

Agenda – Climate Change, Environment, and Infrastructure Committee

Meeting Venue:

Committee room 4 Tŷ Hywel
and video Conference via Zoom

Meeting date: 11 October 2023

Meeting time: 09.30

For further information contact:

Marc Wyn Jones

Committee Clerk

0300 200 6565

SeneddClimate@senedd.wales

Private pre-meeting (09.15–09.30)

Public meeting (09.30–12.30)

1 Introductions, apologies, substitutions, and declarations of interest

(09.30)

2 The Environment (Air Quality and Soundscapes) (Wales) Bill – Stage 2 Proceedings

(09.30–12.30)

Lee Waters MS, Deputy Minister for Climate Change

Rhian Williams, Bill Manager – Welsh Government

Olwen Spiller, Deputy Head of Environmental Protection – Welsh Government

Helen Rowley, Lawyer – Welsh Government

Documents relevant to Stage 2 proceedings will be available on the [Bill page](#).

The Climate Change, Environment, and Infrastructure Committee agreed on 20 September 2023, under Standing Order 26.21, that the order of consideration for Stage 2 proceedings would be:



Sections 1–18; Schedule 1; Sections 19–20; Schedule 2; Sections 21–28; Long Title

3 Papers to note (12.30)

3.1 The Environmental Protection (Single–use Plastic Products) (Wales) Act 2023

(Pages 1 – 12)

Attached Documents:

Correspondence from stakeholders to the Chair in relation to the Environmental Protection (Single–use Plastic Products) (Wales) Act 2023
Correspondence from the First Minister to the Llywydd in relation to the Environmental Protection (Single–use Plastic Products) (Wales) Act 2023

3.2 Draft Budget 2024–25

(Pages 13 – 14)

Attached Documents:

Correspondence from the Chair of the Finance Committee to the Minister for Finance and Local Government in relation to the 2024–25 Draft Budget

3.3 Impact of the UK Government’s announcement on net zero policies on the delivery of Wales’ climate change commitments

(Pages 15 – 16)

Attached Documents:

Correspondence from the Chair to the Minister for Climate Change in relation to the impact of the UK Government’s announcement on net zero policies on the delivery of Wales’ climate change commitments

3.4 The Official Controls (Plant Health) (Prior Notification) and Phytosanitary Conditions (Amendment) Regulations 2023

(Pages 17 – 19)

Attached Documents:

Correspondence from the Minister for Rural Affairs and North Wales, and

Trefnydd to the Chair in relation to The Official Controls (Plant Health) (Prior Notification) and Phytosanitary Conditions (Amendment) Regulations 2023

3.5 The Palma Protocol

(Pages 20 – 21)

Attached Documents:

Correspondence from the Chair of the Legislation, Justice and Constitution Committee to the Chair in relation to the Palma Protocol

3.6 Cable Ploughing Electricity Transmission Lines

(Pages 22 – 24)

Attached Documents:

Correspondence from the Chair to the Llanarthne and Area Community Pylon Group in relation to cable-ploughing

Correspondence from the Chair to Jonathan Edwards MP in relation to cable-ploughing

3.7 Inter-Institutional Relations Agreement

(Page 25)

Attached Documents:

Correspondence from the Minister for Climate Change to the Chair in relation to the inter-institutional relations agreement

3.8 Infrastructure (Wales) Bill

(Pages 26 – 53)

Attached Documents:

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

Annex A

Welsh Government's justice impact assessment for the Infrastructure (Wales) Bill

3.9 Supplementary Legislative Consent Memorandum for the Levelling-up and Regeneration Bill

(Pages 54 – 55)

Attached Documents:

Correspondence from Chair of the Local Government and Housing Committee to the Business Committee in relation to SLCM (No 4) for the Levelling-up and Regeneration Bill

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Deputy Head of Policy

**1 Cleeve House Place,
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Llanishen,
Cardiff,
CF14 5GP**

Environmental Protection (Single-use Plastic Products) (Wales) Bill

Annwyl Llyr Gruffydd MS / Chair,

Thank you for your letter, and your request for the contributions of the experience of our members. Ensuring that small businesses are properly informed and empowered is crucial for the success of Welsh Government policy and for the overall well-being of the economy in Wales. As you will know, small businesses play an especially crucial role in the Welsh economy, making up 99.4% of enterprises in Wales. They offer a window into the culture of Wales, employing the most people, and generating a significant portion of our economic turnover.

