Agenda – Climate Change, Environment, and Infrastructure Committee

Meeting Venue:
Committee room 4 Tŷ Hywel
and video Conference via Zoom
Meeting date: 28 September 2023
Meeting time: 09.30

For further information contact:
Marc Wyn Jones
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Private pre-meeting (09.15-09.30)

Briefing from Expert Adviser

Public meeting (09.30-14.20)

1 Introductions, apologies, substitutions, and declarations of interest

(09.30)

2 Infrastructure (Wales) Bill – Evidence session with the National Infrastructure Planning Association

(09.30-10.30) (Pages 1 – 70)

James Good, NIPA Board member – National Infrastructure Planning Association

Eleri Davies, NIPA member and Head of Onshore Development: Wales & England at RWE Renewables UK – National Infrastructure Planning Association

Attached Documents:

Infrastructure Bill – Bill summary

Infrastructure (Wales) Bill – Summary of written evidence

Infrastructure (Wales) Bill – Suggested questions

Paper – NIPA

Break (10.30-10.40)

3 Infrastructure (Wales) Bill - Evidence session with Energy sector developers

(10.40-11.40) (Pages 71 - 92)

Liz Dunn, Infrastructure (Wales) Bill Task and Finish Group - RenewableUK Cymru

Tom Hill, Programme Manager - Marine Energy Wales

Matthew Hindle, Head of Net Zero & Sustainability - Wales & West utilities

Attached Documents:

Paper - RenewableUK Cymru

Paper - Marine Energy Wales

Paper - Wales & West Utilities

Break (11.40-11.50)

4 Infrastructure (Wales) Bill - Evidence session with Transport sector developers

(11.50-12.50) (Pages 93 - 101)

Gwyn Rees, Performance and Transformation Director - Network Rail

Geoff Ogden, Chief Planning and Development Officer - Transport for Wales

Attached Documents:

Paper - Network Rail

Paper - Transport for Wales

Lunch break (12.50-13.20)

5 Infrastructure (Wales) Bill - Evidence session with Environmental organisations

(13.20-14.20) (Pages 102 - 115)

Annie Smith, Head of Nature Policy and Casework – RSPB Cymru

Ross Evans, Public & Community Affairs Manager – Campaign for the Protection of Rural Wales

Attached Documents:

Paper - RSPB Cymru

Paper - Campaign for the protection of Rural Wales

6 Papers to note (14.20)

6.1 The draft Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023

(Pages 116 - 151)

Attached Documents:

Letter from the Minister for Rural affairs, North Wales & Trefnydd regarding the draft Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023

RMS Annex 1

Letter from the Chair of the Legislation, Justice and Constitution Committee to the Minister for Rural Affairs and North Wales, and Trefnydd, in relation to the Draft Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023

6.2 UK Emissions Trading Scheme (UK ETS)

(Pages 152 - 154)

Attached Documents:

Letter from the Minister for Climate Change to the Chair in relation to the written statement on legislative route for the UK Emissions Trading Scheme

6.3 The Infrastructure (Wales) Bill

(Pages 155 - 279)

Attached Documents:

Letter from the Chair to Secretary of State for Levelling up, Housing and Communities in relation to the Infrastructure (Wales) Bill

Correspondence from the Department for Levelling Up, Housing and Communities to the CCEI Committee in relation to communication between the Minister for Climate Change and the Department for Levelling Up, Housing and Communities.

Correspondence from National Infrastructure Commission for Wales in relation to the Infrastructure (Wales) Bill event

Letter from the Chair of the Legislation, Justice and Constitution Committee to the Minister for Climate Change in relation to the Infrastructure (Wales) Bill

Response from the Minister for Climate Change to the Chair of the Legislation, Justice and Constitution Committee in relation to the Infrastructure (Wales) Bill

6.4 Retained EU Law (Revocation and Reform) Act 2023

(Pages 280 - 291)

Attached Documents:

Letter from the Chair to the Minister for Climate Change in relation to REUL Climate Legislation

Response from the Minister for Climate Change to the Chair in relation to REUL Climate Legislation

Letter from the Chair of the Legislation, Justice and Constitution Committee to the Counsel General and Minister for the Constitution, in relation to the Retained EU Law (Revocation and Reform) Act 2023

Response from the Counsel General and Minister for the Constitution to the

Chair of the Legislation, Justice and Constitution Committee in relation to the Retained EU Law (Revocation and Reform) Bill

6.5 The Windsor Framework (Retail Movement Scheme) Regulations 2023

(Pages 292 – 293)

Attached Documents:

Letter from the Minister for Rural Affairs and North Wales, and Trefnydd to CCEI chair regarding the UK Government making and laying the Windsor Framework (Retail Movement Scheme) Regulations 2023

6.6 The Windsor Framework (Enforcement etc.) Regulations 2023

(Pages 294 – 295)

Attached Documents:

Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd in relation to the Windsor Framework (Enforcement etc.) Regulations 2023

6.7 The Windsor Framework (Plant Health) Regulations 2023

(Pages 296 – 299)

Attached Documents:

Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd to the Chair in relation to the Windsor Framework (Plant Health) Regulations 2023

Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd to the Chair in relation to the Windsor Framework (Plant Health) Regulations 2023

6.8 The Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023

(Pages 300 – 302)

Attached Documents:

Letter from the Minister for Rural Affairs and North Wales, and Trefnydd to the Chair in relation to the Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023

Additional letter from the Minister for Rural Affairs and North Wales, and

Trefnydd to the Chair in relation to the Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023

6.9 Deposit Return Scheme (DRS)

(Pages 303 - 305)

Attached Documents:
Letter from the Chair of the Economy, Trade, and Rural Affairs Committee to the Minister for Climate Change on the Deposit return scheme: inclusion of glass

6.10 Interministerial Group on Net Zero, Energy and Climate Change

(Page 306)

Attached Documents:
Letter from the Minister for Climate Change to the Chair in relation to the Interministerial Group on Net Zero, Energy and Climate Change

6.11 Ffos-y-Fran opencast coalmine

(Pages 307 - 309)

Attached Documents:
Correspondence from Helen Morgan MP to the Climate Change Committee in relation to Ffos-y-Fran opencast coalmine

6.12 Climate Change Committee's (CCC) report, Adapting to climate change - Progress in Wales

(Page 310)

Attached Documents:
Correspondence from the Minister for Climate Change to the Chair in relation to the Climate Change Committee's (CCC) report, Adapting to climate change - Progress in Wales

7 Motion under Standing Order 17.42 (vi) and (ix) to resolve to exclude the public from the remainder of today's meeting

(14.20)

Private meeting (14.20-14.30)

8 Infrastructure (Wales) Bill - Consideration of evidence received under items 2, 3, 4 and 5

9 Bus Franchising Research: Commission Approach

(Pages 311 - 312)

Attached Documents:

Paper - Bus Franchising Research - Commission approach

10 Consideration of the Committee's draft report on the Supplementary Legislative Consent Memorandum for the Levelling-up and Regeneration Bill

(Pages 313 - 319)

Attached Documents:

Draft report

Agenda Item 2

Document is Restricted

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Infrastructure 49, National Infrastructure Planning Association

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | **Climate Change, Environment, and Infrastructure Committee**

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan NIPA | Evidence from NIPA

Infrastructure (Wales) Bill

INTRODUCTION

The National Infrastructure Planning Association ("**NIPA**") was established in November 2010 with the aim of bringing together individuals and organisations involved in the planning and authorisation of major infrastructure projects in England and Wales. Our principal focus is the planning and authorisation regime for nationally significant infrastructure projects ("**NSIPs**") introduced by the Planning Act 2008. We provide a forum for those with an interest in the planning and authorisation of national infrastructure projects in the UK, particularly those brought forward within the framework of the Planning Act 2008.

In summary, we:

- advocate and promote an effective, accountable, efficient, fair and inclusive system for the planning and authorisation of national infrastructure projects and act as a single voice for those involved in national infrastructure planning and authorisation;
- participate in debate on the practice and the future of national infrastructure planning and act as a consultee on proposed changes to national infrastructure planning and authorisation regimes, and other relevant consultations; and
- develop, share and champion best practice, and improve knowledge, skills, understanding and engagement by providing opportunities for learning and debate about national infrastructure planning.

NIPA is pleased to set out its views in outline on the Bill given experience gained with the operation of the Planning Act 2008.

1.What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

NIPA is broadly supportive of the general principles of the Bill and welcomes the introduction of a unified consenting process for infrastructure projects in Wales, in particular to meet the energy transition and renewable energy ambitions set out in Future Wales: The National Plan 2040 and Planning Policy Wales.

We consider that the new regime has the potential to address many of the challenges experienced with the existing Welsh consenting regimes.

Potential concerns arise inevitably from the lack of detail in the Bill on certain matters, which will need to be addressed in subordinate legislation and guidance. The Welsh Government intends to consult on the general principles of subordinate legislation and we will welcome the opportunity to provide further comments on the detailed implementation of the Bill.

At the outset, we would wish to emphasise that in order to realise the benefits of a unified consenting process, proper consideration must be given to addressing some of the systemic challenges of existing

consenting processes, including the Planning (Wales) Act 2015 developments of national significance (DNS) and Planning Act 2008 development consent order regimes. Recent experience of both the DNS and DCO consenting regimes is that there is an increasing elongation of the validation, pre-examination, examination and determination stages, driven in part by inadequate and/or out-of-date national policy and a lack of resources and/or substantive engagement by consultees.

As the proposed significant infrastructure project (SIP) regime would represent a move towards a 'one stop shop' for development consents in Wales, it is very likely that existing problems in the consenting processes will be exacerbated as a result of the additional complexity that SIP applications would necessarily involve, unless sufficient steps are taken to address them. Therefore clear and detailed national policy, appropriate resourcing and strict adherence to the proposed statutory timescales are essential to improve the delivery of energy and transport projects through the new system.

2. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

2.i) Part 1 - Significant infrastructure projects

It is important that the new unified consenting regime is capable of incorporating new and emerging forms of energy generation and associated infrastructure, that may be less well covered under existing regimes. Likewise, clarity and the pace of consent in relation to major developments at locations such as ports for future offshore wind deployment will be essential in helping Wales realise its future ambitions for offshore energy deployment.

In relation to energy SIPs, the Bill generally follows the approach taken by other consenting regimes. Whilst this approach covers existing technologies, it does not encompass the full range of energy infrastructure required to facilitate the energy transition.

It is acknowledged that the Bill includes powers which would enable Welsh Ministers to add to or vary the list of significant infrastructure projects. A commitment from Welsh Ministers to take an active approach to the use of this power (particularly to reflect the pace of technological change) would be welcome. In addition, and perhaps more importantly, the ability of developers to apply for specific projects to be brought into the SIP regime is essential for the new consenting regime to function as a "one stop shop" where most needed. Although some projects may fall within the scope of the Town and Country Planning Act, where multiple consents are required, developers should be able to apply and bring them to the SIP regime.

2.ii) Part 2 - Requirement for infrastructure consent

Supportive of the principle that the SIP regime should be open to other projects which do not meet the criteria set out in the Bill for qualification as 'compulsory SIPs'.

Consultation materials accompanying the Bill refer to the category of 'optional SIPs', however the Bill provides that the ability for projects which do not qualify as 'compulsory SIPs' to access the SIP regime is ultimately at the discretion of Welsh Ministers via the issuing of a direction under clause 22 (akin to the section 35 direction power under the Planning Act 2008). Under the Bill as introduced, applicants do not therefore have the automatic right to opt-in to the SIP regime for projects falling within the criteria of 'optional SIPs'.

Support the removal of the need for a direction from the Bill. Projects which fall within the criteria set out in guidance should have the ability to opt-in to the SIP regime as applicants are best placed to identify which consenting route is best suited to individual projects.

Guidance on the optional SIP thresholds should not be drafted too restrictively and updated regularly to respond to experience of the SIP regime and changes in technology.

In the event that the clause 22 direction power is retained in the Bill, the inclusion of a statutory deadline for deciding on a request for a direction would provide applicants with greater clarity, particularly in the case of novel and emerging technologies not currently covered by Part 1 of the Bill.

2.iii) Part 3 - Applying for infrastructure consent

Much of the detail as to the pre-application procedure will be set out in subordinate legislation.

Whilst NIPA recognises that there are benefits in 'front loading' the consenting process, the detail of the implementing regulations and supporting guidance should strike an appropriate balance to ensure that applicants do not face unnecessary burdens in developing projects. For example, clear guidance on consultation standards to ensure that pre-application consultation is robust but proportionate.

An area of concern in the Bill is the absence of a time limit within which the Welsh Ministers must decide whether or not to accept an application. This should be remedied. Current experience of the DNS process, which has a validation period of 6 weeks in the case of EIA development (itself 2 weeks longer than the equivalent time period for accepting applications for development consent under the Planning Act 2008, for arguably less complex projects) is that Planning and Environment Decisions Wales (PEDW) is estimating between 10-12 weeks for validation. The inclusion of a statutory time period for validation of SIP applications in primary legislation would provide applicants with greater certainty and help to ensure that the headline 52 week determination period for SIP applications is not undermined by an unduly long or uncertain validation period. This is essential.

2.iv) Part 4 - Examining applications

The Bill provides for a number of different procedures for the examination of an application. It is therefore difficult for applicants to gauge upfront the likely cost and resource requirements of the new regime and to budget accordingly. As much of the detail is left to subordinate legislation, there should be clear guidance to provide applicants with greater clarity as to the factors that will influence the choice of procedure.

In order to fast track the delivery of new energy infrastructure in Wales, local inquiries should only be used in exceptional circumstances for the examination of SIP applications. NIPA expects that for most projects the most appropriate form of examination will consist of a primarily written process supplemented by hearings on specific issues where required, e.g. compulsory acquisition or project-specific issues.

NIPA is concerned by the wide powers under clause 50 for Welsh Ministers to direct further examination of an application by examining authorities. Clear parameters are needed in subordinate legislation (or guidance) to clarify the circumstances in which the power may be exercised – should be in exceptional circumstances only if developer confidence in the 52 week consenting period is to be maintained. This approach would also discourage the increasing tendency by some consultees of making late submissions which could and should have been made earlier in the examination process, or earlier still during pre-application consultation where the relevant information was available to enable the consultee to engage at that stage.

2.v) Part 5 - Deciding applications for infrastructure consent

NIPA welcomes the provision in the Bill for infrastructure policy statements to guide decision-making on SIP applications. The potential role of the policy statements in the SIP regime is strengthened by the clarification in clause 53 that in the event of conflict with the national development framework and marine plans, the policy statements will prevail. The introduction of infrastructure policy statements to guide the decision-making process for SIPs is also a key opportunity for Wales to influence, and lead, on the approach to low carbon and renewable energy projects and associated developments.

It is understood however that Welsh Government considers the relevant Bill provisions to be reactive powers and does not propose to introduce policy statements other than for novel technologies or issues. This is a major concern and NIPA strongly encourages the Welsh Government to reconsider the position and to introduce policy statement(s) covering the development of new energy and transport infrastructure. Whilst Future Wales contains a strong degree of general support for new renewable energy development, NIPA considers that the successful delivery of Wales' renewable energy targets requires the need case for additional energy and transport infrastructure to be expressed in the clearest and strongest possible terms, with a strong starting presumption in favour of development and an acknowledgement that it will not be possible to deliver the infrastructure required without some residual adverse impacts arising. Such policy

statements should also provide wide support to all types of decarbonisation including changes to existing projects converting into low carbon generation.

Similarly, it is essential that policy statements provide clear direction to decision-makers on how the national need for new energy development and local impacts should be balanced in the decision-making process. Otherwise, there will be a continued risk of uncertainty, delay and inconsistency in decision-making where projects are refused for reasons of local impact despite meeting the general national need identified in policy.

NIPA welcomes the powers in the Bill that would enable examining authorities to make decisions on particular types of SIP application. Whilst further detail is awaited as to the circumstances in which applications would be decided by examining authorities, in principle it is a practical tool which should enable decisions on less complex applications to be made earlier than the 52 week decision deadline.

Whilst the overall 52 week statutory timeframe for decisions on SIP applications is strongly welcomed, the Bill does not prescribe time limits on the various stages of the process, e.g. the examination of the application by the examining authority, the time spent by the examining authority in preparing its report of findings and conclusions on the application and overall recommendation and the consideration and decision by Welsh Ministers, which could potentially vary significantly from project to project depending on the circumstances. We strongly encourage the inclusion of statutory periods for each stage of the examination and decision-making process to provide applicants and other parties with more certainty.

Confidence in the statutory timeframe for decisions is a very important aspect of maintaining developer and investor confidence in the planning system and for securing crucial inward investment in renewable energy development, and for investment in transport Infrastructure. Statutory deadlines also help to focus participation in examination by local authorities, consultees and other affected parties.

2.vi) Part 6 - Infrastructure consent orders

The drafting of the Bill has understandably been influenced by other consenting regimes in Wales and England. The following comments are informed by extensive experience of using these regimes and of the difficulties that can be encountered in practice.

Infrastructure consent orders should be flexible instruments which provide applicants with sufficient scope post-consent to make changes to projects to respond to information available following site investigations and the input of contractors who may identify opportunities for environmental improvements in the final detailed design. It will be important that any guidance on the drafting of infrastructure consent orders enables a proportionate degree of flexibility to be built-in to the consent.

The ability to include other consents in an infrastructure consent order (whether ‘deeming’ the other consent to have been given or disapplying the need for it) is a welcome tool for developers and will help

the development of the new SIP regime as a 'one stop shop' for development consents for significant projects in Wales.

However, the extent to which the Bill will deliver a true 'one stop shop' is likely to be limited as under the Bill as drafted consenting bodies can simply block the inclusion of other consents in an infrastructure consent order. It is noted that regulations made under the Bill can override the need for consent from other consenting bodies in specified cases. NIPA supports regulations under the Bill conferring extensive exceptions to the need for the consent of other bodies to be obtained in order for those other consents to be included in an infrastructure consent order. The examination process will provide an adequate opportunity for the views of other consenting bodies to be raised and taken into account by the examining authority in making a recommendation on whether a proposed deemed consent or disapplication is appropriate in the particular circumstances of the case.

The provisions relating to special category land should also be simplified. In particular, there should be greater scope to authorise the compulsory acquisition of special category land where it can be demonstrated that the benefits of the development (particularly in the case of low carbon and renewable energy development which contributes to wider Net Zero targets) outweigh the harm that the loss of the land would give rise to.

Whilst it is appropriate that special category land receives protection and applicants will try to avoid the loss of such land, the possibility of special Senedd procedure applying to the compulsory acquisition of special category land in certain circumstances should be removed from the Bill. This process would duplicate the consideration and scrutiny that the SIP application will already have been the subject of as part of the examination process and is not consistent with the urgency in the scaling-up of low carbon and renewable energy infrastructure that will be required to meet Wales' decarbonisation objectives.

In relation to Crown land, the need to obtain the consent of the appropriate Crown authority should be limited to compulsory acquisition powers only, and not for other provisions in an order which relate to Crown land. NIPA's experience under other consenting regimes is that some Crown bodies require applicants to explain and justify the potential application of individual provisions of an order to each parcel of Crown land within the boundary of a project, which adds unnecessary time and cost to the process.

Whilst the power to make regulations dealing with the correction of errors is welcomed, and it is to be hoped that the powers would only need to be used sparingly, experience of the Planning Act 2008 regime is that a 'final' as made development consent order will often contain minor errors and inconsistencies which require correction. Under the Bill, the need for an applicant to request the correction of errors (where the errors are contained in an infrastructure consent order) gives rise to additional delay. In this regard, a practice that would assist in minimising the need for a correction order (and which is followed in other consenting regimes) would be for the Welsh Ministers to circulate to the applicant, on a without prejudice basis, the final version of an infrastructure consent order which it is proposed to be made in order for the applicant to comment on any minor drafting points. This is what currently happens with other types of statutory authorisations, e.g. Transport and Works Act Orders.

Powers to make amendments to infrastructure consent orders post-consent are to be welcomed. Implementing regulations should include a clear timetable for applications to amend orders to be determined. It should also be possible to amend orders even after works have been implemented.

2.vii) Part 7 - Enforcement

2.viii) Part 8 - Supplementary functions

NIPA welcomes the inclusion of a statutory duty on consultees to respond to consultation by the Welsh Ministers or examining authority and for Welsh Ministers to give directions to public authorities requiring them to take particular steps in relation to an application. It will be important for the statutory powers to be reflected in resourcing allocations and funding settlements to ensure that consultees can respond appropriately.

2.ix) Part 9 - General provisions

It is important for proposed transitional provisions to be consulted on with applicants and communicated at the earliest opportunity, particularly given that developers will have a pipeline of pending projects at different stages of development in the existing consenting regimes.

3. What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

The biggest barrier to successful implementation of the new regime is likely to be the resourcing and capability constraints facing consultees and other statutory bodies involved in the process. Public authorities should be adequately resourced to respond to SIP applications and engage at an early stage with applicants on proposals. This is the clear experience gained from the Planning Act 2008.

4. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)?

5. Are any unintended consequences likely to arise from the Bill?

The Bill is being promoted at a time when the UK government is carrying out a review of the Planning Act 2008 regime, which similarly to the Bill introduced a unified consenting process for major infrastructure projects. The UK government has recently consulted on operational reforms to that system as part of its NSIP Action Plan and there are a number of lessons which can be drawn from the operation of that regime in designing and implementing the new SIP regime. NIPA has been actively participating in this review and consultation exercises.

It is imperative that Welsh Ministers take heed of the difficulties that have arisen in the Planning Act 2008 system when implementing the new SIP regime in Wales and, in particular, the need for (a) clear and detailed national policy, (b) statutory guidance, (c) efficient and proportionate examinations; and (d) adherence to statutory deadlines for decisions on all SIP developments.

6. What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

7. Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

22 September 2023

Infrastructure 38, RenewableUK Cymru

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | **Climate Change, Environment, and Infrastructure Committee**

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan **RenewableUK Cymru** | Evidence from **RenewableUK Cymru**

General principles

What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

Across RenewableUK and RenewableUK Cymru, we work with our members to support the building and operating of our future energy system, powered by clean energy. We jointly represent over 470 member companies to ensure an increasing amount of renewable electricity is deployed across Wales and the UK which will support the decarbonisation of our economy, reduce emissions, and respond to the climate emergency. Our members in Wales are business leaders, developers, and technology innovators. We have a broad membership with extensive experience from all the major onshore and offshore wind developers operating in Wales, as well as developers of electricity interconnectors and marine renewables.

RenewableUK Cymru welcomes the opportunity to respond to the Senedd Committee's consultation on the Infrastructure (Wales) Bill. We have established a RenewableUK Cymru members task and finish group to engage on the development of the Bill and bring together the views of industry; members of this group represent the onshore wind, floating and fixed bottom offshore wind, ports, hydrogen and grid sectors.

This long-awaited piece of legislation is very much welcomed by our members. We support the aim of the Bill to introduce a single, unified infrastructure consent process to deliver infrastructure projects in Wales and in the Welsh Marine Area. By streamlining the process for gaining the necessary consents and licences to enable significant infrastructure projects to proceed, it will provide consistency, certainty and improve the quality and communication throughout the process. Adequate resourcing will be key to the success of the new Significant Infrastructure Project (SIP) regime. If implemented in line with the objectives set out in the Explanatory Memorandum which we support, the new Infrastructure

Consent process will bring multiple benefits to all parties involved. The Minister for Climate Change, Julie James, describes the Bill as an "important step" towards delivering on renewable energy targets as Wales moves towards net zero by 2050, noting that *"having an efficient and effective consenting regime is vital to the timely delivery of important infrastructure projects in Wales that make a positive contribution towards our social, economic and environmental prosperity and net zero ambitions.")*

Key points:

The points raised in our response to the following questions are largely in seeking greater clarity in terms of the detailed provisions and implementation of the Bill, and around certainty on timescales to reach a decision. In particular, we highlight the following areas where further clarity is required:

The need for specific statutory timescales on the face of the Bill to provide a clear expectation for applicants, consultees and Welsh Ministers about the time-period allocated for examining and determining SIPs. As drafted, the Bill creates an immediate expectation that timescales can be extended and at this stage no framework for when this could occur. This creates uncertainty for all involved in the process and the potential for significant delays to decisions that cannot be quantified or planned for at the outset. These will undermine developer confidence in the system and the second objective, certainty, of the Bill which is outlined in Chapter 3 of the Explanatory Memorandum: *"Certainty – To provide certainty in terms of timescales for all involved, so that the public are clear on when decisions are made, and proceedings are not unnecessarily prolonged, and to enable developers to plan projects with more accuracy".*

• The importance and content of Infrastructure Policy Statements to provide certainty around the policy that will be applied in determining SIPs and how priorities should be balanced in making consenting decisions.

• The need for clarity on how 10-50MW onshore wind and solar schemes will be consented once the Bill is in place.

• The requirement for detail on how cross-border projects (onshore, in the marine area and s2(1)(e) for above ground electric lines) will be consented and how the consenting regimes on each side of the administrative border will interact.

• The significant lack of detail on transitional arrangements for projects proceeding through current regimes. Information is needed on how these arrangements would work and when will they come in to effect to allow developers to forecast project timescales, programmes, and investment decisions.

• Overall, the need for a clear arrangement on **how planning authorities, Welsh Government departments, PEDW and statutory consultees will be sufficiently resourced** to implement and manage this new process to ensure the objectives are delivered effectively.

The lack of detail highlighted above may undermine the Welsh Government's ambitions for a new regime to provide the consistency and certainty needed to encourage investment in Wales. The Welsh Government should reflect on and learn the lessons from the DNS regime, which only has a 60% success rate (compared to 90%+ under the Planning Act 2008 regime) and where less than 30% of applications have been determined on time.

Overall, we recognise that the Bill is currently a high-level framework and relies on subsequent regulations to provide detail of how it will operate and be implemented in practical terms. However, we believe that too much detail is reserved for subsequent regulations which poses risks of inconsistencies and misunderstandings. We await further detail on specific aspects which will be set out in secondary legislation and guidance. This detail will shape the day to day consenting processes and procedures – therefore, it will be vital that the aim of the Bill to provide *"simplified and efficient consenting arrangements"* remains at the core of this secondary legislation. As such, without this detail it is difficult to comprehensively comment on the proposed Bill. To allow respondents to make meaningful comments, the Bill needs to be able to be read as a whole, together with all supplementary regulations. Clarity on the timescales for publishing this secondary legislation and the consultation process to allow for comments is needed.

The ability to review the Act when regulations are also published is also necessary to ensure that the legislation works together to create the clear and streamlined regime Welsh Government is seeking. Our members are invested in the development of these documents and, with extensive experience of the operation of both the DNS and Planning Act NSIP regimes, request the ability to provide further comments and to engage directly with the Climate Change, Environment, and Infrastructure Committee and the Welsh Government's Planning Division

What are your views on the Bill's provisions (set out according to parts below), in particular are they workable and will they deliver the stated policy intention?

Part 1 - Significant infrastructure projects

We recognise the principal designation of SIPs will be through the Infrastructure (Wales) Act and welcome the comprehensive suite of project types listed under Part 1. However, we note there is an absence of emerging and future technologies such as hydrogen infrastructure and related activities within the definition of SIPs. Whilst there are provisions under Section 17 that grant powers to Welsh Ministers to add, vary or remove types of SIPs, it is disappointing that this is not accounted for in the current document. We would welcome this addition given the political push towards this technology as part of the pathway for net zero. Whilst battery energy storage projects are currently exempt from the DNS regime; it is not clear if these projects will also be excluded from the SIP regime under the Infrastructure (Wales) Bill.

In section 2: Electricity infrastructure, installed capacity is defined as *'the maximum capacity of electricity generation (in MW) at which that generating station would be operated for a sustained period without damage being caused to it (assuming the source of energy used is available without interruption)'*.

- We would welcome clarity on whether this definition applies to AC or DC capacity and whether different definitions will be used for different types of generating technology (for example solar), and hybrid 'energy park' developments.
- The DNS regime includes onshore wind projects above 10MW. It is noted that both onshore and offshore generating stations above 50MW will be SIPs through the IC regime. Clarity is needed on why projects between 10 and 50MW have been excluded from the SIP regime and what is the intention for their consenting – either by Local Planning Authorities through the Town and Country Planning Act or within the new regime. We note that mandatory thresholds (>50MW energy projects) as they apply to generating stations and overhead grid connection are included. However, the optional thresholds (<50MW energy projects) will be subject to a Direction being issued by Welsh Ministers confirming that the project is a SIP and should be subject to the SIP regime. Clarity would be welcomed on whether projects can 'opt-in' to the process (as was suggested in the 2018 consultation) or whether Welsh Ministers could refuse a request. If the intention is the latter, further guidance on matters such as the criteria to bet met for a positive Direction and the timescales for that decision, (e.g. potentially a schedule similar to EIA regulations) is required to provide certainty to developers and other stakeholders.
- The consenting route for 132kV grid projects less than 2km long, grid projects less than 132kV and/or overhead lines not associated with a SIP generating station needs clarification – and whether the intention is that

consent will come through the IC regime, Section 37 of the Electricity Act or the Town and Country Planning Act. We would welcome further definition on what 'associated' with a SIP generating station means for the purposes of new overhead grid lines (OHLs).

In section 18: Cross-border projects, further clarity and detail will be crucial for onshore, offshore and grid projects on how they should be consented and how provisions interface with the Planning Act.

- Clarity is needed on whether it will be a requirement for Celtic Sea floating offshore wind projects in the current Project Development Area that straddle both English and Welsh waters to apply for an IC as well as a DCO. Certainty will be needed in terms of the consenting route as soon as possible for those proposed project development plans in anticipation of leasing rounds. Whilst it's understood that project phases may be progressed to address this, should a project decide to proceed as a whole (greater than 350MW), it is not currently clear if the larger scale project will be required to apply for an IC (for Welsh marine licensing purposes) as well as a DCO.
- Clarity is needed on cross-border OHL projects. The current provisions are too vague (see Planning Act 2008 provisions for English/Scottish border projects as an example of what is required). Further detail is needed on how the provisions for SIP generating stations dove-tail with the Planning Act which requires a DCO for new OHLs of 132kv and above which are partly in England and partly in Wales. There is an opportunity through the Bill to clarify this position that is otherwise not clear.

Part 2 - Requirement for infrastructure consent

We welcome the flexibility of the provisions under sections 22 and 24. Section 22 which enables Welsh Ministers to give direction specifying a development project that does not qualify as a SIP to be treated as such and on the reverse, section 24 allows projects to not be treated as SIPs. Information can be requested from a body that would otherwise consent development. This reflects s.35 Planning Act power, although differs in that projects can be directed as SIPs if a planning application has already been made. There is, however, no indication as to what would be considered 'of national significance' and is not limited to categories in section 1. Furthermore, there is no timeframe for determining request, or information on form of request, these will be set in regulations. We suggest that this should be aligned with the Planning Act 2008 timescale of 28 days as a maximum (it would preferably be shorter to ensure the overall determination process of 52 weeks is achievable due to the discrepancy between the aggregate

duration of the NSIP process compared with the 52-week ambition of the Bill). There are critical elements of the direction process which needs to run efficiently so as not to delay projects that are already in progress.

The IC process is proposed to replace the s.36 consent route currently available to Test & Demonstration and early commercial scale FLOW developments in the Welsh marine area once relevant sections come into force. The Bill isn't entirely explicit here as section 20 (1) (b) merely suggest that where infrastructure consent is required, s.36 consent is not required. This could be interpreted as – *'but could still be obtained if developers considered preferable to do so'*. However, the Explanatory Memorandum (EM) states that section 20 (1) *"list the consents which cannot be obtained or given in relation to development"* where a requirement for infrastructure consent applies. Clarity around this point is required.

Assuming that the intended effect of section 20 (1) is that s.36 consent is no longer an option for projects once the infrastructure consent requirement enters into force, it is not clear when this will be as the relevant sections *'come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument'*. Developers need clarity on when the new infrastructure consent process is likely to take effect as soon as possible (assuming the Bill is enacted) and, more importantly, transitional arrangements including how any existing S.36 (or DNS) applications are proposed to be treated once the infrastructure consent mechanism enters into force. How these arrangements would work and when they will come in effect will be vital to provide certainty and avoid projects being put on hold until this is clear.

Part 3 - Applying for infrastructure consent

The process for applying for infrastructure consent is relatively clear bar the following comments. We look forward to reviewing the regulations that will provide further detail on the timescales and content of preapplication procedures and consultation.

Section 28 on obtaining information about interests in land is welcomed and reflects similar provisions in the Planning Act 2008. The Bill as drafted introduces a currently undefined statutory pre-application consultation requirement (section 30 (1)) and proposes to disregard any consultation undertaken before notice of proposed application is confirmed by virtue of section 29 (section 30 (4)). This is concerning for prospective projects currently at pre-application stage intending to obtain a DNS or s.36 consent and already undertaking related engagement. Should the s.36 consent route be removed as an option for developers (as is intended for DNS), and sections 30 (1) and 30 (4) be applied as drafted, there is

potential that engagement up to that point in time will be largely in vain in terms of its value in support of consent application, with potentially significant impacts on project timelines. If existing engagement can't be counted against the statutory requirements even where broadly compliant with the yet to be defined statutory requirements in terms of its nature and substance, then effort will need to be duplicated at significant resource and programme cost to developers. The statutory pre-application requirements in other consenting regimes are largely defined upfront in primary legislation, e.g., Part 5, Chapter 2 of the Planning Act 2008. An upfront approach whereby requirements are given a level of definition in the proposed Bill itself would provide greater confidence about what is proposed and allow them to make informed decisions and plan accordingly. All detail regarding form, timing, how consultations should be carried out, responding to consultation and provision of consultation report etc will be set out in the regulations which poses a lack of clarity over notification of development in the Welsh marine area. These comments relating to transitional arrangements equally apply to projects currently in the DNS regime.

Section 32 (1) notes that Welsh Ministers have power to determine whether or not to accept applications and must give notice of their decision. However, there is no information on what criteria will be applied or timescales for the acceptance decision and notice. We would welcome a timescale similar to the NSIP process of 28 days as a maximum (again, it would preferably be shorter to ensure the overall determination process of 52 weeks is achievable due to the discrepancy between the aggregate duration of the NSIP process compared with the 52-week ambition of the Bill). This lack of confirmed timescales in which an application's validity is determined within this section which means the overall objective of "timely and effective delivery of major infrastructure and low cardon development" could well be compromised. It is also critical that further incentive and resource is provided for PEDW to validate applications in a timely manner in line with the above objective.

Section 33 (7) allows Welsh Ministers to extend the deadline for receiving representations in response to an application for Infrastructure Consent and allows this to occur more than once. Whilst we can acknowledge there is a need for this to take place under certain circumstances, we believe there should be sufficient justification that should accompany these extensions if required. Again, allowing such broad mechanisms for extending consultation periods compromises the overall objective for timeliness and efficiency of the Bill. Given current concerns regarding resourcing levels at PEDW, LPAs and statutory consultees, there is significant risk that this will continuously be applied. The ability to extend the deadline is an example of a lack of firm timetable for

examination and decision which undermines the 'Certainty' objective. If a response isn't received by a statutory consultee and no material justification of why a response has been delayed or why additional time is required, then it could be deemed as a no objection.

Section 35 outlines the requirements for Local Impact Reports (LIR). LPAs where development is located 'must' provide a LIR while community councils and other LPAs 'may' submit a LIR. These reports are important in the examination of SIPs and must be taken into account in determining the applications. It is, however, critical that there is sufficient resource at LPA level to engage properly with this and participate fully in the SIP examination (which is not routinely happening in either DNS or NSIP examinations).

We welcome the key additional feature to the Bill in section 37 whereby it grants the ability to apply for compulsory acquisition powers for a SIP (akin to the NSIP process for England & Wales). We look forward to further detail in the regulations.

Please see our response to Part 1 and 2, where we seek further clarifications for projects applying for IC (transitional arrangements, consenting route for sites between 10-50MW and cross-border projects depending on the size of the capacity of the part in Wales or Welsh waters).

Part 4 - Examining applications

A proposed timetable for deciding applications for infrastructure consent before the end of 52 weeks is supported. However, further clarity is necessary to understand the provisions of Section 56 (1)(a). Detail of how an examination will be carried out within the 52-week window is lacking and the industry needs to have early sight of the proposals for how this period with be divided up. Section 50 notes that Welsh Ministers have the power to direct the Examining Authority to re-open the examination in accordance with the requirements of the direction. This is of concern as there is no timescale specified and no indication as to how this would fit within the overall 52-week period in s56(1) – this undermines the certainty objective of the proposed Bill.

As is already the case with the current DNS regime (which includes statutory determination timescales), lack of resources and expertise in the public sector (WG departments, PEDW, LPAs, NRW, other statutory consultees) is a key barrier to the timely delivery of projects. The public sector needs to be adequately resourced to support the delivery of projects at all stages: at pre-application to flush out key issues and help shape and refine proposals; at examination; and post-consent to discharge conditions prior to the commencement of construction

and the monitoring of the development. The LPA fee (~£7,000) needs to be increased to sufficiently reflect the time and resource input required from LPAs into the examination process, improve the overall engagement and deliver service within acceptable timescales. This could be done by re-thinking aspects of the proposal such as reviewing the LIR production fee (EM para 8.108) or reimbursing general LPA participation costs (EM para 8.109). Please see our response to question 6 for further detail.

We recognise that it is difficult to retain experienced employees, to continuously train new staff and to have enough personnel to process these applications across organisations. To address this issue and avoid delays in delivering the IC regime, we propose that a Welsh Government central resource, essentially a 'pool of experts' could be established to support the delivery of projects that would be available to WG, LPAs, PEDW, NRW and developers to tap into. It is not realistic to expect all 22 LPAs to have in-house expertise on all topics of relevance to the planning system and, where they do, they may not be fully utilised. A pool of experts operating on full cost recovery basis providing advice to all stakeholders would potentially be a more cost-effective option. We would welcome the opportunity to discuss this further with the Welsh Government, including funding options.

In order to fast track the delivery of new energy infrastructure in Wales, members consider that the use of local inquiries should only be used in exceptional circumstances for the examination of energy SIP applications. We expect that for most projects, the most appropriate form of examination will consist of a primarily written process supplemented by hearings on specific issues where required e.g. compulsory acquisition or project-specific issues. We note that under section 41(6), "The Welsh Ministers must publish the criteria to be applied by the examining authority in making determinations" as to which examination procedure to follow. We would welcome the opportunity to engage on the draft criteria (or similar) to help secure a proportionate process and support the Certainty objective. Certainty is crucial for timely and effective delivery of major infrastructure and low carbon development in the right locations via efficient consenting processes.

We again request early sight of the details regarding the examination procedure to be set out in the regulations – and would appreciate the opportunity to comment.

Part 5 - Deciding applications for infrastructure consent

Section 53 sets out that Welsh Ministers must decide on the application in accordance with statutory policies i.e., any Infrastructure Policy Statement (IPS)

that has effect, the National Development Framework, Future Wales: 2040 and any Marine Plan. Where there is conflict, IPSs will take precedence. IPS are incredibly important in decision making and therefore, it will be critical for Welsh Ministers to put them in place alongside the SIP regime. There are currently no details available on form, content, or timing of IPSs or the process for introducing a policy statement and we understand that there is currently no proposal for these to be brought forward with the Bill or the regulations. The introduction of infrastructure policy statements to guide the decision-making process for SIPs is a key opportunity for Wales to positively influence the direction of travel – much like the NPSs under the NSIP regime. To support a simplified and efficient consenting process, all national policy (and guidance) documents must be aligned.

As highlighted in Part 4, the proposed commitment to determine applications for infrastructure consent in 52 weeks from acceptance of valid applications is also very positive and highly welcomed (section 56 (1)). We note that the 52-week determination commitment at section 56 (1) is essentially immediately undermined by virtue of section 56 (2) which gives Welsh Ministers unconstrained scope to extend this period. We would like to see some checks and balances added to 56 (2) to limit its application in practice. Developer's build whole project programmes around key consent milestones and certainty around decision making timeframes is essential. We note that the equivalent scope of the SoS to extend the deadline for determining DCO applications following receipt of an inspector's report includes a requirement for SoS to make a statement to Parliament announcing the new deadline (see Planning Act 2008 section 107 (7)). This gives elected representatives an opportunity to scrutinise such decisions and hold the Government to account. This is not fully replicated by the proposed annual Senedd Cymru reporting requirement of section 56 (5). More generally, we note that the Planning Act 2008 includes statutory timetable for the majority of discreet elements of the determination process as part of the primary legislation itself (sections 55 (2) and 98 of that Act). This level of detail is currently lacking in the proposed Bill, with details generally deferred to definition through future regulations. We would welcome clarity on how the 52-week period is to be broken down in terms of period for examination, reporting and decision-making.

The 52-week period is shorter than under the Planning Act 2008 which has a 16-month timeframe including acceptance (the Examination itself lasts 12 months and commences with a Preliminary Meeting (on average 3-4 months after acceptance)). It is not currently clear whether Welsh Ministers direction extending period can only be made with the consent of the applicant. In reality, if Welsh Ministers request an extension, the applicant will be concerned about refusal if

they do not agree. We would like to see greater commitment to statutory timeframes and extension of time being an exception rather than set in the Bill.

Section 57 (6), which allows Welsh Ministers to grant consent for a “materially different” proposal creates uncertainty for developers. Again, the regulatory provisions for this will be key to understanding how this mechanism is to work and in what context. The current wording raises serious concerns as it suggests that applicants could potentially receive consent for a “materially different” proposal. This would also give rise to objections from statutory consultees who may have not been granted the opportunity to comment for the alternative proposal under the assessment process.

Furthermore, currently, there is no clarity in terms of the possible circumstances where the Examining Authority will be the determining authority.

We welcome the provision of ‘associated development’ in section 58. It is an important concept for SIPs to enable comprehensive developments to be brought forward. This is frequently optimised by NSIPs under the Planning Act 2008 regime. We suggest that guidance should be provided on what would constitute development for SIP as is in place for NSIPs.

