ar raglen addysg neu hyfforddiant y mae'r person ifanc yn ei dilyn os yw wedi ei fodloni y bydd y person ifanc yn ailgydio yn y rhaglen cyn gynted ag y bo'n rhesymol ymarferol.

**113 Cessation of duties in relation to category 4 young people**

- (1) A responsible local authority's duties towards a category 4 young person cease when the young person ceases to pursue a programme of education or training in accordance with his or her pathway plan.
- (2) For the purposes of subsection (1), the responsible local authority may disregard any interruption in the young person's pursuance of a programme of education or training if it is satisfied that the young person will resume the programme as soon as is reasonably practicable.

**114 Support for category 5 young people and former category 5 young people**

- (1) The responsible local authority for a category 5 young person must consider whether the conditions in subsection (2) are satisfied in relation to the young person.
- (2) The conditions are that—
  - (a) the young person needs support of a kind which it can give under this section, and
  - (b) the local authority is satisfied that the person by whom the young person was being looked after does not have the necessary facilities for advising or befriending him or her.
- (3) If the conditions are satisfied the local authority must advise and befriend the young person and may give that person support in the manner described in subsection (4).
- (4) The support may be given—
  - (a) in kind;
  - (b) by contributing to expenses incurred by the young person in living near the place where he or she is, or will be, employed or seeking employment;
  - (c) by contributing to expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training;
  - (d) by making a grant to the young person to enable him or her to meet expenses connected with his or her education or training;
  - (e) by providing accommodation, if support may not be given in respect of the accommodation under paragraphs (b) to (d);
  - (f) in cash.
- (5) A local authority may also give support in the manner described in paragraphs (c) and (d) of subsection (4) to a young person who—
  - (a) is under the age of 25, and
  - (b) would be a category 5 young person if he or she were under the age of 21.
- (6) Where a local authority is giving support in the manner described in subsection (4)(c) or (d) it may disregard any interruption in the young person's pursuance of a programme of education or training if it is satisfied that the young person will resume the programme as soon as is reasonably practicable.

- (7) Pan fo awdurdod lleol wedi ei fodloni bod person ifanc y caiff ddarparu cymorth iddo o dan is-adran (4) neu (5) mewn addysg bellach neu uwch llawnamser a bod arno angen llety yn ystod gwyliau am nad yw llety yn ystod y tymor ar gael, rhaid iddo—
- (a) darparu llety addas i'r person yn ystod y gwyliau, neu
  - (b) talu digon i'r person i sicrhau llety o'r fath.

**115 Cymorth ar gyfer pobl ifanc categori 6 a phobl ifanc a fu gynt yn bobl ifanc categori 6**

- (1) Rhaid i'r awdurdod lleol sy'n gyfrifol am berson ifanc categori 6 ystyried a fodlonwyd yr amodau yn is-adran (2) mewn perthynas â'r person ifanc.
- (2) Yr amodau yw—
- (a) bod ar y person angen cymorth o fath y gall yr awdurdod lleol ei roi o dan yr adran hon, a
  - (b) pan fo'r person ifanc yn berson ifanc categori 6 yn rhinwedd adran 104(3)(b) i (e), bod yr awdurdod lleol wedi ei fodloni nad oes gan y person yr oedd y person ifanc yn derbyn gofal ganddo, yn cael ei letya ganddo neu ei faethu ganddo (o fewn ystyr yr is-adran honno) y cyfleusterau angenrheidiol i'w gynghori neu ymgyfeillio ag ef.
- (3) Os yw'r amodau wedi eu bodloni—
- (a) rhaid i'r awdurdod lleol gynghori'r person ifanc ac ymgyfeillio ag ef, os yw'r person hwnnw yn berson ifanc categori 6 yn rhinwedd adran 104(3)(a) neu (b), a
  - (b) mewn unrhyw achos arall, caiff yr awdurdod lleol gynghori'r person ifanc ac ymgyfeillio ag ef.
- (4) Pan fo awdurdod lleol, o ganlyniad i'r adran hon, o dan ddyletswydd neu wedi ei rymuso i gynghori'r person ifanc ac ymgyfeillio ag ef, caiff roi cymorth i'r person hwnnw yn y modd a ddisgrifir yn is-adran (5).
- (5) Caiff y cymorth gael ei roi—
- (a) ar ffurf da;
  - (b) pan fo'r person ifanc yn berson ifanc categori 6 yn rhinwedd adran 104(3)(a)—
    - (i) drwy gyfrannu at dreuliau a dynnir gan y person ifanc wrth iddo fyw yn agos i'r man lle y mae, neu y bydd, yn cael ei gyflogi neu yn chwilio am waith cyflogedig;
    - (ii) drwy gyfrannu at dreuliau a dynnir gan y person ifanc wrth iddo fyw yn agos i'r man lle y mae, neu y bydd, yn derbyn addysg neu hyfforddiant;
    - (iii) drwy roi grant i'r person ifanc i'w alluogi i dalu treuliau sy'n gysylltiedig â'i addysg neu ei hyfforddiant;
  - (c) drwy ddarparu llety, os na chaniateir i gymorth gael ei roi mewn cysylltiad â'r llety o dan baragraff (b);
  - (d) mewn arian parod.
- (6) Caiff awdurdod lleol hefyd roi cymorth yn y modd a ddisgrifir yn is-adran (5)(b)(ii) a (iii) i berson ifanc—
- (a) sydd o dan 25 oed, a



- (7) Where a local authority is satisfied that a young person for whom it may provide support under subsection (4) or (5) is in full-time further or higher education and needs accommodation during a vacation because term-time accommodation is not available, it must –
- (a) provide the person with suitable accommodation during the vacation, or
  - (b) pay the person enough to secure such accommodation.

### **115 Support for category 6 young people and former category 6 young people**

- (1) The responsible local authority for a category 6 young person must consider whether the conditions in subsection (2) are satisfied in relation to the young person.
- (2) The conditions are that –
- (a) the young person needs support of a kind which the local authority can give under this section, and
  - (b) where the young person is a category 6 young person by virtue of section 104(3)(b) to (e), the local authority is satisfied that the person by whom the young person was being looked after, accommodated or fostered (within the meaning of that subsection) does not have the necessary facilities for advising or befriending him or her.
- (3) If the conditions are satisfied –
- (a) the local authority must advise and befriend the young person, if that person is a category 6 young person by virtue of section 104(3)(a) or (b), and
  - (b) in any other case, the local authority may advise and befriend the young person.
- (4) Where as a result of this section, a local authority is under a duty, or is empowered, to advise and befriend a young person, it may give that person support in the manner described in subsection (5).
- (5) The support may be given –
- (a) in kind;
  - (b) where the young person is a category 6 young person by virtue of section 104(3)(a) –
    - (i) by contributing to expenses incurred by the young person in living near the place where he or she is, or will be, employed or seeking employment;
    - (ii) by contributing to expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training;
    - (iii) by making a grant to the young person to enable him or her to meet expenses connected with his or her education or training;
  - (c) by providing accommodation, if support may not be given in respect of the accommodation under paragraph (b);
  - (d) in cash.
- (6) A local authority may also give support in the manner described in subsection (5)(b)(ii) and (iii) to a young person who –
- (a) is under the age of 25, and

(b) a fyddai'n berson ifanc categori 6 yn rhinwedd adran 104(3)(a), pe bai o dan 21 oed.

- (7) Pan fo awdurdod lleol yn rhoi cymorth yn y modd a ddisgrifir yn is-adran (5)(b)(ii) neu (iii) caiff ddiystyru unrhyw amhariad ar raglen addysg neu hyfforddiant y mae'r person ifanc yn ei dilyn os yw wedi ei fodloni y bydd y person ifanc yn ailgydio yn y rhaglen cyn gynted ag y bo'n rhesymol ymarferol.
- (8) Pan fo awdurdod lleol wedi ei fodloni bod person ifanc y caiff ddarparu cymorth iddo o dan is-adran (4) neu (6) mewn addysg bellach neu uwch lawnamser a bod arno angen llety yn ystod gwyliau am nad yw llety yn ystod y tymor ar gael, rhaid iddo –
- (a) darparu llety addas i'r person yn ystod y gwyliau, neu
- (b) talu digon i'r person i sicrhau llety o'r fath.

**116 Darpariaeth atodol ynghylch cymorth ar gyfer pobl ifanc mewn addysg bellach neu uwch**

- (1) Caiff rheoliadau, at ddibenion adrannau 110(6) a 112(2) –
- (a) pennu'r swm perthnasol;
- (b) pennu ystyr "addysg uwch";
- (c) gwneud darpariaeth o ran talu'r swm perthnasol;
- (d) gwneud darpariaeth o ran yr amgylchiadau lle y caniateir i'r swm perthnasol (neu unrhyw ran ohono) gael ei adennill gan awdurdod lleol oddi wrth berson ifanc y gwnaed taliad iddo o dan y darpariaethau hynny.
- (2) Caiff rheoliadau wneud darpariaeth ar gyfer ystyr "addysg bellach" (*"further education"*), "addysg uwch" (*"higher education"*), "gwyliau" (*"vacation"*) a "llawnamser" (*"full-time"*) at ddibenion adrannau 110(8), 112(4), 114(7) a 115(8).

**117 Codi ffi am ddarpariaeth o dan adrannau 109 i 115**

- (1) Caiff awdurdod lleol osod ffi am gymorth (ac eithrio cyngor) o dan adrannau 109 i 115.
- (2) O ran ffi a osodir o dan adran (1) –
- (a) dim ond y gost y mae'r awdurdod lleol yn ei thynnu wrth ddiwallu'r anghenion y mae'r ffi yn gymwys iddi;
- (b) caniateir ei gosod –
- (i) ar y person ifanc sy'n cael y cymorth, os yw'r person ifanc hwnnw wedi cyrraedd 18 oed;
- (ii) ar berson sydd â chyfrifoldeb rhiant dros y person ifanc sy'n cael y cymorth, os yw'r person ifanc o dan 18 oed.
- (3) Nid yw person yn atebol am dalu ffi o dan yr adran hon yn ystod unrhyw gyfnod pan fo'n cael budd-dal sydd o fewn categori a bennir mewn rheoliadau.
- (4) Yn is-adran (3) mae "budd-dal" yn cynnwys unrhyw lwfans, taliad, credyd neu fenthyciad.

(b) if he or she were under the age of 21, would be a category 6 young person by virtue of section 104(3)(a).

- (7) Where a local authority is giving support in the manner described in subsection (5)(b)(ii) or (iii) it may disregard any interruption in the young person's pursuance of a programme of education or training if it is satisfied that the young person will resume the programme as soon as is reasonably practicable.
- (8) Where a local authority is satisfied that a young person for whom it may provide support under subsection (4) or (6) is in full-time further or higher education and needs accommodation during a vacation because term-time accommodation is not available, it must –
- (a) provide the person with suitable accommodation during the vacation, or
  - (b) pay the person enough to secure such accommodation.

#### **116 Supplementary provision about support for young persons in further or higher education**

- (1) Regulations may, for the purposes of sections 110(6) and 112(2) –
- (a) specify the relevant amount;
  - (b) specify the meaning of "higher education";
  - (c) make provision as to the payment of the relevant amount;
  - (d) make provision as to the circumstances in which the relevant amount (or any part of it) may be recovered by a local authority from a young person to whom a payment has been made under those provisions.
- (2) Regulations may make provision for the meaning of "full-time" (*"llawnamser"*), "further education" (*"addysg bellach"*), "higher education" (*"addysg uwch"*) and "vacation" (*"gwyliau"*) for the purposes of sections 110(8), 112(4), 114(7) and 115(8).

#### **117 Charging for provision under sections 109 to 115**

- (1) A local authority may impose a charge for support (other than advice) under sections 109 to 115.
- (2) A charge imposed under subsection (1) –
- (a) may only cover the cost that the local authority incurs in meeting the needs to which the charge applies;
  - (b) may be imposed –
    - (i) on the young person who receives the support, if that person has reached the age of 18;
    - (ii) on a person with parental responsibility for the young person who receives the support, if the young person is under 18 years of age.
- (3) A person is not liable to pay a charge under this section during any period when the person is in receipt of a benefit which falls within a category specified in regulations.
- (4) In subsection (3) "benefit" includes any allowance, payment, credit or loan.

- (5) Mae'r pŵer i wneud rheoliadau o dan adran 61 neu 62 yn gymwys i ffioedd o dan yr adran hon mewn perthynas â chymorth fel y bo'n gymwys i ffioedd o dan adran 59 mewn perthynas â gofal a chymorth.
- (6) Caiff rheoliadau gymhwyso unrhyw ddarpariaeth a wneir yn neu o dan adrannau 63 i 68 neu adrannau 70 i 73 i godi ffioedd o dan yr adran hon gyda neu heb addasiadau penodedig.

## 118 Gwybodaeth

- (1) Pan fo'n ymddangos i awdurdod lleol bod person ifanc –
  - (a) y mae ganddo ddyletswydd i gadw mewn cysylltiad ag ef o dan adran 105,
  - (b) y mae wedi bod yn cynghori ac yn cyfeillio o dan adran 114 neu 115, neu
  - (c) y mae wedi bod yn rhoi cymorth arall iddo o dan adran 114 neu 115,
 yn bwriadu byw, neu yn byw, yn ardal awdurdod lleol arall neu awdurdod lleol yn Lloegr, rhaid iddo hysbysu'r awdurdod arall hwnnw.
- (2) Pan fo plentyn sy'n cael ei letya yng Nghymru –
  - (a) gan sefydliad gwirfoddol neu mewn cartref preifat i blant,
  - (b) gan neu ar ran unrhyw Fwrdd Iechyd Lleol neu Awdurdod Iechyd Arbennig,
  - (c) gan neu ar ran grŵp comisiynu clinigol neu Fwrdd Comisiynu'r Gwasanaeth Iechyd Gwladol,
  - (d) gan neu ar ran awdurdod lleol wrth arfer swyddogaethau addysg,
  - (e) gan neu ar ran awdurdod lleol yn Lloegr wrth arfer swyddogaethau addysg,
  - (f) mewn unrhyw gartref gofal neu ysbyty annibynnol, neu
  - (g) mewn unrhyw lety a ddarperir gan neu ar ran Ymddiriedolaeth GIG neu gan neu ar ran Ymddiriedolaeth Sefydledig GIG,
 yn peidio â chael ei letya felly mwyach ar ôl cyrraedd 16 oed, rhaid i'r person y cafodd y plentyn ei letya ganddo neu ar ei ran neu sy'n rhedeg neu'n rheoli'r cartref neu'r ysbyty (yn ôl y digwydd) hysbysu'r awdurdod lleol neu'r awdurdod lleol yn Lloegr y mae'r plentyn yn bwriadu byw yn ei ardal.
- (3) Dim ond os yw'r llety wedi cael ei ddarparu am gyfnod o dri mis yn olynol o leiaf y bydd is-adran (2) yn gymwys yn rhinwedd paragraffau (b) i (g).
- (4) Mewn achos lle y cafodd plentyn ei letya gan neu ar ran awdurdod lleol, neu awdurdod lleol yn Lloegr, wrth arfer swyddogaethau addysg, nid yw is-adran (2) yn gymwys oni fo'r awdurdod a fu'n lletya'r plentyn yn wahanol i'r awdurdod y mae'r plentyn yn bwriadu byw yn ei ardal.

- (5) The power to make regulations under section 61 or 62 applies to charges under this section in relation to support as it applies to charges under section 59 in relation to care and support.
- (6) Regulations may apply any provision made in or under sections 63 to 68 or sections 70 to 73 to charging under this section with or without specified modifications.

## 118 Information

- (1) Where it appears to a local authority that a young person –
  - (a) with whom it is under a duty to keep in touch under section 105,
  - (b) whom it has been advising and befriending under section 114 or 115, or
  - (c) to whom it has been giving other support under section 114 or 115,proposes to live, or is living, in the area of another local authority or a local authority in England, it must inform that other authority.
- (2) Where a child who is accommodated in Wales –
  - (a) by a voluntary organisation or in a private children’s home,
  - (b) by or on behalf of any Local Health Board or Special Health Authority,
  - (c) by or on behalf of a clinical commissioning group or the National Health Service Commissioning Board,
  - (d) by or on behalf of local authority in the exercise of education functions,
  - (e) by or on behalf of a local authority in England in the exercise of education functions,
  - (f) in any care home or independent hospital, or
  - (g) in any accommodation provided by or on behalf of an NHS Trust or by or on behalf of an NHS Foundation Trust,

ceases to be so accommodated after reaching the age of 16, the person by whom or on whose behalf the child was accommodated or who carries on or manages the home or hospital (as the case may be) must inform the local authority or local authority in England within whose area the child proposes to live.

- (3) Subsection (2) only applies by virtue of paragraphs (b) to (g), if the accommodation has been provided for a consecutive period of at least three months.
- (4) In a case where a child was accommodated by or on behalf of a local authority, or a local authority in England, in the exercise of education functions, subsection (2) applies only if the authority which accommodated the child is different from the authority within whose area the child proposes to live.

*Llety diogel***119 Defnyddio llety i gyfyngu ar ryddid**

- (1) Yn ddarostyngedig i ddarpariaethau canlynol yr adran hon, ni chaniateir i blentyn sy'n derbyn gofal gan awdurdod lleol neu awdurdod lleol yn Lloegr gael ei leoli, ac os yw wedi ei leoli, ni chaniateir iddo gael ei gadw mewn llety yng Nghymru a ddarperir at y diben o gyfyngu ar ryddid ("llety diogel") onid yw'n ymddangos –
  - (a) bod y plentyn –
    - (i) yn un sydd â hanes o ddianc a'i fod yn debyg o ddianc o lety o unrhyw ddisgrifiad arall, a
    - (ii) yn debyg o ddiodef gan niwed o bwys os yw'n dianc, neu
  - (b) bod y plentyn, os yw'n cael ei gadw mewn llety o unrhyw ddisgrifiad arall, yn debyg o anafu ei hun neu bersonau eraill.
- (2) Caiff Gweinidogion Cymru drwy reoliadau –
  - (a) pennu –
    - (i) cyfnod na chaniateir i blentyn gael ei gadw y tu hwnt iddo mewn llety diogel yng Nghymru heb awdurdod y llys, a
    - (ii) y cyfnod hwyaf y caiff y llys awdurdodi bod plentyn yn cael ei gadw amdano mewn llety diogel yng Nghymru;
  - (b) rhoi pŵer i'r llys i awdurdodi o bryd i'w gilydd fod plentyn yn cael ei gadw mewn llety diogel yng Nghymru am unrhyw gyfnod pellach y bydd y rheoliadau yn ei bennu;
  - (c) darparu bod ceisiadau i'r llys o dan yr adran hon i'w gwneud gan awdurdod lleol yn unig.
- (3) Mae'n ddyletsywydd ar lys sy'n gwrandao cais o dan yr adran hon i ddyfarnu a yw unrhyw feini prawf perthnasol ar gyfer cadw plentyn mewn llety diogel wedi eu bodloni yn achos y plentyn.
- (4) Os bydd llys yn dyfarnu bod unrhyw feini prawf o'r fath wedi eu bodloni, rhaid iddo wneud gorchymyn yn awdurdodi bod y plentyn i'w gadw mewn llety diogel ac yn pennu'r cyfnod hwyaf ar gyfer cadw'r plentyn felly.
- (5) Os caiff gwrandawriad cais o dan yr adran hon ei ohirio, caiff y llys wneud gorchymyn interim yn caniatáu i'r plentyn gael ei gadw mewn llety diogel yn ystod cyfnod y gohiriad.
- (6) Ni chaiff unrhyw lys arfer y pwerau a roddwyd gan yr adran hon mewn cysylltiad â phlentyn nad yw wedi ei gynrychioli'n gyfreithiol yn y llys hwnnw, oni bai ei fod, ar ôl cael ei hysbysu am ei hawl i wneud cais am gynrychiolaeth a fyddai'n cael ei ariannu gan y Comisiwn Gwasanaethau Cyfreithiol fel rhan o'r Gwasanaeth Cyfreithiol Cymunedol neu'r Gwasanaeth Amddiffyn Troseddol ac wedi cael cyfle i wneud hynny, wedi gwrthod neu wedi methu â gwneud cais.

*Secure accommodation*

**119 Use of accommodation for restricting liberty**

- (1) Subject to the following provisions of this section, a child who is being looked after by a local authority or a local authority in England may not be placed, and if placed, may not be kept, in accommodation in Wales provided for the purpose of restricting liberty (“secure accommodation”) unless it appears –
  - (a) that the child –
    - (i) has a history of absconding and is likely to abscond from any other description of accommodation, and
    - (ii) is likely to suffer significant harm if the child absconds, or
  - (b) that if the child is kept in any other description of accommodation, he or she is likely to injure himself or herself or other persons.
- (2) The Welsh Ministers may by regulations –
  - (a) specify a maximum period –
    - (i) beyond which a child may not be kept in secure accommodation in Wales without the authority of the court, and
    - (ii) for which the court may authorise a child to be kept in secure accommodation in Wales;
  - (b) empower the court from time to time to authorise a child to be kept in secure accommodation in Wales for such further period as the regulations may specify;
  - (c) provide that applications to the court under this section be made only by a local authority.
- (3) It is the duty of a court hearing an application under this section to determine whether any relevant criteria for keeping a child in secure accommodation are satisfied in the child’s case.
- (4) If a court determines that any such criteria are satisfied, it must make an order authorising the child to be kept in secure accommodation and specifying the maximum period for which the child may be so kept.
- (5) On any adjournment of the hearing of an application under this section, a court may make an interim order permitting the child to be kept during the period of the adjournment in secure accommodation.
- (6) No court is to exercise the powers conferred by this section in respect of a child who is not legally represented in that court unless, having been informed of his or her right to apply for representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service and having had the opportunity to do so, the child refused or failed to apply.

- (7) Caiff Gweinidogion Cymru, drwy reoliadau, ddarparu –
- (a) bod yr adran hon i'w chymhwyso neu nad yw i'w chymhwyso i unrhyw ddisgrifiad o blant a bennir yn y rheoliadau;
  - (b) bod yr adran hon yn cael effaith mewn perthynas â phlant o ddisgrifiad a bennir yn y rheoliadau yn ddarostyngedig i addasiadau a bennir yn y rheoliadau;
  - (c) bod darpariaethau eraill a bennir yn y rheoliadau i gael effaith at ddibenion dyfarnu a ganiateir i blentyn o ddisgrifiad a bennir yn y rheoliadau gael ei leoli neu ei gadw mewn llety diogel yng Nghymru.
- (8) Nid yw rhoi awdurdodiad o dan yr adran hon yn rhagfarnu unrhyw bŵer sydd gan unrhyw lys yn Lloegr a Chymru i roi cyfarwyddiadau ynglŷn â'r plentyn y mae'r awdurdodiad yn ymwneud ag ef.
- (9) Nid yw rhoi awdurdodiad o dan yr adran hon yn rhagfarnu effaith unrhyw gyfarwyddyd a roddir gan lys yn yr Alban ynglŷn â phlentyn y mae'r awdurdodiad yn ymwneud ag ef, i'r graddau y mae'r cyfarwyddyd yn cael effaith yng nghyfraith Lloegr a Chymru.
- (10) Mae'r adran hon yn ddarostyngedig i adran 76(5).

*Plant sy'n cael eu lletya mewn sefydliadau penodol*

**120 Asesu plant y mae llety'n cael ei ddarparu iddynt gan awdurdodau ieuchyd ac awdurdodau addysg**

- (1) Mae is-adran (2) yn gymwys pan fo llety'n cael ei ddarparu i blentyn yng Nghymru gan Fwrdd Iechyd Lleol, Ymddiriedolaeth GIG neu awdurdod lleol wrth arfer swyddogaethau addysg ("yr awdurdod lletya") –
- (a) am gyfnod olynol o 3 mis o leiaf, neu
  - (b) gyda'r bwriad, ar ran yr awdurdod, o letya'r plentyn am y cyfnod hwnnw.
- (2) Rhaid i'r awdurdod lletya hysbysu swyddog priodol yr awdurdod cyfrifol –
- (a) ei fod yn lletya'r plentyn, a
  - (b) pan fo'n rhoi'r gorau i letya'r plentyn.
- (3) Yn yr adran hon, ystyr "yr awdurdod cyfrifol" ac "yr awdurdod sy'n gyfrifol" yw –
- (a) yr awdurdod lleol neu awdurdod lleol yn Lloegr y mae'n ymddangos i'r awdurdod lletya mai'r awdurdod hwnnw yw'r un lle yr oedd y plentyn yn preswyllo fel arfer yn union cyn iddo gael ei letya, neu
  - (b) pan fo'n ymddangos i'r awdurdod lletya nad oedd plentyn yn preswyllo fel arfer o fewn ardal unrhyw awdurdod lleol neu awdurdod lleol yn Lloegr, yr awdurdod lleol ar gyfer yr ardal y mae'r llety wedi ei leoli ynddi.
- (4) Yn yr adran hon ac yn adrannau 121 a 122 ystyr "swyddog priodol" yw –
- (a) mewn perthynas ag awdurdod lleol, ei gyfarwyddwr gwasanaethau cymdeithasol, a
  - (b) mewn perthynas ag awdurdod lleol yn Lloegr, ei gyfarwyddwr gwasanaethau plant.



- (7) The Welsh Ministers may by regulations provide that—
- (a) this section is or is not to apply to any description of children specified in the regulations;
  - (b) this section has effect in relation to children of a description specified in the regulations subject to modifications specified in the regulations;
  - (c) other provisions specified in the regulations are to have effect for the purpose of determining whether a child of a description specified in the regulations may be placed or kept in secure accommodation in Wales.
- (8) The giving of an authorisation under this section does not prejudice any power of any court in England and Wales to give directions relating to the child to whom the authorisation relates.
- (9) The giving of an authorisation under this section does not prejudice the effect of any direction given by a court in Scotland relating to a child to whom the authorisation relates, in so far as the direction has effect in the law of England and Wales.
- (10) This section is subject to section 76(5).

*Children accommodated in certain establishments*

**120 Assessment of children accommodated by health authorities and education authorities**

- (1) Subsection (2) applies where a child is provided with accommodation in Wales by a Local Health Board, an NHS Trust or a local authority in the exercise of education functions (“the accommodating authority”)—
- (a) for a consecutive period of at least 3 months, or
  - (b) with the intention, on the part of that authority, of accommodating the child for such a period.
- (2) The accommodating authority must notify the appropriate officer of the responsible authority—
- (a) that it is accommodating the child, and
  - (b) when it ceases to accommodate the child.
- (3) In this section, “the responsible authority” means—
- (a) the local authority or local authority in England appearing to the accommodating authority to be the authority within whose area the child was ordinarily resident immediately before being accommodated, or
  - (b) where it appears to the accommodating authority that a child was not ordinarily resident within the area of any local authority or local authority in England, the local authority within whose area the accommodation is situated.
- (4) In this section and in sections 121 and 122 “the appropriate officer” means—
- (a) in relation to a local authority, its director of social services, and
  - (b) in relation to a local authority in England, its director of children’s services.

- (5) Pan fo swyddog priodol awdurdod lleol wedi ei hysbysu o dan yr adran hon, rhaid i'r awdurdod –
  - (a) asesu'r plentyn o dan adran 21, a
  - (b) ystyried i ba raddau (os o gwbl) y dylai arfer unrhyw un neu rai o'i swyddogaethau eraill o dan y Ddeddf hon, neu unrhyw un neu rai o'i swyddogaethau o dan Ddeddf Plant 1989, mewn cysylltiad â'r plentyn.
- (6) Nid yw'r ddyletswydd o dan is-adran (5)(a) yn gymwys mewn perthynas â phlentyn sy'n derbyn gofal gan –
  - (a) awdurdod lleol,
  - (b) awdurdod lleol yn Lloegr,
  - (c) awdurdod lleol yn yr Alban, neu
  - (d) ymddiriedolaeth Iechyd a Gofal Cymdeithasol.

**121 Asesu plant sy'n cael eu lletya mewn cartrefi gofal neu ysbytai annibynnol**

- (1) Mae is-adran (2) yn gymwys pan fo llety'n cael ei ddarparu i blentyn yng Nghymru mewn unrhyw gartref gofal neu ysbyty annibynnol –
  - (a) am gyfnod olynol o dri mis o leiaf, neu
  - (b) gyda'r bwriad, ar ran y person sy'n gwneud y penderfyniad i letya'r plentyn, o letya'r plentyn am y cyfnod hwnnw.
- (2) Rhaid i'r person sy'n rhedeg y sefydliad o dan sylw hysbysu swyddog priodol yr awdurdod lleol y mae'r sefydliad yn cael ei redeg yn ei ardal –
  - (a) ei fod yn lletya'r plentyn, a
  - (b) pan fo'n rhoi'r gorau i letya'r plentyn.
- (3) Pan fo swyddog priodol awdurdod lleol wedi ei hysbysu o dan yr adran hon, rhaid i'r awdurdod –
  - (a) asesu'r plentyn o dan adran 21, a
  - (b) ystyried i ba raddau (os o gwbl) y dylai arfer unrhyw un neu rai o'i swyddogaethau eraill o dan y Ddeddf hon, neu unrhyw un neu rai o'i swyddogaethau o dan Ddeddf Plant 1989, mewn cysylltiad â'r plentyn.
- (4) Nid yw'r ddyletswydd o dan is-adran (3)(a) yn gymwys mewn perthynas â phlentyn sy'n derbyn gofal gan –
  - (a) awdurdod lleol,
  - (b) awdurdod lleol yn Lloegr,
  - (c) awdurdod lleol yn yr Alban, neu
  - (d) ymddiriedolaeth Iechyd a Gofal Cymdeithasol.
- (5) Os yw person sy'n rhedeg cartref gofal neu ysbyty annibynnol yn methu, heb reswm resymol, â chydymffurfio â'r adran hon, bydd yn euog o drosedd.
- (6) Caiff person sydd wedi ei awdurdodi gan awdurdod lleol gael mynediad i gartref gofal neu ysbyty annibynnol o fewn ardal yr awdurdod at ddiben pennu a ydynt wedi cydymffurfio â gofynion yr adran hon.

- (5) Where the appropriate officer of a local authority has been notified under this section, the authority must –
  - (a) assess the child under section 21, and
  - (b) consider the extent to which (if at all) it should exercise any of its other functions under this Act, or any of its functions under the Children Act 1989, with respect to the child.
- (6) The duty under subsection (5)(a) does not apply in relation to a child looked after by –
  - (a) a local authority,
  - (b) a local authority in England,
  - (c) a local authority in Scotland, or
  - (d) a Health and Social Care trust.

### **121 Assessment of children accommodated in care homes or independent hospitals**

- (1) Subsection (2) applies where a child is provided with accommodation in Wales in any care home or independent hospital –
  - (a) for a consecutive period of at least three months, or
  - (b) with the intention, on the part of the person taking the decision to accommodate the child, of accommodating the child for such period.
- (2) The person carrying on the establishment in question must notify the appropriate officer of the local authority within whose area the establishment is carried on –
  - (a) that it is accommodating the child, and
  - (b) when it ceases to accommodate the child.
- (3) Where the appropriate officer of a local authority has been notified under this section, the authority must –
  - (a) assess the child under section 21, and
  - (b) consider the extent to which (if at all) it should exercise any of its other functions under this Act, or any of its functions under the Children Act 1989, with respect to the child.
- (4) The duty under subsection (3)(a) does not apply in relation to a child looked after by –
  - (a) a local authority,
  - (b) a local authority in England,
  - (c) a local authority in Scotland, or
  - (d) a Health and Social Care trust.
- (5) If a person carrying on a care home or independent hospital fails, without reasonable excuse, to comply with this section, the person is guilty of an offence.
- (6) A person authorised by a local authority may enter a care home or independent hospital within the authority's area for the purpose of establishing whether the requirements of this section have been complied with.

- (7) Rhaid i berson sy'n arfer pŵer mynediad, os gofynnir iddo wneud hynny, ddangos dogfen wedi ei dilysu'n briodol sy'n dangos bod ganddo awdurdodiad i wneud hynny.
- (8) Mae unrhyw berson sy'n fwriadol yn rhwystro person sy'n arfer pŵer mynediad yn euog o drosedd.
- (9) Mae person sy'n cyflawni trosedd o dan yr adran hon yn atebol ar gollfarn diannod i ddirwy nad yw'n uwch na lefel 3 ar y raddfa safonol.

## **122 Ymwelwyr â phlant yr hysbysir awdurdod lleol amdanynt o dan adran 120 neu 121**

- (1) Mae'r adran hon yn gymwys os yw swyddog priodol i awdurdod lleol—
  - (a) wedi ei hysbysu mewn cysylltiad â phlentyn o dan adran 120(2)(a) neu 121(2)(a), a
  - (b) heb ei hysbysu mewn cysylltiad â'r plentyn hwnnw o dan adran 120(2)(b) neu adran 121(2)(b).
- (2) Rhaid i'r awdurdod lleol, yn unol â rheoliadau a wneir o dan yr adran hon, wneud trefniadau er mwyn i gynrychiolydd yr awdurdod ("cynrychiolydd") fynd i ymweld â'r plentyn.
- (3) Dyletswydd cynrychiolydd yw rhoi cyngor a chymorth i'r awdurdod lleol ynghylch y modd y mae'r awdurdod yn cyflawni ei ddyletswyddau o dan y Ddeddf hon mewn perthynas â'r plentyn.
- (4) Caiff rheoliadau o dan yr adran hon wneud darpariaeth ynghylch—
  - (a) amllder yr ymweliadau o dan drefniadau ymweld;
  - (b) amgylchiadau y mae'n rhaid i drefniadau ymweld odanynt ei gwneud yn ofynnol bod rhywun yn ymweld â'r plentyn;
  - (c) swyddogaethau ychwanegol cynrychiolydd.
- (5) Wrth ddewis cynrychiolydd, rhaid i awdurdod lleol fodloni ei hun fod gan y person dewisol y sgiliau a'r profiad angenrheidiol i gyflawni swyddogaethau cynrychiolydd.
- (6) Yn yr adran hon ystyr "trefniadau ymweld" yw'r trefniadau a wneir o dan is-adran (2).

## **123 Gwasanaethau i blant yr hysbysir awdurdod lleol amdanynt o dan adran 120 neu 121**

- (1) Rhaid i awdurdod lleol ddarparu unrhyw wasanaethau y mae'n barnu eu bod yn briodol i blant y mae'n cael hysbysiad amdanynt o dan adran 120 neu 121.
- (2) Rhaid i'r gwasanaethau a ddarperir o dan yr adran hon gael eu darparu gyda golwg ar hyrwyddo cyswllt rhwng pob plentyn y mae'r awdurdod lleol yn cael hysbysiad amdano a theulu'r plentyn.
- (3) Caiff y gwasanaethau gynnwys unrhyw beth y gall yr awdurdod ei ddarparu neu ei drefnu o dan Ran 4.
- (4) Nid oes dim yn yr adran hon sy'n effeithio ar y ddyletswydd a osodwyd gan adran 39.

*Symud plant sy'n derbyn gofal i fyw y tu allan i'r awdurdodaeth*

## **124 Trefniadau i helpu plant i fyw y tu allan i Loegr a Chymru**

- (1) Ni chaiff awdurdod lleol drefnu, neu helpu i drefnu, i blentyn yn ei ofal fyw y tu allan i Loegr a Chymru heb gymeradwyaeth y llys.

- (7) A person exercising the power of entry must, upon request, produce some duly authenticated document showing authority to do so.
- (8) A person who intentionally obstructs a person exercising the power of entry is guilty of an offence.
- (9) A person committing an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **122 Visitors for children notified to a local authority under section 120 or 121**

- (1) This section applies if the appropriate officer of a local authority –
  - (a) has been notified with respect to a child under section 120(2)(a) or 121(2)(a), and
  - (b) has not been notified with respect to that child under section 120(2)(b) or section 121(2)(b).
- (2) The local authority must, in accordance with regulations made under this section, make arrangements for the child to be visited by a representative of the authority (“a representative”).
- (3) It is the duty of a representative to provide advice and assistance to the local authority on the performance of its duties under this Act in relation to the child.
- (4) Regulations under this section may make provision about –
  - (a) the frequency of visits under visiting arrangements;
  - (b) circumstances in which visiting arrangements must require a child to be visited;
  - (c) additional functions of a representative.
- (5) In choosing a representative a local authority must satisfy itself that the person chosen has the necessary skills and experience to perform the functions of a representative.
- (6) In this section “visiting arrangements” means arrangements made under subsection (2).

#### **123 Services for children notified to a local authority under section 120 or 121**

- (1) A local authority must provide such services as it considers appropriate for children in respect of whom it receives notification under section 120 or 121.
- (2) The services provided under this section must be provided with a view to promoting contact between each child in respect of whom the local authority receives notification and the child’s family.
- (3) The services may include anything the authority may provide or arrange under Part 4.
- (4) Nothing in this section affects the duty imposed by section 39.

*Moving looked after children to live outside the jurisdiction*

#### **124 Arrangements to assist children to live outside England and Wales**

- (1) A local authority may only arrange for, or assist in arranging for, a child in its care to live outside England and Wales with the approval of the court.

- (2) Caiff awdurdod lleol, gyda chymeradwyaeth pob person sydd â chyfrifoldeb rhiant dros y plentyn drefnu, neu helpu i drefnu, i unrhyw blentyn arall sy'n derbyn gofal ganddo i fyw y tu allan i Loegr a Chymru.
- (3) Ni chaiff y llys roi ei gymeradwyaeth i hyn o dan is-adran (1) oni chaiff ei fodloni –
  - (a) y byddai byw y tu allan i Loegr a Chymru er lles pennaf y plentyn,
  - (b) y gwnaed, neu y gwneir, trefniadau addas i dderbyn y plentyn a threfniadau addas er ei lesiant yn y wlad lle bydd yn byw,
  - (c) bod y plentyn wedi cydsynio i fyw yn y wlad honno, a
  - (d) bod pob person sydd â chyfrifoldeb rhiant dros y plentyn wedi cydsynio bod y plentyn yn byw yn y wlad honno.
- (4) Pan fo'r llys wedi ei fodloni nad oes gan y plentyn ddealltwriaeth ddigonol i gydsynio neu wrthod cydsynio, caiff anwybyddu is-adran (3)(c) a chymeradwyo os bydd y plentyn yn mynd i fyw yn y wlad sydd o dan sylw gyda rhiant, gwarcheidwad, gwarcheidwad arbennig, neu berson addas arall.
- (5) Pan fo person y mae angen ei gydsyniad gan is-adran (3)(d) yn methu â chydsynio, caiff y llys hepgor cydsyniad y person hwnnw os yw wedi ei fodloni –
  - (a) nad oes modd dod o hyd i'r person neu nad oes gan y person alluedd i gydsynio, neu
  - (b) bod llesiant y plentyn yn ei gwneud yn ofynnol i'r cydsyniad gael ei hepgor.
- (6) Nid yw adran 85 o Ddeddf Mabwysiadu a Phlant 2002 (sy'n gosod cyfyngiadau ar fynd â phlant allan o'r Deyrnas Unedig) yn gymwys yn achos plentyn a fydd yn byw y tu allan i Loegr a Chymru gyda chymeradwyaeth y llys a roddir o dan yr adran hon.
- (7) Pan fydd llys yn penderfynu rhoi ei gydsyniad o dan yr adran hon, caiff orchymyn nad yw ei benderfyniad i gael effaith yn ystod y cyfnod apelio.
- (8) Yn is-adran (7) ystyr "y cyfnod apelio" yw –
  - (a) lle y gwneir apêl yn erbyn y penderfyniad, y cyfnod rhwng gwneud y penderfyniad a dyfarnu ar yr apêl, a
  - (b) fel arall, y cyfnod pryd y caniateir apelio yn erbyn y penderfyniad.
- (9) Nid yw'r adran hon yn gymwys i awdurdod lleol sy'n lleoli plentyn i'w fabwysiadu gyda darpar fabwysiadwyr.

*Marwolaeth plentyn sy'n derbyn gofal*

**125 Marwolaeth plant sy'n derbyn gofal gan awdurdodau lleol**

- (1) Os yw plentyn sy'n derbyn gofal gan awdurdod lleol yn marw –
  - (a) rhaid i'r awdurdod hysbysu Gweinidogion Cymru,
  - (b) rhaid i'r awdurdod hysbysu, i'r graddau y bo'n rhesymol ymarferol, rieni'r plentyn a phob person nad yw'n rhiant i'r plentyn ond sydd â chyfrifoldeb rhiant dros y plentyn,
  - (c) caiff yr awdurdod, gyda chydsyniad pob person sydd â chyfrifoldeb rhiant dros y plentyn (i'r graddau y bo'n rhesymol ymarferol i'w gael), drefnu i gorff y plentyn gael ei gladdu neu ei amlosgi, a

- (2) A local authority may, with the approval of every person who has parental responsibility for the child arrange for, or assist in arranging for, any other child looked after by it to live outside England and Wales.
- (3) The court must not give its approval under subsection (1) unless it is satisfied that—
  - (a) living outside England and Wales would be in the child’s best interests,
  - (b) suitable arrangements have been, or will be, made for the child’s reception and well-being in the country in which he or she will live,
  - (c) the child has consented to living in that country, and
  - (d) every person who has parental responsibility for the child has consented to the child living in that country.
- (4) Where the court is satisfied that the child does not have sufficient understanding to give or withhold consent, it may disregard subsection (3)(c) and give its approval if the child is to live in the country concerned with a parent, guardian, special guardian, or other suitable person.
- (5) Where a person whose consent is required by subsection (3)(d) fails to give consent, the court may dispense with that person’s consent if it is satisfied that—
  - (a) the person cannot be found or lacks capacity to give consent, or
  - (b) the well-being of the child requires the consent to be dispensed with.
- (6) Section 85 of the Adoption and Children Act 2002 (which imposes restrictions on taking children out of the United Kingdom) does not apply in the case of a child who is to live outside England and Wales with the approval of the court given under this section.
- (7) Where a court decides to give its approval under this section, it may order that its decision is not to have effect during the appeal period.
- (8) In subsection (7) “the appeal period” means—
  - (a) where an appeal is made against the decision, the period between the making of the decision and the determination of the appeal, and
  - (b) otherwise, the period during which an appeal may be made against the decision.
- (9) This section does not apply to a local authority placing a child for adoption with prospective adopters.

*Death of a looked after child*

**125 Death of children being looked after by local authorities**

- (1) If a child who is being looked after by a local authority dies, the authority—
  - (a) must notify the Welsh Ministers,
  - (b) must, so far as is reasonably practicable, notify the child’s parents and every person who is not a parent of the child but who has parental responsibility for the child,
  - (c) may, with the consent (so far as it is reasonably practicable to obtain it) of every person who has parental responsibility for the child, arrange for the child’s body to be buried or cremated, and

- (d) caiff yr awdurdod, os bodlonir yr amodau a grybwyllir yn is-adran (2), wneud taliadau i unrhyw berson sydd â chyfrifoldeb rhiant dros y plentyn, neu unrhyw berthynas, gyfaill neu berson arall sy'n gysylltiedig â'r plentyn, mewn cysylltiad â theithio, cynhaliath neu dreuliau eraill a dynnir gan y person hwnnw wrth fod yn bresennol yn angladd y plentyn.
- (2) Dyma'r amodau –
- (a) ei bod yn ymddangos i'r awdurdod na fedrai'r person o dan sylw fod yn bresennol yn angladd y plentyn fel arall heb galedi ariannol gormodol, a
- (b) bod yr amgylchiadau yn cyfiawnhau gwneud y taliadau.
- (3) Nid yw is-adran (1) yn awdurdodi amlosgi lle nad yw'n unol ag arfer argyhoeddiad crefyddol y plentyn.
- (4) Pan fo awdurdod lleol wedi arfer ei bŵer o dan is-adran (1)(c) mewn cysylltiad â phlentyn a oedd o dan 16 oed pan fu farw, caiff adennill oddi wrth unrhyw un o rieni'r plentyn unrhyw dreuliau a dynnwyd ganddo.
- (5) Gellir adennill yn ddiannod fel dyled sifil unrhyw symiau y mae modd eu hadennill yn y modd hwn, ond nid yw hynny'n effeithio ar unrhyw ddull arall o'u hadennill.
- (6) Nid oes dim yn yr adran hon sy'n effeithio ar unrhyw ddeddfiad sy'n rheoleiddio neu'n awdurdodi claddu, amlosgi neu gynnal archwiliad anatomegol o gorff y person ymadawedig.

## RHAN 7

### DIOGELU

#### *Oedolion sy'n wynebu risg*

#### **126 Oedolion sy'n wynebu risg**

- (1) Mae "oedolyn sy'n wynebu risg", at ddibenion y Rhan hon, yn oedolyn –
- (a) sy'n cael, neu sy'n wynebu risg o gael, ei gam-drin neu ei esgeuluso,
- (b) y mae arno anghenion am ofal a chymorth (p'un a yw'r awdurdod yn diwallu unrhyw un neu rai o'r anghenion hynny ai peidio), ac
- (c) nad yw'n gallu, o ganlyniad i'r anghenion hynny, amddiffyn ei hun rhag cael, neu'r risg o gael, ei gam-drin neu ei esgeuluso.
- (2) Os oes gan awdurdod lleol sail resymol dros gredu bod person o fewn ei ardal (p'un a yw'n preswyllo fel arfer yno ai peidio) yn oedolyn sy'n wynebu risg, rhaid iddo –
- (a) gwneud unrhyw ymholiadau (neu beri iddynt gael eu gwneud) y mae'n credu eu bod yn angenrheidiol i'w alluogi i benderfynu a ddylid cymryd unrhyw gamau (p'un ai o dan y Ddeddf hon neu fel arall) ac, os felly, pa gamau a chan bwy, a
- (b) penderfynu a ddylid cymryd unrhyw gamau o'r fath.
- (3) Rhaid i reoliadau a wneir o dan adran 54(5) (cynlluniau gofal a chymorth) gynnwys darpariaeth ynghylch cofnodi mewn cynllun gofal a chymorth ganlyniadau ymholiadau a wneir o dan yr adran hon.



- (d) may, if the conditions mentioned in subsection (2) are satisfied, make payments to any person who has parental responsibility for the child, or any relative, friend or other person connected with the child, in respect of travelling, subsistence or other expenses incurred by that person in attending the child's funeral.
- (2) The conditions are that—
  - (a) it appears to the authority that the person concerned could not otherwise attend the child's funeral without undue financial hardship, and
  - (b) that the circumstances warrant the making of the payments.
- (3) Subsection (1) does not authorise cremation where it does not accord with the practice of the child's religious persuasion.
- (4) Where a local authority has exercised its power under subsection (1)(c) with respect to a child who was under 16 when the child died, it may recover from any parent of the child any expenses incurred by it.
- (5) Any amounts so recoverable are, without prejudice to any other method of recovery, recoverable summarily as a civil debt.
- (6) Nothing in this section affects any enactment regulating or authorising the burial, cremation or anatomical examination of the body of the deceased person.

## PART 7

### SAFEGUARDING

#### *Adults at risk*

#### **126 Adults at risk**

- (1) An "adult at risk", for the purposes of this Part, is an adult who—
  - (a) is experiencing or is at risk of abuse or neglect,
  - (b) has needs for care and support (whether or not the authority is meeting any of those needs), and
  - (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.
- (2) If a local authority has reasonable cause to suspect that a person within its area (whether or not ordinarily resident there) is an adult at risk, it must—
  - (a) make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken (whether under this Act or otherwise) and, if so, what and by whom, and
  - (b) decide whether any such action should be taken.
- (3) Regulations made under section 54(5) (care and support plans) must include provision about recording in a care and support plan the conclusions of enquiries made under this section.

**127 Gorchymynion amddiffyn a chynorthwyo oedolion**

- (1) Caiff swyddog awdurdodedig wneud cais i ynad heddwch am orchymyn (“gorchymyn amddiffyn a chynorthwyo oedolyn”) mewn perthynas â pherson sy’n byw mewn unrhyw fangre o fewn ardal awdurdod lleol.
- (2) Dibenion gorchymyn amddiffyn a chynorthwyo oedolyn yw –
  - (a) galluogi’r swyddog awdurdodedig ac unrhyw berson arall sydd gyda’r swyddog i gael sgwrs breifat gyda’r person yr amheuir ei fod yn oedolyn sy’n wynebu risg,
  - (b) galluogi’r swyddog awdurdodedig i ganfod a yw’r person hwnnw’n gwneud penderfyniadau o’i wirfodd, ac
  - (c) galluogi’r swyddog awdurdodedig i asesu’n iawn a yw’r person yn oedolyn sy’n wynebu risg ac i wneud penderfyniad fel sy’n ofynnol gan adran 126(2) ynghylch pa gamau, os o gwbl, y dylid eu cymryd.
- (3) Pan fo gorchymyn amddiffyn a chynorthwyo oedolyn mewn grym, caiff y swyddog awdurdodedig, cwnstabl ac unrhyw berson penodedig arall sydd gyda’r swyddog hwnnw yn unol â’r gorchymyn, fynd i mewn i’r fangre a bennir yn y gorchymyn at y dibenion a nodir yn is-adran (2).
- (4) Caiff yr ynad heddwch wneud gorchymyn amddiffyn a chynorthwyo oedolyn os yw wedi ei fodloni –
  - (a) bod gan y swyddog awdurdodedig sail resymol dros amau bod y person yn oedolyn sy’n wynebu risg,
  - (b) ei bod yn angenrheidiol i’r swyddog awdurdodedig gael gweld y person er mwyn asesu’n iawn a yw’r person hwnnw’n oedolyn sy’n wynebu risg a gwneud penderfyniad fel sy’n ofynnol gan adran 126(2) ynghylch pa gamau, os o gwbl, y dylid eu cymryd,
  - (c) bod gwneud gorchymyn yn angenrheidiol er mwyn cyflawni’r dibenion a nodir yn is-adran (2), a
  - (d) na fydd arfer y pŵer mynediad a roddir gan y gorchymyn yn peri i’r oedolyn fod mewn mwy o berygl o gael ei gam-drin neu ei esgeuluso.
- (5) Rhaid i orchymyn amddiffyn a chynorthwyo oedolyn –
  - (a) pennu’r fangre y mae’r gorchymyn yn ymwneud â hi;
  - (b) darparu y caiff cwnstabl fod gyda’r swyddog awdurdodedig;
  - (c) pennu’r cyfnod pryd y bydd y gorchymyn mewn grym.
- (6) Caniateir i amodau eraill gael eu gosod ar orchymyn amddiffyn a chynorthwyo oedolyn, er enghraifft –
  - (a) pennu cyfyngiadau ar yr amser pan ganiateir i’r pŵer mynediad a roddir gan y gorchymyn gael ei arfer;
  - (b) darparu i berson penodedig arall fod gyda’r swyddog awdurdodedig;
  - (c) ei gwneud yn ofynnol i hysbysiad am y gorchymyn gael ei roi i feddiannydd y fangre a’r person yr amheuir ei fod yn oedolyn sy’n wynebu risg.