Unfortunately, Wales is currently the only UK nation without a fixed SME regulatory impact assessment, while Scotland is now implementing one, and Northern Ireland and England already have one. Given this, while we await such an assessment, it becomes even more crucial to utilize all available channels to ensure small firms are aware of any legislative or regulatory changes. This will be instrumental as we progress with the regulatory agenda to enable a transition to net-zero.

FSB Wales's previous research illustrated that 73% of small businesses in Wales believe that they have a responsibility to become more sustainable, but only 24% of businesses felt they knew enough about Welsh Government's environmental policies. Therefore, providing the right guidance and raising awareness will help this acknowledged responsibility become an achievable reality and support SMEs in contributing to the Welsh Government's policy goals.

This contradiction between SMEs' acknowledged environmental responsibility and the lack of necessary policy knowledge should be addressed in any new policy changes. It is important that Welsh Government's strategy does not assume awareness of all measures, particularly where they may differ from those in England. The starting point must be grounded in a realistic assessment to ensure that changes are implemented credibly, effectively, and without being counter-productive.

Welsh Government should ensure that the messaging reflects the opportunities that small firms may gain through the changes, while also clearly evidencing the costs associated, so they are able to properly prepare. Given this, we have concerns that the awareness-raising campaign has not yet been effective among the businesses we represent – or we are unaware of any activity or mechanisms to track levels of awareness. For many, the details of what is expected of them, and why, have yet to be filtered through. Therefore, it is important that the initial changes are enforced proportionately, and that the

transition in the law is viewed as a period for learning and engagement about what the law entails and why.

As the Committee is likely aware, we have been conducting work in this area. I have attached the letter we sent to the Minister. Particularly, we have concerns about the definition of plastic and polymers used in the legislation, and how it includes compostable, biodegradable, and bio-based plastics. The same definition is also being used elsewhere in other UK legislation, such as the Plastic Tax and the Extended Producer Responsibility scheme. We are concerned that this could adversely impact small firms that are finding innovative solutions for plastic packaging and potentially have a negative impact on the Welsh economy and Welsh eco-packaging manufacturers. While discussing the issue with businesses, there is a clear sense that a lot is happening simultaneously regarding plastics legislation. There also appears to be confusion about differing policies across the UK and varying implementation dates of implementation. This has subsequently created some level of confusion at the same time as many firms may be facing a lack of awareness of the Environmental Protection (Single-use Plastics Products) (Wales) Bill.

One business we spoke to has raised concerns about the Plastic Tax. When asked about the impact of the Single Use Plastics Ban, they were completely unaware of whether this would affect them or not. This business was in the eco-packaging manufacturing sector, where the Single Use Plastics Ban has the potential to cause significant upheaval to their firm, and despite this, they were not sufficiently aware of how the legislation would affect them.

We would expect that our members not working in this sector will be significantly less aware of the intention to introduce this ban in October (in areas such as small takeaways).

As such, the publicity, information, and guidance provided by the Welsh Government do not appear to be sufficient and clear enough to enable businesses to understand their obligations under the Act. It is evident that many affected businesses are not aware of their responsibilities and obligations, nor the rationale for the changes by Welsh Government. We would suggest that committee scrutiny should cover the proportionality and consistency in implementation, engagement, and enforcement as the new regulations come in. The focus should also be on a communications strategy aimed at the huge majority of SMEs affected by the legislation, and a clear outline of how this strategy will address the need for lead in times for businesses, a long-term engagement to facilitate future changes, and a clear explanation of why these changes are happening now and what support is available. Welsh Government need to ensure that Business Wales will have links to sufficient expertise to answer questions which might come through businesses.

FSB Wales would welcome the opportunity to further contribute on behalf of our members on this very important issue.

Diolch yn fawr,

Deputy Head of Policy
Federation of Small Businesses (Wales)

Minister for Climate Change
Welsh Government
Cathays Park
CF10 3NQ

Dear Minister,

RE: Biodgradable Packaging Businesses and Single Use Plastics Legislation

I am writing to you to bring your attention to an issue FSB Wales have become aware in the last weeks relating to the Single Use Plastics legislation coming into force in the Autumn.

We would suggest that the implications are serious enough that Welsh Government investigate this, and to reassure the sector on whether the forthcoming legislation will impact on sustainability focused businesses developing and trading green packaging solutions.