Part 6 - Infrastructure consent orders

As highlighted in Part 3, a key additional feature not available under the current DNS regime is the ability to apply for compulsory acquisition powers (akin to the NSIP process that applies to certain projects in England & Wales). Clarity would be welcomed on whether post-application consultation on compulsory acquisition in section 38 is intended to be a full statutory consultation or focused on landowners affected by the compulsory acquisition request.

In sections 65 to 68, a number of references are made to ‘special Senedd procedure’ but no clarity is provided as to what this may entail or whether it runs to the same timescale as the IC regime. If outside the IC regime, is could result in even longer timescales for a development to proceed.

Section 81 states that IC may remove requirement for specific consent or deemed consent to have been granted. This will require consent or non-refusal of consenting authority within a specified period. Detail of what can be disapplied will be set in the regulations; this will be important to scrutinise as secondary consents can significantly hold up for developments. The non-refusal provisions are welcomed.

Section 84, which grant powers to correct errors in decision documents is a welcomed initiative that will be effective in making the post determination process efficient.

Section 87 notes that IC Orders can be changed or revoked by Order. These provisions are much broader than under the Planning Act 2008 and are not limited to making non-material changes – where neither the SoS nor the Local Planning Authority has the power to request changes or revocation of a DCO. We would welcome clarification with regards to circumstances Welsh Ministers could exercise power under section 87(6). Having proportionate fixed timescales for enabling changes to ICOs will be important to facilitate the delivery of projects. A clear process and statutory timescales set out in legislation that reflect the importance of proportionality is needed. Shorter timescales and more focused scope of examination could support a more cost-effective approach and more efficient use of resources.

All detail for the procedure for changing and revoking ICOs in section 88 will be set out in regulation. The change in procedure under the Planning Act 2008 is important but has not been effective given the lack of statutory timeframes. There is an opportunity for the Bill and regulations to address this by specifying a timeframe for the determination of applications to change SIP consents which would provide welcome clarity and certainty.

Part 7 - Enforcement

No response.

Part 8 - Supplementary functions

Section 121 allows 'specified' public authorities (those identified in regulations) to charge fees. The detail of specified authorities and fees payable for SIP participation will be important. Furthermore, no timescales are given for the procedure under section 122 which are needed. Section 126 notes that Welsh Ministers or the Examining Authority have power to consult a specified public authority. We would stress that a consulted authority 'must' give a substantive response within the statutory response period. The list of specified authorities, timescales and procedure will be set out in regulations. Under section 127, Welsh Ministers may give a direction requiring a public authority (LPA / NRW / a devolved Welsh authority specified in regulations) to which this section applies to do things in relation to an application. However, there is no detail on what the Welsh Ministers may direct an authority to do. Timescales, procedure, and cost recovery will be set out in regulations where again we would welcome the opportunity to comment.

Part 9 - General provisions

No response.

What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

In terms of the content of Bill itself, further procedural detail around the implementation is required. As highlighted in Question 1:

- Further detail is required regarding the transitional arrangements e.g., DNS to SIP. This is fundamental to provide certainty to all stakeholders involved in the process, and to avoid duplication of effort and abortive costs.
- Lack of specific statutory timescales and those that are included are in context of being able to extend.
- Too much detail reserved for regulations (which have yet to be published) and risks of inconsistencies and misunderstandings with different sets of regulations.
- Importance and content of Infrastructure Policy Statements.
- Lack of clarity on the consenting route for 10-50MW onshore wind generating stations will be consented.
- Lack of clarity around cross-border projects and s2(1)(e) for above ground electric lines.

The biggest barrier in terms of the implementation of the Bill and the objectives set out in the Explanatory Memorandum is the resourcing of public authorities and statutory consultees. We desperately need to increase the flow of people and resources to our planning authorities and Natural Resources Wales. We are already seeing considerable and costly delays which will only worsen with the significant number of projects in the pipeline. Please see further detail in our response to question 2, part 4.

How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)?

No response.

Are any unintended consequences likely to arise from the Bill?

Further workload on PEDW without sufficient resource - this resource needs to be in place or the regime has limited capacity of delivering what it is setting out to do.

What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

As we understand it, Welsh Government and PEDW will operate on full cost recovery basis whereas LPAs will only get costs associated with LIRs reimbursed (but not other costs such as preparing for and participating at public inquiries). LPAs need adequate resourcing to participate meaningfully in the SIP process. This could be achieved by providing LPAs with:

- As per our response in 2.iv) Part 4 - Examining applications, costs associated with general participation in IC examination to be covered either via a set fee for the specific elements of the process (in addition to the proposed LIR fee. It is noted that a fixed fee for pre-application services requested by applicants is proposed (see paras 8.105 and 8.106 of EM)) or more logically as part of a single LPA fee for all IC related work. Section 121 of the proposed Bill seems suitable to accommodate this. Increased core funding to sufficiently resource LPA teams will support them to fulfil statutory duties.
- Access to the Welsh Government specialist resource pool (proposed in question 3) to provide a buffer for resource demand peaks.
- Planning Performance Agreements with developers.
- or a combination of all of these.

Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

No response.

Infrastructure 16, Marine Energy Wales

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | **Climate Change, Environment, and Infrastructure Committee**

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan Ynni Morol Cymru | Evidence from Marine Energy Wales

Written evidence submitted by Marine Energy Wales

Marine Energy Wales (MEW) thanks the Climate Change, Environment, and Infrastructure Committee for inviting us to submit written evidence relating to the Infrastructure (Wales) Bill. MEW is the industry representative body for the nascent floating offshore wind, wave, tidal stream and tidal range energy sectors in Wales, representing the needs and interests of 96 organisations active in the sector in Wales. As such our evidence included here is heavily informed by extensive day-to-day engagement with those looking to develop renewable energy projects in Welsh waters.

The consenting regime within Wales as it currently stands has been described as a significant pain point by many of the developers we have supported to date, with much of this referring specifically to the marine licencing process given the offshore nature of projects. MEW has been co-ordinating the Consenting Strategic Advisory Group (CSAG) since 2019, featuring developers, regulators, eNGOs, and academics to discuss approaches to ongoing consenting challenges in Welsh waters and develop best practices that can assist in the delivery of Welsh Government Policy for renewable energy. Additionally, we supported the end-to-end review of the marine licence process carried out by ICF on behalf of Welsh Government, ensuring that those with lived experience of the process fed into the review.

Some of the more prominent issues experienced by those in our membership that have been through the consenting process include: a lack of statutory timescales for consent impacting upon the commercial timescales of projects; a lack of effective pre-application guidance to inform exact requirements of submitted documents; uncertainty around evidence requirements for consenting innovative projects; and the unstreamlined and inconsistent nature of application submission and subsequent requests for additional information.

We believe that a proposed unified consenting process as set out by the Infrastructure (Wales) Bill has the potential to alleviate some of the concerns and challenges experiences by our membership and the wider offshore renewable energy industry. Additionally, this would be particularly beneficial for developers pursuing projects that span both the onshore and offshore environment as is the case with tidal range schemes and those with landfall substations.

We commend the aspiration to include a statutory timescale within the consent process. Incorporating this level of certainty will have a positive impact on project development. Currently a lack of such timescales can cause significant knock-on negative effects, not only hampering the development of individual projects and their bottom lines but also disincentivising industry investment and increasing the risk of a failure of reaching national renewable energy targets.

Many issues raised by our members relate to uncertainty throughout the consenting process, from a lack of clear guidance at the outset right through to additional evidence requirements requested after initial submission. We have also heard that many applications do not meet the expected standard of those reviewing applications. It appears that the Infrastructure (Wales) Bill should

address some of these challenges, with an emphasis on reducing complexity and improving the overall quality of applications with better early engagement.

Given that Welsh Government has legislative power for projects up to 350 MW, this bill will likely affect different marine energy technologies differently. As it is anticipated that commercial scale floating offshore wind projects will be of a capacity of 1 GW or more, and with the smaller 100 MW test & demonstration sites already going through the consent process, it is unlikely that this legislation will directly impact upon floating offshore wind projects. However, it could be quite key for the development of enabling infrastructure such as ports and grid.

Should the Infrastructure (Wales) Bill have the intended effect and address the problems outlined it could have a positive effect on the development of other marine energy technologies, therefore simplifying the development of commercial wave and tidal stream projects as these industries matures. Given the 350 MW upper limit this would also be beneficial to smaller scale tidal lagoon projects that are likely to be developed in advance of much larger ones.

Infrastructure 25, Wales & West Utilities

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan Wales & West Utilities | Evidence from Wales & West Utilities

General principles

What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

Wales & West Utilities (WWU) is part of a major new project which is set to deliver the world's first zero-carbon gas grid. The company has joined forces with other gas networks (Cadent, Northern Gas Networks, National Gas, and SGN), and the trade body Energy Networks Association to publish an industry blueprint for cutting out carbon emissions.

In September 2022 WWU published its 'Regional Decarbonisation Pathways' which provides an analysis of how WWU and its partners might decarbonise the gas networks in Wales and South-West of England, consistent with the wider UK decarbonisation objective.

WWU has also announced plans for a major hydrogen pipeline (HyLine Cymru) in south Wales to accelerate decarbonisation plans for industry and gas customers in the region. The company is currently assessing the feasibility of a pipeline network from Pembroke to the Swansea Bay area, connecting low carbon hydrogen production with industrial demand and providing options for other natural gas customers. If built, the pipeline will pave the way for commercial scale hydrogen production in Pembrokeshire, Port Talbot and in the Celtic Sea, whilst also providing infrastructure for energy intensive industrial customers to begin fuel-switching their processes to hydrogen in the 2030s or earlier.

WWU supports the general principles of the Bill and agrees that there is a need for a new legislative framework to ensure the timely delivery of significant infrastructure projects in Wales. The Bill is an important step towards supporting Government commitments to delivering on renewable energy targets and achievement of 'net zero' emissions by 2050.

WWU agrees that the current system for consenting major infrastructure in Wales is not fit for purpose and needs to be replaced. The current planning regime for

'developments of national significance' (DNS) puts Wales at a disadvantage compared to other countries in the United Kingdom and causes problems for developers and local communities seeking to engage in the consenting process. These problems are partly reflected in delays to securing consent. The average time taken for a DNS application to be determined pre-2020 was 296 days. For applications between 2020 and now, the average time taken has risen to 440 days.

The DNS regime does not provide a unified consenting process and requires developers to seek multiple separate consents and authorisations (e.g., it does not provide powers for the compulsory acquisition of land). This can be particularly burdensome in the case of linear infrastructure such as electricity lines and gas pipelines where multiple local authorities and landowners may be affected by the proposals. The requirement to obtain separate authorisations creates increased programme and cost risks for developers and there is a clear case for streamlining and unifying the process.

The current regime in Wales is outdated and compares unfavourably with the unified consenting regime that applies to nationally significant infrastructure under the Planning Act 2008 – which has only limited application in Wales.

WWU therefore supports the principles of the Bill and its three key aims expressed in the Minister's oral statement:

• Ensure a streamlined and unified process that enables developers to access a one-stop shop.

• Provide a transparent, thorough and consistent process, which will allow communities to better understand and effectively engage in decisions that affect them .

• Meet future challenges in a timely manner by being sufficiently flexible to capture new and developing technologies, as well as any further consenting powers that may be devolved to Wales.

The regime proposed by the Bill will significantly improve the consenting of major infrastructure and help to deliver these stated aims. However, WWU is concerned that the scope of the Bill as currently drafted is too narrow – particularly the scope of 'significant infrastructure projects' set out in Part 1.

What are your views on the Bill's provisions (set out according to parts below), in particular are they workable and will they deliver the stated policy intention?

Part 1 - Significant infrastructure projects

Part 1 of the Bill sets out the definition of Significant Infrastructure Projects (SIP) and contains the relevant thresholds for qualifying as a SIP. Whilst Part 1 covers

liquified natural gas facilities and gas reception facilities it does not cover the construction of gas or other pipelines, or gaseous storage facilities . The construction of new pipelines (such as Hyline Cymru) that are likely to be required for the development of a hydrogen network therefore fall outside the scope of the Bill as currently drafted.

WWU considers this is a significant omission given the important role that hydrogen is likely to play in meeting carbon budgets and net zero targets. The omission of gas pipelines and storage from the Bill means that new pipelines would have to use the existing statutory framework to secure multiple separate planning consents and other authorisations (e.g., compulsory purchase orders).

It is recognised that the existing statutory framework is fragmented, slow and unduly onerous for developers. Given the Bill's intended role in supporting the move towards decarbonisation and the timely and efficient consenting of renewable energy projects it is a missed opportunity not to include the construction of gas pipelines within the scope of SIPs in Part 1 to enable projects such as the construction of new hydrogen pipelines to benefit from a streamlined consenting regime. This omission is particularly striking given that the Bill does cover fossil fuel projects such as hydraulic fracturing for oil and gas and open cast coal mining.

We note the Bill provides a power in clause 17 for secondary legislation to be made to add a new type of significant infrastructure project. This is sensible and provides flexibility for new types of projects to be brought within the regime in the future. However, this mechanism does not address WWU's concerns regarding the omission of gas pipelines from Part 1. There is no certainty as to how the power of clause 17 will be exercised and the type of projects that may benefit from it. The process for making regulations under clause 17 will also be time consuming.

We note the Bill provides a power for the Welsh Ministers to give directions under clause 22 specifying development as a SIP. Whilst this mechanism would potentially allow projects such as a new hydrogen pipeline to be brought within the new regime this adds an unnecessary burden on the developer and an extra step in what is supposed to be a streamlined process to achieving consent.

A further disadvantage of not being classified as a SIP and relying on the mechanism is clause 22 is that gas pipeline projects may therefore not benefit from policy support in an infrastructure policy statement (IPS). Given the duty in clause 53 of the Bill to decide applications in accordance with any 'relevant policy statement' (i.e., any IPS that has effect in relation to the kind of development to

which the application relates) this automatically puts projects being brought forward under clause 22 directions at a considerable disadvantage.

WWU therefore considers the Bill should expressly make provision for the construction of gas pipelines which meet certain thresholds and criteria to qualify as a SIP under Part 1. This change would support the delivery of the recommendation under Key Insights 6 and 9 of the Future Energy Grids for Wales report, for Welsh Government to consider the role of hydrogen production and networks.

Part 2 - Requirement for infrastructure consent

The power for the Welsh Ministers to give directions under clause 22 specifying development as a SIP is sensible and we note that the equivalent provision in section 35 of the Planning Act 2008 has been used effectively to enable projects that do not meet the statutory thresholds to benefit from a unified consenting regime (e.g., Aquind interconnector). However, for the reasons set out above, this mechanism does not address WWU concern regarding the omission of gas pipelines from Part 1.

Part 3 - Applying for infrastructure consent

No response.

Part 4 - Examining applications

No response.

Part 5 - Deciding applications for infrastructure consent

No response.

Part 6 - Infrastructure consent orders

No response.

Part 7 - Enforcement

No response.

Part 8 - Supplementary functions

No response.

Part 9 - General provisions

No response.

What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

No response.

How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)?

We note the Bill provides a power in clause 17 for secondary legislation to be made to add a new type of significant infrastructure project. This is sensible and provides flexibility for new types of projects to be brought within the regime in the future. However, this mechanism does not address WWU's concerns regarding the omission of gas pipelines and storage from Part 1. There is no certainty as to how the power of clause 17 will be exercised and the type of projects that may benefit from it. The process for making regulations under clause 17 will also be time consuming.

Are any unintended consequences likely to arise from the Bill?

The omission of gas pipelines from Part 1 of the Bill means that projects for the development of a hydrogen network in Wales would be required to obtain multiple consents using the existing statutory framework. This is a significant missed opportunity which WWU considers should be addressed. Including gas pipelines and storage facilities (within specified criteria) would enable such project to benefit from a unified consenting regime and would be aligned with the stated aims of the Bill and the important role it is intended to play in ensuring the timely delivery of significant infrastructure projects in Wales and achievement of net zero targets.

What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

No response.

Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

No response.

Additional comments

We hope our comments are helpful. WWU would be keen to present oral evidence to the Committee at the sessions scheduled for September.

Infrastructure 21, Network Rail

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | **Climate Change, Environment, and Infrastructure Committee**

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan Network Rail | Evidence from Network Rail

General principles

What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

Network Rail are generally supportive of the general principles of the Bill subject to certain provisions and inclusions to ensure that powers afforded to NR under other legislation, including but not limited to The Town and Country Planning (General Permitted Development) Order 1995 and Transport and Works Act 1992 are not undermined.

We welcome the opportunity for an Infrastructure Consent to deliver timely and effective delivery of major infrastructure and low carbon development with the simplified and efficient consenting procedures.

Network Rail is afforded powers under Part 11 and Part 17 of the Town and Country Planning (General Permitted Development) Order 1995 to carry out works to the railway, and routinely uses these powers to deliver infrastructure projects. It is imperative for the effective and efficient delivery of Rail projects that the implementation of an Infrastructure Consent does not undermine these powers, and we support the exemption afforded within the draft Bill the exempts work considered permitted development.

What are your views on the Bill's provisions (set out according to parts below), in particular are they workable and will they deliver the stated policy intention?

Part 1 - Significant infrastructure projects

This section of the Bill defines the meaning of a significant infrastructure projects and refers to the various infrastructure that would fall under this. Network Rail agree with the meaning of significant infrastructure projects. Of interest to

Network Rail is chapter 8, Transport, with specific reference to points 1(d) and 2(d) which refer to railways.

Network Rail have no comments with regards to the indicated SIP definitions for either the construction or alteration of an existing railway. However, it is fundamental that works considered permitted development, under either Part 11 or Part 17 of the GPDO, is a fundamental element for the timely and efficient delivery of rail projects.

Whilst this only applies to a railway entirely constructed within Wales, such works would be equal or equivalent to undergoing the DCO regime whereby Network Rail seek protection from the exercise of compulsory purchase powers over operational land, either for permanent or temporary purchases.

Part 2 - Requirement for infrastructure consent

Part 2 under section 2b refers to development that may not be authorised by (b) an order under section 1 or 3 of the Transport and Works Act 1992 (c. 42) (orders as railways, tramways etc) to railways, tramways, inland waterways etc.) when infrastructure consent is required.

Network Rail would highlight that the IC process should not reduce the scope or efficiency of consenting in comparison to a TWAO.

Network Rail consider there is a risk regarding schemes that will not require IC due to the PD rights afforded, however Network Rail may still use consenting through TWAOs to cover other elements of a scheme. Network Rail would request that any implementation for the IC process does not undermine the opportunity to continue to use the TWAO process to secure consent for elements of a wider scheme, or schemes were a proportion of the wider scheme may not be considered permitted development.

Part 3 - Applying for infrastructure consent

Network Rail have no comment to make on the procedural process outlined in the Bill.

Under section 37(1b), Network Rail will often seek protection from the exercise of compulsory purchase powers over operational land either for permanent or temporary purposes. Network Rail is prepared to discuss the inclusion of Network Rail land or rights over land subject to there being no impact on the operational railway, all regulatory and other required consents being in place and appropriate commercial and other terms having been agreed between the parties and approved by Network Rail's board.

Part 4 - Examining applications

Network Rail understands this section of the regulations to be regarding examining applications and their determination, and the procedure that will be followed with reference to inquiry and hearings. Network Rail have no comments to make on this section.

Part 5 - Deciding applications for infrastructure consent

Network Rail understands this section of regulations to refer to deciding of applications for infrastructure consent in accordance with Infrastructure Policy, the National Development Framework for Wales, and any Marine plan. This section of the Bill also refers to time frames for applications and the granting or refusal of infrastructure consent and the regulatory procedures that are to be followed. Network Rail have no comments to make on this section.

Part 6 - Infrastructure consent orders

Part 6 looks at the specific limitations and powers of the consent order and the provision in orders authorising compulsory acquisition.

Section 63 of the bill is in relation to an Infrastructure Consent order that includes provision of authorising the compulsory acquisition of land. Network rail has concerns regarding statutory land being included in the compulsory purchase and would look to protect our assets for railway interests.

Section 70 refers to Public Rights of way and the regulations the infrastructure consent order must follow for extinguishment. Network Rail usually pursues the route of PROW closure through a TWAO which is closed under the Highways Act. It is important that safety is included in the consideration of closure especially in relation to level crossing use.

Section 72 refers to the extinguishment of rights and removal of apparatus of statutory undertakers which paragraph 6 refers to as those deemed statutory for the purpose of any provision of part 11 of the Town and Country Planning Act 1990. This includes railway undertakers.

This would be of relevance to Network Rail when constructing a railway. The order includes the provision of the extinguishment of the relevant right or relevant restrictive covenant, or the removal of the relevant apparatus, only if the Welsh Ministers are satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates. Network Rail wish to protect our undertaking and land interests and request Welsh

Government consider an appropriate mechanism in any subsequent legislation for the continued protection of railway statutory undertakers land and interests.

Part 7 - Enforcement

This section of the regulations refers to offences and unauthorised development. Network Rail has no comments to make on this section of the Bill.

Part 8 - Supplementary functions

This section of the bill refers to statutory consultees and the power to consult and duty to respond to consultation. This part of the Bill would apply for development that would affect Network Rail land or assets whereby Network Rail would provide a response within the statutory time frame specified by the regulations. Network Rail would request we are identified as a statutory consultee in the IC process for schemes where we are neighbouring land or for works that may impact on our assets which include but is not limited to, the change in use of level crossings, stations, and bridges and the railway.

Part 9 - General provisions

This section of the Bill refers to General Provisions including general interpretation of terms and requirements in which Network Rail has no comments to make.

What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

Network Rail has no comments.

How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)?

Network Rail has no comments.

Are any unintended consequences likely to arise from the Bill?

Network Rail would like to reiterate the importance of not undermining any powers afforded through the GPDO, or the separate use of TWAOs on schemes not considered SIPs, or schemes where a proportion of a project requires planning permission, while the wider scheme is exempt from IC due to permitted development rights.

What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

Network Rail has no comments.

Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

Network Rail has no comments.

Infrastructure 47, Transport for Wales

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | **Climate Change, Environment, and Infrastructure Committee**

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan Trafnidiaeth Cymru | Evidence from Transport for Wales

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Llyr Gruffydd MS
Chair
Climate Change, Environment, and Infrastructure Committee

25 August 2023

Dear Chair Llyr Gruffydd MS,

I am writing to you regarding the Infrastructure (Wales) Bill and to provide evidence from Transport for Wales to the Climate Change, Environment and Infrastructure Committee

Bill provisions

Transport for Wales welcomes the intent behind the Bill to simplify the current planning regime related to significant infrastructure projects (SIPs) within Wales.

Transport for Wales aims to work at pace in delivering our projects and subscribes to the aims within the wider industry to aim to deliver complex and significant schemes in half the time, and half the cost. As such, the fixed time-period for deciding applications under the Bill is welcome as it removes the risks of applications becoming open ended, with the consequential risk of direct costs being incurred for the additional duration as well as the indirect costs of inflation, of repeating expired surveys and of procured contracts expiring.

In line with that same aspiration to significantly reduce the time and cost to deliver improvements to the transport network, it should be considered whether the statutory periods within the Bill could be reviewed. Would it be feasible to arrive at consent within a shorter period than 52 weeks?

When combined with the pre-application period, as drafted, there would be over a year where no design or construction activities could proceed on a significant project, which is a long period of time when we are seeking to deliver early benefits to communities as part of our schemes.

It is noted that the Bill provides flexibility for the Welsh Ministers in defining what developments may be considered as significant infrastructure projects. Transport for Wales welcomes this as it would give greater flexibility to our pipeline of future projects. Many of those projects would be unlikely to trigger the definition of SIPs due to lengths of new infrastructure being less than 2km.

However, these projects are often viewed as highly complex and of relatively high cost to the public purse, so having the additional option of consents under the Bill may be a desirable option to reduce risk and increase certainty of delivery timescales.

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We also welcome the provision in Section 8 of the Bill that the construction or alteration of a railway may not be considered a SIP if it constitutes permitted development under the Town and Country Planning (General Permitted Development) Order 1995. This is of relevance to potential projects on the Core Valley Lines network.

Financial Analysis

The financial analysis that accompanies the Bill estimates the costs to the Welsh Government and the public purse of assessing applications and determining their outcome. What the analysis does not clearly consider is that the cost to the developer may be funded fully or partially by the Welsh Government.

It can be reasonably expected that the costs to a developer working to currently recognised standards and regulations for statutory and public consultation, and environmental impact assessment, may not change substantially from the status quo in the initial appraisal period.

But it should be noted that in the time since the equivalent legislation in England was implemented, several key trends have developed which could significantly impact on cost:[1]

- The average length of time to reach a decision has increased from 2.6 years to 4.2 years
- The volume of documentation created during the consenting process has increased
- The number of projects that are subject to successful legal challenge is increasing

This leads to several linked considerations. The first is that although a statutory period for determination may be set through the Bill, that is not the only factor in the time taken for the determination. The Welsh Government may wish to consider how that period could be protected through the primary legislation.

The second consideration is that the volume of documentation created has increased over time, from an already very high level to the point where some applications are now in excess of 90,000 pages.

This is in part due to the nature of the consenting mechanism, as it is widely considered that the level of detail required at the time of application must be greater than for other consenting means because the terms of the consent are more precise and there is less room for manoeuvre after the consent is granted so the level of detail and certainty in the application must be higher. This comes at a cost to the developer. This is also linked to the third consideration.

[1] Nationally Significant Infrastructure: action plan for reforms to the planning process - GOV.UK (www.gov.uk)

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The third consideration is that of increasing legal challenge. Projects which may be put forward for consent under the Bill would rightly be subject to significant public scrutiny, particularly on contemporary considerations such as contribution to climate change and their environmental impact.

As the grounds for a large number of legal challenges to the equivalent legislation in England have been on public policy grounds, there would have to be significant effort from the Welsh Government to ensure that published policy documents for infrastructure projects remain relevant and consistent with other policy set by the Welsh Government. This cost may not have been considered in the analysis.

Yours sincerely

Geoff Ogden

Infrastructure 27, RSPB Cymru

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan RSPB Cymru | Evidence from RSPB Cymru

General principles

What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

A robust planning system underpinned by strong legislative and policy requirements is essential to protect and restore priority habitats and species, improve the resilience of ecosystems and enable our biodiversity to thrive. We welcome the Bill's partial creation of a unified consenting regime, but there are many other planning requirements that are not included. Ultimately, key tests of success are whether it will front-load the application process so that key environmental issues are dealt with as early as possible, avoiding debate and delay later in the process, and securing the role of Natural Resources Wales (NRW) and its ability to act as an independent advisor and regulator. We have significant experience of planning systems including the operation of the regime for Nationally Significant Infrastructure Projects (NSIPs) under the Planning Act 2008 and have specific concerns in the following areas:

· Opportunities for public consultation and engagement (see 2iii and 2iv)
· Accountability of decision-makers (see 2v)
· The decision-making framework, especially the role of infrastructure policy statements, the development plan and the lack of effective marine spatial planning (see 2v)
· A missed opportunity for net biodiversity benefit from Significant Infrastructure Projects (see below)

NET BIODIVERSITY BENEFIT
Planning Policy Wales currently requires development to provide a net benefit for biodiversity in fulfilment of the biodiversity and resilience of ecosystems duty under Section 6 of the Environment (Wales) Act 2016. A similar policy requirement

for biodiversity gain exists in England under the National Planning Policy Framework and the policies of many local plans, but is difficult to implement consistently for all types of development. However, the Environment Act 2021 has introduced a statutory requirement for biodiversity gain which applies to most types of development in England, under both the Town and Country Planning Act 1991 and the Planning Act 2008. When fully introduced, this will apply a requirement for biodiversity gain of at least 10% to Nationally Significant Infrastructure Projects (NSIPs). The RSPB considers that, given the scale and duration of NSIPs this should be at least 20%. The Welsh Government should take a similarly ambitious approach to biodiversity benefit for Significant Infrastructure Projects. The Infrastructure (Wales) Bill provides an ideal opportunity to legislate for this.

What are your views on the Bill's provisions (set out according to parts below), in particular are they workable and will they deliver the stated policy intention?

Part 1 - Significant infrastructure projects

We have no objection to the definition of Significant Infrastructure Projects (SIPs) in Part 1 and the relevant fields (energy, flood prevention etc) in clause 17. However, Welsh ministers have powers under Part 2 (clauses 22 and 23) to direct that development may be treated as a SIP or an application treated as needing infrastructure consent. It is not clear if this is restricted to development falling within the fields listed in clause 17. Controversy has ensued in England where housing, commercial or leisure uses have been proposed as NSIPs, rather than being dealt with by local planning authorities under the Town and Country Planning regime. In the case of the London Resort at Swanscombe, an application for leisure and commercial use was accepted as an NSIP, sidelining the relevant local plan. Use of the SIP process should be restricted to genuine infrastructure within the fields listed in clause 17, and other types of development should be dealt with under the Town and Country Planning regime.

Part 2 - Requirement for infrastructure consent

All necessary consents, permissions and licences should be considered at the same time as the main application for infrastructure consent. The current disjointed approach can cause challenges and issues for all parties involved including long delays to obtain all the necessary consents. The information required for the decision-maker for all such consents should also be subject to pre-application consideration and consultation to ensure that the general public

and stakeholders are provided with all necessary information and details from the outset.

Part 3 - Applying for infrastructure consent

Pre-application consultation (clause 30) is an essential means of engaging with the general public and expert stakeholders. We note that details are to be subject to regulations; the requirement should be obligatory rather than permissive ("may", not "must" in clause 30 (2)) and the regulations must themselves be subject to public consultation. Natural Resources Wales (NRW) should be identified as a statutory consultee on all Significant Infrastructure Projects, together with the relevant local planning authority and other bodies already identified in planning legislation. If approached positively rather than as a developer PR exercise, pre-application consultation can not only elicit views about the project but can provide useful information which is not in the public domain and help to shape the form of development or matters such as the scope and methodology of an Environmental Impact Assessment or Habitats Regulations Assessment and discuss any mitigation measures that may arise. Our experience with the NSIP regime highlights the importance of establishing common and disputed ground on matters raised in pre-application discussions prior to submission.

However, in some cases the quality of information provided by the developer can be poor or insufficient time given for response. The regulations and accompanying guidance should set the bar high for the standard of pre-application consultation and assessment so that all parties can be confident that a good job has been carried out when an application is submitted for examination. Applications should not be validated where the information provided is demonstrably inadequate to inform assessment.

Specifically on environmental assessments including Habitats Regulation Assessments, which must be carried out during the pre-application stage, it is also important to ensure that rigour is applied to cumulative and in-combination assessments, especially where prior strategic assessments have been carried out poorly. This is important to understand the additive and synergistic environmental effects of the SIP proposal in conjunction with other existing and planned developments. Such matters may not have been adequately assessed or understood at the strategic level.

A national register of all SIPs should be maintained on the Welsh Government website (as is the case for Developments of National Significance), with links to

the applicant's website. This will help all parties to engage with a proposal from the earliest opportunity.

Part 4 - Examining applications

Similarly, the general public and expert stakeholders must be given suitable opportunities to engage during the examination process. We welcome that it is open to the examining authority to choose the route of an inquiry, hearing or written procedure, but the method of examination needs to be proportionate and appropriate to the issues under discussion. Inquiries offering the opportunity for cross-examination can sometimes be the best way to examine evidence robustly, especially where parties disagree. However, an 'open-floor' discussion is often better for the community although unlikely to provide a fair opportunity for the main parties to contribute in full. Examinations under the Planning Act 2008 are a good model to consider since they are largely undertaken via a written procedure but with the ability to have hearings, and open floor discussions for the community.

Ideally, all necessary information to determine an application, including environmental information, should be provided when an application is submitted. However, in the event that this is not the case, it is important to ensure that any additional technical information provided by the developer after the start of the examination process results in proceedings being paused to enable full consultation and avoid bad decision-making. Where necessary it should be subject to relevant Environment Impact Assessment consultation requirements to enable members of the public who have not made representations, based on the original information, to do so.

It is also crucial to enable opportunities within the examination process to discuss and test extremely technical evidence so that significant issues are resolved by the time a decision is made. This did not happen in the case of the Swansea Bay Tidal Lagoon, where the Secretary of State granted a Development Consent Order before matters regarding the potential impacts on fish were dealt with. This required the provision of additional evidence by the applicant and detailed consideration by NRW before a marine licence could be issued. In the event, the issue was never resolved.

Part 5 - Deciding applications for infrastructure consent

Clause 52 makes provision for Welsh ministers to delegate a decision to the 'examining authority'. It is not clear, because this is to be specified in regulations, what kind of development this would apply to, although the 2018 consultation

paper suggests that this would apply “where applications are considered to be uncontroversial and do not give rise to objections” (para 5.10). Some responses to the 2018 consultation paper recognised that there is an issue of democratic deficit if decisions are taken by inspectors or other officials rather than elected ministers. It is important that Welsh Ministers do not restrict their role to policy-making, but retain the final say on Significant Infrastructure Projects, as they carry the political accountability for the consent.

On a related point, clause 57 (5) appears to suggest that where the 'examining authority' is the decision-maker, Ministers must make an infrastructure consent order; i.e. they cannot come to a different view and refuse consent. As stated above, we consider that Ministers should retain the final say. We seek clarity that it will still be the case that ministers are the ultimate decision-makers, particularly where there are issues of significant controversy or environmental impact.

The decision-making framework set out in clauses 53-55 is a crucial element of the bill. We object to the nature of the infrastructure policy statement (IPS) and its primacy over the National Development Framework and the Welsh National Marine Plan (clause 53 (2)). Although superficially similar to National Policy Statements designated under the Planning Act 2008, it does not appear that IPS will be subject to any kind of public consultation, sustainability appraisal or scrutiny by the Senedd (as national policy statements are in the UK Parliament) but simply designated by ministers.

According to the 2018 consultation paper, both the National Development Framework (currently Future Wales: the national plan 2040) and the Welsh National Marine Plan (WNMP) (which had not then been adopted) were intended to set out where development in Wales and its waters will occur and to provide specific policies guiding development (para 5.16). However, the WNMP is not a suitable or adequate framework for decision-making in the marine environment because, unlike Future Wales, it does not contain a spatial strategy to determine where development is most sustainably located or indeed the level of development that can be sustained. The RSPB and Marine Conservation Society have called for a marine development plan to overcome these deficiencies. Although the Welsh Government has been developing sectoral locational guidance for some sectors to complement the WNMP, this is planning guidance rather than statutory policy and does not look at cross-sector spatial planning nor assess cumulative impacts. Although not ideal (because it is not cross-sectoral) any IPS (for example, for offshore wind) could be made a spatial policy document, providing a marine equivalent to the spatial elements of Future Wales, provided it

is subject to proper consultation, appraisal and scrutiny.

The National Development Framework for Wales is part of the statutory development plan and we support its inclusion as a primary consideration in decision-making. However, this should be extended to the development plan as a whole, thus including the relevant Strategic and Local Development Plan. Strategic Development Plans in particular could play an important role in identifying the need for and appropriate location of new strategic infrastructure, such as by identifying areas of strategic opportunity or constraint.

We note that Welsh Ministers will need to take into account policy contained in the UK Energy National Policy Statements due to the mix of reserved and devolved powers in this area.

Part 6 - Infrastructure consent orders

No response.

Part 7 - Enforcement

The Bill requires Natural Resources Wales (NRW) to submit a marine impact report for applications in the Welsh marine area and contains provision to grant deemed consent under a marine licence. However, it is silent on whether NRW is responsible for overseeing discharge of the licence. The 2018 consultation document said: "Responsibility for discharge of conditions will largely remain with the relevant enforcing authority, which is the LPA onshore and the Welsh Ministers offshore, though functions may be delegated other bodies as specified in the consent." (para 5.54). NRW has the expertise to fulfil this role and the Welsh Government should provide clarity on its intentions.

Part 8 - Supplementary functions

No response.

Part 9 - General provisions

No response.

What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

No response.

How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)?

No response.

Are any unintended consequences likely to arise from the Bill?

No response.

What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

No response.

Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

No response.

Infrastructure 32, CPRW, Campaign for the protection of Rural Wales

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | **Climate Change, Environment, and Infrastructure Committee**

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan (YDCW) Ymgyrch Diogelu Cymru Wledig | Evidence from CPRW, Campaign for the protection of Rural Wales

YDCW CPRW Elusen Cefn Gwlad Cymru The Welsh Countryside Charity

Consultation response: Infrastructure (Wales) Bill – Stage 1 scrutiny

11th August 2023

Relevant links:

- Bill: https://senedd.wales/media/wmlnlrja/pri-ld15880-e.pdf
- EM: https://senedd.wales/media/zhxnxhxq/pri-ld15880-em-e.
- Senedd Bill progress page: https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=41502
- Minister's Stage 1 evidence transcript: https://record.assembly.wales/Committee/13393
- Senedd Research explainer: https://research.senedd.wales/research-articles/infrastructure-wales-bill-what-does-it-do-and-what-happens-next/

General Principles of the Bill

CPRW is supportive of the General Principles of the Bill and the broad intention of simplifying and streamlining consenting for significant developments to broadly bring Wales in line with the rest of the UK. However, this streamlining process should not come at the expense of safeguards for nature, not least because these are required by the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016. Nor should the process overrule the wishes of local communities.

Wales has declared both a Climate Emergency and a Nature Emergency. Wales presently has targets for net zero greenhouse gas emissions but there are no targets for nature or biodiversity. Therefore, at present, policy decisions are biased towards increasing renewables without due regard to nature, biodiversity, ecosystems, and habitats. The current methodology for protecting specific species (threatened species) takes these in isolation, failing to consider direct and indirect threats to the wider ecosystem, and how that both directly and indirectly affects the biodiversity of the area.

There is already a democratic deficit implicit in the existing Developments of National Significance (DNS) scheme. Communities feel isolated and see their views repeatedly ignored. Without community buy-in, the process loses the social licence that is essential to enact the changes we need and so we must have a system where the communities' views are taken into account.

CPRW welcomes any reduction in the cost of administering the planning process however, there must be adequate resources in place to fulfil duties towards applicants, local communities and other stakeholders. This cannot currently be said of the DNS system overseen by PEDW, who have informed CPRW that they are not sufficiently resourced and cannot cope with the quantity of applications before them. CPRW would welcome further scrutiny on this from the Committee. We would like to see PEDW adequately resourced so they can correct the existing errors found in roughly half of all DNS cases on their Planning Portal.

CPRW hopes that implementation of the Infrastructure Bill brings a much-improved level of long-term planning and strategic thought. The target should be a holistic, UK-wide, approach to the energy and infrastructure needs of the UK, both on land and at sea, with a clear account of Wales' part in this.

All policy documents that help inform the Infrastructure Bill must be sufficiently up to date. This includes the National Development Framework (NDF), Future Wales 2040 (Future Wales), and Wales National Marine Plan (WNMP). The vision of a transformed Wales where carbon-intensive industries and unsustainable energy generation are reduced and sustainable forms of renewables are encouraged, should be fostered and enforced. However, biodiversity, natural carbon storage, historical landscapes and culturally sensitive sites must not be forgotten in the 'race' to sustainable energy. We cannot ride roughshod over one emergency to resolve the other.

Most forms of renewable energy have either a direct or indirect impact on nature by destroying or degrading habitats during construction or reducing numbers and biodiversity through habitat fragmentation, blade-sweep, light, noise etc. CPRW alongside other environmental NGOs and charities work hard through planning casework to ensure that negative impacts are properly avoided, mitigated or offset. as much as possible.

The balance between renewable energy gain and biodiversity loss is crucial. We hope that a unified process with a 'one stop shop' to engage with it will make it easier for small environment charities, citizen scientists and local residents to engage with the process. All these are important sources of evidence to be weighed in the planning balance.

Achieving policy intentions

Handing oversight of most energy developments under 50MW back to local authorities, as was originally the design of the Planning Act 2008, theoretically frees time and resources for bodies such as PEDW. There are currently 62 live DNS applications: 26 wind and 36 solar. Of these, 8 wind and 26 solar applications would revert to local authorities, leaving only 28 DNS applications. However, this increase in planning workload would need corresponding increases in resources, training and expertise for local authorities.

Welsh Infrastructure Consent (WIC) for applications over 50MW should incorporate opportunities for strategic and spatially aligned developments, with better oversight of cumulative impacts. This would overcome some of the negative impacts and inefficiencies arising from "case by case" decisions.

We'd like to see a more pro-active and strategic approach to renewable energy development in Wales, with Welsh Government actively ensuring that carbon reduction targets can and will be met. For example, there is little national drive or economic support for rooftop solar panels on buildings, even though they are one of the least impactful forms of energy generation, making use of existing development or being an addition to new development. They avoid use of greenfield land and interference with aquatic or terrestrial ecology.

Local Impact Reports and environmental considerations

There are currently countless examples of Planning Inspectors failing to take note of current government planning policy or legislation covering Natural Resources Management, SACs, SSSIs, LDPs etc.. CPRW would like to see a clear direction to Planning Inspectors and Local Planning Authorities to familiarise themselves with current and updated policies made at a government level. In future, net benefit for biodiversity must be embedded in all planning decisions.

Other changes should be made to the current legislation making crucial action mandatory. For instance, we would like to see a requirement that Ministers must add to the regulations specifying what a Local Impact Report (LIR) looks like. As we understand it, without new regulations, an LIR will be limited to the inadequate guidance under the Planning Act which says that an LIR must contain:

- The likely impact of the DNS development on the area,
- Planning history of the site,
- Local designations relevant to the site / surroundings,
- The likely impact of any application in relation to a secondary consent being granted,
- Any relevant local planning policies, guidance or other documents,
- Draft conditions or obligations which the LPA considers necessary for mitigating any likely impacts of the development,
- Evidence of the Publicity undertaken by the LPA in accordance with the Procedure Order, i.e. a copy of the Site Notice, a photograph of the Site Notice on display and a map showing the location of the Site Notice

If there is a local designation for nature nearby, consideration of cumulative impacts should be required, and possible mitigation or offsetting fully explored. Whilst "net benefit" is currently being adjusted in Planning Policy Wales – with 'biodiversity enhancement as compensation' providing a last resort if biodiversity damage is unavoidable – the local context should be fully considered early on in

the development process so that "net gain" is not simply a later, concocted add-on.