**127 Adult protection and support orders**

- (1) An authorised officer may apply to a justice of the peace for an order (“an adult protection and support order”) in relation to a person living in any premises within a local authority’s area.
- (2) The purposes of an adult protection and support order are—
  - (a) to enable the authorised officer and any other person accompanying the officer to speak in private with a person suspected of being an adult at risk,
  - (b) to enable the authorised officer to ascertain whether that person is making decisions freely, and
  - (c) to enable the authorised officer properly to assess whether the person is an adult at risk and to make a decision as required by section 126(2) on what, if any, action should be taken.
- (3) When an adult protection and support order is in force the authorised officer, a constable and any other specified person accompanying the officer in accordance with the order, may enter the premises specified in the order for the purposes set out in subsection (2).
- (4) The justice of the peace may make an adult protection and support order if satisfied that—
  - (a) the authorised officer has reasonable cause to suspect that a person is an adult at risk,
  - (b) it is necessary for the authorised officer to gain access to the person in order properly to assess whether the person is an adult at risk and to make a decision as required by section 126(2) on what, if any, action should be taken,
  - (c) making an order is necessary in order to fulfil the purposes set out in subsection (2), and
  - (d) exercising the power of entry conferred by the order will not result in the person being at greater risk of abuse or neglect.
- (5) An adult protection and support order must—
  - (a) specify the premises to which it relates;
  - (b) provide that the authorised officer may be accompanied by a constable;
  - (c) specify the period for which the order is to be in force.
- (6) Other conditions may be attached to an adult protection and support order, for example—
  - (a) specifying restrictions on the time at which the power of entry conferred by the order may be exercised;
  - (b) providing for the authorised officer to be accompanied by another specified person;
  - (c) requiring notice of the order to be given to the occupier of the premises and to the person suspected of being an adult at risk.

- (7) Caiff cwnstabl sydd gyda'r swyddog awdurdodedig ddefnyddio grym rhesymol os yw'n angenrheidiol er mwyn cyflawni dibenion gorchymyn amddiffyn a chynorthwyo oedolyn fel a nodir yn is-adran (2).
- (8) Wrth fynd i mewn i'r fangre yn unol â gorchymyn amddiffyn a chynorthwyo oedolyn rhaid i'r swyddog awdurdodedig –
  - (a) datgan diben yr ymweliad,
  - (b) dangos tystiolaeth o'r awdurdodiad i fynd i mewn i'r fangre, ac
  - (c) rhoi esboniad i feddiannydd y fangre am sut i gwyno ynghylch sut y mae'r pŵer mynediad wedi cael ei arfer.
- (9) Yn yr adran hon ystyr "swyddog awdurdodedig" yw person sydd wedi ei awdurdodi gan awdurdod lleol at ddibenion yr adran hon, ond caiff rheoliadau osod cyfyngiadau ar y personau neu'r categorïau o bersonau y caniateir eu hawdurdodi.

### 128 Dyletswydd i hysbysu am oedolion sy'n wynebu risg

- (1) Os oes gan bartner perthnasol awdurdod lleol sail resymol dros gredu bod person yn oedolyn sy'n wynebu risg, a'i bod yn ymddangos bod y person hwnnw o fewn ardal yr awdurdod, rhaid iddo hysbysu'r awdurdod lleol am y ffaith honno.
- (2) Os yw'n ymddangos bod y person, y mae gan y partner perthnasol sail resymol dros gredu bod y person hwnnw yn oedolyn sy'n wynebu risg, o fewn ardal awdurdod lleol ac eithrio un y mae'n bartner perthnasol iddo, rhaid iddo hysbysu'r awdurdod lleol arall hwnnw.
- (3) Os oes gan awdurdod lleol sail resymol dros gredu bod person o fewn ei ardal ar unrhyw adeg yn oedolyn sy'n wynebu risg a'i fod yn byw neu'n bwriadu byw yn ardal awdurdod lleol arall (neu awdurdod lleol yn Lloegr), rhaid iddo hysbysu'r awdurdod arall hwnnw.
- (4) At ddiben yr adran hon mae partner perthnasol awdurdod lleol yn berson sy'n bartner perthnasol yr awdurdod at ddibenion adran 162.

### 129 Diddymu pŵer awdurdod lleol i symud personau y mae arnynt angen gofal a sylw

Nid yw adran 47 o Ddeddf Cymorth Gwladol 1948 (sy'n galluogi awdurdodau lleol i wneud cais am orchymyn llys i symud personau y mae arnynt angen gofal a sylw o'u cartrefi i ysbytai neu fannau eraill) bellach yn gymwys i bersonau yng Nghymru.

*Plant sy'n wynebu risg*

### 130 Dyletswydd i hysbysu am blant sy'n wynebu risg

- (1) Os oes gan bartner perthnasol awdurdod lleol sail resymol dros gredu bod plentyn yn blentyn sy'n wynebu risg, a'i bod yn ymddangos bod y plentyn hwnnw o fewn ardal yr awdurdod, rhaid iddo hysbysu'r awdurdod lleol am y ffaith honno.
- (2) Os yw'n ymddangos bod y plentyn, y mae gan y partner perthnasol sail resymol dros gredu bod y plentyn hwnnw yn blentyn sy'n wynebu risg, o fewn ardal awdurdod lleol ac eithrio un y mae'n bartner perthnasol iddo, rhaid iddo hysbysu'r awdurdod lleol arall hwnnw.

- (7) A constable accompanying the authorised officer may use reasonable force if necessary in order to fulfil the purposes of an adult protection and support order set out in subsection (2).
- (8) On entering the premises in accordance with an adult protection and support order the authorised officer must –
  - (a) state the object of the visit,
  - (b) produce evidence of the authorisation to enter the premises, and
  - (c) provide an explanation to the occupier of the premises of how to complain about how the power of entry has been exercised.
- (9) In this section “an authorised officer” means a person authorised by a local authority for the purposes of this section, but regulations may set restrictions on the persons or categories of persons who may be authorised.

#### **128 Duty to report adults at risk**

- (1) If a relevant partner of a local authority has reasonable cause to suspect that a person is an adult at risk and appears to be within the authority’s area, it must inform the local authority of that fact.
- (2) If the person that the relevant partner has reasonable cause to suspect is an adult at risk appears to be within the area of a local authority other than one of which it is a relevant partner, it must inform that other local authority.
- (3) If a local authority has reasonable cause to suspect that a person within its area at any time is an adult at risk and is living or proposing to live in the area of another local authority (or a local authority in England), it must inform that other authority.
- (4) For the purpose of this section a relevant partner of a local authority is a person who is a relevant partner of the authority for the purposes of section 162.

#### **129 Abolition of local authority’s power to remove persons in need of care and attention**

Section 47 of the National Assistance Act 1948 (which enables local authorities to apply for a court order to remove persons in need of care and attention from home to hospitals or other places) ceases to apply to persons in Wales.

#### *Children at risk*

#### **130 Duty to report children at risk**

- (1) If a relevant partner of a local authority has reasonable cause to suspect that a child is a child at risk and appears to be within the authority’s area, it must inform the local authority of that fact.
- (2) If the child that the relevant partner has reasonable cause to suspect is a child at risk appears to be within the area of a local authority other than one of which it is a relevant partner, it must inform that other local authority.

- (3) Os oes gan awdurdod lleol sail resymol dros gredu bod plentyn o fewn ei ardal ar unrhyw adeg yn blentyn sy'n wynebu risg a'i fod yn byw neu'n bwriadu byw o fewn ardal awdurdod lleol arall (neu awdurdod lleol yn Lloegr), rhaid iddo hysbysu'r awdurdod arall hwnnw.
- (4) Yn yr adran hon, "plentyn sy'n wynebu risg" yw plentyn –
  - (a) sy'n cael, neu sy'n wynebu risg o gael, ei gam-drin neu ei esgeuluso neu ddioddef mathau eraill o niwed, a
  - (b) y mae arno anghenion am ofal a chymorth (p'un a yw'r awdurdod yn diwallu unrhyw un neu rai o'r anghenion hynny ai peidio).
- (5) At ddibenion yr adran hon mae partner perthnasol awdurdod lleol yn –
  - (a) person sy'n bartner perthnasol yr awdurdod lleol at ddibenion adran 162;
  - (b) tîm troseddwy'r ifanc ar gyfer ardal y mae unrhyw ran ohoni yn dod o fewn ardal yr awdurdod.
- (6) Am ddarpariaeth ynghylch dyletswydd awdurdod lleol i ymchwilio i blant sy'n wynebu risg, gweler adran 47 o Ddeddf Plant 1989.

*Canllawiau***131 Canllawiau ynghylch oedolion sy'n wynebu risg a phlant sy'n wynebu risg**

- (1) Rhaid i'r canlynol, wrth arfer eu swyddogaethau o dan adrannau 126 i 128 a 130, roi sylw i unrhyw ganllawiau a roddir iddynt at y diben gan Weinidogion Cymru –
  - (a) awdurdod lleol;
  - (b) person sy'n swyddog awdurdodedig at ddibenion adran 127;
  - (c) cwnstabl neu berson penodedig arall sydd gyda swyddog awdurdodedig yn unol â gorchymyn amddiffyn a chynorthwyo oedolyn a wneir o dan adran 127;
  - (d) person sy'n bartner perthnasol at ddibenion adran 128 neu 130.
- (2) Rhaid i Weinidogion Cymru ymgynghori â'r Ysgrifennydd Gwladol cyn rhoi canllawiau o dan is-adran (1).

*Bwrdd Diogelu Annibynnol Cenedlaethol***132 Y Bwrdd Diogelu Annibynnol Cenedlaethol**

- (1) Bydd bwrdd o'r enw'r Bwrdd Diogelu Annibynnol Cenedlaethol (y cyfeirir ato yn y Rhan hon fel "y Bwrdd Cenedlaethol").
- (2) Dyletswyddau'r Bwrdd Cenedlaethol yw –
  - (a) rhoi cymorth a chynghor i Fyrddau Diogelu gyda golwg ar sicrhau eu bod yn effeithiol,
  - (b) cyflwyno adroddiadau am ddigonolrwydd ac effeithiolrwydd trefniadau i ddiogelu plant ac oedolion yng Nghymru, ac
  - (c) gwneud argymhellion i Weinidogion Cymru ynghylch sut y gellid gwella'r trefniadau hynny.

- (3) If a local authority has reasonable cause to suspect that a child within its area at any time is a child at risk and is living or proposing to live within the area of another local authority (or a local authority in England), it must inform that other authority.
- (4) In this section, “a child at risk” is a child who –
  - (a) is experiencing or is at risk of abuse, neglect or other kinds of harm, and
  - (b) has needs for care and support (whether or not the authority is meeting any of those needs).
- (5) For the purposes of this section a relevant partner of a local authority is –
  - (a) a person who is a relevant partner of the local authority for the purposes of section 162;
  - (b) a youth offending team for an area any part of which falls within the area of the authority.
- (6) For provision about a local authority’s duty to investigate children at risk, see section 47 of the Children Act 1989.

*Guidance*

**131 Guidance about adults at risk and children at risk**

- (1) The following must, in exercising their functions under sections 126 to 128 and 130, have regard to any guidance given to them for the purpose by the Welsh Ministers –
  - (a) a local authority;
  - (b) a person who is an authorised officer for the purposes of section 127;
  - (c) a constable or other specified person accompanying an authorised officer in accordance with an adult protection and support order made under section 127;
  - (d) a person who is a relevant partner for the purposes of section 128 or 130.
- (2) The Welsh Ministers must consult the Secretary of State before giving guidance under subsection (1).

*National Independent Safeguarding Board*

**132 The National Independent Safeguarding Board**

- (1) There is to be a board called the National Independent Safeguarding Board (referred to in this Part as “the National Board”).
- (2) The National Board’s duties are –
  - (a) to provide support and advice to Safeguarding Boards with a view to ensuring that they are effective,
  - (b) to report on the adequacy and effectiveness of arrangements to safeguard children and adults in Wales, and
  - (c) to make recommendations to the Welsh Ministers as to how those arrangements could be improved.

(3) O ran y Bwrdd Cenedlaethol—

- (a) rhaid iddo gyflwyno adroddiad blynyddol i Weinidogion Cymru,
- (b) rhaid iddo gyflwyno unrhyw adroddiadau eraill i Weinidogion Cymru y byddant yn eu mynnu, ac
- (c) caiff gyflwyno unrhyw adroddiadau eraill y gwêl yn dda.

### 133 Rheoliadau am y Bwrdd Cenedlaethol

- (1) Caiff rheoliadau wneud darpariaeth bellach am y Bwrdd Cenedlaethol.
- (2) Caiff rheoliadau o dan yr adran hon ddarparu, er enghraifft, ar gyfer y canlynol—
  - (a) cyfansoddiad ac aelodaeth y Bwrdd Cenedlaethol (gan gynnwys darpariaeth ynghylch telerau penodi, anghymhwys, ymddiswyddo, atal neu symud aelodau o'u swydd);
  - (b) y tâl a'r lwfansau sydd i'w talu i aelodau;
  - (c) trafodion y Bwrdd Cenedlaethol;
  - (d) bod y Bwrdd Cenedlaethol yn ymgynghori â'r rhai y gallai trefniadau i ddiogelu oedolion a phlant yng Nghymru effeithio arnynt;
  - (e) ffurf, cynnwys ac amseriad adroddiadau'r Bwrdd Cenedlaethol;
  - (f) cyhoeddi adroddiadau'r Bwrdd Cenedlaethol.
- (3) Ni chaiff rheoliadau o dan yr adran hon ddarparu i Weinidog y Goron fod yn aelod o'r Bwrdd Cenedlaethol.

#### *Byrddau Diogelu Plant a Byrddau Diogelu Oedolion*

### 134 Byrddau Diogelu Plant a Byrddau Diogelu Oedolion

- (1) Rhaid i reoliadau nodi'r ardaloedd hynny yng Nghymru ("ardaloedd Byrddau Diogelu") y bydd Byrddau Diogelu ar eu cyfer.
- (2) Mae pob un o'r canlynol yn bartner Bwrdd Diogelu mewn perthynas ag ardal Bwrdd Diogelu—
  - (a) yr awdurdod lleol dros ardal y mae unrhyw ran ohoni o fewn yr ardal Bwrdd Diogelu;
  - (b) prif swyddog yr heddlu ar gyfer ardal heddlu y mae unrhyw ran ohoni o fewn yr ardal Bwrdd Diogelu;
  - (c) Bwrdd Iechyd Lleol ar gyfer ardal y mae unrhyw ran ohoni o fewn yr ardal Bwrdd Diogelu;
  - (d) ymddiriedolaeth GIG sy'n darparu gwasanaethau yn yr ardal Bwrdd Diogelu;
  - (e) yr Ysgrifennydd Gwladol i'r graddau y mae'r Ysgrifennydd Gwladol yn cyflawni swyddogaethau o dan adrannau 2 a 3 o Ddeddf Rheoli Troseddwy'r 2007 o ran Cymru;
  - (f) unrhyw ddarparwr gwasanaethau prawf y mae'n ofynnol iddo gan drefniadau o dan adran 3(2) o Ddeddf Rheoli Troseddwy'r 2007 weithredu fel partner Bwrdd Diogelu mewn perthynas â'r ardal Bwrdd Diogelu.



- (3) The National Board –
  - (a) must make an annual report to the Welsh Ministers,
  - (b) must make such other reports to the Welsh Ministers as they require, and
  - (c) may make such other reports as it thinks fit.

**133 Regulations about the National Board**

- (1) Regulations may make further provision about the National Board.
- (2) Regulations under this section may, for example, provide for –
  - (a) the constitution and membership of the National Board (including provision about terms of appointment, disqualification, resignation, suspension or removal of members);
  - (b) the remuneration and allowances to be paid to members;
  - (c) the proceedings of the National Board;
  - (d) the National Board to consult with those who may be affected by arrangements to safeguard adults and children in Wales;
  - (e) the form, content and timing of the National Board’s reports;
  - (f) the publication of the National Board’s reports.
- (3) Regulations under this section may not provide for a Minister of the Crown to be a member of the National Board.

*Safeguarding Children Boards and Safeguarding Adults Boards*

**134 Safeguarding Children Boards and Safeguarding Adults Boards**

- (1) Regulations must set out those areas in Wales for which there are to be Safeguarding Boards (“Safeguarding Board areas”).
- (2) Each of the following is a Safeguarding Board partner in relation to a Safeguarding Board area –
  - (a) the local authority for an area, any part of which falls within the Safeguarding Board area;
  - (b) the chief officer of police for a police area, any part of which falls within the Safeguarding Board area;
  - (c) a Local Health Board for an area, any part of which falls within the Safeguarding Board area;
  - (d) an NHS trust providing services in the Safeguarding Board area;
  - (e) the Secretary of State to the extent that the Secretary of State is discharging functions under sections 2 and 3 of the Offender Management Act 2007 in relation to Wales;
  - (f) any provider of probation services that is required by arrangements under section 3(2) of the Offender Management Act 2007 to act as a Safeguarding Board partner in relation to the Safeguarding Board area.

- (3) Ar ôl ymgynghori â'r partneriaid Bwrdd Diogelu ar gyfer ardal, rhaid i Weinidogion Cymru, drwy reoliadau, bennu –
  - (a) partner Bwrdd Diogelu fel y partner arweiniol ar gyfer yr ardal mewn perthynas â phlant, a
  - (b) partner Bwrdd Diogelu fel y partner arweiniol ar gyfer yr ardal mewn perthynas ag oedolion.
- (4) Rhaid i'r partner arweiniol mewn perthynas â phlant sefydlu Bwrdd Diogelu Plant ar gyfer ei ardal Bwrdd Diogelu.
- (5) Rhaid i'r partner arweiniol mewn perthynas ag oedolion sefydlu Bwrdd Diogelu Oedolion ar gyfer ei ardal Bwrdd Diogelu.
- (6) Rhaid i Fwrdd Diogelu gynnwys –
  - (a) cynrychiolydd i bob partner Bwrdd Diogelu a grybwyllwyd yn is-adran (2) mewn perthynas ag ardal y Bwrdd Diogelu, a
  - (b) cynrychiolydd unrhyw berson neu gynrychiolydd i gorff arall a bennir mewn rheoliadau fel partner Bwrdd Diogelu mewn perthynas ag ardal y Bwrdd Diogelu.
- (7) Ni chaiff rheoliadau o dan is-adran (6)(b) bennu person neu gorff fel partner Bwrdd Diogelu ond os yw'r person neu'r corff hwnnw yn arfer swyddogaethau o dan ddeddfiad mewn perthynas â phlant yng Nghymru neu, yn ôl y digwydd, oedolion yng Nghymru.
- (8) Ni chaiff rheoliadau o dan is-adran (6)(b) bennu un o Weinidogion y Goron na llywodraethwr carchar neu ganolfan hyfforddi ddiogel (neu, yn achos carchar sydd wedi ei gontractio allan neu ganolfan hyfforddi ddiogel sydd wedi ei chontractio allan, y cyfarwyddwr) fel partner Bwrdd Diogelu oni bai bod yr Ysgrifennydd Gwladol yn cydsynio.
- (9) Caiff Bwrdd Diogelu gynnwys cynrychiolwyr unrhyw bersonau neu gyrff eraill, a'r rheini'n bersonau neu'n gyrff a grybwyllir yn is-adran (10), y mae'r Bwrdd o'r farn y dylent gael eu cynrychioli arno.
- (10) Mae'r personau neu'r gyrff hynny'n bersonau ac yn gyrff o unrhyw natur sy'n arfer swyddogaethau neu sy'n ymgymryd â gweithgareddau sy'n ymwneud â phlant neu oedolion (yn ôl y digwydd) yn yr ardal Bwrdd Diogelu o dan sylw.
- (11) Yn yr adran hon –
  - (a) mae cyfeiriad at garchar yn cynnwys sefydliad troseddwr ifanc;
  - (b) mae i gyfeiriad at ganolfan hyfforddi ddiogel wedi ei chontractio allan yr ystyr a roddir i "contracted out secure training centre" gan adran 15 o Ddeddf Cyfiawnder Troseddol a Threfn Gyhoeddus 1994;
  - (c) mae i gyfeiriad at garchar sydd wedi ei gontractio allan yr ystyr a roddir i "contracted out prison" gan adran 84(4) o Ddeddf Cyfiawnder Troseddol 1991.

### 135 Swyddogaethau a gweithdrefnau Byrddau Diogelu

- (1) Amcanion Bwrdd Diogelu Plant yw –
  - (a) amddiffyn plant o fewn ei ardal sy'n cael, neu sy'n wynebu risg o gael, eu cam-drin, eu hesgeuluso, neu ddioddef mathau eraill o niwed, a

- (3) After consulting the Safeguarding Board partners for an area, the Welsh Ministers must by regulations specify –
  - (a) a Safeguarding Board partner as the lead partner in relation to children for the area, and
  - (b) a Safeguarding Board partner as the lead partner in relation to adults for the area.
- (4) The lead partner in relation to children must establish a Safeguarding Children Board for its Safeguarding Board area.
- (5) The lead partner in relation to adults must establish a Safeguarding Adults Board for its Safeguarding Board area.
- (6) A Safeguarding Board must include –
  - (a) a representative of each Safeguarding Board partner mentioned in subsection (2) in relation to the Safeguarding Board area, and
  - (b) a representative of any other person or body specified in regulations as a Safeguarding Board partner in relation to the Safeguarding Board area.
- (7) Regulations under subsection (6)(b) may only specify a person or body as a Safeguarding Board partner if that person or body exercises functions under an enactment in relation to children in Wales or, as the case may be, adults in Wales.
- (8) Regulations under subsection (6)(b) may not specify a Minister of the Crown or the governor of a prison or secure training centre (or, in the case of a contracted out prison or secure training centre, its director) as a Safeguarding Board partner unless the Secretary of State consents.
- (9) A Safeguarding Board may include representatives of such other persons or bodies, being persons or bodies mentioned in subsection (10), as the Board considers should be represented on it.
- (10) Those persons or bodies are persons and bodies of any nature who or which exercise functions or are engaged in activities relating to children or adults (as the case may be) in the Safeguarding Board area in question.
- (11) In this section –
  - (a) a reference to a prison includes a young offender institution;
  - (b) a reference to a contracted out secure training centre has the meaning given by section 15 of the Criminal Justice and Public Order Act 1994;
  - (c) a reference to a contracted out prison has the meaning given by section 84(4) of the Criminal Justice Act 1991.

### **135 Functions and procedures of Safeguarding Boards**

- (1) The objectives of a Safeguarding Children Board are –
  - (a) to protect children within its area who are experiencing, or are at risk of, abuse, neglect or other kinds of harm, and

- (b) atal plant o fewn ei ardal rhag dod yn rhai sy'n wynebu risg o gael eu cam-drin, eu hesgeuluso neu ddioddef mathau eraill o niwed.
- (2) Amcanion Bwrdd Diogelu Oedolion yw –
  - (a) amddiffyn oedolion o fewn ei ardal –
    - (i) y mae arnynt anghenion am ofal a chymorth (p'un a yw awdurdod lleol yn diwallu unrhyw un neu rai o'r anghenion hynny ai peidio), a
    - (ii) sy'n cael, neu sy'n wynebu risg o gael, eu cam-drin neu eu hesgeuluso, a
  - (b) atal yr oedolion hynny o fewn ei ardal y soniwyd amdanynt ym mharagraff (a)(i) rhag dod yn rhai sy'n wynebu risg o gael eu cam-drin neu eu hesgeuluso.
- (3) Rhaid i Fwrdd Diogelu geisio sicrhau ei amcanion drwy gydgyssylltu'r hyn a wneir gan bob person neu gorff a gynrychiolir ar y Bwrdd a gwneud yn siŵr ei fod yn effeithiol.
- (4) Rhaid i reoliadau –
  - (a) darparu i Fwrdd Diogelu gael swyddogaethau sy'n ymwneud â'i amcanion (gan gynnwys, er enghraifft, swyddogaethau adolygu neu ymchwilio);
  - (b) gwneud darpariaeth ynghylch y gweithdrefnau sydd i'w dilyn gan Fwrdd Diogelu;
  - (c) pennu pryd a sut y mae'n rhaid i blant neu oedolion y mae swyddogaethau Bwrdd Diogelu yn effeithio arnynt, neu y gallent effeithio arnynt gael cyfle i gymryd rhan yng ngwaith y Bwrdd.
- (5) Caiff Bwrdd Diogelu gydweithredu ag un neu fwy o Fyrddau Diogelu eraill.
- (6) Caiff Bwrdd Diogelu weithredu ar y cyd ag un neu fwy o Fyrddau Diogelu eraill mewn perthynas â'u hardaloedd cyfun ac os byddant yn gwneud hynny –
  - (a) mae cyfeiriadau yn y Rhan hon at Fwrdd Diogelu i'w darllen fel cyfeiriadau at y Byrddau sy'n gweithredu ar y cyd, a
  - (b) mae cyfeiriadau yn y Rhan hon at ardal Bwrdd Diogelu i'w darllen fel cyfeiriadau at yr ardal gyfun.
- (7) Caiff y Bwrdd Diogelu Plant a'r Bwrdd Diogelu Oedolion ar gyfer ardal ffurfio cyd-fwrdd ar gyfer yr ardal, ac os ydynt yn gwneud hynny –
  - (a) mae'r cyd-fwrdd i gael yr amcanion yn is-adrannau (1) a (2), a
  - (b) mae cyfeiriadau yn y Rhan hon at Fwrdd Diogelu i'w darllen fel cyfeiriadau at y cyd-fwrdd.

### 136 **Byrddau Diogelu: cynlluniau ac adroddiadau blynyddol**

- (1) Cyn dechrau pob blwyddyn ariannol rhaid i Fwrdd Diogelu gyhoeddi cynllun (ei "gynllun blynyddol") yn nodi ei gynigion ar gyfer cyflawni ei amcanion yn y flwyddyn honno.
- (2) Erbyn 31 Gorffennaf bob blwyddyn fan bellaf, rhaid i Fwrdd Diogelu gyhoeddi adroddiad ynghylch –
  - (a) sut y mae wedi arfer ei swyddogaethau yn y flwyddyn ariannol flaenorol, a

- (b) to prevent children within its area from becoming at risk of abuse, neglect or other kinds of harm.
- (2) The objectives of a Safeguarding Adults Board are –
  - (a) to protect adults within its area who –
    - (i) have needs for care and support (whether or not a local authority is meeting any of those needs), and
    - (ii) are experiencing, or are at risk of, abuse or neglect, and
  - (b) to prevent those adults within its area mentioned in paragraph (a)(i) from becoming at risk of abuse or neglect.
- (3) A Safeguarding Board must seek to achieve its objectives by co-ordinating and ensuring the effectiveness of what is done by each person or body represented on the Board.
- (4) Regulations must –
  - (a) provide for a Safeguarding Board to have functions relating to its objectives (including, for example, functions of review or investigation);
  - (b) make provision as to the procedures to be followed by a Safeguarding Board;
  - (c) specify when and how children or adults who are, or may be, affected by the exercise of a Safeguarding Board's functions must be given the opportunity to participate in the Board's work.
- (5) A Safeguarding Board may cooperate with another one or more Safeguarding Boards.
- (6) A Safeguarding Board may act jointly with another one or more Safeguarding Boards in relation to their combined areas and if they do so –
  - (a) references in this Part to a Safeguarding Board are to be read as references to the Boards acting jointly, and
  - (b) references in this Part to a Safeguarding Board area are to be read as references to the combined area.
- (7) The Safeguarding Children Board and the Safeguarding Adults Board for an area may form a joint board for the area, and if they do so –
  - (a) the joint board is to have the objectives in both subsections (1) and (2), and
  - (b) references in this Part to a Safeguarding Board are to be read as references to the joint board.

### **136 Safeguarding Boards: annual plans and reports**

- (1) Before the beginning of each financial year a Safeguarding Board must publish a plan (its "annual plan") setting out its proposals for achieving its objectives in that year.
- (2) No later than 31 July of each year, a Safeguarding Board must publish a report on –
  - (a) how it has exercised its functions in the preceding financial year, and

- (b) i ba raddau y mae wedi gweithredu'r cynigion yn ei gynllun blynyddol ar gyfer y flwyddyn ariannol flaenorol.
- (3) Caiff rheoliadau wneud darpariaeth bellach ynghylch gwneud cynlluniau a llunio adroddiadau o dan yr adran hon (gan gynnwys darpariaeth ynghylch eu ffurf a'u cynnwys a sut dylid eu cyhoeddi).
- (4) Yn yr adran hon ystyr "blwyddyn ariannol" yw'r deuddeng mis sy'n dod i ben ar 31 Mawrth.

### 137 Cyflenwi gwybodaeth ar gais Byrddau Diogelu

- (1) Caiff Bwrdd Diogelu, at ddibenion galluogi neu gynorthwyo'r Bwrdd i gyflawni ei swyddogaethau, ofyn i berson neu gorff cymhwysol gyflenwi gwybodaeth benodedig y mae is-adran (2) neu (3) yn gymwys iddi—
  - (a) i'r Bwrdd, neu
  - (b) i berson neu gorff a bennir gan y Bwrdd.
- (2) Mae'r is-adran hon yn gymwys i wybodaeth sy'n ymwneud â'r canlynol—
  - (a) y person neu'r corff cymhwysol y gwneir cais iddo,
  - (b) swyddogaeth neu weithgaredd y person neu'r corff cymhwysol hwnnw, neu
  - (c) person y mae swyddogaeth yn arferadwy mewn cysylltiad ag ef, neu weithgaredd yr ymgwymerir ag ef, gan y person neu'r corff cymhwysol hwnnw.
- (3) Mae'r is-adran hon yn gymwys i wybodaeth—
  - (a) sydd wedi ei chyflenwi i'r person neu'r corff cymhwysol yn unol â chais arall o dan yr adran hon, neu
  - (b) sydd wedi ei deillio o wybodaeth a gyflenwyd yn y modd hwnnw.
- (4) Rhaid i'r person neu'r corff cymhwysol y gwneir cais iddo o dan is-adran (1) gydymffurfio â'r cais oni bai bod y person neu'r corff o'r farn y byddai gwneud hynny—
  - (a) yn anghydnaws â dyletswyddau'r person neu'r corff, neu
  - (b) fel arall yn cael effaith andwyol ar arfer swyddogaethau'r person neu'r corff.
- (5) Rhaid i berson neu gorff cymhwysol sy'n penderfynu peidio â chydymffurfio â chais o dan is-adran (1) roi i'r Bwrdd Diogelu a wnaeth y cais resymau ysgrifenedig dros y penderfyniad.
- (6) Ni chaiff gwybodaeth a gyflenwir o dan yr adran hon gael ei defnyddio ond gan y Bwrdd neu berson neu gorff arall y caiff ei chyflenwi iddo at y diben a grybwyllwyd yn is-adran (1).
- (7) Yn yr adran hon—
  - ystyr "penodedig" ac "a bennir" ("*specified*") yw wedi ei bennu mewn cais a wneir o dan is-adran (1);
  - ystyr "person neu gorff cymhwysol" ("*qualifying person or body*") yw person neu gorff y mae ei swyddogaethau neu ei weithgareddau yn cael eu hystyried gan y Bwrdd yn rhai sy'n golygu bod y person neu'r corff yn debygol o feddu ar wybodaeth sy'n berthnasol i arfer un o swyddogaethau'r Bwrdd.

- (b) the extent to which it implemented the proposals in its annual plan for the preceding financial year.
- (3) Regulations may make further provision about the making of plans and reports under this section (including provision about their form and content and how they are to be published).
- (4) In this section “financial year” means the twelve months ending with 31 March.

### 137 Supply of information requested by Safeguarding Boards

- (1) A Safeguarding Board may, for the purpose of enabling or assisting the Board to perform its functions, ask a qualifying person or body to supply specified information to which subsection (2) or (3) applies to—
  - (a) the Board, or
  - (b) a person or body specified by the Board.
- (2) This subsection applies to information relating to—
  - (a) the qualifying person or body to whom or to which the request is made,
  - (b) a function or activity of that qualifying person or body, or
  - (c) a person in respect of whom a function is exercisable, or an activity is engaged in, by that qualifying person or body.
- (3) This subsection applies to information which—
  - (a) has been supplied to the qualifying person or body in compliance with another request under this section, or
  - (b) is derived from information so supplied.
- (4) The qualifying person or body to whom or to which a request is made under subsection (1) must comply with the request unless the person or body considers that doing so would—
  - (a) be incompatible with the duties of the person or body, or
  - (b) otherwise have an adverse effect on the exercise of the functions of the person or body.
- (5) A qualifying person or body who decides not to comply with a request under subsection (1) must give the Safeguarding Board which made the request written reasons for the decision.
- (6) Information supplied under this section may only be used by the Board or other person or body to whom or to which it is supplied for the purpose mentioned in subsection (1).
- (7) In this section—
  - “qualifying person or body” (*“person neu gorff cymhwysol”*) means a person or body whose functions or activities are considered by the Board to be such that the person or body is likely to have information relevant to the exercise of a function of the Board;
  - “specified” (*“penodedig”* and *“a bennir”*) means specified in a request made under subsection (1).

**138 Cyllido Byrddau Diogelu**

- (1) Caiff partner Bwrdd Diogelu wneud taliadau tuag at wariant a dynnir gan y Bwrdd Diogelu, neu at ddibenion sy'n gysylltiedig â'r Bwrdd Diogelu, y mae'r partner wedi ei gynrychioli arno –
  - (a) drwy wneud y taliadau'n uniongyrchol, neu
  - (b) drwy gyfrannu at gronfa y caniateir i'r taliadau gael eu gwneud ohoni.
- (2) Caiff partner Bwrdd Diogelu ddarparu staff, nwyddau, gwasanaethau, llety neu adnoddau eraill at ddibenion sy'n gysylltiedig â'r Bwrdd Diogelu y mae'r partner wedi ei gynrychioli arno.
- (3) Caiff rheoliadau –
  - (a) ei gwneud yn ofynnol bod taliadau'n cael eu gwneud gan bartner Bwrdd Diogelu tuag at wariant a dynnir gan y Bwrdd Diogelu, neu at ddibenion sy'n gysylltiedig â'r Bwrdd Diogelu, y mae'r partner wedi ei gynrychioli arno, a
  - (b) darparu ar gyfer sut y mae swm y taliadau hynny i'w ddyfarnu mewn cysylltiad â chyfnod penodedig.
- (4) Rhaid i Weinidogion Cymru ymgynghori â'r Ysgrifennydd Gwladol cyn gwneud rheoliadau o dan is-adran (3) sy'n ei gwneud yn ofynnol bod taliadau yn cael eu gwneud gan bartner Bwrdd Diogelu a grybwyllwyd yn adran 134(2)(b), (e) neu (f).

**139 Byrddau Diogelu: materion atodol**

- (1) Rhaid i Fwrdd Diogelu gydweithredu â'r Bwrdd Cenedlaethol, a rhaid iddo gyflenwi i'r Bwrdd Cenedlaethol unrhyw wybodaeth y mae'n gofyn amdani.
- (2) Caiff rheoliadau wneud darpariaeth ynghylch swyddogaethau partneriaid Byrddau Diogelu sy'n ymwneud â'r Byrddau Diogelu y mae'r partneriaid wedi eu cynrychioli arnynt.
- (3) Rhaid i bartner Bwrdd Diogelu, wrth arfer ei swyddogaethau sy'n ymwneud â Bwrdd Diogelu, roi sylw i unrhyw ganllawiau a roddir gan Weinidogion Cymru.
- (4) Rhaid i bob partner Bwrdd Diogelu gymryd pob cam rhesymol i sicrhau bod y Bwrdd Diogelu y mae wedi ei gynrychioli arno'n gweithredu'n effeithiol.

**140 Byrddau Diogelu Cyfun**

- (1) Caiff Gweinidogion Cymru drwy orchymyn ddarparu bod y Bwrdd Diogelu Plant a'r Bwrdd Diogelu Oedolion ym mhob ardal Bwrdd Diogelu i uno i greu un Bwrdd Diogelu ar gyfer yr ardal ("Bwrdd Diogelu Plant ac Oedolion").
- (2) Caiff gorchymyn o dan yr adran hon –
  - (a) diwygio unrhyw ddarpariaeth yn y Rhan hon o ganlyniad i greu un Bwrdd Diogelu Plant ac Oedolion ar gyfer pob ardal Bwrdd Diogelu, a
  - (b) gwneud darpariaethau canlyniadol eraill gan gynnwys diwygio unrhyw ddeddfiad arall (pa bryd bynnag y bydd wedi ei basio neu ei wneud).



**138 Funding of Safeguarding Boards**

- (1) A Safeguarding Board partner may make payments towards expenditure incurred by, or for purposes connected with, the Safeguarding Board on which it is represented –
  - (a) by making the payments directly, or
  - (b) by contributing to a fund out of which the payments may be made.
- (2) A Safeguarding Board partner may provide staff, goods, services, accommodation or other resources for purposes connected with the Safeguarding Board on which it is represented.
- (3) Regulations may –
  - (a) require payments to be made by a Safeguarding Board partner towards expenditure incurred by, or for purposes connected with, the Safeguarding Board on which it is represented, and
  - (b) provide for how the amount of those payments is to be determined in respect of a specified period.
- (4) The Welsh Ministers must consult the Secretary of State before making regulations under subsection (3) which require payments to be made by a Safeguarding Board partner mentioned in section 134(2)(b), (e) or (f).

**139 Safeguarding Boards: supplementary**

- (1) A Safeguarding Board must cooperate with the National Board, and must supply the National Board with any information it requests.
- (2) Regulations may make provision as to the functions of Safeguarding Board partners relating to the Safeguarding Boards on which they are represented.
- (3) A Safeguarding Board partner must, in exercising its functions relating to a Safeguarding Board, have regard to any guidance given by the Welsh Ministers.
- (4) Each Safeguarding Board partner must take all reasonable steps to ensure that the Safeguarding Board on which it is represented operates effectively.

**140 Combined Safeguarding Boards**

- (1) The Welsh Ministers may by order provide that in each Safeguarding Board area, the Safeguarding Children Board and the Safeguarding Adults Board are to combine so as to form a single Safeguarding Board for the area (“a Safeguarding Children and Adult Board”).
- (2) An order under this section may –
  - (a) amend any provision of this Part as a consequence of there being a single Safeguarding Children and Adult Board for each Safeguarding Board area, and
  - (b) make other consequential provision including amendments of any other enactment (whenever passed or made).

**141 Y weithdrefn ar gyfer gorchymynion o dan adran 140**

- (1) Cyn gwneud gorchymyn o dan adran 140, rhaid i Weinidogion Cymru ymgynghori ar y gorchymyn drafft arfaethedig â'r canlynol –
  - (a) pob partner Bwrdd Diogelu ar gyfer yr ardal Bwrdd Diogelu y mae'r gorchymyn arfaethedig yn ymwneud â hi,
  - (b) yr Ysgrifennydd Gwladol, ac
  - (c) unrhyw bersonau eraill y mae Gweinidogion Cymru yn ystyried eu bod yn briodol.
- (2) Rhaid i Weinidogion Cymru –
  - (a) rhoi cyfnod o 12 wythnos o leiaf i'r personau hynny i gyflwyno sylwadau ar y gorchymyn drafft arfaethedig,
  - (b) ystyried unrhyw sylwadau a gyflwynir o fewn y cyfnod hwnnw, ac
  - (c) cyhoeddi crynodeb o'r sylwadau hynny.
- (3) Os yw Gweinidogion Cymru, ar ôl yr ymgynghoriad hwnnw, yn dymuno bwrw ymlaen i wneud gorchymyn o dan adran 140, rhaid iddynt osod gorchymyn drafft gerbron Cynulliad Cenedlaethol Cymru.
- (4) O ran gorchymyn drafft a osodir o dan is-adran (3) –
  - (a) rhaid iddo fynd gyda datganiad gan Weinidogion Cymru yn rhoi manylion unrhyw wahaniaethau rhwng y gorchymyn drafft yr ymgynghorwyd arno o dan is-adran (1) a'r gorchymyn drafft a osodir o dan is-adran (3), a
  - (b) ni chaniateir iddo gael ei gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru yn unol ag adran 196(6) tan ar ôl i'r cyfnod o 60 niwrnod, yn dechrau ar y diwrnod y gosodir y gorchymyn drafft, ddod i ben.

**142 Dehongli Rhan 7**

Yn y Rhan hon –

ystyr “ardal Bwrdd Diogelu” (“*Safeguarding Board area*”) yw ardal a nodir mewn rheoliadau o dan adran 134(1);

ystyr “Bwrdd Cenedlaethol” (“*National Board*”) yw'r Bwrdd Cenedlaethol Annibynnol Cenedlaethol y cyfeirir ato yn adran 132;

ystyr “Bwrdd Diogelu” (“*Safeguarding Board*”) yw Bwrdd Diogelu Plant neu Fwrdd Diogelu Oedolion a sefydlir o dan adran 134 (ac mae cyfeiriadau at ardal Bwrdd Diogelu yn gyfeiriadau at yr ardal Bwrdd Diogelu y mae wedi ei sefydlu ar ei chyfer);

ystyr “partner Bwrdd Diogelu” (“*Safeguarding Board partner*”) yw person neu gorff a grybwyllir yn adran 134(2) neu mewn rheoliadau a wneir o dan adran 134(6)(b) (ac mae cyfeiriadau at ardal partner Bwrdd Diogelu yn gyfeiriadau at yr ardal Bwrdd Diogelu y mae'n bartner Bwrdd Diogelu iddo).

**141 Procedure for orders under section 140**

- (1) Before making an order under section 140, the Welsh Ministers must consult –
  - (a) each Safeguarding Board partner for the Safeguarding Board area to which the proposed order relates,
  - (b) the Secretary of State, and
  - (c) such other persons as the Welsh Ministers consider appropriate,on the proposed draft order.
- (2) The Welsh Ministers must –
  - (a) allow those persons a period of at least 12 weeks to submit comments on the proposed draft order,
  - (b) consider any comments submitted within that period, and
  - (c) publish a summary of those comments.
- (3) If, following that consultation, the Welsh Ministers wish to proceed with the making of an order under section 140, they must lay a draft order before the National Assembly for Wales.
- (4) A draft order laid under subsection (3) –
  - (a) must be accompanied by a statement of the Welsh Ministers giving details of any differences between the draft order consulted on under subsection (1) and the draft order laid under subsection (3), and
  - (b) may not be approved by a resolution of the National Assembly for Wales in accordance with section 196(6) until after the expiry of the period of 60 days beginning with the day on which the draft order is laid.

**142 Interpretation of Part 7**

In this Part –

“National Board” (*“Bwrdd Cenedlaethol”*) means the National Independent Safeguarding Board referred to in section 132;

“Safeguarding Board” (*“Bwrdd Diogelu”*) means a Safeguarding Children Board or a Safeguarding Adult Board established under section 134 (and references to a Safeguarding Board’s area are to the Safeguarding Board area for which it is established);

“Safeguarding Board area” (*“ardal Bwrdd Diogelu”*) means an area set out in regulations under section 134(1);

“Safeguarding Board partner” (*“partner Bwrdd Diogelu”*) means a person or body mentioned in section 134(2) or in regulations made under section 134(6)(b) (and references to a Safeguarding Board partner’s area are to the Safeguarding Board area in relation to which it is a Safeguarding Board partner).

**RHAN 8****SWYDDOGAETHAU GWASANAETHAU CYMDEITHASOL***Awdurdodau lleol***143 Swyddogaethau gwasanaethau cymdeithasol awdurdodau lleol**

- (1) At ddibenion y Ddeddf hon, swyddogaethau gwasanaethau cymdeithasol awdurdod lleol yw ei swyddogaethau o dan y deddfiadau a grybwyllir yng nghlofn gyntaf y tabl yn Atodlen 2 i'r Ddeddf hon (sef y swyddogaethau a ddisgrifir yn gyffredinol yn ail golofn yr Atodlen honno).
- (2) Caiff Gweinidogion Cymru drwy orchymyn—
  - (a) ychwanegu eitemau at y tabl;
  - (b) dileu eitemau o'r tabl;
  - (c) diwygio eitemau yn y tabl.

**144 Cyfarwyddwyr gwasanaethau cymdeithasol**

- (1) Rhaid i awdurdod lleol benodi swyddog, a elwir yn gyfarwyddwr gwasanaethau cymdeithasol, at ddibenion swyddogaethau gwasanaethau cymdeithasol yr awdurdod hwnnw.
- (2) Ni chaniateir i awdurdod lleol benodi person yn gyfarwyddwr gwasanaethau cymdeithasol iddo oni bai ei fod yn fodlon bod y person hwnnw wedi dangos y cymwyseddau a bennwyd gan Weinidogion Cymru.
- (3) Rhaid i Weinidogion Cymru bennu'r cymwyseddau at ddiben is-adran (2) mewn cod a ddyroddir o dan adran 145 neu mewn rheoliadau.
- (4) Caiff dau neu fwy o awdurdodau lleol, os ydynt o'r farn y gall yr un person gyflawni'n effeithiol, ar gyfer y ddau neu bob un ohonynt, swyddogaethau cyfarwyddwr gwasanaethau cymdeithasol, benodi un person yn gyfarwyddwr gwasanaethau cymdeithasol ar gyfer y ddau awdurdod hynny neu ar gyfer pob un ohonynt.
- (5) Rhaid i awdurdod lleol sydd wedi penodi, neu sydd wedi penodi ar y cyd, berson o dan yr adran hon sicrhau bod staff digonol yn cael eu darparu at ddibenion ei swyddogaethau gwasanaethau cymdeithasol er mwyn cynorthwyo'r cyfarwyddwr.

*Codau***145 Y pŵer i ddyroddi codau**

- (1) Caiff Gweinidogion Cymru ddyroddi, a diwygio o bryd i'w gilydd, un neu fwy o godau ar arfer swyddogaethau gwasanaethau cymdeithasol ("cod").
- (2) Caiff cod osod gofynion, a chaiff gynnwys canllawiau sy'n disgrifio nodau, amcanion a materion eraill.
- (3) Rhaid i awdurdod lleol, wrth arfer swyddogaethau gwasanaethau cymdeithasol—
  - (a) gweithredu'n unol ag unrhyw ofynion perthnasol sydd wedi eu cynnwys mewn cod (yn ddarostyngedig i adran 147), a

## **PART 8**

### **SOCIAL SERVICES FUNCTIONS**

#### *Local authorities*

#### **143 Social services functions of local authorities**

- (1) For the purposes of this Act, the social services functions of a local authority are its functions under the enactments mentioned in the first column of the table in Schedule 2 to this Act (being the functions which are described in general terms in the second column of that Schedule).
- (2) The Welsh Ministers may by order –
  - (a) add entries to the table;
  - (b) remove entries from the table;
  - (c) amend entries in the table.

#### **144 Directors of social services**

- (1) A local authority must appoint an officer, to be known as the director of social services, for the purposes of its social services functions.
- (2) A local authority may not appoint a person to be its director of social services unless it is satisfied that the person has demonstrated competencies specified by the Welsh Ministers.
- (3) The Welsh Ministers must specify the competencies for the purpose of subsection (2) in a code issued under section 145 or in regulations.
- (4) Two or more local authorities may, if they consider that the same person can efficiently discharge, for both or all of them, the functions of a director of social services, appoint one person as director of social services for both or all of those authorities.
- (5) A local authority which has appointed, or jointly appointed, a person under this section must secure the provision of adequate staff for the purposes of its social services functions in order to assist the director.

#### *Codes*

#### **145 Power to issue codes**

- (1) The Welsh Ministers may issue, and from time to time revise, one or more codes on the exercise of social services functions (“a code”).
- (2) A code may impose requirements, and may include guidelines setting out aims, objectives and other matters.
- (3) A local authority must, when exercising social services functions –
  - (a) act in accordance with any relevant requirements contained in a code (subject to section 147), and

- (b) rhoi sylw i unrhyw ganllawiau perthnasol sydd wedi eu cynnwys ynddo.
- (4) Caiff cod bennu nad yw adran 147 yn gymwys i ofyniad sydd wedi ei gynnwys yn y cod.
- (5) Rhaid i Weinidogion Cymru –
  - (a) cyhoeddi ar eu gwefan bob cod sydd am y tro mewn grym, a
  - (b) trefnu bod y codau sydd wedi eu disodli neu eu dirymu (p'un a ydynt ar eu gwefan neu fel arall) ar gael i'r cyhoedd.

#### **146 Dyroddi, cymeradwyo a dirymu codau**

- (1) Cyn dyroddi neu ddiwygio cod o dan adran 145, rhaid i Weinidogion Cymru ymgynghori ag unrhyw bersonau sy'n briodol yn eu barn hwy ynghylch drafft o'r cod (neu'r cod diwygiedig).
- (2) Os bydd Gweinidogion Cymru yn dymuno bwrw ymlaen â'r drafft (gydag addasiadau neu hebddynt) rhaid iddynt osod copi o'r drafft gerbron Cynulliad Cenedlaethol Cymru.
- (3) Os, cyn diwedd y cyfnod o 40 niwrnod, bydd Cynulliad Cenedlaethol Cymru yn penderfynu peidio â chymeradwyo'r drafft, ni chaniateir i Weinidogion Cymru ddyroddi'r cod (neu'r cod diwygiedig) ar ffurf y drafft hwnnw.
- (4) Os na wneir penderfyniad o'r fath cyn diwedd y cyfnod hwnnw –
  - (a) rhaid i Weinidogion Cymru ddyroddi'r cod (neu'r cod diwygiedig) ar ffurf y drafft, a
  - (b) daw'r cod (neu'r cod diwygiedig) i rym ar y dyddiad a bennir drwy orchymyn Gweinidogion Cymru.
- (5) O ran y cyfnod o 40 niwrnod –
  - (a) bydd yn dechrau ar y diwrnod y gosodir y drafft gerbron Cynulliad Cenedlaethol Cymru, a
  - (b) ni fydd yn cynnwys unrhyw amser pan fydd Cynulliad Cenedlaethol Cymru wedi ei ddiddymu neu pan fydd ar doriad am fwy na phedwar diwrnod.
- (6) Nid yw is-adran (3) yn atal drafft newydd o god (neu god diwygiedig) rhag cael ei osod gerbron Cynulliad Cenedlaethol Cymru.
- (7) Caniateir i Weinidogion Cymru ddirymu cod (neu god diwygiedig) a ddyroddir o dan yr adran hon mewn cod pellach neu drwy gyfarwyddyd.
- (8) Rhaid gosod cyfarwyddyd o dan is-adran (7) gerbron Cynulliad Cenedlaethol Cymru.