FSB Wales and businesses in the sustainable packaging sector strongly support the necessity of a ban on single-use plastics.

However, the possible issue lies in the definition of plastics that has been used in the plastics tax legislation by UK Government, and the continuing use of this definition into Welsh legislation to ban Single Use Plastics.

Within the definition used, Polymer of almost all kinds is defined as plastic in the legislation - even though the plastic packaging tax aims to result in environmental benefits, compostable, biodegradable and bio-based plastics are not current exempt from the tax on plastics through this definition. So, these will also be covered by any upcoming ban on plastics covered by the same definition.

While there are issues with processes of recycling and natural based polymers, the effect of this definition appears to go against the aims of the legislation and further development of the sustainability sector, in that the issue lies with the process and not necessarily the material itself. The materials are plant-based and are geared to be sustainable. Given that we are in need of building better circularity, this should be a spur to better waste separation (as happens elsewhere) rather than a ban. Indeed, some of our members have tested this with waste management companies and experts.

It also appears to go against the hierarchy of re-use vs recycling that is the core aim in developing a circular economy in Wales.

At the very least, it appears that lumping all of these materials together as the same in the definition as 'single use plastic' is disproportionate and risks lumping the 'better' in with the 'worst' of single use plastics, on a definition that is problematic.

The Minister should note that the EU has already provided a derogation for biodegradable packaging in its own legislation which should be seen as a comparator, but also risks placing Wales under a competitive disadvantage in a sector in which its companies are leading.

Please find attached a briefing provided to us by leading company in the UK sustainability sector which outlines the issues and misunderstandings in the definition currently used. This has been sent by our FSB UK colleagues to DEFRA, and we are now awaiting a response. So that you are aware, this is an issue that we are looking into in England and in UK legislation too.

However, the Welsh Government legislation defines polymers as plastic in same way as the UK Government. **We would urge Welsh Government to explore how it may change this definition, as lies within the power of Welsh Ministers in the legislation, or at the very least provide a derogation over a period of time to ensure that the definition is fit for purpose and does not have an unintended consequence against the spirit of the legislation.**

It should also be noted that many businesses in this sector have been supported by Welsh Government and held up as exemplars of good businesses, and so there seems to be a disconnect here in how Welsh Government has supported this industry to develop and innovate.

As currently defined, the legislation may also not account for innovations happening in the field and close space and markets for innovation to solve the issues of re-using materials in the future. There is a danger that we will lose ethical green Welsh packaging businesses to other nations taking a lead in supporting this area, and be left behind economically as a result. Businesses in Wales who have been leaders in this field, and work to an ethical green model of sustainability, will be forced to cease operations in Wales and the UK as a result.

We would welcome the opportunity to explore this further and would like to offer that officials meet businesses in the field of plant-based packaging who understand the issues best to further explore the problem and the impact, as well as the best way forward.

We are currently exploring the issues further but given the timeline to the Single Use Plastics legislation coming into force, we wanted to ensure that you were aware of the issue as early as possible, and we would be happy to work with Welsh Government and the businesses in the area to find a solution.

Diolch yn fawr,

Yours Sincerely,


Deputy Head of Policy
Federation of Small Businesses (Wales)

Solinatra position on the Proposal Environmental Protection (Plastic Plates etc. and Polystyrene Containers etc.) (England) Regulations 2023

The environmental need for legislation on single use plastic is clear, and we welcome the UK government's proposal to ban the supply of commonly littered single-use plastic items. However, we oppose the draft legislation's inclusion of compostable plastics within the scope of the ban, which does not reflect the reality of the industry and stifles innovation.

Compostable plastics offer a sustainable solution for products and packaging that are not suitable for plastics recycling, in particular single use items that are too small to be recycled or are contaminated with food or organic waste. Compostable plastics, made without petrochemicals and which degrade without microplastics are a viable and sustainable material which offer an environmentally friendly alternative to traditional, polluting plastics.

The legislation gives three main arguments against the use of biodegradable and compostable plastics, that:

(a) "bio-based, biodegradable and compostable plastics are still plastics", (b) they are not designed for reuse and therefore are still single use in nature, (c) that there is not sufficient industrial composting capacity in England to manage with the disposal.

To counter these arguments, and to illustrate the positive contributions of compostable plastics the following arguments are laid out, with further evidence provided in the appendices.