At present, an LIR by a Relevant Planning Authority can include a view on the 'relative importance' of differing social, environmental, and economic issues, but this is not mandatory. This is a fundamentally difficult choice for LPAs who rarely give much weight to the intrinsic value of nature's ecosystems for the general health of our environment. LIRs should be made available to the general public before the close of general representations so that the public may be aware of key issues and frame their own submissions accordingly. Bringing the concept to local Community Councils may enable finer examination of environmental impacts.

A fundamental problem with the current Planning Policy pyramid is that the chronology of policy development tends to breed ambiguity in the system. For example, Local Authorities across Wales are beginning to update their LDPs. The next update of the Wales Spatial Plan is anticipated after LDP updates and the next update to Future Wales is not due for several years after that. This entire process is upside down. Future Wales should be updated, which in turn would inform the update of the Wales Spatial Plan. Both of these over-arching policy documents could then inform development of the LDPs at local authority level. As things stand, the LDPs and Wales Spatial Plan updates will inevitably refer to Future Wales - now three years out of date. Ministers making decisions about energy infrastructure will have to decide how to juggle the integration of new and outdated information, which is likely to foster poor confidence and legal challenges.

CPRW agrees with the joint response given from the Future Generations Commissioner and the Wales Infrastructure Commission, that the Bill presents an opportunity to address the common perception that planning decisions are heavily weighted towards economic well-being to the detriment of other Well-being of Future Generations Act Goals. The Bill should address this imbalance both on the face of the Bill and in secondary legislation. It should also be made clear that the Well-being Act requires involvement of the individuals and communities impacted by planning decisions.

Marine consenting

To implement the forward-looking ambitions of the Bill, legislation should be cognisant of, and take into account likely future trends, especially in the need for energy and energy infrastructure in Wales, and in Wales as a part of the UK. This will be influenced by any shifts in legislative competence. CPRW has long predicted that offshore wind developments, both fixed and floating, will become the dominant source of energy production in Wales over the coming years. This was recently reinforced in the Future Energy Grids Wales report published on the Welsh Government website on 14th July 2023. Ideally, this legislation should be drafted in such a way to anticipate potential changes in planning responsibilities for energy development in territorial waters that are not currently devolved to Wales. Otherwise, there is a risk of an additional piece of primary legislation being required in another few years.

For developments in the sea, the Bill sets out that whilst a local authority 'must' submit a Local Impact Report for a development on land, they only 'may' for the marine area. A way must be found to reflect the concerns of coastal Authorities and Communities

Natural Resources Wales is required to, if it needs a marine licence, and Ministers can direct them to if it's considered necessary. But this can potentially create the adverse consequence of marine developments having less oversight than land developments. The Wales National Marine Plan (WNMP) will become even more important if decisions are made more on a broad policy basis, as opposed to on land where it has more spatial elements as prescribed by Local Development Plans.

A form of Marine Development Plan is planned broadly to sit underneath the WNMP (a written statement from 1st March 2023 highlights that Welsh Government intends to "bring forward further proposals to implement spatial direction through the Welsh National Marine Plan. This will include consideration at a strategic, plan-level of environmental compensation and mitigation requirements"). This is very much welcome, as it can more cohesively give spatial instructions as to where it's safe to develop without impacting negatively on the environment, blue carbon habitats, or other sea-based industries like fisheries and tourism.

In light of Welsh Government having powers devolved to develop the offshore area. It would significantly help with streamlining renewable developments whilst balancing carbon needs in our nature-rich seas. Spatial planning is something that is overdue for the marine area.

Ensuring evidence is shared – potential for this to be included in regulations or for Ministers to add this as part of their WIS decision-making process.

One of the continuous problems for developing at sea is a lack of reliable or recent data, even though many private companies have undertaken exploratory work and have data that isn't shared with NRW or Welsh Gov. If and when a Marine Development Plan is progressed, we hope it could also drive improvements in the evidence base and publicly available data. This, in turn, would help developers to more easily create proposals for offshore energy which doesn't infringe on marine protected areas.

We believe it would also be possible to use this Bill, in terms of its regulation-making powers, to improve our evidence by making it necessary for developers to share any private developers' surveys (i.e. biodiversity assessments) with NRW and Welsh Government in perpetuity, to be in the public domain, so that data can be used for future spatial planning for energy. This can be done through a duty or part of the application process for permission.

Increasing offshore renewables without designating Marine Conservation Zones

There is some concern that we are embarking on a Bill that explicitly hopes to increase renewables when we still do not have an ecologically coherent network of marine designations. The Welsh Government, as part of the UK Marine Strategy's aims of achieving 'Good Environmental Status' in our seas, has been committed to designating further Marine Conservation Zones (MCZs) for some years, but only in November 2022 did the Minister announce the start of the pre-consultation engagement process.

We would strongly urge for MCZs to be designated before 2026, at the end of this Senedd term, so they can be used to drive progress in marine development that fully considers important ecosystems, species and particularly those protected under Section 7 in the Environment Act.

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

Llywodraeth Cymru
Welsh Government

Llyr Gruffydd MS Chair,
Climate Change, Environment, and Infrastructure Committee
Senedd Cymru

SeneddClimate@senedd.wales

30th June 2023

Dear Llyr,

I am writing to inform the Committee of the intention to consent to the UK Government making and laying the draft Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023.

I have received a letter from the Minister of State for Environment, Food and Rural Affairs, Rt Hon Lord Benyon asking for consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales. The Regulation will extend to England, Scotland, Wales and Northern ireland and a similar request for consent has been sent to Scottish Ministers.

The Regulations will be made in exercise of the powers conferred under paragraph 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The SI relates to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27th February 2023

Currently under the Northern Ireland Protocol, agri-food goods produced in and moved to NI are subject to EU animal, plant, public health, marketing, and organics standards. The amendments made to the Northern Ireland Protocol, as set out in the Windsor Framework will, in part, enable the establishment of a Retail Movement Scheme which will enable certain retail goods to move from GB to NI and meet GB public health, marketing and organics standards. Goods will still be required to meet EU standards for animal and plant health, and EU standards that apply to animal by-products.

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Correspondence.Lesley.Griffiths@gov.wales

The EU will be disapplying the relevant EU legislative instruments for the categories of goods that will be capable of being moved under the retail movement scheme, including legislation that set standards on public health, marketing, and organics for goods in Northern Ireland, and provide the legal basis for enforcing them. However, enforcement powers against EU standards will remain for goods produced in NI. Legislation is therefore required on a domestic basis to ensure that goods moved under the scheme are subject to GB standards, and the relevant authorities in NI are able to enforce against non-compliance with GB standards.

This new Retail Movement Scheme will allow for simplified trading of specified retail goods between GB and NI for scheme members, as per the agreements made with the EU under the Windsor Framework.

Consent has been given for the UK Government to make these Regulations following the Windsor Framework Agreement which was reached by the UK and the EU and announced on 27 February 2023. This will ensure we have a coherent and consistent statute book with the regulations being accessible in a single instrument.

I have written similarly to Huw Irranca-Davies MS, the Chair of the Legislation, Justice and Constitution Committee (LJCC).

Yours sincerely,

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

Draft Regulations laid before Parliament under paragraph 8F(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2023 No.

EXITING THE EUROPEAN UNION

The Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023

Made - - - -	*2023*
Coming into force	*2023*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**).

In accordance with paragraph 8F(1) of Schedule 7 to that Act(**b**), a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

In making these Regulations, the Secretary of State has had special regard to the matters listed in section 46 of the United Kingdom Internal Market Act 2020.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023.

(2) These Regulations come into force on 1st October 2023.

(3) Part 1 extends to England and Wales, Scotland and Northern Ireland.

(4) Part 2 extends to England and Wales and Scotland.

(5) Part 3 and Schedules 1 to 3 extend to Northern Ireland.

(**a**) 2018 c.16. Section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c.1) ("the 2020 Act") and amended by section 55(3) of the United Kingdom Internal Market Act 2020 (c.27). Paragraph 21 of Schedule 7 was amended by paragraph 53(2) of Schedule 5 to the 2020 Act.

(**b**) Paragraph 8F was inserted by paragraph 51 of Schedule 5 to the 2020 Act.

Interpretation

2.—(1) In these Regulations—

"consignment" has the meaning given by Article 2(1) of the SPS Regulation;

"retail goods" has the meaning given by Article 2(2) of the SPS Regulation;

"the SPS Regulation" means the Regulation of the European Parliament and of the Council on specific rules relating to the entry into Northern Ireland from other parts of the United Kingdom of certain consignments of retail goods, plants for planting, seed potatoes, machinery and certain vehicles operated for agricultural or forestry purposes, as well as non-commercial movements of certain pet animals into Northern Ireland(**a**);

"subordinate legislation" has the meaning given by section 21(1) of the Interpretation Act 1978(**b**);

"total diet replacement for weight control" has the meaning given by Article 2(2)(h) of Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 as it has effect in Great Britain(**c**).

(2) Any reference to provisions of the instruments listed in Schedules 1 to 3 of Part 3 is a reference to those provisions as amended from time to time.

PART 2

Plants

CHAPTER 1

Amendments to retained direct EU legislation

Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants

3.—(1) Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants(**d**) amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC is amended as follows.

(2) In Article 95a (introduction of qualifying Northern Ireland goods into Great Britain and their movement within Great Britain)—

(a) in paragraph 1, for "A relevant" substitute "Subject to paragraph 1A, a relevant";

(b) after paragraph 1, insert—

"1A Where a relevant NI trade unit referred to in paragraph 1 has previously been introduced into Northern Ireland from Great Britain on or after the date on which the SPS Regulation came into force, it must be accompanied, on its re-introduction into Great Britain, by either—

(a) the plant passport referred to in paragraph 1, or

(**a**) OJ No. L [****].
(**b**) 1978 c. 30.
(**c**) EUR 2013/609. Relevant amendments were made by S.I. 2019/651.
(**d**) EUR 2016/2031, amended by S.I. 2020/1482, 2021/79.

(b) the plant health label which was required for its introduction into Northern Ireland in accordance with the SPS Regulation.".

(c) in paragraph 2—

(i) after "paragraph 1", in both places it occurs, insert "or paragraph 1A";

(ii) at the end, insert "or the plant health label referred to in paragraph 1A".

(d) after paragraph 2, insert—

"3 In paragraph 1A, "the SPS Regulation" means the Regulation of the European Parliament and of the Council on specific rules relating to the entry into Northern Ireland from other parts of the United Kingdom of certain consignments of retail goods, plants for planting, seed potatoes, machinery and certain vehicles operated for agricultural or forestry purposes, as well as non-commercial movements of certain pet animals into Northern Ireland.".

Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products

4.—(1) Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products(**a**), amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) is amended as follows.

(2) In Article 168 (derogations and modifications for transitional purposes), after "Annex 6" insert "and Annex 7".

(3) In Annex 6, paragraph 2 (application), in the definition of "relevant goods" after "Article 47(1)(a) to (d)" insert ", except for the goods listed in Annex 7 which come from a corresponding country of origin"

(4) After Annex 6, insert—

"Annex 7

Goods exempt from the application of Annex 6 Article 168

1. The plants listed in this Annex which come from a corresponding country of origin are exempt from the application of Annex 6.

Description of plants	*Country of origin*
Strawberries, fresh or chilled	Third countries other than an EU Member State and Switzerland
Avocados, fresh or chilled	Third countries other than an EU Member State and Switzerland
Blackberries, mulberries and loganberries, fresh or chilled	Third countries other than an EU Member State and Switzerland

(**a**) EUR 2017/625. Relevant amendments were made by S.I. 2020/1481, 2022/621 and 2022/1315.

Raspberries, fresh or chilled	Third countries other than an EU Member State and Switzerland
Table grapes, fresh or chilled	Third countries other than an EU Member State and Switzerland
Apples, fresh or chilled but excluding cider apples, in bulk from 16 September to 15 December	Third countries other than an EU Member State and Switzerland
Pears, fresh or chilled but excluding perry pears in bulk, from 1 August to 31 December	Third countries other than an EU Member State and Switzerland
Fruits of the species *Vaccinium macrocarpon* and *Vaccinium corymbosum*, fresh or chilled	United States, Canada and Mexico
Fruits of species *Vaccinium myrtillus*, fresh or chilled	United States, Canada and Mexico
Fruits of the genus Capsicum or of the genus Pimenta (Solanaceae), fresh or chilled, but excluding fruits of the genus Capsicum for the manufacture of capsicin or capsicum oleoresin dyes, or for the industrial manufacture of essential oils or resinoids	Third countries other than an EU Member State and Switzerland
Sweet potatoes, fresh, whole, intended for human consumption	Third countries other than an EU Member State and Switzerland
Ginger, fresh or chilled, other than dried	Third countries other than an EU Member State and Switzerland
Tomatoes, fresh or chilled	Third countries other than an EU Member State and Switzerland
Sweetcorn, fresh or chilled	Third countries other than an EU Member State and Switzerland".

CHAPTER 2

Amendments to subordinate legislation

Amendments to the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022

5.—(1) The Official Controls (Plant Health) (Frequency of Checks) Regulations 2022(**a**) are amended as follows.

(2) In regulation 3 (determination of the frequency rate of physical checks and identity checks)—

(a) for paragraph 1, substitute—

"1. This regulation applies to plants, plant products or other objects of a description specified in Part A of Annex 11, or in Annex 12, to the Commission Regulation which—

(a) originate in a country other than a relevant third country;

(b) are goods of a kind specified in Schedule 2 to the Plant Health (Amendment etc.) (EU Exit) Regulations 2020(**b**); or

(c) are goods of a kind specified in Annex 7 to Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.".

(**a**) S.I. 2022/739.
(**b**) S.I. 2020/1482.

(b) in paragraph (2)—

(i) at the beginning insert "Subject to paragraph (2A),";

(ii) after paragraph (2), insert—

"2A. In respect of the goods listed in the Schedule, the frequency rates determined by the appropriate authority must be no lower than the rates of such checks in respect of corresponding goods being imported into Northern Ireland, notwithstanding the appropriate authority having regard to information of a kind specified in paragraph (4).".

(c) in paragraph (3), after "paragraph (2)", insert "or paragraph (2A), as applicable";

(d) in paragraph (6), after "paragraph (2)", insert "or paragraph (2A), as applicable";

(3) In regulation 4 (annual review and modification of the frequency rate of physical checks and identity checks), in paragraph (3), after "regulation 3(2)", insert "or regulation 3(2A), as applicable";

(4) After regulation 6, insert—

"SCHEDULE Regulation 3

List of goods

Description of plants	*Country of origin*
Strawberries, fresh or chilled	Third countries other than an EU Member State and Switzerland
Avocados, fresh or chilled	Third countries other than an EU Member State and Switzerland
Blackberries, mulberries and loganberries, fresh or chilled	Third countries other than an EU Member State and Switzerland
Raspberries, fresh or chilled	Third countries other than an EU Member State and Switzerland
Table grapes, fresh or chilled	Third countries other than an EU Member State and Switzerland
Apples, fresh or chilled but excluding cider apples, in bulk from 16 September to 15 December	Third countries other than an EU Member State and Switzerland
Pears, fresh or chilled but excluding perry pears in bulk, from 01 August to 31 December	Third countries other than an EU Member State and Switzerland
Fruits of the species *Vaccinium macrocarpon* and *Vaccinium corymbosum*, fresh or chilled	United States, Canada and Mexico
Fruits of species *Vaccinium myrtillus*, fresh or chilled	United States, Canada and Mexico
Fruits of the genus Capsicum or of the genus Pimenta (Solanaceae), fresh or chilled, but excluding fruits of the genus Capsicum for the manufacture of capsicin or capsicum oleoresin dyes, or for the industrial manufacture of essential oils or resinoids	Third countries other than an EU Member State and Switzerland
Sweet potatoes, fresh, whole, intended for human consumption	Third countries other than an EU Member State and Switzerland
Ginger, fresh or chilled, other than dried	Third countries other than an EU Member State and Switzerland
Tomatoes, fresh or chilled	Third countries other than an EU Member

	State and Switzerland
Sweetcorn, fresh or chilled	Third countries other than an EU Member State and Switzerland.”.

PART 3

Application of public health, marketing and organic product standards

Scope

6.—(1) This Part applies in respect of consignments of retail goods entering into Northern Ireland from other parts of the United Kingdom in accordance with the Retail Movement Scheme established under regulation 3(1) of the Windsor Framework (Retail Movement Scheme) Regulations 2023(**a**).

(2) This Part applies to the extent that any provision listed in Annex 1 to the SPS Regulation does not apply to that consignment of retail goods by virtue of Article 1(2) and Chapter 2 of the SPS Regulation.

Application of public health and marketing standards

7. Where this Part applies in respect of a consignment of retail goods by virtue of regulation 6(2)—

(a) the provisions of the instruments listed in Column 2 of Schedule 1 are to be treated as applying in respect of that consignment to the extent that the corresponding EU instrument in Column 1 of Schedule 1 does not apply by virtue of Article 1(2) and Chapter 2 of the SPS Regulation, subject to the modifications specified in Column 3 of Schedule 1 and such further modifications as are necessary, including those which reflect the exceptional application of such provisions in Northern Ireland in respect of a specific category of goods;

(b) the provisions of the instruments listed in Column 2 of Schedule 2 are to be treated as applying in place of the corresponding legislation applicable in Northern Ireland in respect of that consignment to the extent that the corresponding EU instrument in Column 1 of Schedule 2 does not apply by virtue of Article 1(2) and Chapter 2 of the SPS Regulation, subject to the modifications specified in Column 3 of Schedule 2 and such further modifications as are necessary, including those which reflect the exceptional application of such provisions in Northern Ireland in respect of a specific category of goods.

Application of retained delegated and implementing acts

8.—(1) Where the provisions of the instruments listed in Column 2 of Schedule 1 and Column 2 of Schedule 2 are to be treated as applying in respect of a consignment of retail goods by virtue of regulation 7, the retained direct EU legislation applicable in Great Britain which supplements or implements those instruments is to be treated as also applying in relation to that consignment with such modifications as are necessary, including those which reflect the exceptional application of such provisions in Northern Ireland in respect of a specific category of goods.

(2) In respect of food for total diet replacement for weight control within a consignment of retail goods, paragraph (1) does not apply and the Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997(b) are to be treated as applying in relation to those products

(**a**) S.I. 2023/[****].

(**b**) S.I. 1997/2182, amended by (as regards England) S.I. 2005/2626, 2007/2591, 2014/1855, 2016/688, 2020/43; (as regards Scotland) S.S.I. 2005/616, 2007/424, 2015/410, 2016/190, 2018/392; (as regards Wales) S.I. 2005/3254, 2007/2753, 2014/2303, 2016/639, 2018/806.

with such modifications as are necessary, including those which reflect the exceptional application of such provisions in Northern Ireland in respect of a specific category of goods.

Application of organic product standards

9. Where this Part applies in respect of a consignment of retail goods by virtue of Regulation 6(2), the provisions of the instruments listed in Column 2 of Schedule 3 are to be treated as applying in respect of that consignment to the extent that the EU instrument listed in Column 1 of Schedule 3 does not apply by virtue of Article 1(2) and Chapter 2 of the SPS Regulation, subject to the modifications specified in Column 3 of Schedule 3 and such modifications as are necessary, including those which reflect the exceptional application of such provisions in Northern Ireland in respect of a specific category of goods.

No power to make subordinate legislation

10. Nothing in regulation 7, 8 or 9 confers power on any person to make subordinate legislation in respect of Northern Ireland.

Parallel texts

11. Where legislation which extends to Great Britain is treated as applying in Northern Ireland under this Part and there are differences between the versions of that legislation applicable in England, Scotland and Wales, the version of the legislation applicable in respect of a particular retail good within a consignment is the version applicable in the part of Great Britain which the retail good was produced in or imported into.

Name
Parliamentary Under Secretary of State
Date Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 7

Application of public health and marketing standards by virtue of the disapplication of EU Regulations listed in Annex 1 to the SPS Regulation

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
2. Commission Regulation (EEC) No 3703/85 of 23 December 1985 laying down detailed rules for applying the common marketing standards for certain fresh or chilled fish(**a**)	Commission Regulation (EEC) No 3703/85 of 23 December 1985 laying down detailed rules for applying the common marketing standards for certain fresh or chilled fish(**b**)	None
4. Council Regulation (EEC) No 2136/89 of 21 June 1989 laying down common marketing standards for	Council Regulation (EEC) No 2136/89 of 21 June 1989 laying down common marketing standards for	None

(**a**) OJ No. L 351, 28.12.1985, p. 63.
(**b**) EUR 1985/3703, as amended by S.I. 2019/739.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
preserved sardines and trade descriptions for preserved sardines and sardine-type products(**a**)	preserved sardines and trade descriptions for preserved sardines and sardine-type products(**b**)	
5. Council Regulation (EEC) No 1536/92 of 9 June 1992 laying down common marketing standards for preserved tuna and bonito(**c**)	Council Regulation (EEC) No 1536/92 of 9 June 1992 laying down common marketing standards for preserved tuna and bonito(**d**)	None
6. Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food(**e**)	Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food(**f**)	None
8. Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products(**g**)	Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products(**h**)	None
19. Council Regulation (EC) No 1035/2001 of 22 May 2001 establishing a catch documentation scheme for *Dissostichus spp.**(i)***	Council Regulation (EC) No 1035/2001 of 22 May 2001 establishing a catch documentation scheme for *Dissostichus spp.**(j)***	None
22. Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(**k**)	Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(**l**)	In Article 18(4), the reference to "Great Britain" is to be read, so far as the context requires, as a reference to "the United Kingdom"
23. Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and	Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and	In Article 12(1), the reference to "Great Britain" is to be read, so far as the context requires, as a reference to "Northern Ireland"

(**a**) OJ No. L 212, 22.7.1989, p.79.
(**b**) EUR 1989/2136, as amended by S.I. 2019/739, 753.
(**c**) OJ No. L 163, 17.6.1992, p.1.
(**d**) EUR 1992/1536, as amended by S.I. 2019/739, 753.
(**e**) OJ No. L 37, 13.2.1993, p. 1.
(**f**) EUR 1993/315, amended by S.I. 2019/639 (itself amended by S.I. 2020/1504), 2020/1504.
(**g**) OJ No. L 334, 23.12.1996, p. 1.
(**h**) EUR 1996/2406, amended by S.I. 2019/739, 753.
(**i**) OJ No. L 145, 31.5.2001, p. 1.
(**j**) EUR 2001/1035, amended by S.I. 2020/1599.
(**k**) OJ No. L 31, 1.2.2002, p. 1.
(**l**) EUR 2002/178, amended by S.I. 2019/641 (itself amended by S.I. 2020/1504).

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
feed(**a**), with the exception of the second paragraph of Article 32	feed(**b**), with the exception of the second paragraph of Article 32 In respect of retail goods produced in or imported into England, the Genetically Modified Food (England) Regulations 2004(**c**) In respect of retail goods produced in or imported into Wales, the Genetically Modified Food (Wales) Regulations 2004(**d**) In respect of retail goods produced in or imported into Scotland, the Genetically Modified Food (Scotland) Regulations 2004(**e**)	
24. Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC(**f**)	Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed from genetically modified organisms and amending Directive 2001/18/EC(**g**)	None
25. Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition(**h**)	Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition(**i**)	None
27. Regulation (EC) No 2160/2003 of the European Parliament and of the Council	Regulation (EC) No 2160/2003 of the European Parliament and of the Council	None

(**a**) OJ No. L 268, 18.10.2003, p. 1.
(**b**) EUR 2003/1829.
(**c**) S.I. 2004/2335, amended by S.I. 2019/705.
(**d**) S.I. 2004/3220 (W.276), amended by S.I. 2018/806, 2019/425, 2020/1581.
(**e**) S.S.I. 2004/432, amended by S.S.I. 2011/1043, 2015/100, 2019/52.
(**f**) OJ No. L 268, 18.10.2003, p. 24.
(**g**) EUR 2003/1830.
(**h**) OJ No. L 268, 18.10.2003, p. 29.
(**i**) EUR 2003/1831.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
of 17 November 2003 on the control of salmonella and other specified food-borne zoonotic agents(**a**)	of 17 November 2003 on the control of salmonella and other specified food-borne zoonotic agents(**b**)	
28. Regulation (EC) No 2065/2003 of the European Parliament and of the Council of 10 November 2003 on smoke flavourings used or intended for use in or on foods(**c**)	Regulation (EC) No 2065/2003 of the European Parliament and of the Council of 10 November 2003 on smoke flavourings used or intended for use in or on foods(**d**)	None
29. Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs(**e**)	Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs(**f**)	1. A food business operator in Northern Ireland who would be in compliance with a requirement in the EU instrument in Column 1 which would apply but for its disapplication by virtue of Article 1(2) and Chapter 2 of the SPS Regulation is deemed to be in compliance with the corresponding requirement in the instrument in Column 2 2. A competent authority in Northern Ireland which carries out a function in a way which would be exercisable by it under a provision in the EU instrument in Column 1 but for its disapplication by virtue of Article 1(2) and Chapter 2 of the SPS Regulation is deemed to carry out the function under the corresponding provision in the instrument in Column 2
30. Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin(**g**)	Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin(**h**)	1. A food business operator in Northern Ireland who would be in compliance with a requirement in the EU instrument in Column 1 which would apply but for its disapplication by virtue of

(**a**) OJ No. L 325, 12.12.2003, p. 1.
(**b**) EUR 2003/2160.
(**c**) OJ No. L 309, 26.11.2003, p. 1.
(**d**) EUR 2003/2065.
(**e**) OJ No. L 139, 30.4.2004, p. 1.
(**f**) EUR 2004/853.
(**g**) OJ No. L 139, 30.4.2004, p. 55.
(**h**) EUR 2004/853.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
		Article 1(2) and Chapter 2 of the SPS Regulation is deemed to be in compliance with the corresponding requirement in the instrument in Column 2 2. A competent authority in Northern Ireland which carries out a function in a way which would be exercisable by it under a provision in the EU instrument in Column 1 but for its disapplication by virtue of Article 1(2) and Chapter 2 of the SPS Regulation is deemed to carry out the function under the corresponding provision in the instrument in Column 2
31. Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC(**a**)	Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC(**b**)	None
33. Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC(**c**)	Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC(**d**)	None
34. Regulation (EC) 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods(**e**)	Regulation (EC) 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods(**f**)	None
35. Regulation (EC) No 1925/2006 of the European	Regulation (EC) No 1925/2006 of the European	None

(**a**) OJ No. L 338, 13.11.2004, p. 4.
(**b**) EUR 2004/1935.
(**c**) OJ No. L 70, 16.3.2005, p. 1.
(**d**) EUR 2005/396.
(**e**) OJ No. L 404, 30.12.2006, p. 9.
(**f**) EUR 2006/1924.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods(**a**)	Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods(**b**)	
37. Council Regulation (EC) No 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European eel, insofar as it concerns provisions relating to marketing standards(**c**)	Council Regulation (EC) No 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European eel, insofar as it concerns provisions relating to marketing standards(**d**)	None
38. Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and repealing Regulation (EEC) No 339/93(**e**)	Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93(**f**)	None
40. Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings(**g**)	Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings(**h**)	None
41. Regulation (EC) No 1332/2008 of the European Parliament and of the Council of 16 December 2008 on food enzymes and amending Council Directive 83/417/EEC, Council Regulation (EC) No 1493/1999, Directive 2000/13/EC, Council Directive 2001/112/EC and Regulation	Regulation (EC) No 1332/2008 of the European Parliament and of the Council of 16 December 2008 on food enzymes and amending Council Directive 83/417/EEC, Council Regulation (EC) No 1493/1999, Directive 2000/13/EC, Council Directive	None

(**a**) OJ No. L 404, 30.12.2006, p. 26.
(**b**) EUR 2006/1925.
(**c**) OJ No. L 248, 22.9.2007, p. 17.
(**d**) EUR 2007/1100.
(**e**) OJ No. L 218, 13.8.2008, p. 30.
(**f**) EUR 2008/765.
(**g**) OJ No. L 354, 31.12.2008, p. 1.
(**h**) EUR 2008/1331.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
(EC) No 258/97(**a**)	2001/112/EC and Regulation (EC) No 258/97(**b**)	
42. Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives(**c**)	Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives(**d**)	None
43. Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC(**e**)	Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC(**f**)	None
46. Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council(**g**)	Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council(**h**)	None
47. Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European	Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European	None

(**a**) OJ No. L 354, 31.12.2008, p. 7.
(**b**) EUR 2008/1332.
(**c**) OJ No. L 354, 31.12.2008, p. 16.
(**d**) EUR 2008/1333.
(**e**) OJ No. L 354, 31.12.2008, p. 34.
(**f**) EUR 2008/1334.
(**g**) OJ No. L 152, 16.6.2009, p. 11.
(**h**) EUR 2009/470.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC(**a**)	Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC(**b**)	
49. Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006(**c**), insofar as it concerns provisions relating to marketing standards	Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006(**d**), insofar as it concerns provisions relating to marketing standards	None
50. Regulation (EU) No 640/2010 of the European Parliament and of the Council of 7 July 2010 establishing a catch documentation programme for bluefin tuna *Thunnus thynnus* and amending Council Regulation (EC) No 1984/2003(**e**)	Regulation (EU) No 640/2010 of the European Parliament and of the Council of 7 July 2010 establishing a catch documentation programme for bluefin tuna *Thunnus thynnus* and amending Council Regulation (EC) No 1984/2003(**f**)	None
51. Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down	Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying	None

(**a**) OJ No. L 229, 1.9.2009, p. 1.
(**b**) EUR 2009/767.
(**c**) OJ No. L 343, 22.12.2009, p. 1.
(**d**) EUR 2009/1224.
(**e**) OJ No. L 194, 24.7.2010, p. 1.
(**f**) EUR 2010/640.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors(**a**)	down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors(**b**)	
52. Regulation (EU) 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004(**c**)	Regulation (EU) 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004(**d**)	None
53. Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products(**e**)	Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products(**f**)	None
54. Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation	Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No	None

(**a**) OJ No. L 157, 15.6.2011, p. 1.
(**b**) EUR 2011/543.
(**c**) OJ No. L 304, 22.11.2011, p. 18.
(**d**) EUR 2011/1169.
(**e**) OJ No. L 167, 27.6.2012, p. 1.
(**f**) EUR 2012/528.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
(EC) No 1383/2003(**a**)	1383/2003(**b**)	
55. Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009(**c**)	Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009(**d**)	None
56. Sections 1 and 3 of Chapter I of Title II of Part II of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007(**e**)	Sections 1 and 3 of Chapter 1 of Title 2 of Part 2 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007(**f**)	None
57. Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No	Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No	None

(**a**) OJ No. L 181, 29.6.2013, p. 15.
(**b**) EUR 2013/608.
(**c**) OJ No. L 181, 29.6.2013, p. 35.
(**d**) EUR 2013/609.
(**e**) OJ No. L 347, 20.12.2013, p. 671.
(**f**) EUR 2013/1308.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
639/2004 and Council Decision 2004/585/ EC(**a**), insofar as it concerns provisions relating to marketing standards for fishery and aquaculture products	639/2004 and Council Decision 2004/585/ EC(**b**), insofar as it concerns provisions relating to marketing standards for fishery and aquaculture products	
58. Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation and labelling of aromatised wine products and repealing Council Regulation (EEC) No 1601/91(**c**)	Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91(**d**) except Chapter 3	None
60. Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001(**e**)	Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001(**f**)	References to "Great Britain" are to be read as references to "Northern Ireland" so far as the context requires
61. Council Regulation (Euratom) 2016/52 of 15 January 2016 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No 3954/87 and Commission Regulations (Euratom) No 944/89 and (Euratom) No	Council Regulation (Euratom) 2016/52 of 15 January 2016 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No 3954/87 and Commission Regulations (Euratom) No 944/89 and (Euratom) No 770/90(**b**)	None

(**a**) OJ No. L 354, 28.12.2013, p. 22.
(**b**) EUR 2013/1380.
(**c**) OJ No. L 84, 20.3.2014, p.14.
(**d**) EUR 2014/251.
(**e**) OJ No. L 327, 11.12.2015, p. 1.
(**f**) EUR 2015/2283.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
770/90(**a**)		
63. Regulation (EU) 2019/4 of the European Parliament and of the Council of 11 December 2018 on the manufacture, placing on the market and use of medicated feed, amending Regulation (EC) No 183/2005 of the European Parliament and of the Council and repealing Council Directive 90/167/EEC(**c**)	The Veterinary Medicines Regulations 2013, as they have effect in Great Britain(**d**) The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (England and Scotland) Regulations 2015(**e**), in respect of retail goods produced in or imported into England or Scotland The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019(**f**), in respect of retail goods produced in or imported into Wales	None
64. Regulation (EU) 2019/6 of the European Parliament and of the Council of 11 December 2018 on veterinary medicinal products and repealing Directive 2001/82/EC(**g**)	The Veterinary Medicines Regulations 2013, as they have effect in Great Britain The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (England and Scotland) Regulations 2015, in respect of retail goods produced in or imported into England or Scotland The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019, in respect of retail goods produced in or imported into Wales	None
65. Chapter II of Regulation (EU) 2019/787 of the	Chapter II of Regulation 110/2008 of the European	None

(**b**) EUR 2016/52.
(**a**) OJ No. L 13, 20.1.2016, p. 2.
(**c**) OJ No. L 4, 7.1.2019, p. 1.
(**d**) S.I. 2013/2033, as amended by S.I. 2014/599, 2018/761, 2019/676 (itself amended by S.I. 2020/461), 865, 1448, 2020/1461 and 1631).
(**e**) S.I. 2015/787, as amended by S.I. 2019/676, 2020/1461.
(**f**) S.I. 2019/569 (W.125), as amended by S.I. 2019/737.
(**g**) OJ No. L 4, 7.1.2019, p. 43.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008(**a**) and Chapter I thereof insofar as it prohibits the use of synthetic alcohol and certain colourings	Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89(**b**) and Chapter I thereof insofar as it prohibits the use of synthetic alcohol and certain colourings	
66. Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005(**c**), insofar as it concerns provisions relating to minimum sizes of marine organisms that also constitute minimum marketing sizes	Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005(**d**), insofar as it concerns provisions relating to minimum sizes of marine organisms that also constitute minimum marketing sizes	None

(**a**) OJ No. L 130, 17.5.2019, p. 1.
(**b**) EUR 2008/110.
(**c**) OJ No. L 198, 25.7.2019, p. 105.
(**d**) EUR 2019/1241.

SCHEDULE 2

Regulation 7

Application of public health and marketing standards by virtue of the disapplication of EU Directives listed in Annex 1 to the SPS Regulation

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
1. Council Directive 84/500/EEC of 15 October 1984 on the approximation of the laws of the Member States relating to ceramic articles intended to come into contact with foodstuffs(**a**)	In respect of retail goods produced in or imported into England, the following provisions of the Materials and Articles in Contact with Food (England) Regulations 2012(**b**)— Part 1 (preliminary), so far as relating to Part 4 (and Schedules 2, 3 and 4). Part 4 (requirements for ceramic articles), together with Schedules 2, 3 and 4. In respect of retail goods produced in or imported into Wales, the following provisions of the Materials and Articles in Contact with Food (Wales) Regulations 2012(**c**)— Part 1 (preliminary), so far as relating to Part 4 (and those Schedules). Part 4 (requirements for ceramic articles), together with Schedules 3, 4 and 5. In respect of retail goods produced in or imported into Scotland, the following provisions of the Materials and Articles in Contact with Food (Scotland) Regulations 2012(**d**)—	None

(**a**) OJ No. L 277, 20.10.1984, p12.
(**b**) S.I. 2012/2619, as amended by S.I. 2019/704, 2020/1419 and 2022/1351.
(**c**) S.I. 2012/2705 (W.291), as amended by S.I. 2017/832, 2018/806, 913, 2019/425, 2020/1581, 2022/1362.
(**d**) S.S.I. 2012/318, as amended by S.S.I. 2013/83, 2014/312, 2015/100, 2019/32, 52 (as amended by S.S.I. 2020/372), 2022/373.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
	Part 1 (preliminary), so far as relating to Part 4 (and those Schedules). Part 4 (requirements for ceramic articles), together with Schedules 3, 4 and 5.	
3. Council Directive 89/108/EEC of 21 December 1988 on the approximation of the laws of the Member States relating to quick-frozen foodstuffs for human consumption(**a**)	Commission Regulation (EC) No 37/2005 of 12 January 2005 on the monitoring of temperatures in the means of transport, warehousing and storage of quick-frozen foodstuffs intended for human consumption(**b**) In respect of retail goods produced in or imported into England, the Quick-frozen Foodstuffs (England) Regulations 2007(**c**) except regulations 9, 10 and 12. In respect of retail goods produced or imported into Wales, the Quick-frozen Foodstuffs (Wales) Regulations 2007(**d**) except regulations 9, 10 and 12. In respect of retail goods produced or imported into Scotland, the Quick-frozen Foodstuffs Regulations 1990(**e**) except for regulations 7 and 8.	None
7. Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of ß-agonists, and repealing Directives 81/602/EEC, 88/146/EEC and	The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (England and Scotland) Regulations 2015 in respect of retail goods produced in or imported into England or Scotland.	None

(**a**) OJ No. L 40, 11.2.1989, p.34.
(**b**) EUR 2005/37.
(**c**) S.I. 2007/191, as amended by S.I. 2014/1855, 2019/462, 2022/377, 938.
(**d**) S.I. 2007/389 (W.40); relevant amending instruments are S.I. 2014/389, 2018/806, 2019/434 and 2020/1581.
(**e**) S.I. 1990/2615.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
88/299/EEC(**a**)	The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) 2019, in respect of retail goods produced in or imported into Wales.	
9. Directive 1999/2/EC of the European Parliament and of the Council of 22 February 1999 on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation(**b**)	In respect of retail goods produced in or imported into England, the Food Irradiation (England) Regulations 2009(**c**) except for regulations 9-11. In respect of retail goods produced in or imported into Wales, the Food Irradiation (Wales) Regulations 2009(**d**) except for regulations 9-11. In respect of retail goods produced in or imported into Scotland, the Food Irradiation (Scotland) Regulations 2009(**e**) except for regulations 9-11.	None
10. Directive 1999/3/EC of the European Parliament and of the Council of 22 February 1999 on the establishment of a Community list of foods and food ingredients treated with ionising radiation(**f**)	In respect of retail goods produced in or imported into England, the Food Irradiation (England) Regulations 2009 except for regulations 9-11. In respect of retail goods produced in or imported into Wales, the Food Irradiation (Wales) Regulations 2009 except for regulations 9-11. In respect of retail goods produced in or imported into Scotland, the Food Irradiation (Scotland) Regulations 2009 except for regulations 9-11.	None
11. Directive 1999/4/EC of the European Parliament and of	In respect of retail goods produced in or imported into	None

(**a**) OJ No. L 125, 23.5.1996, p.3.
(**b**) OJ No. L 66, 13.3.1999, p.16.
(**c**) S.I. 2009/1584; relevant amending instruments are S.I. 2010/2312, 2019/1013 and 2020/1504.
(**d**) S.I. 2009/1795 (W.162); relevant amending instruments are S.I. 2010/2289, 2018/806 and 2020/1581.
(**e**) S.S.I. 2009/261; relevant amending instruments are S.S.I 2010/328, 2015/100, 2019/52 and 2020/372.
(**f**) OJ No. L 66, 13.3.1999, p.24.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
the Council of 22 February 1999 relating to coffee extracts and chicory extracts(**a**)	England, the Coffee Extracts and Chicory Extracts (England) Regulations 2000(**b**) except for regulations 7 and 10. In respect of retail goods produced in or imported into Wales, the Coffee Extracts and Chicory Extracts (Wales) Regulations 2001(**c**) except for regulations 7 and 10. In respect of retail goods produced in or imported into Scotland, the Coffee Extracts and Chicory Extracts (Scotland) Regulations 2001(**d**) except for regulations 7 and 10.	
12. Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption(**e**)	In respect of retail goods produced in or imported into England, the Cocoa and Chocolate Products (England) Regulations 2003(**f**) except for regulations 8 and 10. In respect of retail goods produced in or imported into Wales, the Cocoa and Chocolate Products (Wales) Regulations 2003(**g**) except for regulations 8 and 10. In respect of retail goods produced in or imported into Scotland the Cocoa and Chocolate Products (Scotland) Regulations 2003(**h**) except for regulations 8 and 11.	None

(**a**) OJ No. L 66,13.3.1999, p.26.
(**b**) S.I. 2000/3323; as amended by S.I. 2003/1563, 2005/2626, 2014/1855, 2018/575, 2019/526, 1488.
(**c**) S.I. 2001/1440 (W.102); amended by S.I. 2003/3047, 2005/3254, 2014/2303, 2018/806 and 2019/1482.
(**d**) S.S.I. 2001/38; amended by S.S.I. 2003/527, 2005/616, 2014/312, 2019/33, 407.
(**e**) OJ No. L 197, 3.8.2000, p19.
(**f**) S.I. 2003/1659; amended by S.I. 2005/2626, 2014/1855, 2018/575, 2019/526.
(**g**) S.I. 2003/3037 (W. 285), amended by S.I. 2005/3254, 2014/2303, 2018/806.
(**h**) S.S.I. 2003/291, amended by S.S.I. 2005/616, 2014/312, 2019/33.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
14. Council Directive 2001/110/EC of 20 December 2001 relating to honey(**a**)	In respect of retail goods produced in or imported into England, the Honey (England) Regulations 2015(**b**) except for regulations 18, 18A, 19, 22 and 22A and Schedule 2. In respect of retail goods produced in or imported into Wales, the Honey (Wales) Regulations 2015(**c**) except for regulations 18, 18A, 19, 22 and 23 and Schedule 2. In respect of retail goods produced in or imported into Scotland, the Honey (Scotland) Regulations 2015(**d**) except for regulations 17, 17A and 18.	None
15. Council Directive 2001/111/EC of 20 December 2001 relating to certain sugars intended for human consumption(**e**)	In respect of retail goods produced in or imported into England, the Specified Sugar Products (England) Regulations 2003(**f**) except for regulations 7 and 9. In respect of retail goods produced in or imported into Wales, the Specified Sugar Products (Wales) Regulations 2003(**g**) except for regulations 7 and 9. In respect of retail goods produced in or imported into Scotland, the Specified Sugar Products (Scotland) Regulations 2003(**h**) except for regulations 7 and 9.	None
16. Council Directive 2001/112/EC of 20 December 2001 relating to fruit juices	In respect of retail goods produced in or imported into England, the Fruit Juices and	None

(**a**) OJ No. L 10, 12.1.2002, p. 47.
(**b**) S.I. 2015/1348; relevant amendments were made by S.I. 2021/632.
(**c**) S.I. 2015/1507 (W. 174); relevant amendments were made by S.I. 2020/1581.
(**d**) S.S.I. 2015/208, amended by S.S.I 2005/616, 2009/436, 2014/312 (as amended by S.S.I. 2015/410), 2019/33.
(**e**) OJ No. L 10, 12.1.2002, p. 53.
(**f**) S.I. 2003/1563, relevant amendments were made by S.I. 2005/2626, 2009/3238, 2014/1855, 2018/575, 2019/526.
(**g**) S.I. 2003/3047 (W. 290); relevant amendments were made S.I. 2005/3254, 2009/3378, 2014/2303, 2018/806.
(**h**) S.S.I. 2003/527, amended by S.S.I. 2005/616, 2009/436, 2014/312 (as amended by S.S.I. 2015/410), 2019/33.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
and certain similar products intended for human consumption(**a**)	Fruit Nectars (England) Regulations 2013(**b**) except for regulations 16-19 and Schedule 14. In respect of retail goods produced in or imported into Wales, the Fruit Juices and Fruit Nectars (Wales) Regulations 2013(**c**) except for regulations 16-19 and Schedule 14. In respect of retail goods produced in or imported into Scotland, the Fruit Juices and Fruit Nectars (Scotland) Regulations 2013(**d**) except for regulations 16-18 and Schedule 14.	
17. Council Directive 2001/113/EC of 20 December 2001 relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption(**e**)	In respect of retail goods produced in or imported into England, the Jam and Similar Products (England) Regulations 2003(**f**) except for regulations 7 and 9. In respect of retail goods produced in or imported into Wales, the Jam and Similar Products (Wales) Regulations 2018(**g**) except for regulations 9 and 10 and Schedule 5. In respect of retail goods produced in or imported into Scotland, the Jam and Similar Products (Scotland) Regulations 2004(**h**) except for regulations 7 and 10.	None
18. Council Directive 2001/114/EC of 20 December 2001 relating to certain partly	In respect of retail goods produced in or imported into England, the Condensed Milk	None

(**a**) OJ No. L 10, 12.1.2002, p. 58.
(**b**) S.I. 2013/2775, amended by S.I. 2014/1855, 2018/575, 2019/526.
(**c**) S.I. 2013/2750 (W. 267), amended by S.I. 2018/806, 2014/2303.
(**d**) S.S.I. 2013/305, amended by S.S.I. 2019/33.
(**e**) OJ No. L 10, 12.1.2002, p. 67.
(**f**) S.I. 2003/3120, amended by S.I. 2005/2626, 2009/3238, 2012/1809, 2018/575, 2019/526.
(**g**) S.I. 2018/274 (W.50), amended by S.I. 2022/112.
(**h**) S.S.I. 2004/133, amended by S.S.I. 2005/616, 2009/436, 2013/177, 266, 2019/33, 2021/477.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
or wholly dehydrated preserved milk for human consumption(**a**)	and Dried Milk (England) Regulations 2015(**b**) except for regulations 6 and 7 and Schedule 3. In respect of retail goods produced in or imported into Wales, the Condensed Milk and Dried Milk (Wales) Regulations 2018(**c**) except for regulations 6 and 7 and Schedule 3. In respect of retail goods produced in or imported into Scotland, the Condensed Milk and Dried Milk (Scotland) Regulations 2003(**d**) except for regulations 7 and 10.	
20. Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed(**e**)	In respect of retail goods produced in or imported into England, the Animal Feed (Composition, Marketing and Use) (England) Regulations 2015(**f**), Part 6 and Schedules 4 and 5 (and Part 1 so far as relating to those provisions) save that paragraphs (1) to (5) and (8) to (13) of regulation 15 are to be treated as applying only in so far as they give effect to the standards set out in Schedules 4 and 5. In respect of retail goods produced in or imported into Wales, the Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016(**g**), Part 6, Schedules 1B and 1C (and Part 1 so far as relating to those provisions) save that paragraphs (1) to (5) and (8) to (11) of regulation 15	None

(**a**) OJ No. L 15, 17.1.2002, p. 19.
(**b**) S.I. 2015/675.
(**c**) S.I. 2018/275 (W.51).
(**d**) S.S.I. 2003/311, amended by S.S.I. 2003/492, 2005/616, 2006/3, 2008/12, 2009/436, 2019/33.
(**e**) OJ No. L 140, 30.5.2002, p. 10.
(**f**) S.I. 2015/255.
(**g**) S.I. 2016/383 (W.120).