#### **147 Gwyo oddi wrth ofynion mewn codau**

- (1) Pan fo'r adran hon yn gymwys i ofyniad mewn cod (gweler adran 145(4)), caiff awdurdod lleol arfer swyddogaethau gwasanaethau cymdeithasol mewn ffordd nad yw'n cydymffurfio â'r gofyniad i'r graddau –
  - (a) y mae'r awdurdod yn credu bod rheswm da iddo beidio â chydymffurfio â'r gofyniad mewn categorïau penodol o achosion neu i beidio â gwneud hynny o gwbl,
  - (b) y mae'n penderfynu ar bolisi amgen ar gyfer arfer ei swyddogaethau mewn cysylltiad â phwnc y gofyniad, ac

- (b) have regard to any relevant guidelines contained in it.
- (4) A code may specify that section 147 does not apply to a requirement contained in the code.
- (5) The Welsh Ministers must –
  - (a) publish each code for the time being in force on their website, and
  - (b) make available to the public codes that have been replaced or revoked (whether on their website or otherwise).

**146 Issue, approval and revocation of codes**

- (1) Before issuing or revising a code under section 145, the Welsh Ministers must consult such persons as they think fit on a draft of the code (or revised code).
- (2) If the Welsh Ministers wish to proceed with the draft (with or without modifications) they must lay a copy of the draft before the National Assembly for Wales.
- (3) If, before the end of the 40 day period, the National Assembly for Wales resolves not to approve the draft, the Welsh Ministers must not issue the code (or revised code) in the form of that draft.
- (4) If no such resolution is made before the end of that period –
  - (a) the Welsh Ministers must issue the code (or revised code) in the form of the draft, and
  - (b) the code (or revised code) comes into force on the date appointed by order of the Welsh Ministers.
- (5) The 40 day period –
  - (a) begins on the day on which the draft is laid before the National Assembly for Wales, and
  - (b) does not include any time during which the National Assembly for Wales is dissolved or is in recess for more than four days.
- (6) Subsection (3) does not prevent a new draft of a code (or revised code) from being laid before the National Assembly for Wales.
- (7) The Welsh Ministers may revoke a code (or revised code) issued under this section in a further code or by direction.
- (8) A direction under subsection (7) must be laid before the National Assembly for Wales.

**147 Departure from requirements in codes**

- (1) Where this section applies to a requirement in a code (see section 145(4)), a local authority may exercise social services functions in a way that does not comply with the requirement so far as –
  - (a) the authority considers there is good reason for it not to comply with the requirement in particular categories of cases or at all,
  - (b) it decides on an alternative policy for the exercise of its functions in respect of the subject matter of the requirement, and

- (c) y mae datganiad polisi a ddyroddwyd gan yr awdurdod yn unol ag adran 148 yn weithredol.
- (2) Pan fo paragraffau (a) i (c) yn is-adran (1) yn gymwys—
  - (a) rhaid i'r awdurdod ddilyn y llwybr sydd wedi ei nodi yn y datganiad polisi, a
  - (b) nid yw'r awdurdod yn ddarostyngedig i'r ddyletswydd i gydymffurfio â'r gofyniad yn y cod ond i'r graddau nad yw pwnc y gofyniad wedi ei ddisodli gan y datganiad polisi.
- (3) Nid yw'r ddyletswydd i gydymffurfio â gofyniad mewn cod ymarfer neu i ddilyn y llwybr a bennir mewn datganiad polisi yn gymwys i awdurdod lleol i'r graddau y byddai'n afresymol i'r awdurdod ddilyn y cod neu'r datganiad polisi mewn achos penodol neu gategori o achos.

#### 148 Datganiadau polisi: gofynion a phwerau ategol

- (1) Rhaid i ddatganiadau polisi a ddyroddir o dan adran 147(1) nodi—
  - (a) sut mae'r awdurdod lleol yn cynnig y dylai swyddogaethau gwasanaethau cymdeithasol gael eu harfer mewn ffordd sy'n wahanol i'r gofyniad yn y cod perthnasol, a
  - (b) rhesymau'r awdurdod neu'r corff dros gynnig y llwybr gwahanol hwnnw.
- (2) Caiff awdurdod sydd wedi dyroddi datganiad polisi—
  - (a) dyroddi datganiad polisi diwygiedig;
  - (b) rhoi hysbysiad yn dirymu datganiad polisi.
- (3) Rhaid i ddatganiad polisi (neu ddatganiad diwygiedig) ddatgan—
  - (a) ei fod wedi ei ddyroddi o dan adran 147(1), a
  - (b) y dyddiad y bydd yn cael effaith.
- (4) Rhaid i awdurdod sy'n dyroddi datganiad polisi (neu ddatganiad diwygiedig), neu sy'n rhoi hysbysiad o dan is-adran (2)(b)—
  - (a) trefnu bod y datganiad neu hysbysiad yn cael ei gyhoeddi;
  - (b) anfon copi o'r datganiad neu hysbysiad at Weinidogion Cymru.

#### 149 Cyfarwyddiadau i'w gwneud yn ofynnol i gydymffurfio â chodau ymarfer

- (1) Mae is-adran (2) yn gymwys os yw Gweinidogion Cymru yn barnu, mewn perthynas â datganiad polisi a ddyroddwyd gan awdurdod lleol, nad yw polisi amgen yr awdurdod ar gyfer arfer swyddogaethau (yn gyfan gwbl neu yn rhannol) yn debygol o arwain at arfer swyddogaethau gwasanaethau cymdeithasol yn unol â safon ddigonol.
- (2) Caiff Gweinidogion Cymru gyfarwyddo'r awdurdod lleol i gymryd unrhyw gam y mae Gweinidogion Cymru yn barnu ei fod yn briodol er mwyn sicrhau bod yr awdurdod yn arfer swyddogaethau yn unol â'r gofyniad perthnasol yn y cod perthnasol.



- (c) a policy statement issued by the authority in accordance with section 148 is in effect.
- (2) Where paragraphs (a) to (c) of subsection (1) apply, the authority –
  - (a) must follow the course set out in the policy statement, and
  - (b) is subject to the duty to comply with the requirement in the code only so far as the subject matter of the requirement is not displaced by the policy statement.
- (3) The duty to comply with a requirement in a code of practice or to follow the course set out in a policy statement does not apply to a local authority so far as it would be unreasonable for the authority to follow the code or policy statement in a particular case or category of case.

**148 Policy statements: requirements and ancillary powers**

- (1) A policy statement issued under section 147(1) must set out –
  - (a) how the local authority proposes that social services functions should be exercised differently from the requirement in the relevant code, and
  - (b) the authority’s reasons for proposing that different course.
- (2) An authority that has issued a policy statement may –
  - (a) issue a revised policy statement;
  - (b) give notice revoking a policy statement.
- (3) A policy statement (or revised statement) must state –
  - (a) that it is issued under section 147(1), and
  - (b) the date on which it is to take effect.
- (4) An authority that issues a policy statement (or revised statement), or gives a notice under subsection (2)(b), must –
  - (a) arrange for the statement or notice to be published;
  - (b) send a copy of the statement or notice to the Welsh Ministers.

**149 Directions to require compliance with codes of practice**

- (1) Subsection (2) applies if, in relation to a policy statement issued by a local authority, the Welsh Ministers consider that the authority’s alternative policy for the exercise of functions (in whole or in part) is not likely to lead to the exercise of social services functions to an adequate standard.
- (2) The Welsh Ministers may direct the local authority to take any action which the Welsh Ministers consider appropriate for the purpose of securing the exercise of functions by the authority in accordance with the relevant requirement in the relevant code.

*Ymyriadau gan y llywodraeth ganolog***150 Y seiliau dros ymyrryd**

At ddibenion y Rhan hon, mae'r seiliau dros ymyrryd â'r modd y mae awdurdod lleol yn arfer ei swyddogaethau gwasanaethau cymdeithasol fel a ganlyn—

SAIL 1 - mae'r awdurdod lleol wedi methu, neu'n debygol o fethu, â chydymffurfio â dyletswydd sy'n swyddogaeth gwasanaethau cymdeithasol;

SAIL 2 - mae'r awdurdod lleol wedi gweithredu, neu'n bwriadu gweithredu, yn afresymol wrth arfer swyddogaeth gwasanaethau cymdeithasol;

SAIL 3 - mae'r awdurdod lleol yn methu, neu'n debygol o fethu, â chyflawni swyddogaeth gwasanaethau cymdeithasol yn unol â safon ddigonol.

**151 Hysbysiad rhybuddio**

- (1) Caiff Gweinidogion Cymru roi hysbysiad rhybuddio i awdurdod lleol os ydynt wedi eu bodloni bod un neu fwy o seiliau 1 i 3 yn bodoli mewn perthynas â'r awdurdod lleol.
- (2) Rhaid i Weinidogion Cymru bennu pob un o'r canlynol yn yr hysbysiad rhybuddio—
  - (a) y seiliau dros ymyrryd;
  - (b) y rhesymau pam y maent wedi eu bodloni bod y seiliau yn bodoli;
  - (c) y camau gweithredu y maent yn ei gwneud yn ofynnol i'r awdurdod lleol eu cymryd i ddelio â'r seiliau dros ymyrryd;
  - (d) y cyfnod y mae'r camau i'w cymryd ynddo gan yr awdurdod lleol ("y cyfnod cydymffurfio");
  - (e) y camau y maent â'u bryd ar eu cymryd os bydd yr awdurdod lleol yn methu â chymryd y camau sy'n ofynnol.
- (3) Pan fo Gweinidogion Cymru yn rhoi hysbysiad rhybuddio o dan is-adran (1), rhaid iddynt—
  - (a) o fewn 21 diwrnod o roi'r hysbysiad, osod copi ohono gerbron Cynulliad Cenedlaethol Cymru, a
  - (b) o fewn 90 diwrnod o roi'r hysbysiad, adrodd i Gynulliad Cenedlaethol Cymru ynghylch y camau a gymerwyd gan yr awdurdod lleol mewn ymateb i'r hysbysiad rhybuddio.

**152 Pŵer Gweinidogion Cymru i ymyrryd**

- (1) Mae gan Weinidogion Cymru bŵer i ymyrryd o dan y Rhan hon â'r modd y mae awdurdod lleol yn arfer swyddogaethau gwasanaethau cymdeithasol os yw is-adran (2) neu (3) yn gymwys.
- (2) Mae'r is-adran hon yn gymwys—
  - (a) os yw Gweinidogion Cymru wedi rhoi hysbysiad rhybuddio, a
  - (b) os yw awdurdod lleol wedi methu â chydymffurfio, neu sicrhau cydymffurfedd, â'r hysbysiad er boddhad Gweinidogion Cymru o fewn y cyfnod cydymffurfio.

*Intervention by central government***150 Grounds for intervention**

For the purposes of this Part, the grounds for intervention in the exercise by a local authority of its social services functions are as follows—

GROUND 1 - the local authority has failed, or is likely to fail, to comply with a duty that is a social services function;

GROUND 2 - the local authority has acted, or is proposing to act, unreasonably in the exercise of a social services function;

GROUND 3 - the local authority is failing, or is likely to fail, to perform a social services function to an adequate standard.

**151 Warning notice**

- (1) The Welsh Ministers may give a warning notice to a local authority if they are satisfied that one or more of grounds 1 to 3 exist in relation to the local authority.
- (2) The Welsh Ministers must specify each of the following in the warning notice—
  - (a) the grounds for intervention;
  - (b) the reasons why they are satisfied that the grounds exist;
  - (c) the action they require the local authority to take in order to deal with the grounds for intervention;
  - (d) the period within which the action is to be taken by the local authority (“the compliance period”);
  - (e) the action they are minded to take if the local authority fails to take the required action.
- (3) Where the Welsh Ministers give a warning notice under subsection (1), they must—
  - (a) within 21 days of the giving of the notice, lay a copy of the notice before the National Assembly for Wales, and
  - (b) within 90 days of the giving of the notice, report to the National Assembly for Wales on the action taken by the local authority in response to the warning notice.

**152 Power of Welsh Ministers to intervene**

- (1) The Welsh Ministers have the power to intervene under this Part in the exercise of social services functions by a local authority if subsection (2) or (3) applies.
- (2) This subsection applies if—
  - (a) the Welsh Ministers have given a warning notice, and
  - (b) the local authority has failed to comply, or secure compliance, with the notice to the Welsh Ministers’ satisfaction within the compliance period.

- (3) Mae'r is-adran hon yn gymwys os yw Gweinidogion Cymru wedi eu bodloni bod un neu fwy o seiliau 1 i 3 yn bodoli mewn perthynas â'r awdurdod lleol a bod ganddynt reswm dros gredu –
  - (a) bod risg cysylltiedig i iechyd neu ddiogelwch unrhyw berson sy'n galw am ymyrraeth frys o dan y Rhan hon, neu
  - (b) ei bod yn annhebygol y byddai'r awdurdod lleol yn gallu cydymffurfio, neu sicrhau cydymffurfedd, â hysbysiad rhybuddio.
- (4) Rhaid i Weinidogion Cymru, o fewn 90 diwrnod i'r dyddiad y maent yn dechrau ymyrryd â'r modd y mae awdurdod lleol yn arfer ei swyddogaethau gwasanaethau cymdeithasol, adrodd i Gynulliad Cenedlaethol Cymru ynghylch y camau a gymerwyd yn unol â'r ymyriad.
- (5) Pan fo gan Weinidogion Cymru bŵer i ymyrryd, rhaid iddynt adolygu'n gyson yr amgylchiadau sy'n rhoi cychwyn i'r pŵer.
- (6) Os daw Gweinidogion Cymru i'r casgliad bod y seiliau dros ymyrryd wedi cael eu trin er boddhad iddynt neu na fyddai arfer eu pwerau o dan y Rhan hon yn briodol am unrhyw reswm arall, rhaid iddynt hysbysu yr awdurdod lleol yn ysgrifenedig am eu casgliad.
- (7) Mae pŵer Gweinidogion Cymru i ymyrryd yn parhau i gael effaith hyd nes y byddant yn rhoi hysbysiad o dan is-adran (6).
- (8) Hyd nes y rhoddir hysbysiad o dan is-adran (6), rhaid i Weinidogion Cymru adrodd i Gynulliad Cenedlaethol Cymru, bob 6 mis o'r dyddiad y maent yn dechrau ymyrryd â'r modd y mae awdurdod lleol yn arfer ei swyddogaethau gwasanaethau cymdeithasol, ynghylch y camau sy'n cael eu cymryd yn unol â'r ymyriad.
- (9) Pan fo gan Weinidogion Cymru bŵer i ymyrryd, nid ydynt wedi eu cyfyngu i gymryd y camau gweithredu yr oeddent wedi dweud mewn hysbysiad rhybuddio eu bod â'u bryd ar eu cymryd.

**153 Pŵer i'w gwneud yn ofynnol i awdurdod lleol gael gwasanaethau cynghori**

- (1) Mae'r adran hon yn gymwys os oes gan Weinidogion Cymru bŵer i ymyrryd â'r modd y mae awdurdod lleol yn arfer swyddogaethau gwasanaethau cymdeithasol.
- (2) Caiff Gweinidogion Cymru roi cyfarwyddyd i'r awdurdod lleol i ymrwymo i gontract neu drefniant arall gyda pherson penodedig, neu berson sy'n dod o fewn dosbarth penodedig, ar gyfer darparu i'r awdurdod wasanaethau penodedig cynghorol eu natur.
- (3) Caiff y cyfarwyddyd ei gwneud yn ofynnol i'r contract neu drefniant arall gynnwys telerau ac amodau penodedig.
- (4) Yn yr adran hon ac adran 154 ystyr "penodedig" yw wedi ei bennu mewn cyfarwyddyd.

**154 Pŵer i'w gwneud yn ofynnol i swyddogaethau gael eu cyflawni gan bersonau eraill ar ran yr awdurdod**

- (1) Mae'r adran hon yn gymwys os oes gan Weinidogion Cymru bŵer i ymyrryd â'r modd y mae awdurdod lleol yn arfer swyddogaethau gwasanaethau cymdeithasol.

- (3) This subsection applies if the Welsh Ministers are satisfied that one or more of grounds 1 to 3 exist in relation to the local authority and they have reason to believe that—
  - (a) there is a related risk to the health or safety of any person that calls for urgent intervention under this Part, or
  - (b) the local authority is unlikely to be able to comply, or secure compliance, with a warning notice.
- (4) The Welsh Ministers must, within 90 days of the date on which they begin to intervene in the exercise of a local authority's social services functions, report to the National Assembly for Wales on the steps taken pursuant to the intervention.
- (5) Where the Welsh Ministers have the power to intervene, they must keep the circumstances giving rise to the power under review.
- (6) If the Welsh Ministers conclude that the grounds for intervention have been dealt with to their satisfaction or that the exercise of their powers under this Part would not be appropriate for any other reason, they must notify the local authority of their conclusion in writing.
- (7) The Welsh Ministers' power to intervene continues in effect until they give notice under subsection (6).
- (8) Until such time as notice is given under subsection (6), the Welsh Ministers must, every 6 months from the date on which they begin to intervene in the exercise of a local authority's social services functions, report to the National Assembly for Wales on the steps being taken pursuant to the intervention.
- (9) Where the Welsh Ministers have the power to intervene, they are not limited to taking the action they said they were minded to take in a warning notice.

**153 Power to require local authority to obtain advisory services**

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of social services functions by a local authority.
- (2) The Welsh Ministers may direct the local authority to enter into a contract or other arrangement with a specified person, or a person falling within a specified class, for the provision to the authority of specified services of an advisory nature.
- (3) The direction may require the contract or other arrangement to contain specified terms and conditions.
- (4) In this section and section 154 "specified" means specified in a direction.

**154 Power to require performance of functions by other persons on behalf of authority**

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of social services functions by a local authority.

- (2) Caiff Gweinidogion Cymru roi cyfarwyddyd o'r fath i'r awdurdod lleol neu unrhyw un o'i swyddogion y maent yn credu ei fod yn briodol i sicrhau bod y swyddogaethau hynny y mae'r seiliau dros ymyrryd yn ymwneud â hwy yn cael eu cyflawni ar ran yr awdurdod gan berson a bennir yn y cyfarwyddyd.
- (3) Caiff cyfarwyddyd o dan is-adran (2) ei gwneud yn ofynnol i unrhyw gontract neu drefniant arall a wneir gan yr awdurdod gyda'r person penodedig gynnwys telerau ac amodau a bennir yn y cyfarwyddyd.
- (4) Os oes cyfarwyddyd o dan is-adran (2) mewn grym, mae swyddogaethau'r awdurdod lleol y mae'n ymwneud â hwy i'w trin at bob diben fel eu bod yn arferadwy gan y person penodedig.

**155 Pŵer i'w gwneud yn ofynnol i swyddogaethau gael eu cyflawni gan Weinidogion Cymru neu enwebai**

- (1) Mae'r adran hon yn gymwys os oes gan Weinidogion Cymru bŵer i ymyrryd â'r modd y mae awdurdod lleol yn arfer swyddogaethau gwasanaethau cymdeithasol.
- (2) Caiff Gweinidogion Cymru gyfarwyddo bod y swyddogaethau y mae'r seiliau dros ymyrryd yn ymwneud â hwy i'w harfer gan Weinidogion Cymru neu berson a enwebir ganddynt hwy.
- (3) Os gwneir cyfarwyddyd o dan is-adran (2), rhaid i'r awdurdod lleol gydymffurfio ag arweiniad Gweinidogion Cymru neu eu henwebai mewn perthynas ag arfer y swyddogaethau.
- (4) Os oes cyfarwyddyd o dan is-adran (2) mewn grym, mae swyddogaethau'r awdurdod lleol y mae'n ymwneud â hwy i'w trin at bob diben fel eu bod yn arferadwy gan Weinidogion Cymru neu eu henwebai.

**156 Pŵer i gyfarwyddo bod swyddogaethau gwasanaethau cymdeithasol eraill yn cael eu harfer**

- (1) Os yw Gweinidogion Cymru yn credu ei bod yn hwylus, caiff cyfarwyddyd o dan adran 154 neu 155 ymwneud â chyflawni swyddogaethau gwasanaethau cymdeithasol yn ychwanegol at y swyddogaethau y mae'r seiliau dros ymyrryd yn ymwneud â hwy.
- (2) Caiff Gweinidogion Cymru roi sylw (ymhlith pethau eraill) i ystyriaethau ariannol wrth benderfynu a yw'n hwylus bod cyfarwyddyd yn ymwneud â swyddogaethau gwasanaethau cymdeithasol nad ydynt yn swyddogaethau sy'n ymwneud â'r seiliau dros ymyrryd.

**157 Pŵer cyffredinol i roi cyfarwyddiadau a chymryd camau**

- (1) Mae'r adran hon yn gymwys os oes gan Weinidogion Cymru bŵer i ymyrryd â'r modd y mae awdurdod lleol yn arfer swyddogaethau gwasanaethau cymdeithasol.
- (2) Os yw Gweinidogion Cymru yn credu ei bod yn briodol er mwyn delio â'r seiliau dros ymyrryd, caiff Gweinidogion Cymru –
  - (a) cyfarwyddo'r awdurdod lleol neu unrhyw un neu rai o'i swyddogion, neu
  - (b) cymryd unrhyw gamau eraill.

- (2) The Welsh Ministers may give such a direction to the local authority or any of its officers as they think is appropriate for securing that the functions to which the grounds for intervention relate are performed on behalf of the authority by a person specified in the direction.
- (3) A direction under subsection (2) may require that any contract or other arrangement made by the authority with the specified person contains terms and conditions specified in the direction.
- (4) If a direction under subsection (2) is in force, the functions of the local authority to which it relates are to be treated for all purposes as being exercisable by the specified person.

**155 Power to require performance of functions by Welsh Ministers or nominee**

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of social services functions by a local authority.
- (2) The Welsh Ministers may direct that the functions to which the grounds for intervention relate are to be exercised by the Welsh Ministers or a person nominated by them.
- (3) If a direction is made under subsection (2), the local authority must comply with the instructions of the Welsh Ministers or their nominee in relation to the exercise of the functions.
- (4) If a direction under subsection (2) is in force, the functions of the local authority to which it relates are to be treated for all purposes as being exercisable by the Welsh Ministers or their nominee.

**156 Power to direct exercise of other social services functions**

- (1) If the Welsh Ministers think it is expedient, a direction under section 154 or 155 may relate to the performance of social services functions in addition to the functions to which the grounds for intervention relate.
- (2) The Welsh Ministers may have regard (among other things) to financial considerations in deciding whether it is expedient that a direction should relate to social services functions other than the functions relating to the grounds for intervention.

**157 General power to give directions and take steps**

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of social services functions by a local authority.
- (2) If the Welsh Ministers think it is appropriate in order to deal with the grounds for intervention, the Welsh Ministers may –
  - (a) direct the local authority or any of its officers, or
  - (b) take any other steps.

**158 Ymyrryd: dyletswydd i adrodd**

Pan fo Gweinidogion Cymru yn arfer eu pŵer i roi cyfarwyddyd o dan adran 153, 154, 155 neu 157, rhaid iddynt—

- (a) o fewn 21 diwrnod o roi'r cyfarwyddyd, osod copi o'r cyfarwyddyd gerbron Cynulliad Cenedlaethol Cymru, a
- (b) o fewn 90 diwrnod o roi'r cyfarwyddyd, adrodd i Gynulliad Cenedlaethol Cymru ynghylch y camau a gymerwyd gan yr awdurdod lleol i gydymffurfio â'r cyfarwyddyd.

**159 Cyfarwyddiadau**

- (1) Rhaid i awdurdod lleol, neu swyddog i awdurdod, sy'n ddarostyngedig i gyfarwyddyd neu arweiniad o dan y Rhan hon gydymffurfio ag ef.
- (2) Mae hyn yn cynnwys cyfarwyddyd neu arweiniad i arfer swyddogaeth sy'n amodol ar farn yr awdurdod lleol neu swyddog i'r awdurdod.
- (3) O ran cyfarwyddyd o dan y Rhan hon—
  - (a) rhaid iddo fod yn ysgrifenedig;
  - (b) caniateir iddo gael ei amrywio neu ei ddirymu drwy gyfarwyddyd diweddarach;
  - (c) mae'n orfodadwy drwy orchymyn gorfodol ar gais gan, neu ar ran, Gweinidogion Cymru.

**160 Dyletswydd i gydweithredu**

- (1) Rhaid i awdurdod lleol roi i Weinidogion Cymru ac unrhyw berson a grybwyllir yn is-adran (2) gymaint o gymorth ag y gall yr awdurdod lleol yn rhesymol ei roi mewn cysylltiad ag arfer swyddogaethau o dan, neu yn rhinwedd, y Rhan hon.
- (2) Y personau yw—
  - (a) unrhyw berson a awdurdodir gan Weinidogion Cymru at ddibenion yr adran hon;
  - (b) unrhyw berson sy'n gweithredu o dan gyfarwyddyd o dan y Rhan hon;
  - (c) unrhyw berson sy'n cynorthwyo—
    - (i) Gweinidogion Cymru, neu
    - (ii) person a grybwyllwyd ym mharagraff (a) neu (b).

**161 Pwerau mynd i mewn ac arolygu**

- (1) Mae gan berson sy'n dod o fewn is-adran (2) hawl, ar bob adeg resymol—
  - (a) i gael mynd i mewn i fangreoddedd yr awdurdod lleol o dan sylw;
  - (b) i arolygu, a gwneud copïau, o unrhyw gofnodion neu ddogfennau eraill a gedwir gan yr awdurdod, ac unrhyw ddogfennau eraill sy'n cynnwys gwybodaeth sy'n ymwneud â'r awdurdod, a'r rheini'n gofnodion neu'n ddogfennau y mae'r person o'r farn eu bod yn berthnasol i gyflawniad ei swyddogaethau o dan, neu yn rhinwedd, y Rhan hon.



**158 Intervention: duty to report**

Where the Welsh Ministers exercise their power of direction under section 153, 154, 155 or 157, they must—

- (a) within 21 days of the giving of the direction, lay a copy of the direction before the National Assembly for Wales, and
- (b) within 90 days of the giving of the direction, report to the National Assembly for Wales on the steps taken by the local authority to comply with the direction.

**159 Directions**

- (1) A local authority, or an officer of an authority, subject to a direction or instruction under this Part must comply with it.
- (2) This includes a direction or an instruction to exercise a function that is contingent upon the opinion of the local authority or an officer of the authority.
- (3) A direction under this Part—
  - (a) must be in writing;
  - (b) may be varied or revoked by a later direction;
  - (c) is enforceable by mandatory order on application by, or on behalf of, the Welsh Ministers.

**160 Duty to co-operate**

- (1) A local authority must give the Welsh Ministers and any person mentioned in subsection (2) as much assistance in connection with the exercise of functions under or by virtue of this Part as they are reasonably able to give.
- (2) The persons are—
  - (a) any person authorised for the purposes of this section by the Welsh Ministers;
  - (b) any person acting under a direction under this Part;
  - (c) any person assisting—
    - (i) the Welsh Ministers, or
    - (ii) a person mentioned in paragraph (a) or (b).

**161 Powers of entry and inspection**

- (1) A person falling within subsection (2) has at all reasonable times—
  - (a) a right of entry to the premises of the local authority in question;
  - (b) a right to inspect, and take copies of, any records or other documents kept by the authority, and any other documents containing information relating to the authority, which the person considers relevant to the exercise of his or her functions under or by virtue of this Part.

- (2) Mae'r personau canlynol yn dod o fewn yr is-adran hon –
- (a) person a bennir mewn cyfarwyddyd o dan adran 153 neu, pan fo'r cyfarwyddyd yn pennu dosbarth o bersonau, person y mae'r awdurdod yn ymrwymo i gontract neu unrhyw drefniant arall ag ef sy'n ofynnol o dan y cyfarwyddyd;
  - (b) person a bennir mewn cyfarwyddyd o dan adran 154;
  - (c) Gweinidogion Cymru yn unol â chyfarwyddyd o dan adran 155;
  - (d) person a enwebir drwy gyfarwyddyd o dan adran 155.
- (3) Wrth arfer yr hawl o dan is-adran (1)(b) i arolygu cofnodion neu ddogfennau eraill –
- (a) mae gan berson ("P") hawlogaeth i gael mynediad at, ac i arolygu a gwirio gweithrediad, unrhyw gyfrifiadur ac unrhyw gyfarpar neu ddeunydd cysylltiedig sydd, neu sydd wedi bod, yn cael ei ddefnyddio mewn cysylltiad â'r cofnodion neu'r dogfennau eraill o dan sylw, a
  - (b) caiff P ei gwneud yn ofynnol i'r personau canlynol ddarparu unrhyw gymorth y mae arno angen rhesymol ei gael (gan gynnwys, ymhlith pethau eraill, rhoi gwybodaeth ar gael i'w harolygu neu i'w chopio ar ffurf ddarlledadwy) –
    - (i) y person y defnyddir neu y defnyddiwyd y cyfrifiadur felly ganddo neu ar ei ran;
    - (ii) unrhyw berson y mae'r cyfrifiadur, y cyfarpar neu'r deunydd o dan ei ofal neu sy'n ymwneud fel arall â'u gweithredu.
- (4) Mae unrhyw gyfeiriad yn yr adran hon at berson sy'n dod o fewn is-adran (2) yn cynnwys cyfeiriad at unrhyw berson sy'n cynorthwyo'r person hwnnw.
- (5) Yn yr adran hon mae "dogfen" a "cofnodion" ill dau yn cynnwys gwybodaeth a gofnodir ar unrhyw ffurf.

## RHAN 9

### CYDWEITHREDIAD A PHARTNERIAETH

#### *Cydweithrediad*

- 162 Trefniadau i hyrwyddo cydweithrediad: oedolion y mae arnynt anghenion am ofal a chymorth a gofalwyr**
- (1) Rhaid i awdurdod lleol wneud trefniadau i hyrwyddo cydweithrediad rhwng –
- (a) yr awdurdod lleol,
  - (b) pob un o bartneriaid perthnasol yr awdurdod wrth arfer –
    - (i) eu swyddogaethau sy'n ymwneud ag oedolion y mae arnynt anghenion am ofal a chymorth neu ag oedolion sy'n ofalwyr, a
    - (ii) eu swyddogaethau eraill y mae eu harfer yn berthnasol i'r swyddogaethau y cyfeirir atynt yn is-baragraff (i), a

- (2) The following persons fall within this subsection—
  - (a) a person specified in a direction under section 153 or, where the direction specifies a class of persons, the person with whom the local authority enters into the contract or other arrangement required by the direction;
  - (b) a person specified in a direction under section 154;
  - (c) the Welsh Ministers in pursuance of a direction under section 155;
  - (d) a person nominated by a direction under section 155.
- (3) In exercising the right under subsection (1)(b) to inspect records or other documents, a person (“P”)—
  - (a) is entitled to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question, and
  - (b) may require the following persons to provide any assistance P may reasonably require (including, among other things, the making of information available for inspection or copying in a legible form)—
    - (i) the person by whom or on whose behalf the computer is or has been so used;
    - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material.
- (4) Any reference in this section to a person falling within subsection (2) includes a reference to any person assisting that person.
- (5) In this section “document” and “records” each include information recorded in any form.

## PART 9

### CO-OPERATION AND PARTNERSHIP

#### *Co-operation*

#### **162 Arrangements to promote co-operation: adults with needs for care and support and carers**

- (1) A local authority must make arrangements to promote co-operation between—
  - (a) the local authority,
  - (b) each of the authority’s relevant partners in the exercise of—
    - (i) their functions relating to adults with needs for care and support or to adults who are carers, and
    - (ii) their other functions the exercise of which is relevant to the functions referred to in sub-paragraph (i), and

- (c) unrhyw bersonau neu gyrff eraill y mae'r awdurdod yn ystyried eu bod yn briodol, a'r rheini'n bersonau neu'n gyrff o unrhyw natur sy'n arfer swyddogaethau neu sy'n ymgymryd â gweithgareddau mewn perthynas â'r canlynol—
- (i) oedolion o fewn ardal yr awdurdod y mae arnynt anghenion am ofal a chymorth, neu
  - (ii) oedolion o fewn ardal yr awdurdod sy'n ofalwyr.
- (2) Rhaid i awdurdod lleol hefyd wneud trefniadau i hyrwyddo cydweithrediad rhwng swyddogion yr awdurdod sy'n arfer ei swyddogaethau.
- (3) Mae'r trefniadau o dan is-adrannau (1) a (2) i'w gwneud gyda golwg ar—
- (a) gwella llesiant—
    - (i) oedolion o fewn ardal yr awdurdod y mae arnynt anghenion am ofal a chymorth, a
    - (ii) oedolion o fewn ardal yr awdurdod sy'n ofalwyr;
  - (b) gwella ansawdd y gofal a'r cymorth i oedolion, ac ansawdd y cymorth i oedolion sy'n ofalwyr, a ddarperir yn ardal yr awdurdod (gan gynnwys y canlyniadau a sicrheir drwy'r ddarpariaeth honno);
  - (c) amddiffyn oedolion y mae arnynt anghenion am ofal a chymorth ac sy'n cael, neu sy'n wynebu risg o gael, eu cam-drin neu eu hesgeuluso.
- (4) At ddibenion yr adran hon mae pob un o'r canlynol yn bartner perthnasol i awdurdod lleol—
- (a) y corff plismona lleol a phrif swyddog yr heddlu ar gyfer ardal heddlu y mae unrhyw ran ohoni o fewn ardal yr awdurdod lleol;
  - (b) unrhyw awdurdod lleol arall y mae'r awdurdod yn cytuno y byddai'n briodol cydweithredu ag ef o dan yr adran hon;
  - (c) yr Ysgrifennydd Gwladol i'r graddau y mae'r Ysgrifennydd Gwladol yn cyflawni swyddogaethau o dan adrannau 2 a 3 o Ddeddf Rheoli Troseddwy'r 2007 o ran Cymru;
  - (d) unrhyw ddarparwr gwasanaethau prawf y mae'n ofynnol iddo gan drefniadau o dan adran 3(2) o Ddeddf Rheoli Troseddwy'r 2007 weithredu fel partner perthnasol i'r awdurdod;
  - (e) Bwrdd Iechyd Lleol ar gyfer ardal y mae unrhyw ran ohoni o fewn ardal yr awdurdod;
  - (f) ymddiriedolaeth GIG sy'n darparu gwasanaethau yn ardal yr awdurdod;
  - (g) Gweinidogion Cymru i'r graddau y maent yn cyflawni swyddogaethau o dan Ran 2 o Ddeddf Dysgu a Medrau 2000;
  - (h) unrhyw berson, neu berson o unrhyw ddisgrifiad, y bydd rheoliadau yn ei bennu.
- (5) Ni chaiff rheoliadau o dan is-adran (4)(h) bennu un o Weinidogion y Goron na llywodraethwr carchar (neu yn achos carchar sydd wedi ei contractio allan, y cyfarwyddwr) oni bai bod yr Ysgrifennydd Gwladol yn cydsynio.

- (c) such other persons or bodies as the authority considers appropriate, being persons or bodies of any nature who or which exercise functions or are engaged in activities in relation to—
  - (i) adults within the authority's area with needs for care and support, or
  - (ii) adults within the authority's area who are carers.
- (2) A local authority must also make arrangements to promote co-operation between the officers of the authority who exercise its functions.
- (3) The arrangements under subsections (1) and (2) are to be made with a view to—
  - (a) improving the well-being of—
    - (i) adults within the authority's area with needs for care and support, and
    - (ii) adults within the authority's area who are carers;
  - (b) improving the quality of care and support for adults, and of support for adults who are carers, provided in the authority's area (including the outcomes that are achieved from such provision);
  - (c) protecting adults with needs for care and support who are experiencing, or are at risk of, abuse or neglect.
- (4) For the purposes of this section each of the following is a relevant partner of a local authority—
  - (a) the local policing body and the chief officer of police for a police area any part of which falls within the area of the local authority;
  - (b) any other local authority with which the authority agrees that it would be appropriate to co-operate under this section;
  - (c) the Secretary of State to the extent that the Secretary of State is discharging functions under sections 2 and 3 of the Offender Management Act 2007 in relation to Wales;
  - (d) any provider of probation services that is required by arrangements under section 3(2) of the Offender Management Act 2007 to act as a relevant partner of the authority;
  - (e) a Local Health Board for an area any part of which falls within the area of the authority;
  - (f) an NHS trust providing services in the area of the authority;
  - (g) the Welsh Ministers to the extent that they are discharging functions under Part 2 of the Learning and Skills Act 2000;
  - (h) such a person, or a person of such description, as regulations may specify.
- (5) Regulations under subsection (4)(h) may not specify a Minister of the Crown or the governor of a prison (or, in the case of a contracted out prison, its director) unless the Secretary of State consents.

- (6) Rhaid i bartneriaid perthnasol awdurdod lleol gydweithredu â'r awdurdod wrth wneud trefniadau o dan yr adran hon.
- (7) Caiff awdurdod lleol ac unrhyw un neu rai o'i bartneriaid perthnasol, at ddibenion trefniadau o dan yr adran hon—
  - (a) darparu staff, nwyddau, gwasanaethau, llety neu adnoddau eraill;
  - (b) sefydlu a chynnal cronfa gyfun;
  - (c) rhannu gwybodaeth â'i gilydd.
- (8) At ddibenion is-adran (7) mae cronfa gyfun yn gronfa—
  - (a) sydd wedi ei ffurfio o gyfraniadau gan yr awdurdod a'r partner neu'rartneriaid perthnasol o dan sylw, a
  - (b) y caniateir i daliadau gael eu gwneud ohoni tuag at wariant a dynnir wrth gyflawni swyddogaethau'r awdurdod a swyddogaethau'r partner neu'rartneriaid perthnasol.
- (9) Rhaid i awdurdod lleol a phob un o'i bartneriaid perthnasol, wrth arfer eu swyddogaethau o dan yr adran hon, roi sylw i unrhyw ganllawiau a roddir iddynt gan Weinidogion Cymru at y diben hwnnw.
- (10) Rhaid i Weinidogion Cymru ymgynghori â'r Ysgrifennydd Gwladol cyn rhoi canllawiau o dan is-adran (9).
- (11) Yn yr adran hon—
  - (a) mae cyfeiriad at garchar yn cynnwys sefydliad troseddwr ifanc;
  - (b) mae i gyfeiriad at garchar sydd wedi ei gcontractio allan yr ystyr a roddir i "contracted out prison" gan adran 84(4) o Ddeddf Cyfiawnder Troseddol 1991.

### **163 Trefniadau i hyrwyddo cydweithrediad: plant**

- (1) Mae adran 25 o Ddeddf Plant 2004 (cydweithrediad i wella llesiant: Cymru) wedi ei diwygio fel a ganlyn.
- (2) Ar ôl is-adran (1) mewnosoder—
  - “(1A) Each local authority in Wales must also make arrangements to promote co-operation between officers of the authority who exercise its functions.”
- (3) Yn lle is-adran (2) rhodder—
  - “(2) The arrangements under subsections (1) and (1A) are to be made with a view to—
    - (a) improving the well-being of children within the authority's area, in particular those with needs for care and support;
    - (b) improving the quality of care and support for children provided in the authority's area (including the outcomes that are achieved from such provision);
    - (c) protecting children who are experiencing, or are at risk of, abuse, neglect or other kinds of harm (within the meaning of the Children Act 1989).”

- (6) The relevant partners of a local authority must co-operate with the authority in the making of arrangements under this section.
- (7) A local authority and any of its relevant partners may for the purposes of arrangements under this section –
  - (a) provide staff, goods, services, accommodation or other resources;
  - (b) establish and maintain a pooled fund;
  - (c) share information with each other.
- (8) For the purposes of subsection (7) a pooled fund is a fund –
  - (a) which is made up of contributions by the authority and the relevant partner or partners concerned, and
  - (b) out of which payments may be made towards expenditure incurred in the discharge of functions of the authority and functions of the relevant partner or partners.
- (9) A local authority and each of its relevant partners must, in exercising their functions under this section, have regard to any guidance given to them for the purpose by the Welsh Ministers.
- (10) The Welsh Ministers must consult the Secretary of State before giving guidance under subsection (9).
- (11) In this section –
  - (a) a reference to a prison includes a young offender institution;
  - (b) a reference to a contracted out prison has the meaning given by section 84(4) of the Criminal Justice Act 1991.

### **163 Arrangements to promote co-operation: children**

- (1) Section 25 of the Children Act 2004 (co-operation to improve well-being: Wales) is amended as follows.
- (2) After subsection (1) insert –

“(1A) Each local authority in Wales must also make arrangements to promote co-operation between officers of the authority who exercise its functions.”
- (3) For subsection (2) substitute –

“(2) The arrangements under subsections (1) and (1A) are to be made with a view to –

  - (a) improving the well-being of children within the authority’s area, in particular those with needs for care and support;
  - (b) improving the quality of care and support for children provided in the authority’s area (including the outcomes that are achieved from such provision);
  - (c) protecting children who are experiencing, or are at risk of, abuse, neglect or other kinds of harm (within the meaning of the Children Act 1989).”

## (4) Yn is-adran (4) –

## (a) ar ôl paragraff (a) mewnosoder –

“(aa) any other local authority in Wales with which the authority agrees that it would be appropriate to co-operate under this section;”;

## (b) ym mharagraff (f) yn lle “Assembly” rhodder “Welsh Ministers” ac yn lle “it is” rhodder “they are”;

## (c) ar ôl paragraff (f) mewnosoder –

“(g) such a person, or a person of such description, as regulations made by the Welsh Ministers may specify.”

## (5) Ar ôl is-adran (4) mewnosoder –

“(4A) Regulations under subsection (4)(g) may not specify a Minister of the Crown or the governor of a prison or secure training centre (or, in the case of a contracted out prison or secure training centre, its director) unless the Secretary of State consents.”

## (6) Yn is-adrannau (8) a (9) yn lle “Assembly” rhodder “Welsh Ministers”.

## (7) Ar ôl is-adran (10) mewnosoder –

“(11) In this section –

“care and support” means –

- (a) care;
- (b) support;
- (c) both care and support;

“well-being” means well-being in relation to any of the following –

- (a) physical and mental health and emotional well-being;
- (b) protection from abuse and neglect;
- (c) education, training and recreation;
- (d) domestic, family and personal relationships;
- (e) contribution made to society;
- (f) securing rights and entitlements;
- (g) social and economic well-being;
- (h) suitability of living accommodation;
- (i) physical, intellectual, emotional, social and behavioural development;

and it includes “welfare” as that word is interpreted for the purposes of the Children Act 1989.”

## (8) O ganlyniad i’r diwygiad a wneir gan is-adran (4)(b), yn adran 66 o Ddeddf Plant 2004 (rheoliadau a gorchmynion), yn is-adran (7), ar ôl “section” mewnosoder “25 or”.



- (4) In subsection (4) –
- (a) after paragraph (a) insert –
    - “(aa) any other local authority in Wales with which the authority agrees that it would be appropriate to co-operate under this section;”;
  - (b) in paragraph (f) for “Assembly” substitute “Welsh Ministers” and for “it is” substitute “they are”;
  - (c) after paragraph (f) insert –
    - “(g) such a person, or a person of such description, as regulations made by the Welsh Ministers may specify.”
- (5) After subsection (4) insert –
  - “(4A) Regulations under subsection (4)(g) may not specify a Minister of the Crown or the governor of a prison or secure training centre (or, in the case of a contracted out prison or secure training centre, its director) unless the Secretary of State consents.”
- (6) In subsections (8) and (9) for “Assembly” substitute “Welsh Ministers”.
- (7) After subsection (10) insert –
  - “(11) In this section –
    - “care and support” means –
      - (a) care;
      - (b) support;
      - (c) both care and support;
    - “well-being” means well-being in relation to any of the following –
      - (a) physical and mental health and emotional well-being;
      - (b) protection from abuse and neglect;
      - (c) education, training and recreation;
      - (d) domestic, family and personal relationships;
      - (e) contribution made to society;
      - (f) securing rights and entitlements;
      - (g) social and economic well-being;
      - (h) suitability of living accommodation;
      - (i) physical, intellectual, emotional, social and behavioural development;
  - and it includes “welfare” as that word is interpreted for the purposes of the Children Act 1989.”
- (8) In consequence of the amendment made by subsection (4)(b), in section 66 of the Children Act 2004 (regulations and orders), in subsection (7), after “section” insert “25 or”.

**164 Dyletswydd i gydweithredu a darparu gwybodaeth wrth arfer swyddogaethau gwasanaethau cymdeithasol**

- (1) Os yw awdurdod lleol yn gofyn am gydweithrediad person a grybwyllir yn is-adran (4) wrth arfer unrhyw un neu rai o'i swyddogaethau gwasanaethau cymdeithasol, rhaid i'r person gydymffurfio â'r cais oni bai ei fod o'r farn y byddai gwneud felly –
  - (a) yn anghydnaws â'i ddyletswyddau ei hun, neu
  - (b) fel arall yn cael effaith andwyol ar arfer ei swyddogaethau.
- (2) Os yw awdurdod lleol yn gofyn i berson a grybwyllir yn is-adran (4) ddarparu gwybodaeth iddo y mae ei angen arno er mwyn arfer unrhyw un neu rai o'i swyddogaethau gwasanaethau cymdeithasol, rhaid i'r person gydymffurfio â'r cais oni bai ei fod o'r farn y byddai gwneud felly –
  - (a) yn anghydnaws â'i ddyletswyddau ei hun, neu
  - (b) fel arall yn cael effaith andwyol ar arfer ei swyddogaethau.
- (3) Rhaid i berson sy'n penderfynu peidio â chydymffurfio â chais o dan is-adran (1) neu (2) roi i'r awdurdod lleol a wnaeth y cais resymau ysgrifenedig dros y penderfyniad.
- (4) Y personau yw –
  - (a) partner perthnasol i'r awdurdod lleol sy'n gwneud y cais;
  - (b) awdurdod lleol, Bwrdd Iechyd Lleol neu ymddiriedolaeth GIG nad yw'n bartner perthnasol i'r awdurdod lleol sy'n gwneud y cais;
  - (c) tîm troseddwr ifanc ar gyfer ardal y mae unrhyw ran ohoni yn dod o fewn ardal yr awdurdod lleol sy'n gwneud y cais.
- (5) Rhaid i awdurdod lleol a phob un o'r personau hynny a grybwyllwyd yn is-adran (4), wrth arfer eu swyddogaethau o dan yr adran hon, roi sylw i unrhyw ganllawiau a roddir iddynt at y diben gan Weinidogion Cymru.
- (6) Rhaid i Weinidogion Cymru ymgynghori â'r Ysgrifennydd Gwladol cyn rhoi canllawiau o dan is-adran (5).
- (7) At ddiben yr adran hon mae partner perthnasol awdurdod lleol yn berson sy'n bartner perthnasol yr awdurdod at ddibenion adran 162.

**165 Hyrwyddo integreiddio gofal a chymorth â gwasanaethau iechyd etc**

- (1) Rhaid i awdurdod lleol arfer ei swyddogaethau gwasanaethau cymdeithasol gyda golwg ar sicrhau bod darpariaeth gofal a chymorth yn cael ei hintegreiddio â darpariaeth iechyd a darpariaeth sy'n ymwneud ag iechyd pan fo'n ystyried y byddai hyn yn –
  - (a) hyrwyddo llesiant –
    - (i) plant o fewn ardal yr awdurdod,
    - (ii) oedolion o fewn ardal yr awdurdod y mae arnynt anghenion am ofal a chymorth, neu
    - (iii) gofalwyr o fewn ardal yr awdurdod y mae arnynt anghenion am gymorth,
  - (b) cyfrannu at atal neu oedi datblygiad anghenion gan blant neu oedolion o fewn ei ardal am ofal a chymorth neu ddatblygiad anghenion gan ofalwyr o fewn ei ardal am gymorth, neu

**164 Duty to co-operate and provide information in the exercise of social services functions**

- (1) If a local authority requests the co-operation of a person mentioned in subsection (4) in the exercise of any of its social services functions, the person must comply with the request unless the person considers that doing so would –
  - (a) be incompatible with the person’s own duties, or
  - (b) otherwise have an adverse effect on the exercise of the person’s functions.
- (2) If a local authority requests that a person mentioned in subsection (4) provides it with information it requires for the purpose of the exercise of any of its social services functions, the person must comply with the request unless the person considers that doing so would –
  - (a) be incompatible with the person’s own duties, or
  - (b) otherwise have an adverse effect on the exercise of the person’s functions.
- (3) A person who decides not to comply with a request under subsection (1) or (2) must give the local authority which made the request written reasons for the decision.
- (4) The persons are –
  - (a) a relevant partner of the local authority making the request;
  - (b) a local authority, a Local Health Board or an NHS trust which is not a relevant partner of the local authority making the request;
  - (c) a youth offending team for an area any part of which falls within the area of the local authority making the request.
- (5) A local authority and each of those persons mentioned in subsection (4) must in exercising their functions under this section have regard to any guidance given to them for the purpose by the Welsh Ministers.
- (6) The Welsh Ministers must consult the Secretary of State before giving guidance under subsection (5).
- (7) For the purpose of this section a relevant partner of a local authority is a person who is a relevant partner of the authority for the purposes of section 162.

**165 Promoting integration of care and support with health services etc**

- (1) A local authority must exercise its social services functions with a view to ensuring the integration of care and support provision with health provision and health-related provision where it considers that this would –
  - (a) promote the well-being of –
    - (i) children within the authority’s area,
    - (ii) adults within the authority’s area with needs for care and support, or
    - (iii) carers within the authority’s area with needs for support,
  - (b) contribute to the prevention or delay of the development by children or adults within its area of needs for care and support or the development by carers within its area of needs for support, or

- (c) gwella ansawdd y gofal a'r cymorth i blant ac oedolion, a'r cymorth i ofalwyr, a ddarperir yn ei ardal (gan gynnwys y canlyniadau sy'n cael eu sicrhau drwy ddarpariaeth o'r fath).
- (2) Ystyr "darpariaeth gofal a chymorth" yw –
  - (a) darpariaeth i ddiwallu anghenion plant ac oedolion am ofal a chymorth, a
  - (b) darpariaeth i ddiwallu anghenion gofalwyr am gymorth.
- (3) Ystyr "darpariaeth iechyd" yw darpariaeth o ran gwasanaethau iechyd fel rhan o'r gwasanaeth iechyd.
- (4) Ystyr "darpariaeth sy'n ymwneud ag iechyd" yw darpariaeth o ran gwasanaethau a allai effeithio ar iechyd unigolion ond nad ydynt –
  - (a) yn wasanaethau iechyd a ddarperir fel rhan o'r gwasanaeth iechyd, neu
  - (b) yn wasanaethau a ddarperir wrth arfer swyddogaethau gwasanaethau cymdeithasol.
- (5) Ystyr "gwasanaeth iechyd" yw'r gwasanaeth iechyd a barheir o dan adran 1(1) o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006.