Biobased, Biodegradable and Compostable Plastics

The proposal in its current form does not distinguish between biobased, biodegradable and compostable plastics, which represents a fundamental misunderstanding of the topic and ignores the innovation undertaken in this industry. The lack of distinction also undermines the BEIS and Defra consultation "Standards for biodegradable, compostable and bio-based plastics" published in July 2019¹ which gave the following definitions:

"Bio-based – These are plastics that are made using polymers derived from plant-based sources such as starch, cellulose, or lignin. Bio-based plastics can be engineered to be biodegradable, but are not necessarily.

Biodegradable – These are plastics that can be broken down into water, biomass, and gases such as carbon dioxide and methane. Biodegradability depends on environmental conditions such as temperature, humidity, microorganisms present, and oxygen.

¹ BEIS and Defra consultation outcome, "Standards for biodegradable, compostable and bio-based plastics", 2019 <https://www.gov.uk/government/consultations/standards-for-biodegradable-compostable-and-bio-based-plastics-call-for-evidence>

Compostable – Compostable plastics are a subset of biodegradable plastics that break down into water, biomass, and gases under composting conditions. Industrial composting conditions are the most optimal: temperatures of 55–70 degrees C, high humidity, and oxygen.”

Innovation in the sector has led to the development of compostable plastics, made without petrochemicals and which break down without microplastics. Such materials provide a renewable, low carbon, circular solution which have environmental and consumer benefits. Solinatra is a material that has been developed in the UK, and is a natural alternative to plastic. Possessing the positive characteristics of traditional plastics that enable it to easily be moulded and manufactured, without the detrimental environmental impact, and degrades at its end of life with zero persistent microplastics.

Comparisons with Wooden Cutlery

The proposed legislation states that compostable plastics are not designed for reuse, and therefore are still single use in nature. However, single use wooden cutlery will continue to be allowed – a product that is single use, and not designed to be reused. Wooden cutlery is most commonly made using birchwood or bamboo, and manufactured in China from wood grown in China or Russia². Wooden cutlery is often also coated with a thin film of wax or plastic, to prevent splinters occurring and to avoid the uncomfortable mouthfeel that is associated with the product. Wooden cutlery will also not degrade if littered in an open environment, and in a home compost or industrial compost setting will actually take longer to degrade than a material such as Solinatra, due to the wood’s high fibrous cellulose content.

The Defra impact assessment³ used to inform the legislation states that wooden cutlery takes two years to compose, but this figure is based on simplified information about the degradation of plywood in an open marine environment and does not factor in the differences between decomposition in a home or industrial composting environment nor the open environment.

Furthermore, the impact assessment assumes that 10% of cutlery used in the UK is manufactured in the UK and that the manufacture of wooden alternatives will replace the plastic. However, the manufacturing process for wood requires a wholly different manufacturing set up, and there is no

² Timber Trade Federation UK, August 2022: <https://ttf.co.uk/import-warning-birch-plywood-from-the-far-east> and Indufor, April 2022: <https://induforgroup.com/can-the-european-market-survive-without-russian-birch-plywood>

³“Impact Assessment on the proposal to ban the supply of single-use plastic plates and cutlery in England”, Defra, 2021 https://consult.defra.gov.uk/environmental-quality/consultation-on-proposals-to-ban-commonly-littered/supporting_documents/Plates%20and%20Cutlery%20Impact%20Assessment.pdf (page 5, footnote 14, which refers to a NOAA pdf which is no longer listed but can be found at: <https://web.archive.org/web/20161227133518/https://marinedebris.noaa.gov/sites/default/files/publications-files/talking-trash-educational.pdf>) A response from the NOAA about why the pdf is no longer listed at the link:

“We believe that the link originally went to an out-of-date version of [the Talking Trash & Taking Action educational curriculum](#). A previous version contained an activity that NOAA no longer supports, focused on somewhat misleading and oversimplified information about degradation rates of different marine debris materials. That version was replaced in recent years, but the report you are reviewing must have included the outdated link. For more information on the NOAA Marine Debris website, you can learn more about the complexities and problems around the use of degradation rates on our [The Mystery of How Long Until It’s Gone page](#).”

evidence to suggest that any plastics manufacturers are going to change production lines in this regard.