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
	are to be treated as applying only in so far as they give effect to the standards set out in Schedules 1B and 1C. In respect of retail goods produced in or imported into Scotland, the Animal Feed (Scotland) Regulations 2010(**a**), Part 4 and Schedules 4 and 5 (and Part 1 so far as relating to those provisions) save that paragraph (8) of regulation 9 does not apply and paragraphs (1) to (5) of that regulation are to be treated as applying only in so far as they impose an obligation to comply with the requirements of Schedules 4 and 5.	
21. Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements(**b**)	The Food Supplements (England) Regulations 2003(**c**) except for regulations 8, 9, 11 and 12. The Food Supplements (Wales) Regulations 2003(**d**) except for regulations 8, 9, 11 and 12. The Food Supplements (Scotland) Regulations 2003(**e**) except for regulations 8, 9 and 11.	None
44. Directive 2009/32/EC of the European Parliament and of the Council of 23 April 2009 on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients(**f**)	In respect of retail goods produced in or imported into England, the following provisions of the Food Additives, Flavourings, Enzymes and Extraction Solvents (England) Regulations 2013(**g**)— Part 1, so far as relating to Part	In regulation 10(b) of the Food Additives, Flavourings, Enzymes and Extraction Solvents (England) Regulations 2013, the reference to "Great Britain" is to be read, so far as the context requires, as a reference to "the United Kingdom"

(**a**) S.S.I. 2010/373, amended by S.S.I. 2013/340, 2013/151, 2020/467, 2022/373.
(**b**) OJ No. L 183, 12.7.2002, p. 51.
(**c**) S.I. 2003/1387, amended by S.I. 2005/2626, 2007/330, 2009/3251, 2014/1855, 2019/651, 2023/131.
(**d**) S.I. 2003/1719 (W.186), amended by S.I. 2005/2759, 2007/1076, 2014/2303, 2019/179, 2023/131.
(**e**) S.S.I. 2003/278, amended by S.S.I. 2007/78, 2009/438, 2011/1043, 2014/312, 2019/54, 2023/131.
(**f**) OJ No. L 141, 6.6.2009, p. 3.
(**g**) S.I. 2013/2210.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
	3 and Schedule 6; Part 3 (extraction solvents) together with Schedule 6 In respect of retail goods produced in or imported into Wales, the following provisions of the Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013(**a**)— Part 1 (introductory), so far as relating to Part 3 and Schedule 6; Part 3 (extraction solvents) together with Schedule 4A In respect of retail goods produced in or imported into Scotland, the following provisions of the Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013(**b**)— Part 1 (introductory), so far as relating to Part 3 and Schedule 6; Part 3 (extraction solvents) together with Schedule 6	In regulation 10(b) of the Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013 the reference to "Great Britain" is to be read, so far as the context requires, as a reference to "the United Kingdom" In regulation 8(b) of the Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013 the reference to "Great Britain" is to be read, so far as the context requires, as a reference to "the United Kingdom"
45. Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters(**c**)	In respect of retail goods produced in or imported into England, the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007(**d**) except for regulations 3(1)(d)(i), 16, 16A, 17 and 22.	None

(**a**) S.I. 2013/2591 (W.255).
(**b**) S.S.I. 2013/266, amended by S.S.I. 2014/312, 2015/100, 2019/53 (itself amended by S.S.I. 2020/372), 285 (itself amended by S.S.I. 2020/372), 2020/373, 2022/265, 373.
(**c**) OJ No. L 164, 26.6.2009, p. 45.
(**d**) S.I. 2007/2785.

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
	In respect of retail goods produced in or imported into Wales, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015(**a**) except for— regulation 3(1)(d)(i); Part 5; regulations 32 to 35; Schedules 9 to 12. In respect of retail goods produced in or imported into Scotland, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007(**b**) except for regulations 3(1)(d)(i), 16 to 18, 20 and 22.	
59. Directive (EU) 2015/2203 of the European Parliament and of the Council of 25 November 2015 on the approximation of the laws of the Member States relating to caseins and caseinates intended for human consumption and repealing Council Directive 83/417/EEC(**c**)	In respect of retail goods produced in or imported into England, the Caseins and Caseinates (England) Regulations 2017(**d**) except for regulations 6, 7 and 10 and Schedule 5. In respect of retail goods produced in or imported into Wales, the Caseins and Caseinates (Wales) Regulations 2016(**e**) except for regulations 7, 8 and 10 and Schedule 5. In respect of retail goods produced in or imported into Scotland, the Caseins and Caseinates (Scotland) (No. 2) Regulations 2016(**f**) except for regulations 6, 7 and 8 and Schedule 4.	None

(**a**) S.I. 2015/1867 (W.274).
(**b**) S.S.I. 2007/483, amended by S.S.I. 2008/273, 2010/89, 127, 2011/94, 2014/312, 2015/100, 363, 2017/287, 2021/66.
(**c**) OJ No. L 314, 1.12.2015, p. 1.
(**d**) S.I. 2017/848.
(**e**) S.I. 2016/1130 (W.270).
(**f**) S.S.I. 2016/422, amended by S.S.I. 2019/285 (itself amended by S.S.I. 2020/372), 2022/265.

SCHEDULE 3

Regulation 9

Application of organic product standards

Column 1 *EU instrument listed in Annex 1 to the SPS Regulation (including paragraph numbering from that Annex)*	*Column 2* *Instruments*	*Column 3* *Modifications*
62. Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007(**a**)	Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91(**b**) Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control(**c**) Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries(**d**) The Organic Products Regulations 2009(**e**) except for Part 5.	None

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to retained direct EU legislation and the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 (S.I. 2022/739) for the purpose of implementing the Windsor Framework. They also apply (with modifications) public health, marketing and organic products standards applicable in Great Britain to consignments of retail agri-food goods in Northern Ireland which have moved from Great Britain under the Retail Movement Scheme to the extent that EU public health, marketing and organic products standards

(**a**) OJ No. L 150, 14.6.2018, p. 1.
(**b**) EUR 2007/834.
(**c**) EUR 2008/889.
(**d**) EUR 2008/1235.
(**e**) S.I. 2009/842.

(which would otherwise apply in Northern Ireland) are disapplied in accordance with the Windsor Framework.

[A full impact assessment has not been produced for this instrument as no, or no significant impact on the private or voluntary sector is foreseen].

Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
Legislation, Justice and Constitution Committee

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Lesley Griffiths MS
Minister for Rural Affairs and North Wales, and Trefnydd

7 July 2023

Dear Lesley

Draft Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023

At our meeting on 3 July 2023 we considered your letter of 30 June about your intention to consent to the UK Government making and laying the draft Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023.

There are some matters on which we would welcome further information and clarification.

We would be grateful to receive a response to the questions in the Annex at the earliest opportunity and no later than 31 July 2023.

I am copying this letter to Llyr Gruffydd MS, Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

ANNEX

Question 1: You told us that you received a letter from the Minister of State for Environment, Food and Rural Affairs, the Rt Hon Lord Benyon, asking for the Welsh Ministers' consent to these Regulations. Can you confirm when Lord Benyon wrote to you. In your letter to us on 2 December 2022, you committed to include the date of correspondence with UK Ministers in letters to Senedd Committees.

Question 2: Please can you share with us the relevant correspondence with Lord Benyon. Again, in your letter to us on 2 December 2022, you said you would aim to provide copies of correspondence with the UK Government to the appropriate Senedd Committees.

Question 3: You told us that the Regulations intersect with devolved policy. Have you made an assessment of the devolved/reserved split? If so please can you provide details of that assessment.

Question 4: Did you consider bringing forward your own Regulations to deal with matters within devolved competence?

Question 5: Can you confirm that the development of these Regulations was taken through the relevant common framework processes.

Question 6: The Scottish Government wrote to the Scottish Parliament on 22 June 2023 identifying a package of five Statutory Instruments implementing parts of the Windsor Framework. The Regulations you have written to us about are referred to as NID/014 in the Scottish Government's letter. The other Regulations are: The Windsor Framework (Retail Movement Scheme) Regulations 2023 - (NID/011); The Windsor Framework (Plant Health) Regulations 2023 – (NID/012); The Windsor Framework (Enforcement etc.) Regulations 2023 – (NID/013); The Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 - (NID/015).

The letter from the Scottish Government to the Scottish Parliament states: "*NID/011, NID/012 and NID/015 are subject to negative procedure. DEFRA plan to lay NID/011 in Westminster on 8 August 2023 and NID/012 and NID/015 on 30 August 2023. NID/014 is currently subject to draft affirmative procedure but we have been informed by DEFRA that it will likely be changed to the negative procedure, and we therefore propose to treat it as such for consent purposes. It is due to be laid on 17 July 2023 under affirmative procedure, but may be laid in August under negative procedure. NID/013 is subject to draft affirmative procedure and is due to be laid on 17 July 2023*." Specifically on NID/014, the Scottish Government states in its letter: "*The SI is currently subject to the draft affirmative procedure and is due to be laid on 17 July 2023, to come into force on 1 October 2023. However, the instrument may become subject to the negative procedure if the Retained EU Law (Revocation and Reform) Bill gains Royal Assent before the proposed laying date*."

The Regulations which are the subject of your letter are to be made under section 8C(1) of the *European Union (Withdrawal) Act 2018* (the 2018 Act) and are making amendments to retained direct EU law (RDEUL). Before the coming into force of the *Retained EU Law (Revocation and Reform) Act 2023* (the 2023 Act) , such regulations would be subject to the affirmative procedure if amending, repealing or revoking primary legislation or retained direct principal EU legislation (paragraph 8F(2)(a) of Schedule 7 to the 2018 Act). Following the coming into force of section 9 of, and Schedule 3 to, the 2023 Act, the reference to retained direct principal EU legislation has been removed from paragraph 8F(2)(a) of Schedule 7 to the 2018 Act, meaning that the affirmative procedure is no longer required for such regulations.

a. Has the UK Government written to you about the four other sets of Regulations referred to as NID/011, NID/012, NID/013, and NID/015 in the Scottish Government's letter?

b. If the UK Government has not written to you about the other Regulations, what action will you now take?

c. If the UK Government has written to you about the other Regulations, why does your letter of 30 June only refer to the Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023 (NID/014)?

d. Were you aware of the timings regarding the Regulations which are the subject of your letter?

e. Were you aware that the 2023 Act would result in the Regulations which are the subject of your letter no longer being subject to the affirmative procedure?

Question 7: Are you aware of further implementing legislation being prepared to implement the Windsor Framework and as described by the Framework's accompanying documents? If so, please can you provide details, including timings.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/1687/23

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
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21 July 2023

Dear Llyr,

I am writing to update you on the UK Emissions Trading Scheme (UK ETS) Authority Government Response to the "Developing the UK Emissions Scheme" consultation, which was published on 3 July. This update follows my oral statement, delivered on 4 July 2023. As I set out, the key change within the Government Response is the reduction of the UK ETS cap to bring it in line with net zero targets. Within the Response, the UK ETS Authority (formed of Welsh Government, UK Government, Scottish Government, and Northern Ireland Executive) committed to implementing a new cap by January 2024. It is the Authority's aim to pursue a legislative programme in line with the decisions and intentions made in the Government Response, including for the cap.

Changes to the cap, (maximum amounts of reportable emissions available under the Greenhouse Gas Emissions Trading Scheme Order 2020 ("the 2020 Order")) would ordinarily have been made through regulations under an enabling power within the Climate Change Act 2008 ("the 2008 Act"). Such regulations would be in the form of a statutory instrument ("SI") laid within each of the four legislatures of the United Kingdom as an Order in Council. The SIs would be subject to the affirmative procedure, as they would contain provision, making the overall requirements of a trading scheme "significantly more onerous". However, due to the absence of a Northern Ireland Executive and sitting Assembly, it is not possible to make affirmative procedure legislation, in all legislatures in parallel.

With no clear date on when a Northern Ireland Executive will be formed and with time criticality on the changes required, the UK ETS Authority have been assessing alternative options.

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The agreed alternative is for the UK Government to amend the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 ("the Auctioning Regulations") by way of an enabling power within the Finance Act 2020 ("the 2020 Act"), until the changes can be made under the 2008 Act.

The enabling power under section 96(3) of the 2020 Act provides that:
The Treasury may make schemes about the conduct and terms of allocations of emissions allowances in return for payment (the schemes having effect subject to any regulations under this section).

The Auctioning Regulations are part of the UK ETS framework and are used to determine the share of allowances which can be brought to auction each year. This amendment will set the auction share and therefore the number of allowances that enter circulation in line with the proposed net zero cap. This will mean that the number of allowances available to the market is in line with a lower cap consistent with net zero. The amendments to the Auctioning Regulations do not change the cap as set out in the 2020 Order, and legislation amendments made through an enabling power under the 2008 Act will be needed to deliver policy in the long term. However, reducing the share of allowances available to auction, will have the desired effect, until the legislation amendments made through the 2008 Act enabling power, can be made. Namely, limiting the emissions of participants by reducing the number of allowances available.

In accordance with the UK ETS Common Framework, the Welsh Government's stance on the UK ETS is that the financial elements are simply the mechanism by which the ultimate goal of the system – environmental protection via incentivising decarbonisation – is achieved. As the amendment to lower the auctioning allowances is being made to the Auctioning Regulations, and not primary legislation, a Legislative Consent Motion is not relevant. The amendment is being made by an SI to subordinate legislation. As the subordinate legislation being amended is not retained direct principal EU legislation under paragraph 4 of part 1 under schedule 8 of the European Union (Withdrawal) Act 2018, the procedure to be applied before the Senedd is not what would apply to that legislation as if it were amending an enactment contained in primary legislation. An SI Consent Memorandum is therefore unnecessary, as per the Standing Orders of the Welsh Parliament[1]. However, proceeding with the proposal to modify the Auctioning Regulations potentially eliminates the opportunity for the Senedd (and other Parliaments) to assess the proposed changes. Consequently, I am cautious about using this approach.

Nevertheless, reducing the UK ETS cap is time critical. Without an agreed legislative route, the Government Response with the commitment to implement the cap by 2024 could not have been published. Failing to do this would have delayed the implementation of the cap and therefore posed significant risks to both our climate targets and the participants of the UK ETS. Delaying implementation of the cap will only result in a steeper cap (and decarbonisation) trajectory later in this decade, placing greater pressure on our industries. In recognition of the urgency and importance of this proposal and the need to respect the political and legislative process in Northern Ireland, I have agreed with the other Portfolio Ministers across the Authority for the amendments to be made in this way. We have also committed via an exchange of letters to legislate under the 2008 Act to lower the UK ETS cap as soon as practicably possible. To avoid delaying the publication of the Government Response and therefore the implementation of the new cap, the scrutiny process will be carried out as normal across the four legislatures when the cap is legislated for, through the enabling power under the 2008 Act. Moving forward, I will continue to seek the Senedd's approval where relevant.

[1] Standing Orders of the Welsh Parliament (senedd.wales)

Of the other proposals within the Government Response, some will be made through an SI, subject to the negative procedure, pursuant to the 2008 Act, amending the 2020 Order. This will make a number of operational changes to the scheme which will be applied UK-wide, such as the inclusion of benchmarks into UK law. It is still possible to lay legislation under negative resolution procedure in Northern Ireland. Once laid, the SI will come into force on the specified commencement date. However, on their return, if the NI Assembly passes a resolution of annulment within the statutory period (being a period comprising at least 10 days on which the Assembly has been sitting, but not in any event less than 30 calendar days during one or more than one session of the Assembly) then that rule will be void from the date of that resolution.

Other changes will be made through an SI, subject to the affirmative procedure, which will apply only to Great Britain, for example, capping aviation free allocation at 100% of an operator's emissions. As there are currently no operators in Northern Ireland who would be affected by the provisions in this SI, the Authority have agreed that a GB-only SI would be acceptable in the short term.

I am copying this letter to Huw Irranca-Davies, Chair of Legislation, Justice and Constitution Committee.

Yours sincerely,

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith
—
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Rt Hon Michael Gove MP

Secretary of State for Levelling up, Housing and Communities

25 July 2023

Dear Secretary of State,

I am writing to you as Chair of the Senedd's Climate Change, Environment and Infrastructure Committee concerning the Infrastructure (Wales) Bill, which was introduced in the Senedd by the Minister for Climate Change on 12 June 2023.

The Minister wrote to you on 7 January 2022 and 11 January 2023 to request that the Senedd should be transferred legislative competence:

> (a) For the consenting of energy generating stations offshore between the edge of the territorial sea and the edge of the Welsh zone (an area roughly between 12 and 200 nautical miles ("nm") off the shoreline); and
>
> (b) Which clarifies the Senedd's ability to legislate in respect of energy storage.

We understand that the Minister has made several attempts to communicate with your office on this matter but is yet to receive a response to these letters.

We are deeply concerned that the lack of response from your office to the Welsh Government's requests is impinging the Senedd's ability to scrutinise the Bill appropriately. We, therefore, urge you to take the necessary steps to address this issue at the earliest opportunity, given that the Infrastructure (Wales) Bill has now begun its passage through the Senedd.

Yours sincerely,

Llyr Gruffydd MS,
Chair, Climate Change, Environment and Infrastructure Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

From: Ministerial Correspondence <Ministerial.Correspondence@levellingup.gov.uk>
Sent: Tuesday, August 1, 2023 12:26 PM
To: Climate Change, Environment, and Infrastructure Committee | Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith <SeneddClimate@senedd.wales>
Cc: LegislativeProgrammeGovernanceUnit@gov.wales;
Subject: RE: Correspondence from the Chair of the Climate Change, Environment and Infrastructure (CCEI) Committee

Good afternoon,

Thank you for the below query. On investigation, I found that we transferred Minister James' enquiries to the Department for Business, Energy and Industrial Strategy in January 2023, as it fell under that department's policy remit.

When I followed up with the successor Department for Energy Security and Net Zero, they provided the attached correspondence which indicates a conversation may have already taken place between Minister James and Minister Stuart of DESNZ in March and April of this year.

I hope that this resolves any question of outstanding correspondence between the Minister for Climate Change in the Welsh Government, and the Secretary of State for Levelling Up, Housing and Communities.

Do please advise if you have any further queries.

Kind regards,

Department for Levelling Up, Housing & Communities

Department for Levelling Up, Housing and Communities
gov.uk/dluhc | @luhc

Department for Energy Security & Net Zero

Rt Hon Graham Stuart MP
Minister of State for Energy Security & Net Zero

Department for Energy Security & Net Zero
1 Victoria Street
London
SW1H 0ET

www.gov.uk

Julie James AS/MS
Minister for Climate Change
Welsh Government
Cardiff Bay
Cardiff CF99 1SN

24 March 2023

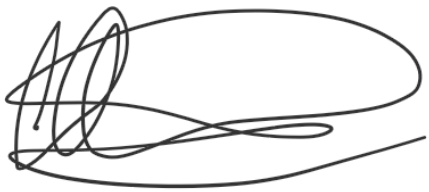
Dear Julie,

Thank you for your letters to the Secretary of State for Levelling Up, Housing and Communities regarding a proposed transfer of legislative competence for consenting of offshore energy generating stations and a request for clarification of the Senedd's ability to legislate in respect of energy storage. I am also in receipt of your letter of the 19 January, requesting we meet to discuss energy issues and climate change. I am responding as these matters fall within my Ministerial portfolio.

Please accept my apologies that you have not had prompt responses to your letters. The question of legislative competence you raise is an important issue, with wider implications affecting other departments and other parts of the UK. My officials are working through the issue and I will provide you with a substantive answer as soon as this work has been done. In the meantime, I would suggest my officials engage with yours to clarify the Welsh Government's position, although as you will appreciate, they will not be able to give definitive answers pending the outcome of the ongoing cross-Government work.

As you identify in your most recent letter, there are significant challenges, as well as opportunities, in all parts of the UK in our transition to net zero. I am grateful to you and your officials for the positive and constructive engagement between the Welsh Government and the Department for Energy Security and Net Zero, not least through the Energy and Climate Change Interministerial Group. I agree that it would be useful for us to meet separately to this to discuss how we can strengthen our joint working and I have asked my office to arrange this with yours.

Yours ever,



Rt Hon Graham Stuart MP
Minister of State for Energy Security & Net Zero

From: DSMCC@gov.wales <DSMCC@gov.wales>
Sent: Wednesday, March 29, 2023 11:08 AM
Subject: RE: Letter FAO Julie James/Meeting Dates - Energy Issues & Climate Change

Dear,

Thank you for your email to Julie James MS, Minister for Climate Change. Minister James has noted the letter and I can confirm she will be available to meet on Wednesday 26 April at 13:30 – 14:00. I'd be grateful if you could send through the Teams invite to DSMCC@gov.wales please?

Kind regards,

Llywodraeth Cymru
Welsh Government

Ysgrifennydd Dyddiadur i Julie James AS / Diary Secretary to Julie James MS
Y Gweinidog Newid Hinsawdd / Minister for Climate Change
Is-adran y Cabinet / Cabinet Division
Llywodraeth Cymru / Welsh Government
E-bost / E-Mail DSMCC@llyw.cymru | DSMCC@gov.wales

From: Stuart, Minister (BEIS) <Minister.Stuart@beis.gov.uk>
Sent: 27 March 2023 13:15
To: DS Minister for Climate Change <DSMCC@gov.wales>
Cc: BEIS Cabinet Committee Correspondence <cabinetcommittees@beis.gov.uk>;
Subject: Letter FAO Julie James/Meeting Dates - Energy Issues & Climate Change

Dear Minister James,

Please find attached letter from Minister Graham Stuart MP in response to your recent correspondence.

I am holding the following dates in the Minister's diary for you to meet to discuss energy issues and climate change. Please advise which is most convenient and I will confirm by sending a Teams linked invitation:

26 April 1.30 - 2.00
1 May 10.30 - 11.00

Thank you and best regards,

Department for Energy Security & Net Zero

Diary Manager (Locum) to the Rt Hon Graham Stuart MP
Minister of State for Energy Security and Net Zero
T: 0300 068 2975
E: minister.stuart@beis.gov.uk

From: Stuart.Ingram@gov.wales <Stuart.Ingram@gov.wales>
Sent: Wednesday, September 20, 2023 1:10 PM
To: Climate Change, Environment, and Infrastructure Committee | Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith <SeneddClimate@senedd.wales>
Subject: Evidence Session

Hello

Many thanks for the warm welcome we received at the Senedd earlier today.

Further to the request of the Chair at the NICW Committee session, please find attached the event presentations and scribe notes from the workshops. The latter are very much in rough note form, however, should clarification be required on any of these, we can assist.

Also, for completeness, I paste below a list of the organisations that were represented 'in the room' at the event.

If you have any questions, or require anything further, please let me know.
Best wishes and thanks again.
Stuart

Allan Archer Planning
NICW
Highlight Planning
Mott Macdonald
Welsh Government
Arup
RTPI Cymru
WLGA
Lichfields
Design Commission for Wales
Planning Aid Wales
Wardell Armstrong
Carney Sweeney
Future Generations Wales
WSP
Atkins
TFW
NRW
Savills
National Grid
Vale of Glamorgan Council
PEDW
BT
Burges Salmon
WW Utilities

Stuart Ingram MRTPI

Head of National Infrastructure Commission for Wales Secretariat / Pennaeth Ysgrifenyddiaeth Comisiwn Seilwaith Cenedlaethol i Gymru
Planning Division / Adran Cynllunio
Climate Change and Rural Affairs Group/ Y Grŵp Newid Hinsawdd a Materion Gwledig Welsh Government / Llywodraeth Cymru

NICW / RTPI CYMRU - NOTES SHARING DOCUMENT

INITIAL DISCUSSION NOTES

Welsh Government Presentation

- Clarification on ‘no procedure’ statements on Senedd process
- Mandatory threshold of applications LPA / WG process. Type of development (EG several consents needed). Regulations to set out type of projects which WG will direct will to be determined by Welsh Ministers.

PEDW Presentation

- Supporting RIA. Workload of PEDW. Existing DNS wouldn’t be SIPS. How does PEDW ensure its resourced. Pipeline of projects will be based on industry trends. Resourcing this is a challenge to predict. Perhaps less applications, but bigger one. Detail will be in the regulations over what developments are caught. Changes in technology will also assist in this.
- Talking to PINS (England) about resourcing etc. Yes, talking to colleagues about this. Interested in resourcing this and how they balance this challenge.

Legal Response

- Engagement from communities. They usually engage when asked. Statutory consultees vary in their responses. Developers do not want to be shocked by a response which raises new issues later in the process. Resource is needed to enable this to happen. Developers are engaging. They all have comms teams and try to engage. Consultation does not mean making everyone happy. If they aren’t happy, they still need to be asked what they want if it is consented.
-

DEFINITION OF DEVELOPMENT

Pipelines

Not dealt with as we don’t have legislative competence over all aspects. The Wales Act gave strange limits on the devolution settlement.

Power is with Westminster (pipelines act) which means that certain types of development do not fall under this Act.

Cross-border issues.

Should pipelines be included? Would like it to be included, would make things easier. In England it’s a DCO, in Wales it's an application to the LPA.

Hybrid schemes?
Energy parks – solar, wind, battery storage. Battery is out of the planning act.
If you had solar and wind as part of the proposal, would that take you over the threshold? Bill allows for associated development to be included. If nothing is individually included in the bill, it would be a directed application.

Worth remembering that all these pieces of infrastructure have existing consenting regimes.

From rail perspective had quite a good robust definition, a lot of work is done under Part 11. Railway would still look to implement as part of existing Part 11.

What do we think is missing?

Thresholds – what happens to less than 50mw schemes? Welsh ministers need to direct. Because under 50, will go straight back to LPA, but then potentially appealed under section 78 if refused by LPA

Why was 50mw made? Seems high. Suspect comes copied from the DCO thresholds. When legislation first came forward, 50mw was big, it no longer is as technology has moved on.

Vast majority of DNSs are coming in under 50w.

Do we think the threshold should be lower so more is captured? 25mw? Would RE developers rather the threshold came down?

DNS came in to take decision off LPA, this new legislation will mean they will go back to the LPa to determine,.

Schemes are coming forward at 49,9mw and a lot of in close proximity to each other.

Potable water isn't included?

Hydrogen is completely out because its all pipeline based?

Would be useful to provide a document (when bill becomes an Act) which explains why certain aspects haven't been included ie competence, existing legislation etc.

Grid issue

There is provision in the bill

Practically, if you have one system in Wales (infrastructure act) and another in England, how would this work in a cross border issue? Perhaps anything crossing the border wouldn't come forward because the two regimes are so different.
There is no way to bring the two systems together so the proposal can revert back to the electricity act, etc.

Section 24 in the bill says “this is not us”. Can only legislate what is in Wales and what is under Wales’ competency.

Policy context

Not for this process

Opinion is policy wording is not strong enough. There is scope to review FW every 5 years so can strengthen as needs be and both Act and FW can align as FW will be reviewed 2025? And bill comes into force 2025.

Policy statements
these are for “novel and new”.

Do LPAs want 10-50mw? Depends who you are talking to – officers or politicians

SCOPE OF CONSENTS and NATURE OF APPLICATIONS

- Table questioned what scope is?
- Telecoms aren't mentioned in the Bill. Is this a missed opportunity? Want to work in tandem with other provisions - connectivity of important infrastructure. Resourcing is an issue in this sector as well as planning. Development and technology, such as bigger poles are being replaced by mono-poles, so future development needs to be taken into account.
- Found it difficult to talk about the detail while we are still trying to work out the structure.
- Need more certainty around optional thresholds. In particular it needs more certainty on what will be coming through to LPAs.
- It was felt that PEDW should deal with strategically important developments and LPAs should deal with those that are more appropriate to them. **So** important that the right development goes to the right place for decision. It was also felt important that this decision should be made at an early stage. Should this be decided on a case by case by case basis? There is a need for clarity around this - different levels of scrutiny. Important need for clarity in the process here. The developer needs to know what is the best route for their development.
- Pre-app is critical. Pre-app might influence the developer in making a decision on the application route - SIP or not.
- National grid - lines that are under 2km, where do they go?
- We also need to think about the consumption side of things, as well as demand and plan for this. Do we need to expand the PD rights for stat undertakers to cover this?
- What needs to be covered: Hydrogen, pipelines etc. Needs this certainty up front. We know that given climate change targets and rapidly changing technology - there will be more applications, can we look at this for the next 5 - 10 years.
- There is experience to learn from England: There are ways of including other studies, by writing them into the order. Giving detail and providing confidence doesn’t need to be part of the statutory process. It can run alongside, as part of the order.
- Resources and time are needed to process the detail appropriately. Operational as well as production. Need guidance up front on process.
- The relationship between licence and planning permission: Tension between the two - licensing and operations etc. Suggest possible drafting MoUs with Stat Cons.
- A one stop shop is important.
- Certainty is needed for developers, they will be concerned over the 52 weeks.
- The definition of the marine env, is currently unclear.
- Note issues around Crown Land. What are we going to do if we need to put things on Crown land?
- If the Act work well then it will be attractive to developers. However, recognise the impact - this could lead to a flood of apps.
- Neighbouring authorities - What is local?

- LIR and impact of fees.
- Expect that the application has already looked at many of the things in the LIR anyway. Let's shartpern this up and look at proportionally.
- Only 5 weeks to produce LIR. 7k is not enough for LPAs. Is there an option to pay that fee up front to the LPA? The fee can then be used internally to resource their service. Consultants, or services.
- PPAs are being given back. No resources.
- Developers are happy to pay for a good service.
- Charge max fee and spread it out where it needs to go to get a good service.
- Future gens commissioner - is there anything in the process that helps look at the cumulative impact?
- We know we need more grid capacity and renewables in the future. We know its coming.
- It will take longer if we need to go to Ministers. Frustrating for developers and would rather have the professional involved and decide.
- In England there is time build in to make changes as things evolve.
- All parties need to be committed to the process - to get certainty timescales etc. Resources!
- Policy statements are the absolute key.

ENGAGEMENT

- Resources. If money is provided, are the people out there to get them in to help!
- Plenty of experience to draw from local planning authorities experiences.
- Quality of information provided influences the quality of the response.
- Response times for statutory consultees should be in the Bill. Recognise there is a resource issue associated with this.
- Bill should mirror the Planning Act and set timetables out.
- Learn from the Planning Act, doesn't need to be flexible.
- After pre-app there is minimal chance for change.
- eg NRW requesting 3 turbines deleted after submission, despite pre app.

- Differences between public engagement and consultation with statutory consultees.
- Earlier pre-app with public needed, outside of the statutory timescales.
- Digital-only is not good enough. Lampost notices still an early sign of 'something going on'.
- NRW: if pre-app is given. It must be made clear how the advice has been taken into account by developer, including reasons why things haven't been taken forward. More time for reflection by developers?
- Statements of common (and uncommon) ground are really useful as they identify issues for discussion.
- Quite often stat consultees won't respond to developers, but they do to PEDW once submitted.

- Access to developers, not their comms teams.
- A fully formed view cannot be formed on the Bill due to lack of info at this stage. It would have been good to have more info on secondary legislation.

- Tension between Bill being too restrictive vs. requiring something good to be undertaken. Qualitative not quantitative.
- Planning Act requires a statement of community consultation which is confirmed with LPA. This isn't in the Infrastructure Bill.

- Not clear on the Bill, how responses are taken into account. Is it implicit in the PEDW examination?
- Equal weight to overriding considerations eg climate change etc. to balance against objections. Sometimes this is overlooked.
- Report should be required outlining how developers have taken into account. This is in the Planning Act but not the Infrastructure Act. Guidance will follow.
- Clarity of access to information and ease of use to use the system to the public. Current arrangements are insufficient.
- Public access to official websites is daunting.

- Big issues is that the majority of the public are completely unaware of the processes. People are generally suspicious of the process. Wider education and awareness raising is needed.
- Undergrounding isn't necessarily the answer…environmental impacts could be just as significant.

POLICY IN THE DECISION MAKING PROCESS

Act trumps FW and Marine Plan – isn't that an issue?

FW, policy statements, Marine plan have equal status.

Policy statements will no longer be as they are drafted, so FW, PPW etc will remain the foremost policy documents.

Risk there will be lots of gaps – the policy doesn't entirely speak to the type of development – ie technology moves on.
Does FW need to be more granular? The pre-assessed areas are useful, but NRW may argue against these.

Industry would like more certainty, don't like that policy changes regularly can "scupper" proposals. National policy statements are preferable.

Policy statements – idea was they would be filling gaps where FW didn't cover. Effectively these would undermine FW.

There is always a balancing act, site constraints, material considerations, etc so policy will always need to be reviewed.

Pre-assessed areas – these look from a landscape perspective, but you'll have overlays with habitats, birds, etc therefore policy needs to be stronger.
- these are just high level areas where wind may be preferable, it isn't a granting or permission or refusal.

NPS give a primacy in England.

You cannot be that prescriptive at national level in terms of policy, you give so much certainty you end up with nothing granted.

Some opinions that there is already too much policy, others want stronger policy, more certainty.

Bute energy
How would this legislation help? Project spans number of LPAs, CPO powers,

LDPs and SDPs and their role.
If you're talking nationally significant projects, perhaps they should be over the head of the SDP/LDP.
if the thresholds are going up, perhaps you may see more decisions being made at a local level.

If youre looking for more spatial/ policy certainty, don't you get that at a local level?

There shouldn't be a contradiction because you have FW > SDP > LDP all of which should be in conformity.

FEES, COSTS & SECONDARY LEGISLATION

- A lot of detail still to come.
- This is an issue for timescales.
- The success of the DNS regime, was because the timescale were on the face of the DNS bill.
- Part of the way through the process can you slip back into TCPA if it is possible? It would be useful to know what the plan for this is?
- The 10 to 50 megawatt process, you need the transitional process in place. There might be developers waiting.
- National Grid - Current pressure on connections and those that are ready to connect.
- Secondary legislation - easier to amend than primary, however problems in keeping amending secondary legislative.
- Potentially there is such a lot of info in the Policy Statements. Second guessing at the moment.
- Really important to consult on the detail of the secondary legislation.
- FEES and COSTS - developers don't mind paying for the right level of service.
- LPAs need resourcing
- Is it skills and capacity?
- We have to plan now for the future. Apprenticeships etc. - it all takes time in building up this skills.
- Developers need to know that Wales are open for business. You will then attract planners, development. etc.
- Central pool of expertise, similar to M&W: Table felt that this could work but not in all cases. A shared pool needs to be resourced - it wont work otherwise.
- Lost a lot of skill through people retiring. This needs a long term thinking.
- Is there enough development pipeline to plan all this? LPAs might only ever deal with one or two wind farms ever, so a shared pool might work in these cases.
- Resourcing and pooling - Wales is fishing for the same pool already.
- Noted 7,750k if its done within 5 weeks - NOT enough.
- The fixed fee doesn't work.
- This is not helpful for LPA, if you divide it fairly then everyone might engage better.
- If things go to S78 - LPA would have an application fee but PEDW would have nothing. Either from developers or Welsh Government.
- Need to talk to all parties to understanding coasts, time, the choices that developers would be likely to make. It will cost a lot to defend a decision.
- In scot wind farm applications get dealt with by written reps. It doesn't happen here. We could streamline this process. Needs more scoping, common sense.
- Fees and service improvement must go hand in hand. Most would be happy with a fee increase. Need certainty of time and service.

ENFORCEMENT

- Note the interface between LPAs and WM. note you can’t positively enforce.

MOPPING UP TABLE

- Scope of the consent. Clarity on what is included.
- Principles need to be decided and established through strong national policy statements.
- Quality of submissions is a collaboration issue. It isn't just the developers responsibility to do this. This includes statutory consultees and the public etc.
- Issues raised after submission (eg peat) throw timetables and processes out of line.
- However, changes to policy do occur and need to be considered.
- Is there a risk of stakeholder fatigue? Communities are engaging in different processes. This causes confusion. Aim of the Bill is to streamline the process and focus the conversation. This is not just planning; public life etc.
- UK Government have to give consent for Infrastructure Bill to make requirements of organisations not within the control / remit of WG. eg HSE
- Transitionary arrangements. Risk of differing consenting regimes for extant consents. These need further consideration on the face of the bill.
- Cross border projects. Clarity is required on the process. Two systems running to 2 different timetables. Infrastructure Bill needs to mirror arrangements UK Govt has with Scotland. Comes down to legislative competence. Needs collaboration between Governments.
- Commercial sensitivity. Design review. DCFW is a non-statutory consultee. Offers services.
- NPS under planning act requires a design review.
- No recognition of landscape in the Bill.
- Design review could help improve the quality of the applications and protect commercial sensitivity.
- Need is established in policy statements, but the resource is not there to provide the support.
- All sectors struggling with skills, retention, supply base and workforce to meet the challenge.
- Impacts on other sectors eg, historic environment, waste etc. Are these being scrutinised as much.
- If consents aren't included, is there a risk that development could be frustrated by objections further down the line. All process is subject to co-ordinated action.