*Trefniadau partneriaeth***166 Trefniadau partneriaeth**

- (1) Caiff rheoliadau ei gwneud yn ofynnol i drefniadau partneriaeth penodedig gael eu gwneud gan –
  - (a) dau neu fwy o awdurdodau lleol, neu
  - (b) un neu fwy o awdurdodau lleol ac un neu fwy o Fyrddau Iechyd Lleol.
- (2) Mae trefniadau partneriaeth yn drefniadau ar gyfer cyflawni –
  - (a) swyddogaethau awdurdod lleol a bennir mewn rheoliadau –
    - (i) sy'n swyddogaethau gwasanaethau cymdeithasol, neu
    - (ii) sydd ym marn Gweinidogion Cymru, yn cael effaith ar, neu yr effeithir arnynt gan, swyddogaethau gwasanaethau cymdeithasol awdurdod lleol, neu
  - (b) swyddogaethau a bennir mewn rheoliadau –
    - (i) sy'n swyddogaethau Bwrdd Iechyd Lleol, neu
    - (ii) sy'n ymddiriedolaeth GIG.
- (3) Rhaid i reoliadau o dan is-adran (1) wneud darpariaeth –
  - (a) sy'n pennu'r awdurdodau lleol a'r Byrddau Iechyd Lleol sydd i gymryd rhan mewn trefniadau partneriaeth;
  - (b) ynghylch ffurf trefniadau partneriaeth;
  - (c) ynghylch cyfrifoldeb am drefniadau partneriaeth, a dull eu gweithredu a'u rheoli;
  - (d) ar gyfer rhannu gwybodaeth rhwng y canlynol –
    - (i) awdurdodau lleol;
    - (ii) Byrddau Iechyd Lleol;

- (c) improve the quality of care and support for children and adults, and of support for carers, provided in its area (including the outcomes that are achieved from such provision).
- (2) “Care and support provision” means –
  - (a) provision to meet the needs of children and adults for care and support, and
  - (b) provision to meet carers’ needs for support.
- (3) “Health provision” means provision of health services as part of the health service.
- (4) “Health-related provision” means provision of services which may have an effect on the health of individuals but which are not –
  - (a) health services provided as part of the health service, or
  - (b) services provided in the exercise of social services functions.
- (5) The “health service” means the health service continued under section 1(1) of the National Health Service (Wales) Act 2006.

*Partnership arrangements*

**166 Partnership arrangements**

- (1) Regulations may require specified partnership arrangements to be made by –
  - (a) two or more local authorities, or
  - (b) one or more local authorities and one or more Local Health Boards.
- (2) Partnership arrangements are arrangements for carrying out –
  - (a) functions of a local authority specified in regulations which –
    - (i) are social services functions, or
    - (ii) in the opinion of the Welsh Ministers, have an effect on, or are affected by, a local authority’s social services functions, or
  - (b) functions specified in regulations of –
    - (i) a Local Health Board, or
    - (ii) an NHS trust.
- (3) Regulations under subsection (1) must make provision –
  - (a) specifying the local authorities and Local Health Boards that are to take part in partnership arrangements;
  - (b) about the form that partnership arrangements are to take;
  - (c) about the responsibility for, and the operation and management of, partnership arrangements;
  - (d) for sharing information between the following –
    - (i) local authorities;
    - (ii) Local Health Boards;

- (iii) unrhyw dimau neu bersonau sy'n cyflawni trefniadau partneriaeth yn unol â rheoliadau a wneir yn rhinwedd is-adran (4)(b);
  - (iv) unrhyw fyrddau partneriaeth a sefydlir o dan reoliadau o dan adran 168.
- (4) Caiff rheoliadau o dan is-adran (1) wneud darpariaeth –
- (a) i awdurdod lleol neu Fwrdd Iechyd Lleol gyflawni unrhyw un neu rai o'r swyddogaethau a bennwyd at ddibenion is-adran (2) at ddibenion trefniadau partneriaeth;
  - (b) ar gyfer sefydlu timau neu ar gyfer penodi personau i roi trefniadau partneriaeth ar waith ac ar gyfer neilltuo i'r timau neu'r personau hynny unrhyw un neu rai o'r swyddogaethau a bennwyd at ddibenion is-adran (2);
  - (c) sy'n pennu'r personau neu'r categorïau o bersonau y mae trefniadau partneriaeth i'w cyflawni er eu lles;
  - (d) ar gyfer atgyfeirio personau i wasanaethau a ddarperir yn unol â threfniadau partneriaeth.
- (5) Mae'r ddarpariaeth a ganiateir ei gwneud o dan is-adran (3)(c) yn cynnwys, er enghraifft, ddarpariaeth –
- (a) sy'n ei gwneud yn ofynnol bod trefniadau partneriaeth yn cael eu cyflawni o dan gyfarwyddyd bwrdd partneriaeth a sefydlwyd o dan reoliadau o dan adran 168;
  - (b) ynghylch adolygu achosion a atgyfeirir yn unol â threfniadau partneriaeth;
  - (c) ynghylch cwynion ac anghydfodau ynglŷn ag arfer swyddogaethau yn unol â threfniadau partneriaeth;
  - (d) ynghylch darparu gwybodaeth am drefniadau partneriaeth;
  - (e) ynghylch cyfrifon ac archwilio mewn cysylltiad â swyddogaethau a gyflawnir yn unol â threfniadau partneriaeth.
- (6) Nid yw trefniadau partneriaeth a wneir o dan reoliadau o dan yr adran hon yn effeithio ar –
- (a) atebolrwydd Bwrdd Iechyd Lleol am arfer unrhyw un neu rai o'i swyddogaethau,
  - (b) atebolrwydd awdurdod lleol am arfer unrhyw un neu rai o'i swyddogaethau, na
  - (c) unrhyw bŵer neu ddyletswydd i adennill ffioedd mewn cysylltiad â gwasanaethau a ddarperir wrth arfer unrhyw swyddogaethau awdurdod lleol.

### **167 Adnoddau ar gyfer trefniadau partneriaeth**

- (1) Caiff awdurdod lleol a Bwrdd Iechyd Lleol dalu tuag at y gwariant a dynnir at ddibenion trefniadau partneriaeth a wneir o dan reoliadau o dan adran 166 neu a dynnir yn gysylltiedig â'r trefniadau hynny –
- (a) drwy wneud taliadau'n uniongyrchol, neu
  - (b) drwy gyfrannu at gronfa gyfun.
- (2) Caiff awdurdod lleol a Bwrdd Iechyd Lleol ddarparu staff, nwyddau, gwasanaethau, llety neu adnoddau eraill at ddibenion trefniadau partneriaeth neu'n gysylltiedig â'r trefniadau hynny.

- (iii) any teams or persons carrying out partnership arrangements in accordance with regulations made by virtue of subsection (4)(b);
  - (iv) any partnership boards established under regulations under section 168.
- (4) Regulations under subsection (1) may make provision –
- (a) for a local authority or a Local Health Board to carry out any of the functions specified for the purposes of subsection (2) for the purposes of partnership arrangements;
  - (b) for the establishment of teams or for the appointment of persons to carry out partnership arrangements and for assigning to those teams or persons any of the functions specified for the purposes of subsection (2);
  - (c) specifying the persons or categories of persons for whose benefit partnership arrangements are to be carried out;
  - (d) for the referral of persons to services provided in accordance with partnership arrangements.
- (5) The provision that may be made under subsection (3)(c) includes, for example, provision –
- (a) requiring partnership arrangements to be carried out under the direction of a partnership board established under regulations under section 168;
  - (b) about the review of cases referred in accordance with partnership arrangements;
  - (c) about complaints and disputes about the exercise of functions in accordance with partnership arrangements;
  - (d) about the provision of information about partnership arrangements;
  - (e) about accounts and audit in respect of functions carried out in accordance with partnership arrangements.
- (6) Partnership arrangements made under regulations under this section do not affect –
- (a) the liability of a Local Health Board for the exercise of any of its functions,
  - (b) the liability of a local authority for the exercise of any of its functions, or
  - (c) any power or duty to recover charges in respect of services provided in the exercise of any local authority functions.

## **167 Resources for partnership arrangements**

- (1) A local authority and a Local Health Board may pay towards the expenditure incurred for the purpose of, or in connection with, partnership arrangements made under regulations under section 166 –
- (a) by making payments directly, or
  - (b) by contributing to a pooled fund.
- (2) A local authority and a Local Health Board may provide staff, goods, services, accommodation or other resources for the purpose of, or in connection with, partnership arrangements.

- (3) Caiff rheoliadau wneud darpariaeth bellach ynghylch cyllido trefniadau partneriaeth, gan gynnwys (ymhlith pethau eraill) darpariaeth—
- sy'n ei gwneud yn ofynnol bod awdurdod lleol neu Fwrdd Iechyd Lleol yn sefydlu ac yn cynnal cronfa gyfun;
  - ar gyfer dyfarnu swm y cyfraniadau sydd i'w gwneud gan awdurdod lleol neu Fwrdd Iechyd Lleol i gronfa gyfun;
  - ynghylch gwariant ar gyfer swyddi neu categorïau o swyddi a sefydlir at ddiben trefniadau partneriaeth neu'n gysylltiedig â'r trefniadau hynny;
  - ynghylch gwariant ar gyfer gwasanaethau a ddarperir yn unol â threfniadau partneriaeth;
  - ynghylch gwariant ar gyfer gweinyddu trefniadau partneriaeth;
  - ynghylch gwariant at unrhyw ddiben arall sy'n gysylltiedig â threfniadau partneriaeth.
- (4) Yn yr adran hon ystyr "cronfa gyfun" yw cronfa a sefydlwyd ac a gynhaliwyd gan awdurdod lleol neu Fwrdd Iechyd Lleol, y caniateir i daliadau gael eu tynnu ohoni tuag at y gwariant a dynnir at ddibenion trefniadau partneriaeth neu'n gysylltiedig â'r trefniadau hynny.

#### 168 Byrddau partneriaeth

- (1) Caiff rheoliadau ei gwneud yn ofynnol i fwrdd partneriaeth mewn cysylltiad â threfniadau partneriaeth a wneir o dan reoliadau o dan adran 166 gael ei sefydlu gan—
- un neu fwy o awdurdodau lleol,
  - un neu fwy o Fyrddau Iechyd Lleol, neu
  - un neu fwy o awdurdodau lleol ac un neu fwy o Fyrddau Iechyd Lleol.
- (2) Caiff rheoliadau wneud darpariaeth ynghylch y canlynol—
- aelodaeth byrddau partneriaeth;
  - talw cydnabyddiaeth ariannol a lwfansau i aelodau byrddau partneriaeth;
  - amcanion a swyddogaethau byrddau partneriaeth;
  - y gweithdrefnau sydd i'w dilyn gan fyrddau partneriaeth;
  - gwaith llunio adroddiadau gan fyrddau partneriaeth ac ynghylch eu ffurf, eu cynnwys, eu hamseru a'u cyhoeddi.

#### 169 Canllawiau ynghylch trefniadau partneriaeth

- (1) Rhaid i Weinidogion Cymru ddyroddi, ac o bryd i'w gilydd ddiwygio, canllawiau ynghylch trefniadau partneriaeth a wneir o dan reoliadau o dan adran 166.
- (2) Wrth arfer swyddogaethau a roddir iddynt o dan neu yn rhinwedd adrannau 166 i 168 rhaid i'r canlynol roi sylw i'r canllawiau hynny ac i unrhyw ganlyniadau a bennir mewn ddatganiad a ddyroddir o dan adran 8—
- awdurdod lleol;
  - Bwrdd Iechyd Lleol;



- (3) Regulations may make further provision about the funding of partnership arrangements, including (among other things) provision—
  - (a) requiring a local authority or a Local Health Board to establish and maintain a pooled fund;
  - (b) for determining the amount of contributions to be made by a local authority or a Local Health Board to a pooled fund;
  - (c) about expenditure for posts or categories of post established for the purpose of, or in connection with, partnership arrangements;
  - (d) about expenditure for services provided in accordance with partnership arrangements;
  - (e) about expenditure for the administration of partnership arrangements;
  - (f) about expenditure for any other purpose connected to partnership arrangements.
- (4) In this section “a pooled fund” means a fund established and maintained by a local authority or a Local Health Board, out of which the payments may be made towards the expenditure incurred for the purpose of, or in connection with, partnership arrangements.

#### **168 Partnership boards**

- (1) Regulations may require a partnership board in respect of partnership arrangements made under regulations under section 166 to be established by—
  - (a) one or more local authorities,
  - (b) one or more Local Health Boards, or
  - (c) one or more local authorities and one or more Local Health Boards.
- (2) Regulations may make provision about—
  - (a) the membership of partnership boards;
  - (b) the payment of remuneration and allowances to members of partnership boards;
  - (c) the objectives and functions of partnership boards;
  - (d) the procedures to be followed by partnership boards;
  - (e) the making of reports by partnership boards and their form, content, timing and publication.

#### **169 Guidance about partnership arrangements**

- (1) The Welsh Ministers must issue, and from time to time revise, guidance about partnership arrangements made under regulations under section 166.
- (2) In exercising functions conferred on them under or by virtue of sections 166 to 168, the following must have regard to that guidance and to any outcomes specified in a statement issued under section 8—
  - (a) a local authority;
  - (b) a Local Health Board;

- (c) tim neu berson sy'n cyflawni trefniadau partneriaeth yn unol â rheoliadau a wneir yn rhinwedd adran 166(4)(b);
- (d) bwrdd partneriaeth a sefydlwyd o dan reoliadau o dan adran 168.

*Mabwysiadu*

**170 Gwasanaeth mabwysiadu: trefniadau ar y cyd**

Ar ôl adran 3 o Ddeddf Mabwysiadu a Phlant 2002 mewnosoder –

**“3A Wales - joint arrangements**

- (1) The Welsh Ministers may direct two or more local authorities in Wales to enter into specified arrangements with each other in relation to the provision of specified services maintained under section 3(1).
- (2) Before giving a direction under this section the Welsh Ministers must consult the local authorities to which it is to be given.
- (3) Specified arrangements may include (among other things) arrangements –
  - (a) as to the establishment and maintenance of a pooled fund;
  - (b) as to the provision of staff, goods, services, accommodation or other resources;
  - (c) for determining the amount of payment or other contribution to be made towards relevant expenditure by the authorities which are parties to the arrangements;
  - (d) for working in conjunction with registered adoption societies;
  - (e) as to the responsibility for, and the operation and management of, the arrangements;
  - (f) as to the establishment and operation of a panel to make recommendations as to –
    - (i) whether a child should be placed for adoption;
    - (ii) whether a prospective adopter is suitable to adopt a child;
    - (iii) whether a particular child should be placed for adoption with a particular prospective adopter;
  - (g) for resolving complaints about services provided in accordance with the specified arrangements;
  - (h) as to the determination of disputes between the authorities which are parties to the arrangements.
- (4) Where the Welsh Ministers exercise their power of direction under subsection (1) they must within 21 days of the giving of the direction –
  - (a) report to the National Assembly for Wales that the power has been exercised, and

- (c) a team or person carrying out partnership arrangements in accordance with regulations made by virtue of section 166(4)(b);
- (d) a partnership board established under regulations under section 168.

*Adoption*

**170 Adoption service: joint arrangements**

Insert after section 3 of the Adoption and Children Act 2002 –

**“3A Wales - joint arrangements**

- (1) The Welsh Ministers may direct two or more local authorities in Wales to enter into specified arrangements with each other in relation to the provision of specified services maintained under section 3(1).
- (2) Before giving a direction under this section the Welsh Ministers must consult the local authorities to which it is to be given.
- (3) Specified arrangements may include (among other things) arrangements –
  - (a) as to the establishment and maintenance of a pooled fund;
  - (b) as to the provision of staff, goods, services, accommodation or other resources;
  - (c) for determining the amount of payment or other contribution to be made towards relevant expenditure by the authorities which are parties to the arrangements;
  - (d) for working in conjunction with registered adoption societies;
  - (e) as to the responsibility for, and the operation and management of, the arrangements;
  - (f) as to the establishment and operation of a panel to make recommendations as to –
    - (i) whether a child should be placed for adoption;
    - (ii) whether a prospective adopter is suitable to adopt a child;
    - (iii) whether a particular child should be placed for adoption with a particular prospective adopter;
  - (g) for resolving complaints about services provided in accordance with the specified arrangements;
  - (h) as to the determination of disputes between the authorities which are parties to the arrangements.
- (4) Where the Welsh Ministers exercise their power of direction under subsection (1) they must within 21 days of the giving of the direction –
  - (a) report to the National Assembly for Wales that the power has been exercised, and

(b) lay a copy of the direction before the National Assembly for Wales.

(5) In this section—

“a pooled fund” is a fund made up of contributions by two or more local authorities out of which payments may be made towards relevant expenditure;

“relevant expenditure” is expenditure incurred in connection with the provision of services provided in accordance with the specified arrangements;

“specified” means specified in a direction under this section.”

## RHAN 10

### CWYNION, SYLWADAU A GWASANAETHAU EIRIOLI

#### PENNOD 1

#### CWYNION A SYLWADAU AM WASANAETHAU CYMDEITHASOL

#### 171 Cwynion ynghylch gwasanaethau cymdeithasol

- (1) Caiff rheoliadau wneud darpariaeth ynghylch ystyried cwynion ynghylch—
  - (a) y modd y mae awdurdod lleol yn cyflawni ei swyddogaethau gwasanaethau cymdeithasol;
  - (b) y gwasanaethau sy'n cael eu darparu gan berson arall yn unol â threfniadau a wnaed gan awdurdod lleol wrth gyflawni'r swyddogaethau hynny;
  - (c) y gwasanaethau sy'n cael eu darparu gan awdurdod lleol neu berson arall yn unol â threfniadau a wnaed gan yr awdurdod o dan adran 33 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006 neu adran 75 o Ddeddf y Gwasanaeth Iechyd Gwladol 2006 mewn perthynas â swyddogaethau corff GIG (o fewn ystyr “NHS body” yn yr adran berthnasol) i'r graddau y maent yn arferadwy o ran Cymru.
- (2) Caiff y rheoliadau ddarparu bod cwyn yn cael ei hystyried gan un neu fwy o'r canlynol—
  - (a) yr awdurdod lleol y gwneir y gwyn amdano mewn cysylltiad â'i swyddogaethau;
  - (b) panel annibynnol a sefydlwyd o dan y rheoliadau;
  - (c) unrhyw berson neu gorff arall ac eithrio un o Weinidogion y Goron.
- (3) Caiff y rheoliadau ddarparu bod cwyn neu unrhyw fater arall a godir gan y gwyn—
  - (a) yn cael ei chyfeirio neu ei gyfeirio at Ombwdsmon Gwasanaethau Cyhoeddus Cymru (“yr Ombwdsmon”) er mwyn i'r Ombwdsmon ystyried p'un a yw'n mynd i ymchwilio i'r gwyn neu'r mater o dan Ddeddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2005 (ac yn cael ei thrin neu ei drin fel cwyn a gyfeiriwyd yn briodol o dan adran 2(3) o'r Ddeddf honno);
  - (b) yn cael ei chyfeirio neu ei gyfeirio at unrhyw berson neu gorff arall er mwyn i'r person neu'r corff hwnnw ystyried p'un a yw am gymryd unrhyw gamau nad dydynt yn rhai sydd i'w cymryd o dan y rheoliadau.

(b) lay a copy of the direction before the National Assembly for Wales.

(5) In this section—

“a pooled fund” is a fund made up of contributions by two or more local authorities out of which payments may be made towards relevant expenditure;

“relevant expenditure” is expenditure incurred in connection with the provision of services provided in accordance with the specified arrangements;

“specified” means specified in a direction under this section.”

## **PART 10**

### **COMPLAINTS, REPRESENTATIONS AND ADVOCACY SERVICES**

#### **CHAPTER 1**

##### **COMPLAINTS AND REPRESENTATIONS ABOUT SOCIAL SERVICES**

#### **171 Complaints about social services**

- (1) Regulations may make provision about the consideration of complaints relating to—
  - (a) the discharge by a local authority of its social services functions;
  - (b) the provision of services by another person pursuant to arrangements made by a local authority in the discharge of those functions;
  - (c) the provision of services by a local authority or another person in pursuance of arrangements made by the authority under section 33 of the National Health Service (Wales) Act 2006 or section 75 of the National Health Service Act 2006 in relation to the functions of an NHS body (within the meaning of the relevant section) so far as exercisable in relation to Wales.
- (2) The regulations may provide for a complaint to be considered by one or more of the following—
  - (a) the local authority in respect of whose functions the complaint is made;
  - (b) an independent panel established under the regulations;
  - (c) any other person or body other than a Minister of the Crown.
- (3) The regulations may provide for a complaint or any matter raised by the complaint—
  - (a) to be referred to the Public Services Ombudsman for Wales (“the Ombudsman”) for the Ombudsman to consider whether to investigate the complaint or matter under the Public Services Ombudsman (Wales) Act 2005 (and to be treated by the Ombudsman as a complaint duly referred under section 2(3) of that Act);
  - (b) to be referred to any other person or body for that person or body to consider whether to take any action otherwise than under the regulations.

- (4) Ond ni chaiff y rheoliadau wneud darpariaeth ynghylch cwynion y gellir eu hystyried yn sylwadau o dan adran 174 neu 176.

**172 Cwynion ynghylch gwasanaethau cymdeithasol: materion atodol**

- (1) Mae'r canlynol yn enghreifftiau pellach o'r ddarpariaeth y caniateir ei gwneud mewn rheoliadau o dan adran 171.
- (2) Caiff y rheoliadau wneud darpariaeth ynghylch –
- (a) y personau a gaiff wneud cwyn;
  - (b) y cwynion y caniateir, neu na chaniateir, iddynt gael eu gwneud;
  - (c) y personau y caniateir gwneud cwynion iddynt;
  - (d) y cwynion nad oes angen iddynt gael eu hystyried;
  - (e) y cyfnod y mae'n rhaid gwneud unrhyw gwynion ynddo;
  - (f) y weithdrefn sydd i'w dilyn wrth wneud ac ystyried cwyn;
  - (g) materion sydd wedi eu heithrio rhag cael eu hystyried;
  - (h) llunio adroddiad neu argymhellion ynghylch cwyn;
  - (i) y camau gweithredu sydd i'w cymryd o ganlyniad i gwyn.
- (3) Caiff y rheoliadau –
- (a) ei gwneud yn ofynnol i berson neu gorff y gwneir cwyn amdano i wneud taliad mewn perthynas ag ystyried y gwyn o dan y rheoliadau,
  - (b) ei gwneud yn ofynnol bod taliad o'r math hwnnw –
    - (i) yn cael ei wneud i berson neu gorff a bennir yn y rheoliadau, a
    - (ii) yn swm a bennir yn y rheoliadau, neu a gyfrifir neu a ddyfernir o dan y rheoliadau, ac
  - (c) ei gwneud yn ofynnol i banel annibynnol adolygu'r swm y gellir ei godi o dan baragraff (a) mewn achos penodol ac, os yw hynny'n briodol ym marn y panel, rhoi swm llai yn ei le.
- (4) Caiff y rheoliadau ei gwneud yn ofynnol i berson neu gorff sy'n ystyried cwynion o dan y rheoliadau i roi cyhoeddusrwydd i'r gweithdrefnau sydd i'w dilyn o dan y rheoliadau.
- (5) Caiff y rheoliadau hefyd –
- (a) darparu bod gwahanol rannau o gwyn neu agweddau gwahanol arni yn cael eu trin yn wahanol;
  - (b) ei gwneud yn ofynnol bod gwybodaeth neu ddogfennau yn cael eu dangos er mwyn galluogi cwyn i gael ei hystyried yn briodol;
  - (c) awdurdodi bod gwybodaeth neu ddogfennau sy'n berthnasol i gwyn yn cael eu datgelu i berson neu gorff sy'n ystyried cwyn o dan y rheoliadau neu y mae cwyn wedi ei chyfeirio ato (er gwaethaf unrhyw reol cyfraith gyffredin a fyddai, fel arall, yn gwahardd y datgeliad neu'n cyfyngu arno).

- (4) But the regulations may not make provision about complaints capable of being considered as representations under section 174 or 176.

**172 Complaints about social services: supplementary**

- (1) The following are further examples of the provision which may be made in regulations under section 171.
- (2) The regulations may make provision about –
  - (a) the persons who may make a complaint;
  - (b) the complaints which may, or may not, be made;
  - (c) the persons to whom complaints may be made;
  - (d) complaints which need not be considered;
  - (e) the period within which complaints must be made;
  - (f) the procedure to be followed in making and considering a complaint;
  - (g) matters which are excluded from consideration;
  - (h) the making of a report or recommendations about a complaint;
  - (i) the action to be taken as a result of a complaint.
- (3) The regulations may –
  - (a) require a person about whom, or a body about which, a complaint is made to make a payment in relation to the consideration of the complaint under the regulations,
  - (b) require a payment of that kind –
    - (i) to be made to a person or body specified in the regulations, and
    - (ii) to be of an amount specified in, or calculated or determined under, the regulations, and
  - (c) require an independent panel to review the amount chargeable under paragraph (a) in a particular case and, if the panel thinks fit, to substitute a lesser amount.
- (4) The regulations may require a person who, or a body which, considers complaints under the regulations to give publicity to the procedures to be followed under the regulations.
- (5) The regulations may also –
  - (a) provide for different parts or aspects of a complaint to be treated differently;
  - (b) require the production of information or documents to enable a complaint to be properly considered;
  - (c) authorise the disclosure of information or documents relevant to a complaint to a person who, or a body which, is considering a complaint under the regulations or to whom a complaint has been referred (despite any rule of common law that would otherwise prohibit or restrict the disclosure).

- (6) Caiff y rheoliadau wneud darpariaeth ynghylch cwynion sy'n codi materion sydd i'w hystyried o dan y rheoliadau a materion sydd i'w hystyried o dan weithdrefnau cwyno statudol eraill; gan gynnwys (ymhlith pethau eraill) darpariaeth i—
- (a) galluogi cwyn o'r fath i gael ei gwneud o dan y rheoliadau, a
  - (b) sicrhau bod materion sydd i'w hystyried o dan weithdrefnau cwyno statudol eraill yn cael eu trin fel pe baent yn faterion a godwyd mewn cwyn a wnaed o dan y gweithdrefnau priodol.
- (7) Yn is-adran (6) ystyr "gweithdrefnau cwyno statudol" yw gweithdrefnau a sefydlwyd gan neu o dan ddeddfiad o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru.

### **173 Cynhorthwy i achwynwyr**

- (1) Caiff rheoliadau ei gwneud yn ofynnol i awdurdodau lleol—
- (a) gwneud trefniadau i roi cynhorthwy (ar ffurf cynrychiolaeth neu fel arall) i bersonau sy'n gwneud, neu'n bwriadu gwneud, cwyn o dan reoliadau a wnaed o dan adran 171, a
  - (b) rhoi cyhoeddusrwydd i'r trefniadau ar gyfer darparu'r cynhorthwy hwnnw.
- (2) Caiff y rheoliadau, er enghraifft, wneud darpariaeth ynghylch—
- (a) y personau y mae'n rhaid darparu cynhorthwy iddynt;
  - (b) y math o gynhorthwy y mae'n rhaid ei ddarparu i'r personau hynny;
  - (c) y personau y caniateir i'r cynhorthwy hwnnw gael ei ddarparu ganddynt;
  - (d) y cam neu'r camau wrth ystyried cwyn y mae'n rhaid darparu cynhorthwy mewn perthynas ag ef neu hwy;
  - (e) y math o gyhoeddusrwydd y mae'n rhaid ei roi i'r trefniadau ar gyfer darparu'r cynhorthwy hwnnw.

### **174 Sylwadau sy'n ymwneud â phlant penodol etc**

- (1) Rhaid i awdurdod lleol sefydlu gweithdrefn ar gyfer ystyried y canlynol—
- (a) sylwadau (gan gynnwys cwynion) a wneir i'r awdurdod gan berson y mae is-adran (3) yn gymwys iddo ynghylch y modd y mae'n cyflawni swyddogaeth gymhwysol mewn perthynas â phlentyn sy'n derbyn gofal ganddo, neu blentyn nad yw'n derbyn gofal ganddo ond y gall fod arno anghenion am ofal a chymorth;
  - (b) sylwadau (gan gynnwys cwynion) a wneir i'r awdurdod gan berson y mae is-adran (4) yn gymwys iddo ynghylch y modd y mae'n cyflawni swyddogaethau o dan adran 14F o Ddeddf Plant 1989 (gwasanaethau cynnal gwarcheidiaeth arbennig) sydd wedi eu pennu mewn rheoliadau;
  - (c) sylwadau (gan gynnwys cwynion) a wneir i'r awdurdod gan berson y mae is-adran (5) yn gymwys iddo ynghylch y modd mae'n cyflawni swyddogaethau o dan Ddeddf Mabwysiadu a Phlant 2002 sydd wedi eu pennu mewn rheoliadau.



- (6) The regulations may make provision about complaints which raise both matters falling to be considered under the regulations and matters falling to be considered under other statutory complaints procedures; including (among other things) provision to—
  - (a) enable a complaint of that kind to be made under the regulations, and
  - (b) secure that matters falling to be considered under other statutory complaints procedures are treated as if they had been raised in a complaint made under the appropriate procedures.
- (7) In subsection (6) “statutory complaints procedures” means procedures established by or under an enactment within the legislative competence of the National Assembly for Wales.

**173 Assistance for complainants**

- (1) Regulations may require local authorities to—
  - (a) make arrangements to provide assistance (by way of representation or otherwise) to persons who make, or intend to make, a complaint under regulations made under section 171, and
  - (b) give publicity to the arrangements for the provision of that assistance.
- (2) The regulations may, for example, make provision about—
  - (a) the persons to whom assistance must be provided;
  - (b) the kind of assistance that must be provided to those persons;
  - (c) the persons by whom that assistance may be provided;
  - (d) the stage or stages in the consideration of a complaint in relation to which that assistance must be provided;
  - (e) the kind of publicity that must be given to the arrangements for the provision of that assistance.

**174 Representations relating to certain children etc**

- (1) A local authority must establish a procedure for considering—
  - (a) representations (including complaints) made to the authority by a person to whom subsection (3) applies about its discharge of a qualifying function in relation to a child who is being looked after by it, or who is not being looked after by it but may have needs for care and support;
  - (b) representations (including complaints) made to the authority by a person to whom subsection (4) applies about its discharge of functions under section 14F of the Children Act 1989 (special guardianship support services) which have been specified in regulations;
  - (c) representations (including complaints) made to the authority by a person to whom subsection (5) applies about its discharge of functions under the Adoption and Children Act 2002 which have been specified in regulations.

- (2) Mae'r canlynol yn swyddogaethau cymhwysol at ddibenion is-adran (1)(a) –
- (a) swyddogaethau sy'n arferadwy mewn perthynas â phlentyn o dan Rannau 3 i 6 (ac eithrio swyddogaethau sy'n arferadwy mewn perthynas â phlentyn fel gofalwr);
  - (b) swyddogaethau sy'n arferadwy mewn perthynas â phlentyn o dan Ran 7;
  - (c) swyddogaethau o dan Ran 4 neu Ran 5 o Ddeddf Plant 1989 sydd wedi eu pennu mewn rheoliadau.
- (3) Mae'r is-adran hon (sy'n ymwneud â sylwadau ynghylch cyflawni swyddogaethau cymhwysol) yn gymwys i'r canlynol –
- (a) y plentyn sy'n derbyn gofal gan awdurdod lleol, neu'r plentyn nad yw'n derbyn gofal ganddo ond y gall fod arno anghenion am ofal a chymorth;
  - (b) rhiant y plentyn;
  - (c) person nad yw'n rhiant i'r plentyn ond sydd â chyfrifoldeb rhiant dros y plentyn;
  - (d) rhiant maeth awdurdod lleol y lleolir y plentyn gydag ef o dan adran 81(5);
  - (e) darpar fabwysiad y lleolir y plentyn gydag ef o dan adran 81(11);
  - (f) unrhyw berson arall y mae'r awdurdod lleol yn ystyried bod ganddo ddiddordeb digonol yn lles y plentyn i gyfiawnhau bod ei sylwadau yn cael eu hystyried gan yr awdurdod.
- (4) Mae'r is-adran hon (sy'n ymwneud â sylwadau am gyflawni swyddogaethau penodedig o dan adran 14F o Ddeddf Plant 1989) yn gymwys i'r canlynol –
- (a) plentyn y mae gorchymyn gwarcheidiaeth arbennig mewn grym mewn perthynas ag ef;
  - (b) gwarcheidwad arbennig neu riant y plentyn;
  - (c) person sydd wedi gwneud cais am asesiad o dan adran 14F(3) neu (4) o Ddeddf Plant 1989;
  - (d) unrhyw berson arall y mae'r awdurdod lleol yn ystyried bod ganddo ddiddordeb digonol yn lles y plentyn i gyfiawnhau bod ei sylwadau yn cael eu hystyried gan yr awdurdod.
- (5) Mae'r is-adran hon (sy'n ymwneud â sylwadau am y modd y mae swyddogaethau penodedig yn cael eu cyflawni o dan Ddeddf Mabwysiadu a Phlant 2002) yn gymwys i'r canlynol –
- (a) person a grybwyllwyd yn adran 3(1) o Ddeddf Mabwysiadu a Phlant 2002 (y personau hynny y gwneir darpariaeth ar gyfer eu hanghenion gan y Gwasanaeth Mabwysiadu) ac unrhyw berson arall y mae trefniadau ar gyfer darparu gwasanaethau mabwysiadu (o fewn ystyr "adoption services" yn y Ddeddf honno) yn ei rychwantu;
  - (b) unrhyw berson arall y mae'r awdurdod yn barnu bod ganddo ddiddordeb digonol mewn plentyn sydd wedi ei fabwysiadu neu a allai gael ei fabwysiadu i gyfiawnhau bod ei sylwadau yn cael eu hystyried gan yr awdurdod.

- (2) The following are qualifying functions for the purposes of subsection (1)(a) –
  - (a) functions exercisable in relation to a child under Parts 3 to 6 (other than functions which are exercisable in relation to the child as a carer);
  - (b) functions exercisable in relation to a child under Part 7;
  - (c) functions under Part 4 or Part 5 of the Children Act 1989 which have been specified in regulations.
- (3) This subsection (relating to representations about the discharge of qualifying functions) applies to –
  - (a) the child who is being looked after by the local authority, or who is not being looked after by it but may have needs for care and support;
  - (b) a parent of the child;
  - (c) a person who is not a parent of the child but who has parental responsibility for the child;
  - (d) a local authority foster parent with whom the child is placed under section 81(5);
  - (e) a prospective adopter with whom the child is placed under section 81(11);
  - (f) any other person whom the local authority considers has a sufficient interest in the child's welfare to warrant his or her representations being considered by the authority.
- (4) This subsection (relating to representations about the discharge of specified functions under section 14F of the Children Act 1989) applies to –
  - (a) a child in relation to whom a special guardianship order is in force;
  - (b) a special guardian or a parent of the child;
  - (c) a person who has applied for an assessment under section 14F(3) or (4) of the Children Act 1989;
  - (d) any other person whom the local authority considers has a sufficient interest in the welfare of the child to warrant his or her representations being considered by the authority.
- (5) This subsection (relating to representations about the discharge of specified functions under the Adoption and Children Act 2002) applies to –
  - (a) a person mentioned in section 3(1) of the Adoption and Children Act 2002 (persons for whose needs provision is made by the Adoption Service) and any other person to whom arrangements for the provision of adoption services (within the meaning of that Act) extend;
  - (b) any other person whom the authority considers has sufficient interest in a child who is or may be adopted to warrant his or her representations being considered by it.

- (6) Rhaid i awdurdod lleol sicrhau (yn ddarostyngedig i is-adran (8)) fod y weithdrefn y mae'n ei sefydlu at ddibenion yr adran hon yn sicrhau bod o leiaf un person nad yw'n aelod o'r awdurdod lleol nac yn swyddog iddo yn cymryd rhan yn y camau a ganlyn –
  - (a) ystyried unrhyw sylw y mae'r adran hon yn gymwys iddo, a
  - (b) unrhyw drafodaethau sy'n cael eu cynnal gan yr awdurdod am y camau sydd i'w cymryd, o ganlyniad i'r ystyried hwnnw, mewn perthynas â'r person y mae'r sylw yn ymwneud ag ef.
- (7) Caiff rheoliadau wneud darpariaeth bellach am y weithdrefn y mae'n rhaid ei sefydlu at ddibenion yr adran hon.
- (8) Caiff y rheoliadau ddarparu (ymhlith pethau eraill) nad yw is-adran (6) yn gymwys mewn perthynas ag ystyried neu drafod sy'n digwydd er mwyn datrys yn anffurfiol y materion a godwyd mewn sylw.
- (9) Rhaid i awdurdod lleol roi cyhoeddusrwydd i'r weithdrefn y mae'n ei sefydlu at ddibenion yr adran hon.

**175 Sylwadau sy'n ymwneud â phlant penodol etc: darpariaeth bellach**

- (1) Rhaid i awdurdod lleol, wrth iddo roi ystyriaeth i sylwadau y mae adran 174 yn gymwys iddynt, gydymffurfio â gofynion a osodwyd gan neu o dan is-adrannau (6) i (8) o'r adran honno.
- (2) Caiff rheoliadau ei gwneud yn ofynnol i awdurdodau lleol fonitro'r camau y maent wedi eu cymryd i sicrhau eu bod yn cydymffurfio â'r gofynion hynny.
- (3) Caiff rheoliadau osod terfynau amser ar gyflwyno sylwadau y mae adran 174 yn gymwys iddynt.
- (4) Pan fo sylw wedi ei ystyried o dan weithdrefn a sefydlwyd at ddibenion adran 174, rhaid i awdurdod lleol –
  - (a) rhoi sylw i ganfyddiadau'r personau a roddodd ystyriaeth i'r sylw, a
  - (b) cymryd unrhyw gamau sy'n rhesymol ymarferol i hysbysu (yn ysgrifenedig) y personau a grybwyllir yn is-adran (5) am benderfyniad yr awdurdod a'i resymau dros wneud y penderfyniad hwnnw ac am unrhyw gamau gweithredu y mae wedi eu cymryd neu y mae'n bwriadu eu cymryd.
- (5) Y personau hynny yw –
  - (a) y person a gyflwynodd y sylw,
  - (b) y person y mae'r sylw yn ymwneud ag ef (os yw'n wahanol), ac
  - (c) unrhyw berson arall y mae'n ymddangos i'r awdurdod yr effeithir arno yn ôl pob tebyg.
- (6) Pan fo'r person a grybwyllir yn is-adran (5)(b) neu (c) yn blentyn, dim ond pan fo'r awdurdod lleol o'r farn bod gan y plentyn ddealltwriaeth ddigonol y mae'r ddyletswydd o dan is-adran (4)(b) yn gymwys.

- (6) A local authority must ensure (subject to subsection (8)) that the procedure which it establishes for the purposes of this section secures that at least one person who is not a member or officer of the local authority takes part in –
  - (a) the consideration of any representation to which this section applies, and
  - (b) any discussions which are held by the authority about the action to be taken, as a result of that consideration, in relation to the person to whom the representation relates.
- (7) Regulations may make further provision about the procedure which must be established for the purposes of this section.
- (8) The regulations may provide (among other things) that subsection (6) does not apply in relation to a consideration or discussion which takes place for the purpose of resolving informally the matters raised in a representation.
- (9) A local authority must give publicity to the procedure which it establishes for the purposes of this section.

**175 Representations relating to certain children etc: further provision**

- (1) A local authority, in considering representations to which section 174 applies, must comply with requirements imposed by or under subsections (6) to (8) of that section.
- (2) Regulations may require local authorities to monitor the steps they have taken to ensure that they comply with those requirements.
- (3) Regulations may impose time limits on the making of representations to which section 174 applies.
- (4) Where a representation has been considered under a procedure established for the purposes of section 174, the local authority must –
  - (a) have regard to the findings of the persons who considered the representation, and
  - (b) take such steps as are reasonably practicable to notify (in writing) the persons mentioned in subsection (5) of the authority's decision and its reasons for taking that decision and of any action which it has taken or proposes to take.
- (5) The persons are –
  - (a) the person who made the representation,
  - (b) the person to whom the representation relates (if different), and
  - (c) any other person who appears to the authority likely to be affected.
- (6) Where the person mentioned in subsection (5)(b) or (c) is a child, the duty under subsection (4)(b) applies only where the local authority considers that the child has sufficient understanding.

**176 Sylwadau sy'n ymwneud â phlant a fu gynt yn derbyn gofal etc**

- (1) Rhaid i awdurdod lleol sefydlu gweithdrefn ar gyfer ystyried sylwadau (gan gynnwys cwynion) a gyflwynir iddo gan bersonau y mae is-adran (2) yn gymwys iddynt ynghylch cyflawni ei swyddogaethau o dan Rannau 3 i 7 mewn perthynas â'r personau hynny.
- (2) Mae'r is-adran hon yn gymwys i—
  - (a) personau ifanc categori 2;
  - (b) personau ifanc categori 3;
  - (c) personau ifanc categori 4;
  - (d) personau ifanc categori 5;
  - (e) personau ifanc categori 6;
  - (f) personau o dan 25 oed, a fyddai, pe baent o dan 21 oed—
    - (i) yn bersonau ifanc categori 5, neu
    - (ii) yn bersonau ifanc categori 6 sy'n dod o fewn y categori hwnnw yn rhinwedd adran 104(3)(a).
- (3) Caiff rheoliadau osod—
  - (a) gofynion mewn perthynas â'r weithdrefn y mae'n rhaid ei sefydlu;
  - (b) terfynau amser ar gyfer cyflwyno sylwadau y mae'r weithdrefn yn gymwys iddynt.
- (4) Rhaid i awdurdod lleol—
  - (a) rhoi cyhoeddusrwydd i'r weithdrefn y mae'n ei sefydlu at ddibenion yr adran hon;
  - (b) cydymffurfio ag unrhyw ofynion a osodwyd o dan is-adran (3)(a) wrth roi ystyriaeth i sylwadau y mae'r adran hon yn gymwys iddynt.
- (5) Yn yr adran hon mae i "person ifanc categori 2", "person ifanc categori 3", "person ifanc categori 4", "person ifanc categori 5" a "person ifanc categori 6" yr ystyr a roddir gan adran 104.

**177 Rhoi ystyriaeth bellach i sylwadau**

- (1) Caiff rheoliadau wneud darpariaeth ar gyfer rhoi ystyriaeth bellach i sylwadau (gan gynnwys cwynion) sy'n dod o fewn adran 174 neu 176.
- (2) Caiff y rheoliadau, er enghraifft, wneud darpariaeth—
  - (a) ar gyfer rhoi ystyriaeth bellach i sylw gan banel annibynnol a sefydlwyd o dan y rheoliadau;
  - (b) ynghylch y weithdrefn sydd i'w dilyn wrth roi ystyriaeth bellach i sylw;
  - (c) ar gyfer cyflwyno argymhellion ynghylch y camau gweithredu sydd i'w cymryd o ganlyniad i roi ystyriaeth bellach i sylw;
  - (d) ynghylch llunio adroddiadau am roi ystyriaeth bellach i sylw;
  - (e) ynghylch y camau gweithredu sydd i'w cymryd gan yr awdurdod lleol o dan sylw o ganlyniad i roi ystyriaeth bellach i sylw;

**176 Representations relating to former looked after children etc**

- (1) A local authority must establish a procedure for considering representations (including complaints) made to it by persons to whom subsection (2) applies about the discharge of its functions under Parts 3 to 7 in relation to those persons.
- (2) This subsection applies to—
  - (a) category 2 young persons;
  - (b) category 3 young persons;
  - (c) category 4 young persons;
  - (d) category 5 young persons;
  - (e) category 6 young persons;
  - (f) persons under the age of 25 who, if they were under the age of 21, would be—
    - (i) category 5 young persons, or
    - (ii) category 6 young persons falling within that category by virtue of section 104(3)(a).
- (3) Regulations may impose—
  - (a) requirements in relation to the procedure that must be established;
  - (b) time limits on the making of representations to which the procedure applies.
- (4) A local authority must—
  - (a) give publicity to the procedure which it establishes for the purposes of this section;
  - (b) comply with any requirements imposed under subsection (3)(a) in considering representations to which this section applies.
- (5) In this section “category 2 young person”, “category 3 young person”, “category 4 young person”, “category 5 young person” and “category 6 young person” have the meanings given by section 104.

**177 Further consideration of representations**

- (1) Regulations may make provision for the further consideration of representations (including complaints) which fall within section 174 or 176.
- (2) The regulations may, for example, make provision—
  - (a) for the further consideration of a representation by an independent panel established under the regulations;
  - (b) about the procedure to be followed on the further consideration of a representation;
  - (c) for the making of recommendations about the action to be taken as a result of the further consideration of a representation;
  - (d) about the making of reports about the further consideration of a representation;
  - (e) about the action to be taken by the local authority concerned as a result of the further consideration of a representation;

- (f) bod sylw yn cael ei gyfeirio yn ôl at yr awdurdod lleol o dan sylw er mwyn i'r awdurdod ei ailystyried.
- (3) Caiff y rheoliadau –
- (a) ei gwneud yn ofynnol bod taliad yn cael ei wneud, mewn perthynas â'r ystyriaeth bellach a roddir i sylw, gan awdurdod lleol y mae'r sylw wedi ei wneud amdano mewn cysylltiad â'i swyddogaethau;
- (b) ei gwneud yn ofynnol bod y taliad –
- (i) yn cael ei wneud i berson neu gorff a bennir yn y rheoliadau, a
- (ii) yn swm a bennir yn y rheoliadau, neu'n un a gyfrifir neu a ddyfernir oddi tanynt;
- (c) ei gwneud yn ofynnol i banel annibynnol adolygu'r swm y gellir ei godi o dan baragraff (a) mewn achos penodol a rhoi, os gwêl y panel yn dda, swm llai yn ei le;
- (d) darparu bod gwahanol rannau o sylw neu agweddau gwahanol arno yn cael eu trin yn wahanol;
- (e) ei gwneud yn ofynnol bod gwybodaeth neu ddogfennau yn cael eu dangos er mwyn galluogi sylw i gael ei ystyried yn briodol;
- (f) awdurdodi bod gwybodaeth neu ddogfennau sy'n berthnasol i sylw yn cael ei datgelu neu eu datgelu i berson neu gorff sy'n rhoi ystyriaeth bellach i sylw o dan y rheoliadau (er gwaethaf unrhyw reol cyfraith gyffredin a fyddai, fel arall, yn gwahardd y datgeliad neu'n cyfyngu arno).
- (4) Caiff y rheoliadau ddarparu hefyd bod sylw neu unrhyw fater a godir gan sylw –
- (a) yn cael ei gyfeirio at Ombwdsmon Gwasanaethau Cyhoeddus Cymru ("yr Ombwdsmon") er mwyn i'r Ombwdsmon ystyried p'un a yw'n mynd i ymchwilio i'r sylw neu'r mater o dan Ddeddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2005 (ac yn cael ei drin gan yr Ombwdsmon fel cwyn a gyfeiriwyd yn briodol o dan adran 2(3) o'r Ddeddf honno);
- (b) yn cael ei gyfeirio at unrhyw berson neu gorff er mwyn i'r person hwnnw neu'r corff hwnnw ystyried p'un a ydynt yn mynd i gymryd unrhyw gamau nad ydynt yn rhai i'w cymryd o dan y rheoliadau.

## 178 Cynhorthwy i bersonau sy'n cyflwyno sylwadau

- (1) Rhaid i awdurdod lleol wneud trefniadau ar gyfer darparu cynhorthwy –
- (a) i blant sy'n cyflwyno, neu'n bwriadu cyflwyno, sylwadau sy'n dod o fewn adran 174, a
- (b) i bersonau sy'n cyflwyno, neu'n bwriadu cyflwyno, sylwadau sy'n dod o fewn adran 176.
- (2) Mae'r ddyletswydd o dan is-adran (1) yn cynnwys dyletswydd i wneud trefniadau ar gyfer darparu cynhorthwy pan fo'r sylwadau hynny yn cael eu hystyried ymhellach o dan adran 177.
- (3) Rhaid i'r cynhorthwy a ddarperir o dan y trefniadau gynnwys cynhorthwy ar ffurf cynrychiolaeth.



- (f) for a representation to be referred back to the local authority concerned for reconsideration by the authority.
- (3) The regulations may –
  - (a) require the making of a payment, in relation to the further consideration of a representation, by a local authority in respect of whose functions the representation is made;
  - (b) require the payment –
    - (i) to be made to a person or body specified in the regulations, and
    - (ii) to be of an amount specified in, or calculated or determined under, the regulations;
  - (c) require an independent panel to review the amount chargeable under paragraph (a) in a particular case and, if the panel thinks fit, to substitute a lesser amount;
  - (d) provide for different parts or aspects of a representation to be treated differently;
  - (e) require the production of information or documents to enable a representation to be properly considered;
  - (f) authorise the disclosure of information or documents relevant to a representation to a person who, or a body which, is further considering a representation under the regulations (despite any rule of common law that would otherwise prohibit or restrict the disclosure).
- (4) The regulations may also provide for a representation or any matter raised by a representation –
  - (a) to be referred to the Public Services Ombudsman for Wales (“the Ombudsman”) for the Ombudsman to consider whether to investigate the representation or matter under the Public Services Ombudsman (Wales) Act 2005 (and to be treated by the Ombudsman as a complaint duly referred under section 2(3) of that Act);
  - (b) to be referred to any other person or body for that person or body to consider whether to take any action otherwise than under the regulations.

**178 Assistance for persons making representations**

- (1) A local authority must make arrangements for the provision of assistance to –
  - (a) children who make or intend to make representations which fall within section 174, and
  - (b) persons who make or intend to make representations which fall within section 176.
- (2) The duty under subsection (1) includes a duty to make arrangements for the provision of assistance where those representations are further considered under section 177.
- (3) The assistance provided under the arrangements must include assistance by way of representation.

- (4) Rhaid i reoliadau wneud darpariaeth bellach mewn perthynas â'r trefniadau.
- (5) O ran y rheoliadau –
  - (a) rhaid iddynt ei gwneud yn ofynnol bod y trefniadau yn sicrhau nad yw personau penodedig neu gategoriâu penodedig o bersonau yn darparu cynhorthwy, a
  - (b) caniateir iddynt osod gofynion eraill mewn perthynas â'r trefniadau.
- (6) Caiff rheoliadau ei gwneud yn ofynnol i awdurdodau lleol fonitro'r camau y maent wedi eu cymryd er mwyn sicrhau eu bod yn cydymffurfio â gofynion a osodir gan neu o dan yr adran hon.
- (7) Rhaid i awdurdod lleol roi cyhoeddusrwydd i'w drefniadau ar gyfer darparu cynhorthwy o dan yr adran hon.

## PENNOD 2

### CWYNION AM OFAL CYMDEITHASOL A GOFAL LLINIAROL PREIFAT

#### 179 **Ymchwilio i gwynion am ofal cymdeithasol a gofal lliniarol a drefnir neu a ariennir yn breifat**

Mae Atodlen 3 (sy'n mewnosod Rhannau 2A a 2B newydd yn Neddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2005 i roi i Ombwdsmon Gwasanaethau Cyhoeddus Cymru bwerau i ymchwilio i gwynion am fathau penodol o ofal cymdeithasol a gofal lliniarol ac sy'n gwneud diwygiadau canlyniadol) yn cael effaith.