Currently there are no domestic manufacturers of wooden cutlery, and very few plastics companies still produce cutlery in the UK. One of the last major manufacturers of cutlery was Plas Tech Ltd, who ceased producing plastic cutlery in 2021 when their contract with a major supermarket chain ended.

Plas Tech Ltd are now working with Solinatra to manufacture biobased cutlery in the UK: resulting in a product made with plant sources grown in Suffolk, material processed in Manchester and manufactured into cutlery in Norfolk. The domestic supply chain means that Solinatra cutlery has a much lower carbon footprint than products shipped from China, as well as far greater oversight of manufacturing conditions and compliance with regulations.

All single use wooden currently sold in the UK is imported, and the vast majority is manufactured in China. The carbon footprint of shipping the cutlery from China to the UK is one of the biggest factors in calculating the overall LCA of the materials.

Degradation of Solinatra Material

Cutlery made of Solinatra has been shown to fully degrade in industrial composting facilities within 45 days, and in home compost settings within 9-12 months. Solinatra degrades to carbon, water and biomass, and leaves behind zero persistent microplastics or harmful contaminants.

In order to further evidence the degradation of Solinatra material, we include Appendix A which provides interim data from Merieux NutriSciences, an independent testing laboratory who are verifying the home and industrial compostability of Solinatra material to the TÜV standard. The TÜV OK Compost certifications are globally recognised and based on the requirements of EN13432 and other European standards and regulations. The test criteria includes measuring the metabolic, microbial conversion into water, carbon dioxide, mineral salts of any other elements present and new cell biomass; the disintegration into fragments no larger than 2mm and the absence of harmful toxic substances or ecotoxicity effects.

Waste Collection and Infrastructure

The 2019 BEIS/Defra consultation on the “Standards for biodegradable, compostable and bio-based plastics” stated that “Current systems and processes should not, however, be a barrier to innovation, particularly if such innovation could have environmental benefits” (Chapter 6, Point 6.21). In regards to the current infrastructure and capacity of biowaste collections, the Environment Act 2021⁴ legislated that all local authorities must provide weekly food waste collections by the end of 2023. This increase in household food waste collection is being matched by growth in the AD sector, as of April 2022 the UK had 660 operational facilities⁵ and advancements in technology mean that sites currently under construction have far increased capacity in comparison to those in use in 2019.

⁴ Environment Act 2021, Part 3, Section 57: Food Waste Collection
<https://www.legislation.gov.uk/ukpga/2021/30/section/57/enacted>

⁵ Anaerobic digestion deployment in the United Kingdom, Ninth Annual Report, 2022
<https://www.nnfcc.co.uk/press-release-ad-report-2022>

Responses to consultations on the topic have often cited concerns about the possibility of compostable plastics negatively affecting the running or results of AD plants or contaminating the supply. However, the evidence for this is scant and the concerns more frequently refer to compostable bags and caddy liners rather than rigid material items as included in the scope of the proposal.

Innovations in the material sector have led to compostable plastics that have no detrimental impact upon the operation of the anaerobic digesters nor on the quality of compost produced.

An AD plant opened in 2022 in Attleborough has tested Solinatra material, and gives the following evidence:

“There is no doubt that cutlery made from Solinatra is capable of being processed by the AD plant and will not be any concern to the operation or output and should be recommended to be collected with food waste.

The depackaging unit at Attleborough is state of the art for the food waste processing industry, whereby all solid wastes are mixed and subjected to a number of processes that are designed to reduce any solids to a size that will pass through a series of screens.

All of the digestate from the tanks, following the digestion process (45 day retention), is then pasteurised at 70+ degrees C, for an hour. This material then becomes a product, and under the PAS110 protocol, can be spread to land as a soil improver and fertiliser.” - Attleborough Eco Electric Limited

This is an excerpt from the full report which can be found in full in Appendix B.

Previous Legislation

Since the introduction of a charge for single use plastic carrier bags in 2015, the use of such bags has decreased significantly, and the regulation has been heralded as a great achievement in reducing plastic waste in the UK. In this legislation, compostable bags were exempt and the use of carrier bags and food caddy liners rated to the standard EN13432 is widespread.

Concerns cited in the consultation that the labelling of products as compostable would lead to increased littering has not been evidenced in carrier bags since the change in legislation in 2015.