Comisiwn **Seilwaith** Cenedlaethol **Cymru**

National **Infrastructure** Commission **Wales**

RTPI Cymru

Royal Town Planning Institute

Sefydliad Cynllunio Trefol Brenhinol

Infrastructure (Wales) Bill Event

18th September 2023

Comisiwn Seilwaith Cenedlaethol Cymru
National Infrastructure Commission Wales

RTPI Cymru
Royal Town Planning Institute
Sefydliad Cynllunio Trefol Brenhinol

Overview of the Bill

Owen Struthers
Head of National Consenting
Welsh Government

Infrastructure (Wales) Bill 2023

NICW/RTPI
Briefing

Content

- Background to the bill
- Engagement prior to introduction
- Aims and objectives
- Summary of bill provisions

Background

- The Wales Act 2017 devolved further legislative and executive responsibility for the consenting of energy generating projects, overhead electric lines as well as ports and harbours.

- As a consequence of the way these powers were devolved, Wales has been placed into consenting processes which are not fit for purpose.

- This has caused problems for developers, namely, there is no longer any certainty in terms of timing and policy, and the consenting process no longer provides authorisation for a range of other consents as part of a ‘one-stop shop’.

- This situation significantly frustrates the Welsh Government’s ambitions in relation to Net Zero and growing the green economy.

- This Bill establishes a unified consenting process for devolved major energy and infrastructure projects in Wales, which applies both on and offshore (up to territorial seawater boundary).

Consultation and engagement outcomes

Support/agreement with:

- The proposals which underpin a unified consenting regime.
- The inclusion of ancillary development to avoid the need of multiple consents.
- The inclusion of compulsory acquisition powers.
- Developments designated as nationally significant to remain determined at the national level.
- The variation in type of consent dependent of the type of application made.
- The proposed new process will bring about a fairer and more equitable process/system and the proposal seems reasonable and balanced, and responds to practical experience of the current regime.

Aims and objectives of the Bill?

The consenting process established by the Bill will:

- Streamline and unify the decision-making process for devolved infrastructure projects by adopting a ‘one-stop shop’ approach whereby many existing consents, authorisations and licences are integrated into the process;
- Provide a transparent, consistent and simple, yet rigorous, process which enables local communities to better understand how decisions affect them;
- Meet future challenges by being sufficiently flexible to capture the consenting arrangements for developing technologies and any further powers which may be devolved; and
- Provide certainty in time-scales and in decision-making that is underpinned by a clear policy.

A single unified infrastructure consent

- Imposition of limitations and conditions for rights over common and waste lands
- Planning permission
- Harbour Revision or Empowerment Order
- Safety zone designation
- Listed Building Consent
- Control of deposit of building materials
- Consent for works or to deregister common land
- Authorisation of drainage works
- Marine licence
- Felling licence
- Authorisation for persistent organic pollutants
- Consent for work on polluted construction sites
- Compulsory purchase and acquisition
- Consent to carry out coast protection works
- Order requiring diversion of navigable watercourses
- Necessary wayleaves
- Installation permit (Environmental Permitting)
- Protection of habitats licence
- Direction requiring highway to become trunk road
- Scheduled Ancient Monument Consent
- Power to interfere with rights of navigation
- Registration for disposal of polychlorinated biphensys and other dangerous substances
- Compulsory water orders
- Exemption under the Clean Air Act
- Consent to construct and operate generating station
- Waste permit
- Extinguishment of rights held over land
- Stopping up order
- Extinguishment of rights of way
- Order providing construction of bridges over navigable waters

Summary of Bill Provisions

The Bill contains 144 sections arranged in 9 Parts, and 3 Schedules.

Part 1 – Significant Infrastructure Projects

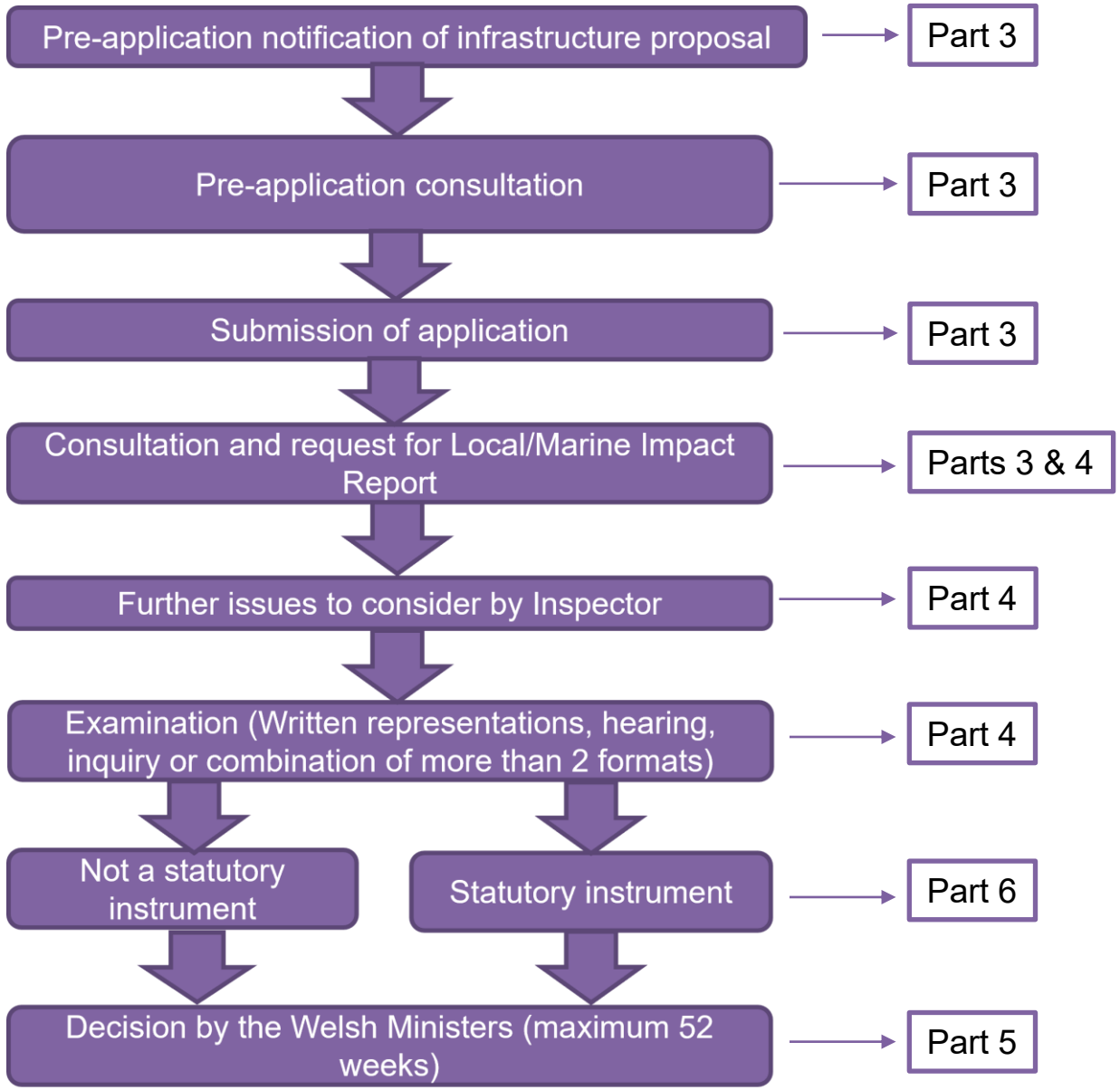
Part 1 of the Bill defines the meaning of Significant Infrastructure Projects and the qualifying projects which will be subject to this consenting process.

Part 2 – Requirement for infrastructure consent

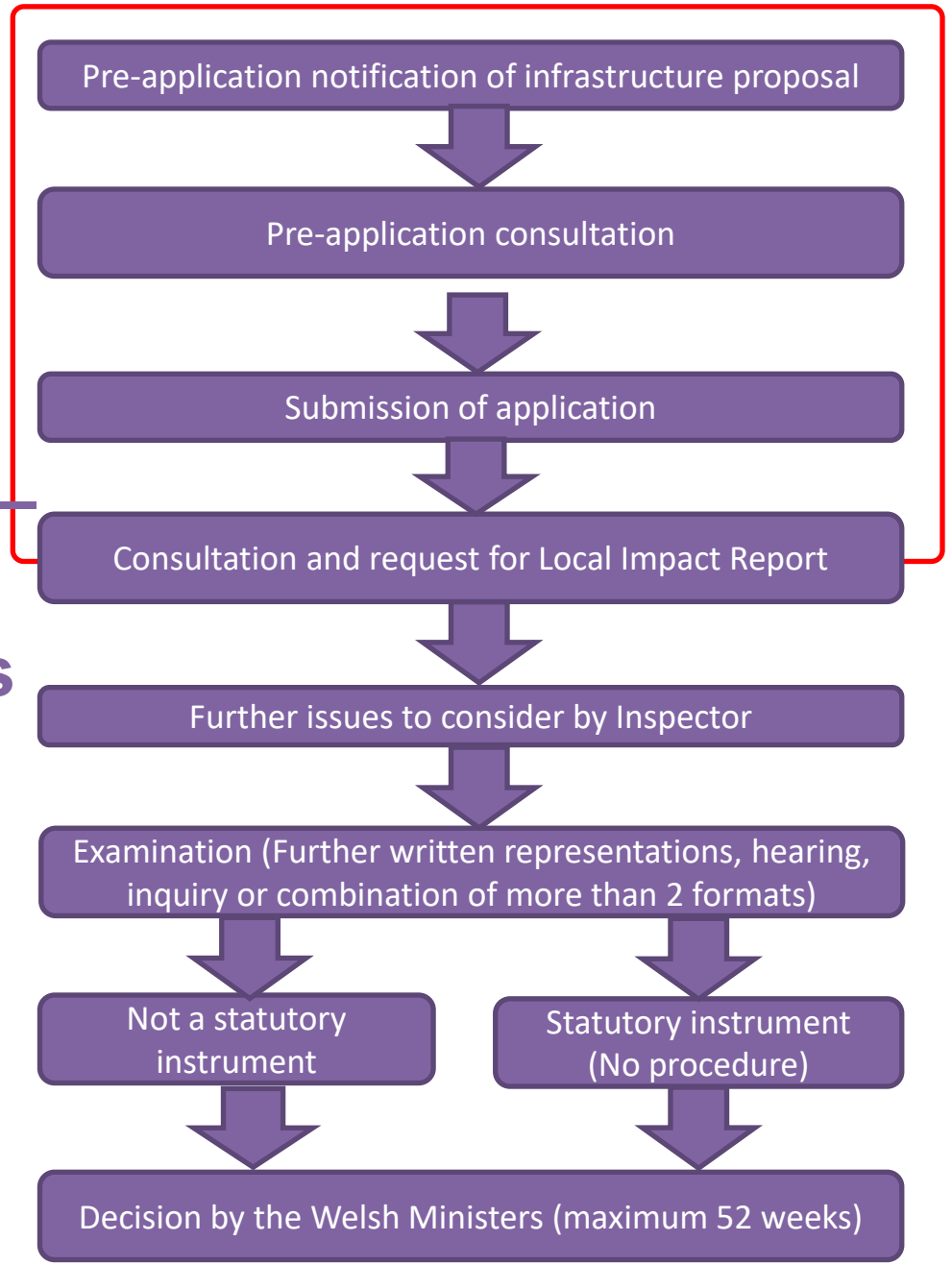
Part 2 of the Bill imposes a requirement for infrastructure consent for development which is or forms part of a significant infrastructure project, and the effect on other statutory regimes.

What infrastructure projects are captured?

Project type	Compulsory threshold
Energy (on and offshore)	50MW+ (Onshore wind) 50MW – 350MW (All other projects)
Overhead electric lines	132KV and a minimum length of 2KM
Highways promoted by Welsh Government	Continuous length of more than 1KM
Ports and harbours	Annual capacity of handling above: - 50,000 twenty-foot equivalent unit container ships, - 25,000 roll-on roll-off ships, or - 500,000 tonne cargo ships
Radioactive waste geological disposal	All works, including investigation and preparation
Open cast coal, underground coal gasification and unconventional oil and gas	All exploitation works
Liquefied natural gas facilities and gas reception facilities	Storage capacity above 43 million cu.m per day, or flow rate above 4.5 million cu.m per day
Railways	2KM+ (Continuous stretch)
Rail freight interchanges	At least 60ha when constructed and handling at least 4 goods trains per day
Airports	1m+ passengers per year; or 5,000+ cargo movements per year
Dams and reservoirs	10m+ cu.m of water
Transfer of water resources	100m+ cu.m of water per year
Waste water treatment plants	Capacity exceeding a population of 500,000
Hazardous waste facilities	100,000+ tonnes per year (Landfill or deep storage facility) 30,000+ tonnes per year (Any other case)


Pre-application notification of infrastructure proposal
Part 3
Pre-application consultation
Part 3
Submission of application
Part 3
Consultation and request for Local/Marine Impact Report
Parts 3 & 4
Further issues to consider by Inspector
Part 4
Examination (Written representations, hearing, inquiry or combination of more than 2 formats)
Part 4
Not a statutory instrument
Statutory instrument
Part 6
Decision by the Welsh Ministers (maximum 52 weeks)
Part 5

Summary – Bill Provisions



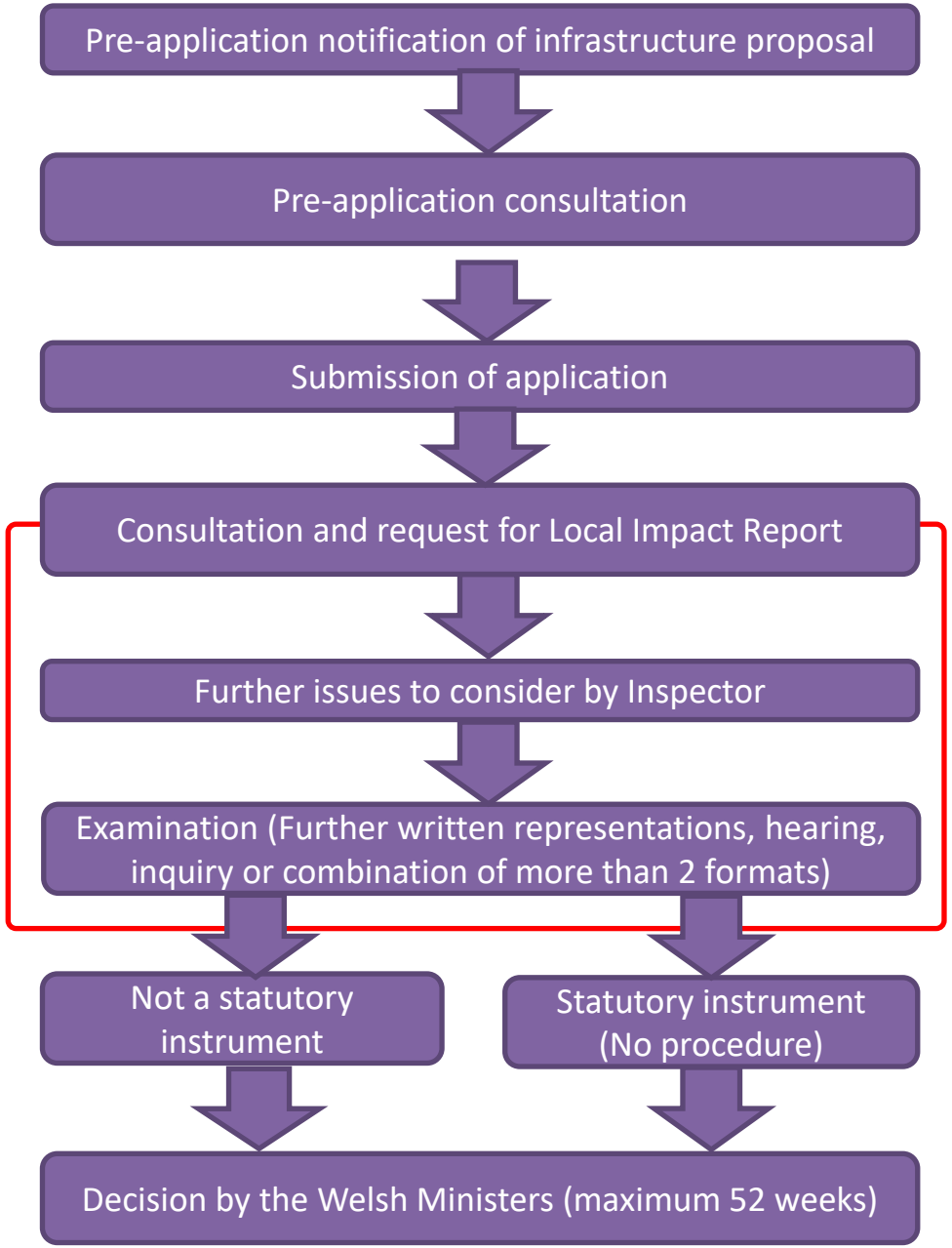
Summary of Bill Provisions cont…

Part 3 – Applying for infrastructure consent

Part 3 of the Bill sets out:

- the pre-application procedure, including seeking pre-application advice, notification of a proposed application and the requirement for pre-application consultation;
- how an application for infrastructure consent is to be made to the Welsh Ministers; and
- the requirements for publicity and notification, which will vary depending on whether a proposed development is onshore or offshore.

This part also sets out some procedures that relate to the compulsory acquisition of land as part of an infrastructure consent.


Pre-application notification of infrastructure proposal
Pre-application consultation
Submission of application
Consultation and request for Local Impact Report
Further issues to consider by Inspector
Examination (Further written representations, hearing, inquiry or combination of more than 2 formats)
Not a statutory instrument
Statutory instrument (No procedure)
Decision by the Welsh Ministers (maximum 52 weeks)

Summary of Bill Provisions cont…

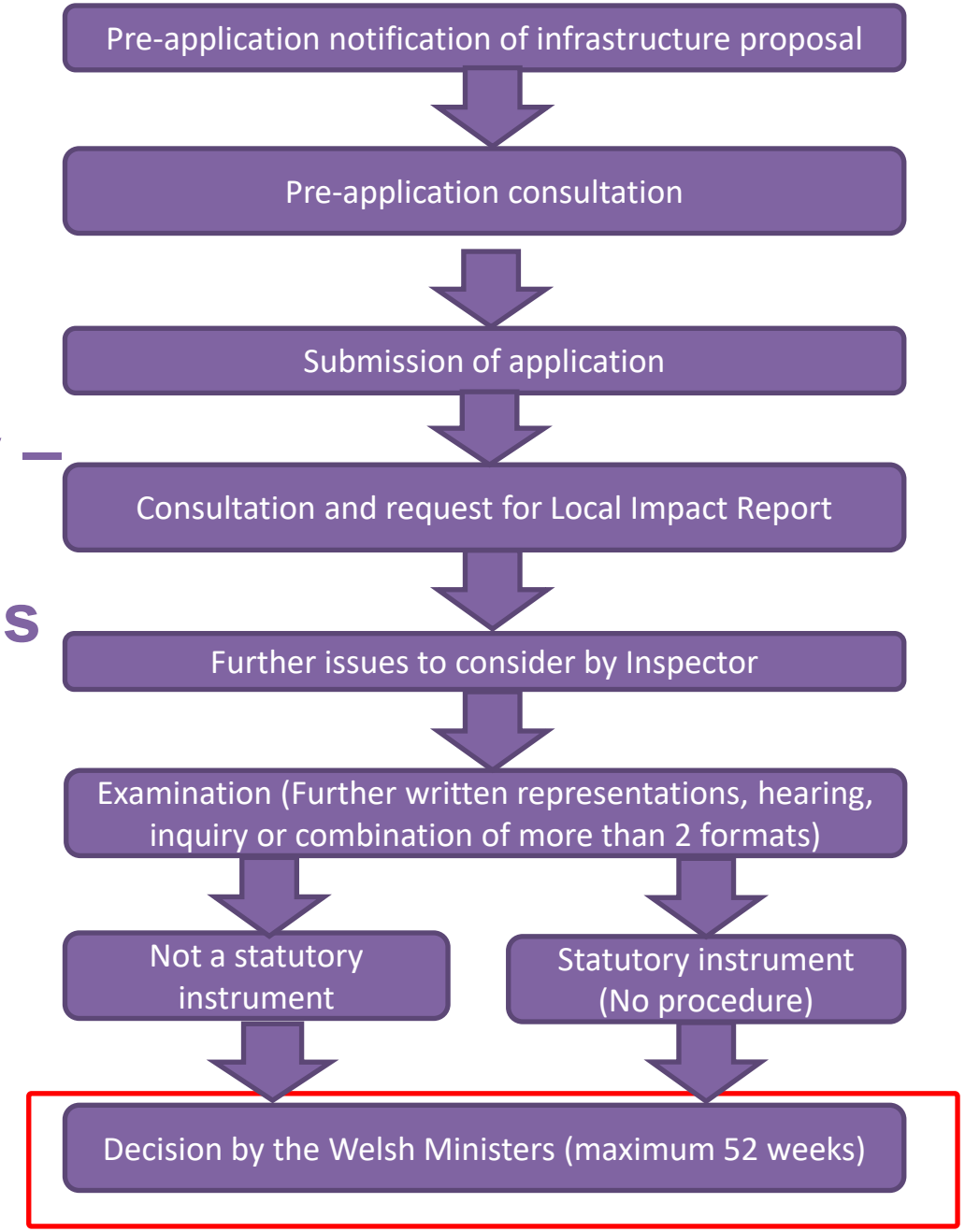
Part 4 – Examining applications

Part 4 of the Bill sets out the processes and procedures for examining applications for infrastructure consent.

This includes:

- the appointment of an examining authority;
- the procedure(s) for examining applications;
- assistance during examinations; and
- reports by examining authorities.

Summary – Bill Provisions



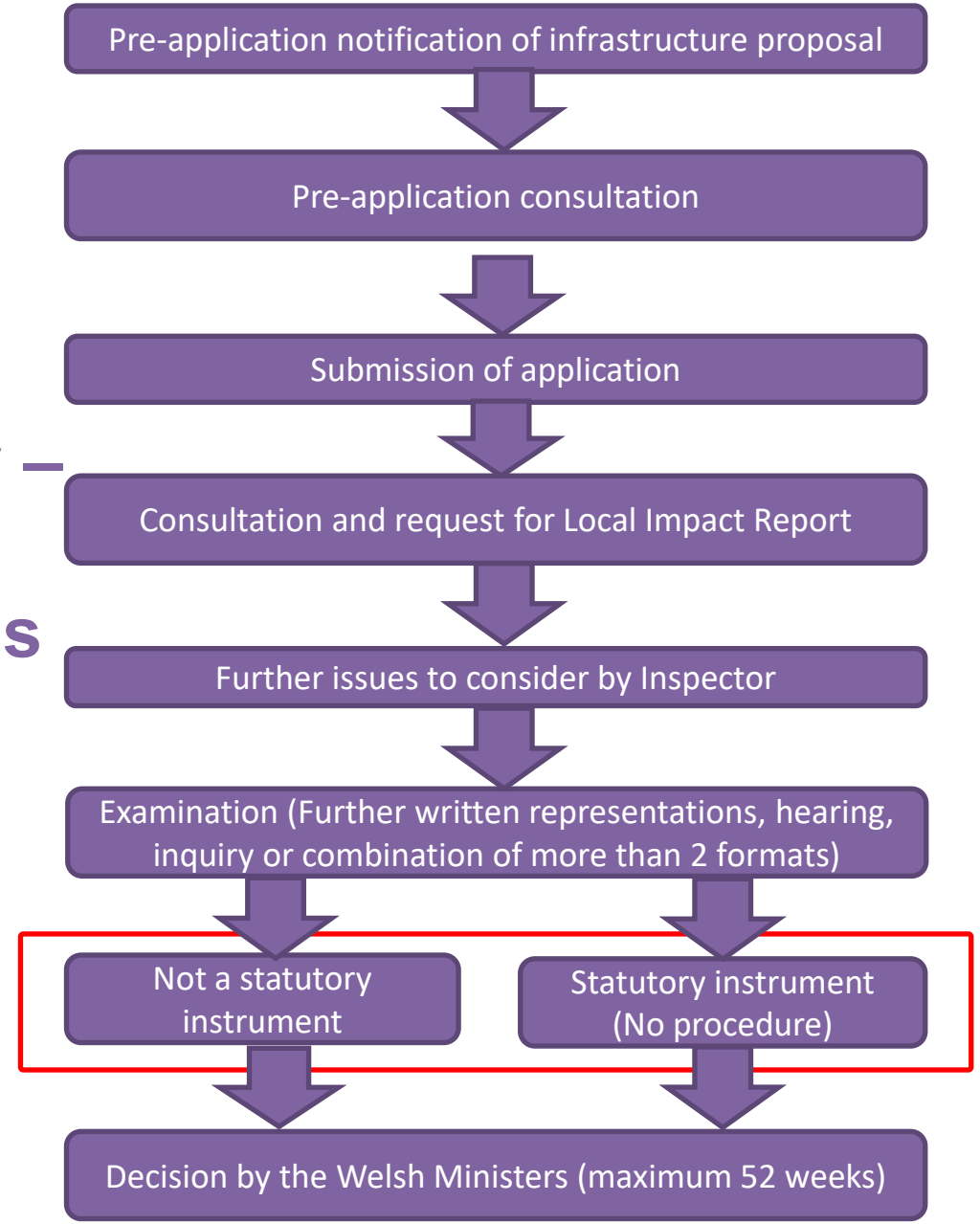
Summary of Bill Provisions cont…

Part 5 – Deciding applications for infrastructure consent

Part 5 of the Bill sets out:

- who decides an application for infrastructure consent;
- what has to take into account when deciding an application;
- the timetable for making the decision; and
- making the decision.

Summary – Bill Provisions



Summary of Bill Provisions cont…

Part 6 – Infrastructure Consent Orders

Part 6 of the Bill sets out:

- What may be included in an infrastructure consent order;
- The requirement to publish infrastructure consent orders;
- How infrastructure consent orders may be amended or revoked;
- The duration of infrastructure consent orders; and
- Legal challenges.

This part also sets out some procedures that relate to the compulsory acquisition of land as part of an infrastructure consent.

Summary of Bill Provisions cont…

Part 7 – Enforcement

Part 7 of the Bill contains provisions about offences relating to development without infrastructure consent and a breach of, or failure to comply with, the terms of an infrastructure consent order and the ability to serve notices of unauthorised development.

Part 8 – Supplementary functions

Part 8 of the Bill provides a number of supplementary functions, mainly for the Welsh Ministers, to facilitate the operation of the system established by the Bill.

Part 9 – General provisions and schedule 1, 2, and 3

Part 9 and the Schedules of the Bill contains general provisions which relate to multiple parts or all of the Bill, including matters ancillary to development, compensation for changing or revoking infrastructure consent orders and consequential amendments and repeals.

Thoughts and Comments?

Comisiwn Seilwaith Cenedlaethol Cymru
National Infrastructure Commission Wales

RTPI Cymru
Royal Town Planning Institute
Sefydliad Cynllunio Trefol Brenhinol

PEDW Perspective

Victoria Robinson

Chief Planning Inspector

Planning and Environment Decisions Wales

PCAC
PEDW

Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Presentation to Infrastructure (Wales) Bill Event: Observations from Planning and Environment Decisions Wales (PEDW)

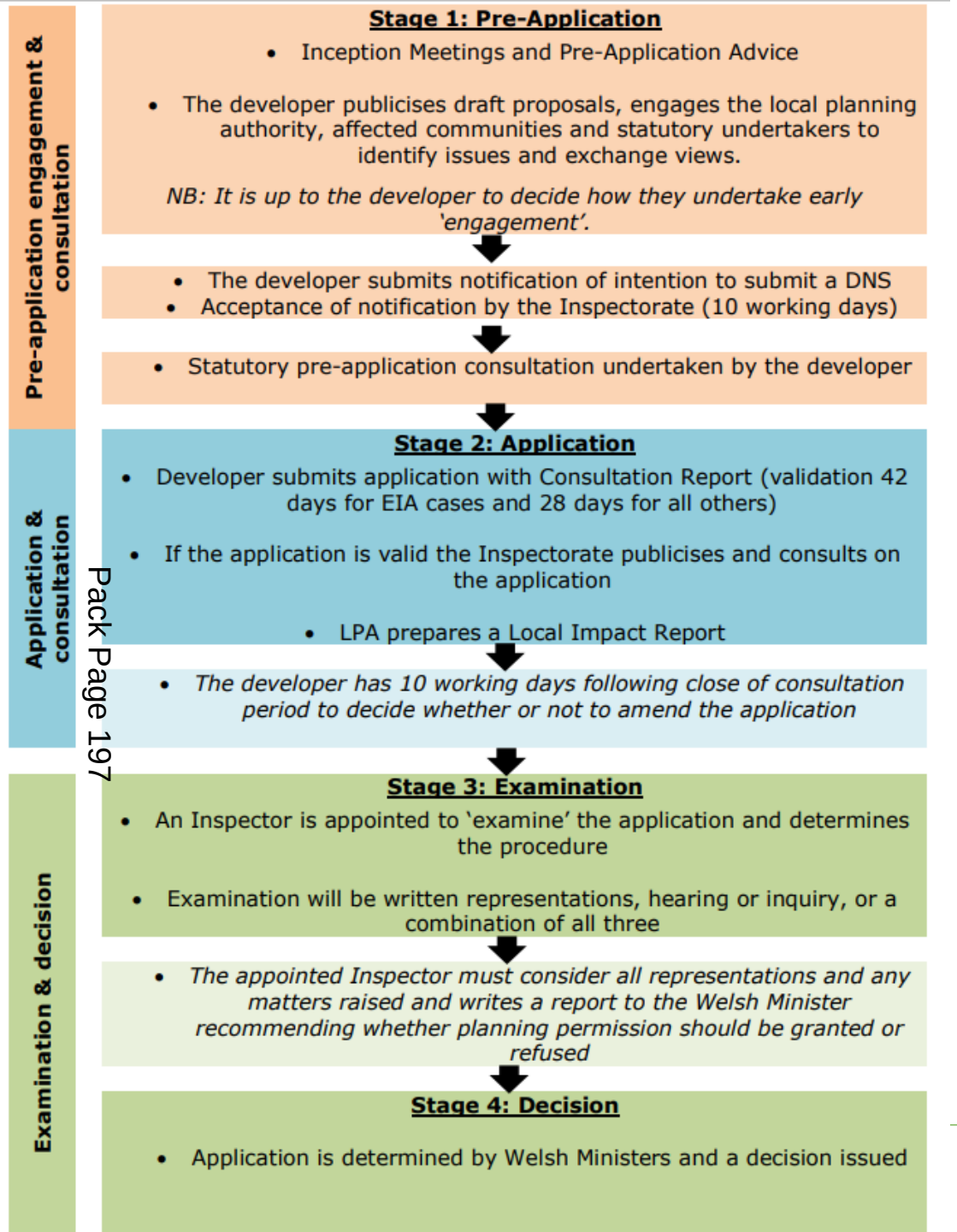
Vicky Robinson, Chief Planning Inspector

Introduction to PEDW

PCAC PEDW
Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

- Formerly Wales Directorate of Planning Inspectorate for England and Wales (PINS), PEDW was established on 1st October 2021
- Team of 22 Planning Inspectors and 29 support staff - home working and Pan-Wales offices
- Deal with Planning and Environmental casework in Wales on behalf of the Welsh Ministers, including:

Developments of National Significance (DNS), Harbour Revision Orders (HRO), Electricity Act, Transport and Works Act, Compulsory Purchase Orders (CPO), Environmental Permitting and Marine Licence appeals



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Planning & Environment Decisions Wales

DNS Process Overview

- Pre application 'engagement'
- Application and Consultation
- Examination by Inspector
- Decision by Welsh Ministers

Local Impact Reports (for DNS)

PCAC PEDW
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Planning & Environment Decisions Wales

- Fee paid by applicant to LPA for LIR £7,750
- LPA must submit an LIR within 5 weeks of notification
- Details of the likely impact of the proposed development on the authority's area based on their local knowledge and robust evidence of local issues, and should list the impacts and their relative importance.
- Provide factual, objective view of the impacts of the proposed development on the area in terms of their **positive, neutral** and **negative** effects

Local Impact Reports (for DNS)

PCAC PEDW
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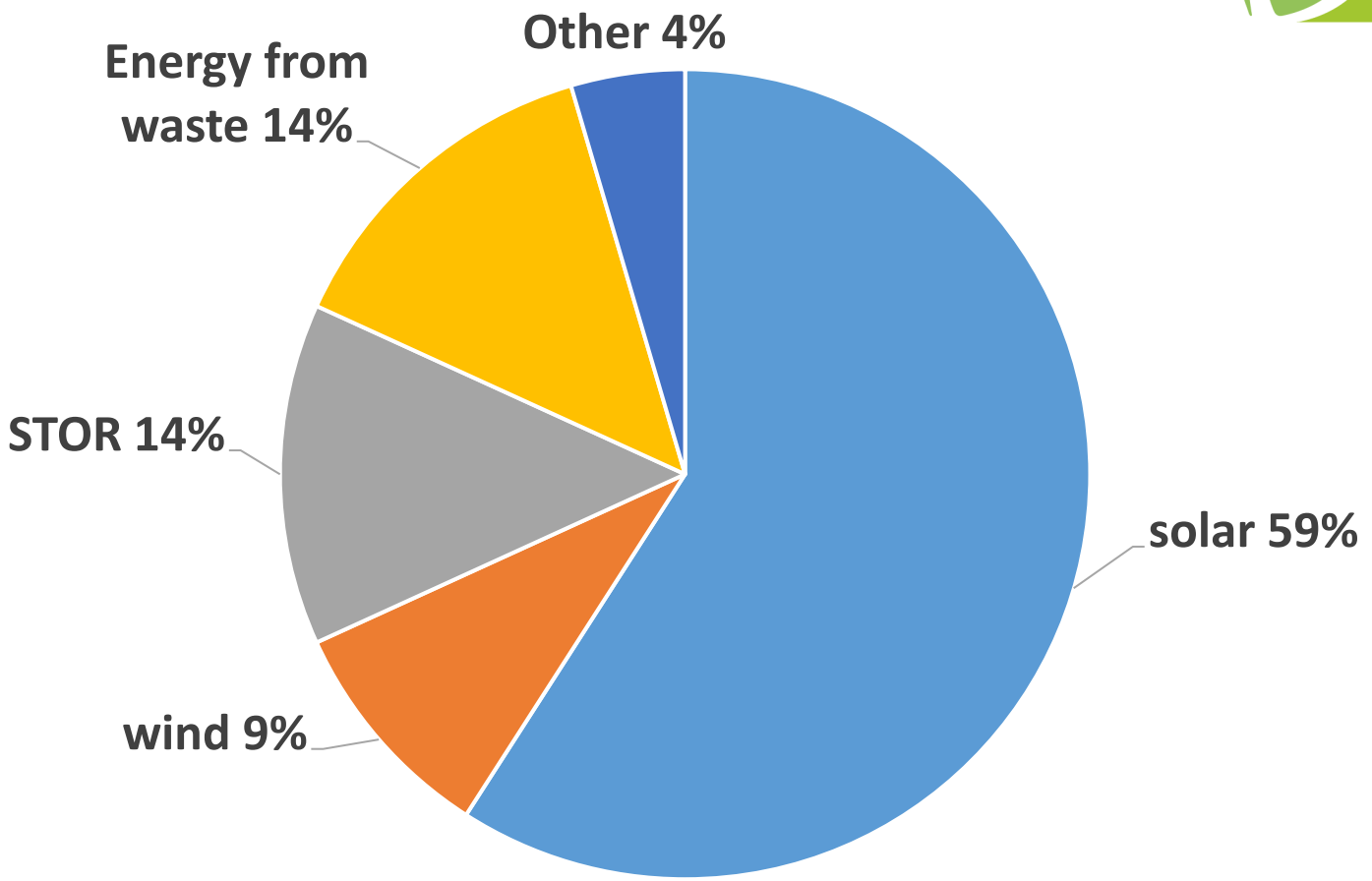
Planning & Environment Decisions Wales

The minimum requirements for the content of a mandatory LIR is as follows:

- ✓ The likely impact of the DNS development on the area
- ✓ Planning History
- ✓ Local designations relevant to the site / surroundings,
- ✓ The likely impact of any application in relation to a secondary consent being granted,
- ✓ Any relevant local planning policies, guidance or other documents,
- ✓ Draft conditions or obligations which the LPA considers necessary for mitigating any likely impacts of the development,
- ✓ Evidence of the Publicity undertaken by the LPA in accordance with the Procedure Order, i.e. a copy of the Site Notice, a photograph of the Site Notice on display and a map showing the location of the Site Notice.

DNS – the story so far: Decided Applications

PCAC PEDW
Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales



DNS ‘Live’ Applications with PEDW (September 2023)

PCAC PEDW
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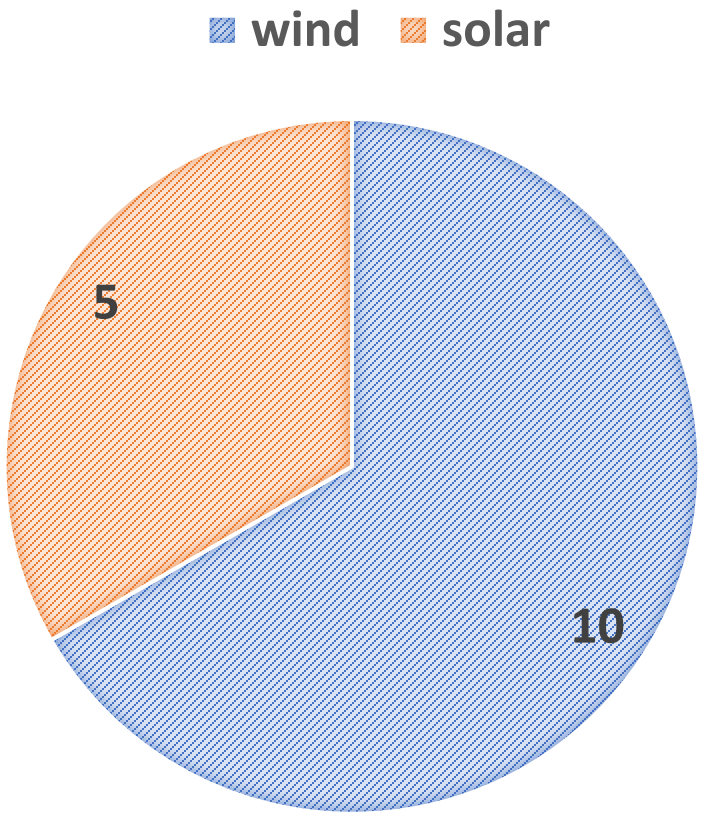
Planning & Environment Decisions Wales



DNS – the story so far: Decided Applications

PCAC PEDW
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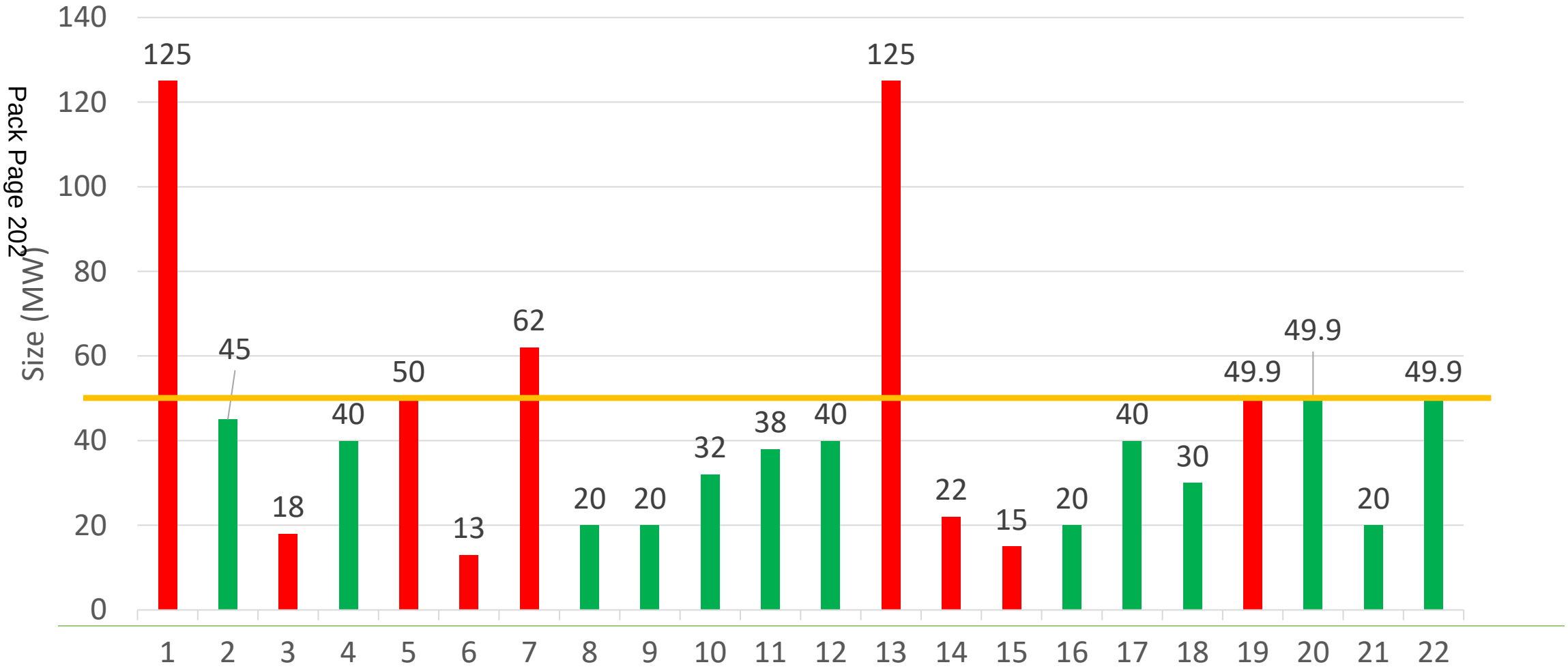
Planning & Environment Decisions Wales



DNS – the story so far: Decided Applications

PCAC PEDW
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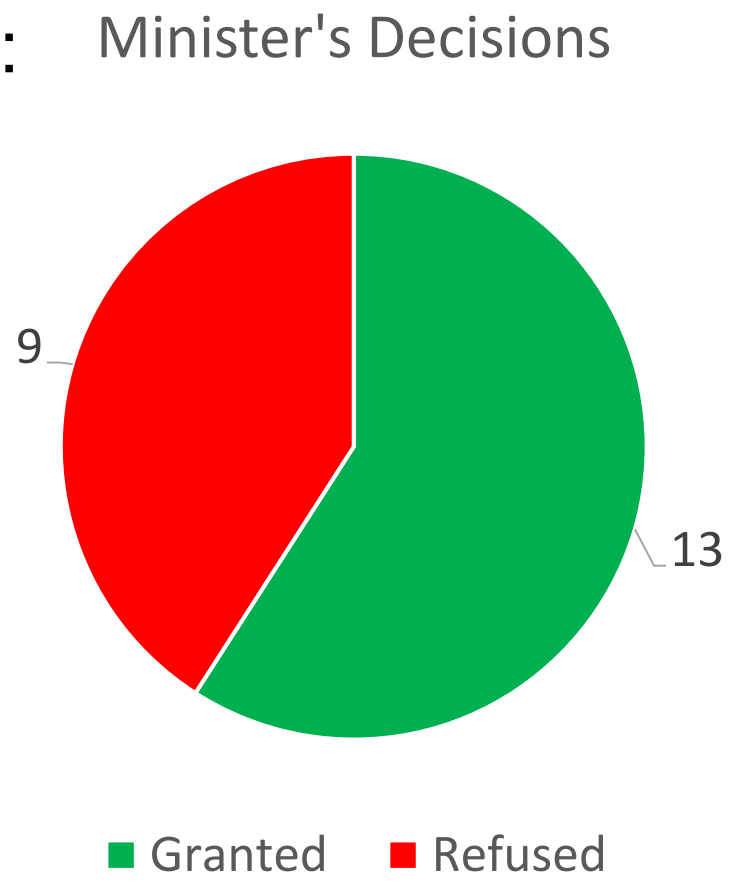
Planning & Environment Decisions Wales

The Welsh Ministers have determined **22 DNS**:

- 2023 (so far) - 5 (2 granted, 3 refused)
- 2022 - 5 (3 granted, 2 refused)
- 2021 - 5 (2 granted, 3 refused)
- 2020 - 2 (2 granted)
- 2019 - 1 (1 granted)
- 2018 - 3 (2 granted, 1 refused)
- 2017 - 1 (1 granted)



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Planning & Environment Decisions Wales

Other Infrastructure Applications

- Holyhead
  (Harbour Revision Order)
- Erebus offshore floating wind farm (Electricity Act)
- Morlais Tidal Energy project
  (Transport and Works Act)

DNS limitations

PCAC PEDW
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"the DNS process is limited in scope, there is limited flexibility for changes and only a small range of secondary consents can be applied for concurrently and do not form part of the main decision"

[Explanatory Memorandum]

PEDW Observations on the Bill

PCAC PEDW
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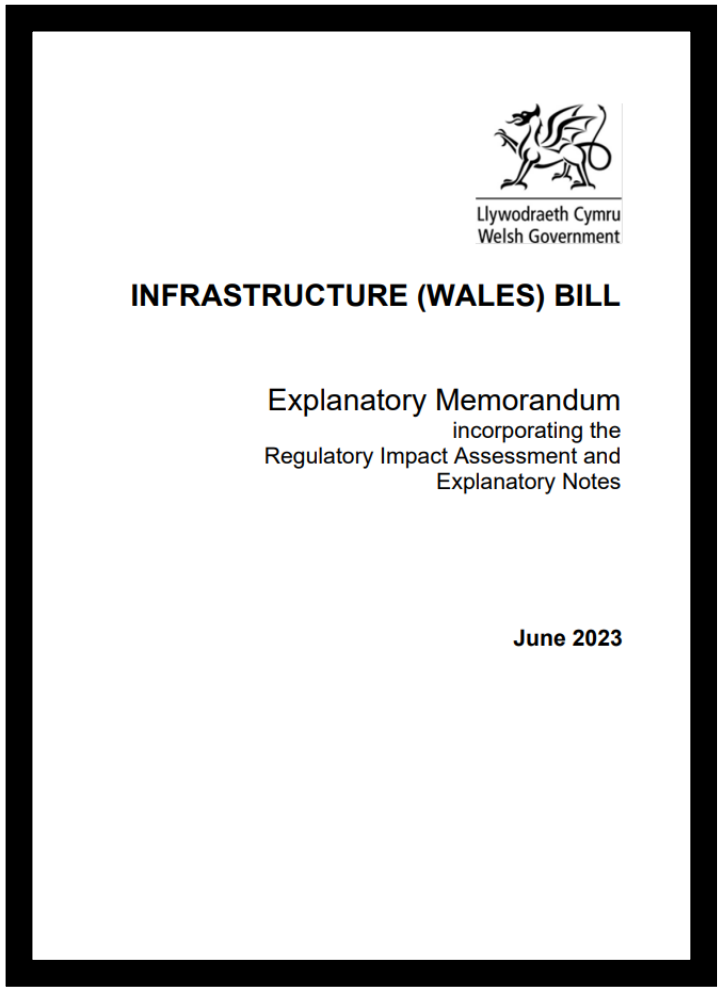
Planning & Environment Decisions Wales



"The timely and effective delivery of major infrastructure and low carbon development in the right locations requires simplified and efficient consenting arrangements."