#### 180 **Gwasanaethau eirioli annibynnol ar gyfer cwynion am ofal lliniarol a drefnir neu a ariennir yn breifat**

- (1) Mae adran 187 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006 (gwasanaethau eirioli annibynnol) wedi ei diwygio fel a ganlyn.
- (2) Yn is-adran (2) –
  - (a) ym mharagraff (a) yn lle "or independent provider" rhodder ", independent provider or independent palliative care provider",
  - (b) ym mharagraff (c) hepgorer y geiriau "or the Public Services Ombudsman for Wales", ac
  - (c) ar ôl paragraff (c) mewnosoder –
 

“(ca) a complaint to the Public Services Ombudsman for Wales which relates to a health service body or independent palliative care provider,”.
- (3) Yn is-adran (3) mewnosoder yn y man priodol –
 

“independent palliative care provider” means a person who is an independent palliative care provider (within the meaning given by section 34T of the Public Services Ombudsman (Wales) Act 2005),”.

- (4) Regulations must make further provision in relation to the arrangements.
- (5) The regulations –
  - (a) must require the arrangements to secure that specified persons or categories of persons do not provide assistance, and
  - (b) may impose other requirements in relation to the arrangements.
- (6) Regulations may require local authorities to monitor the steps they have taken to ensure that they comply with requirements imposed by or under this section.
- (7) A local authority must give publicity to its arrangements for the provision of assistance under this section.

## CHAPTER 2

### COMPLAINTS ABOUT PRIVATE SOCIAL CARE AND PALLIATIVE CARE

#### 179 **Investigation of complaints about privately arranged or funded social care and palliative care**

Schedule 3 (which inserts new Parts 2A and 2B into the Public Services Ombudsman (Wales) Act 2005 to give the Public Services Ombudsman for Wales powers to investigate complaints about certain kinds of social care and palliative care and makes consequential amendments) has effect.

#### 180 **Independent advocacy services for complaints about privately arranged or funded palliative care**

- (1) Section 187 of the National Health Service (Wales) Act 2006 (independent advocacy services) is amended as follows.
- (2) In subsection (2) –
  - (a) in paragraph (a) for “or independent provider” substitute “, independent provider or independent palliative care provider”,
  - (b) in paragraph (c) omit the words “or the Public Services Ombudsman for Wales”, and
  - (c) after paragraph (c) insert –
    - “(ca) a complaint to the Public Services Ombudsman for Wales which relates to a health service body or independent palliative care provider,”.
- (3) In subsection (3) insert in the appropriate place –
  - “independent palliative care provider” means a person who is an independent palliative care provider (within the meaning given by section 34T of the Public Services Ombudsman (Wales) Act 2005),”.

**PENNOD 3****GWASANAETHAU EIRIOLI****181 Darparu gwasanaethau eirioli**

- (1) Caiff rheoliadau ei gwneud yn ofynnol i awdurdod lleol drefnu i wasanaethau eirioli gael eu rhoi ar gael i bobl y mae arnynt anghenion am ofal a chymorth (p'un a yw'r anghenion hynny yn cael eu diwallu gan awdurdod lleol ai peidio); mae hyn yn ddarostyngedig i adran 182.
- (2) Mae "gwasanaethau eirioli" yn wasanaethau sy'n darparu cynhorthwy (ar ffurf cynrychiolaeth neu fel arall) i bersonau at ddibenion sy'n ymwneud â'u gofal a chymorth.
- (3) Caiff y rheoliadau bennu –
  - (a) y personau, neu ddisgrifiad o'r personau, y mae gwasanaethau eirioli i gael eu rhoi ar gael iddynt;
  - (b) yr amgylchiadau y mae gwasanaethau eirioli i gael eu rhoi ar gael odanynt;
  - (c) y personau, neu ddisgrifiad o'r personau, y caniateir, neu na chaniateir, i wasanaethau eirioli gael eu darparu ganddynt.
- (4) Rhaid i'r rheoliadau ei gwneud yn ofynnol i awdurdod lleol roi cyhoeddusrwydd i'w drefniadau ar gyfer rhoi gwasanaethau eirioli ar gael.

**182 Darparu gwasanaethau eirioli: cyfyngiadau**

- (1) Ni chaiff rheoliadau o dan adran 181 ei gwneud yn ofynnol i wasanaethau eirioli gael eu rhoi ar gael i berson –
  - (a) at y diben o wneud cwyn y mae'n ofynnol i awdurdod lleol wneud trefniadau mewn cysylltiad â hi ar gyfer darparu cynhorthwy i'r person yn rhinwedd rheoliadau o dan adran 173;
  - (b) at y diben o gyflwyno sylwadau y mae'n ofynnol i awdurdod lleol wneud trefniadau mewn cysylltiad â hwy ar gyfer darparu cynhorthwy i'r person o dan adran 178;
  - (c) at ddibenion y mae'n ofynnol i Weinidogion Cymru wneud trefniadau mewn cysylltiad â hwy i alluogi eiriolwr iechyd meddwl annibynnol i fod ar gael o dan adran 130E o Ddeddf Iechyd Meddwl 1983;
  - (d) at ddibenion y mae'n ofynnol i awdurdod lleol wneud trefniadau mewn cysylltiad â hwy ar gyfer darparu gwasanaethau eirioli annibynnol o dan adran 332BB o Ddeddf Addysg 1996 neu baragraff 6D o Atodlen 17 i Ddeddf Cydraddoldeb 2010;
  - (e) at ddibenion y mae'n ofynnol i Weinidogion Cymru wneud trefniadau mewn cysylltiad â hwy i alluogi eiriolwr galluedd meddyliol annibynnol i fod ar gael o dan adran 35 o Ddeddf Galluedd Meddyliol 2005;
  - (f) at y diben o wneud cwyn y mae'n ofynnol i Weinidogion Cymru wneud trefniadau mewn cysylltiad â hi ar gyfer darparu gwasanaethau eirioli annibynnol o dan adran 187 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006.

## CHAPTER 3

### ADVOCACY SERVICES

#### **181 Provision of advocacy services**

- (1) Regulations may require a local authority to arrange for advocacy services to be made available to people with needs for care and support (whether or not those needs are being met by a local authority); this is subject to section 182.
- (2) “Advocacy services” are services which provide assistance (by way of representation or otherwise) to persons for purposes relating to their care and support.
- (3) The regulations may specify –
  - (a) the persons, or description of persons, to whom advocacy services are to be made available;
  - (b) the circumstances in which advocacy services are to be made available;
  - (c) the persons, or description of persons, by whom advocacy services may, or may not, be provided.
- (4) The regulations must require a local authority to give publicity to its arrangements for making advocacy services available.

#### **182 Provision of advocacy services: restrictions**

- (1) Regulations under section 181 may not require advocacy services to be made available to a person –
  - (a) for the purpose of making a complaint in respect of which a local authority is required to make arrangements for the provision of assistance to the person by virtue of regulations under section 173;
  - (b) for the purpose of making representations in respect of which a local authority is required to make arrangements for the provision of assistance to the person under section 178;
  - (c) for purposes in respect of which the Welsh Ministers are required to make arrangements to enable an independent mental health advocate to be available under section 130E of the Mental Health Act 1983;
  - (d) for purposes in respect of which a local authority is required to make arrangements for the provision of independent advocacy services under section 332BB of the Education Act 1996 or paragraph 6D of Schedule 17 to the Equality Act 2010;
  - (e) for purposes in respect of which the Welsh Ministers are required to make arrangements to enable an independent mental capacity advocate to be available under section 35 of the Mental Capacity Act 2005;
  - (f) for the purpose of making a complaint in respect of which the Welsh Ministers are required to arrange for the provision of independent advocacy services under section 187 of the National Health Service (Wales) Act 2006.

## (2) Pan—

- (a) bo gwasanaethau eirioli yn cael eu darparu ar gyfer person o dan adran 15, 17, 35, 36, 37 neu 38, a
- (b) byddai rheoliadau o dan adran 181 (ar wahân i'r is-adran hon) yn gosod gofyniad ar awdurdod lleol i roi gwasanaethau eirioli ar gael i'r person hwnnw mewn cysylltiad â'r un materion,

nid yw'r gofyniad hwnnw yn gymwys.

**183 Rhoi cyhoeddusrwydd i wasanaethau eirioli mewn cartrefi gofal**

Yn adran 22 o Ddeddf Safonau Gofal 2000 (rheoleiddio sefydliadau ac asiantaethau), yn is-adran (7), ar ôl paragraff (l) mewnoder—

“(m) make provision requiring a person who carries on or manages a care home in Wales to make arrangements to bring to the attention of persons accommodated in the home the advocacy services which are available to those persons by virtue of regulations made under section 181 of the Social Services and Well-being (Wales) Act 2014.”

**RHAN 11****AMRYWIOL A CHYFFREDINOL***Amrywiol***184 Ymchwil a darparu gwybodaeth**

- (1) Caiff Gweinidogion Cymru wneud, comisiynu, neu gynorthwyo i wneud, ymchwil i unrhyw fater sy'n gysylltiedig—
  - (a) â'u swyddogaethau o dan y Ddeddf hon,
  - (b) â'r swyddogaethau a grybwyllir yn is-adran (12),
  - (c) â swyddogaethau'r Byrddau Iechyd Lleol o dan y Ddeddf hon, neu
  - (d) â swyddogaethau'r Byrddau Diogelu.
- (2) Caiff awdurdod lleol wneud, comisiynu, neu gynorthwyo i wneud, ymchwil i unrhyw fater sy'n gysylltiedig—
  - (a) ag unrhyw un neu rai o'i swyddogaethau a grybwyllir yn is-adran (12), neu
  - (b) â swyddogaethau'r Byrddau Diogelu.
- (3) Caiff Bwrdd Iechyd Lleol wneud, comisiynu, neu gynorthwyo i wneud, ymchwil i unrhyw fater sy'n gysylltiedig â'i swyddogaethau o dan y Ddeddf hon.
- (4) Caiff Gweinidogion Cymru ei gwneud yn ofynnol i awdurdod lleol ddarparu gwybodaeth iddynt mewn cysylltiad—
  - (a) â'r modd y mae'r awdurdod yn cyflawni unrhyw un neu rai o'i swyddogaethau a grybwyllir yn is-adran (12), a

(2) Where—

- (a) advocacy services are being provided for a person under section 15, 17, 35, 36, 37 or 38, and
- (b) regulations under section 181 would (apart from this subsection) impose a requirement upon a local authority to make advocacy services available to that person in respect of the same matters,

that requirement does not apply.

**183 Publicising advocacy services in care homes**

In section 22 of the Care Standards Act 2000 (regulation of establishments and agencies), in subsection (7), after paragraph (l) insert—

- “(m) make provision requiring a person who carries on or manages a care home in Wales to make arrangements to bring to the attention of persons accommodated in the home the advocacy services which are available to those persons by virtue of regulations made under section 181 of the Social Services and Well-being (Wales) Act 2014.”

## PART 11

### MISCELLANEOUS AND GENERAL

#### *Miscellaneous*

**184 Research and provision of information**

- (1) The Welsh Ministers may conduct, commission, or assist in the conduct of, research into any matter connected with—
  - (a) their functions under this Act,
  - (b) the functions mentioned in subsection (12),
  - (c) the functions of Local Health Boards under this Act, or
  - (d) the functions of Safeguarding Boards.
- (2) A local authority may conduct, commission, or assist in the conduct of, research into any matter connected with—
  - (a) any of its functions that are mentioned in subsection (12), or
  - (b) the functions of Safeguarding Boards.
- (3) A Local Health Board may conduct, commission, or assist in the conduct of, research into any matter connected with its functions under this Act.
- (4) The Welsh Ministers may require a local authority to provide them with information in connection with—
  - (a) the performance by the authority of any of its functions that are mentioned in subsection (12), and

- (b) â'r personau y mae'r awdurdod wedi arfer y swyddogaethau hynny mewn perthynas â hwy.
- (5) Caiff Gweinidogion Cymru ei gwneud yn ofynnol i Fwrdd Iechyd Lleol ddarparu gwybodaeth iddynt mewn cysylltiad –
- (a) â'r modd y mae'n cyflawni ei swyddogaethau o dan y Ddeddf hon, a
- (b) â'r personau y mae wedi arfer y swyddogaethau hynny mewn perthynas â hwy.
- (6) Caiff Gweinidogion Cymru ei gwneud yn ofynnol i bartner arweiniol Bwrdd Diogelu ddarparu gwybodaeth iddynt mewn cysylltiad â'r modd y mae'r Bwrdd hwnnw yn cyflawni ei swyddogaethau.
- (7) Caiff Gweinidogion Cymru ei gwneud yn ofynnol i sefydliad gwirfoddol ddarparu gwybodaeth iddynt mewn cysylltiad ag oedolion sydd wedi eu lletya gan y sefydliad neu ar ei ran.
- (8) Rhaid cydymffurfio â gofyniad o dan is-adran (4), (5), (6) neu (7) drwy ddarparu'r wybodaeth ar unrhyw ffurf ac ar unrhyw adeg sy'n ofynnol gan Weinidogion Cymru.
- (9) Caiff yr wybodaeth y mae'n ofynnol ei darparu o dan is-adran (4) gynnwys gwybodaeth sy'n ymwneud â phlant unigol ac sy'n golygu bod modd adnabod plant unigol, ond dim ond os oes angen yr wybodaeth honno er mwyn llywio –
- (a) y broses o adolygu a datblygu polisi ac arfer sy'n ymwneud â llesiant plant, neu
- (b) y broses o wneud ymchwil sy'n ymwneud â llesiant plant.
- (10) Rhaid i Weinidogion Cymru ym mhob blwyddyn osod gerbron Cynulliad Cenedlaethol Cymru grynodedb o'r wybodaeth a ddarperir iddynt o dan is-adrannau (4), (5), (6) a (7), ond rhaid i'r crynodeb beidio â chynnwys gwybodaeth sy'n golygu bod modd adnabod plentyn unigol neu sy'n caniatáu i blentyn unigol gael ei adnabod.
- (11) Yn yr adran hon –
- ystyr “Bwrdd Diogelu” (“*Safeguarding Board*”) yw Bwrdd Diogelu Plant neu Fwrdd Diogelu Oedolion a sefydlir o dan adran 134, ac
- ystyr “partner arweiniol Bwrdd Diogelu” (“*the lead partner of a Safeguarding Board*”) yw'r partner Bwrdd Diogelu a bennir fel y partner arweiniol mewn rheoliadau o dan adran 134.
- (12) Y swyddogaethau y cyfeirir atynt yn is-adrannau (1), (2) a (4) yw –
- (a) unrhyw swyddogaeth awdurdod lleol o dan y Ddeddf hon;
- (b) unrhyw swyddogaeth awdurdod lleol fel partner iechyd meddwl lleol o dan Fesur Iechyd Meddwl (Cymru) 2010.

## 185 Oedolion mewn carchar, llety cadw ieuenctid neu lety mechnïaeth etc

- (1) Wrth ei chymhwyso i oedolyn a gedwir yn gaeth mewn carchar neu lety cadw ieuenctid yng Nghymru, mae'r Ddeddf hon yn cael effaith fel pe bai cyfeiriadau at breswyllo fel arfer mewn ardal yn gyfeiriadau at gael ei gadw'n gaeth mewn carchar neu lety cadw ieuenctid yn yr ardal honno.



- (b) the persons in relation to whom the authority has exercised those functions.
- (5) The Welsh Ministers may require a Local Health Board to provide them with information in connection with—
- (a) the performance of its functions under this Act, and
  - (b) the persons in relation to whom it has exercised those functions.
- (6) The Welsh Ministers may require the lead partner of a Safeguarding Board to provide them with information in connection with the performance by that Board of its functions.
- (7) The Welsh Ministers may require a voluntary organisation to provide them with information in connection with adults accommodated by the organisation or on its behalf.
- (8) A requirement under subsection (4), (5), (6) or (7) must be complied with by providing the information in such form and at such time as the Welsh Ministers may require.
- (9) Information required to be provided under subsection (4) may include information relating to and identifying individual children, but only if that information is needed to inform—
- (a) the review and development of policy and practice relating to the well-being of children, or
  - (b) the conduct of research relating to the well-being of children.
- (10) The Welsh Ministers must in each year lay before the National Assembly for Wales a summary of the information provided to them under subsections (4), (5), (6) and (7), but the summary must not include information that identifies an individual child or allows an individual child to be identified.
- (11) In this section—
- “the lead partner of a Safeguarding Board” (*“partner arweiniol Bwrdd Diogelu”*) is the Safeguarding Board partner specified as the lead partner in regulations under section 134, and
- “Safeguarding Board” (*“Bwrdd Diogelu”*) means a Safeguarding Children Board or a Safeguarding Adults Board established under section 134.
- (12) The functions referred to in subsections (1), (2) and (4) are—
- (a) any function of a local authority under this Act;
  - (b) any function of a local authority as a local mental health partner under the Mental Health (Wales) Measure 2010.

**185 Adults in prison, youth detention accommodation or bail accommodation etc**

- (1) In its application to an adult who is detained in prison or youth detention accommodation in Wales, this Act has effect as if references to being ordinarily resident in an area were references to being detained in prison or youth detention accommodation in that area.

- (2) Wrth ei chymhwyso i oedolyn sy'n preswyllo mewn mangre a gymeradwywyd yng Nghymru, mae'r Ddeddf hon yn cael effaith fel pe bai cyfeiriadau at breswyllo fel arfer mewn ardal yn gyfeiriadau at breswyllo mewn mangre a gymeradwywyd yn yr ardal honno.
- (3) Wrth ei chymhwyso i oedolyn sy'n preswyllo mewn unrhyw fangre arall yng Nghymru am fod gofyniad i wneud hynny wedi ei osod ar yr oedolyn fel amod o roi mechnïaeth mewn achos troseddol, mae'r Ddeddf hon yn cael effaith fel pe bai cyfeiriadau at breswyllo fel arfer mewn ardal yn gyfeiriadau at breswyllo mewn mangre yn yr ardal honno am y rheswm hwnnw.
- (4) Nid yw'r darpariaethau a nodir yn is-adran (5) yn gymwys yn achos oedolyn –
  - (a) sy'n cael ei gadw'n gaeth mewn carchar neu lety cadw ieuenctid, neu
  - (b) sy'n preswyllo mewn mangre a gymeradwywyd.
- (5) Y darpariaethau yw –
  - (a) adran 110 (cymorth ar gyfer pobl ifanc categori 3);
  - (b) adran 112 (cymorth ar gyfer pobl ifanc categori 4);
  - (c) adran 114 (cymorth ar gyfer pobl ifanc categori 5 a phobl ifanc a fu gynt yn bobl ifanc categori 5);
  - (d) adran 115 (cymorth ar gyfer pobl ifanc categori 6 a phobl ifanc a fu gynt yn bobl ifanc categori 6).
- (6) Nid yw adran 127 (gorchmynion amddiffyn a chynorthwyo oedolion) yn gymwys yn achos oedolyn a gedwir yn gaeth mewn carchar neu lety cadw ieuenctid.
- (7) Gweler hefyd adran 187 am addasiadau pellach i ddarpariaethau'r Ddeddf hon mewn perthynas â'r canlynol –
  - (a) oedolion a gedwir yn gaeth mewn carchar neu lety cadw ieuenctid, a
  - (b) oedolion sy'n preswyllo mewn mangre a gymeradwywyd.

#### **186 Plant mewn llety cadw ieuenctid, carchar neu lety mechnïaeth etc**

- (1) Yn is-adran (2), ystyr "plentyn perthnasol" yw plentyn sydd, ar ôl cael ei gollfarnu o drosedd –
  - (a) yn cael ei gadw'n gaeth mewn llety cadw ieuenctid neu garchar,
  - (b) yn preswyllo mewn mangre a gymeradwywyd, neu
  - (c) yn preswyllo mewn unrhyw fangre arall am fod gofyniad i wneud hynny wedi ei osod ar y plentyn fel amod o roi mechnïaeth mewn achos troseddol.
- (2) Pan fo plentyn perthnasol, yn union cyn iddo gael ei gollfarnu o drosedd –
  - (a) ag anghenion am ofal a chymorth sy'n cael eu diwallu gan awdurdod lleol o dan Ran 4,
  - (b) yn derbyn gofal gan awdurdod lleol yn rhinwedd cael llety wedi ei ddarparu iddo gan yr awdurdod, neu
  - (c) yn preswyllo fel arfer yn ardal awdurdod lleol, ond na fo'n dod o fewn paragraff (a) neu (b),

- (2) In its application to an adult who is residing in approved premises in Wales, this Act has effect as if references to being ordinarily resident in an area were references to being resident in approved premises in that area.
- (3) In its application to an adult who is residing in any other premises in Wales because a requirement to do so has been imposed on the adult as a condition of the grant of bail in criminal proceedings, this Act has effect as if references to being ordinarily resident in an area were references to being resident in premises in that area for that reason.
- (4) The provisions set out in subsection (5) do not apply in the case of an adult who is –
  - (a) detained in prison or youth detention accommodation, or
  - (b) residing in approved premises.
- (5) The provisions are –
  - (a) section 110 (support for category 3 young people);
  - (b) section 112 (support for category 4 young people);
  - (c) section 114 (support for category 5 young people and former category 5 young people);
  - (d) section 115 (support for category 6 young people and former category 6 young people).
- (6) Section 127 (adult protection and support orders) does not apply in the case of an adult who is detained in prison or youth detention accommodation.
- (7) See also section 187 for further modifications of this Act's provisions in relation to –
  - (a) adults who are detained in prison or in youth detention accommodation, and
  - (b) adults who are residing in approved premises.

**186 Children in youth detention accommodation, prison or bail accommodation etc**

- (1) In subsection (2), a "relevant child" means a child who, having been convicted of an offence –
  - (a) is detained in youth detention accommodation or in prison,
  - (b) is residing in approved premises, or
  - (c) is residing in any other premises because a requirement to do so has been imposed on the child as a condition of the grant of bail in criminal proceedings.
- (2) Where a relevant child, immediately before being convicted of an offence –
  - (a) has needs for care and support that are being met by a local authority under Part 4,
  - (b) is looked after by a local authority by virtue of being provided with accommodation by the authority, or
  - (c) is ordinarily resident in the area of a local authority, but does not come within paragraph (a) or (b),

mae'r plentyn i'w drin at ddibenion y Ddeddf hon fel pe bai o fewn ardal yr awdurdod lleol hwnnw tra bo'n blentyn perthnasol (ac nid yw i'w drin fel pe bai'n preswyllo fel arfer yn ardal unrhyw awdurdod lleol arall neu fel pe bai o fewn yr ardal honno).

- (3) Nid yw'r darpariaethau a nodir yn is-adran (4) yn gymwys mewn perthynas â phlentyn sydd, ar ôl cael ei gollfarnu o drosedd –
- (a) yn cael ei gadw'n gaeth mewn llety cadw ieuenctid neu garchar, neu
  - (b) yn preswyllo mewn mangre a gymeradwywyd.
- (4) Y darpariaethau yw –
- (a) adran 79 (darparu llety i blant mewn gofal);
  - (b) adran 80 (cynnal plant sy'n derbyn gofal);
  - (c) adran 81 (y ffyrdd y mae plant sy'n derbyn gofal i'w lletya a'u cynnal);
  - (d) adran 82 (adolygu achos plentyn cyn gwneud trefniadau amgen o ran llety);
  - (e) adran 109 (cymorth ar gyfer pobl ifanc categori 2);
  - (f) adran 114 (cymorth ar gyfer pobl ifanc categori 5 a phobl ifanc a fu gynt yn bobl ifanc categori 5);
  - (g) adran 115 (cymorth ar gyfer pobl ifanc categori 6 a phobl ifanc a fu gynt yn bobl ifanc categori 6);
  - (h) paragraff 1 o Atodlen 1 (atebolrwydd am gyfrannu tuag at gynhaliaeth plant sy'n derbyn gofal).
- (5) Nid yw adran 119 (defnyddio llety i gyfyngu ar ryddid) yn gymwys –
- (a) mewn perthynas â phlentyn sydd, ar ôl cael ei gollfarnu o drosedd –
    - (i) yn cael ei gadw'n gaeth mewn llety cadw ieuenctid neu garchar, neu
    - (ii) yn preswyllo mewn mangre a gymeradwywyd, na
  - (b) mewn perthynas â phlentyn sydd wedi ei remandio i lety cadw ieuenctid o dan adran 91 o Ddeddf Cymorth Cyfreithiol, Dedfrydu a Chosbi Troseddwyd 2012.
- (6) Nid yw'r darpariaethau a nodir yn is-adran (7) yn gymwys mewn perthynas â phlentyn –
- (a) sydd, ar ôl cael ei gollfarnu o drosedd –
    - (i) yn cael ei gadw'n gaeth mewn llety cadw ieuenctid neu garchar, neu
    - (ii) yn preswyllo mewn mangre a gymeradwywyd, a
  - (b) yr oedd llety'n cael ei ddarparu iddo gan awdurdod lleol yn Lloegr o dan adran 20 o Ddeddf Plant 1989 yn union cyn iddo gael ei gollfarnu.
- (7) Y darpariaethau yw –
- (a) adran 21 (dyletswydd i asesu anghenion plentyn am ofal a chymorth);
  - (b) adran 37 (dyletswydd i ddiwallu anghenion gofal a chymorth plentyn);
  - (c) adran 38 (pŵer i ddiwallu anghenion gofal a chymorth plentyn).

the child is to be treated for the purposes of this Act as being within that local authority's area while he or she is a relevant child (and is not to be treated as being ordinarily resident or within any other local authority's area).

- (3) The provisions set out in subsection (4) do not apply in relation to a child who, having been convicted of an offence –
  - (a) is detained in youth detention accommodation or in prison, or
  - (b) is residing in approved premises.
- (4) The provisions are –
  - (a) section 79 (provision of accommodation for children in care);
  - (b) section 80 (maintenance of looked after children);
  - (c) section 81 (ways in which looked after children are to be accommodated and maintained);
  - (d) section 82 (review of child's case before making alternative arrangements for accommodation);
  - (e) section 109 (support for category 2 young people);
  - (f) section 114 (support for category 5 young people and former category 5 young people);
  - (g) section 115 (support for category 6 young people and former category 6 young people);
  - (h) paragraph 1 of Schedule 1 (liability to contribute towards maintenance of looked after children).
- (5) Section 119 (use of accommodation for restricting liberty) does not apply in relation to –
  - (a) a child who, having been convicted of an offence –
    - (i) is detained in youth detention accommodation or in prison, or
    - (ii) is residing in approved premises, or
  - (b) a child who is remanded to youth detention accommodation under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- (6) The provisions set out in subsection (7) do not apply in relation to a child who –
  - (a) having been convicted of an offence –
    - (i) is detained in youth detention accommodation or in prison, or
    - (ii) is residing in approved premises, and
  - (b) immediately before being convicted, was provided with accommodation by a local authority in England under section 20 of the Children Act 1989.
- (7) The provisions are –
  - (a) section 21 (duty to assess the needs of a child for care and support);
  - (b) section 37 (duty to meet care and support needs of a child);
  - (c) section 38 (power to meet care and support needs of a child).

- (8) Gweler hefyd adran 187 am addasiadau pellach i ddarpariaethau'r Ddeddf hon mewn perthynas â'r canlynol –
- (a) plant a gedwir yn gaeth mewn llety cadw ieuenctid neu garchar, a
  - (b) plant sy'n preswyllo mewn mangre a gymeradwywyd.

**187 Personau mewn carchar, llety cadw ieuenctid neu lety mechniaeth etc**

- (1) Nid yw person yn ofalwr at ddibenion y Ddeddf hon os yw'r person –
- (a) yn cael ei gadw'n gaeth mewn carchar neu lety cadw ieuenctid, neu
  - (b) ar ôl cael ei gollfarnu o drosedd, yn preswyllo mewn mangre a gymeradwywyd.
- (2) Ni chaiff rheoliadau o dan adran 50 neu 51 (taliadau uniongyrchol) ei gwneud yn ofynnol na chaniatáu i daliadau gael eu gwneud tuag at y gost o ddiwallu anghenion person am ofal a chymorth os yw'r person hwnnw, ar ôl cael ei gollfarnu o drosedd –
- (a) yn cael ei gadw'n gaeth mewn carchar neu lety cadw ieuenctid, neu
  - (b) yn preswyllo mewn mangre a gymeradwywyd.
- (3) Ni chaniateir i'r pŵer o dan adran 57 (achosion pan fo person yn mynegi ei fod yn ffafrio llety penodol) gael ei arfer yn achos person sydd –
- (a) yn cael ei gadw'n gaeth mewn carchar neu lety cadw ieuenctid, neu
  - (b) yn preswyllo mewn mangre a gymeradwywyd,
- ac eithrio at y diben o wneud darpariaeth mewn cysylltiad â llety i'r person wrth iddo gael ei ryddhau o'r carchar neu o'r llety cadw ieuenctid (gan gynnwys ei ryddhau dros dro), neu wrth i'r person beidio â phreswyllo mwyach yn y fangre a gymeradwywyd.
- (4) Nid yw adran 58 (gwarchod eiddo personau y gofelir amdanynt i ffwrdd o'u cartrefi) yn gymwys yn achos person –
- (a) sy'n cael ei gadw'n gaeth mewn carchar neu lety cadw ieuenctid, neu
  - (b) sy'n preswyllo mewn mangre a gymeradwywyd.

**188 Dehongli adrannau 185 i 187**

- (1) Yn adrannau 185 i 187 –
- mae i "carchar" yr ystyr a roddir i "prison" yn Neddf Carchardai 1952 (gweler adran 53(1) o'r Ddeddf honno);
- ystyr "llety cadw ieuenctid" ("*youth detention accommodation*") yw –
- (a) cartref diogel i blant;
  - (b) canolfan hyfforddi ddiogel;
  - (c) sefydliad troseddwy'r ifanc;
  - (d) llety sy'n cael ei ddarparu, ei gyfarparu a'i gynnal gan Weinidogion Cymru o dan adran 82(5) o Ddeddf Plant 1989 at y diben o gyfyngu ar ryddid plant;
  - (e) llety, neu lety o ddisgrifiad, a bennir am y tro drwy orchymyn o dan adran 107(1)(e) o Ddeddf Pwerau Llysoedd Troseddol (Dedfrydu) 2000 (llety cadw ieuenctid at ddibenion gorchmynion cadw a hyfforddi);

- (8) See also section 187 for further modifications of this Act's provisions in relation to—
- (a) children who are detained in youth detention accommodation or in prison, and
  - (b) children who are residing in approved premises.

**187 Persons in prison, youth detention accommodation or bail accommodation etc**

- (1) A person is not a carer for the purposes of this Act if the person—
- (a) is detained in prison or youth detention accommodation, or
  - (b) having been convicted of an offence, is residing in approved premises.
- (2) Regulations under section 50 or 51 (direct payments) may not require or allow payments to be made towards the cost of meeting a person's needs for care and support if that person, having been convicted of an offence, is—
- (a) detained in prison or in youth detention accommodation, or
  - (b) residing in approved premises.
- (3) The power under section 57 (preference for particular accommodation) may not be exercised in the case of a person who is—
- (a) detained in prison or in youth detention accommodation, or
  - (b) residing in approved premises,
- except for the purpose of making provision with respect to accommodation for the person on the person's release from prison or youth detention accommodation (including temporary release), or on the person's ceasing to reside in the approved premises.
- (4) Section 58 (protecting property of persons being cared for away from home) does not apply in the case of a person who is—
- (a) detained in prison or in youth detention accommodation, or
  - (b) residing in approved premises.

**188 Interpretation of sections 185 to 187**

- (1) In sections 185 to 187—
- “approved premises” (*“mangre a gymeradwywyd”*) has the meaning given by section 13 of the Offender Management Act 2007;
  - “bail in criminal proceedings” (*“mechnïaeth mewn achos troseddol”*) has the meaning given by section 1 of the Bail Act 1976;

mae i “mangre a gymeradwywyd” yr ystyr a roddir i “approved premises” gan adran 13 o Ddeddf Rheoli Troseddwyr 2007;

mae i “mechnïaeth mewn achos troseddol” yr ystyr a roddir i “bail in criminal proceedings” gan adran 1 o Ddeddf Mechnïaeth 1976.

(2) At ddibenion adrannau 185 i 187 –

- (a) mae person sy’n absennol dros dro o garchar neu lety cadw ieuentid i’w drin fel pe bai’n cael ei gadw’n gaeth mewn carchar neu lety cadw ieuentid am gyfnod yr absenoldeb;
- (b) mae person sy’n absennol dros dro o fangre a gymeradwywyd i’w drin fel pe bai’n preswyllo mewn mangre a gymeradwywyd am gyfnod yr absenoldeb;
- (c) mae person sy’n absennol dros dro o fangre arall y mae’n ofynnol i’r person breswyllo ynddi fel amod o roi mechnïaeth mewn achos troseddol i’w drin fel pe bai’n preswyllo yn y fangre am gyfnod yr absenoldeb.

**189 Methiant darparwr: dyletswydd dros dro ar awdurdod lleol**

- (1) Mae’r adran hon yn gymwys pan fo person sydd wedi ei gofrestru o dan Ran 2 o Ddeddf Safonau Gofal 2000 mewn cysylltiad â sefydliad neu asiantaeth (o fewn yr ystyr a roddir i “establishment” ac “agency” yn y Ddeddf honno) yn methu â rhedeg y sefydliad neu ei reoli neu’n methu â rhedeg yr asiantaeth neu ei rheoli oherwydd methiant busnes.
- (2) Rhaid i awdurdod lleol am ba hyd bynnag ag y mae’n ei ystyried yn angenrheidiol (ac i’r graddau nad yw eisoes yn ofynnol iddo wneud hynny) ddiwallu –
  - (a) yr anghenion hynny sydd gan oedolyn am ofal a chymorth, a
  - (b) yr anghenion hynny sydd gan ofalwr perthnasol am gymorth,
 a oedd, yn union cyn i’r person cofrestredig fethu â rhedeg y sefydliad neu ei reoli neu fethu â rhedeg yr asiantaeth neu ei rheoli, yn cael eu diwallu yn ardal yr awdurdod gan y sefydliad neu’r asiantaeth (ond mae hyn yn ddarostyngedig i adran 190).
- (3) Mae’n ofynnol i awdurdod lleol ddiwallu anghenion o dan is-adran (2) ni waeth –
  - (a) p’un a yw’r person perthnasol yn preswyllo fel arfer yn ei ardal ai peidio;
  - (b) p’un a yw’r awdurdod wedi cynnal asesiad o anghenion neu asesiad ariannol ai peidio;
  - (c) p’un a fyddai dyletswydd fel arall ar yr awdurdod i ddiwallu’r anghenion hynny o dan y Ddeddf hon ai peidio.



“prison” (“*carchar*”) has the same meaning as in the Prison Act 1952 (see section 53(1) of that Act);

“youth detention accommodation” (“*llety cadw ieuenctid*”) means –

- (a) a secure children’s home;
  - (b) a secure training centre;
  - (c) a young offender institution;
  - (d) accommodation provided, equipped and maintained by the Welsh Ministers under section 82(5) of the Children Act 1989 for the purpose of restricting the liberty of children;
  - (e) accommodation, or accommodation of a description, for the time being specified by order under section 107(1)(e) of the Powers of Criminal Courts (Sentencing) Act 2000 (youth detention accommodation for purposes of detention and training orders).
- (2) For the purposes of sections 185 to 187 –
- (a) a person who is temporarily absent from prison or youth detention accommodation is to be treated as detained in prison or youth detention accommodation for the period of absence;
  - (b) a person who is temporarily absent from approved premises is to be treated as residing in approved premises for the period of absence;
  - (c) a person who is temporarily absent from other premises in which the person is required to reside as a condition of the grant of bail in criminal proceedings is to be treated as residing in the premises for the period of absence.

**189 Provider failure: temporary duty on local authority**

- (1) This section applies where a person registered under Part 2 of the Care Standards Act 2000 in respect of an establishment or agency (within the meaning of that Act) becomes unable to carry on or manage the establishment or agency because of business failure.
- (2) A local authority must for so long as it considers necessary (and in so far as it is not already required to do so) meet –
  - (a) those of an adult’s needs for care and support, and
  - (b) those of a relevant carer’s needs for support,
 which were, immediately before the registered person became unable to carry on or manage the establishment or agency, being met in the authority’s area by the establishment or agency (but this is subject to section 190).
- (3) A local authority is required to meet needs under subsection (2) regardless of –
  - (a) whether the relevant person is ordinarily resident in its area;
  - (b) whether the authority has carried out a needs assessment or a financial assessment;
  - (c) whether the authority would otherwise have a duty to meet those needs under this Act.

- (4) Caniateir i awdurdod lleol osod ffi am ddiwallu anghenion o dan is-adran (2) (ac eithrio i'r graddau y mae'r anghenion hynny yn cael eu diwallu drwy ddarparu gwybodaeth neu gyngor).
- (5) Caniateir i ffi o dan is-adran (4) –
- (a) cael ei gosod dim ond mewn cysylltiad ag anghenion nad oeddent, yn union cyn i'r person cofrestredig fethu â rhedeg y sefydliad neu ei reoli neu fethu â rhedeg yr asiantaeth neu ei rheoli, yn cael eu diwallu –
- (i) o dan drefniadau a wnaed gan awdurdod lleol wrth gyflawni ei ddyletswydd o dan adran 35 neu 40, neu wrth arfer ei bŵer o dan adran 36 neu 45, neu
- (ii) drwy ddarparu llety neu wasanaethau y talwyd ei gost neu eu cost yn llwyr neu'n rhannol drwy daliadau uniongyrchol a wnaed yn rhinwedd adran 50 neu 52;
- (b) cynnwys dim ond y gost y mae'r awdurdod lleol yn ei thynnu wrth ddiwallu'r anghenion hynny.
- (6) Mae adrannau 60 i 67, 70, 71 a 73 yn gymwys i osod ffi o dan is-adran (4) yn yr un modd ag y maent yn gymwys i osod ffi o dan adran 59, ac yn unol â hynny mae pŵer awdurdod lleol i osod ffi o dan yr is-adran honno yn ddarostyngedig –
- (a) i'r ddarpariaeth a wneir mewn rheoliadau o dan adran 61 neu 62 (os oes darpariaeth), a
- (b) i ddyletswyddau'r awdurdod o dan adrannau 63, 66 ac 67 (os ydynt yn gymwys).
- (7) Os nad yw'r person perthnasol yn preswyllo fel arfer yn ardal yr awdurdod lleol y mae'n ofynnol iddo ddiwallu anghenion o dan is-adran (2) –
- (a) rhaid i'r awdurdod, wrth ddiwallu anghenion o dan yr is-adran honno a oedd yn cael eu diwallu o dan drefniadau a wnaed gan awdurdod lleol arall wrth gyflawni ei ddyletswydd o dan adran 35 neu 40 neu wrth arfer ei bŵer o dan adran 36 neu 45, gydweithredu â'r awdurdod hwnnw;
- (b) rhaid i'r awdurdod, wrth ddiwallu anghenion o dan yr is-adran honno a oedd yn cael eu diwallu o dan drefniadau y talwyd eu cost yn llwyr neu'n rhannol gan awdurdod lleol arall drwy daliadau uniongyrchol a wnaed yn rhinwedd adran 50 neu 52, gydweithredu â'r awdurdod hwnnw;
- (c) caniateir i'r awdurdod adennill oddi wrth yr awdurdod lleol arall a grybwyllir ym mharagraff (a) neu (b) y gost y mae'n ei thynnu wrth ddiwallu'r anghenion hynny sydd gan yr oedolyn neu'r anghenion hynny sydd gan y gofalwr perthnasol y cyfeirir atynt yn y paragraff o dan sylw.
- (8) Mae unrhyw anghydfod rhwng awdurdodau lleol ynghylch cymhwyso'r adran hon i'w ddyfarnu o dan adran 195 fel pe bai'n anghydfod o'r math a grybwyllir yn is-adran (1) o'r adran honno.
- (9) Yn yr adran hon a (lle y bo'n berthnasol) yn adran 190 a 191 –
- ystyr "gofalwr perthnasol" ("*relevant carer*") yw gofalwr –
- (a) sy'n oedolyn, a
- (b) sy'n darparu neu sy'n bwriadu darparu gofal i oedolyn arall;

- (4) A local authority may impose a charge for meeting needs under subsection (2) (except in so far as those needs are met by the provision of information or advice).
- (5) A charge under subsection (4) –
  - (a) may be imposed only in respect of needs which were not, immediately before the registered person became unable to carry on or manage the establishment or agency, being met –
    - (i) under arrangements made by a local authority discharging its duty under section 35 or 40, or exercising its power under section 36 or 45, or
    - (ii) by the provision of accommodation or services all or part of the cost of which was paid for by direct payments made by virtue of section 50 or 52;
  - (b) may cover only the cost that the local authority incurs in meeting those needs.
- (6) Sections 60 to 67, 70, 71 and 73 apply to charging under subsection (4) as they apply to charging under section 59, and accordingly a local authority's power to impose a charge under that subsection is subject to –
  - (a) the provision made in regulations under section 61 or 62 (if any), and
  - (b) the authority's duties under sections 63, 66 and 67 (if applicable).
- (7) If the relevant person is not ordinarily resident in the area of the local authority which is required to meet needs under subsection (2), the authority –
  - (a) must, in meeting needs under that subsection which were being met under arrangements made by another local authority discharging its duty under section 35 or 40 or exercising its power under section 36 or 45, co-operate with that authority;
  - (b) must, in meeting needs under that subsection which were being met under arrangements all or part of the cost of which was paid for by another local authority by means of direct payments made by virtue of section 50 or 52, co-operate with that authority;
  - (c) may recover from the other local authority mentioned in paragraph (a) or (b) the cost it incurs in meeting those of the adult's needs or the relevant carer's needs referred to in the paragraph in question.
- (8) Any dispute between local authorities about the application of this section is to be determined under section 195 as if it were a dispute of the type mentioned in subsection (1) of that section.
- (9) In this section and (where relevant) in section 190 and 191 –

“registered person” (*“person cofrestredig”*), in relation to an establishment or agency, means the person registered under Part 2 of the Care Standards Act 2000 in respect of that establishment or agency;

ystyr “person cofrestredig” (“*registered person*”), mewn perthynas â sefydliad neu asiantaeth, yw’r person sydd wedi ei gofrestru o dan Ran 2 o Ddeddf Safonau Gofal 2000 mewn cysylltiad â’r sefydliad hwnnw neu’r asiantaeth honno;

ystyr “person perthnasol” (“*relevant person*”) yw –

- (a) mewn achos sy’n ymwneud ag anghenion oedolyn am ofal a chymorth, yr oedolyn hwnnw;
- (b) mewn achos sy’n ymwneud ag anghenion gofalwr perthnasol am gymorth, yr oedolyn y mae angen gofal arno.

## 190 Methiant darparwr: eithriad i’r ddyletswydd dros dro

- (1) Nid yw’n ofynnol i awdurdod lleol ddiwallu anghenion a oedd, yn union cyn i’r person cofrestredig fethu â rhedeg y sefydliad neu ei reoli neu fethu â rhedeg yr asiantaeth neu ei rheoli, yn cael eu diwallu –
  - (a) o dan drefniadau a wnaed gan awdurdod lleol yn Lloegr o dan Ran 1 o Ddeddf Gofal 2014;
  - (b) o dan drefniadau a wnaed gan awdurdod lleol yn yr Alban wrth gyflawni ei ddyletswydd o dan adran 12 neu 13A o Ddeddf Gwaith Cymdeithasol (Yr Alban) 1968 neu adran 25 o Ddeddf Iechyd Meddwl (Gofal a Thriniaeth) (Yr Alban) 2003;
  - (c) o dan drefniadau a wnaed gan ymddiriedolaeth Iechyd a Gofal Cymdeithasol o dan Erthygl 15 o Orchymyn Iechyd a Gwasanaethau Cymdeithasol Personol (Gogledd Iwerddon) 1972 (O.S. 1972/1265 (N.I. 14)) neu adran 2 o Ddeddf Gofalwyr a Thaliadau Uniongyrchol (Gogledd Iwerddon) 2002;
  - (d) drwy ddarparu llety neu wasanaethau y talwyd ei gost neu eu cost yn llwyr neu’n rhannol drwy daliadau uniongyrchol a wnaed –
    - (i) yn rhinwedd adran 57 o Ddeddf Iechyd a Gofal Cymdeithasol 2001,
    - (ii) o ganlyniad i’r dewis a wnaed gan yr oedolyn yn unol ag adran 5 o Ddeddf Gofal Cymdeithasol (Cymorth Hunangyfeiriedig) (Yr Alban) 2013, neu
    - (iii) yn rhinwedd adran 8 o Ddeddf Gofalwyr a Thaliadau Uniongyrchol (Gogledd Iwerddon) 2002.
- (2) Wrth ddisgwyl i Ran 1 o Ddeddf Gofal 2014 gychwyn, mae is-adran (1)(a) i’w darllen fel pe bai wedi ei hamnewid gan –
  - “(a) o dan drefniadau a wnaed neu drwy gyfrwng gwasanaethau a ddarparwyd gan awdurdod lleol yn Lloegr o dan –
    - (i) Rhan 3 o Ddeddf Cymorth Gwladol 1948,
    - (ii) adran 45 o Ddeddf Gwasanaethau Iechyd ac Iechyd y Cyhoedd 1968,
    - (iii) adran 117 o Ddeddf Iechyd Meddwl 1983,
    - (iv) Atodlen 20 i Ddeddf y Gwasanaeth Iechyd Gwladol 2006, neu
    - (v) adran 2 o Ddeddf Gofalwyr a Phlant Anabl 2000;”.

“relevant carer” (“*gofalwr perthnasol*”) means a carer who –

- (a) is an adult, and
- (b) provides or intends to provide care for another adult;

“relevant person” (“*person perthnasol*”) means –

- (a) in a case involving an adult’s needs for care and support, that adult;
- (b) in a case involving a relevant carer’s needs for support, the adult needing care.

#### 190 **Provider failure: exception to temporary duty**

- (1) A local authority is not required to meet needs which were, immediately before the registered person became unable to carry on or manage the establishment or agency, being met –
  - (a) under arrangements made by a local authority in England under Part 1 of the Care Act 2014;
  - (b) under arrangements made by a local authority in Scotland discharging its duty under section 12 or 13A of the Social Work (Scotland) Act 1968 or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003;
  - (c) under arrangements made by a Health and Social Care trust under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) or section 2 of the Carers and Direct Payments Act (Northern Ireland) 2002;
  - (d) by the provision of accommodation or services all or part of the cost of which was paid for by direct payments made –
    - (i) by virtue of section 57 of the Health and Social Care Act 2001,
    - (ii) as a result of the choice made by the adult pursuant to section 5 of the Social Care (Self-directed Support) (Scotland) Act 2013, or
    - (iii) by virtue of section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002.
- (2) Pending the commencement of Part 1 of the Care Act 2014, subsection (1)(a) is to be read as if there were substituted for it –
  - “(a) under arrangements made by or by means of services provided by a local authority in England under –
    - (i) Part 3 of the National Assistance Act 1948,
    - (ii) section 45 of the Health Services and Public Health Act 1968,
    - (iii) section 117 of the Mental Health Act 1983,
    - (iv) Schedule 20 to the National Health Service Act 2006, or
    - (v) section 2 of the Carers and Disabled Children Act 2000;”.

- (3) Wrth ddisgwyl i adran 5 o Ddeddf Gofal Cymdeithasol (Cymorth Hunangyfeiriedig) (Yr Alban) 2013 gychwyn, mae is-adran (1)(d)(ii) i'w darllen fel pe bai wedi ei hamnewid gan—

“(ii) o dan adran 12B o Ddeddf Gwaith Cymdeithasol (Yr Alban) 1968, neu”.

#### 191 Methiant darparwr: materion atodol

- (1) Daw awdurdod lleol yn ddarostyngedig i'r ddyletswydd o dan adran 189(2) cyn gynted ag y daw'n ymwybodol o'r methiant busnes.
- (2) Mae adran 34 (sut i ddiwallu anghenion) ac adrannau 46 i 49 (diwallu anghenion: eithriadau a chyfyngiadau) yn gymwys i ddiwallu anghenion o dan adran 189 yn yr un modd ag y maent yn gymwys i ddiwallu anghenion o dan adrannau 35 i 45.
- (3) Caiff reoliadau wneud darpariaeth ynghylch y personau y mae rhaid i'r awdurdod lleol eu cynnwys mewn cysylltiad â diwallu anghenion o dan adran 189(2).
- (4) Pan fo person y mae ei anghenion yn cael eu diwallu gan awdurdod lleol o dan adran 189(2) ac y mae gofal parhaus y GIG hefyd yn cael ei ddarparu iddo o dan drefniadau a wnaed gan Fwrdd Iechyd Lleol nad yw unrhyw ran o'i ardal yn ardal yr awdurdod lleol, mae'r Bwrdd Iechyd Lleol i'w drin fel partner perthnasol yr awdurdod at ddibenion adrannau 162 a 164.
- (5) Yn is-adran (4) ystyr “gofal parhaus y GIG” yw gwasanaethau neu gyfleusterau a ddarperir yn rhinwedd adrannau 3(1)(e) a 12 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006.
- (6) Pan fo awdurdod lleol yn barnu ei bod yn angenrheidiol gwneud hynny at y diben o gyflawni ei ddyletswydd o dan adran 189(2), caiff ofyn i'r person cofrestredig, neu unrhyw berson arall sy'n gysylltiedig â busnes y sefydliad neu'r asiantaeth fel y bernir yn briodol ganddo, i ddarparu gwybodaeth iddo.
- (7) Rhaid i reoliadau wneud darpariaeth at ddibenion adran 189 a'r adran hon ynglŷn â'r dehongliad o gyfeiriadau at fethiant busnes neu at fethu â gwneud rhywbeth oherwydd methiant busnes; a caiff y rheoliadau, yn benodol, bennu'r amgylchiadau hynny lle y mae person i'w drin fel rhywun sy'n methu â rhedeg sefydliad neu ei reoli neu'n methu â rhedeg asiantaeth neu ei rheoli oherwydd methiant busnes.

#### 192 Diwygio Deddf Cymorth Gwladol 1948

Yn adran 49 o Ddeddf Cymorth Gwladol 1948 (treuliau swyddogion cyngor sy'n gweithredu fel derbynyddion), ar ôl “Act” mewnosoder “, other than one in Wales,”.

*Atodol*

#### 193 Adennill costau rhwng awdurdodau lleol

- (1) Mae is-adran (2) yn gymwys—
  - (a) pan fo awdurdod lleol (“awdurdod A”) yn darparu neu yn trefnu gofal a chymorth i berson sy'n preswyllo fel arfer yn ardal awdurdod lleol arall (“awdurdod B”), a

- (3) Pending the commencement of section 5 of the Social Care (Self-directed Support) (Scotland) Act 2013, subsection (1)(d)(ii) is to be read as if there were substituted for it –

“(ii) under section 12B of the Social Work (Scotland) Act 1968, or”.

**191 Provider failure: supplementary**

- (1) A local authority becomes subject to the duty under section 189(2) as soon as it becomes aware of the business failure.
- (2) Section 34 (how to meet needs) and sections 46 to 49 (meeting needs: exceptions and restrictions) apply to meeting needs under section 189 as they apply to meeting needs under sections 35 to 45.
- (3) Regulations may make provision about the persons whom the local authority must involve in connection with meeting needs under section 189(2).
- (4) Where a person whose needs are being met by a local authority under section 189(2) is also being provided with continuing NHS care under arrangements made by a Local Health Board no part of whose area is in the local authority’s area, the Local Health Board is to be treated as a relevant partner of the authority for the purposes of sections 162 and 164.
- (5) In subsection (4) “continuing NHS care” means services or facilities provided by virtue of sections 3(1)(e) and 12 of the National Health Service (Wales) Act 2006.
- (6) Where a local authority considers it necessary to do so for the purpose of carrying out its duty under section 189(2), it may request the registered person, or such other person involved in the establishment or agency’s business as it considers appropriate, to provide it with information.
- (7) Regulations must make provision for the purposes of section 189 and this section as to the interpretation of references to business failure or to being unable to do something because of business failure; and the regulations may, in particular, specify circumstances in which a person is to be treated as unable to carry on or manage an establishment or agency because of business failure.

**192 Amendment of the National Assistance Act 1948**

In section 49 of the National Assistance Act 1948 (expenses of council officers acting as receivers), after “Act” insert “, other than one in Wales,”.

*Supplementary*

**193 Recovery of costs between local authorities**

- (1) Subsection (2) applies where –
- (a) a local authority (“authority A”) provides or arranges care and support to a person who is ordinarily resident in the area of another local authority (“authority B”), and

- (b) pan fo'r gofal a'r cymorth wedi eu darparu naill ai –
  - (i) i ddiwallu anghenion brys er mwyn diogelu llesiant y person, neu
  - (ii) gyda chydysyniad awdurdod B.
- (2) Caiff awdurdod A adennill oddi wrth awdurdod B unrhyw dreuliau rhesymol a dynnwyd ganddo wrth ddarparu neu drefnu'r gofal a'r cymorth.
- (3) Pan fo awdurdod lleol yn darparu llety o dan adran 76(1) i blentyn a oedd (yn union cyn iddo ddechrau gofalu am y plentyn) yn preswyllo fel arfer yn ardal awdurdod lleol arall, caiff adennill oddi wrth yr awdurdod arall hwnnw unrhyw dreuliau rhesymol a dynnwyd ganddo wrth ddarparu'r llety a chynnal y plentyn.
- (4) Mae is-adran (5) yn gymwys pan fo awdurdod lleol ("awdurdod A") yn darparu llety o dan adran 77(1) neu (2)(a) neu (b) i blentyn sy'n preswyllo fel arfer yn ardal awdurdod lleol arall ("awdurdod B") ac nad yw'n cynnal y plentyn mewn –
  - (a) cartref cymunedol a ddarparwyd gan awdurdod A,
  - (b) cartref cymunedol a reolir, neu
  - (c) ysbyty sydd wedi ei freinio yng Ngweinidogion Cymru, Ymddiriedolaeth GIG, Ymddiriedolaeth Sefydledig GIG neu'r Ysgrifennydd Gwladol, neu unrhyw ysbyty arall a roddwyd ar gael yn unol â threfniadau a wnaed gan Fwrdd Iechyd Lleol, Ymddiriedolaeth GIG, Ymddiriedolaeth Sefydledig GIG, Gweinidogion Cymru, yr Ysgrifennydd Gwladol, Bwrdd Comisiynu'r Gwasanaeth Iechyd Gwladol neu grŵp comisiynu clinigol.
- (5) Caiff awdurdod A adennill oddi wrth awdurdod B unrhyw dreuliau rhesymol a dynnwyd ganddo wrth ddarparu'r llety a chynnal y plentyn.
- (6) Ac eithrio lle y bo is-adran (7) yn gymwys, pan fo awdurdod lleol yn cydymffurfio ag unrhyw gais o dan adran 164(1) neu (2) mewn perthynas â pherson nad yw'n preswyllo fel arfer yn ei ardal, caiff adennill unrhyw dreuliau rhesymol a dynnwyd ganddo mewn cysylltiad â'r person hwnnw oddi wrth yr awdurdod lleol y mae'r person yn preswyllo fel arfer yn ei ardal.
- (7) Pan fo awdurdod lleol ("awdurdod A") yn cydymffurfio ag unrhyw gais o dan adran 164(1) neu (2) gan awdurdod lleol arall ("awdurdod B") mewn perthynas â pherson ac awdurdod B yw'r awdurdod lleol cyfrifol o fewn ystyr adran 104 ar gyfer y person hwnnw, caiff awdurdod A adennill oddi wrth awdurdod B unrhyw dreuliau rhesymol a dynnwyd ganddo wrth arfer ei swyddogaethau o dan adrannau 105 i 115 mewn cysylltiad â'r person hwnnw.

#### **194 Preswylfa arferol**

- (1) Pan fo gan oedolyn anghenion am ofal a chymorth nad oes modd eu diwallu ond os yw'n byw mewn llety o fath a bennir mewn rheoliadau a bod yr oedolyn yn byw mewn llety yng Nghymru o fath a bennir felly, mae'r oedolyn i'w drin at ddibenion y Ddeddf hon fel un sy'n preswyllo fel arfer –
  - (a) yn yr ardal lle'r oedd yn preswyllo fel arfer yn union cyn iddo ddechrau byw mewn llety o fath a bennir yn y rheoliadau, neu
  - (b) os oedd heb breswylfa sefydlog yn union cyn iddo ddechrau byw mewn llety o fath a bennir felly, yn yr ardal lle'r oedd yr oedolyn yn bresennol bryd hynny.



- (b) the care and support was provided either –
  - (i) to meet urgent needs in order to safeguard the person’s well-being, or
  - (ii) with the consent of authority B.
- (2) Authority A may recover from authority B any reasonable expenses incurred by it in providing or arranging the care and support.
- (3) Where a local authority provides accommodation under section 76(1) for a child who was (immediately before it began to look after the child) ordinarily resident within the area of another local authority, it may recover from that other authority any reasonable expenses incurred by it in providing the accommodation and maintaining the child.
- (4) Subsection (5) applies where a local authority (“authority A”) provides accommodation under section 77(1) or (2)(a) or (b) for a child who is ordinarily resident within the area of another local authority (“authority B”) and it is not maintaining the child in –
  - (a) a community home provided by authority A,
  - (b) a controlled community home, or
  - (c) a hospital vested in the Welsh Ministers, an NHS Trust, an NHS Foundation Trust or the Secretary of State, or any other hospital made available pursuant to arrangements made by a Local Health Board, an NHS Trust, an NHS Foundation Trust, the Welsh Ministers, the Secretary of State, the National Health Service Commissioning Board or a clinical commissioning group.
- (5) Authority A may recover from authority B any reasonable expenses incurred by it in providing the accommodation and maintaining the child.
- (6) Except where subsection (7) applies, where a local authority complies with any request under section 164(1) or (2) in relation to a person who is not ordinarily resident within its area, it may recover from the local authority in whose area the person is ordinarily resident any reasonable expenses incurred by it in respect of that person.
- (7) Where a local authority (“authority A”) complies with any request under section 164(1) or (2) from another local authority (“authority B”) in relation to a person for whom authority B is the responsible local authority within the meaning of section 104, authority A may recover from authority B any reasonable expenses incurred by it in exercising its functions under sections 105 to 115 in respect of that person.

#### **194 Ordinary residence**

- (1) Where an adult has needs for care and support which can be met only if the adult is living in accommodation of a type specified in regulations and the adult is living in accommodation in Wales of a type so specified, the adult is to be treated for the purposes of this Act as ordinarily resident –
  - (a) in the area in which the adult was ordinarily resident immediately before the adult began to live in accommodation of a type specified in the regulations, or
  - (b) if the adult was of no settled residence immediately before the adult began to live in accommodation of a type so specified, in the area in which the adult was present at that time.

- (2) Pan fo oedolyn, cyn iddo ddechrau byw yn ei lety presennol, yn byw mewn llety o fath a bennir felly (p'un a yw'r llety o'r un fath â'r llety presennol ai peidio), mae'r cyfeiriad yn is-adran (1)(a) at y cyfnod y dechreuodd yr oedolyn fyw mewn llety o fath a bennir felly yn gyfeiriad at ddechrau'r cyfnod y mae'r oedolyn wedi bod yn byw mewn llety o un neu fwy o'r mathau a bennir am gyfnodau olynol.
- (3) Caiff y rheoliadau wneud darpariaeth i ddyfarnu at ddibenion is-adran (1) a oes gan oedolyn anghenion am ofal a chymorth na ellir eu diwallu ond os yw'r oedolyn yn byw mewn llety o fath a bennir mewn rheoliadau.
- (4) Mae person y mae llety'n cael ei ddarparu iddo o dan ddeddfiad iechyd i'w drin at ddibenion y Ddeddf hon fel un sy'n preswyllo fel arfer –
  - (a) yn yr ardal lle'r oedd yn preswyllo fel arfer yn union cyn i'r llety gael ei ddarparu, neu
  - (b) os oedd heb breswylfa sefydlog yn union cyn i'r llety gael ei ddarparu, yn yr ardal lle'r oedd y person yn bresennol bryd hynny.
- (5) Yn is-adran (4) ystyr "deddfiad iechyd" yw –
  - (a) Deddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006;
  - (b) Deddf y Gwasanaeth Iechyd Gwladol 2006;
  - (c) Deddf y Gwasanaeth Iechyd Gwladol (Yr Alban) 1978;
  - (d) Gorchymyn Iechyd a Gwasanaethau Cymdeithasol Personol (Gogledd Iwerddon) 1972 (O.S. 1972/1265 (N.I. 14));
  - (e) Deddf (Diwygio) Iechyd a Gofal Cymdeithasol (Gogledd Iwerddon) 2009.
- (6) Wrth ddyfarnu preswylfa arferol plentyn at ddibenion y Ddeddf hon, mae preswylfa'r plentyn yn y manau a ganlyn i'w ddiystyru –
  - (a) ysgol neu sefydliad arall;
  - (b) man lle y lleolir y plentyn yn unol â gofynion gorchymyn goruchwylio o dan Ddeddf Plant 1989;
  - (c) man lle y lleolir y plentyn yn unol â gofynion gorchymyn adsefydlu ieuencid o dan Ran 1 o Ddeddf Cyfiawnder a Mewnfudo 2008;
  - (d) llety a ddarperir gan neu ar ran awdurdod lleol neu awdurdod lleol yn Lloegr;
  - (e) man a bennir mewn rheoliadau.
- (7) Gweler hefyd adrannau 185(1) i (3) a 186(2) am ddarpariaeth o ran preswylfa arferol personau sydd mewn carchar, llety cadw ieuencid neu lety mechnïaeth etc.

## **195 Anghydfodau ynghylch preswylfa arferol a hygludedd gofal a chymorth**

- (1) Mae anghydfod rhwng awdurdodau lleol ynghylch ble y mae person yn preswyllo fel arfer yng Nghymru at ddibenion y Ddeddf hon, neu anghydfod rhwng awdurdod anfon ac awdurdod derbyn o dan adran 56 ynghylch cymhwyso'r adran honno mewn perthynas â pherson, i'w ddyfarnu arno gan –
  - (a) Gweinidogion Cymru, neu

- (2) Where, before beginning to live in his or her current accommodation, the adult was living in accommodation of a type so specified (whether or not of the same type as the current accommodation), the reference in subsection (1)(a) to when the adult began to live in accommodation of a type so specified is a reference to the beginning of the period during which the adult has been living in accommodation of one or more of the specified types for consecutive periods.
- (3) The regulations may make provision for determining for the purposes of subsection (1) whether an adult has needs for care and support which can be met only if the adult is living in accommodation of a type specified in regulations.
- (4) A person who is being provided with accommodation under a health enactment is to be treated for the purposes of this Act as ordinarily resident –
  - (a) in the area in which the person was ordinarily resident immediately before the accommodation was provided, or
  - (b) if the person was of no settled residence immediately before the accommodation was provided, in the area in which the person was present at that time.
- (5) In subsection (4) “health enactment” means –
  - (a) the National Health Service (Wales) Act 2006;
  - (b) the National Health Service Act 2006;
  - (c) the National Health Service (Scotland) Act 1978;
  - (d) the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14));
  - (e) the Health and Social Care (Reform) Act (Northern Ireland) 2009.
- (6) In determining the ordinary residence of a child for the purposes of this Act, the child’s residence in the following places is to be disregarded –
  - (a) a school or other institution;
  - (b) a place in which the child is placed in accordance with the requirements of a supervision order under the Children Act 1989;
  - (c) a place in which the child is placed in accordance with the requirements of a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008;
  - (d) accommodation provided by or on behalf of a local authority or a local authority in England;
  - (e) a place specified in regulations.
- (7) See also sections 185(1) to (3) and 186(2) for provision as to the ordinary residence of persons in prison, youth detention accommodation or bail accommodation etc.

## **195 Disputes about ordinary residence and portability of care and support**

- (1) A dispute between local authorities about where a person is ordinarily resident in Wales for the purposes of this Act, or a dispute between a sending and receiving authority under section 56 about the application of that section in relation to a person, is to be determined by –
  - (a) the Welsh Ministers, or

- (b) person a benodir gan Weinidogion Cymru at y ddiben hwnnw (“person penodedig”).
- (2) Caiff rheoliadau wneud darpariaeth bellach ynghylch datrys anghydfodau o’r math a grybwyllwyd yn is-adran (1); caiff y rheoliadau wneud, er enghraifft –
  - (a) darpariaeth i sicrhau bod gofal a chymorth yn cael eu darparu i berson tra bo anghydfod heb ei ddatrys;
  - (b) darpariaeth sy’n ei gwneud yn ofynnol i awdurdodau lleol mewn anghydfod gymryd camau penodedig cyn cyfeirio anghydfod at Weinidogion Cymru neu berson penodedig;
  - (c) darpariaeth ynghylch y weithdrefn ar gyfer cyfeirio anghydfod at Weinidogion Cymru neu berson penodedig;
  - (d) darpariaeth ynghylch adolygu dyfarniad a wneir o dan is-adran (1).

*Cyffredinol***196 Gorchmynion a rheoliadau**

- (1) Mae pŵer i wneud gorchmyn neu reoliadau o dan y Ddeddf hon i’w arfer drwy offeryn statudol.
- (2) Mae pŵer i wneud gorchmyn neu reoliadau o dan y Ddeddf hon yn cynnwys pŵer –
  - (a) i wneud darpariaeth wahanol ar gyfer achosion gwahanol neu ddsbarthau gwahanol o achosion, ardaloedd gwahanol neu at ddibenion gwahanol;
  - (b) i wneud darpariaeth wahanol yn gyffredinol neu’n ddarostyngedig i esemptiadau neu eithriadau penodol neu ddim ond mewn perthynas ag achosion penodol neu ddsbarthau penodol o achos;
  - (c) i wneud darpariaeth gysylltiedig, atodol, ganlyniadol, ddarfodol, drosiannol neu arbed.
- (3) Nid yw is-adrannau (1) a (2) yn gymwys i orchmyn y caniateir i lys neu ynad heddwch ei wneud.
- (4) Mae offeryn statudol sy’n cynnwys rheoliadau a wneir gan Weinidogion Cymru o dan y Ddeddf hon yn ddarostyngedig i’w ddirymu yn unol â phenderfyniad gan Gynulliad Cenedlaethol Cymru.
- (5) Nid yw is-adran (4) yn gymwys i reoliadau y mae is-adran (6) yn gymwys iddynt.
- (6) Ni chaniateir i offeryn statudol sy’n cynnwys y rheoliadau neu’r gorchmynion canlynol (p’un ai ar eu pennau eu hunain neu ar y cyd â darpariaeth arall) gael ei wneud onid oes drafft o’r offeryn wedi ei osod gerbron Cynulliad Cenedlaethol Cymru, a’i gymeradwyo ganddo drwy benderfyniad –
  - (a) rheoliadau o dan adran 3(6), 16(3), 18(3), 32, 37(1), 40(1), 42(1), 119, 127(9), 135(4), 166, 167(3), 168 neu 181;
  - (b) gorchmyn o dan adran 140 neu 143(2);
  - (c) rheoliadau o dan adran 198 sy’n diwygio neu ddiddymu unrhyw ddarpariaeth mewn Deddf Seneddol neu mewn un o Fesurau neu Ddeddfau Cynulliad Cenedlaethol Cymru;

- (b) a person appointed by the Welsh Ministers for that purpose (“an appointed person”).
- (2) Regulations may make further provision about the resolution of disputes of the type mentioned in subsection (1); the regulations may, for example, make—
  - (a) provision for ensuring that care and support is provided to a person while a dispute is unresolved;
  - (b) provision requiring local authorities in dispute to take specified steps before referring a dispute to the Welsh Ministers or an appointed person;
  - (c) provision about the procedure for referring a dispute to the Welsh Ministers or an appointed person;
  - (d) provision about the review of a determination made under subsection (1).

*General*

**196 Orders and regulations**

- (1) A power to make an order or regulations under this Act is to be exercised by statutory instrument.
- (2) A power to make an order or regulations under this Act includes power—
  - (a) to make different provision for different cases or classes of case, different areas or different purposes;
  - (b) to make different provision generally or subject to specified exemptions or exceptions or only in relation to specific cases or classes of case;
  - (c) to make incidental, supplementary, consequential, transitory, transitional or saving provision.
- (3) Subsections (1) and (2) do not apply to an order which may be made by a court or a justice of the peace.
- (4) A statutory instrument containing regulations made by the Welsh Ministers under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (5) Subsection (4) does not apply to regulations to which subsection (6) applies.
- (6) A statutory instrument containing the following regulations or orders (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales—
  - (a) regulations under section 3(6), 16(3), 18(3), 32, 37(1), 40(1), 42(1), 119, 127(9), 135(4), 166, 167(3), 168 or 181;
  - (b) an order under section 140 or 143(2);
  - (c) regulations under section 198 which amend or repeal any provision of an Act of Parliament or a Measure or Act of the National Assembly for Wales;

(gweler adrannau 33 a 141 am ofynion pellach mewn perthynas â gwneud rheoliadau o dan adran 32 a gorchmynion o dan adran 140).

- (7) Mae offeryn statudol sy'n cynnwys rheoliadau a wneir gan yr Arglwydd Ganghellor o dan adran 101 yn ddarostyngedig i'w ddirymu yn unol â phenderfyniad gan y naill neu'r llall o ddau Dŷ'r Senedd.

**197 Dehongli cyffredinol a mynegai o ymadroddion a ddiffiniwyd**

- (1) Yn y Ddeddf hon –

mae i “anabl” (“*disabled*”) yr ystyr a roddir gan adran 3;

mae “ardal Bwrdd Diogelu” (“*Safeguarding Board area*”) wedi ei ddiffinio at ddibenion Rhan 7 gan adran 142;

mae i “asesiad ariannol” (“*financial assessment*”) yr ystyr a roddir gan adran 63;

ystyr “asesiad o anghenion” (“*needs assessment*”) yw asesiad o dan Ran 3;

ystyr “Awdurdod Iechyd Arbennig” (“*Special Health Authority*”) yw Awdurdod Iechyd Arbennig a sefydlwyd o dan adran 22 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006 neu adran 28 o Ddeddf y Gwasanaeth Iechyd Gwladol 2006;

ystyr “awdurdod lleol” (“*local authority*”) yw cyngor sir neu gyngor bwrdeistref sirol yng Nghymru;

ystyr “awdurdod lleol yn Lloegr” (“*local authority in England*”) yw –

- (a) cyngor sir yn Lloegr,
- (b) cyngor dosbarth ar gyfer ardal yn Lloegr lle nad oes cyngor sir,
- (c) cyngor bwrdeistref yn Llundain, neu
- (d) Cyngor Cyffredin Dinas Llundain;

ystyr “awdurdod lleol yn yr Alban” (“*local authority in Scotland*”) yw cyngor a gyfansoddwyd o dan adran 2 o Ddeddf Llywodraeth Leol etc. (Yr Alban) 1994;

mae “Bwrdd Cenedlaethol” (“*National Board*”) wedi ei ddiffinio at ddibenion Rhan 7 gan adran 142;

ystyr “Bwrdd Comisiynu'r Gwasanaeth Iechyd Gwladol” (“*National Health Service Commissioning Board*”) yw'r corff a sefydlwyd o dan adran 1H o Ddeddf y Gwasanaeth Iechyd Gwladol 2006;

mae “Bwrdd Diogelu” (“*Safeguarding Board*”) wedi ei ddiffinio at ddibenion Rhan 7 gan adran 142;

ystyr “Bwrdd Iechyd Lleol” (“*Local Health Board*”) yw Bwrdd Iechyd Lleol a sefydlwyd o dan adran 11 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006;

(see sections 33 and 141 for further requirements in relation to the making of regulations under section 32 and orders under section 140).

- (7) A statutory instrument containing regulations made by the Lord Chancellor under section 101 is subject to annulment in pursuance of a resolution of either House of Parliament.

## 197 General interpretation and index of defined expressions

- (1) In this Act—

“abuse” (*“camdriniaeth”, “cam-drin”*) means physical, sexual, psychological, emotional or financial abuse (and includes abuse taking place in any setting, whether in a private dwelling, an institution or any other place), and “financial abuse” (*“camdriniaeth ariannol”*) includes—

- (a) having money or other property stolen;
- (b) being defrauded;
- (c) being put under pressure in relation to money or other property;
- (d) having money or other property misused;

“adult” (*“oedolyn”*) has the meaning given by section 3;

“approved premises” (*“mangre a gymeradwywyd”*) is defined for the purposes of sections 185 to 187 by section 188(1);

“bail in criminal proceedings” (*“mechnïaeth mewn achos troseddol”*) is defined for the purposes of sections 185 to 187 by section 188(1);

“care and support” (*“gofal a chymorth”*) has the meaning given by section 4;

“care home” (*“cartref gofal”*) has the same meaning as in the Care Standards Act 2000;

“carer” (*“gofalwr”*) has the meaning given by section 3;

“child” (*“plentyn”*) has the meaning given by section 3;

“children’s home” (*“cartref plant”*) means, except in section 86, a children’s home within the meaning of the Care Standards Act 2000 in respect of which a person is registered under Part 2 of that Act;

“clinical commissioning group” (*“grŵp comisiynu clinigol”*) means a body established under section 14D of the National Health Service Act 2006;

“community home” (*“cartref cymunedol”*) and “controlled community home” (*“cartref cymunedol a reolir”*) have the meanings given by section 53 of the Children Act 1989;

“disabled” (*“anabl”*) has the meaning given by section 3;

ystyr “camdriniaeth” a “cam-drin” (“*abuse*”) yw camdriniaeth gorfforol, rhywiol, seicolegol, emosiynol neu ariannol (ac mae’n cynnwys camdriniaeth sy’n digwydd mewn unrhyw leoliad, p’un ai mewn annedd breifat, mewn sefydliad neu mewn unrhyw fan arall), ac mae “camdriniaeth ariannol” (“*financial abuse*”) yn cynnwys y canlynol—

- (a) bod arian neu eiddo arall person yn cael ei ddwyn;
- (b) bod person yn cael ei dwyllo;
- (c) bod person yn cael ei roi o dan bwysau mewn perthynas ag arian neu eiddo arall;
- (d) bod arian neu eiddo arall person yn cael ei gamddefnyddio;

mae “carchar” (“*prison*”) wedi ei ddiffinio—

- (a) at ddibenion adrannau 185 i 187 gan adran 188(1),
- (b) at ddibenion adran 134, gan adran 134(11), ac
- (c) at ddibenion adran 162, gan adran 162(11);

mae i “cartref cymunedol” (“*community home*”) a “cartref cymunedol a reolir” (“*controlled community home*”) yr ystyron a roddir i “community home” a “controlled community home” gan adran 53 o Ddeddf Plant 1989;

mae i “cartref gofal” (“*care home*”) yr ystyr a roddir i “care home” yn Neddf Safonau Gofal 2000;

ystyr “cartref plant” (“*children’s home*”), ac eithrio yn adran 86, yw cartref plant o fewn ystyr “children’s home” yn Neddf Safonau Gofal 2000 y mae person wedi ei gofrestru mewn cysylltiad ag ef o dan Ran 2 o’r Ddeddf honno;

ystyr “cartref plant preifat” (“*private children’s home*”) yw cartref plant nad yw’n—

- (a) cartref cymunedol, na
- (b) cartref gwirfoddol (o fewn yr ystyr a roddir i “voluntary home” gan adran 60 o Ddeddf Plant 1989);

mae i “cyfrifoldeb rhiant” (“*parental responsibility*”) yr ystyr a roddir i “parental responsibility” gan adran 3 o Ddeddf Plant 1989;



“education functions” (“*swyddogaethau addysg*”) has the meaning given by section 579(1) of the Education Act 1996;

“eligibility criteria” (“*meini prawf cymhwysra*”) means criteria set under section 32;

“enactment” (“*deddfiad*”) means –

(a) except in sections 140(2)(b), 172(7) and 198(2)(b), a provision contained in any of the following (whenever enacted or made) –

- (i) an Act of Parliament;
- (ii) an Act or Measure of the National Assembly for Wales;
- (iii) an Act of the Scottish Parliament;
- (iv) Northern Ireland legislation (within the meaning of the Interpretation Act 1978);
- (v) subordinate legislation made under an enactment falling within subparagraphs (i) to (iv);

(b) in sections 140(2)(b), 172(7) and 198(2)(b), a provision contained in any of the following (whenever enacted or made) –

- (i) an Act of Parliament;
- (ii) an Act or Measure of the National Assembly for Wales;
- (iii) subordinate legislation made under an enactment falling within subparagraph (i) or (ii);

“family” (“*teulu*”), in relation to a child, includes (but is not limited to) any person who has parental responsibility for the child and any other person with whom the child has been living;

“financial assessment” (“*asesiad ariannol*”) has the meaning given by section 63;

“financial limit” (“*terfyn ariannol*”) has the meaning given by section 66(5);

“function” (“*swyddogaeth*”) means power or duty;

ystyr “deddfiad” (“*enactment*”) yw –

- (a) ac eithrio yn adrannau 140(2)(b), 172(7) a 198(2)(b), darpariaeth sydd wedi ei chynnwys mewn unrhyw un neu rai o’r canlynol (pa bryd bynnag y byddant wedi eu deddfu neu eu gwneud) –
  - (i) Deddf Seneddol;
  - (ii) Deddf neu Fesur gan Gynulliad Cenedlaethol Cymru;
  - (iii) Deddf Senedd yr Alban;
  - (iv) deddfwriaeth Gogledd Iwerddon (o fewn ystyr “Northern Ireland legislation” yn Neddf Dehongli 1978);
  - (v) is-ddeddfwriaeth a wneir o dan ddeddfiad sy’n dod o fewn is-baragraffau (i) i (iv);
- (b) yn adrannau 140(2)(b), 172(7) a 198(2)(b), darpariaeth sydd wedi ei chynnwys mewn unrhyw un neu rai o’r canlynol (pa bryd bynnag y byddant wedi eu deddfu neu eu gwneud) –
  - (i) Deddf Seneddol;
  - (ii) Deddf neu Fesur gan Gynulliad Cenedlaethol Cymru;
  - (iii) is-ddeddfwriaeth a wneir o dan ddeddfiad sy’n dod o fewn is-baragraff (i) neu (ii);

ystyr “esgeulustod” (“*neglect*”) yw methiant i ddiwallu anghenion corfforol, emosiynol, cymdeithasol neu seicolegol sylfaenol person, sy’n debygol o arwain at amharu ar lesiant y person (er enghraifft, amharu ar iechyd y person neu, yn achos plentyn, amharu ar ddatblygiad y plentyn);

mae “ffi safonol” (“*standard charge*”) wedi ei ddiffinio at ddibenion Rhan 5 gan adran 63(3);

mae i “gofal a chymorth” (“*care and support*”) yr ystyr a roddir gan adran 4;

mae i “gofalwr” (“*carer*”) yr ystyr a roddir gan adran 3;

ystyr “grŵp comisiynu clinigol” (“*clinical commissioning group*”) yw corff a sefydlir o dan adran 14D o Ddeddf y Gwasanaeth Iechyd Gwladol 2006;

mae i “gwarcheidwad arbennig” (“*special guardian*”) a “gorchymyn gwarcheidiaeth arbennig” (“*special guardianship order*”) yr ystyr a roddir i “special guardian” a “special guardianship order” gan adran 14A o Ddeddf Plant 1989;

mae “gwasanaethau” (“*services*”) yn cynnwys cyfleusterau;

mae i “llesiant” (“*well-being*”) yr ystyr a roddir gan adran 2;

mae “llety cadw ieuenctid” (“*youth detention accommodation*”) wedi ei ddiffinio at ddibenion adrannau 185 i 187 gan adran 188(1);

mae “magwraeth” (“*upbringing*”), mewn perthynas â phlentyn, yn cynnwys gofal dros y plentyn ond nid cynhaliaeth y plentyn;

mae “mangre a gymeradwywyd” (“*approved premises*”) wedi ei ddiffinio at ddibenion adrannau 185 i 187 gan adran 188(1);

“harm” (*“niwed”*), in relation to a child, means abuse or the impairment of –

- (a) physical or mental health, or
- (b) physical, intellectual, emotional, social or behavioural development,

and where the question of whether harm is significant turns on the child’s health or development, the child’s health or development is to be compared with that which could reasonably be expected of a similar child;

“Health and Social Care trust” (*“ymddiriedolaeth Iechyd a Gofal Cymdeithasol”*) means a Health and Social Care trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1));

“hospital” (*“ysbyty”*) has the meaning given by section 206 of the National Health Service (Wales) Act 2006;

“independent hospital” (*“ysbyty annibynnol”*) –

- (a) in relation to Wales, has the meaning given by section 2 of the Care Standards Act 2000, and
- (b) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section;

“local authority” (*“awdurdod lleol”*) means the council of a county or county borough in Wales;

“local authority foster parent” (*“rhiant maeth awdurdod lleol”*) means a person who is approved as a local authority foster parent in accordance with regulations made by virtue of section 93;

“local authority in England” (*“awdurdod lleol yn Lloegr”*) means –

- (a) a county council in England,
- (b) a district council for an area in England for which there is no county council,
- (c) a London borough council, or
- (d) the Common Council of the City of London;

“local authority in Scotland” (*“awdurdod lleol yn yr Alban”*) means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

“Local Health Board” (*“Bwrdd Iechyd Lleol”*) means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;

“National Board” (*“Bwrdd Cenedlaethol”*) is defined for the purposes of Part 7 by section 142;

“National Health Service Commissioning Board” (*“Bwrdd Comisiynu’r Gwasanaeth Iechyd Gwladol”*) means the body established under section 1H of the National Health Service Act 2006;

“needs assessment” (*“asesiad o anghenion”*) means an assessment under Part 3;

mae “mechnïaeth mewn achos troseddol” (“*bail in criminal proceedings*”) wedi ei ddiffinio at ddibenion adrannau 185 i 187 gan adran 188(1);

ystyr “meini prawf cymhwystra” (“*eligibility criteria*”) yw meini prawf a osodir o dan adran 32;

ystyr “niwed” (“*harm*”), mewn perthynas â phlentyn, yw camdriniaeth neu nam ar –

(a) iechyd corfforol neu iechyd meddwl, neu

(b) datblygiad corfforol, deallusol, emosiynol, cymdeithasol neu ymddygiadol, a phan fo’r cwestiwn a yw’r niwed yn sylweddol yn troi ar iechyd neu ddatblygiad y plentyn, mae iechyd neu ddatblygiad y plentyn i’w gymharu â’r hyn y gellid ei ddisgwyl yn rhesymol gan blentyn tebyg;

mae i “oedolyn” (“*adult*”) yr ystyr a roddir gan adran 3;

mae “partner Bwrdd Diogelu” (“*Safeguarding Board partner*”) wedi ei ddiffinio at ddibenion Rhan 7 gan adran 142;

ystyr “penodedig”, “a bennir” ac “a bennwyd” (“*specified*”) ac ymadroddion cytras, oni bai bod y cyd-destun yn mynnu fel arall, yw penodedig mewn rheoliadau;

ystyr “perthynas” (“*relative*”), mewn perthynas â phlentyn, yw llys-riant, tad-cu/taid, mam-gu/nain, brawd, chwaer, ewythr neu fodryb (gan gynnwys unrhyw berson sydd yn y berthynas honno yn rhinwedd priodas neu bartneriaeth sifil neu berthynas deuluol barhaus);

mae i “plentyn” (“*child*”) yr ystyr a roddir gan adran 3;

ystyr “rheoliadau” (“*regulations*”), ac eithrio mewn perthynas ag adran 101, yw rheoliadau a wneir gan Weinidogion Cymru;

ystyr “rhiant maeth awdurdod lleol” (“*local authority foster parent*”) yw person sydd wedi ei gymeradwyo fel rhiant maeth awdurdod lleol yn unol â rheoliadau a wneir yn rhinwedd adran 93;

ystyr “sefydliad gwirfoddol” (“*voluntary organisation*”) yw corff (ac eithrio corff cyhoeddus neu breifat) nad yw ei weithgareddau’n cael eu cynnal er mwyn gwneud elw;

mae i “swyddog achosion teuluol Cymru” (“*Welsh family proceedings officer*”) yr ystyr a roddir i “Welsh family proceedings officer” gan adran 35 o Ddeddf Plant 2004;

ystyr “swyddogaeth” (“*function*”) yw pŵer neu ddyletswydd;

mae i “swyddogaethau addysg” (“*education functions*”) yr ystyr a roddir i “education functions” gan adran 579(1) o Ddeddf Addysg 1996;

mae i “terfyn ariannol” (“*financial limit*”) yr ystyr a roddir gan adran 66(5);

mae “teulu” (“*family*”), mewn perthynas â phlentyn, yn cynnwys (ond nid yw’n gyfyngedig i) unrhyw berson sydd â chyfrifoldeb rhiant dros y plentyn ac unrhyw berson arall y mae’r plentyn wedi bod yn byw gydag ef;

“neglect” (*“esgeulustod”*) means a failure to meet a person’s basic physical, emotional, social or psychological needs, which is likely to result in an impairment of the person’s well-being (for example, an impairment of the person’s health or, in the case of a child, an impairment of the child’s development);

“NHS Foundation Trust” (*“Ymddiriedolaeth Sefydledig GIG”*) has the meaning given by section 30 of the National Health Service Act 2006;

“NHS Trust” (*“Ymddiriedolaeth GIG”*) means a National Health Service trust established under section 18 of the National Health Service (Wales) Act 2006;

“parental responsibility” (*“cyfrifoldeb rhiant”*) has meaning given by section 3 of the Children Act 1989;

“prison” (*“carchar”*) is defined –

- (a) for the purposes of sections 185 to 187 by section 188(1),
- (b) for the purposes of section 134, by section 134(11), and
- (c) for the purposes of section 162, by section 162(11);

“private children’s home” (*“cartref plant preifat”*) means a children’s home which is not –

- (a) a community home, or
- (b) a voluntary home (within the meaning given by section 60 of the Children Act 1989);

“regulations” (*“rheoliadau”*), other than in relation to section 101, means regulations made by the Welsh Ministers;

“relative” (*“perthynas”*), in relation to a child, means a step-parent, grandparent, brother, sister, uncle or aunt (including any person who is in that relationship by virtue of a marriage or civil partnership or an enduring family relationship);

“Safeguarding Board” (*“Bwrdd Diogelu”*) is defined for the purposes of Part 7 by section 142;

“Safeguarding Board area” (*“ardal Bwrdd Diogelu”*) is defined for the purposes of Part 7 by section 142;

“Safeguarding Board partner” (*“partner Bwrdd Diogelu”*) is defined for the purposes of Part 7 by section 142;

“services” (*“gwasanaethau”*) includes facilities;

“special guardian” (*“gwarcheidwad arbennig”*) and “special guardianship order” (*“gorchymyn gwarcheidiaeth arbennig”*) have the meaning given by section 14A of the Children Act 1989;

“Special Health Authority” (*“Awdurdod Iechyd Arbennig”*) means a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006 or section 28 of the National Health Service Act 2006;

“specified” (*“penodedig”, “a bennir”, “a bennwyd”*) and related expressions, unless the context otherwise requires, means specified in regulations;

“standard charge” (*“ffi safonol”*) is defined for the purposes of Part 5 by section 63(3);

ystyr “*tîm troseddwr ifanc*” (“*youth offending team*”) yw tîm a sefydlir o dan adran 39 o Ddeddf Trosedd ac Anrhefn 1998;

ystyr “*Ymddiriedolaeth GIG*” (“*NHS Trust*”) yw Ymddiriedolaeth Gwasanaeth Iechyd Gwladol a sefydlwyd o dan adran 18 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006;

ystyr “*ymddiriedolaeth Iechyd a Gofal Cymdeithasol*” (“*Health and Social Care trust*”) yw ymddiriedolaeth Iechyd a Gofal Cymdeithasol a sefydlwyd o dan Orchymyn Iechyd a Gwasanaethau Cymdeithasol Personol (Gogledd Iwerddon) 1991 (O.S. 1991/194 (N.I. 1));

mae i “*Ymddiriedolaeth Sefydledig GIG*” (“*NHS Foundation Trust*”) yr ystyr a roddir i “*NHS Foundation Trust*” gan adran 30 o Ddeddf y Gwasanaeth Iechyd Gwladol 2006;

mae i “*ysbyty*” (“*hospital*”) yr ystyr a roddir i “*hospital*” gan adran 206 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006;

mae i “*ysbyty annibynnol*” (“*independent hospital*”) –

(a) o ran Cymru, yr ystyr a roddir i “*independent hospital*” gan adran 2 o Ddeddf Safonau Gofal 2000, a

(b) o ran Lloegr, yr ystyr a roddir i “*hospital*” fel y’i diffinnir gan adran 275 o Ddeddf y Gwasanaeth Iechyd Gwladol 2006 nad yw’n ysbyty gwasanaeth iechyd fel y diffinnir “*health service hospital*” gan yr adran honno.

(2) Yn y Ddeddf hon –

(a) mae i gyfeiriad at blentyn sy’n derbyn gofal gan awdurdod lleol yr ystyr a roddir gan adran 74;

(b) mae i gyfeiriad at blentyn sy’n derbyn gofal gan awdurdod lleol yn Lloegr yr ystyr a roddir i gyfeiriad yn Neddf Plant 1989 at blentyn sy’n derbyn gofal gan awdurdod lleol ar gyfer ardal yn Lloegr (gweler adran 22 o’r Ddeddf honno);

(c) mae i gyfeiriad at blentyn sy’n derbyn gofal gan awdurdod lleol yn yr Alban yr un ystyr â chyfeiriad ym Mhennod 1 o Ran 2 o Ddeddf Plant (Yr Alban) 1995 at blentyn sy’n derbyn gofal (“*looked after*”) gan awdurdod lleol (gweler adran 17(6) o’r Ddeddf honno);

(d) mae i gyfeiriad at blentyn sy’n derbyn gofal gan ymddiriedolaeth Iechyd a Gofal Cymdeithasol yr un ystyr â chyfeiriad yng Ngorchymyn Plant (Gogledd Iwerddon) 1995 (O.S. 1995/755 (N.I. 2)) at blentyn sy’n derbyn gofal gan awdurdod (gweler erthygl 25 o’r Gorchymyn hwnnw).

(3) Mae cyfeiriad yn y Ddeddf hon at blentyn sydd yng ngofal awdurdod lleol yn gyfeiriad at blentyn sydd o dan ei ofal yn rhinwedd gorchymyn gofal (o fewn yr ystyr a roddir i “*care order*” gan Neddf Plant 1989).

(4) Mae cyfeiriad yn y Ddeddf hon at lety a ddarperir gan neu ar ran awdurdod lleol yn gyfeiriad at lety a ddarperir felly wrth arfer swyddogaethau’r awdurdod hwnnw neu unrhyw awdurdod lleol arall sy’n swyddogaethau gwasanaethau cymdeithasol.

“upbringing” (*“magwraeth”*), in relation to a child, includes the care of the child but not the child’s maintenance;

“voluntary organisation” (*“sefydliad gwirfoddol”*) means a body (other than a public or private body) whose activities are not carried on for profit;

“well-being” (*“llesiant”*) has the meaning given by section 2;

“Welsh family proceedings officer” (*“swyddog achosion teuluol Cymru”*) has the meaning given by section 35 of the Children Act 2004;

“youth detention accommodation” (*“llety cadw ieuenctid”*) is defined for the purposes of sections 185 to 187 by section 188(1);

“youth offending team” (*“tîm troseddwyf ifanc”*) means a team established under section 39 of the Crime and Disorder Act 1998.

(2) In this Act—

- (a) a reference to a child looked after by a local authority has the meaning given by section 74;
- (b) a reference to a child looked after by a local authority in England has the meaning given to a reference in the Children Act 1989 to a child who is looked after by a local authority for an area in England (see section 22 of that Act);
- (c) a reference to a child looked after by a local authority in Scotland has the same meaning as a reference in Chapter 1 of Part 2 of the Children (Scotland) Act 1995 to a child who is “looked after” by a local authority (see section 17(6) of that Act);
- (d) a reference to a child looked after by a Health and Social Care trust has the same meaning as a reference in the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) to a child who is looked after by an authority (see article 25 of that Order).

(3) A reference in this Act to a child who is in the care of a local authority is a reference to a child who is in its care by virtue of a care order (within the meaning given by the Children Act 1989).

(4) A reference in this Act to accommodation provided by or on behalf of a local authority is a reference to accommodation so provided in the exercise of functions of that authority or any other local authority which are social services functions.

- (5) Mae cyfeiriad yn y Ddeddf hon at y ffaith bod gan, neu nad oes gan, berson alluedd mewn perthynas â mater i'w ddehongli fel cyfeiriad at y ffaith bod gan, neu nad oes gan, berson alluedd o fewn ystyr "capacity" yn Neddf Galluedd Meddyliol 2005 mewn perthynas â'r mater hwnnw.
- (6) Mae cyfeiriad yn y Ddeddf hon at gael awdurdodiad o dan Ddeddf Galluedd Meddyliol 2005 yn gyfeiriad at gael awdurdodiad fel—
  - (a) rhoddai atwrneiaeth arhosol a grëwyd o dan y Ddeddf honno, neu
  - (b) dirprwy a benodwyd gan y Llys Gwarchod o dan adran 16(2)(b) o'r Ddeddf honno.
- (7) Caiff Gweinidogion Cymru drwy reoliadau ddarparu bod Cyngor Ynysoedd Scilly i'w drin fel awdurdod lleol yn Lloegr at ddibenion y Ddeddf hon, neu at ddibenion darpariaethau penodol y Ddeddf hon, gydag unrhyw addasiadau a bennir.

### 198 Pŵer i wneud darpariaeth ganlyniadol a throsiannol etc

- (1) Os yw Gweinidogion Cymru o'r farn ei bod yn angenrheidiol neu'n hwylus at ddibenion rhoi effaith lawn i unrhyw ddarpariaeth yn y Ddeddf hon, neu o ganlyniad i unrhyw ddarpariaeth o'r fath, cânt drwy reoliadau wneud—
  - (a) unrhyw ddarpariaeth atodol, cysylltiedig neu ganlyniadol, a
  - (b) unrhyw ddarpariaeth drosiannol neu ddarpariaeth arbed.
- (2) Caiff rheoliadau o dan yr adran hon (ymhlith pethau eraill)—
  - (a) darparu bod unrhyw ddarpariaeth yn y Ddeddf hon sy'n dod i rym cyn bod unrhyw ddarpariaeth arall wedi dod i rym yn cael effaith, hyd nes y bydd y ddarpariaeth arall honno wedi dod i rym, gydag addasiadau penodedig;
  - (b) diwygio, diddymu neu ddirymu unrhyw ddeddfiad (gan gynnwys un o ddarpariaethau'r Ddeddf hon) a basiwyd neu a wnaed ar neu cyn y dyddiad y caiff y Ddeddf hon ei phasio.
- (3) Nid oes dim yn yr adran hon sy'n cyfyngu'r pŵer yn rhinwedd adran 196(2) i gynnwys darpariaeth drosiannol neu ddarpariaeth arbed mewn gorchymyn o dan adran 199(2).

### 199 Cychwyn

- (1) Daw'r darpariaethau canlynol i rym drannoeth y diwrnod y caiff y Ddeddf hon y Cydsyniad Brenhinol—
  - Rhan 1;
  - adran 196;
  - adran 197;
  - adran 198;
  - yr adran hon;
  - adran 200.
- (2) Daw gweddill darpariaethau'r Ddeddf hon i rym ar ddiwrnod a bennir gan Weinidogion Cymru drwy orchymyn.



- (5) A reference in this Act to a person having, or lacking, capacity in relation to a matter is to be interpreted as a reference to a person having, or lacking, capacity within the meaning of the Mental Capacity Act 2005 in relation to that matter.
- (6) A reference in this Act to being authorised under the Mental Capacity Act 2005 is a reference to being authorised as –
  - (a) a donee of a lasting power of attorney created under that Act, or
  - (b) a deputy appointed by the Court of Protection under section 16(2)(b) of that Act.
- (7) The Welsh Ministers may by regulations provide that the Council of the Isles of Scilly is to be treated as a local authority in England for the purposes of this Act, or for the purposes of specified provisions of this Act, with such modifications as may be specified.

**198 Power to make consequential and transitional provision etc**

- (1) If the Welsh Ministers consider it necessary or expedient for the purposes of giving full effect to any provision of this Act, or in consequence of any such provision, they may by regulations make –
  - (a) any supplementary, incidental or consequential provision, and
  - (b) any transitional or saving provision.
- (2) Regulations under this section may (among other things) –
  - (a) provide for any provision of this Act which comes into force before another provision has come into force to have effect, until that other provision has come into force, with specified modifications;
  - (b) amend, repeal or revoke any enactment (including a provision of this Act) passed or made on or before the day on which this Act is passed.
- (3) Nothing in this section limits the power by virtue of section 196(2) to include transitional or saving provision in an order under section 199(2).

**199 Commencement**

- (1) The following provisions come into force on the day after the day on which this Act receives Royal Assent –
  - Part 1;
  - section 196;
  - section 197;
  - section 198;
  - this section;
  - section 200.
- (2) The remaining provisions of this Act come into force on a day appointed by the Welsh Ministers by order.

- (3) Caiff gorchymyn a wneir o dan is-adran (2) bennu gwahanol ddiwrnodau at wahanol ddibenion.
- (4) Ni chaiff gorchymyn a wneir o dan is-adran (2) gychwyn y ddarpariaeth yn is-adrannau (1) a (2) o adran 32 cyn bod rheoliadau a wneir o dan is-adrannau (3) a (4) o'r adran honno wedi dod i rym.

**200 Enw byr**

Enw byr y Ddeddf hon yw Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014.

- (3) An order made under subsection (2) may appoint different days for different purposes.
- (4) An order made under subsection (2) may not commence the provision in subsections (1) and (2) of section 32 before regulations made under subsections (3) and (4) of that section have come into force.

**200 Short title**

The short title of this Act is the Social Services and Well-being (Wales) Act 2014.

## ATODLEN 1

*(a gyflwynwyd gan adran 85)*

## CYFRANIADAU TUAG AT GYNHALIAETH PLANT SY’N DERBYN GOFAL

*Atebolrwydd am gyfrannu*

- 1 (1) Pan fo awdurdod lleol yn gofalu am blentyn (mewn achosion ar wahân i’r rhai a grybwyllir yn is-baragraff (8)) rhaid iddo ystyried a ddylai adennill cyfraniadau tuag at gynhaliaeth y plentyn gan unrhyw berson sy’n atebol am gyfrannu (“cyfrannwr”).
- (2) Dim ond pan fo awdurdod lleol yn ystyried ei bod yn rhesymol y caniateir iddo adennill cyfraniadau gan gyfrannwr.
- (3) Mae person yn atebol am gyfrannu os yw’n oedolyn sydd â chyfrifoldeb rhiant dros y plentyn.
- (4) Nid yw person yn atebol am gyfrannu yn ystod unrhyw gyfnod pan fo’n cael budd-dal sy’n dod o fewn categori a bennir mewn rheoliadau.
- (5) Yn is-baragraff (4) mae “budd-dal” yn cynnwys unrhyw lwfans, taliad, credyd neu fenthyciad.
- (6) Nid yw person yn atebol am gyfrannu tuag at gynhaliaeth plentyn y mae awdurdod lleol yn gofalu amdano mewn cysylltiad ag unrhyw gyfnod y mae’r plentyn yn byw gydag un o rieni’r plentyn o dan drefniadau a wneir gan yr awdurdod yn unol ag adran 81.
- (7) Nid oes rhaid i gyfrannwr wneud unrhyw gyfraniad tuag at gynhaliaeth plentyn ac eithrio fel a gytunir neu a ddyfernir yn unol â’r Atodlen hon.
- (8) Yr achosion yw’r rhai lle y mae awdurdod lleol yn gofalu am blentyn o dan—
  - (a) adran 76;
  - (b) gorchymyn gofal interim o dan Ddeddf Plant 1989;
  - (c) adran 92 o Ddeddf Pwerau Llysoedd Troseddol (Dedfrydu) 2000.

*Cyfraniadau y cytunwyd arnynt*

- 2 (1) Ni chaniateir i gyfraniadau tuag at gynhaliaeth plentyn gael eu hadennill ond os yw’r awdurdod lleol wedi cyflwyno hysbysiad (“hysbysiad cyfrannu”) i’r cyfrannwr yn pennu—
  - (a) y swm wythnosol y mae’n barnu y dylid ei gyfrannu, a
  - (b) trefniadau ar gyfer talu.
- (2) Rhaid i’r hysbysiad cyfrannu fod yn ysgrifenedig ac wedi ei ddyddio.
- (3) Rhaid i’r trefniadau ar gyfer talu gynnwys, yn benodol—
  - (a) y dyddiad y mae atebolrwydd am gyfrannu’n dechrau (y mae’n rhaid i’r dyddiad beidio â bod yn gynharach na dyddiad yr hysbysiad),
  - (b) y dyddiad y bydd atebolrwydd o dan yr hysbysiad yn dod i ben (os nad yw’r plentyn, cyn y dyddiad hwnnw, wedi peidio â bod yn un sy’n derbyn gofal gan yr awdurdod), ac
  - (c) y dyddiad pryd y mae’r taliad cyntaf i’w wneud.