Introduction to the Bill

PCAC PEDW
Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

- Current legislation may need separate applications for certain permissions, consents and licences
- new regime that adopts a 'one-stop-shop' approach where consents and other permissions can be sought in one application and decision-making process
- aims to be more transparent and consistent allowing local communities to better understand and engage in decisions
- vital to the timely delivery of major infrastructure in Wales

What is a Significant Infrastructure Project (SIP)?

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Planning & Environment Decisions Wales

- Sections 2 – 16 set out what types of Energy, Gas, Mining, Transport, Water and Waste project are SIP
- Thresholds to be set out in secondary legislation or is designated as nationally significant within ‘Future Wales’ (none in current version).
- Tier of optional SIP thresholds and criteria would sit below compulsory ones – choice over the IC process or TCPA planning application regime. Welsh Ministers would ultimately decide whether the development constitutes a SIP requiring an IC.
- Section 22 - Welsh Ministers may give a direction that a specific development is a significant infrastructure project, if its of national significance

Project type	Compulsory threshold
Energy (on and offshore)	50MW+ (Onshore wind) 50MW – 350MW (All other projects)
Overhead electric lines	132KV and a minimum length of 2KM
Highways promoted by Welsh Government	Continuous length of more than 1KM
Ports and harbours	Annual capacity of handling above: - 50,000 twenty-foot equivalent unit container ships, - 25,000 roll-on roll-off ships, or - 500,000 tonne cargo ships
Radioactive waste geological disposal	All works, including investigation and preparation
Open cast coal, underground coal gasification and unconventional oil and gas	All exploitation works
Liquefied natural gas facilities and gas reception facilities	Storage capacity above 43 million cu.m per day, or flow rate above 4.5 million cu.m per day
Railways	2KM+ (Continuous stretch)
Rail freight interchanges	At least 60ha when constructed and handling at least 4 goods trains per day
Airports	1m+ passengers per year; or 5,000+ cargo movements per year
Dams and reservoirs	10m+ cu.m of water
Transfer of water resources	100m+ cu.m of water per year
Waste water treatment plants	Capacity exceeding a population of 500,000
Hazardous waste facilities	100,000+ tonnes per year (Landfill or deep storage facility) 30,000+ tonnes per year (Any other case)

What Infrastructure Consent (IC) replaces / includes…

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Planning & Environment Decisions Wales

- Part 1 of the Bill defines the meaning of Significant Infrastructure Projects and the qualifying projects which will be subject to this consenting process.
- IC will replace DNS and other existing regimes e.g. the Electricity Act 1989, the Transport and Works Act 1992, the Highways Act 1980 and the Harbours Act 1964
- **Marine licences** (current determined by NRW) - requirement for NRW to submit a Marine Impact Report (“MIR”), which documents the likely impact on the marine environment where an applicant seeks to deem a marine licence alongside its IC
- Includes compulsory acquisition powers (see Part 3 of Bill)

Objectives of the Bill - Consistency

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To enable the public and developers to engage with **a single process** across all infrastructure types, providing administrative **efficiency** for decision-makers and **familiarity** with those who engage with it, which will **reduce delays**.

Objectives of the Bill - Certainty

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Planning & Environment Decisions Wales

To provide certainty in terms of **timescales** for all involved, so that the public are clear on **when decisions are made**, and proceedings are not unnecessarily prolonged, and to enable developers to plan projects with more accuracy.

Objectives of the Bill – Chances of success

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To provide a **clear strategic and policy framework** on which decisions are made, to enable a developer to know their prospects of success in advance of an application for consent being made.

Objectives of the Bill – Quality of applications

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To provide **minimum bars** in terms of pre-application consultation and submission requirements to enable decision-makers to **better ascertain the impacts** of development from the outset, while providing **more informed** information to the public.

Objectives of the Bill – Avoid Confusion

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To provide a more **consistent and inclusive** process, which enables those who are not familiar with engaging with the planning process to engage more effectively.

Objectives of the Bill – Limit Complexity

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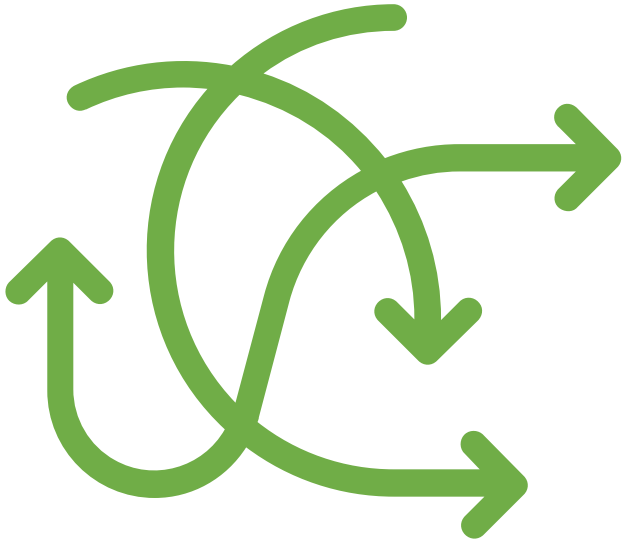
To enable a developer to obtain all the authorisations and consents it needs to implement a project, **removing** the need for the public to engage with **multiple consenting processes**, and lowering overall costs for all.



Impact of the Bill: Decision Making

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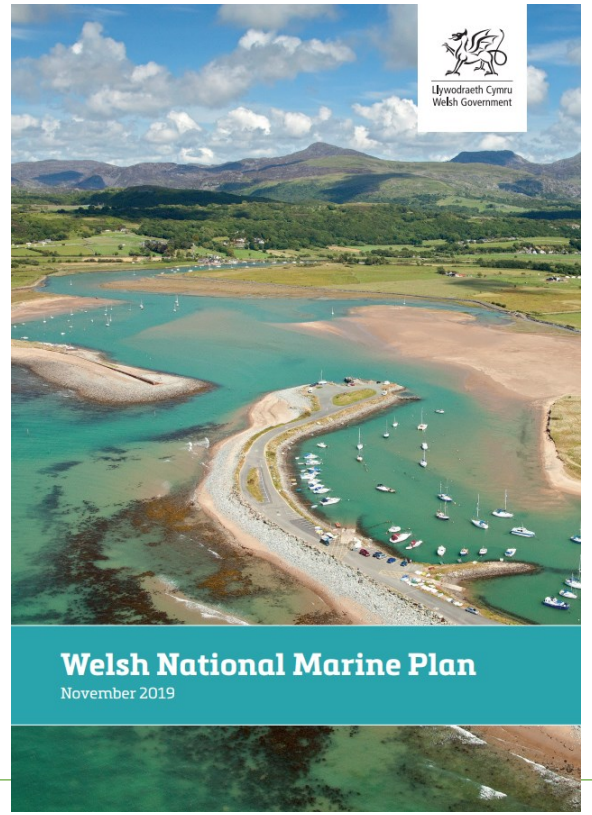
Part 5 of the Bill contains provisions about deciding applications for infrastructure consent.

Section 53 prescribes that applications for infrastructure consent **must be decided in accordance with** any infrastructure policy statement, the National Development Framework for Wales or any marine plan.



IC Decision Making: Policy Framework

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Future Wales, WNMP and PPW provide a policy framework used to inform the determination of infrastructure projects.

FW Policies 17 and 18 provide locational and criteria specific planning policies for the determination of renewable and low carbon energy projects of national significance (10 megawatts and above).

IC Decision Making: Have regard to…

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Section 54 places a duty to have regard to the following when deciding an application for infrastructure consent:

- local impact report or marine impact report
- the examination
- any matters specified in regulations in relation to the development
- any other material considerations.

Decision Making: Material Considerations

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Planning & Environment Decisions Wales

- Planning Policy Wales (PPW)
- Technical Advice Notes (TANs)
- Local & Strategic Development Plans (LDP/SDP)
- Local Impact Reports & Marine Impact Reports
- Statutory Consultee Responses
- Other Representations

Examination of IC Applications

PCAC PEDW
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Planning & Environment Decisions Wales

Part 4 of the Bill sets out the processes and procedures for examining applications for infrastructure consent

Procedure - Section 41: Choice of inquiry, hearing or written procedure (or combination)

Reporting - Section 49 Following the examination, the examining authority must make a report to the Welsh Ministers setting out its findings and conclusions in respect of the application and its recommendations as to the decision to be made.

Detail to follow…

PCAC PEDW
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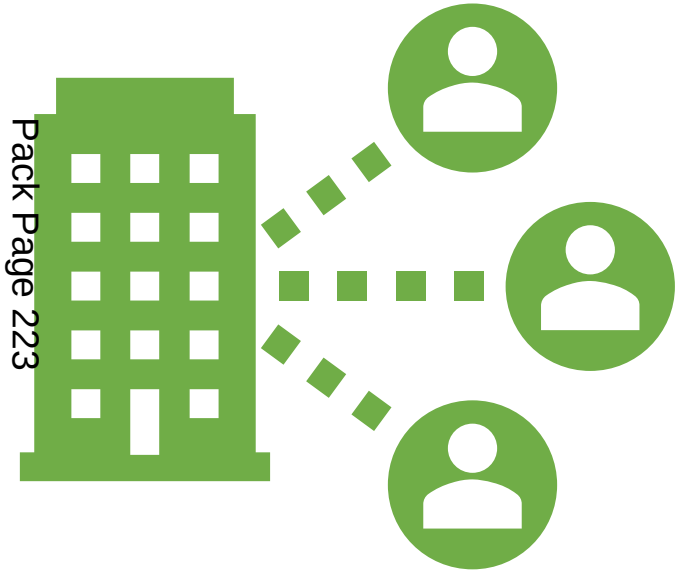
Planning & Environment Decisions Wales

Much of the process and procedures are reserved for future Regulations… such as:

- Process for deciding whether projects <50MW should be a SIP
- Specific content of LIRs and MIRs under the IC regime
- Fees for performance of infrastructure consent functions
- Prescribed consultation mechanisms
- Examination procedures
- Form and content of the IC Order

PEDW Action in Response to Bill

PCAC PEDW
Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales



- New **Infrastructure Consenting Manager** to support the administration of efficient processing of current DNS and future IC regime
- Work with WG Planning Directorate to prepare **procedural guidance** for all involved in new IC process
- New **Digital Officer for PEDW** will help improve our digital platforms (front and back-office) to support new IC regime
- **Capacity and capability** building across PEDW to respond to additional resource demands
- **Collaborative** working with partners to coordinate action

PCAC
PEDW
Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Contact Us:

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Comisiwn Seilwaith Cenedlaethol Cymru
National Infrastructure Commission Wales

RTPI Cymru
Royal Town Planning Institute
Sefydliad Cynllunio Trefol Brenhinol

Legal Viewpoint

Cathryn Tracey

Director

Burgess Salmon

Initial Legal Response

Cathryn Tracey

14 September 2023

Part 1 - SIPs

Principal designations of SIPs will be through the IA.

Follows the regime set out in the Planning Act 2008 for NSIPs.

Power for WM to amend the list (but limited to those categories already listed). If not need to use s22.

How are cross border grid projects consented?

How is installed capacity measured?

How are onshore wind projects over 10MW but below 50MW consented?

Part 2 – Requirement for IC

Section 20 removes the need for other consents if IC required

Section 22 enables a direction to be secured specifying a development as a SIP

Section 24 – direction that development is NOT a SIP

Generally reflects s35 PA 2008 power, but projects can be directed as SIPs post application.

What would be considered 'of national significance'?

Section 24 - Not available for NSIPs

No timeframe for determining request, or information of form of request or information to be provided or persons to be notified – all to be in regulations

Parts 3 & 4 – Application & Examination

Notices of proposed applications, pre-app consultation and publicity

WM to determine validity, notify and publicise the application post acceptance

Procedure determined by ExA, reports to WM, WM can direct reopening of examination

All the detail to come in regulations re criteria, timescales, forms, content

Resourcing?

Lack of fixed timetable

LIRs proposed – anything which can be learnt from the DNS regime?

Part 5 – Determination

WM can direct who determines the application – ExA or WM

Determine in accordance with policy

Associated Development

Determine within:

52 week; or

As otherwise agreed; or

As directed by the WM

All details to follow in regulations

Infrastructure Policy Statements will be critical to the SIP regime

Guidance on associated development essential

Lack of certainty on timescales

Part 6 – Infrastructure Consent Orders

- Compulsory acquisition of land
- Creation, interference of interest and rights in land (including navigation over water)
- Operation of generating station
- Keeping electric line installed above ground

- Surveys or soil samples
- Cutting down trees or shrubs etc
- Removal, disposal or relocation of apparatus
- Carrying out of civil or other engineering works
- Deeming a marine licence

Part 6 – cont'd

May remove requirement for specific consent or deem consent to have been granted

Will require consent or non-refusal of consenting authority within specified period

ICO can be changed or revoked by Order

Detail of what can be disapplied will be in regulations.

Non-refusal provisions to be welcomed

Broader than the PA 2008 and not limited to non-material changes

Scope of changes

Timescales

Parts 7, 8 & 9 – Enforcement etc

Criminal Offence - fine

Fees – specified public authorities can charge fees

Enforcement follows the PA 2008

Who will be the specified authorities?

What will the fees be?

What service will applicants receive?

Summary

Too much in regulations with risks of inconsistencies and misunderstandings between different sets of regulations

Infrastructure Policy Statements are of critical importance

Lack of specific timescales and those that are included are in context of being capable of extension

How are 10-50MW onshore wind schemes to be consented?

Lack of clarity around cross-border projects and s2(1)(e) for above ground electric lines

Lack of detail on transitional arrangements

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Comisiwn **Seilwaith** Cenedlaethol **Cymru**

National **Infrastructure** Commission **Wales**

RTPI Cymru

Royal Town Planning Institute

Sefydliad Cynllunio Trefol Brenhinol

Infrastructure (Wales) Bill Event

18th September 2023

Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

–

Legislation, Justice and Constitution Committee

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Julie James MS
Minister for Climate Change

27 July 2023

Dear Julie,

Infrastructure (Wales) Bill

Thank you for accepting our invitation to attend our meeting on 25 September 2023 to discuss the Infrastructure (Wales) Bill (the Bill).

Ahead of that session, we have a number of questions to ask you about the Bill. I would be grateful to receive a response to the questions in the Annex by Friday 8 September.

I am copying this letter to the Climate Change, Environment, and Infrastructure Committee.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

ANNEX

Question 1: Please can you provide a narrative explaining in broad terms how the new infrastructure consenting process will work, identifying key players, processes and milestones and how it differs from the existing process.

Question 2: The Explanatory Memorandum, at paragraph 3.9, states "the differences between [infrastructure consenting] regimes have perpetuated and further widened with devolution of energy infrastructure under the Wales Act 2017". Please would you provide further clarity and explanation about these differences.

Question 3: The Explanatory Memorandum, at paragraph 3.19, states that having a unified consent process "would enable the Welsh Minister to include other consents and authorisations required in a 'one stop shop' approach". Could you explain further what this means, and provide additional explanation.

Question 4: Please would you confirm the number and breakdown by type of all delegated powers in the Bill, including regulation-making powers (including whether a power is a Henry VIII power), direction-making powers and order-making powers, and the scrutiny procedure attached to each.

Question 5: In the Explanatory Memorandum, the regulations needing to present or accommodate "significant detail" is used as a justification for the use of the negative procedure in respect of a number of delegated powers in the Bill. These include sections 27(1), 31(4), 33(3), 34, 53(4), 55, 126, and 129(2). A similar explanation is provided for the regulation-making power in section 128 of the Bill which is subject to the affirmative procedure. Please would you provide further clarity and explanation as to how the need to present or accommodate "significant detail" is relevant to the choice of procedure in each of these provisions?

Question 6: In the Explanatory Memorandum, the ability to "legislate swiftly" is used as a justification for the use of the negative procedure in respect of a number of delegated powers in the Bill. These include sections 26, 27(1), 28(5), 29(1)(d), 30(2) and (3), 31(4), 31(5), 33(2)(c), 33(3), 33(5), 35(4)(b), 36(4)(b), 37(2) and (3), 38, 41(3), 41(5), 42, 45(6), 52(1), 53(4), 54(d), 55, 56(4) and (6), 57(6), 59(3), 62(4), 69(1) and (2), 81(1), 81(4), 85, 88(1) to (3) and (5) to (7), 91(3), 92(2), 93(7)(b), 110(8), 115(1), 125(6) and (7), 126(1), (3) and (4), 127(2)(c), 127(3) and (4), 133(2)(e), and 141. How is the need to act "swiftly" relevant to the choice of procedure in each of these provisions?

Question 7: Section 22 of the Bill deals with directions specifying a development as a significant infrastructure project. a) Please would you confirm the purpose of, and requirement for, the direction and regulation-making powers contained within section 22 of the Bill? b) We note that there is a separate power to add, vary or remove significant infrastructure projects in section 17 of the Bill. Why will the powers in section 22 be required, given that the powers in section 17 are also provided to the Welsh Ministers?

Question 8: In relation to section 30(2) and (3) relating to pre-application consultation, the Explanatory Memorandum, in describing the appropriateness of the delegated power, states the requirements set out in the regulations will accommodate "a significant level of detail which would encumber the reading of the Bill". The Explanatory Memorandum also describes the requirement to undertake pre-application consultation as "a minor procedural matter". a) Could you explain further what this means? b) Why have you taken the view that a requirement to undertake pre-application consultation is a minor matter?

Question 9: In relation to section 31(5) relating to applying for infrastructure consent, the Explanatory Memorandum, in describing the appropriateness of the delegated power, states the list of potential functions will present "a significant level of detail which would encumber the reading of the Bill". The regulations will be subject to the negative procedure, and may confer a function on any person, including the exercise of a discretion. A similar explanation is provided for the regulation-making power in section 128 of the Bill which is subject to the affirmative procedure. Could you explain further what this means and why you take the view that this is a "minor technical matter"?

Question 10: Section 34 deals with regulations about notices and publicity. Section 34(1)(b) states that regulations may impose requirements on persons specified in the regulations to respond to a notice under section 33(2). What requirements will be imposed and are there any requirements that could not be imposed?

Question 11: Section 37(4) defines an "affected person" for the purpose of that section. It states that a person is an "affected person" if the applicant "after making diligent inquiry" knows that the person is interested in the land to which the compulsory acquisition request relates. a) What is meant by "diligent inquiry"? b) How will this be tested? c) Is this an established concept in the current law relating to applying for infrastructure consent and/or compulsory acquisition requests?

Question 12: Section 38 enables regulations to be made which will require consultation in relation to compulsory acquisition. It is our understanding that subsection (1) contains the regulation-making power in this section. a) Please would you clarify how subsections (2) and (3) will operate and, in particular, confirm that the reference to subsection (2) in subsection (3) is correct. b) Under what circumstances will consultation not be required?

Question 13: Section 42 enables regulations to be made that will make provision about the procedure to be followed in connection with the examination of an application under Part 4 of the Bill. a) Please would you provide further explanation and clarity regarding the direction specified in subsection (3), and confirm which power will be relied upon in order to 'switch' decision maker (from the Welsh Ministers to the examining authority, and vice versa). b) The Explanatory Memorandum, in describing the appropriateness of the regulation-making power in section 42, states the details in the regulations will accommodate a "significant level of detail which would encumber the reading of the Bill". The regulations will be subject to the negative procedure. A similar explanation is provided for the

regulation-making power in section 128 of the Bill which is subject to the affirmative procedure. Could you explain further what this means and why you take the view that this is a minor matter?

Question 14: Section 43 enables regulations to make provision for powers of entry to inspect land owned or occupied otherwise than by the applicant. a) What principles will apply to the powers to enter land and why are they not on the face of the Bill? b) Who is covered by the phrase "a person, alone or with others" for the purpose of section 43? c) This regulation-making power is not subject to the affirmative procedure, as it is not listed in section 138(4) of the Bill. Why was the negative procedure considered to be appropriate in this case? The Explanatory Memorandum states only that the power to enter land is "a minor procedural matter in the wider legislative scheme".

Question 15: Section 45 relates to access to evidence at a local inquiry. Subsection (6) contains a regulation-making power which will enable regulations to make provisions about procedures to be followed and the functions of an appointed representative. The Explanatory Memorandum, in describing the appropriateness of the delegated power, states that this matter is considered suitable to be included in regulations "as arrangements need to be flexible to respond to future changes in procedure". The justification does not appear to address subsection (6)(b) which will enable the regulations to provide for the functions of an appointed representative, and which does not relate to procedures. Please would you provide further clarity, including an explanation of what the functions of an appointed representative are and how they might change over time.

Question 16: Section 55 enables the Welsh Ministers to make regulations which specify matters that the examining authority or the Welsh Ministers may disregard in deciding an application for infrastructure consent. What is the purpose of this provision and what matters may be disregarded? The Explanatory Memorandum provides no detail about what this provision seeks to achieve, only that the matters "will present a significant level of detail and will also need to be flexible to respond to any future changes in procedure".

Question 17: Section 56(6) provides a power for regulations to amend section 56(1)(a). This is a Henry VIII power enabling the amendment of primary legislation. As such why are regulations made under section 56(6) not included in section 138(4) of the Bill so as to require them to follow the affirmative procedure?

Question 18: Section 57 deals with the granting or refusal of infrastructure consent. Subsection (6) enables regulations to be made which will make provision regulating the procedure to be followed if the Welsh Ministers propose to make an infrastructure consent order on terms which are "materially different" from those proposed in the application. Such regulations are to be subject to the negative scrutiny procedure. Given that "materially different" is likely to include changes which are more than minor in nature, and could include significant changes, please would you clarify why you consider the negative procedure to be appropriate for such regulations.

Question 19: Section 59 of the Bill relates to the reasons for a decision to grant or refuse infrastructure consent. Are there any persons who will always be provided with a copy of a statement by the Welsh Ministers under section 59(3)?

Question 20: Section 81 of the Bill relates to removing consent requirements and deeming consents. a) What specific consents are covered by section 81(1)(a)? b) Under section 81(4) regulations may provide exceptions to the requirement to meet the conditions in subsections (2) and (3). What are the exceptions and why can they not be placed on the face of the Bill?

Question 21: Section 82 of the Bill relates to the publication and procedure for infrastructure consent orders. Subsection (4) requires the Welsh Ministers to lay a copy of a statutory instrument, a plan and a statement of reasons before the Senedd. We note that section 138(5) of the Bill provides that the negative procedure is intended to apply to any instrument containing regulations to which 138(4) does not apply. An instrument made under section 82 is not listed in section 138(4). Is it intended that such an instrument would follow the negative resolution procedure, or is a wholly new procedure intended?

Question 22: Please would you confirm our understanding that section 84(4) contains an order-making power, and that the Explanatory Memorandum will be amended accordingly at the next available opportunity.

Question 23: In relation to section 88, which relates to the procedure for changing and revoking infrastructure consent orders, the Explanatory Memorandum, in describing the appropriateness of the delegated power, states the details in the regulations will accommodate a "significant level of detail which would encumber the reading of the Bill". The regulations will be subject to the negative procedure. A similar explanation is provided for the regulation-making power in section 128 of the Bill which is subject to the affirmative procedure. Could you explain further what this means and why you take the view that this is a minor matter?

Question 24: Section 92 deals with when a development begins, for the purposes of the Act. Section 92(2) states that a ""Material operation" means any operation except an operation of a kind specified in regulations". What operations will not be material operations?

Question 25: Section 115 deals with restrictions on the power to issue a temporary stop notice. What activities will not be prohibited by a temporary stop notice under section 115(1)?

Question 26: Section 121 deals with fees for performance of infrastructure consent functions and services. a) Under section 121, which public authorities will be permitted to charge fees? b) Under section 121(5) functions may be conferred on any person by regulations. What are the functions and on who will they be conferred?

Question 27: Please would you confirm our understanding that section 127(3) contains a direction-making power, and that the Explanatory Memorandum will be amended accordingly at the next available opportunity.

Question 28: Section 128 provides a regulation-making power to the Welsh Ministers which will enable them to direct that requirements under the Act do not apply in cases specified in the direction. The regulations will be subject to the draft affirmative procedure. The Explanatory Memorandum, in justifying the procedure, states that "Subordinate legislation will limit this power". a) Why is this power appropriate and necessary? b) How will subordinate legislation be used to limit the power?

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/0994/23

Huw Irranca-Davies MS,
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

11 September 2023

Dear Huw

Thank you for your letter of 27 July and the questions put forward by the Legislation, Justice and Constitution Committee relating to the Infrastructure (Wales) Bill. I am pleased to provide my response which is attached at Annex A.

I trust the responses in Annex A answer your questions. However, if there are any additional questions or areas requiring clarification, I am happy to provide further information in writing.

I am copying this letter to the Chair of the Climate Change, Environment, and Infrastructure Committee for information.

Yours sincerely

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

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Annex A

Question 1

Please can you provide a narrative explaining in broad terms how the new infrastructure consenting process will work, identifying key players, processes and milestones and how it differs from the existing process.

The Infrastructure (Wales) Bill builds on procedures established as part of the Developments of National Significance procedure in the Town and Country Planning Act 1990 in Wales and those in the Planning Act 2008 for Nationally Significant Infrastructure Projects.

The summary below sets out how the new infrastructure consenting process will work, identifying each stage within the process.

Summary of Infrastructure Consent Procedure:

Pre-application services

Prospective applicants will have the ability to seek pre-application services from the Welsh Ministers and/or the relevant local planning authority. This is discretionary and not a mandatory requirement.

Pre-application notification

Prospective applicants will be required to notify the Welsh Ministers, relevant local authorities and other persons specified in regulations of their intention to submit an application for infrastructure consent.

Pre-application consultation

Providing the notification of a proposed application is accepted, prospective applicants will be required to undertake a period of pre-application consultation. The specific details regarding consultees, how a consultation must be carried out, the timetable and how a proposed development must be publicised, will be reserved for subordinate legislation.

Applying for infrastructure consent

Following the pre-application consultation period, an application for infrastructure consent can be submitted to the Welsh Ministers. Subordinate legislation will specify matters such as the form and content of the application, submission and the validation process. Applications will also be required to be accompanied by a pre-application consultation report, which must include all representations received from the consultation and details regarding how these representations have been considered and any changes made to the application.

Notice of accepted applications and publicity requirements

When the Welsh Ministers have accepted an application as valid, they will provide written notification to prescribed authorities with other publicity and notification requirements being reserved for subordinate legislation. We anticipate this will include methods such as publication in relevant newspapers / journals and the displaying of site notices.

Where a local planning authority receive such notification, they will be required to submit a local impact report to the Welsh Ministers. Similarly, where an application contains provision for a deemed marine licence, Natural Resources Wales will be required to submit a marine impact report.

Certain public authorities will also be consulted and will be required to provide a substantive and timely response. The details of what a substantive response must include and when a response must be provided by, will be prescribed in subordinate legislation.

Examination

The Welsh Ministers will appoint a person or panel of persons to examine an application; the 'examining authority'. The examining authority will determine the procedure of an examination, which may be written representations, a hearing, an inquiry, or any combination of these methods. However, if no objections are raised preceding examination, the examining authority may proceed straight to decision.

Examining authorities or the Welsh Ministers may also appoint assessors or a barrister or solicitor to provide legal advice and assistance during an examination.

Deciding applications

Following examination, an application will be decided by either the examining authority or the Welsh Ministers. Subordinate legislation will specify who the determining authority will be, based on application types. Decisions will be made in accordance with specified policy and have regard to additional specified matters.

Decisions must be made within 52 weeks of an application being accepted as valid, although the Welsh Ministers may extend this via direction. Additionally, subordinate legislation may amend the prescribed period, for example, to shorten the timescale for orders which are less complex or do not require a statutory instrument. Infrastructure consent orders can be made by way of Statutory Instrument, if it contains certain provisions.

Post-consent

Where an infrastructure consent order has been granted, the Bill provides the ability for these consents to be amended or revoked.

Comparison of the new process and existing consenting regimes

The table below sets out each key stage in the process of applying for infrastructure consent, as detailed above. Each key stage has been compared to consent processes currently used by the Welsh Ministers, the Developments of National Significance (DNS) regime including the Developments of National Significance (Wales) Regulations 2016 (the DNS regulations), consents under the Electricity Act 1989, Harbour Revision Orders (HRO) and orders under the Transport and Works Act 1992 (TWA 1992).

The relevant stakeholders for each stage have also been identified.

Key Stage in new process	**Stakeholders in new process**	**Comparison of stage to existing consenting processes**
Pre-app services	• LPA • Applicant • Welsh Ministers	***DNS*** – reg.6 – 9 (DNS Regulations) Request for pre-application services • Pre-application services from LPA or Welsh Ministers
		Electricity Act – Not set out in legislation
		HRO – Not set out in legislation
		TWA 1992 - Not set out in legislation
Notification	• LPA • Applicant • Welsh Ministers	***DNS*** – art.5 – 6 Developments of National Significance (Procedure) (Wales) Order 2016 Notification of proposed development • Notice of acceptance by WM to LPA and applicant • Applicant has 12 months to submit application
		Electricity Act – Not set out in legislation

		HRO - Schedule 3 Harbours Act 1964 • Applicant must give Sectary of State (SoS) notice of intention to make application • SoS accepting notification must decide if the project is EIA
		TWA 1992 – rule 5 Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 • Applicants must send draft order no later than 28 days before application
Pre- Application Consultation	• LPA • Applicant • Statutory Consultees • Any other persons wishing to make a representation • Welsh Ministers	***DNS*** – art. 7- 11 Developments of National Significance (Procedure) (Wales) Order 2016 Requirement to carry out pre-application consultation • Publicity and consultation before applying for planning permission • Specialist consultees duty to respond • Pre-application consultation reports
		Electricity Act – Not set out in legislation
		HRO – Not set out in legislation
		TWA 1992 - Not set out in legislation
Application	• Applicant • PEDW • Welsh Ministers	***DNS*** – art. 12 – 14 Developments of National Significance (Procedure) (Wales) Order 2016 Applications • General requirements • Design and Access Statements

		Electricity Act - Schedule 8 Electricity Act 1989 • Details of land in application • Details of line, length and nominal voltage in case of electric line
		HRO - Schedule 3 Harbours Act 1964 • Details the application process, and what must accompany the application
		TWA 1992 - rule 9 Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 • Application made in writing to SoS, including required information
Acceptance of Application	• Applicant • PEDW • Welsh Ministers	***DNS*** – art. 15 – 17 Developments of National Significance (Procedure) (Wales) Order 2016 Acceptance of Applications • Notice of acceptance • Notice if not a valid application • Relevant timescales
		Electricity Act – Not set out in legislation
		HRO – Schedule 3 Harbours Act 1964 No formal 'acceptance' of application, though the application will not be considered unless fees have been paid and it complies with the requirements set out in the Act.
		TWA 1992 - Not set out in legislation

Publicity	• Applicant • LPA • PEDW • Welsh Ministers	***DNS*** – art. 18 – 19 Developments of National Significance (Procedure) (Wales) Order 2016 Publicity for applications for planning permission • Welsh Ministers must publicise application • LPA must display site notice
		Electricity Act – Reg 4 - 9 of Electricity (Applications for Consent) Regulations 1990 made under s.36(8) Schedule 8 of the Electricity Act 1989 • Notice published in local paper, served on NRW where it relates to SSSI, any other person SoS specifies • Notice to LPA in case of electric lines • Objections should be received within specified time frame • Applies both off and onshore
		HRO - Schedule 3 Harbours Act 1964 • Applicant must publish notices in the London Gazette and other ways the SoS may direct. • Opportunity for comment within 42 days of the date the notice first appears in a local paper.
		TWA 1992 - rule 13 - 16 Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 • Notices served on all relevant LPAs, coastal authority, publish notice in newspaper • SoS may direct applicant to ensure public is informed
Consultation	• LPA	***DNS*** – art. 22 – 23 Developments of National Significance (Procedure) (Wales) Order 2016

	• Applicant • Statutory Consultees • Any other persons wishing to make representation • Welsh Ministers	Duty to consult before the grant of planning permission • Consult with specialist consultees • Duty to respond
		Electricity Act – Not set out in legislation
		HRO - Schedule 3 Harbours Act 1964 • SoS must consult any bodies likely to have an interest in the project
		TWA 1992 - Not set out in legislation
Impact Reports	• Applicant • LPA • PEDW • NRW • Welsh Ministers	***DNS*** – art. 25 – 26 Developments of National Significance (Procedure) (Wales) Order 2016 Local Impact Reports • Required in relation to applications • Must include prescribed information
		Electricity Act – Not set out in legislation
		HRO – Not set out in legislation
		TWA 1992 - Not set out in legislation
Examination	• Applicant • LPA • PEDW • Any relevant statutory consultees	***DNS -*** reg.28-31 (DNS Regulations) Determination of procedure • Person appointed and applicant/LPA notified • Procedure determined
		Electricity Act - Schedule 8 of the Electricity Act 1989

	• Welsh Ministers	• Details of when an inquiry would be held
		HRO - Schedule 3 Harbours Act 1964 • Sets out the parameters for the examination process, and whether an inquiry will be held.
		TWA 1992 – s.11 TWA 1992 rule 21 – 25 Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 • SoS may cause a public inquiry for the purposes of an application • Details of examination
Decision	• Applicant • LPA • Welsh Ministers	***DNS -*** reg.35 – 36 (2016 Regulations) art. 28 – 31 Developments of National Significance (Procedure) (Wales) Order 2016 Determination • Representations to be taken into account
		Electricity Act - s.36 Electricity Act 1989 • Consents and conditions
		HRO - Schedule 3 Harbours Act 1964 • Considerations when making a decision. • Details of considerations in the order
		TWA 1992 – s.13 - 14 TWA 1992 • SoS will determine whether to grant the making of an order or to not make an order
Post-decision	• Applicant • LPA	***DNS*** - reg.37 (DNS Regulations) • Procedure following quashing of a decision

	• Welsh Ministers	***Electricity Act -*** s.36C Electricity Act 1989 • Consents for electric lines may be varied or revoked • Variation of consents
		HRO – Not set out in legislation
		TWA 1992 - Not set out in legislation

As the table demonstrates, many of the existing consenting processes lack the requirement for pre-application consultation, and formal consultation following the submission of an application. Therefore, these regimes lack the appropriate community engagement throughout the consenting process. As consenting is fragmented across different regimes, this causes confusion for the participating public and there is no administrative efficiency for developers and decision-makers.

In addition, as consenting spans a number of regimes, many of which are not underpinned by a specific policy or policies, developers are less certain of their chances of success. The Bill therefore provides a clear policy framework for infrastructure consenting to be decided under.

Question 2

The Explanatory Memorandum, at paragraph 3.9, states "the differences between [infrastructure consenting] regimes have perpetuated and further widened with devolution of energy infrastructure under the Wales Act 2017". Please would you provide further clarity and explanation about these differences.

The proposed infrastructure consenting process will seek to replace a number of existing consenting regimes both on land and in the inshore region following the implementation of the Wales Act 2017. These include:

- Developments of National Significance ("DNS") under the Town and Country Planning Act 1990;
- The Transport and Works Act 1992;
- The Electricity Act 1989;
- The Highways Act 1980; and
- The Harbours Act 1964.

Each of these regimes set out their own processes and procedures for how the relevant permissions, consents, orders etc. are granted, which have a number of differences. Some examples of these include, but are not limited to:

- The DNS process specifies a clear and consistent pre-application process to help engage stakeholders and communities at the earliest opportunity. The other regimes set out above do not have a formal pre-application process.

- There are different publicity and notification requirements, such as the requirement to display site notices, which certain consenting regimes do not require (for example, the Harbours Act 1964).

- There are different requirements for the type of information that must be submitted with an application.

- Certain matters and objections / representations are dealt with by way of examination as part of the DNS process which may be undertaken via written representations, a hearing, an inquiry, or any combination of these procedures. Conversely, the other consenting regimes may only consider matters to be heard by an inquiry.

- Some regimes do not enable compulsory acquisition of land or the granting of necessary wayleaves over land, whereas others do.

- The different regimes also have different enforcement systems.

The table included as part of the response to question 1 provides further details on the differences between the various consenting regimes.

Question 3

The Explanatory Memorandum, at paragraph 3.19, states that having a unified consent process "would enable the Welsh Minister to include other consents and authorisations required in a 'one stop shop' approach". Could you explain further what this means and provide additional explanation.

For large infrastructure projects, further consents, licences or authorisations under different regimes to the one which would grant consent are often required to implement a scheme. Examples include marine licences, compulsory acquisition of land, listed building consent and extinguishment of rights held over land.

This can cause the duplication of work and procedures and may significantly increase the costs of applications. It can also act as a barrier to bringing forward proposals and cause frustration and confusion to those participating in the process.