SCHEDULE 1  
(introduced by section 85)

CONTRIBUTIONS TOWARDS MAINTENANCE OF LOOKED AFTER CHILDREN

*Liability to contribute*

- 1 (1) Where a local authority is looking after a child (other than in the cases mentioned in sub-paragraph (8)) it must consider whether it should recover contributions towards the child's maintenance from any person liable to contribute ("a contributor").
- (2) An authority may only recover contributions from a contributor if it considers it reasonable to do so.
- (3) A person is liable to contribute if he or she is an adult with parental responsibility for the child.
- (4) A person is not liable to contribute during any period when the person is in receipt of a benefit which falls within a category specified in regulations.
- (5) In sub-paragraph (4) "benefit" includes any allowance, payment, credit or loan.
- (6) A person is not liable to contribute towards the maintenance of a child in the care of a local authority in respect of any period during which the child is living with a parent of the child under arrangements made by the authority in accordance with section 81.
- (7) A contributor is not obliged to make any contribution towards a child's maintenance except as agreed or determined in accordance with this Schedule.
- (8) The cases are those in which the child is looked after by a local authority under –
  - (a) section 76;
  - (b) an interim care order under the Children Act 1989;
  - (c) section 92 of the Powers of Criminal Courts (Sentencing) Act 2000.

*Agreed contributions*

- 2 (1) Contributions towards a child's maintenance may only be recovered if the local authority has served a notice ("a contribution notice") on the contributor specifying –
  - (a) the weekly amount which it considers should be contributed, and
  - (b) arrangements for payment.
- (2) The contribution notice must be in writing and dated.
- (3) Arrangements for payment must, in particular, include –
  - (a) the date on which liability to contribute begins (which must not be earlier than the date of the notice),
  - (b) the date on which liability under the notice will end (if the child has not, before that date, ceased to be looked after by the authority), and
  - (c) the date on which the first payment is to be made.

- (4) Caiff yr awdurdod bennu, mewn hysbysiad cyfrannu, swm wythnosol sy'n gyfraniad safonol a ddyfernir gan yr awdurdod ar gyfer yr holl blant y mae'n gofalu amdanynt.
- (5) Ni chaiff awdurdod bennu, mewn hysbysiad cyfrannu, swm wythnosol sy'n uwch na'r hyn y mae'n barnu –
  - (a) y byddai fel arfer yn barod i'w dalu pe bai wedi lleoli plentyn tebyg gyda rhieni maeth awdurdod lleol, a
  - (b) ei bod yn rhesymol ymarferol i'r cyfrannwr dalu (gan roi sylw i'w foddion byw).
- (6) Caiff awdurdod dynnu hysbysiad cyfrannu yn ôl ar unrhyw bryd (heb effeithio ar ei bŵer i gyflwyno un arall).
- (7) Pan fo'r awdurdod a'r cyfrannwr yn cytuno ar –
  - (a) y swm y mae'r cyfrannwr i'w gyfrannu, a
  - (b) trefniadau ar gyfer talu,

(p'un ai fel a bennir yn yr hysbysiad cyfrannu neu fel arall) a bod y cyfrannwr yn hysbysu'r awdurdod yn ysgrifenedig ei fod yn cytuno â hynny, caiff yr awdurdod adennill yn ddiannod, fel dyled sifil, unrhyw gyfraniad sy'n orddyledus a heb ei dalu.
- (8) Nid yw is-baragraff (7) yn effeithio ar unrhyw ddull arall o adennill costau.
- (9) Caiff cyfrannwr, drwy gyflwyno hysbysiad ysgrifenedig i'r awdurdod, dynnu ei gytundeb yn ôl mewn perthynas ag unrhyw gyfnod atebolrwydd sy'n dod ar ôl y dyddiad y cyflwynwyd yr hysbysiad.

#### *Gorchymynion cyfraniadau*

- 3 (1) Pan fo hysbysiad cyfrannu wedi ei gyflwyno i gyfrannwr a bod –
  - (a) y cyfrannwr wedi methu â dod i unrhyw gytundeb gyda'r awdurdod lleol fel a grybwyllwyd ym mharagraff 2(7) o fewn cyfnod o fis sy'n dechrau ar y diwrnod y cyflwynwyd yr hysbysiad am gyfraniadau, neu
  - (b) y cyfrannwr wedi cyflwyno hysbysiad o dan baragraff 2(9) yn tynnu ei gytundeb yn ôl,

caiff yr awdurdod wneud cais i'r llys am orchymyn o dan y paragraff hwn.
- (2) Wrth gael cais o'r fath caiff y llys wneud gorchymyn ("gorchymyn cyfrannu") yn ei gwneud yn ofynnol i'r cyfrannwr gyfrannu swm wythnosol tuag at gynhaliaeth y plentyn yn unol â threfniadau ar gyfer talu a bennir gan y llys.
- (3) O ran gorchymyn cyfrannu –
  - (a) ni chaiff bennu swm wythnosol sy'n uwch na'r hyn a bennir yn yr hysbysiad cyfrannu, a
  - (b) rhaid ei wneud gan roi sylw i foddion byw y cyfrannwr.
- (4) Ni chaiff gorchymyn cyfrannu –
  - (a) dod yn effeithiol cyn y dyddiad a bennir yn yr hysbysiad cyfrannu,
  - (b) cael effaith tra na bo'r cyfrannwr yn atebol am gyfrannu (yn rhinwedd paragraff 1), nac

- (4) The authority may specify in a contribution notice a weekly amount which is a standard contribution determined by the authority for all children looked after by it.
- (5) The authority may not specify in a contribution notice a weekly amount greater than that which it considers –
  - (a) it would normally be prepared to pay if it had placed a similar child with local authority foster parents, and
  - (b) it is reasonably practicable for the contributor to pay (having regard to his or her means).
- (6) An authority may at any time withdraw a contribution notice (without affecting its power to serve another).
- (7) Where the authority and the contributor agree –
  - (a) the amount which the contributor is to contribute, and
  - (b) arrangements for payment,(whether as specified in the contribution notice or otherwise) and the contributor notifies the authority in writing that he or she so agrees, the authority may recover summarily, as a civil debt, any contribution which is overdue and unpaid.
- (8) Sub-paragraph (7) is without prejudice to any other method of recovery.
- (9) A contributor may, by serving a notice in writing on the authority, withdraw his or her agreement in relation to any period of liability falling after the date of service of the notice.

#### *Contribution orders*

- 3 (1) Where a contributor has been served with a contribution notice and has –
  - (a) failed to reach any agreement with the local authority as mentioned in paragraph 2(7) within the period of one month beginning with the day on which the contribution notice was served, or
  - (b) served a notice under paragraph 2(9) withdrawing his or her agreement,the authority may apply to the court for an order under this paragraph.
- (2) On such an application the court may make an order (“a contribution order”) requiring the contributor to contribute a weekly amount towards the child’s maintenance in accordance with arrangements for payment specified by the court.
- (3) A contribution order –
  - (a) may not specify a weekly amount greater than that specified in the contribution notice, and
  - (b) must be made with regard to the contributor’s means.
- (4) A contribution order may not –
  - (a) take effect before the date specified in the contribution notice,
  - (b) have effect while the contributor is not liable to contribute (by virtue of paragraph 1), or

- (c) aros mewn grym ar ôl i'r plentyn beidio mwyach â bod yn un sy'n derbyn gofal gan yr awdurdod a sicrhaodd y gorchymyn.
- (5) Ni chaiff awdurdod wneud cais i'r llys o dan is-baragraff (1) mewn perthynas â hysbysiad cyfrannu y mae wedi ei dynnu yn ôl.
- (6) Pan fo—
- (a) gorchymyn cyfrannu mewn grym,
  - (b) yr awdurdod yn cyflwyno hysbysiad cyfrannu arall, ac
  - (c) y cyfrannwr a'r awdurdod yn dod i gytundeb o dan baragraff 2(7) mewn perthynas â'r hysbysiad cyfrannu arall hwnnw,
- effaith y cytundeb yw disodli'r gorchymyn o'r dyddiad y cytunir bod y cytundeb i ddod yn effeithiol.
- (7) Pan ddeuir i gytundeb yn yr amgylchiadau a ddisgrifiwyd yn is-baragraff (6) rhaid i'r awdurdod hysbysu'r llys—
- (a) am y cytundeb, a
  - (b) am y dyddiad y daeth yn effeithiol.
- (8) Caniateir i orchymyn cyfrannu gael ei amrywio neu ei ddirymu ar gais y cyfrannwr neu'r awdurdod.
- (9) Mewn achos cyfreithiol ar gyfer amrywio gorchymyn cyfrannu, rhaid i'r awdurdod bennu—
- (a) y swm wythnosol, gan roi sylw i baragraff 2, y mae'n bwriadu y dylai'r cyfrannwr ei gyfrannu o dan y gorchymyn fel y bydd yn cael ei amrywio, a
  - (b) y trefniadau arfaethedig ar gyfer talu.
- (10) Pan fo gorchymyn cyfrannu wedi ei amrywio—
- (a) ni chaiff y gorchymyn bennu swm wythnosol sy'n uwch na'r un a bennwyd gan yr awdurdod yn yr achos cyfreithiol ar gyfer ei amrywio, a
  - (b) rhaid i'r gorchymyn gael ei wneud gan roi sylw i foddion byw y cyfrannwr.
- (11) Ceir gwneud apêl yn unol â rheolau'r llys yn erbyn unrhyw orchymyn a wneir o dan y paragraff hwn.

*Gorfodi gorchymynion cyfraniadau etc*

- 4 (1) Mae gorchymyn cyfrannu a wneir gan lys ynadon yn orfodadwy fel gorchymyn cynhaliaeth llys ynadon (o fewn ystyr "magistrates' court maintenance order" yn adran 150(1) o Ddeddf Llysoedd Ynadon 1980).
- (2) Mae is-baragraff (1) yn peidio â chael effaith ar y diwrnod y daw paragraff 120 o Atodlen 11 i Ddeddf Troseddu a'r Llysoedd 2013 i rym.
- (3) Pan fo cyfrannwr wedi cytuno, neu wedi cael ei orchymyn, i wneud cyfraniadau i awdurdod lleol, caiff unrhyw awdurdod lleol arall y mae'r cyfrannwr yn byw yn ei ardal am y tro—
- (a) ar gais yr awdurdod lleol a gyflwynodd yr hysbysiad cyfrannu, a



- (c) remain in force after the child has ceased to be looked after by the authority which obtained the order.
- (5) An authority may not apply to the court under sub-paragraph (1) in relation to a contribution notice which it has withdrawn.
- (6) Where—
  - (a) a contribution order is in force,
  - (b) the authority serves another contribution notice, and
  - (c) the contributor and the authority reach an agreement under paragraph 2(7) in respect of that other contribution notice,the effect of the agreement is to discharge the order from the date on which it is agreed that the agreement is to take effect.
- (7) Where an agreement is reached in the circumstances described in sub-paragraph (6) the authority must notify the court—
  - (a) of the agreement, and
  - (b) of the date on which it took effect.
- (8) A contribution order may be varied or revoked on the application of the contributor or the authority.
- (9) In proceedings for the variation of a contribution order, the authority must specify—
  - (a) the weekly amount which, having regard to paragraph 2, it proposes that the contributor should contribute under the order as varied, and
  - (b) the proposed arrangements for payment.
- (10) Where a contribution order is varied, the order—
  - (a) may not specify a weekly amount greater than that specified by the authority in the proceedings for variation, and
  - (b) must be made with regard to the contributor's means.
- (11) An appeal lies in accordance with rules of court from any order made under this paragraph.

*Enforcement of contribution orders etc*

- 4
- (1) A contribution order made by a magistrates' court is enforceable as a magistrates' court maintenance order (within the meaning of section 150(1) of the Magistrates' Courts Act 1980).
  - (2) Sub-paragraph (1) ceases to have effect on the day on which paragraph 120 of Schedule 11 to the Crime and Courts Act 2013 comes into force.
  - (3) Where a contributor has agreed, or has been ordered, to make contributions to a local authority, any other local authority within whose area the contributor is for the time being living may—
    - (a) at the request of the local authority which served the contribution notice, and

- (b) yn ddarostyngedig i gytundeb ynghylch unrhyw swm sydd i'w ddidynnu mewn cysylltiad â'r gwasanaethau a ddarparwyd,
- gasglu oddi wrth y cyfrannwr unrhyw gyfraniadau sy'n ddyledus ar ran yr awdurdod a gyflwynodd yr hysbysiad.
- (4) Mae'r pŵer i gasglu symiau o dan is-baragraff (3) yn cynnwys pŵer i—
- (a) cael unrhyw gyfraniadau sy'n ddyledus a rhoi rhyddhad rhag eu talu, a
- (b) (os yw'n angenrheidiol) gorfodi unrhyw gyfraniadau i gael eu talu,
- er ei bod yn bosibl bod y cyfraniadau hynny wedi dod yn ddyledus ar adeg pan roedd y cyfrannwr yn byw yn rhywle arall.
- (5) Mae unrhyw gyfraniad a gesglir o dan is-baragraff (3) i'w dalu (yn ddarostyngedig i unrhyw ddidyniad y cytunwyd arno) i'r awdurdod lleol a gyflwynodd yr hysbysiad cyfraniadau.
- (6) Mewn unrhyw achos cyfreithiol o dan y paragraff hwn, mae dogfen—
- (a) sy'n honni ei bod yn gopi o orchymyn a wnaed gan lys o dan neu yn rhinwedd paragraff 3, a
- (b) sy'n honni ei bod wedi ei hardystio'n wir gopi gan y swyddog dynodedig i'r llys, i'w derbyn fel tystiolaeth o'r gorchymyn.
- (7) Mewn unrhyw achos cyfreithiol o dan y paragraff hwn, mae tystysgrif—
- (a) sy'n honni ei bod wedi ei llofnodi gan y clerc neu gan ryw swyddog arall a awdurdodwyd yn briodol a hwnnw'n swyddog i'r awdurdod lleol a sicraodd y gorchymyn cyfrannu, a
- (b) sy'n nodi bod unrhyw swm sy'n ddyledus i'r awdurdod o dan y gorchymyn yn orddyledus a heb ei dalu,
- i'w derbyn fel tystiolaeth bod y swm yn orddyledus a heb ei dalu.

*Rheoliadau*

- 5 Caiff rheoliadau ddarparu ar gyfer—
- (a) yr ystyriaethau y mae'n rhaid i awdurdod lleol eu hystyried wrth benderfynu—
- (i) a yw'n rhesymol adennill cyfraniadau, a
- (ii) yr hyn y dylai'r trefniadau ar gyfer talu fod;
- (b) y gweithdrefnau y mae'n rhaid i awdurdod lleol eu dilyn wrth ddod i gytundeb â'r canlynol—
- (i) cyfranwyr (o dan baragraffau 2 a 3), a
- (ii) unrhyw awdurdod lleol arall (o dan baragraff 4).

*Cyflwyno hysbysiad cyfrannu*

- 6 (1) Caniateir i hysbysiad cyfrannu y mae'n ofynnol ei gyflwyno i gyfrannwr o dan yr Atodlen hon gael ei gyflwyno i'r cyfrannwr—
- (a) drwy ei ddsbarthu'n bersonol i'r cyfrannwr, neu

- (b) subject to agreement as to any amount to be deducted in respect of services rendered,  
collect from the contributor any contributions due on behalf of the authority which served the notice.
- (4) The power to collect amounts under sub-paragraph (3) includes the power to—
  - (a) receive and give a discharge for any contributions due, and
  - (b) (if necessary) enforce payment of any contributions,even though those contributions may have fallen due at a time when the contributor was living elsewhere.
- (5) Any contribution collected under sub-paragraph (3) is to be paid (subject to any agreed deduction) to the local authority which served the contribution notice.
- (6) In any proceedings under this paragraph, a document which purports to be—
  - (a) a copy of an order made by a court under or by virtue of paragraph 3, and
  - (b) certified as a true copy by the designated officer for the court,is to be accepted as evidence of the order.
- (7) In any proceedings under this paragraph, a certificate which—
  - (a) purports to be signed by the clerk or some other duly authorised officer of the local authority which obtained the contribution order, and
  - (b) states that any amount due to the authority under the order is overdue and unpaid,is to be accepted as evidence that the amount is overdue and unpaid.

*Regulations*

- 5 Regulations may provide for—
- (a) the considerations which a local authority must take into account in deciding—
    - (i) whether it is reasonable to recover contributions, and
    - (ii) what the arrangements for payment should be;
  - (b) the procedures a local authority must follow in reaching agreements with—
    - (i) contributors (under paragraphs 2 and 3), and
    - (ii) any other local authority (under paragraph 4).

*Service of contribution notice*

- 6 (1) A contribution notice required under this Schedule to be served on a contributor may be served on the contributor—
- (a) by being delivered personally to the contributor, or

- (b) drwy ei anfon at y cyfrannwr –
  - (i) drwy wasanaeth post cofrestredig (fel y diffinnir “registered post service” gan adran 125(1) o Ddeddf Gwasanaethau Post 2000), neu
  - (ii) drwy wasanaeth post sy’n darparu i ddosbarthiad y ddogfen gael ei gofnodi.
- (2) At ddibenion adran 7 o Ddeddf Ddehongli 1978 o ran ei chymhwyso i’r paragraff hwn, cyfeiriad priodol cyfrannwr yw cyfeiriad hysbys diwethaf y cyfrannwr.

- (b) by being sent to the contributor –
  - (i) by a registered post service (as defined by section 125(1) of the Postal Services Act 2000), or
  - (ii) by a postal service which provides for the delivery of the document to be recorded.
- (2) For the purposes of section 7 of the Interpretation Act 1978 in its application to this paragraph, a contributor's proper address is the contributor's last known address.

ATODLEN 2  
( a gyflwynwyd gan adran 143)

SWYDDOGAETHAU GWASANAETHAU CYMDEITHASOL

TABL 1

Y deddfiad	Natur y swyddogaethau
<b>Deddf Plant a Phobl Ifanc 1933</b> Adrannau 34 a 34A	Amddiffyn yr ifanc mewn perthynas ag achosion troseddol a diannod.
<b>Deddf Gwasanaethau Iechyd ac Iechyd y Cyhoedd 1968</b> Adran 65	Cymorth ariannol a chymorth arall a roddir gan awdurdodau lleol i sefydliadau gwirfoddol penodol.
<b>Deddf Plant a Phobl Ifanc 1969</b> Y Ddeddf gyfan	Gofal a dulliau eraill o ymdrin â phlant a phersonau ifanc yn ystod achosion llys.
<b>Deddf Mabwysiadu 1976</b>	Swyddogaethau sy'n parhau i fod yn arferadwy yn rhinwedd unrhyw ddarpariaeth drosiannol neu ddarpariaeth arbed a wneir gan neu o dan Ddeddf Mabwysiadu a Phlant 2002.
<b>Deddf Iechyd Meddwl 1983</b> Rhannau 2, 3 a 4; Adrannau 66, 67, 69(1), 114, 115, 116, 117 a 130	Lles y rhai hynny sydd ag anhwylder meddwl; gwarcheidiaeth personau sy'n dioddef gan anhwylder meddwl gan gynnwys y personau hynny sydd wedi eu symud i Gymru a Lloegr o'r Alban neu o Ogledd Iwerddon; arfer swyddogaethau perthynas agosaf y person sy'n dioddef felly; arfer swyddogaethau'r perthynas agosaf mewn perthynas â cheisiadau a chyfeiriadau at y Tribiwnlys Haen Gyntaf neu Dribiwnlys Adolygu Iechyd Meddwl Cymru; penodi gweithwyr iechyd meddwl sydd wedi eu cymeradwyo; mynd i mewn ac arolygu; lles ysbytai penodol; ôl-ofal cleifion a gedwir yn gaeth; erlyniadau.
<b>Deddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984</b> Adran 46(2) a (5)	Claddu neu amlosgi person sy'n marw mewn llety a ddarperir o dan Ran 2 o'r Ddeddf hon ac adennill treuliau o ystad y person hwnnw.

SCHEDULE 2  
(introduced by section 143)

SOCIAL SERVICES FUNCTIONS

TABLE 1

Enactment	Nature of functions
<b>Children and Young Persons Act 1933</b> Sections 34 and 34A	Protection of the young in relation to criminal and summary proceedings.
<b>Health Services and Public Health Act 1968</b> Section 65	Financial and other assistance by local authorities to certain voluntary organisations.
<b>Children and Young Persons Act 1969</b> The whole Act	Care and other treatment of children and young persons through court proceedings.
<b>Adoption Act 1976</b>	Functions continuing to be exercisable by virtue of any transitional or saving provision made by or under the Adoption and Children Act 2002.
<b>Mental Health Act 1983</b> Parts 2, 3 and 4; Sections 66, 67, 69(1), 114, 115, 116, 117 and 130	Welfare of the mentally disordered; guardianship of persons suffering from mental disorder including such persons removed to England and Wales from Scotland or Northern Ireland; exercise of functions of nearest relative of person so suffering; exercise of functions of nearest relative in relation to applications and references to the First-tier Tribunal or the Mental Health Review Tribunal for Wales; appointment of approved mental health professionals; entry and inspection; welfare of certain hospitals; after-care of detained patients; prosecutions.
<b>Public Health (Control of Disease) Act 1984</b> Section 46(2) and (5)	Burial or cremation of person dying in accommodation provided under Part 2 of this Act and recovery of expenses from the person's estate.

<p><b>Deddf Iechyd Meddwl (Yr Alban) 1984</b> Adran 10</p>	<p>Lles personau penodol tra bônt yn yr ysbyty yn yr Alban.</p>
<p><b>Deddf Personau Anabl (Gwasanaethau, Ymgynghori a Chynrychioli) 1986</b> Adrannau 1 i 3 a 5(5)</p>	<p>Cynrychioli ac asesu personau anabl.</p>
<p><b>Deddf Tai (Yr Alban) 1987</b> Adran 38(b)</p>	<p>Cydweithredu mewn perthynas â phersonau digartref a phersonau sydd o dan fygythiad o gael eu gwneud yn ddigartref.</p>
<p><b>Deddf Plant 1989</b> Y Ddeddf gyfan ac eithrio adran 36 a pharagraffau 12 i 19(1) o Atodlen 3 (gorchmynion goruchwylio addysg), i'r graddau y mae'n rhoi swyddogaethau i awdurdod lleol o fewn ystyr y Ddeddf honno.</p>	<p>Adroddiadau lles; cydsynio i gais am orchymyn preswyllo mewn perthynas â phlentyn mewn gofal; swyddogaethau sy'n ymwneud â gorchmynion gwarcheidiaeth arbennig; gorchmynion cymorth teulu; gofal a goruchwylio; amddiffyn plant; swyddogaethau mewn perthynas â chartrefi cymunedol, cartrefi gwirfoddol a sefydliadau gwirfoddol, cartrefi plant cofrestredig, a threfniadau preifat ar gyfer maethu plant; arolygu cartrefi plant ar ran yr Ysgrifennydd Gwladol; ymchwil a dychwelebau gwybodaeth; swyddogaethau mewn perthynas â phlant sy'n cael eu lletya gan Fyrddau Iechyd Lleol, Ymddiriedolaethau Gofal Sylfaenol, ymddiriedolaethau'r Gwasanaeth Iechyd Gwladol neu awdurdodau lleol wrth iddynt arfer eu swyddogaethau addysg neu mewn cartrefi gofal, ysgolion neu ysbytai annibynnol.</p>
<p><b>Deddf Tai 1996</b> Adran 213(1)(b)</p>	<p>Cydweithredu mewn perthynas â phersonau digartref a phersonau sydd o dan fygythiad o gael eu gwneud yn ddigartref.</p>
<p><b>Deddf Addysg 1996</b> Adran 322</p>	<p>Cymorth i awdurdod lleol arall wrth iddo arfer ei swyddogaethau o dan Ran 4 o'r Ddeddf.</p>



<p><b>Mental Health (Scotland) Act 1984</b> Section 10</p>	<p>Welfare of certain persons while in hospital in Scotland.</p>
<p><b>Disabled Persons (Services, Consultation and Representation) Act 1986</b> Sections 1 to 3 and 5(5)</p>	<p>Representation and assessment of disabled persons.</p>
<p><b>Housing (Scotland) Act 1987</b> Section 38(b)</p>	<p>Co-operation in relation to homeless persons and persons threatened with homelessness.</p>
<p><b>Children Act 1989</b> The whole Act, except section 36 and paragraphs 12 to 19(1) of Schedule 3 (education supervision orders), in so far as it confers functions on a local authority within the meaning of that Act.</p>	<p>Welfare reports; consent to application for residence order in respect of child in care; functions relating to special guardianship orders; family assistance orders; care and supervision; protection of children; functions in relation to community homes, voluntary homes and voluntary organisations, registered children's homes, and private arrangements for fostering children; inspection of children's homes on behalf of Secretary of State; research and returns of information; functions in relation to children accommodated by Local Health Boards, Primary Care Trusts, National Health Service trusts or local authorities in the exercise of education functions or in care homes, independent hospitals or schools.</p>
<p><b>Housing Act 1996</b> Section 213(1)(b)</p>	<p>Co-operation in relation to homeless persons and persons threatened with homelessness.</p>
<p><b>Education Act 1996</b> Section 322</p>	<p>Help for another local authority in exercising functions under Part 4 of the Act.</p>

<p><b>Deddf Mabwysiadu (Agweddau Rhwng Gwledydd) 1999</b> Adrannau 1 a 2(4)</p>	<p>Swyddogaethau o dan reoliadau a wnaed o dan adran 1 yn rhoi effaith i'r Confensiwn ar Amddiffyn Plant a Chydweithredu mewn cysylltiad â Mabwysiadu Rhwng Gwledydd, a gwblhawyd yn yr Hag ar 29 Mai 1993, a swyddogaethau o dan Erthygl 9(a) i (c) o'r Confensiwn.</p>
<p><b>Deddf Mabwysiadu a Phlant 2002</b></p>	<p>Cynnal Gwasanaeth Mabwysiadu; swyddogaethau awdurdod lleol fel asiantaeth fabwysiadu.</p>
<p><b>Deddf Gofal Cymunedol (Rhyddhau Gohiriedig etc) 2003</b> Rhan 1</p>	<p>Swyddogaethau sy'n ymwneud â chleifion mewn ysbytai y mae'n debygol y bydd angen gwasanaethau gofal cymunedol arnynt er mwyn eu rhyddhau o'r ysbyty yn ddiogel.</p>
<p><b>Deddf Galluedd Meddyliol 2005</b> Adrannau 39, 39A, 39C, 39D, 49 ac Atodlen A1</p>	<p>Cyfarwyddo eiriolwr galluedd meddyliol annibynnol cyn darparu llety i berson nad oes ganddo alluedd; cyfarwyddo eiriolwr galluedd meddyliol annibynnol wrth roi awdurdodiad brys, neu wrth wneud cais am awdurdodiad safonol, o dan Atodlen A1 i'r Ddeddf; cyfarwyddo eiriolwr galluedd meddyliol annibynnol pan na fo cynrychiolydd ar gael ar gyfer person perthnasol o dan Ran 10 o Atodlen A1 i'r Ddeddf; cyfarwyddo eiriolwr galluedd meddyliol annibynnol pan na fo cynrychiolydd ar gyfer person perthnasol o dan Ran 10 o Atodlen A1 i'r Ddeddf yn cael ei dalu; adroddiadau mewn achosion cyfreithiol; swyddogaethau sy'n ymwneud â phreswylwyr ysbytai a chartrefi gofal.</p>
<p><b>Mesur Plant a Theuluoedd (Cymru) 2010</b> Adran 66</p>	<p>Swyddogion safonau gwaith cymdeithasol teuluol.</p>

<p><b>Adoption (Intercountry Aspects) Act 1999</b> Sections 1 and 2(4)</p>	<p>Functions under regulations made under section 1 giving effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993, and functions under Article 9(a) to (c) of the Convention.</p>
<p><b>Adoption and Children Act 2002</b></p>	<p>Maintenance of Adoption Service; functions of local authority as adoption agency.</p>
<p><b>Community Care (Delayed Discharges etc) Act 2003</b> Part 1</p>	<p>Functions relating to hospital patients likely to need community care services to be made available in order to be discharged safely.</p>
<p><b>Mental Capacity Act 2005</b> Sections 39, 39A, 39C, 39D, 49 and Schedule A1</p>	<p>Instructing independent mental capacity advocate before providing accommodation for person lacking capacity; instructing independent mental capacity advocate when giving an urgent authorisation, or making a request for a standard authorisation, under Schedule A1 to the Act; instructing independent mental capacity advocate when no representative for relevant person under Part 10 of Schedule A1 to the Act; instructing independent mental capacity advocate when representative for relevant person under Part 10 of Schedule A1 to the Act is not being paid; reports in proceedings; functions relating to hospital and care home residents.</p>
<p><b>Children and Families (Wales) Measure 2010</b> Section 66</p>	<p>Family social work standards officers.</p>

<p><b>Mesur Iechyd Meddwl (Cymru) 2010</b> Rhannau 1 i 3</p>	<p>Gwasanaethau cymorth iechyd meddwl sylfaenol lleol, cydgysylltu a chynllunio gofal ar gyfer defnyddwyr gwasanaethau iechyd meddwl eilaidd, asesu defnyddwyr blaenorol gwasanaethau iechyd meddwl eilaidd.</p>
<p><b>Deddf Cymorth Cyfreithiol, Dedfrydu a Chosbi Troseddwyr 2012</b> Adran 92</p>	<p>Swyddogaethau mewn perthynas â phlentyn sydd wedi ei remandio i lety awdurdod lleol.</p>
<p><b>Deddf Gofal 2014</b> Adrannau 50 a 52</p>	<p>Dyletswydd dros dro i ddiwallu anghenion am ofal a chymorth (neu anghenion am gymorth) pan fo sefydliad neu asiantaeth yn methu â'u diwallu oherwydd methiant busnes.</p>
<p><b>Y Ddeddf hon</b> Y Ddeddf gyfan, ac eithrio'r swyddogaethau o dan adrannau 15(4) (i'r graddau y mae'n ymwneud â swyddogaethau eraill nad ydynt yn rhai gwasanaethau cymdeithasol), 120(2), 128(1) a (2), 130(1) a (2), 162 ac adran 164.</p>	<p>Gwasanaethau ataliol; gofal a chymorth; cymorth i ofalwyr; plant sy'n derbyn gofal a phlant sy'n cael eu lletya; diogelu oedolion a phlant.</p>

<p><b>Mental Health (Wales) Measure 2010</b> Parts 1 to 3</p>	<p>Local primary mental health support services, coordination of and care planning for secondary mental health service users, assessments of former users of secondary mental health services.</p>
<p><b>Legal Aid, Sentencing and Punishment of Offenders Act 2012</b> Section 92</p>	<p>Functions in relation to a child remanded to local authority accommodation.</p>
<p><b>Care Act 2014</b> Sections 50 and 52</p>	<p>Temporary duty to meet needs for care and support (or needs for support) where establishment or agency unable to do so because of business failure.</p>
<p><b>This Act</b> The whole Act, except the functions under sections 15(4) (in so far as it relates to other functions that are not social services functions), 120(2), 128(1) and (2), 130(1) and (2), 162 and section 164.</p>	<p>Preventative services; care and support; support for carers; looked after and accommodated children; safeguarding adults and children.</p>

ATODLEN 3  
(a gyflwynwyd gan adran 179)

YMCHWILIO I GWYNIION YNGHYLCH GOFAL CYMDEITHASOL A GOFAL  
LLINIAROL A DREFNIR NEU A ARIENNIR YN BREIFAT

RHAN 1

RHANNAU NEWYDD 2A A 2B AR GYFER DEDDF OMBWDSMON GWASANAETHAU CYHOEDDUS  
(CYMRU) 2005

- 1 Mae Deddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2005 wedi ei diwygio fel a ganlyn.
- 2 Ar ôl Rhan 2 (ymchwilio i gwynion) mewnosoder –

**“PART 2A**

INVESTIGATION OF COMPLAINTS RELATING TO OTHER  
PERSONS: SOCIAL CARE AND PALLIATIVE CARE

*Application of this Part*

**34A Matters to which this Part applies**

- (1) This Part applies to the following matters –
  - (a) action taken by a care home provider in connection with the provision of accommodation, nursing or personal care in a care home in Wales;
  - (b) action taken by a domiciliary care provider in connection with the provision of domiciliary care in Wales;
  - (c) action taken by an independent palliative care provider in connection with the provision of a palliative care service in Wales.
- (2) But this Part does not apply to –
  - (a) matters which may be investigated under Part 2, or
  - (b) matters described in Schedule 3A.
- (3) The Welsh Ministers may by order amend Schedule 3A by –
  - (a) adding an entry,
  - (b) removing an entry, or
  - (c) changing an entry.
- (4) Before making an order under subsection (3), the Welsh Ministers must consult the Ombudsman.
- (5) No order is to be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.

SCHEDULE 3  
*(introduced by section 179)*

INVESTIGATION OF COMPLAINTS ABOUT PRIVATELY ARRANGED OR FUNDED  
SOCIAL CARE AND PALLIATIVE CARE

PART 1

NEW PARTS 2A AND 2B FOR THE PUBLIC SERVICES OMBUDSMAN (WALES) ACT 2005

- 1 The Public Services Ombudsman (Wales) Act 2005 is amended as follows.
- 2 After Part 2 (investigation of complaints) insert –

**“PART 2A**

INVESTIGATION OF COMPLAINTS RELATING TO OTHER  
PERSONS: SOCIAL CARE AND PALLIATIVE CARE

*Application of this Part*

**34A Matters to which this Part applies**

- (1) This Part applies to the following matters –
  - (a) action taken by a care home provider in connection with the provision of accommodation, nursing or personal care in a care home in Wales;
  - (b) action taken by a domiciliary care provider in connection with the provision of domiciliary care in Wales;
  - (c) action taken by an independent palliative care provider in connection with the provision of a palliative care service in Wales.
- (2) But this Part does not apply to –
  - (a) matters which may be investigated under Part 2, or
  - (b) matters described in Schedule 3A.
- (3) The Welsh Ministers may by order amend Schedule 3A by –
  - (a) adding an entry,
  - (b) removing an entry, or
  - (c) changing an entry.
- (4) Before making an order under subsection (3), the Welsh Ministers must consult the Ombudsman.
- (5) No order is to be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.

- (6) For the meaning of the following terms see sections 34R to 34T –
- “care home”;
  - “care home provider”;
  - “domiciliary care”;
  - “domiciliary care provider”;
  - “palliative care service”;
  - “independent palliative care provider”.

*Investigation of complaints*

**34B Power to investigate complaints**

- (1) The Ombudsman may investigate a complaint about a matter to which this Part applies if –
- (a) the complaint has been duly made or referred to the Ombudsman, and
  - (b) in the case of a complaint which relates to an independent palliative care provider, the condition in subsection (2) is met.
- (2) The condition is that the independent palliative care provider has received public funding, within the three years before the date of the action to which the complaint relates, in respect of a palliative care service that it provides in Wales.
- (3) In subsection (2) “public funding” means funding from –
- (a) the Welsh Ministers,
  - (b) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006,
  - (c) an NHS Trust, or
  - (d) a county council or county borough council in Wales.
- (4) A complaint is “duly made” to the Ombudsman if (but only if) –
- (a) it is made by a person who is entitled under section 34D to make a complaint to the Ombudsman,
  - (b) before the complaint is made –
    - (i) the matter to which it relates has been brought, by or on behalf of the person affected, to the notice of the provider to whom it relates, and
    - (ii) the provider has been given a reasonable opportunity to investigate the matter and to respond, and
  - (c) the requirements of section 34E are met in respect of it.
- (5) A complaint is “duly referred” to the Ombudsman if (but only if) –
- (a) it is made by a person who is entitled under section 34D to make a complaint to the Ombudsman, and



- (6) For the meaning of the following terms see sections 34R to 34T –
- “care home”;
  - “care home provider”;
  - “domiciliary care”;
  - “domiciliary care provider”;
  - “palliative care service”;
  - “independent palliative care provider”.

*Investigation of complaints*

**34B Power to investigate complaints**

- (1) The Ombudsman may investigate a complaint about a matter to which this Part applies if –
- (a) the complaint has been duly made or referred to the Ombudsman, and
  - (b) in the case of a complaint which relates to an independent palliative care provider, the condition in subsection (2) is met.
- (2) The condition is that the independent palliative care provider has received public funding, within the three years before the date of the action to which the complaint relates, in respect of a palliative care service that it provides in Wales.
- (3) In subsection (2) “public funding” means funding from –
- (a) the Welsh Ministers,
  - (b) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006,
  - (c) an NHS Trust, or
  - (d) a county council or county borough council in Wales.
- (4) A complaint is “duly made” to the Ombudsman if (but only if) –
- (a) it is made by a person who is entitled under section 34D to make a complaint to the Ombudsman,
  - (b) before the complaint is made –
    - (i) the matter to which it relates has been brought, by or on behalf of the person affected, to the notice of the provider to whom it relates, and
    - (ii) the provider has been given a reasonable opportunity to investigate the matter and to respond, and
  - (c) the requirements of section 34E are met in respect of it.
- (5) A complaint is “duly referred” to the Ombudsman if (but only if) –
- (a) it is made by a person who is entitled under section 34D to make a complaint to the Ombudsman, and

- (b) the requirements of section 34F are met in respect of it.
- (6) It is for the Ombudsman to determine whether the requirements of subsection (1) have been met in respect of a complaint.
- (7) Where the Ombudsman determines that the requirements of subsection (1) have not been met in respect of a complaint because the requirements of subsection (4)(b), section 34E or section 34F(1)(a)(ii) or (b)(ii) have not been met in respect of that complaint, the Ombudsman may nonetheless investigate the complaint if—
  - (a) it relates to a matter to which this Part applies, and
  - (b) the Ombudsman thinks it reasonable to do so.
- (8) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation.
- (9) The Ombudsman may take any action which he or she thinks may assist in making a decision under subsection (8).
- (10) The Ombudsman may begin or continue an investigation into a complaint even if the complaint has been withdrawn.

#### **34C Alternative resolution of complaints**

- (1) The Ombudsman may take any action he or she considers appropriate with a view to resolving a complaint which he or she has the power to investigate under section 34B.
- (2) The Ombudsman may take action under this section in addition to or instead of conducting an investigation into the complaint.
- (3) Any action under this section must be taken in private.

#### **34D Who can complain**

- (1) The persons entitled to make a complaint to the Ombudsman are—
  - (a) a member of the public (referred to in this Part as “the person aggrieved”) who claims or claimed to have sustained injustice or hardship as a result of a matter to which this Part applies,
  - (b) a person authorised in writing by the person aggrieved to act on that person’s behalf, or
  - (c) if the person aggrieved is not capable of authorising a person to act on his or her behalf (for example because the person has died), a person who appears to the Ombudsman to be appropriate to act on behalf of the person aggrieved.
- (2) “Member of the public” does not include a person acting in his or her capacity as—
  - (a) a care home provider,
  - (b) a domiciliary care provider,
  - (c) an independent palliative care provider, or

- (b) the requirements of section 34F are met in respect of it.
- (6) It is for the Ombudsman to determine whether the requirements of subsection (1) have been met in respect of a complaint.
- (7) Where the Ombudsman determines that the requirements of subsection (1) have not been met in respect of a complaint because the requirements of subsection (4)(b), section 34E or section 34F(1)(a)(ii) or (b)(ii) have not been met in respect of that complaint, the Ombudsman may nonetheless investigate the complaint if –
  - (a) it relates to a matter to which this Part applies, and
  - (b) the Ombudsman thinks it reasonable to do so.
- (8) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation.
- (9) The Ombudsman may take any action which he or she thinks may assist in making a decision under subsection (8).
- (10) The Ombudsman may begin or continue an investigation into a complaint even if the complaint has been withdrawn.

#### **34C Alternative resolution of complaints**

- (1) The Ombudsman may take any action he or she considers appropriate with a view to resolving a complaint which he or she has the power to investigate under section 34B.
- (2) The Ombudsman may take action under this section in addition to or instead of conducting an investigation into the complaint.
- (3) Any action under this section must be taken in private.

#### **34D Who can complain**

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  - (a) a member of the public (referred to in this Part as “the person aggrieved”) who claims or claimed to have sustained injustice or hardship as a result of a matter to which this Part applies,
  - (b) a person authorised in writing by the person aggrieved to act on that person’s behalf, or
  - (c) if the person aggrieved is not capable of authorising a person to act on his or her behalf (for example because the person has died), a person who appears to the Ombudsman to be appropriate to act on behalf of the person aggrieved.
- (2) “Member of the public” does not include a person acting in his or her capacity as –
  - (a) a care home provider,
  - (b) a domiciliary care provider,
  - (c) an independent palliative care provider, or

(d) a listed authority.

- (3) It is for the Ombudsman to determine any question of whether a person is entitled under this section to make a complaint.

**34E Requirements: complaints made to the Ombudsman**

- (1) The requirements mentioned in section 34B(4)(c) are that the complaint must be made –
- (a) in writing, and
  - (b) before the end of the permitted period.
- (2) In subsection (1)(b) (and in section 34F(1)(a)(ii)) “the permitted period” means –
- (a) where the person aggrieved has notice of the matter before the date on which section 34B comes into force, the period of 12 months beginning with the date on which that section comes into force, and
  - (b) in any other case, the period of 12 months beginning with the day on which the person aggrieved first has notice of the matter.
- (3) It is for the Ombudsman to determine whether the requirements of subsection (1) are met in respect of a complaint.

**34F Requirements: complaints referred to the Ombudsman**

- (1) The requirements mentioned in section 34B(5)(b) are that the complaint –
- (a) must have been made to the provider to whom it relates –
    - (i) by a person who would have been entitled under section 34D to make the complaint to the Ombudsman, and
    - (ii) before the end of the permitted period (within the meaning given by section 34E(2)), and
  - (b) must be referred to the Ombudsman –
    - (i) in writing, and
    - (ii) before the end of the period of 12 months beginning with the day on which the complaint was made to the provider.

(d) a listed authority.

(3) It is for the Ombudsman to determine any question of whether a person is entitled under this section to make a complaint.

**34E Requirements: complaints made to the Ombudsman**

(1) The requirements mentioned in section 34B(4)(c) are that the complaint must be made –

(a) in writing, and

(b) before the end of the permitted period.

(2) In subsection (1)(b) (and in section 34F(1)(a)(ii)) “the permitted period” means –

(a) where the person aggrieved has notice of the matter before the date on which section 34B comes into force, the period of 12 months beginning with the date on which that section comes into force, and

(b) in any other case, the period of 12 months beginning with the day on which the person aggrieved first has notice of the matter.

(3) It is for the Ombudsman to determine whether the requirements of subsection (1) are met in respect of a complaint.

**34F Requirements: complaints referred to the Ombudsman**

(1) The requirements mentioned in section 34B(5)(b) are that the complaint –

(a) must have been made to the provider to whom it relates –

(i) by a person who would have been entitled under section 34D to make the complaint to the Ombudsman, and

(ii) before the end of the permitted period (within the meaning given by section 34E(2)), and

(b) must be referred to the Ombudsman –

(i) in writing, and

(ii) before the end of the period of 12 months beginning with the day on which the complaint was made to the provider.

*Decisions not to investigate etc***34G Decisions not to investigate complaints or to discontinue investigations**

- (1) If the Ombudsman decides under section 34B(8) not to begin an investigation into a complaint or to discontinue an investigation, the Ombudsman must prepare a statement of the reasons for that decision.
- (2) The Ombudsman must send a copy of the statement to –
  - (a) the person who made the complaint, and
  - (b) the provider to whom the complaint relates.
- (3) The Ombudsman may also send a copy of the statement to any other persons he or she thinks appropriate.
- (4) The Ombudsman may publish a statement under this section if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, he or she considers that it would be in the public interest to do so.
- (5) The Ombudsman may supply a copy of the published statement, or part of that statement, to any person who requests it.
- (6) The Ombudsman may charge a reasonable fee for supplying a copy of a statement, or part of a statement, under subsection (5).
- (7) The following information must not be included in a version of a statement sent to a person under subsection (2)(b) or (3) or published under subsection (4) –
  - (a) the name of a person other than the provider to whom the complaint relates;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the statement.
- (8) Subsection (7) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the statement.

*Decisions not to investigate etc*

**34G Decisions not to investigate complaints or to discontinue investigations**

- (1) If the Ombudsman decides under section 34B(8) not to begin an investigation into a complaint or to discontinue an investigation, the Ombudsman must prepare a statement of the reasons for that decision.
- (2) The Ombudsman must send a copy of the statement to –
  - (a) the person who made the complaint, and
  - (b) the provider to whom the complaint relates.
- (3) The Ombudsman may also send a copy of the statement to any other persons he or she thinks appropriate.
- (4) The Ombudsman may publish a statement under this section if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, he or she considers that it would be in the public interest to do so.
- (5) The Ombudsman may supply a copy of the published statement, or part of that statement, to any person who requests it.
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- (7) The following information must not be included in a version of a statement sent to a person under subsection (2)(b) or (3) or published under subsection (4) –
  - (a) the name of a person other than the provider to whom the complaint relates;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the statement.
- (8) Subsection (7) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the statement.

*Investigation procedure and evidence***34H Investigation procedure**

- (1) If the Ombudsman decides under section 34B(8) to conduct an investigation into a complaint, he or she must—
  - (a) give the provider to whom the complaint relates an opportunity to comment on the allegations contained in the complaint, and
  - (b) give any other person who is alleged in the complaint to have taken or authorised the action complained of an opportunity to comment on the allegations relating to that person.
- (2) An investigation must be conducted in private.
- (3) Subject to subsections (1) and (2), the procedure for conducting an investigation is that which the Ombudsman thinks appropriate in the circumstances of the case.
- (4) The Ombudsman may, among other things—
  - (a) make any inquiries which he or she thinks appropriate, and
  - (b) determine whether any person may be represented in the investigation by an authorised person or another person.
- (5) In subsection (4) “authorised person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).
- (6) The Ombudsman may pay to the person who made the complaint and to any other person who attends or supplies information for the purposes of the investigation—
  - (a) sums in respect of the expenses properly incurred by them, and
  - (b) allowances to compensate for the loss of their time.
- (7) The Ombudsman may attach conditions to those payments.

**34I Information, documents, evidence and facilities**

- (1) This section applies for the purposes of an investigation under this Part.
- (2) The Ombudsman may require a person he or she thinks is able to supply information or produce a document relevant to the investigation to do so.
- (3) The Ombudsman has the same powers as the High Court in relation to—
  - (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and



*Investigation procedure and evidence*

**34H Investigation procedure**

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  - (a) give the provider to whom the complaint relates an opportunity to comment on the allegations contained in the complaint, and
  - (b) give any other person who is alleged in the complaint to have taken or authorised the action complained of an opportunity to comment on the allegations relating to that person.
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- (4) The Ombudsman may, among other things—
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- (5) In subsection (4) “authorised person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).
- (6) The Ombudsman may pay to the person who made the complaint and to any other person who attends or supplies information for the purposes of the investigation—
  - (a) sums in respect of the expenses properly incurred by them, and
  - (b) allowances to compensate for the loss of their time.
- (7) The Ombudsman may attach conditions to those payments.

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- (1) This section applies for the purposes of an investigation under this Part.
- (2) The Ombudsman may require a person he or she thinks is able to supply information or produce a document relevant to the investigation to do so.
- (3) The Ombudsman has the same powers as the High Court in relation to—
  - (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and

- (b) the production of documents.
- (4) The Ombudsman may require a person he or she thinks is able to supply information or produce a document relevant to the investigation to provide any facility the Ombudsman may reasonably require.
- (5) Subject to subsection (6), no person may be compelled to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.
- (6) The Crown is not entitled to any privilege in relation to the production of documents or the giving of evidence that would otherwise be allowed by law in legal proceedings.
- (7) Where an obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service has been imposed by an enactment or rule of law, the obligation or restriction does not apply to the disclosure of information for the purposes of the investigation.

### **34J Obstruction and contempt**

- (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a person, he or she may issue a certificate to that effect to the High Court.
- (2) The condition is that the person—
  - (a) without lawful excuse, has obstructed the discharge of any of the Ombudsman's functions under this Part, or
  - (b) has done an act in relation to an investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court.
- (3) If the Ombudsman issues a certificate, the High Court may inquire into the matter.
- (4) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with that person in the same manner as it may deal with a person who has committed contempt in relation to the High Court.

#### *Reports about investigations*

### **34K Investigation reports**

- (1) This section applies to investigations under this Part unless section 34N applies.
- (2) The Ombudsman must, after conducting an investigation into a complaint about a matter to which this Part applies—
  - (a) prepare a report on the findings of the investigation ("an investigation report"), and

- (b) the production of documents.
- (4) The Ombudsman may require a person he or she thinks is able to supply information or produce a document relevant to the investigation to provide any facility the Ombudsman may reasonably require.
- (5) Subject to subsection (6), no person may be compelled to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.
- (6) The Crown is not entitled to any privilege in relation to the production of documents or the giving of evidence that would otherwise be allowed by law in legal proceedings.
- (7) Where an obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service has been imposed by an enactment or rule of law, the obligation or restriction does not apply to the disclosure of information for the purposes of the investigation.

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  - (a) without lawful excuse, has obstructed the discharge of any of the Ombudsman's functions under this Part, or
  - (b) has done an act in relation to an investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court.
- (3) If the Ombudsman issues a certificate, the High Court may inquire into the matter.
- (4) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with that person in the same manner as it may deal with a person who has committed contempt in relation to the High Court.

#### *Reports about investigations*

### **34K Investigation reports**

- (1) This section applies to investigations under this Part unless section 34N applies.
- (2) The Ombudsman must, after conducting an investigation into a complaint about a matter to which this Part applies—
  - (a) prepare a report on the findings of the investigation ("an investigation report"), and

- (b) send a copy of the report to the appropriate persons.
- (3) The appropriate persons are –
  - (a) the person who made the complaint,
  - (b) the provider to whom it relates,
  - (c) any other person who is alleged in the complaint to have taken or authorised the action complained of, and
  - (d) the Welsh Ministers.
- (4) The Ombudsman may also send a copy of the report to any other persons he or she thinks appropriate.
- (5) The Ombudsman may publish the report if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, he or she considers that it would be in the public interest to do so.
- (6) The Ombudsman may supply a copy of the published report, or part of that report, to any person who requests it.
- (7) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (6).
- (8) The following information must not be included in a version of a report sent to a person under subsection (3)(b) or (c) or (4) or published under subsection (5) –
  - (a) the name of a person other than the provider to whom the complaint relates;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report.
- (9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the report.

#### **34L Further publicity for investigation reports**

- (1) The Ombudsman may arrange for a notice about an investigation report to be published –
  - (a) in one or more newspapers, or
  - (b) by means of broadcast or other electronic media.
- (2) The notice may, for example –
  - (a) provide a summary of the Ombudsman's findings,

- (b) send a copy of the report to the appropriate persons.
- (3) The appropriate persons are –
  - (a) the person who made the complaint,
  - (b) the provider to whom it relates,
  - (c) any other person who is alleged in the complaint to have taken or authorised the action complained of, and
  - (d) the Welsh Ministers.
- (4) The Ombudsman may also send a copy of the report to any other persons he or she thinks appropriate.
- (5) The Ombudsman may publish the report if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, he or she considers that it would be in the public interest to do so.
- (6) The Ombudsman may supply a copy of the published report, or part of that report, to any person who requests it.
- (7) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (6).
- (8) The following information must not be included in a version of a report sent to a person under subsection (3)(b) or (c) or (4) or published under subsection (5) –
  - (a) the name of a person other than the provider to whom the complaint relates;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report.
- (9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the report.

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  - (a) in one or more newspapers, or
  - (b) by means of broadcast or other electronic media.
- (2) The notice may, for example –
  - (a) provide a summary of the Ombudsman's findings,

- (b) specify an address or addresses at which a copy of the published report can be inspected during ordinary office hours and from which a copy of that report (or part of that report) may be obtained, and
  - (c) specify a website address at which a copy of the published report can be viewed.
- (3) The provider to whom the report relates must, if required to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice.
- (4) In deciding whether it is appropriate to make arrangements under subsection (1), the Ombudsman must take into account –
  - (a) the public interest,
  - (b) the interests of the person aggrieved, and
  - (c) the interests of any other persons the Ombudsman thinks appropriate.

#### **34M Action following receipt of investigation reports**

- (1) This section applies where the Ombudsman has concluded in an investigation report that the person aggrieved has sustained injustice or hardship as a result of the matter investigated.
- (2) The provider to whom the matter relates must consider the report and notify the Ombudsman before the end of the permitted period of –
  - (a) the action the provider has taken or proposes to take in response to the report, and
  - (b) the period before the end of which the provider proposes to take that action (if that action has not already been taken).
- (3) In subsection (2) “the permitted period” means –
  - (a) the period of one month beginning on the date on which the authority receives the report, or
  - (b) a longer period specified by the Ombudsman in writing (if any).

#### **34N Reports: alternative procedure**

- (1) This section applies if, after the Ombudsman has conducted an investigation under this Part –
  - (a) the Ombudsman concludes that the person aggrieved has not sustained injustice or hardship as a result of the matter complained of, and
  - (b) the Ombudsman is satisfied that the public interest does not require sections 34K to 34M to apply.

- (b) specify an address or addresses at which a copy of the published report can be inspected during ordinary office hours and from which a copy of that report (or part of that report) may be obtained, and
  - (c) specify a website address at which a copy of the published report can be viewed.
- (3) The provider to whom the report relates must, if required to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice.
- (4) In deciding whether it is appropriate to make arrangements under subsection (1), the Ombudsman must take into account –
  - (a) the public interest,
  - (b) the interests of the person aggrieved, and
  - (c) the interests of any other persons the Ombudsman thinks appropriate.

**34M Action following receipt of investigation reports**

- (1) This section applies where the Ombudsman has concluded in an investigation report that the person aggrieved has sustained injustice or hardship as a result of the matter investigated.
- (2) The provider to whom the matter relates must consider the report and notify the Ombudsman before the end of the permitted period of –
  - (a) the action the provider has taken or proposes to take in response to the report, and
  - (b) the period before the end of which the provider proposes to take that action (if that action has not already been taken).
- (3) In subsection (2) “the permitted period” means –
  - (a) the period of one month beginning on the date on which the authority receives the report, or
  - (b) a longer period specified by the Ombudsman in writing (if any).

**34N Reports: alternative procedure**

- (1) This section applies if, after the Ombudsman has conducted an investigation under this Part –
  - (a) the Ombudsman concludes that the person aggrieved has not sustained injustice or hardship as a result of the matter complained of, and
  - (b) the Ombudsman is satisfied that the public interest does not require sections 34K to 34M to apply.

- (2) This section also applies if, after the Ombudsman has conducted an investigation under this Part –
  - (a) the Ombudsman concludes that the person aggrieved has sustained injustice or hardship as a result of the matter complained of,
  - (b) the provider to whom the complaint relates agrees to implement, before the end of the permitted period, any recommendations that the Ombudsman makes, and
  - (c) the Ombudsman is satisfied that the public interest does not require sections 34K to 34M to apply.
- (3) In subsection (2)(b) “the permitted period” means –
  - (a) a period agreed between the Ombudsman, the provider and the person who made the complaint, or
  - (b) if the Ombudsman thinks that no such agreement can be reached, a period specified by him or her in writing.
- (4) The Ombudsman may decide to prepare a report on his or her findings under this section, rather than under section 34K; and if the Ombudsman decides to do so, sections 34K to 34M do not apply.
- (5) If a report is prepared under this section, the Ombudsman –
  - (a) must send a copy of the report to the person who made the complaint and the provider to whom the complaint relates, and
  - (b) may send a copy of the report to any other persons he or she thinks appropriate.
- (6) The Ombudsman may publish the report if, after taking account of the interests of the persons aggrieved and any other persons the Ombudsman thinks appropriate, he or she considers it to be in the public interest to do so.
- (7) The Ombudsman may supply a copy of a report published under subsection (6), or a part of that report, to any person who requests it.
- (8) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (7).
- (9) The following information must not be included in a version of the report sent to a person under subsection (5) or published under subsection (6) –
  - (a) the name of a person other than the provider to whom the complaint relates;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman’s opinion, can be omitted without impairing the effectiveness of the report.



- (2) This section also applies if, after the Ombudsman has conducted an investigation under this Part –
  - (a) the Ombudsman concludes that the person aggrieved has sustained injustice or hardship as a result of the matter complained of,
  - (b) the provider to whom the complaint relates agrees to implement, before the end of the permitted period, any recommendations that the Ombudsman makes, and
  - (c) the Ombudsman is satisfied that the public interest does not require sections 34K to 34M to apply.
- (3) In subsection (2)(b) “the permitted period” means –
  - (a) a period agreed between the Ombudsman, the provider and the person who made the complaint, or
  - (b) if the Ombudsman thinks that no such agreement can be reached, a period specified by him or her in writing.
- (4) The Ombudsman may decide to prepare a report on his or her findings under this section, rather than under section 34K; and if the Ombudsman decides to do so, sections 34K to 34M do not apply.
- (5) If a report is prepared under this section, the Ombudsman –
  - (a) must send a copy of the report to the person who made the complaint and the provider to whom the complaint relates, and
  - (b) may send a copy of the report to any other persons he or she thinks appropriate.
- (6) The Ombudsman may publish the report if, after taking account of the interests of the persons aggrieved and any other persons the Ombudsman thinks appropriate, he or she considers it to be in the public interest to do so.
- (7) The Ombudsman may supply a copy of a report published under subsection (6), or a part of that report, to any person who requests it.
- (8) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (7).
- (9) The following information must not be included in a version of the report sent to a person under subsection (5) or published under subsection (6) –
  - (a) the name of a person other than the provider to whom the complaint relates;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman’s opinion, can be omitted without impairing the effectiveness of the report.

- (10) Subsection (9) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the report.

*Special reports*

**34O Circumstances in which special reports may be prepared**

- (1) The Ombudsman may prepare a special report under section 34P if case 1, 2 or 3 applies.
- (2) Case 1 applies if –
- (a) the Ombudsman has concluded in an investigation report that the person aggrieved has sustained injustice or hardship as a result of the matter investigated, and
  - (b) one of the circumstances in subsection (3) applies.
- (3) The circumstances are that –
- (a) the Ombudsman has not received the notification required under section 34M before the end of the period permitted under that section;
  - (b) the Ombudsman has received that notification but is not satisfied with –
    - (i) the action which the provider has taken or proposes to take, or
    - (ii) the period before the end of which the provider proposes to have taken that action;
  - (c) the Ombudsman has received that notification but is not satisfied that the provider has, before the end of the permitted period, taken the action that the provider proposed to take.
- (4) In subsection (3)(c) “the permitted period” means –
- (a) the period referred to in section 34M(2)(b), or
  - (b) a longer period specified by the Ombudsman in writing (if any).
- (5) Case 2 applies if –
- (a) the Ombudsman has prepared a report under section 34N by virtue of subsection (2) of that section, and
  - (b) he or she is not satisfied that the provider has implemented the Ombudsman’s recommendations before the end of the permitted period.
- (6) In subsection (5)(b) “the permitted period” means –
- (a) the period referred to in section 34N(2)(b), or

- (10) Subsection (9) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the report.

*Special reports*

**34O Circumstances in which special reports may be prepared**

- (1) The Ombudsman may prepare a special report under section 34P if case 1, 2 or 3 applies.
- (2) Case 1 applies if –
- (a) the Ombudsman has concluded in an investigation report that the person aggrieved has sustained injustice or hardship as a result of the matter investigated, and
  - (b) one of the circumstances in subsection (3) applies.
- (3) The circumstances are that –
- (a) the Ombudsman has not received the notification required under section 34M before the end of the period permitted under that section;
  - (b) the Ombudsman has received that notification but is not satisfied with –
    - (i) the action which the provider has taken or proposes to take, or
    - (ii) the period before the end of which the provider proposes to have taken that action;
  - (c) the Ombudsman has received that notification but is not satisfied that the provider has, before the end of the permitted period, taken the action that the provider proposed to take.
- (4) In subsection (3)(c) “the permitted period” means –
- (a) the period referred to in section 34M(2)(b), or
  - (b) a longer period specified by the Ombudsman in writing (if any).
- (5) Case 2 applies if –
- (a) the Ombudsman has prepared a report under section 34N by virtue of subsection (2) of that section, and
  - (b) he or she is not satisfied that the provider has implemented the Ombudsman’s recommendations before the end of the permitted period.
- (6) In subsection (5)(b) “the permitted period” means –
- (a) the period referred to in section 34N(2)(b), or

- (b) a longer period specified by the Ombudsman in writing (if any).
- (7) Case 3 applies if –
  - (a) a complaint in respect of a provider has been resolved under section 34C,
  - (b) in resolving the complaint, the Ombudsman has concluded that the person aggrieved has sustained injustice or hardship as a result of the matter complained of,
  - (c) the provider has agreed to take particular action before the end of a particular period, and
  - (d) the Ombudsman is not satisfied that the provider has taken that action before the end of the permitted period.
- (8) In subsection (7)(d) “the permitted period” means –
  - (a) the period referred to in subsection (7)(c), or
  - (b) a longer period specified by the Ombudsman in writing (if any).

### **34P Special reports**

- (1) A special report must –
  - (a) set out the facts which entitle the Ombudsman to prepare the special report (that is, the facts on the basis of which case 1, 2 or 3 of section 34O applies), and
  - (b) make such recommendations as the Ombudsman thinks fit as to the action which, in his or her opinion, should be taken –
    - (i) to remedy the injustice or hardship to the person aggrieved, and
    - (ii) to prevent similar injustice or hardship being caused in the future.
- (2) If the special report is prepared because case 1 of section 34O applies, the Ombudsman must send a copy of the report to each person to whom a copy of the section 34K report was sent under section 34K(2)(b).
- (3) If the special report is prepared because case 2 or 3 of section 34O applies, the Ombudsman must send a copy of the report to the person who made the complaint and the provider to whom the complaint relates.
- (4) The Ombudsman may send a copy of a special report to any other persons he or she thinks appropriate.
- (5) The Ombudsman may publish a special report.
- (6) The Ombudsman may supply a copy of a published special report, or a part of such a report, to any person who requests it.

- (b) a longer period specified by the Ombudsman in writing (if any).
- (7) Case 3 applies if –
  - (a) a complaint in respect of a provider has been resolved under section 34C,
  - (b) in resolving the complaint, the Ombudsman has concluded that the person aggrieved has sustained injustice or hardship as a result of the matter complained of,
  - (c) the provider has agreed to take particular action before the end of a particular period, and
  - (d) the Ombudsman is not satisfied that the provider has taken that action before the end of the permitted period.
- (8) In subsection (7)(d) “the permitted period” means –
  - (a) the period referred to in subsection (7)(c), or
  - (b) a longer period specified by the Ombudsman in writing (if any).

### **34P Special reports**

- (1) A special report must –
  - (a) set out the facts which entitle the Ombudsman to prepare the special report (that is, the facts on the basis of which case 1, 2 or 3 of section 34O applies), and
  - (b) make such recommendations as the Ombudsman thinks fit as to the action which, in his or her opinion, should be taken –
    - (i) to remedy the injustice or hardship to the person aggrieved, and
    - (ii) to prevent similar injustice or hardship being caused in the future.
- (2) If the special report is prepared because case 1 of section 34O applies, the Ombudsman must send a copy of the report to each person to whom a copy of the section 34K report was sent under section 34K(2)(b).
- (3) If the special report is prepared because case 2 or 3 of section 34O applies, the Ombudsman must send a copy of the report to the person who made the complaint and the provider to whom the complaint relates.
- (4) The Ombudsman may send a copy of a special report to any other persons he or she thinks appropriate.
- (5) The Ombudsman may publish a special report.
- (6) The Ombudsman may supply a copy of a published special report, or a part of such a report, to any person who requests it.

- (7) The Ombudsman may charge a reasonable fee for supplying a copy of a special report, or part of such a report, under subsection (6).
- (8) The following information must not be included in a version of a special report sent to a person under subsection (2), (3) or (4) or published under subsection (5) –
  - (a) the name of any person other than the provider in respect of whom the complaint was made;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the special report.
- (9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the special report.

#### **34Q Further publicity for special reports**

- (1) The Ombudsman may arrange for a notice about a special report to be published –
  - (a) in one or more newspapers, or
  - (b) by means of broadcast or other electronic media.
- (2) The notice may, for example –
  - (a) provide a summary of the Ombudsman's findings,
  - (b) specify an address or addresses at which a copy of the published report can be inspected during ordinary office hours and from which a copy of that report (or part of that report) may be obtained, and
  - (c) specify a website address at which a copy of the published report can be viewed.
- (3) The provider to whom the report relates must, if required to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice.
- (4) In deciding whether to make arrangements under subsection (1), the Ombudsman must take into account –
  - (a) the public interest,
  - (b) the interests of the person aggrieved, and
  - (c) the interests of any other person the Ombudsman thinks appropriate.

- (7) The Ombudsman may charge a reasonable fee for supplying a copy of a special report, or part of such a report, under subsection (6).
- (8) The following information must not be included in a version of a special report sent to a person under subsection (2), (3) or (4) or published under subsection (5) –
  - (a) the name of any person other than the provider in respect of whom the complaint was made;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify any such person and which, in the Ombudsman’s opinion, can be omitted without impairing the effectiveness of the special report.
- (9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the special report.

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- (4) In deciding whether to make arrangements under subsection (1), the Ombudsman must take into account –
  - (a) the public interest,
  - (b) the interests of the person aggrieved, and
  - (c) the interests of any other person the Ombudsman thinks appropriate.

*Interpretation***34R Meaning of “care home” and “care home provider”**

- (1) This section applies for the purposes of this Act.
- (2) “Care home” has the same meaning as in the Care Standards Act 2000.
- (3) “Care home provider” means a person who carries on a care home.
- (4) Action is to be treated as action taken by a care home provider if it is taken by –
  - (a) a person employed by that provider,
  - (b) a person acting on behalf of that provider, or
  - (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by a care home provider if –
  - (a) that provider provides, by means of an arrangement with another person, accommodation, nursing or personal care in a care home in Wales for a person falling within section 3(2) of the Care Standards Act 2000, and
  - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

**34S Meaning of “domiciliary care” and “domiciliary care provider”**

- (1) This section applies for the purposes of this Act.
- (2) “Domiciliary care” means personal care provided in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
- (3) “Domiciliary care provider” means a person who carries on an activity which involves the provision of domiciliary care, but it does not include an individual who –
  - (a) carries on the activity otherwise than in partnership with others,
  - (b) is not employed by a body corporate or unincorporated association to carry it on,
  - (c) does not employ any other person to carry out the activity, and
  - (d) provides or arranges the provision of domiciliary care to fewer than four persons.
- (4) Action is to be treated as action taken by a domiciliary care provider if it is taken by –
  - (a) a person employed by that provider,
  - (b) a person acting on behalf of that provider, or
  - (c) a person to whom that provider has delegated any functions.



*Interpretation*

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  - (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by a care home provider if –
  - (a) that provider provides, by means of an arrangement with another person, accommodation, nursing or personal care in a care home in Wales for a person falling within section 3(2) of the Care Standards Act 2000, and
  - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

**34S Meaning of “domiciliary care” and “domiciliary care provider”**

- (1) This section applies for the purposes of this Act.
- (2) “Domiciliary care” means personal care provided in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
- (3) “Domiciliary care provider” means a person who carries on an activity which involves the provision of domiciliary care, but it does not include an individual who –
  - (a) carries on the activity otherwise than in partnership with others,
  - (b) is not employed by a body corporate or unincorporated association to carry it on,
  - (c) does not employ any other person to carry out the activity, and
  - (d) provides or arranges the provision of domiciliary care to fewer than four persons.
- (4) Action is to be treated as action taken by a domiciliary care provider if it is taken by –
  - (a) a person employed by that provider,
  - (b) a person acting on behalf of that provider, or
  - (c) a person to whom that provider has delegated any functions.

- (5) Action is also to be treated as action taken by a domiciliary care provider if—
  - (a) that provider provides domiciliary care by means of an arrangement with another person, and
  - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

**34T Meaning of “palliative care service” and “independent palliative care provider”**

- (1) This section applies for the purposes of this Act.
- (2) “Palliative care service” means a service the main purpose of which is to provide palliative care.
- (3) “Independent palliative care provider” means a person who—
  - (a) provides a palliative care service, and
  - (b) is not a Welsh health service body.
- (4) Action is to be treated as action taken by an independent palliative care provider if it is taken by—
  - (a) a person employed by that provider,
  - (b) a person acting on behalf of that provider, or
  - (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by an independent palliative care provider if—
  - (a) that provider provides palliative care by means of an arrangement with another person, and
  - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

## PART 2B

### INVESTIGATION OF COMPLAINTS: SUPPLEMENTARY

#### *Consultation and co-operation*

**34U Consultation and co-operation with other ombudsmen**

- (1) This section applies if, in making a decision under section 2(5) or 34B(8) or conducting an investigation under Part 2 or 2A, the Ombudsman forms the opinion that a matter which is the subject of the complaint or investigation could be the subject of an investigation by an ombudsman mentioned in subsection (7).
- (2) The Ombudsman must consult that ombudsman about the matter.
- (3) The Ombudsman may co-operate with that ombudsman in relation to the matter.

- (5) Action is also to be treated as action taken by a domiciliary care provider if—
  - (a) that provider provides domiciliary care by means of an arrangement with another person, and
  - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

**34T Meaning of “palliative care service” and “independent palliative care provider”**

- (1) This section applies for the purposes of this Act.
- (2) “Palliative care service” means a service the main purpose of which is to provide palliative care.
- (3) “Independent palliative care provider” means a person who—
  - (a) provides a palliative care service, and
  - (b) is not a Welsh health service body.
- (4) Action is to be treated as action taken by an independent palliative care provider if it is taken by—
  - (a) a person employed by that provider,
  - (b) a person acting on behalf of that provider, or
  - (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by an independent palliative care provider if—
  - (a) that provider provides palliative care by means of an arrangement with another person, and
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- (2) The Ombudsman must consult that ombudsman about the matter.
- (3) The Ombudsman may co-operate with that ombudsman in relation to the matter.

- (4) Consultation under subsection (2), and co-operation under subsection (3), may extend to anything relating to a matter which is the subject of the complaint or investigation, including (among other things) –
  - (a) the conduct of an investigation into the complaint, and
  - (b) the form, content and publication of a report of the investigation.
- (5) If the Ombudsman consults an ombudsman about a matter under subsection (2), the Ombudsman and that ombudsman may –
  - (a) conduct a joint investigation into the matter,
  - (b) prepare a joint report in relation to the investigation, and
  - (c) publish the joint report.
- (6) Subsection (5) does not apply if the ombudsman consulted under subsection (2) is the Scottish Public Services Ombudsman.
- (7) The ombudsmen referred to in subsection (1) are –
  - (a) the Parliamentary Commissioner for Administration;
  - (b) the Health Service Commissioner for England;
  - (c) a Local Commissioner;
  - (d) the Scottish Public Services Ombudsman;
  - (e) a housing ombudsman appointed in accordance with a scheme approved under section 51 of the Housing Act 1996;
  - (f) the Children’s Commissioner for Wales.
- (8) The Welsh Ministers may by order amend subsection (7) by –
  - (a) adding a person,
  - (b) omitting a person, or
  - (c) changing the description of a person.
- (9) An order under subsection (8) may add a person to subsection (7) only if the person appears to the Welsh Ministers to have functions relating to the investigation of complaints.
- (10) No order is to be made under subsection (8) unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of the Assembly.

#### **34V Working jointly with other Commissioners**

- (1) This section applies where it appears to the Ombudsman that –
  - (a) there is a complaint in respect of a matter which he is entitled to investigate, and
  - (b) the matter is one which could also be the subject of an examination by the Commissioner for Older People in Wales or the Welsh Language Commissioner.

- (4) Consultation under subsection (2), and co-operation under subsection (3), may extend to anything relating to a matter which is the subject of the complaint or investigation, including (among other things) –
  - (a) the conduct of an investigation into the complaint, and
  - (b) the form, content and publication of a report of the investigation.
- (5) If the Ombudsman consults an ombudsman about a matter under subsection (2), the Ombudsman and that ombudsman may –
  - (a) conduct a joint investigation into the matter,
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  - (a) adding a person,
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- (1) This section applies where it appears to the Ombudsman that –
  - (a) there is a complaint in respect of a matter which he or she is entitled to investigate, and
  - (b) the matter is one which could also be the subject of an examination by the Commissioner for Older People in Wales or the Welsh Language Commissioner.

- (2) Where the Ombudsman considers it appropriate, he or she must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) –
  - (a) inform the Commissioner about the matter, and
  - (b) consult him or her in relation to it.
- (3) Where the Ombudsman consults a Commissioner under this section, the Ombudsman and the Commissioner may –
  - (a) co-operate with each other in relation to the matter,
  - (b) conduct a joint investigation into the matter, and
  - (c) prepare and publish a joint report in relation to the investigation.

#### **34W Working collaboratively with other Commissioners**

- (1) This section applies where it appears to the Ombudsman that a complaint relates to or raises a matter which could be the subject of an examination by the Commissioner for Older People in Wales or the Welsh Language Commissioner (“the connected matter”).
- (2) Where the Ombudsman considers it appropriate, he or she must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) inform the Commissioner about the connected matter.
- (3) Where the Ombudsman considers that the complaint also relates to or raises a matter into which he or she is entitled to conduct an investigation (“the Ombudsman matter”), the Ombudsman must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) also if he or she considers it appropriate –
  - (a) inform the Commissioner about the Ombudsman’s proposals for conducting an investigation into the complaint, and
  - (b) consult the Commissioner about those proposals.
- (4) Where the Ombudsman and the Commissioner consider that they are entitled to investigate, respectively, the Ombudsman matter and the connected matter, they may –
  - (a) co-operate with each other in the separate investigation of each of those matters,
  - (b) act together in the investigation of those matters, and
  - (c) prepare and publish a joint report containing their respective conclusions in relation to the matters they have each investigated.
- (5) Where the Ombudsman considers –
  - (a) that the complaint does not relate to or raise a matter into which he or she is entitled to conduct an investigation, and

- (2) Where the Ombudsman considers it appropriate, he or she must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) –
  - (a) inform the Commissioner about the matter, and
  - (b) consult him or her in relation to it.
- (3) Where the Ombudsman consults a Commissioner under this section, the Ombudsman and the Commissioner may –
  - (a) co-operate with each other in relation to the matter,
  - (b) conduct a joint investigation into the matter, and
  - (c) prepare and publish a joint report in relation to the investigation.

**34W Working collaboratively with other Commissioners**

- (1) This section applies where it appears to the Ombudsman that a complaint relates to or raises a matter which could be the subject of an examination by the Commissioner for Older People in Wales or the Welsh Language Commissioner (“the connected matter”).
- (2) Where the Ombudsman considers it appropriate, he or she must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) inform the Commissioner about the connected matter.
- (3) Where the Ombudsman considers that the complaint also relates to or raises a matter into which he or she is entitled to conduct an investigation (“the Ombudsman matter”), the Ombudsman must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) also if he or she considers it appropriate –
  - (a) inform the Commissioner about the Ombudsman’s proposals for conducting an investigation into the complaint, and
  - (b) consult the Commissioner about those proposals.
- (4) Where the Ombudsman and the Commissioner consider that they are entitled to investigate, respectively, the Ombudsman matter and the connected matter, they may –
  - (a) co-operate with each other in the separate investigation of each of those matters,
  - (b) act together in the investigation of those matters, and
  - (c) prepare and publish a joint report containing their respective conclusions in relation to the matters they have each investigated.
- (5) Where the Ombudsman considers –
  - (a) that the complaint does not relate to or raise a matter into which he or she is entitled to conduct an investigation, and

(b) that it is appropriate to do so,  
the Ombudsman must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) inform the person who initiated the complaint about how to secure the referral of the connected matter to the Commissioner.

*Disclosure*

**34X Disclosure of information**

- (1) The information to which this section applies is –
- (a) information obtained by the Ombudsman, a member of the Ombudsman’s staff or another person acting on the Ombudsman’s behalf or assisting the Ombudsman in the discharge of his or her functions –
    - (i) in deciding whether to begin an investigation,
    - (ii) in the course of an investigation, or
    - (iii) in resolving a complaint under section 3 or 34C;
  - (b) information obtained from an ombudsman mentioned in section 34U(7) by virtue of any provision of section 34U or a corresponding provision in an enactment relating to any of those ombudsmen;
  - (c) information obtained from the Commissioner for Older People in Wales by virtue of section 34V or 34W of this Act or section 16 or 17 of the Commissioner for Older People (Wales) Act 2006 (working with other ombudsmen);
  - (d) information obtained from the Welsh Language Commissioner by virtue of section 34V or 34W of this Act or section 22 of the Welsh Language (Wales) Measure 2011 (power to disclose information);
  - (e) information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (disclosure between Information Commissioner and ombudsmen).
- (2) The information must not be disclosed except –
- (a) for the purposes of deciding whether to begin an investigation;
  - (b) for the purposes of an investigation;
  - (c) for the purposes of resolving a complaint under section 3 or 34C;
  - (d) for the purposes of a statement or report made in relation to a complaint or investigation;
  - (e) for the purposes of any provision of section 34U, 34V or 34W;



(b) that it is appropriate to do so,  
the Ombudsman must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) inform the person who initiated the complaint about how to secure the referral of the connected matter to the Commissioner.

*Disclosure*

**34X Disclosure of information**

- (1) The information to which this section applies is –
- (a) information obtained by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of his or her functions –
    - (i) in deciding whether to begin an investigation,
    - (ii) in the course of an investigation, or
    - (iii) in resolving a complaint under section 3 or 34C;
  - (b) information obtained from an ombudsman mentioned in section 34U(7) by virtue of any provision of section 34U or a corresponding provision in an enactment relating to any of those ombudsmen;
  - (c) information obtained from the Commissioner for Older People in Wales by virtue of section 34V or 34W of this Act or section 16 or 17 of the Commissioner for Older People (Wales) Act 2006 (working with other ombudsmen);
  - (d) information obtained from the Welsh Language Commissioner by virtue of section 34V or 34W of this Act or section 22 of the Welsh Language (Wales) Measure 2011 (power to disclose information);
  - (e) information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (disclosure between Information Commissioner and ombudsmen).
- (2) The information must not be disclosed except –
- (a) for the purposes of deciding whether to begin an investigation;
  - (b) for the purposes of an investigation;
  - (c) for the purposes of resolving a complaint under section 3 or 34C;
  - (d) for the purposes of a statement or report made in relation to a complaint or investigation;
  - (e) for the purposes of any provision of section 34U, 34V or 34W;

- (f) for the purposes of proceedings for –
    - (i) an offence under the Official Secrets Act 1911 to 1989 alleged to have been committed by the Ombudsman, a member of the Ombudsman's staff or other person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;
    - (ii) an offence of perjury alleged to have been committed in the course of an investigation;
  - (g) for the purposes of an inquiry with a view to the taking of proceedings mentioned in paragraph (f);
  - (h) for the purpose of proceedings under section 15 or 34J;
  - (i) in the case of information to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, to any person to whom the Ombudsman thinks it should be disclosed in the public interest;
  - (j) in the case of information to which subsection (3) applies, to the Information Commissioner.
- (3) This subsection applies to information if it appears to the Ombudsman to relate to –
- (a) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in subsection (4), or
  - (b) the commission of an offence mentioned in subsection (5).
- (4) The enactments are –
- (a) Part 5 of the Data Protection Act 1998 (enforcement);
  - (b) section 48 of the Freedom of Information Act 2000 (practice recommendations);
  - (c) Part 4 of that Act.
- (5) The offences are those under –
- (a) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 to that Act (obstruction of execution of warrant);
  - (b) section 77 of the Freedom of Information Act 2000 (offence of altering etc records with intent to prevent disclosure).
- (6) No person may be called upon to give evidence in any proceedings (other than proceedings mentioned in subsection (2)) of information obtained by that person as mentioned in subsection (1)(a) or (b).

- (f) for the purposes of proceedings for –
    - (i) an offence under the Official Secrets Act 1911 to 1989 alleged to have been committed by the Ombudsman, a member of the Ombudsman’s staff or other person acting on the Ombudsman’s behalf or assisting the Ombudsman in the discharge of any of his or her functions;
    - (ii) an offence of perjury alleged to have been committed in the course of an investigation;
  - (g) for the purposes of an inquiry with a view to the taking of proceedings mentioned in paragraph (f);
  - (h) for the purpose of proceedings under section 15 or 34J;
  - (i) in the case of information to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, to any person to whom the Ombudsman thinks it should be disclosed in the public interest;
  - (j) in the case of information to which subsection (3) applies, to the Information Commissioner.
- (3) This subsection applies to information if it appears to the Ombudsman to relate to –
- (a) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in subsection (4), or
  - (b) the commission of an offence mentioned in subsection (5).
- (4) The enactments are –
- (a) Part 5 of the Data Protection Act 1998 (enforcement);
  - (b) section 48 of the Freedom of Information Act 2000 (practice recommendations);
  - (c) Part 4 of that Act.
- (5) The offences are those under –
- (a) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 to that Act (obstruction of execution of warrant);
  - (b) section 77 of the Freedom of Information Act 2000 (offence of altering etc records with intent to prevent disclosure).
- (6) No person may be called upon to give evidence in any proceedings (other than proceedings mentioned in subsection (2)) of information obtained by that person as mentioned in subsection (1)(a) or (b).

**34Y Disclosure prejudicial to safety of State or contrary to public interest**

- (1) A Minister of the Crown may give notice to the Ombudsman with respect to—
- (a) any document or information specified in the notice, or
  - (b) any class of document or information so specified,
- that, in the opinion of the Minister, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest.
- (2) If a notice is given under subsection (1), nothing in this Act is to be construed as authorising or requiring the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of his or her functions to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice.

**34Z Protection from defamation claims**

- (1) For the purposes of the law of defamation, the following are absolutely privileged—
- (a) the publication of a matter, in the discharge of any of the Ombudsman's functions under this Act, by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;
  - (b) the publication of a matter by a person in the discharge of functions under section 17;
  - (c) the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Act, in communications between—
    - (i) a listed authority, a member or co-opted member of a listed authority, an officer or member of the staff of a listed authority or another person acting on behalf of a listed authority or assisting it in the discharge of any of its functions, and
    - (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;

**34Y Disclosure prejudicial to safety of State or contrary to public interest**

- (1) A Minister of the Crown may give notice to the Ombudsman with respect to—
- (a) any document or information specified in the notice, or
  - (b) any class of document or information so specified,
- that, in the opinion of the Minister, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest.
- (2) If a notice is given under subsection (1), nothing in this Act is to be construed as authorising or requiring the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of his or her functions to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice.

**34Z Protection from defamation claims**

- (1) For the purposes of the law of defamation, the following are absolutely privileged—
- (a) the publication of a matter, in the discharge of any of the Ombudsman's functions under this Act, by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;
  - (b) the publication of a matter by a person in the discharge of functions under section 17;
  - (c) the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Act, in communications between—
    - (i) a listed authority, a member or co-opted member of a listed authority, an officer or member of the staff of a listed authority or another person acting on behalf of a listed authority or assisting it in the discharge of any of its functions, and
    - (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;

- (d) the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Act, in communications between—
  - (i) a care home provider, domiciliary care provider or independent palliative care provider, an officer or member of staff of such a provider or another person acting on behalf of such a provider or assisting it in the discharge of any of its functions, and
  - (ii) the Ombudsman, a member of the Ombudsman’s staff or another person acting on the Ombudsman’s behalf or assisting the Ombudsman in the discharge of any of his or her functions;
- (e) the publication of a matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Act, in communications between a person and an Assembly member;
- (f) the publication of a matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Act, in communications between—
  - (i) the person, and
  - (ii) the Ombudsman, a member of the Ombudsman’s staff or another person acting on the Ombudsman’s behalf or assisting the Ombudsman in the discharge of any of his or her functions.

(2) For the purposes of subsection (1)(d)(i) a person is an officer of a provider if he or she has control or management of a provider which is not an individual or the affairs of such a provider.”

3 Hyd nes y daw Rhan 5 o Fesur y Gymraeg (Cymru) 2011 i rym, mae adrannau 34V a 34W o Ddeddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2005 yn cael effaith a hynny gan hepgor y geiriau a ganlyn (ym mha le bynnag y maent yn digwydd) –

“or the Welsh Language Commissioner”;

“or may (as respects the Welsh Language Commissioner)”.

4 Ar ôl Atodlen 3 (awdurdodau rhestredig) mewnosoder –

### “SCHEDULE 3A

#### EXCLUDED MATTERS: PART 2A

- 1 The commencement or conduct of proceedings before a court of competent jurisdiction.
- 2 Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters.”

- (d) the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Act, in communications between—
  - (i) a care home provider, domiciliary care provider or independent palliative care provider, an officer or member of staff of such a provider or another person acting on behalf of such a provider or assisting it in the discharge of any of its functions, and
  - (ii) the Ombudsman, a member of the Ombudsman’s staff or another person acting on the Ombudsman’s behalf or assisting the Ombudsman in the discharge of any of his or her functions;
- (e) the publication of a matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Act, in communications between a person and an Assembly member;
- (f) the publication of a matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Act, in communications between—
  - (i) the person, and
  - (ii) the Ombudsman, a member of the Ombudsman’s staff or another person acting on the Ombudsman’s behalf or assisting the Ombudsman in the discharge of any of his or her functions.

(2) For the purposes of subsection (1)(d)(i) a person is an officer of a provider if he or she has control or management of a provider which is not an individual or the affairs of such a provider.”

3 Until the coming into force of Part 5 of the Welsh Language (Wales) Measure 2011, sections 34V and 34W of the Public Services Ombudsman (Wales) Act 2005 have effect with the omission of the following words (wherever occurring) –

“or the Welsh Language Commissioner”;

“or may (as respects the Welsh Language Commissioner)”.

4 After Schedule 3 (listed authorities) insert –

### “SCHEDULE 3A

#### EXCLUDED MATTERS: PART 2A

- 1 The commencement or conduct of proceedings before a court of competent jurisdiction.
- 2 Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters.”

## RHAN 2

## MÂN DDIWYGIADAU A DIWYGIADAU CANLYNIADOL SY'N YMWNEUD Â'R OMBWDSMON

*Deddf Llywodraeth Leol 1974*

- 5 Mae Deddf Llywodraeth Leol 1974 wedi ei diwygio fel a ganlyn.
- 6 Yn adran 29 (ymchwiliadau: darpariaethau pellach), yn is-adran (5), yn lle "26" rhodder "34X".
- 7 Yn adran 33 (ymgyngori rhwng y Comisiynydd Lleol, y Comisiynydd Seneddol a Chomisiynwyr y Gwasanaeth Iechyd a Chomisiynwyr ac Ombwdsmyr eraill), yn is-adran (5), yn lle "26" rhodder "34X".
- 8 Yn adran 34G (ymchwiliadau: darpariaethau pellach), yn is-adran (2), yn lle "26" rhodder "34X".
- 9 Yn adran 34M (ymgyngori â Chomisiynwyr eraill), yn is-adran (7), ym mharagraff (d), yn lle "26" rhodder "34X".

*Deddf Llywodraeth Leol 2000*

- 10 Mae Deddf Llywodraeth Leol 2000 wedi ei diwygio fel a ganlyn.
- 11 Mae adran 67 (ymgyngori ag ombwdsmyr) yn cael effaith, hyd nes y bydd diddymiad yr adran honno gan Ran 5 o Atodlen 25 o Ddeddf Lleoliaeth 2011 wedi ei ddwyn i rym yn llawn, gyda'r diwygiadau canlynol –
- (a) yn is-adran (2A), ar ôl "Part 2" mewnosoder "or 2A", a
- (b) yn is-adran (4), yn lle "26" rhodder "34X".
- 12 Yn adran 70 (ymchwiliadau: darpariaethau pellach), yn is-adran (2), ym mharagraff (b), yn lle ", 25 to 27 and 32" rhodder "and Part 2B".

*Deddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2005*

- 13 Mae Deddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2005 wedi ei diwygio fel a ganlyn.
- 14 Ym mhennawd Rhan 2 (ymchwilio i gwynion), ar ôl "COMPLAINTS" mewnosoder "RELATING TO LISTED AUTHORITIES".
- 15 Yn adran 2 (pŵer ymchwilio) –
- (a) yn is-adran (1), ar ôl "complaint" (yn y man cyntaf lle y mae'n digwydd) mewnosoder "under this Part", a
- (b) yn is-adran (4), ar ôl "complaint" (yn y man cyntaf lle y mae'n digwydd) mewnosoder "under this Part".
- 16 Yn adran 4 (pwy sy'n cael cwyno), yn is-adran (1) –
- (a) yn y geiriau cyn paragraff (a), ar ôl "Ombudsman" mewnosoder "under this Part", a
- (b) ym mharagraff (a), yn lle "Act" rhodder "Part".



PART 2

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO THE OMBUDSMAN

*Local Government Act 1974*

- 5 The Local Government Act 1974 is amended as follows.
- 6 In section 29 (investigations: further provisions), in subsection (5), for “26” substitute “34X”.
- 7 In section 33 (consultation between Local Commissioner, the Parliamentary Commissioner and the Health Service Commissioners and other Commissioners and Ombudsmen), in subsection (5), for “26” substitute “34X”.
- 8 In section 34G (investigations: further provisions), in subsection (2), for “26” substitute “34X”.
- 9 In section 34M (consultation with other Commissioners), in subsection (7), in paragraph (d), for “26” substitute “34X”.

*Local Government Act 2000*

- 10 The Local Government Act 2000 is amended as follows.
- 11 Section 67 (consultation with ombudsmen) has effect, until the repeal of that section by Part 5 of Schedule 25 to the Localism Act 2011 is brought fully into force, with the following amendments –
- (a) in subsection (2A), after “Part 2” insert “or 2A”, and
  - (b) in subsection (4), for “26” substitute “34X”.
- 12 In section 70 (investigations: further provisions), in subsection (2), in paragraph (b), for “, 25 to 27 and 32” substitute “and Part 2B”.

*Public Services Ombudsman (Wales) Act 2005*

- 13 The Public Services Ombudsman (Wales) Act 2005 is amended as follows.
- 14 In the heading to Part 2 (investigation of complaints), after “COMPLAINTS” insert “RELATING TO LISTED AUTHORITIES”.
- 15 In section 2 (power of investigation) –
- (a) in subsection (1), after “complaint” (in the first place it occurs) insert “under this Part”, and
  - (b) in subsection (4), after “complaint” (in the first place it occurs) insert “under this Part”.
- 16 In section 4 (who can complain), in subsection (1) –
- (a) in the words before paragraph (a), after “Ombudsman” insert “under this Part”, and
  - (b) in paragraph (a), for “Act” substitute “Part”.

- 17 Yn adran 7 (materion y caniateir ymchwilio iddynt), yn is-adran (1), ar ôl “investigate” mewnosoder “under this Part”.
- 18 Yn adran 9 (eithrio: rhwymedïau eraill) –
- (a) yn is-adran (1), ar ôl “matter” (yn y man cyntaf lle y mae’n digwydd) mewnosoder “under this Part”, a
  - (b) yn is-adran (3), ar ôl “matter” (yn y man cyntaf lle y mae’n digwydd) mewnosoder “under this Part”.
- 19 Yn adran 10 (materion eraill a eithrir), yn is-adran (1), ar ôl “investigate” mewnosoder “under this Part”.
- 20 Yn adran 14 (gwybodaeth, dogfennau, tystiolaeth a chyfleusterau), cyn is-adran (1) mewnosoder –
- “(A1) This section applies in relation to investigations conducted under this Part.”
- 21 Yn adran 23 (adroddiadau arbennig: materion atodol) –
- (a) yn is-adran (1), ym mharagraff (a), ar ôl “report” mewnosoder “made under section 22”, a
  - (b) yn is-adran (7), ar ôl “report” (yn y man cyntaf lle y mae’n digwydd) mewnosoder “under section 22”.
- 22 Hepgorer y croesbennawd italg cyn adran 25 (ymgyngori a chydweithredu).
- 23 Hepgorer adrannau 25 i 25B (ymgyngori a chydweithredu).
- 24 Hepgorer y croesbennawd italg cyn adran 26 (datgelu).
- 25 Hepgorer adrannau 26 a 27 (datgelu gwybodaeth).
- 26 Hepgorer adran 32 (amddiffyniad rhag honiadau o ddifenwi).
- 27 Yn adran 41 (dehongli), yn is-adran (1) –
- (a) yn y diffiniad o “investigation”, ar ôl “section 2” mewnosoder “or 34B”,
  - (b) yn y diffiniad o “the person aggrieved” –
    - (i) ar ôl “aggrieved” mewnosoder “in Part 2”, a
    - (ii) ar ôl “section 4(1)(a)” mewnosoder “and in Part 2A has the meaning given in section 34D(1)(a)”,
  - (c) yn y diffiniad o “special report” –
    - (i) ar ôl “report” mewnosoder “in Part 2”, a
    - (ii) ar ôl “section 22” mewnosoder “and in Part 2A has the meaning given in section 34P”, a
  - (d) mewnosoder, yn y manau priodol –
    - ““care home” has the meaning given by section 34R(2);”;
    - ““care home provider” has the meaning given in section 34R(3);”;
    - ““domiciliary care” has the meaning given by section 34S(2);”;

- 17 In section 7 (matters which may be investigated), in subsection (1), after “investigate” insert “under this Part”.
- 18 In section 9 (exclusion: other remedies) –
- (a) in subsection (1), after “matter” (in the first place it occurs) insert “under this Part”, and
  - (b) in subsection (3), after “matter” (in the first place it occurs) insert “under this Part”.
- 19 In section 10 (other excluded matters), in subsection (1), after “investigate” insert “under this Part”.
- 20 In section 14 (information, documents, evidence and facilities), before subsection (1) insert –
- “(A1) This section applies in relation to investigations conducted under this Part.”
- 21 In section 23 (special reports: supplementary) –
- (a) in subsection (1), in paragraph (a), after “report” insert “made under section 22”, and
  - (b) in subsection (7), after “report” (in the first place it occurs) insert “under section 22”.
- 22 Omit the italic cross-heading before section 25 (consultation and co-operation).
- 23 Omit sections 25 to 25B (consultation and co-operation).
- 24 Omit the italic cross-heading before section 26 (disclosure).
- 25 Omit sections 26 and 27 (disclosure of information).
- 26 Omit section 32 (protection from defamation claims).
- 27 In section 41 (interpretation), in subsection (1) –
- (a) in the definition of “investigation”, after “section 2” insert “or 34B”,
  - (b) in the definition of “the person aggrieved” –
    - (i) after “aggrieved” insert “in Part 2”, and
    - (ii) after “section 4(1)(a)” insert “and in Part 2A has the meaning given in section 34D(1)(a)”,
  - (c) in the definition of “special report” –
    - (i) after “report” insert “in Part 2”, and
    - (ii) after “section 22” insert “and in Part 2A has the meaning given in section 34P”, and
  - (d) insert, in the appropriate places –
    - ““care home” has the meaning given by section 34R(2);”;
    - ““care home provider” has the meaning given by section 34R(3);”;
    - ““domiciliary care” has the meaning given by section 34S(2);”;

““domiciliary care provider” has the meaning given by section 34S(3);”;

““independent palliative care provider” has the meaning given by section 34T(3);”;

““palliative care service” has the meaning given by section 34T(2);”.

- 28 Ym mhennawd adran 42 (cyn-ddarparwyr gofal iechyd a chyn-landlordiaid cymdeithasol: addasiadau), yn lle “and social landlords” rhodder “social landlords, social care providers and palliative care providers”.
- 29 (1) Mae adran 42 (cyn-ddarparwyr gofal iechyd a chyn-landlordiaid cymdeithasol: addasiadau) wedi ei diwygio fel a ganlyn.
- (2) Yn is-adran (1), ar ôl paragraff (c) mewnosoder –
- “(d) former care home providers in Wales;
- (e) former domiciliary care providers in Wales;
- (f) former independent palliative care providers in Wales.”
- (3) Ar ôl is-adran (4) mewnosoder –
- (4A) “Former care home provider in Wales” means a person who –
- (a) at the relevant time, provided accommodation, nursing or personal care of a particular description at a care home (within the meaning given by the Care Standards Act 2000) in Wales, and
- (b) subsequently ceased to do so (whether or not the person has later started to do so again).
- (4B) “Former domiciliary care provider in Wales” means a person who –
- (a) at the relevant time, provided domiciliary care services of a particular description in Wales, and
- (b) subsequently ceased to do so (whether or not the person has later started to provide those services again).
- (4C) “Former independent palliative care provider in Wales” means a person who –
- (a) at the relevant time, provided a palliative care service of a particular description in Wales, and
- (b) subsequently ceased to do so (whether or not the person has later started to do so again).”
- 30 (1) Mae Atodlen 1 (Ombwdsmon Gwasanaethau Cyhoeddus Cymru: penodiad etc) wedi ei diwygio fel a ganlyn.
- (2) Ym mharagraff 5 –
- (a) yn is-baragraff (1), ar ôl paragraff (e) mewnosoder –
- “(f) he is a care home provider, domiciliary care provider or independent palliative care provider;

““domiciliary care provider” has the meaning given by section 34S(3);”;

““independent palliative care provider” has the meaning given by section 34T(3);”;

““palliative care service” has the meaning given by section 34T(2);”.

- 28 In the heading to section 42 (former health care providers and social landlords: modifications), for “and social landlords” substitute “social landlords, social care providers and palliative care providers”.
- 29 (1) Section 42 (former health care providers and social landlords: modifications) is amended as follows.
- (2) In subsection (1), after paragraph (c) insert –
- “(d) former care home providers in Wales;
  - (e) former domiciliary care providers in Wales;
  - (f) former independent palliative care providers in Wales.”
- (3) After subsection (4) insert –
- (4A) “Former care home provider in Wales” means a person who –
- (a) at the relevant time, provided accommodation, nursing or personal care of a particular description at a care home (within the meaning given by the Care Standards Act 2000) in Wales, and
  - (b) subsequently ceased to do so (whether or not the person has later started to do so again).
- (4B) “Former domiciliary care provider in Wales” means a person who –
- (a) at the relevant time, provided domiciliary care services of a particular description in Wales, and
  - (b) subsequently ceased to do so (whether or not the person has later started to provide those services again).
- (4C) “Former independent palliative care provider in Wales” means a person who –
- (a) at the relevant time, provided a palliative care service of a particular description in Wales, and
  - (b) subsequently ceased to do so (whether or not the person has later started to do so again).”
- 30 (1) Schedule 1 (Public Services Ombudsman for Wales: appointment etc) is amended as follows.
- (2) In paragraph 5 –
- (a) in sub-paragraph (1), after paragraph (e) insert –
- “(f) he is a care home provider, domiciliary care provider or independent palliative care provider;

(g) he is an officer or member of staff of a provider of that kind.”;

(b) ar ôl is-baragraff (1) mewnosoder –

“(1A) For the purposes of sub-paragraph (1)(g) a person is an officer of a provider if he or she has control or management of a provider which is not an individual or the affairs of such a provider.”

(3) Ym mharagraff 14, yn is-baragraff (7)(a), ar ôl “authority” mewnosoder “, care home provider, domiciliary care provider or independent palliative care provider”.

31 Yn yr enw i Atodlen 2, ar ôl “MATTERS” mewnosoder “: PART 2”.

*Deddf Comisiynydd Pobl Hŷn (Cymru) 2006*

32 Mae Deddf Comisiynydd Pobl Hŷn (Cymru) 2006 wedi ei diwygio fel a ganlyn.

33 Yn adran 18 (pŵer i ddatgelu gwybodaeth), yn is-adran (1), ym mharagraff (b), yn lle “25A” rhodder “34V”.

34 Yn Atodlen 4 (mân ddiwygiadau a diwygiadau canlyniadol), ym mharagraff 2, hepgorer is-baragraffau (2) a (3).

*Deddf Llywodraeth Cymru 2006*

35 Yn Atodlen 10 i Ddeddf Llywodraeth Cymru 2006 (mân ddiwygiadau a diwygiadau canlyniadol), hepgorer paragraff 77.

*Mesur y Gymraeg (Cymru) 2011*

36 (1) Mae Atodlen 3 i Fesur y Gymraeg (Cymru) 2011 (diwygiadau ynglŷn â gweithio ar y cyd a gweithio'n gyfochrog) wedi ei diwygio fel a ganlyn.

(2) Hepgorer y croesbennawd italig cyn paragraff 4 (Deddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2005).

(3) Hepgorer paragraffau 4 i 6.

(g) he is an officer or member of staff of a provider of that kind.”;

(b) after sub-paragraph (1) insert—

“(1A) For the purposes of sub-paragraph (1)(g) a person is an officer of a provider if he or she has control or management of a provider which is not an individual or the affairs of such a provider.”

(3) In paragraph 14, in sub-paragraph (7)(a), after “authority” insert “, care home provider, domiciliary care provider or independent palliative care provider”.

31 In the title to Schedule 2, after “MATTERS” insert “: PART 2”.

*Commissioner for Older People (Wales) Act 2006*

32 The Commissioner for Older People (Wales) Act 2006 is amended as follows.

33 In section 18 (power to disclose information), in subsection (1), in paragraph (b), for “25A” substitute “34V”.

34 In Schedule 4 (minor and consequential amendments), in paragraph 2, omit sub-paragraphs (2) and (3).

*Government of Wales Act 2006*

35 In Schedule 10 to the Government of Wales Act 2006 (minor and consequential amendments), omit paragraph 77.

*Welsh Language (Wales) Measure 2011*

36 (1) Schedule 3 to the Welsh Language (Wales) Measure 2011 (amendments about joint and collaborative working) is amended as follows.

(2) Omit the italic cross-heading before paragraph 4 (Public Services Ombudsman (Wales) Act 2005).

(3) Omit paragraphs 4 to 6.







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