The proposed infrastructure consenting process seeks to introduce a 'one stop shop' for infrastructure projects. This will enable other authorisations or licences necessary for the development to be considered at the same time and form part of the same consent. This will provide a consistent and administratively efficient process for determining major energy, waste, water and transportation infrastructure in Wales. Furthermore, there are certain development types which straddle both the onshore and offshore areas (such as tidal lagoons and alterations to harbours) and are subject to separate jurisdictions. Having a unified process would enable the Welsh

Ministers to include other consents and authorisations required to facilitate development in a 'one stop shop' approach.

Section 60 of the Bill specifies what may be included in an infrastructure consent order, with provision relating to, or matters ancillary to, development set out in Schedule 1. The list has been compiled comprehensively and is considered to be exhaustive at this point in time.

Similarly, section 81 of the Bill provides for certain consent requirements to be removed and deemed instead. This allows authorisations, permissions and consents to be deemed without the consent of the relevant authority who would usually issue them. The intention is for the specific details be set out in subordinate legislation, but an example may include extinguishing any requirement under the Hedgerow Regulations 2017.

Question 4

Please would you confirm the number and breakdown by type of all delegated powers in the Bill, including regulation-making powers (including whether a power is a Henry VIII power), direction-making powers and order-making powers, and the scrutiny procedure attached to each.

Table 1 lists regulations -making powers included in the Bill.

Regulations making power	Is it a Henry VIII power? Y/N	Procedure
Section 17(1)(a)	Y	Draft Affirmative
Section 17(1)(b)	Y	Draft Affirmative
Section 21(1)(a)	Y	Draft Affirmative
Section 21(1)(b)	Y	Draft Affirmative
Section 22(2)(c)	N	Draft Affirmative
Section 26	N	Negative
Section 27(1)	N	Negative
Section 28(5)	N	Negative
Section 29(1)(d)	N	Negative
Section 29(2) and (3)	N	Negative
Section 29(5)	N	Negative

Regulations making power	Is it a Henry VIII power? Y/N	Procedure
Section 30(2) and (3)	N	Negative
Section 31(4)	N	Negative
Section 31(5)	N	Negative
Section 33(2)(c)	N	Negative
Section 33(3)	N	Negative
Section 33(5)	N	Negative
Section 34	N	Negative
Section 35(4)(b)	N	Negative
Section 36(4)(b)	N	Negative
Section 37(2) and (3)	N	Negative
Section 38	N	Negative
Section 39(5) and (6)	N	Negative
Section 41(3)	N	Negative
Section 41(5)	N	Negative
Section 42	N	Negative
Section 43	N	Negative
Section 45(6)	N	Negative
Section 52(1)	N	Negative
Section 53(4)	N	Negative
Section 54(d)	N	Negative
Section 55	N	Negative
Section 56(4)	N	Negative
Section 56(6)	Y	Negative
Section 57(6)	N	Negative
Section 59(3)	N	Negative
Section 60(5)	Y	Draft Affirmative
Section 62(4)	N	Negative

Regulations making power	Is it a Henry VIII power? Y/N	Procedure
Section 69(1) and (2)	N	Negative
Section 81(1)	N	Negative
Section 81(2), (3) and (4)	N	Negative
Section 85	N	Negative
Section 88(1), (3) (5) and 6	N	Negative
Section 91(1)(a)	N	Negative
Section 91(3)	N	Negative
Section 92(2)	N	Negative
Section 93(7)(b)	N	Negative
Section 110(8)	N	Negative
Section 115(1)	N	Negative
Section 121	N	Draft Affirmative
Section 125(6) and (7)	N	Negative
Section 126	N	Negative
Section 127	N	Negative
Section 128	Y	Draft Affirmative
Section 129(2)	Y	Negative
Section 133(2)(e)	N	Negative
Section 141(2)	Y	Draft Affirmative
Paragraph 1(3) of Schedule 2	N	Negative
Paragraph 2(1) of Schedule 2	N	Draft Affirmative

Section 141 (2) is incorrectly listed in the EMRIA as negative procedure. This will be corrected in the EMRIA at the next opportunity.

Table 2 lists the direction making powers included in the Bill.

Direction making power	Is this a Henry VIII power? Y/N	Procedure
Section 22(1)	N	No procedure
Section 23(1)	N	No procedure

Direction making power	Is this a Henry VIII power? Y/N	Procedure
Section 24(1)	Y	No procedure
Section 33(9)	N	No procedure
Section 36(2)	N	No procedure
Section 45(2)	N	No procedure
Section 46(2)	N	No procedure
Section 50(1)	N	No procedure
Section 52(4)	N	No procedure
Section 56(2)	Y	No procedure
Section 70(5)	N	No procedure
Section 127(1)	N	No procedure
Section 128(1)	Y	No procedure
Schedule 2 – Paragraph 7(1)(c)	N	No procedure

Table 3 lists order making powers included in the Bill.

Order making powers	Is this a Henry VIII power? Y/N	Procedure
Section 51(2)	N	No procedure
Section 57	N	No procedure
Section 60(6)	Y	No procedure
	N	
Section 84	N	No procedure for IC in the form of a common order. If the IC is a Statutory Instrument, it is laid before the Senedd along with the latest version any plan and the statement of reasons for granting the order
Section 87	Y	No procedure
Section 111	N	Application to the Magistrates Court
Section 143(2) and (3)	N	No Procedure

Question 5

In the Explanatory Memorandum, the regulations needing to present or accommodate "significant detail" is used as a justification for the use of the negative procedure in respect of a number of delegated powers in the Bill. These include sections 27(1), 31(4), 33(3), 34, 53(4), 55, 126, and 129(2). A similar explanation is provided for the regulation-making power in section 128 of the Bill which is subject to the affirmative procedure. Please would you provide further clarity and explanation as to how the need to present or accommodate "significant detail" is relevant to the choice of procedure in each of these provisions?

The procedure for applying for infrastructure consent will be contained in regulations, due to the level of detail that will be required. Regulations will be concerned with the content, form, timescales and other such specifications of the application procedure in sections 27(1), 31(4), 33(3), 34, 53(4), 55, 126, and 129(2).

The negative procedure is considered appropriate for these sections, as they relate to procedural and technical elements of the processes for applying and deciding infrastructure consents, that will require consultation with a wide range of stakeholders. Section 33(3), for example, relates to the way in which an application will be publicised.

Using the negative procedure for these regulations also allows for flexibility, and the opportunity to respond to changes in a timely manner to ensure the infrastructure consenting system is kept up to date. For example, the way in which notices are published in the future may be amended to account for new technology.

Section 128 of the Bill sets out the regulation making power for the Welsh Ministers to disapply certain infrastructure consent application requirements. In contrast to the above-mentioned sections, these matters could have significant impact on the whole infrastructure consent process. It is therefore considered appropriate that the significant level of detail required by these regulations are scrutinised by the Senedd, and for this reason these regulations follow the draft affirmative procedure.

Question 6

In the Explanatory Memorandum, the ability to "legislate swiftly" is used as a justification for the use of the negative procedure in respect of a number of delegated powers in the Bill. These include sections 26, 27(1), 28(5), 29(1)(d), 30(2) and (3), 31(4), 31(5), 33(2)(c), 33(3), 33(5), 35(4)(b), 36(4)(b), 37(2) and (3), 38, 41(3), 41(5), 42, 45(6), 52(1), 53(4), 54(d), 55, 56(4) and (6), 57(6), 59(3), 62(4), 69(1) and (2), 81(1), 81(4), 85, 88(1) to (3) and (5) to (7), 91(3), 92(2), 93(7)(b), 110(8), 115(1), 125(6) and (7), 126(1), (3) and (4), 127(2)(c), 127(3) and (4), 133(2)(e), and 141. How is the need to act "swiftly" relevant to the choice of procedure in each of these provisions?

I have grouped the responses to this question by relevant Parts in the Bill, and where appropriate by topic within each Part.

In general terms, the negative procedure and the ability to legislate swiftly is appropriate to provide sufficient flexibility to the Bill and the way in which it is intended to operate. The ability to legislate swiftly to amend regulations would also help ensure that any necessary amendments of the current infrastructure consenting regimes are able to be addressed in a timely manner. When choosing the negative procedure, being able to legislate swiftly is only one of our considerations. Other factors, such as the subject-matter being technical or containing relatively minor details, are also relevant to the examples below.

Part 2 of the Bill – Section 26
Part 2 of the Bill sets out the requirement for infrastructure consent. Section 26 makes provisions about procedural matters in connection with direction making powers under sections 22, 23 and 24.

The regulations may specify time limits for the Welsh Ministers to make a decision on whether a project is a SIP, following a request for a direction, and may also specify the information required to be submitted with a request. Changes to data protection regulations, for example, may require a change to the information required in such a request. Therefore, the ability to act swiftly to amend regulations would be appropriate, to keep the process up to date. The Welsh Ministers therefore retain the efficiency to respond quickly to changes and reinforcing the purpose of the Bill.

Part 3 of the Bill – Sections 27(1), 28(5), 29(1)(d), 30(2) and (3), 31(4), 31(5) 33(2)(c), 33(3), 33(5), 35(4)(b), 36(4)(b), 37(2) and (3), and 38
Part 3 of the Bill sets out the process for applying for infrastructure consent. Regulation making powers relate to pre-application services, notification, pre-application consultation and publicity, submitting an application, notice of acceptance and notices of persons interested in land to which compulsory acquisition relates.

Any potential future changes would be limited to procedural elements and minor details of the application process such as, the application form and its content, timescales, persons to consult and notify, and any other relevant details. Future changes to publicising an application, such as in a newspaper or on a website, may become outdated or incorrect. Should this occur, the ability for regulations to respond swiftly to any outside changes is beneficial.

Sections 35(4)(b) and 36(4)(b) relate to Local Impact Reports (LIRs) and Marine Impact Reports (MIRs) respectively, specifying that regulations will set out the form and content of a LIR/MIR. The form and content of a LIR/MIR may need to be amended swiftly to accommodate any changes as a result of a rapidly developing industry in terms of offshore developments. Responding swiftly and keeping up with the speed at which the industry is changing will reinforce the aims and objectives of the Bill.

Part 4 of the Bill – Sections 41(3), 41(5), 42, and 45(6)
Part 4 of the Bill relates to the examination of applications for infrastructure consent. The sections listed above relate to the choice of inquiry, hearing or written procedure, examination procedure and access to evidence at inquiry.

Examination procedures set out in subordinate legislation are technical matters of detail and are likely to specify word limits for further representations and the timescales

in which a hearing or inquiry must take place. As the examining authority, Planning and Environment Decisions Wales (PEDW) will conduct examinations, and it is possible that internal processes and procedures in PEDW could change, or a need to amend time limits would result in the need to change regulations.

Part 5 of the Bill – Sections 52(1), 53(4), 54(d), 55, 56(4) and (6), 57(6), 59(3)
Part 5 of the Bill relates to deciding applications for infrastructure consent.

- Sections 52(1), 53(4), 54(d) and 55 relate to functions of deciding applications, duty to decide applications in accordance with statutory policies and specific matters and matters that may be disregarded when making decisions.
- Sections 56(4) and (6), 57(6), 59(3) relate to timetable for determining applications, grant or refusal of infrastructure consent and the reasons for decision.

Subordinate legislation will set out matters of minor details in relation to the above sections such as, specifying applications which are to be determined by the examining authority following the close of an examination. The negative procedure, and the ability to legislate from time to time, is appropriate in this instance to reflect changes in applications that come forward.

Part 6 of the Bill – Sections 62(4), 69(1) and (2), 81(1), 81(4) 85, 88(1) to (3) and (5) to (7), 91(3), 92(2) and 93(7)(b)
Part 6 of the Bill refers to infrastructure consent orders. Sections 62(4), and 69(1) and (2) relate to land to which authorisation of compulsory acquisition can relate and notice of authorisation of compulsory acquisition. Subordinate legislation will set out the procedures necessary for compulsory acquisition to be authorised and the detail of the process to serve a notice and what it should contain. The ability to legislative swiftly is necessary to respond to any future changes in compulsory acquisition, such as time periods to respond to notices.

Section 81(1) and 81(4) relates to removing consent requirements and deeming consents. Regulations will compile a list of consents that could be deemed, and consents that can be authorised within the infrastructure consent. This is appropriate for the negative procedure as the ability to amend regulations from time to time will be needed, should any consents need to be removed or added.

Sections 85 and 88(1) to (3) and (5) to (7) relate to correcting errors and the procedure for changing and revoking infrastructure consent orders. Subordinate legislation will specify the procedure for correcting errors, including details of consultation, details of publication requirements, and the effect of correcting an error. We may need to legislate swiftly to amend the consultation requirements, or publicity to ensure they align with those of making an application generally.

Sections 91(3), 92(2) and 93(7)(b) relate to the duration of infrastructure consent orders, when development begins and legal challenges. Subordinate legislation will set out development must begin before the end of a period prescribed, and the circumstances in which consent can be challenged. It may be appropriate to respond to keep up with the speed at which the industry is changing and amend time limits for certain developments.

Part 7 of the Bill – Sections 110(8) and 115(1)
Part 7 of the Bill sets out enforcement in relation to infrastructure consent, with Section 110(8) relating to notices of unauthorised development and Section 115(1) setting out restrictions to issue temporary stop notices. Regulations provide necessary flexibility to introduce additional information to notices of unauthorised development as well as circumstances in which a temporary stop notice will not be applicable. The negative procedure is considered appropriate in relation to these provisions as they are technical matters of detail, where there may be a need to amend requirements in future.

Part 8 of the Bill – Sections 125(6) and (7), 126(1), (3) and (4), 127(2)(c) and (4)
Part 8 provides a number of supplementary functions to the Bill. The Sections listed above relate to requirements in connection with an application register, power to consult and duty to respond, and the charging of fees. Subordinate legislation will set out matters of detail, such as information to be contained within the applications register and a list of statutory consultees.

The ability to legislative swiftly in this instance is necessary, as changes to a website where the applications register is hosted, or the statutory consultee list may change. The ability for Welsh Ministers to respond to this quickly will ensure the principles of the Bill are reinforced and the infrastructure consenting system does not become outdated.

Part 9 of the Bill – Sections 133(2)(e) and 141
Part 9 contains general provisions of the Bill. Section 133(2)(e) and Section 141 relates to giving notices, directions and other documents relating to infrastructure and the power of Welsh Ministers to make consequential and transitional provisions.

Subordinate legislation will set out any other way notices and documents may be provided and any necessary amendments, modifications or revocation in relation to consequential and transitional provisions. The negative procedure is appropriate in relation to these provisions as they are technical matters of detail.

Question 7

Section 22 of the Bill deals with directions specifying a development as a significant infrastructure project. a) Please would you confirm the purpose of, and requirement for, the direction and regulation-making powers contained within section 22 of the Bill? b) We note that there is a separate power to add, vary or remove significant infrastructure projects in section 17 of the Bill. Why will the powers in section 22 be required, given that the powers in section 17 are also provided to the Welsh Ministers?

Part a

The Bill sets out the criteria and thresholds of Significant Infrastructure Projects which are captured by the new consenting regime.

For certain types of projects, such as those with a medium output, or a project including new technology or novel circumstances a simple compulsory quantitative

threshold may not be sufficient to determine whether a project is of such significance and complexity that it merits consenting through a unified consenting process.

Therefore, where a development is of national significance to Wales the Welsh Ministers may give a direction to specify that a proposed development is a Significant Infrastructure Projects. Two examples are provided below.

Example 1 - when the project falls under compulsory criteria

Where a project falls just under the compulsory criteria of the Bill but it is likely to raise significant concerns due to its location or complexity, the Welsh Ministers can direct that the project is to be classed as a Significant Infrastructure Projects.

For example, a proposed solar farm with a generating capacity of 30MW but located in the proximity of an ecological sensitive receptor may be directed by the Welsh Ministers to be classed as a Significant Infrastructure Projects due to its potential significant impacts.

Example 2 - when the project contains new technology or novel circumstances

In addition to the power to direct when a project is below the compulsory thresholds, the Bill provides the Welsh Ministers with a degree of flexibility in considering whether new technology or novel circumstances should fall under the consenting regime.

Should new projects come forward which involve a higher complexity and potential significant impacts, these projects may benefit from inclusion in the new unified consenting regime, due to their novel circumstances.

However, the Bill has been designed to be transparent and therefore the Bill sets limitations to this power of direction. Subordinate legislation will set out the scope of projects that may be directed as a Significant Infrastructure Projects.

Part b

The scope of the regulations making powers in section 17 and in section 22 is different. Subsection 22(2)(c) limits the Welsh Ministers power of give a direction and is explained above. Section 17 allows subordinate legislation to change the face of the Bill to add projects which will automatically be classed as a Significant Infrastructure Projects. These regulations are subject to draft affirmative procedure.

Part 1 of the Bill contains projects where there is evidence that they will be significant on a national level. New evidence may emerge that different types of project should be included, or a threshold of the existing projects should be amended. Section 17 provides this power to make this change.

Question 8

In relation to section 30(2) and (3) relating to pre-application consultation, the Explanatory Memorandum, in describing the appropriateness of the delegated power, states the requirements set out in the regulations will accommodate "a significant level of detail which would encumber the reading of the Bill". The Explanatory Memorandum also describes the requirement to undertake pre-application consultation as "a minor procedural matter". a) Could you explain further what this means? b) Why have you taken the view that a requirement to undertake pre-application consultation is a minor matter?

Part a

Pre-application consultation will need to ensure certain minimum requirements are met which will help engage as many people as possible. It also needs to respond to the fact each proposed development will be different and require different types of engagement.

We envisage the minimum requirements will include procedural matters such as the display of site notices and publicising notice of an application in a newspaper circulating in the vicinity of a proposed development. However, these matters will require specific and substantial details attached to them, such as what will need to be included in a notice, where they must be displayed and for how long. For example, we envisage different requirements for the display of site notices will likely be required for linear routes (such as electric lines or railways), compared to developments contained on a clearly contained site.

We also need to consider any alternative arrangements for developments in the inshore region, where proposed requirements for development on land would not be suitable or practical. For example, it would not be possible or beneficial to display a site notice in these circumstances.

The regulations will specify significant detail on any minimum pre-application consultation requirements, the inclusion on the face of the Bill would encumber its reading. Further, matters will detail procedural requirements, including different procedures for developments on land and in the inshore region, as well as the necessary flexibility to adapt these requirements and respond to change. Given this, we have concluded such specific and procedural matters are more appropriately specified in subordinate legislation.

Part b

The requirement to undertake pre-application consultation is not considered to be a minor matter in the wider consenting process. However, any specific procedural requirements, such as publicising a notice in a local newspaper, are considered to be minor technical and procedural matters which will require specific and substantial detail (see response above).

Question 9

In relation to section 31(5) relating to applying for infrastructure consent, the Explanatory Memorandum, in describing the appropriateness of the delegated power, states the list of potential functions will present "a significant level of detail which would encumber the reading of the Bill". The regulations will be subject to the negative procedure, and may confer a function on any person, including the exercise of a discretion. A similar explanation is provided for the regulation-making power in section 128 of the Bill which is subject to the affirmative procedure. Could you explain further what this means and why you take the view that this is a "minor technical matter"?

The power at section 31(5) of the Bill provides that regulations made under subsection (4), may include a discretion to disapply requirements. This discretion will help ensure that procedural requirements do not cause an unnecessary burden.

This is because the processes and procedures for obtaining infrastructure consent are particularly prescriptive and it is recognised that legislation may oblige parties to fulfil requirements which may be excessive in some limited circumstances. For example, regulations made under subsection (4) will state what other information, documents or other materials must be submitted with an application form. However, if once validated, the applicant recognises an error in the application form that does not materially affect the proposed development (such as an incorrect address) and there is a requirement to re-submit the application form with correct details, the legislation would obligate the applicant to also re-submit all the supporting documentation. The timeframe for decision making would also the align with the date the application was considered valid. This power could enable a discretion to enable minor changes to the application form of this type without re-starting the application process.

This is considered a minor technical matter as the power at section 31(5) to confer functions, including a those involving the exercise of a discretion are restricted to regulations made under that section. As this section prescribes matters specifically relating to the application process (for example, how an application is to be made, what supporting information and documents must be submitted with one and how applications are validated), it is considered a minor procedural and technical matter in the wider consenting process.

However, whilst the regulation making power in Section 128 will also prescribe matters of detail, as set out in question 5, the legislation, if made, will confer further powers on the Welsh Ministers. Therefore, it is considered appropriate for regulations prescribed under Section 128 to be subject to the draft affirmative procedure.

Question 10

Section 34 deals with regulations about notices and publicity. Section 34(1)(b) states that regulations may impose requirements on persons specified in the regulations to respond to a notice under section 33(2). What requirements will be imposed and are there any requirements that could not be imposed?

The persons specified in regulations in these circumstances are anticipated to be statutory consultees. Who is considered to be a statutory consultee will vary on a case-by-case basis, depending on the type of development being proposed.

Because these consultees will have knowledge and expertise in certain areas, their input and opinions on a proposed development are considered vital. Therefore, where a statutory consultee is given notice of a proposed development, they will be required to respond to the notice in the form of a substantive response, which must also be submitted to the Welsh Ministers within a specified period.

It is anticipated a substantive response will state the statutory consultee:

- Has no comment to make;
- Has no objections;
- Has concerns regarding the proposed development and how these concerns can be addressed; or
- Has concerns regarding the proposed development and would be minded to object.

The Regulations may only impose a requirement where it is falls under one of the categories specified in section 34(1)(a) to (d).

Question 11

Section 37(4) defines an "affected person" for the purpose of that section. It states that a person is an "affected person" if the applicant "after making diligent inquiry" knows that the person is interested in the land to which the compulsory acquisition request relates. a) What is meant by "diligent inquiry"? b) How will this be tested? c) Is this an established concept in the current law relating to applying for infrastructure consent and/or compulsory acquisition requests?

<u>Part a</u>

"Diligent inquiry" means for the applicant to undertake reasonable diligence in investigating land interests. The carrying out of diligent inquiry is an established concept for compulsory acquisition requests as prescribed by the Compulsory Purchase Act 1965 and Acquisition of Land Act 1981. Its meaning is noted in case law[1] and it is an established term prescribed under the Planning Act 2008 as part of the regime for determining nationally significant infrastructure projects by the UK Government where there is to be compulsory acquisition of land.

[1] See: R v Secretary of State for Transport ex parte Blackett [1992] 1 WLUK 524 (HC).

Part b

The carrying out of diligent inquiry will be considered by the determining body for the application during the assessment of whether to grant compulsory acquisition. This will be considered on a case-by-case basis and supplemented by guidance that will assist both the applicant and the determining body. The guidance is likely to contain information on methods of best practice including research on title information, land interest questionnaires, companies house searches, site investigations and web based research to assist in ensuring diligent inquiry has been undertaken.

Part c

Please see answer a.

Question 12

Section 38 enables regulations to be made which will require consultation in relation to compulsory acquisition. It is our understanding that subsection (1) contains the regulation-making power in this section. a) Please would you clarify how subsections (2) and (3) will operate and, in particular, confirm that the reference to subsection (2) in subsection (3) is correct. b) Under what circumstances will consultation not be required?

Part a

There are two distinct regulation making powers in Section 38. Subsection (1) allows regulations to made requiring an applicant to carry out consultation where the application for an ICO contains a request for compulsory acquisition. Subsection 2 is a separate regulation making power allowing for regulations to specify the circumstances when that consultation will take place and to make other provisions in connection with the consultation. Subsection (3) provides examples of what may be contained in regulations made under subsection (2). The reference to subsection (2) is therefore correct.

Part b

At this point in time, we anticipate further consultation under regulations prescribed by Section 38 would only be required where additional land interests are identified following the submission of an application for infrastructure consent that includes a compulsory acquisition request.

Question 13

Section 42 enables regulations to be made that will make provision about the procedure to be followed in connection with the examination of an application under Part 4 of the Bill. a) Please would you provide further explanation and clarity regarding the direction specified in subsection (3), and confirm which power will be relied upon in order to 'switch' decision maker (from the Welsh Ministers to the examining authority, and vice versa). b) The Explanatory Memorandum, in describing the appropriateness of the regulation-making power in section 42, states the details in the regulations will accommodate a "significant level of detail which would encumber the reading of the Bill". The regulations will be subject to the negative procedure. A similar explanation is provided for the regulation-making power in section 128 of the Bill which is subject to the affirmative procedure. Could you explain further what this means and why you take the view that this is a minor matter?

Part a

The power for the Welsh Ministers to issue a direction, transferring the undertaking of proceedings from the examining authority to themselves, or vice versa is provided by Section 52, Subsection (4) of the Bill.

The direction making power is intended to provide flexibility to ultimately ensure the final decision on an application is made by the appropriate body. A change to the determining body may be appropriate where an examining authority is examining an application and matters may arise which are, for example, particularly controversial and it would be more appropriate for the Welsh Ministers to take over and undertake the proceedings. Similarly, the Welsh Ministers may be examining an application and may come to view the proceedings would be more appropriately dealt with by the examining authority; for example where no representations or objections have been received to the application. The Regulations under Section 42 will specify the procedure to be followed in these circumstances. This will include matters such as (but not limited to) who is to be notified of a direction and the timeframe within which such notification must occur so as to not unduly impact on the decision making process.

Part b

Section 42 provides the Welsh Ministers with a power to make regulations about the procedure to be followed in connection with the examination of an application under Part 4. This does not only cover the procedures where a direction in respect of the decision maker is to be issued. The regulations may make provision about the procedure to be followed in connection with making a determination under Section 41, about how an application is to be examined, about matters preparatory and subsequent to an examination, about the conduct of an examination, including the procedure for transferring the examination of an application to another body. The regulations will therefore prescribe a significant level of detail that would encumber the reading of the Bill. In addition, the content is both very technical and relatively minor in nature, and may need to be amended and therefore is subject to the negative procedure.

Conversely, the regulation making power in Section 128 will confer further powers on the Welsh Ministers. Therefore it is considered appropriate for regulations prescribed under Section 128 to be subject to the draft affirmative procedure.

Question 14

Section 43 enables regulations to make provision for powers of entry to inspect land owned or occupied otherwise than by the applicant. a) What principles will apply to the powers to enter land and why are they not on the face of the Bill? b) Who is covered by the phrase "a person, alone or with others" for the purpose of section 43? c) This regulation-making power is not subject to the affirmative procedure, as it is not listed in section 138(4) of the Bill. Why was the negative procedure considered to be appropriate in this case? The Explanatory Memorandum states only that the power to enter land is "a minor procedural matter in the wider legislative scheme".

Part a

The principles applying to the powers to enter land will be prescribed through subordinate legislation. At this time we envisage they will be:-

- The land must relate to the application which is being examined;
- The Welsh Ministers or examining authority who will enter land as part of an examination are to notify the applicant and other persons considered necessary of their intention to do so. Other persons will likely include the owner/occupier of the land and providing them with a period of notice. The notification will be in writing and will include the proposed date and time of the inspection; and
- The timetable for examining an application will not be delayed as a result of a site visit. Subordinate legislation will provide that the Welsh Ministers or examining authority will not be required to defer an inspection where any person (including the applicant) is not present at the time of an inspection.

The principle to enter land as part of examination will be established by the Bill. The details are not on the face of the Bill as they relate to technical procedural matters for the entering onto land. Prescribing them in subordinate legislation will ensure flexibility to account for a potential need to amend those detailed requirements in future. This is similar to what currently occurs under the regime for determining nationally significant infrastructure projects by the UK Government. The principle to enter land as part of the examination of applications under that regime is established by Section 97, Subsection 3 of the Planning Act 2008. Detailed matters for the entering onto land and undertaking site inspections are prescribed by Rule 16 of the Infrastructure Planning (Examination Procedure) Rules 2010. The procedure for undertaking site inspections as part of the 'Developments of National Significance' regime is also established by subordinate legislation, under Regulation 16 of the Developments of National Significance (Wales) Regulations 2016.

Part b

The phrase “a person, alone or with others” for the purpose of Section 43 covers those persons who would be required to carry out an assessment of the site to inform the examination, for example the Inspector assigned to examine the application. It is recognised it may be necessary for more than one person with different specialisms to assess the site where it has a range of considerations (for example where a site may have ecological and highways considerations).

Part c

The matters to be prescribed under Section 43 in regulations relate to the procedure for persons to enter land as part of the examination of an application. It is considered appropriate for those regulations to be subject to negative procedure. They will prescribe technical matters of detail regarding a process for which the principle will already have been established through primary legislation. Further, the matters are considered to be minor discretionary procedural matters in the wider consenting process. If these requirements are to be updated in future, it would be important to legislate swiftly in order to avoid any delays in determining infrastructure applications.

Question 15

Section 45 relates to access to evidence at a local inquiry. Subsection (6) contains a regulation-making power which will enable regulations to make provisions about procedures to be followed and the functions of an appointed representative. The Explanatory Memorandum, in describing the appropriateness of the delegated power, states that this matter is considered suitable to be included in regulations “as arrangements need to be flexible to respond to future changes in procedure”. The justification does not appear to address subsection (6)(b) which will enable the regulations to provide for the functions of an appointed representative, and which does not relate to procedures. Please would you provide further clarity, including an explanation of what the functions of an appointed representative are and how they might change over time.

Regulations to specify the functions of an appointed representative will include, but are not limited to, the following:

- Representing the interests of the affected person by, for example, taking instructions from the affected person before receiving copies of closed or potentially closed evidence, dealing with preliminary matters, making submissions and cross-examining witnesses;
- Ensuring that the copies of the closed evidence or potentially closed evidence are returned to the person who supplied them as soon as practicable after inquiry proceedings; and
- To make applications to the Court in respect of any of its functions.

Similar legislation listing the functions of an appointed representative for the purposes of giving evidence in the planning system is prescribed under Regulation 4

of the Planning (National Security Directions and Appointed Representatives) (Wales) Regulations 2006.

It is considered there is a need to allow for flexibility in specifying functions of an appointed representative in the regulations as it is possible certain functions may no longer be required in future or there may be a need to add additional functions due to changes in examination procedure. For example, if in future it is considered advances can be made to improve the efficiency of how an examination is carried out (this could be through use of technology), the functions of the appointed representative may need to be modified in order to reflect an updated process.

Question 16

Section 55 enables the Welsh Ministers to make regulations which specify matters that the examining authority or the Welsh Ministers may disregard in deciding an application for infrastructure consent. What is the purpose of this provision and what matters may be disregarded? The Explanatory Memorandum provides no detail about what this provision seeks to achieve, only that the matters "will present a significant level of detail and will also need to be flexible to respond to any future changes in procedure".
This provision is included in recognition of the significant volume of evidence and information that will likely have to be considered by the determining body for an application for infrastructure consent. The purpose of this provision is to help to ensure an efficient decision-making process by disregarding matters that do not provide appropriate or robust evidence in informing the decision on a proposed infrastructure consent. At this time it is considered such evidence and information could include vexatious or frivolous representations, and representations which dispute established national policy prescribed by the Welsh Ministers in the National Development Framework, or Marine Plan. However, during the operation of the new regime it may become necessary to amend the list to make clear what information may be disregarded. For example, policy statements of the UK Government could be added if considered necessary.

Question 17

Section 56(6) provides a power for regulations to amend section 56(1)(a). This is a Henry VIII power enabling the amendment of primary legislation. As such why are regulations made under section 56(6) not included in section 138(4) of the Bill so as to require them to follow the affirmative procedure?

The Bill enables the Welsh Ministers to amend the statutory time period through secondary legislation under subsection 56(6). At this time it is not envisaged the time period will be amended, however evidence may emerge through operation of the process that indicates a shorter or longer timescale may be more appropriate.

This regulation making power can only amend subsection 56(1)(a). As this is a procedural matter, i.e. changing the number of weeks the Welsh Ministers have to decide an application, it is not believed that the draft affirmative procedure is necessary.

Question 18

Section 57 deals with the granting or refusal of infrastructure consent. Subsection (6) enables regulations to be made which will make provision regulating the procedure to be followed if the Welsh Ministers propose to make an infrastructure consent order on terms which are "materially different" from those proposed in the application. Such regulations are to be subject to the negative scrutiny procedure. Given that "materially different" is likely to include changes which are more than minor in nature, and could include significant changes, please would you clarify why you consider the negative procedure to be appropriate for such regulations.

In respect of the Welsh Ministers proposing "materially different" changes to an application. We envisage subordinate legislation will specify that the Welsh Ministers must only make an order which contains minor changes to what was originally applied for in the application for infrastructure consent. This will ensure parity between what types of amendments and variations are considered to be acceptable where they are requested via a separate application to vary or amend an existing infrastructure consent. For example, they can only be non-material or minor material. Therefore, whilst on the face of the Bill there is reference to changes to an application being "material", the regulations will provide clarification that any changes made by the Welsh Ministers in an order should only be minor in nature. As the regulations will specify a technical matter of detail on the procedure to be followed for changes the Welsh Ministers can make to an application, they are considered suitable to be subject to negative procedure.

Question 19

Section 59 of the Bill relates to the reasons for a decision to grant or refuse infrastructure consent. Are there any persons who will always be provided with a copy of a statement by the Welsh Ministers under section 59(3)?

Subordinate legislation provided under section 59(3) will specify those persons who must be provided with a copy of a statement of reasons. At this time, we anticipate the applicant will always be provided with the statement of reasons. Other persons notified will vary depending on the type or category of development to which an application relates. We anticipate such persons could include relevant LPAs and community councils, statutory consultees who were consulted as part of the application process, any person who made representations on an application and any other persons considered appropriate by the examining authority or the Welsh Ministers.

Question 20

Section 81 of the Bill relates to removing consent requirements and deeming consents. a) What specific consents are covered by section 81(1)(a)? b) Under section 81(4) regulations may provide exceptions to the requirement to meet the conditions in subsections (2) and (3). What are the exceptions and why can they not be placed on the face of the Bill?

Part a

In order to implement and develop a Significant Infrastructure Project, consent would normally be required for a number of ancillary matters. To implement a true unified consenting process, the Infrastructure Consent issued by the Welsh Ministers may also have the effect of giving permission, authorising, approving, consenting, licensing or granting these ancillary matters.

There are no specific consents on the face of the Bill because subsections 81(1) (a) and (b) allow an infrastructure consenting order to include any ancillary consent issued by a relevant authority and not listed in part 2 of the Bill.

The Bill adopts a qualified approach, which requires that a relevant consenting authority has given authorisation for the use of its consent/licence/authorisation within the Infrastructure Consent. This is specified on the face of the Bill at sections 81(2) and (3).

Part b

Section 82(4) allows the Welsh Ministers to specify in subordinate legislation authorisations/permissions/consents which will not be subject to sections 81(2) and (3). This has the effect of allowing the Welsh Ministers to deem a consent without the consent (explicit or silent) of the relevant authority.

These regulations will be subject to further consultation, but they may for example:

- deem a consent to establish a safety zone around renewable energy installations under section 95 of the Energy Act 2004.
- extinguish any requirement under the Hedgerow Regulations 1997.

The exceptions are not on the face of the Bill as they will be subject to further consultation with relevant stakeholders and may need to be amended during the operation of the consenting process.

Question 21

Section 82 of the Bill relates to the publication and procedure for infrastructure consent orders. Subsection (4) requires the Welsh Ministers to lay a copy of a statutory instrument, a plan and a statement of reasons before the Senedd. We note that section 138(5) of the Bill provides that the negative procedure is intended to apply to any instrument containing regulations to which 138(4) does not apply. An instrument made under section 82 is not listed in section 138(4). Is it intended that such an instrument would follow the negative resolution procedure, or is a wholly new procedure intended?

Section 138(5) of the Bill applies to negative procedure to any regulations made under the Act which are not listed in section 138(4). This does not apply to infrastructure consent orders as they are not regulations. Infrastructure consent orders are not subject to either the negative or affirmative procedure, however where the criteria in section 82 are met and the order is contained in a statutory instrument, it must be laid before the Senedd along with the latest version any plan and the statement of reasons for granting the order.

Question 22

Please would you confirm our understanding that section 84(4) contains an order-making power, and that the Explanatory Memorandum will be amended accordingly at the next available opportunity.

Section 84(4) does include an order-making power for the making of an Infrastructure Consent Order (where it is a statutory instrument) due to the correction of an error in a decision document. Thank you for bringing this matter to our attention, the Explanatory Memorandum will be amended at the next opportunity to reflect this order-making power. The Explanatory Memorandum will also be amended to include section 57(1)(a) which contains the order-making power to make an order granting infrastructure consent (“an infrastructure consent order”) where it is a statutory instrument.

Question 23

In relation to section 88, which relates to the procedure for changing and revoking infrastructure consent orders, the Explanatory Memorandum, in describing the appropriateness of the delegated power, states the details in the regulations will accommodate a “significant level of detail which would encumber the reading of the Bill”. The regulations will be subject to the negative procedure. A similar explanation is provided for the regulation-making power in section 128 of the Bill which is subject to the draft affirmative procedure. Could you explain further what this means and why you take the view that this is a minor matter?

The power at section 88 of the Bill provides the Welsh Ministers with a power to make regulations about the procedure for changing and revoking infrastructure consent orders.

The Regulations will prescribe matters specifically relating to the changing and revoking process, for example, how an application is to be made, what supporting information and documents must be submitted with an application, what consultation is undertaken and details of the decision-making process. The extent of these procedures would encumber the reading of the Bill and are considered a minor procedural and technical matter in the wider consenting process.

The negative procedure is considered appropriate for this section, as it relates to procedural elements of the process for changing and revoking an infrastructure consent. The negative procedure for these regulations also allows for flexibility, and the opportunity to respond to changes in a timely manner to ensure the infrastructure consenting system is kept up to date, for example, should we decide to amend the publicity requirements to account for changes in technology.

However, the regulation making power in Section 128 will confer further powers on the Welsh Ministers. Therefore, it is considered appropriate for regulations prescribed under Section 128 to be subject to the draft affirmative procedure.

Question 24

Section 92 deals with when a development begins, for the purposes of the Act. Section 92(2) states that a "Material operation" means any operation except an operation of a kind specified in regulations". What operations will not be material operations?

Section 92 states that development is taken to begin on the earliest day that any material operation is undertaken. Subsection (2) enables regulations to set out the kinds of operations that are not a "material operation" for the purposes of commencement.

The exclusion of certain operations from the definition of material operation enables clarity. For example, it is anticipated the regulations will specify that soil and water sampling will not constitute a material operation on its own thus it will not be taken as beginning of development for the purpose of the duration of an infrastructure consenting order.

Question 25

Section 115 deals with restrictions on the power to issue a temporary stop notice. What activities will not be prohibited by a temporary stop notice under section 115(1)?

The main purpose of restricting the use of a temporary stop notices is to ensure certain rights an individual may have are not affected, or where the issuing of such a notice would have other negative implications, for example on health and safety or national security.

This power mirrors section 171F(1)(b) of the Town and Country Planning Act 1990 and certain restrictions may be introduced in the wider planning system which would

also be relevant to applications for infrastructure consent. Therefore, this provides the necessary flexibility to align with the wider planning system, where relevant.

Question 26

Section 121 deals with fees for performance of infrastructure consent functions and services. a) Under section 121, which public authorities will be permitted to charge fees? b) Under section 121(5) functions may be conferred on any person by regulations. What are the functions and on who will they be conferred?

Part a

The Bill provides the Welsh Ministers power to make regulations in relation to the charging of fees by a specified public authority providing functions in relation to an infrastructure consent. To achieve a fee regime that is simple and transparent, it is envisaged fees will be combination of fixed and variable rates. Costs can vary depending on size, scale and location of a proposed development and other factors such as inflation can impact on costs. The existence of a variable rate within the process allows for such flexibility.

I have already mentioned in the Climate Change, Environment and Infrastructure Committee session on the 6 July that I am keen that fees are charged on a cost-recovery basis. This power will enable me to achieve this by allowing public bodies to charge fees.

I anticipate the public authorities that will be specified by regulations are:

- Welsh Ministers;
- Local Planning Authorities, Natural Resources Wales; and
- Certain Statutory Consultees

Part b

The public authorities that will be permitted to charge fees in relation to infrastructure consent orders are also the bodies on which functions can be conferred. Nevertheless, a public body undertaking a function or service as part of the Bill does not necessarily mean that a fee can be charged. The charging of fees must be reasonable and appropriate.

Welsh Ministers

The Welsh Ministers, or those appointed on their behalf (such as PEDW), will be required to undertake the following functions in relation to an application for infrastructure consent:

- Provide pre-application services (where requested);
- Respond to a pre-application notification form;
- Validate an application once submitted;
- Undertake any relevant publicity and notification requirements;

- Consider variations to an application (if requested by an applicant);
- Undertake the examination of an application; and
- Making a decision on application.

The Welsh Ministers could potentially be required to undertake similar functions where an amendment is requested to an infrastructure consent order following the grant of consent, as well as functions relating to the revocation of an infrastructure consent order. It is our intention for Welsh Ministers to charge a fee for the processing and determination of an infrastructure consent order.

Local planning authorities

Local planning authorities ("LPA") will be required to undertake the following functions in relation to an application for infrastructure consent:

- Provide pre-application services (where requested);
- Submit a local impact report; and
- Attendance at examination (where relevant).

Natural Resources Wales

Natural Resources Wales ("NRW") will be required to undertake the following functions in relation to an application for infrastructure consent that contains provision for a deemed marine licence:

- Submit a marine impact report (MIR)
- Attendance at examination (where relevant).

Statutory consultees

Statutory consultees will be required to undertake the following functions in relation to an application for infrastructure consent:

- Responding to consultations in the form of a substantive response; and
- Attendance at examination (where relevant).

Regarding the conferring of functions on statutory consultees, you may be aware that I have sought Minister of Crown consent for these provisions to apply to certain statutory consultees. In correspondence with the Chair of the Climate Change, Environment and Infrastructure Committee in June 2023, copied to the Chair of this Committee, I attached my letter to the Secretary of State for Levelling Up, Housing and Communities seeking those consents. Discussions between officials are on-going on this matter.

Question 27

Please would you confirm our understanding that section 127(3) contains a direction-making power, and that the Explanatory Memorandum will be amended accordingly at the next available opportunity.

The direction-making power requiring public authorities to undertake any relevant matters in respect of infrastructure consent applications made to the Welsh Ministers is provided under Section 127(1). Section 127(3) provides clarification on how such directions are to be given. We note there is an error in the subordinate legislation table which suggests that section 127(3) contains a regulation making power. This is incorrect and we will amend the Explanatory Memorandum accordingly at the next opportunity.

Question 28

Section 128 provides a regulation-making power to the Welsh Ministers which will enable them to direct that requirements under the Act do not apply in cases specified in the direction. The regulations will be subject to the draft affirmative procedure. The Explanatory Memorandum, in justifying the procedure, states that "Subordinate legislation will limit this power". a) Why is this power appropriate and necessary? b) How will subordinate legislation be used to limit the power?

Part a

The consenting process introduced by the Bill is intended to be a one stop shop for the consenting of infrastructure in Wales. A single process will be used for a wide range of infrastructure developments and in a wide range of different circumstances.

The process is intended to be prescriptive, for example, subordinate legislation will prescribe in detail how consultations must be conducted, or how the examining authority will notify interested parties upon receiving a valid application.

In being prescriptive, it is recognised that legislation may oblige parties to fulfil requirements which may be excessive in some limited circumstances. The Bill aims to ensure a transparent and fair examination process but also to be efficient and timely. In order to continue to expedite the consenting process, the Welsh Ministers have the power to dispense with certain procedural requirements but only where they believe there would be no detriment to procedural fairness.

The following are examples of circumstances where dispensing requirements may be considered.

For example, subordinate legislation will set out publicity requirements. In the instances of a linear route, such as a railway or a new road, this may include multiple notices. However, where additional publicity occurs for a relatively minor

amendment to the scheme, the Welsh Ministers may see no reason to publicise this amendment in the same way.

Another example is where subordinate legislation will set requirements that applicant will have to fulfil during the pre-application consultation. If the regulation requires public events to consult on a proposed development, there might be instances where this will not be physically possible, for example during a pandemic.

A final example is where subordinate legislation will set consultation requirements associated with the correction of errors in a decision. Depending on the nature of the correction, it may be appropriate to dispense on some consultation requirements.

In such instances, it would be helpful and proportionate for the Welsh Ministers to exercise a power which enables them to dispense with a procedural requirement or requirements set out in the Bill or regulations. In the interests of transparency, where requirements are dispensed, it would be important for the reasons for those requirements to be dispensed are published.

Regulations to limit this power

Due to the nature of this power, it is intended to limit its scope through subordinate legislation which must specify the requirements that may be dis-applied by direction.

At this time, it is anticipated this power will be limited to pre-application procedures, to some application procedures, and the procedure for correcting errors in a consent or changing or revoking an infrastructure consent.

Under no circumstances is it intended the subordinate legislation will enable a direction to be issued to disapply requirements which protect rights or ensure no offences are committed, such as procedures relating to compulsory purchase.

Regulations will also place a duty on the Welsh Ministers to publish any direction which dispenses a requirement and to specify the reason behind the dispensation.

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith
—
Climate Change, Environment, and Infrastructure Committee

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Julie James MS
Minister for Climate Change

25 July 2023

Dear Minister

RE: Implications of the Retained EU Law (Revocation and Reform) Act 2023 on Climate Change Legislation

The Retained EU Law (Revocation and Reform) Act 2023 received Royal Assent on 29 June 2023. The Act introduces a Schedule listing around six hundred pieces of retained EU law (REUL) that will be revoked on 31 December 2023. We understand that much of the legislation listed in the Schedule relates to environmental matters. You will appreciate that this raises significant concerns for the Committee.

According to the Act, UK and Welsh Ministers can exempt any REUL listed in the Schedule before 31 October 2023. In devolved policy areas, this can be achieved either through Welsh Ministers laying regulations in the Senedd or by UK Ministers laying regulations in the UK Parliament. This latter approach would bypass both the Welsh Government and the Senedd.

In your correspondence with the Legislation, Justice and Constitution Committee, the Counsel General said that "the Welsh Government's assessment is that there are no apparent problems for areas within devolved competence arising from the revocation of the instruments listed in the Schedule" and that "we do not currently see the need for the exercise of such powers and have no current plans to use them".

We note that amendments designed to ensure non-regression of environmental standards were not agreed in the final parliamentary stages.

Given the urgency to prioritise environmental protection and address the challenges posed by climate change, we would be grateful for clarity on your intentions regarding the legislation included in the Schedule:

- Could you share the Welsh Government's assessment of the environmental retained EU law listed in the Schedule with this Committee?
- What impact will the revocation of the REUL listed in Schedule 1 have on environmental law in Wales?
- Can you provide assurances that the revocation of environmental retained EU law listed on the Schedule will not result in reduced environmental protection in Wales?
- How can the revocation of Schedule 1 be reconciled with the Welsh Government's long-term ambition to increase standards post-Brexit?
- Has the Welsh Government conducted formal or informal consultations with stakeholders regarding the potential impact of revoking the REUL listed in the Schedule to the Act?
- How do you plan to ensure ongoing engagement and consultation with stakeholders during the implementation of the Act, particularly regarding any potential amendments, exemptions, or modifications to the Schedule?
- Does the Welsh Government plan to introduce new legislation or regulations to replace any REUL that may be revoked under the Act? If so, what will be the process and timeline for this?

We remain deeply concerned about the impact of the REUL Act on environmental legislation. Given the timings arising from the Act, we would be grateful for a response before the end of August to allow us to further consider this matter at our first meeting of the autumn term.

Yours sincerely,

Llyr Gruffydd MS,
Chair, Climate Change, Environment and Infrastructure Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/308/2023

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
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15 September 2023

Dear Llyr,

Thank you for your letter of 25 July 2023 regarding the implications of the Retained EU Law (Revocation and Reform) Act 2023 on environmental legislation.

We share the Committee's concerns about the potential negative impact of the REUL Act on environmental law in Wales. Overall, we maintain the view the REUL Act as an unnecessary, imprecise and politically motivated initiative. It was not a sensible basis for a reasonable reform of retained EU law, which could have been undertaken in a more considered fashion gradually over a period of years.

As it stands, we are confident that revocation of the legislation listed in Schedule 1 to the Act does not do any immediate and substantial impact to environmental law in Wales. However, we have particular concerns about the powers given by the Act to UK Ministers to reform existing pieces of retained EU law (now known as "assimilated law") by statutory instrument. We do not currently have information on exactly if, how, when and in what areas these powers could be used to reform environmental law, and we are seeking further clarity with Defra. Although any such reform in areas of devolved competence would not normally be extended into Wales by decisions of UK Ministers and the UK Parliament, the cross-border implications of any such changes could have negative impacts in Wales. My officials continue to work with Defra to understand their intentions in this area and will keep the Committee informed of developments.

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Could you share the Welsh Government's assessment of the environmental retained EU law listed in the Schedule with this Committee?

We have assessed the Schedule through a light touch policy review and agree with the UK Government's assessment that the Schedule contains largely redundant pieces of legislation that are no longer needed, particularly in the context of the UK no longer being a member of the EU. Should any instrument in the Schedule be identified as still being of use, it can be retained by 31 October through a further SI.

However, the schedule includes Provisions 9 and 10 of The National Emission Ceilings Regulations 2018 , the decision to revoke these in their entirety was made without consideration of devolved governments through the Air Quality Common Framework. These provisions relate to the Secretary of State's duty to prepare and review a National Air Pollution Control Programme to set out how the UK can meet air pollutant emission reduction targets. Having revoked these provisions with no clear plans to replace them may now lead to a lack of transparency in information made available to stakeholders regarding the emission reduction pathway the UK intends to take.

I believe transparency and public scrutiny are important principles to retain, and have asked the Secretary of State for Environment, Food and Rural Affairs to engage constructively with all governments of the UK on this matter. Meaningful discussions are now beginning to take place through the Air Quality Common framework.

What impact will the revocation of the REUL listed in Schedule 1 have on environmental law in Wales?

For the reasons set out above we do not believe there is any meaningful impact, apart from the provisions related to the National Emission Ceilings Regulations 2018 as mentioned above.

Can you provide assurances that the revocation of environmental retained EU law listed on the Schedule will not result in reduced environmental protection in Wales?

As mentioned above, our initial policy review of the schedule indicates we don't anticipate a reduction in environmental protection in Wales

How can the revocation of Schedule 1 be reconciled with the Welsh Government's long-term ambition to increase standards post-Brexit?

As explained above, none of the instruments in Schedule 1 have any continuing substantive legal effect.

Has the Welsh Government conducted formal or informal consultations with stakeholders regarding the potential impact of revoking the REUL listed in the Schedule to the Act?

Through the EFRA Inter-Ministerial Group I urged the Secretary of State to make public the list of legislation to be revoked as soon as possible. However, due to the nature and timing of the UK Government approach no such formal consultation was possible. The change in approach to revocation in the REUL Bill was made by the UK Government late into the Westminster Parliamentary process in the second half of April, and the Schedule itself published in May.

Prior to the publication of this list, I had received correspondence from concerned stakeholders regarding the potential impacts of losing environmental legislation (which was not subsequently included in the Schedule 1 list of legislation the UK Government intends to revoke). I have encouraged these organisations to continue to make any concerns known to both myself and the UK Government.

As explained above, there are powers to retain, by 31 October, any instrument listed in the Schedule that is found to still have any benefit. We will keep the Schedule under review, continuing to speak to expert advisors to ensure our review has not missed vital legislation. HSE have already provided advice on two commission decisions related to biocides which had been included in the Schedule but are still necessary. The UK Government will now be removing this legislation from the Schedule. Where stakeholders identify further legislation which is still in use, I would be open to considering any reasoned argument to propose a similar approach if necessary.

How do you plan to ensure ongoing engagement and consultation with stakeholders during the implementation of the Act, particularly regarding any potential amendments, exemptions, or modifications to the Schedule?

My officials continue to engage with Defra to understand their approach to changes to the Schedule and on implementation of the Act. More generally, we do not have plans at this stage to use any powers under the REUL Act to revoke or reform assimilated law.

We do not yet have a full understanding of the UK Government's intentions to use its powers to revoke or reform assimilated law. We wish to work closely with the UK Government on any such proposals and we will need to consider how to respond on a case-by-case basis. We expect any future UK Government reforms due to the REUL Act to go through proper routes of engagement with both ourselves and with stakeholders. I will be reiterating this point to the UK Government during my inter-ministerial discussions. For any changes proposed by the UK Government we will first need to understand any impacts in relation to Wales and then consider appropriate mitigating measures where necessary. We will have to consider how to engage with stakeholders if and when UKG makes clear its intention to reform in areas that affect devolved policy in Wales.

Does the Welsh Government plan to introduce new legislation or regulations to replace any REUL that may be revoked under the Act? If so, what will be the process and timeline for this?

The Welsh Government has no plans to use its powers under the Act to revoke any further pieces of assimilated law, or to introduce new legislation to replace legislation contained in the Schedule 1 of the Act

I am copying this to Huw Iranca-Davies MS, Chair, Legislation, Justice and Constitution Committee.

Yours sincerely,

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

–

Legislation, Justice and Constitution Committee

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Mick Antoniw MS
Counsel General and Minister for the Constitution

14 July 2023

Dear Mick,

Retained EU Law (Revocation and Reform) Act 2023

Thank you for your letter of 7 July 2023 in which you responded to the questions we asked on 27 June. We are grateful that we were able to pursue some of these matters with you at our meeting on 10 July.

Following the session we had with you, we were able to review more fully the responses you provided in your letter and there are further points we wish to raise with you, particularly within the context of the discussion during the meeting.

We value your ongoing engagement with us on this significant piece of legislation, and I would welcome a response to the questions in the Annex by 1 September 2023.

I am copying this letter to the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

ANNEX

Question 1: In your letter to us on 7 July you confirmed that the Welsh Government has undertaken an assessment of the retained EU law listed in Schedule 1 to the Act and "there are no apparent problems for areas within devolved competence arising from the revocation of the instruments listed" and that "we do not currently see the need for the exercise of such powers [to exclude retained EU law from the Schedule] and have no current plans to use them".

a. During our meeting you told us that this work was "still work in progress", it would be "something that we will want to scrutinise much more closely leading up to that particular point", and that engagement with UK Government officials is continuing. Please would you confirm our understanding that the Welsh Government's assessment of the Schedule is therefore still ongoing, and will you confirm that you will provide an updated and final assessment to us as soon as possible.

b. Please would you clarify if the Welsh Government's assessment has involved consideration of any and all implications for Wales, and not just matters which fall within devolved competence.

c. When we asked for your response to the concerns expressed by environmental organisations about the Schedule, you said you were not aware of any concerns but you acknowledged that concerns may have been raised in other ministerial portfolios. We would welcome confirmation as to whether any concerns with the retained EU law listed in the Schedule has been raised with any Welsh Minister, and details of the concern(s) raised.

Question 2: In your letter of 7 July, in response to questions 4 to 6 which related to the exercise by UK Government Ministers of regulation-making powers in devolved areas, you told us that the Welsh Government remained in discussion with the UK Government about "an alternative consent mechanism". During our meeting you told us "we have a concession, I think in writing, that, basically, the UK Government… will not legislate in these areas without the consent of Welsh Government". Please can you confirm the terms of this agreement and share with us the correspondence which sets out its negotiation and final details. Please can you also clarify how the Welsh Government will keep the Senedd informed and share relevant information about the exercise of these regulation-making powers by UK Government Ministers.

Question 3: In relation to the sunsetting of directly effective rights and obligations, in your letter to us on 7 July you said discussions are ongoing between the UK Government and the Devolved Governments on this matter, including whether concerns could be addressed using the appropriate powers in the Act. You added "This is a significant piece of work that we are now having to apply on a case-by-case basis across different policy areas and pieces of legislation", and you said you would

keep us informed of progress. We welcome your commitment to keep us informed. Please would you also provide further detail on the work which is being undertaken by the Welsh Government.

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

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Welsh Government

Huw Irranca-Davies MS
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12 September 2023

Dear Huw,

Thank you for your letter of 14 July 2023 seeking responses to questions in relation to the Retained EU Law (Revocation and Reform) Bill. My answers are set out in the following Annex.

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

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ANNEX

Question 1:

In your letter to us on 7 July you confirmed that the Welsh Government has undertaken an assessment of the retained EU law listed in Schedule 1 to the Act and "there are no apparent problems for areas within devolved competence arising from the revocation of the instruments listed" and that "we do not currently see the need for the exercise of such powers [to exclude retained EU law from the Schedule] and have no current plans to use them".

a. *During our meeting you told us that this work was "still work in progress", it would be "something that we will want to scrutinise much more closely leading up to that particular point", and that engagement with UK Government officials is continuing. Please would you confirm our understanding that the Welsh Government's assessment of the Schedule is therefore still ongoing, and will you confirm that you will provide an updated and final assessment to us as soon as possible.*

We can confirm that the work on Schedule 1 of the Act ('the Schedule'), has continued. While our initial review of the schedule did not raise any apparent issues, we also explained in the meeting of 10 July that we are unable to confirm with 100% accuracy that there will be no further issues that may present themselves. Welsh Government officials continue to work with the UK Government and other devolved governments to review the contents of the schedule.

As advised at the 10 July meeting, the UK Government itself recognises that the schedule was put together very quickly and that a further review might uncover issues that had not been identified at that time.

In that context, I received correspondence from Nusrat Ghani MP, the Minister of State for Industry and Economic Security, on 2 August. She highlighted a small number of instruments in the Schedule that should, on further investigation, be preserved as they are still of use. Of those, two, concerning biocidal products containing copper, are in devolved areas. These had initially been included in the Schedule for revocation, but the Health and Safety Executive has identified these as a legal basis for the continued safe use of such products and the UK Government intends to remove them from the Schedule, using the powers under the REUL Act.

Minister Ghani acknowledged these were public health measures and so a devolved responsibility and asked for Welsh Ministers' consent to an SI to remove them from the Schedule.

Welsh Government officials have further reviewed these provisions in light of the additional information in the letter and have concluded that both these Commission Decisions (2014/85/EU and 2014/395/EU) should be preserved. The Decisions currently permit the Health and Safety Executive to issue specific product authorisations for biocidal products containing or generating copper to be supplied and used.

Copper forms the basis for 19 so-called ‘essential use’ authorisations for biocidal products used for purposes such as the prevention of Legionella in hospitals and public buildings, and to prevent fouling in water inlets on oil rigs.

If these provisions were to be revoked via the Schedule, users of copper biocides would be obliged to change to alternative technologies. This would be costly and time-consuming for many users, as it would require refitting and rebuilding completely different types of systems. Selection of systems for these applications is complex and could risk less-effective systems being used. On that basis, we wrote in August to UK Government to consent to these legal provisions being preserved so that this safe supply and use of copper biocides continues to be legally permissible.

Our assessment of the Schedule, in collaboration with UK Government, is ongoing. We will provide further updates on any necessary changes to the committee.

b. *Please would you clarify if the Welsh Government’s assessment has involved consideration of any and all implications for Wales, and not just matters which fall within devolved competence.*

Our review to date has been primarily focused on instruments in devolved areas.

c. *When we asked for your response to the concerns expressed by environmental organisations about the Schedule, you said you were not aware of any concerns but you acknowledged that concerns may have been raised in other ministerial portfolios. We would welcome confirmation as to whether any concerns with the retained EU law listed in the Schedule has been raised with any Welsh Minister, and details of the concern(s) raised.*

I am aware that the Chair of the Climate Change Environment and Infrastructure Committee wrote to the Minister for Climate Change on this issue on 25 July. I understand that she will be replying to this letter shortly and that it will be copied to you.

Question 2:

In your letter of 7 July, in response to questions 4 to 6 which related to the exercise by UK Government Ministers of regulation-making powers in devolved areas, you told us that the Welsh Government remained in discussion with the UK Government about “an alternative consent mechanism”. During our meeting you told us “we have a concession, I think in writing, that, basically, the UK Government… will not legislate in these areas without the consent of Welsh Government”. Please can you confirm the terms of this agreement and share with us the correspondence which sets out its negotiation and final details. Please can you also clarify how the Welsh Government will keep the Senedd informed and share relevant information about the exercise of these regulation-making powers by UK Government Ministers.

This issue is not yet fully resolved between the UK Government and the Devolved Governments. We hope that it will be soon, in a way that protects and respects the devolution settlement. We will continue to keep the Senedd informed and share relevant information through the normal channels.

Question 3:

In relation to the sunsetting of directly effective rights and obligations, in your letter to us on 7 July you said discussions are ongoing between the UK Government and the Devolved Governments on this matter, including whether concerns could be addressed using the appropriate powers in the Act. You added "This is a significant piece of work that we are now having to apply on a case-by-case basis across different policy areas and pieces of legislation", and you said you would keep us informed of progress. We welcome your commitment to keep us informed. Please would you also provide further detail on the work which is being undertaken by the Welsh Government.

The implications of the Act are heavily dependent on any decisions yet to be taken by UK Ministers for reform of existing REUL in key areas. We remain in discussion with the UK Government at official level on possible developments of this kind. The immediate focus for Welsh Government officials is on implementation of the Act, including an SI to change references related to "retained EU law" to "assimilated law" (or similar) across the existing body of legislation made in Wales) and in relation to the ending of provisions on the interpretive effects of REUL.

We will continue to keep the Committee informed as work progresses.

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

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1 August 2023

Dear Llyr

I am writing to inform the Committee of the intention to consent to the UK Government making and laying the Windsor Framework (Retail Movement Scheme) Regulations 2023

I have received a letter from the Minister of State for Environment, Food and Rural Affairs, Rt Hon Lord Benyon, asking for consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales. The Regulations contain provision that could be made by Welsh Ministers in exercise of our own powers. The Regulations will extend to England, Scotland, Wales and Northern Ireland and a similar request for consent has been sent to Scottish Ministers.

The Regulations will be made in exercise of the powers conferred under paragraph 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The Regulations relate to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27th February 2023

Currently under the Northern Ireland Protocol, agri-food goods produced in and moved to NI are subject to EU animal, plant, public health, marketing, and organics standards. The amendments made to the Northern Ireland Protocol, as set out in the Windsor Framework will, in part, enable the establishment of a Retail Movement Scheme which will enable certain retail goods to move from GB to NI and meet GB public health, marketing and organics standards. Goods will still be required to meet EU standards for animal and plant health, and EU standards that apply to animal by-products.

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The EU will be disapplying the relevant EU legislative instruments for the categories of goods moved under the retail movement scheme, including legislation that set standards on public health, marketing, and organics for goods in Northern Ireland, and provide the legal basis for enforcing them. However, enforcement powers against EU standards will remain for goods produced in NI. Legislation is therefore required on a domestic basis to ensure that goods moved under the scheme are subject to GB standards, and the relevant authorities in NI can enforce against non-compliance with GB standards.

This new Retail Movement Scheme will allow for simplified trading of specified retail goods between GB and NI for scheme members, as per the agreements made with the EU under the Windsor Framework.

These Regulations require the Secretary of State to establish the new Retail Movement Scheme, which implements the Windsor Framework and is intended to regulate the movement of certain retail goods from Great Britain into Northern Ireland and what checks are to be made in respect of those goods. These Regulations prescribe how a person may apply for approval to move goods to which the Scheme applies into Northern Ireland; functions as to suspension of revocation of that approval; the location, nature, and extent of checks; and rights of entry, seizure and destruction etc of goods posing a relevant potential risk.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for this instrument to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. I consider that legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes nor a prudent use of Welsh Government resources given other important priorities.

I have written similarly to Huw Irranca-Davies MS, the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

Lesley Griffiths AS/MS
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Minister for Rural Affairs and North Wales, and Trefnydd

Llywodraeth Cymru
Welsh Government

Llyr Gruffydd MS Chair,
Climate Change, Environment, and Infrastructure Committee
Senedd Cymru
SeneddClimate@senedd.wales

09 August 2023

Dear Llyr

I am writing to inform the Committee of the intention to consent to the UK Government making and laying the draft Windsor Framework (Enforcement etc.) Regulations 2023.

I have received a letter from the Minister of State for Environment, Food and Rural Affairs, Rt Hon Lord Benyon, asking for consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales. The provisions could be made by Welsh Ministers in exercise of our own powers. The Regulations will extend to England, Scotland, Wales and Northern Ireland and a similar request for consent has been sent to Scottish Ministers.

The Regulations will be made in exercise of the powers conferred under paragraph 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The SI relates to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27th February 2023.

Currently under the Northern Ireland Protocol, agri-food goods produced in and moved to Northern Ireland (NI) are subject to EU animal, plant, public health, marketing, and organics standards. The amendments made to the Northern Ireland Protocol, as set out in the Windsor Framework will, in part, establish a Retail Movement Scheme which will enable certain retail goods to move from GB to NI and meet GB public health, marketing and organics standards. Goods will still be required to meet EU standards for animal and plant health, and EU standards that apply to animal by-products.

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The EU will be disapplying the relevant EU legislative instruments for the categories of goods moved under the retail movement scheme, including legislation that set standards on public health, marketing, and organics for goods in Northern Ireland, and provide the legal basis for enforcing them. However, enforcement powers against EU standards will remain for goods produced in NI. Legislation is therefore required on a domestic basis to ensure that goods moved under the scheme are subject to GB standards, and the relevant authorities in NI can enforce against non-compliance with GB standards.

This new Retail Movement Scheme will allow for simplified trading of specified retail goods between GB and NI for scheme members, as per the agreements made with the EU under the Windsor Framework.

These Regulations provide for the enforcement of GB standards in Northern Ireland, and make provision on offences, penalties and certain fees. These Regulations are part of a wider suite of statutory instruments delivering the Windsor Framework arrangements, including to address any non-compliance with the Retail Movement Scheme requirements (which poses a risk to the biosecurity of the island of Ireland and could otherwise result in onward movement of Retail Movement Scheme goods into the EU). They provide for an offence of non-compliance with the terms and conditions of the Retail Movement Scheme.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for this instrument to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. I consider that legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes nor a prudent use of Welsh Government resources given other important priorities.

I have written similarly to Huw Irranca-Davies MS, the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

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Llywodraeth Cymru
Welsh Government

Llŷr Gruffydd MS
Chair,
Climate Change, Environment, and Infrastructure Committee
Senedd Cymru
SeneddClimate@senedd.wales

09 August 2023

Dear Llŷr,

The Windsor Framework (Plant Health) Regulations 2023

I wish to inform the Committee of the intention to consent to the UK Government making and laying The Windsor Framework (Plant Health) Regulations 2023 by 30 August 2023.

I have received a letter from the Minister of State for Environment, Food and Rural Affairs, Rt Hon Lord Benyon MP asking for consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales. The Regulation will extend to England, Scotland and Wales and Northern Ireland and a similar request for consent has been sent to Scottish Ministers.

The Regulations will be made in exercise of the powers conferred under paragraph 8C(1) of Schedule 7 to the European Union (Withdrawal) Act 2018. This is a power for a Minster of the Crown to make regulations in connection with the Ireland/Northern Ireland Protocol in the withdrawal agreement. The SI relates to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27th February 2023.

The purpose of the Regulations is to protect biosecurity and support trade between Northern Ireland ("NI") and Great Britain ("GB"). The amendments contained in the

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Regulations change the way in which plants, plant products and other objects move between GB and NI by introducing requirements for a NI Plant Health Label scheme.

The NI Plant Health Label scheme enables the movement of various plants and plant products from a GB professional operator to a NI professional operator. This will be similar to the currently used UK Plant Passport scheme. The plants and plant products included in the NI Plant Health Label scheme are:

- plants for planting;
- seed potatoes; and
- vehicles and machinery which have been operated for agricultural or forestry purposes and equipment for their movement from GB to NI.

The Statutory Instrument (SI) is subject to the negative procedure and is due to be laid before UK Parliament on 30 August 2023 with a commencement date of 1 October 2023.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for the substance of the amendments to apply to Wales. The SI relates to a devolved area, however, the SI operates GB-wide and has effect as to the acceptance of goods into Northern Ireland. It also places requirements on Northern Ireland operators. Given the application to Northern Ireland it would not be within competence of Welsh Ministers to wholly make this SI as Wales-only. Additionally, there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. Making the regulations GB-wide also ensures there will be no risk of legislative divergence in the UK which would likely jeopardise the implementation of the Windsor Framework.

I have written similarly to Huw Irranca-Davies MS, the Chair of the Legislation, Justice and Constitution Committee (LJCC).

Yours sincerely

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

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Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee
Senedd Cymru
SeneddLJC@senedd.wales

05 September 2023

Dear Huw,

The Windsor Framework (Plant Health) Regulations 2023

I refer to my letter to you of 9 August 2023. I wish to inform the Committee I have given my consent to the Minister of State to lay the Windsor Framework (Plant Health) Regulations 2023 in relation to Wales. I have laid a Written Statement which can be found here.

The Regulations intersect with devolved policy and will apply to Wales. The Regulations extend to England, Scotland and Wales and Northern Ireland. The Statutory Instrument (SI) is subject to the negative procedure and was laid before Parliament on 5 September 2023 with a commencement date of 1 October 2023.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for the substance of the amendments to apply to Wales. The SI relates to a devolved area, however, the SI operates GB-wide and has effect as to the acceptance of goods into Northern Ireland. It also places requirements on Northern Ireland operators. Given the application to Northern Ireland it would not be within competence of Welsh Ministers to make this SI wholly as Wales-only. Additionally, there is no policy divergence between the Welsh and UK Government in this matter.

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This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. Making the regulations GB-wide also ensures there will be no risk of legislative divergence in the UK which would likely jeopardise the implementation of the Windsor Framework.

I have written similarly to Llŷr Gruffyd MS, the Chair of the Climate Change, Environment, and Infrastructure (CCEI) Committee.

Yours sincerely

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

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Llywodraeth Cymru
Welsh Government

Llyr Gruffydd MS Chair,
Climate Change, Environment, and Infrastructure Committee
Senedd Cymru
SeneddClimate@senedd.wales

31 August 2023

Dear Llyr

I am writing to inform the Committee of my intention to consent to the UK Government making and laying the Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 ('the Regulations').

I have received a letter from the Minister of State for Environment, Food and Rural Affairs, Rt Hon Lord Benyon, asking for consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales. The Regulations contain provision that could be made by Welsh Ministers in exercise of our own powers. The Regulations will extend to England, Scotland, Wales and Northern Ireland and a similar request for consent has been sent to Scottish Ministers.

The Regulations will be made in exercise of the powers conferred under paragraph 8C(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The Regulations relate to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27th February 2023.

Currently under the Northern Ireland Protocol, agri-food goods produced in and moved to NI are subject to EU animal, plant, public health, marketing, and organics standards. The amendments made to the Northern Ireland Protocol, as set out in the Windsor Framework will, in part, enable the establishment of a Retail Movement Scheme which will enable certain retail goods to move from GB to NI and meet GB public health, marketing and organics standards. Goods will still be required to meet EU standards for animal and plant health, and EU standards that apply to animal by-products.

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The EU will be disapplying the relevant EU legislative instruments for the categories of goods moved under the retail movement scheme, including legislation that set standards on public health, marketing, and organics for goods in Northern Ireland, and provide the legal basis for enforcing them. However, enforcement powers against EU standards will remain for goods produced in NI. Legislation is therefore required on a domestic basis to ensure that goods moved under the scheme are subject to GB standards, and the relevant authorities in NI can enforce against non-compliance with GB standards.

This new Retail Movement Scheme will allow for simplified trading of specified retail goods between GB and NI for scheme members, as per the agreements made with the EU under the Windsor Framework.

These Regulations establish the financial assistance scheme ('the scheme') and provides a discretionary power on the Secretary of State to give or arrange the giving of financial assistance to support compliance with the marking of retail goods requirements. These Regulations also make provision in relation to delegation of the Secretary of State's functions and the recovery of any financial assistance provided under the scheme. The UK Government will introduce financial assistance, likely in the form of a grant to reimburse businesses for the specific costs incurred in preparation for the labelling requirements that will be required under the Retail Movement Scheme, from the 1 October 2023.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for this instrument to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. I consider that legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes nor a prudent use of Welsh Government resources given other important priorities.

I have written similarly to Huw Irranca-Davies MS, the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

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Llywodraeth Cymru
Welsh Government

Llyr Gruffydd MS
Chair,
Climate Change, Environment, and Infrastructure Committee
Senedd Cymru
SeneddClimate@senedd.wales

05 September 2023

Dear Llyr

I refer to my letter to you of 31 August 2023. I am writing to inform the Committee that I have given my consent to the Minister of State for the making of the Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 in relation to Wales. I have laid a Written Statement which can be found at:

https://senedd.wales/media/5pth1uyg/ws-ld16009-e.pdf

Consent has been given for the UK Government to make these Regulations following the Windsor Framework Agreement which was reached by the UK and the EU and announced on 27 February 2023. The Regulations intersect with devolved policy and will apply to Wales. The Statutory Instrument (SI) is subject to the negative procedure and was laid before Parliament on 4 September 2023 with a commencement date of 1 October 2023.

I have written similarly to Huw Irranca-Davies MS, the Chair of the Legislation, Justice and Constitution Committee (LJCC).

Yours sincerely

Lesley Griffiths

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

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Pwyllgor yr Economi,
Masnach a Materion Gwledig
—
Economy, Trade, and
Rural Affairs Committee

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Julie James MS
Minister for Climate Change

04 September 2023

Deposit return Scheme (DRS): Inclusion of glass

Dear Julie,

Please find enclosed correspondence received from the Food and Drink Federation Cymru, noting work being done on the interoperability of the DRS schemes in different parts of the UK, but setting out serious concerns about the possible economic impact of the inclusion of glass in the planned Deposit Return Scheme in Wales.

In particular FDF Cymru are asking whether Welsh Government has conducted a full economic impact assessment of the plans and the effect it could have on the Welsh economy. The Committee would be very grateful if you could address this question and confirm what assessments have been made, what effect you think the plans could have on Welsh businesses and the Welsh economy, and what actions are planned to mitigate any negative impacts. The Committee would also welcome being kept updated on the status of implementation plans for the DRS in Wales.

Kind regards,

Paul Davies MS
Chair: Economy, Trade and Rural Affairs Committee

CC: Llyr Gruffydd, Chair, Climate Change, Environment and Infrastructure Committee

We welcome correspondence in Welsh or English

22nd August 2023

Mr Paul Davies MS
Chairman – Economic, Trade & Rural Affairs Committee (ETRA)
Welsh Parliament
Cardiff Bay
Cardiff,
CF99 1SN

Dear Paul,

DEPOSIT RETURN SCHEME (DRS): INCLUSION OF GLASS

I am writing to you as Chairman of the Economic Trade & Rural Affairs (ETRA) committee with regards to the Wales Deposit Return Scheme (DRS). We are fully committed to a successful launch of this landmark environmental initiative, but we urge the Welsh Government to keep all glass packaging as a kerbside scheme. Wales, as you know, is already a world leading glass recycling nation.

Minimising waste and preventing litter through the promotion of a circular economy is a key priority for our industry. Our members fully support this goal and are very supportive of the introduction of DRS for some time. A consistent message from industry has been to reduce the complexity for businesses and consumers, and for all DRS schemes across the UK to be aligned and interoperable. Our businesses need to understand what is required of them to comply with DRS requirements, and that the scheme is simple, seamless, and incentivising for consumers to engage with.

We have been heartened by the recent 4 nations interoperability workshop with officials working together on shared environmental goals. However, given the significant border between Wales and the rest of the UK, the difference in the scope of DRS materials raises serious questions, amongst other things, about labelling and logistics. Excluding glass would reduce the complexity and cost of the schemes for consumers, producers, and retailers, as well as diminishing the risk of fraud.

Our vision is that any plastic or metal drinks container bought anywhere in the UK by anyone, can be returned to be recycled. We are keen to work closely with the Welsh Government to achieve this and to ensure that Wales is at the forefront of the circular economy. Having different materials being included in the Welsh DRS would, in our view, increase complexities and cost, including specific labelling and/or demarcation. This would mean many businesses, particularly smaller ones, not been able to trade across the United Kingdom. Other unintended consequences could be that producers withdraw products from uneconomic markets, switch to plastic packaging, and that certain beverage products might no longer be sold across the UK nations.

This is big moment for drinks producers and consumers alike as we transition to a circular economy and link up the first part of the supply chain with the final part of the consumer experience. We need to get it right. The prospect, however, of having multiple, diverging schemes across the UK, and the myriad of challenges that would involve, could force many drink businesses in Wales to make tough decisions. Our industry has consistently raised the issue of additional complexities and costs and the impact this could have on business. I should be grateful to know, therefore, whether the Welsh Government has conducted a full economic impact assessment of their planned Wales DRS scheme and the affects it could have on the Welsh economy.

Should you, or any other members of the ETRA committee, wish to discuss this further with the Food & Drink Federation, I would be happy to arrange a meeting.

I look forward to hearing from you.

With regards

David

David Harries OBE
Head, FDF Cymru
Telephone: 07592-588296
E-mail: David.Harries@fdfcymru.org.uk

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/306/2023

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee

13 September 2023

Dear Huw, Llyr,

I am writing in accordance with the inter-institutional relations agreement to let you know that a virtual meeting of the Interministerial Group on Net Zero, Energy and Climate Change is scheduled to take place on 14 September.

I will be representing the Welsh Government. The meeting will focus on the comments from Chris Stark, Chief Executive of the Climate Change Committee and Heat Decarbonisation.

The Group will publish a joint communique after the meeting. I will also publish a Written Statement.

Yours sincerely,

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

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From: Helen Morgan MP <helen.morgan.mp@parliament.uk>
Sent: Monday, September 18, 2023 11:30 AM
To: contact@Senedd <contact@senedd.wales>
Subject: (Case Ref: HM9406)

Good morning,

I am writing on behalf of a constituent, Tom Attwood, who has contacted me regarding the closing of the Ffos-y-fran coal mine.

I have attached his correspondence in its entirety, and would be grateful if you could forward this correspondence to the select committee for Climate Change, Environment and Infrastructure, asking for a response to Tom's letter, that I can share with him.

With thanks and kind regards,

Helen

Helen Morgan MP

Member of Parliament for North Shropshire
House of Commons, London, SW1A 0AA

1st Floor Offices, Maypole Court, Wem, SY4 5AA

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Email: helen.morgan.mp@parliament.uk

Follow Helen Morgan on: Facebook | Twitter | Instagram

Mr Thomas Attwood

[redacted]

18th July 2023

Re: Ffos-y-fran Coal Mine Appeal – Heritage Road Steam Impact

As an extremely dedicated and enthusiastic owner of a 1920 Steam Lorry and miniature traction engine, I write to express my concerns and implore consideration of perhaps the unintended but nevertheless dramatic impact that the demise of indigenous steam coal supply in the UK poses to countless charitable events, businesses, enthusiasts and the many visitors who all enjoy and benefit from this charming hobby.

The UK has as a long-established love of engineering and science and as such the steam-based heritage sector is a quintessential British identity, recognised the world over and a significant source of domestic and international tourism. Often emulated but never rivalled, Britain has some of the best and world-oldest steam railways, pumping stations, marine and my love, road steam engines. Often road steam is the pursuit of a private owner, much like myself; dedicated to our little bit of preservation and keeping steam alive, safe and relevant in the modern age. Did you know for example, the road steam sector alone contributes an estimated £745M per annum to local businesses and charities through ever popular steam rallies, events and museums attracting circa 10 million visitors?

Usually privately financed at great personal expense. Owning, maintaining and sharing a road steam engine with the public is not a hobby but more of a lifestyle choice. On a personal level we are often deeply impassioned by the engineering marvels of centuries' old technology and ingenuity, we genuinely delight in sharing that with the public who perhaps have never seen or considered the advent of mechanised transport and agriculture. A working demonstration of a steam engine embodies and inspires great engineering prowess but also brings alive the cultural and social context of life during and after the industrial revolution, helping to educate and inform on the positives and negatives from history. A steam engine is still the only inanimate object that conjures up a "living" machine. It needs feeding and watering to awaken it and to work it, you must read how it is responding and adapt accordingly to get the best out of it. In a World rushing towards Artificial Intelligence there is a palpable similarity to be drawn in many ways.

Removing some of the romance from the embodiment of a "living" machine, there is a very important and troubling concern around one of those key elements, that of feeding. Or to put it more clearly supply of the food (energy source) – coal. Most UK built steam engines were designed to burn dry steam coal, to maximise the best efficiency and cleanest burning characteristics obtainable at the time of their construction.

Ffos-y-fran Mine near Merthyr Tydfil has provided the heritage sector with a high quality hard coal, which has generally become the favoured fuel for its:-

- Clean burning characteristics (low to no visible smoke and emissions.)
- Long-lasting burning – leading to very efficient use.
- Indigenously mined, washed and distributed reducing transport miles.
- Available (pre-2022) at an economically viable rate.
- Giving employment to UK workers from mine, transportation, merchants etc.

Sourcing an alternative good quality lumped steam coal, even on a global search is extremely challenging and currently a similar or better fuel has not come to fruition. Ffos-y-fran is possibly the last bastille of the high-grade coal with which the UK heritage sector's steam engines were designed to run on. Therein you may be able to tell that by starving away a good quality food (coal) from the heritage sector may inadvertently lead to the diminishment or demise of the industry in its entirety including those that it supports, encourages and inspires.

May I urge you to consider if your influence and guidance can assist in seeing a constructive way with which mining at the Ffos-y-fran coal mine can be approved, to help protect this very important part of our national identity. Coal mining may be considered part of Wales' heritage but allowing it to cease altogether runs the risk of consigning the heritage sector to history, an act I cannot imagine is truly desired by anyone. Whilst we may be outwardly perceived as an antiquated interest, we are made up of people from very diverse and differing backgrounds. For example, some of which are embracing our need to research and develop alternatives to coal with much enthusiasm or open-minded pragmatism, but this is in its infancy. We still have much to learn and develop, unfortunately time is not on our side and so this is a very challenging time for us all who are faced with and threatened by:-

- Escalating costs of seeking other fuels.
- Escalating and remaining elevated current fuel cost following the energy crisis.
- Difficulty in supply of an alternative fuel.
- Inferior fuel in terms of quantity consumed and visible emissions.
- Increase of overall transportation emissions if not indigenous.
- Tempering public reaction and understanding to fossil fuels and emissions.

May I close, with my final personal plea? As a professional self-employed engineer in my thirties, I was inspired as a child by watching and being mesmerised by the thunderous workings of steam engines. They captured my imagination; it is no coincidence that I studied engineering and my career is a passion and a passion that funds my hobby. I am far from alone in this story. But what is even more important and so-often goes unnoticed, this hobby is escapism, not just my escapism but those who partake and engage in a little sense of nostalgia for a few hours at a weekend. A return to simple fun with like-minded friends, engaging with the public and sharing that enjoyment, relaxation and mental well-being implicitly. We are feeling more at risk of losing the hobby we love so dearly and who knows how many future generations are yet to be inspired. It bothers us to think this could be at threat, all for the sake of the supply of the finest coal available in the World, which is here in our own lands.

Yours Faithfully,

Tom Attwood

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/314/2023

Llŷr Gruffydd MS
Chair
Climate Change, Environment, and Infrastructure Committee
Welsh Parliament
Cardiff Bay
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21 September 2023

Dear Llŷr,

I wish to make the CCEI Committee aware of the Climate Change Committee's (CCC) report, *Adapting to climate change - Progress in Wales*, which was published on 14 September.

As I explained in my Written Statement of 14 September, the Welsh Government requested this independent assessment from the CCC, in order to help us understand and address the increasing risks arising from climate change in Wales. The CCC's findings will help to inform the development of our new national climate resilience strategy, due to be published in autumn 2024.

The CCC's main report is also accompanied by three separate briefings focussed on the interrelationships between climate adaptation and decarbonisation, social equality, and the nature emergency.

Yours sincerely,

Julie James

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

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Agenda Item 9

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Agenda Item 10

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