Innovation and Investment

The UK bioplastics sector was valued at \$273.5 million in 2021, and forecast to grow to \$745.2 million in 2026⁶. The biomaterials sector is set to grow globally offering export market opportunities to the UK, but also meaning that not having a strong biomaterials sector in the UK sets export and jobs at risk.

Government investment in innovative materials and technologies that promote the UK’s sustainability and net zero goals accounts for more than £3billion, including £1billion in the Net Zero Innovation

⁶ GlobalData Industry Profile, Bioplastics in the United Kingdom, 2022. Reference code: gd0183-2940-2021, Publication Date: August 2022, Primary NAICS: 325211

Portfolio⁷. Government funding, including from Innovate UK, has been awarded to develop compostable plastics. Solinatra is one such recipient of Innovate UK funding, having been awarded a Smart Grant in 2022 to develop a thermoforming grade of biodegradable material. It is questionable why the government is seeking to ban the use of a material it is also funding to develop.

Standards and Certifications

We propose that a standard is implemented for biodegradable and compostable plastics that are industrially compostable without microplastics, and that this standard is allowed within the proposal – and future proposals on single use products.

We propose that this standard complies with the current standards:

- EN 13432
- ASTM D6400
- PAS 9017

The UK has an opportunity to set a world standard, and be seen as a world leader in this area.

Setting such a standard that also complies with the upcoming EU Packaging and Packaging Waste Directive, would make it easier for businesses to comply across borders, and in particular in Northern Ireland and Ireland, as well as on a global scale.

A standard and certification for products that can be composted will provide clarity to businesses and consumers about the correct use and disposal.

Setting a robust standard will help to reduce greenwashing of products that are not compostable, and drive innovation in creating truly sustainable materials and products that match the standard.

⁷ Net Zero Innovation Portfolio, <https://www.gov.uk/government/collections/net-zero-innovation-portfolio>. UKRI Corporate Plan 2022-2025: <https://www.ukri.org/wp-content/uploads/2022/08/UKRI-190822-CorporatePlan2022to2025.pdf>

5th September 2023

By Email: SeneddClimate@senedd.wales

Dear Mr Llyr Gruffydd MS,

Re: ACS response on Communications Plan for Welsh Single Use Plastic Ban

Thank you for your letter and questions on the Welsh Government's communication plan for the single use plastic products ban introduced by the Environmental Protection (Single-use Plastic Products) (Wales) Bill. We have proactively engaged with Welsh Government Officials on their guidance and communications in relations to the ban. We have answered your questions set out below.

How effective do you believe the awareness-raising campaign has been among the businesses you represent?

We have had positive engagement with Welsh Government Officials about the single use plastic ban. We have raised concerns about the very limited consultation on the regulations and the lead times for publishing guidance and other assets to inform retailers. The Welsh Government has shared with us a draft version of their guidance and we were able to provide feedback. However, to date we have not seen a final version of the guidance that can be shared with retailers and we are not clear on the exact implementation date. At this point we are directing our members to the information on the Welsh Government's website: [The Environmental Protection \(Single-use Plastic Products\) \(Wales\) Act](#). We recommend that the guidance associated with new regulatory changes are shared with impacted businesses at least 12 months in advance of their implementation – we are currently 3 weeks away from implementation.

Are the businesses you represent aware of the intention to introduce the first bans of certain single-use plastics in October?

It is difficult to provide a single view from convenience retailers on their preparedness for the single use plastic products ban. Some retailers have dedicated compliance teams that have been working on the policy change for a and other retailers will carry a small range of products that are going to be impacted. The lack of guidance from the Welsh government means that many retailers will be increasingly reliant on manufacturers of products being banned or manufacturers of alternative recyclable products for information. It should be a priority for the Welsh Government to issue their guidance to business as soon as possible.

Is the information and guidance provided by the Welsh Government sufficient and clear enough to enable businesses to understand their obligations under the Act?

The guidance published by the Welsh Government at present is not very detailed. The draft guidance that the Welsh Government have shared with us is comprehensive, but it is yet to be published or shared with retailers. We are also awaiting more resources to be made available, such as infographics and animations.

We hope our feedback is helpful, please contact me or [REDACTED] if you require any further information.

Yours sincerely,

[REDACTED]
Government Relations Director
Association of Convenience Stores



Elin Jones MS
Llywydd
Senedd Cymru

llywydd@senedd.cymru

21 September 2023

Dear Llywydd,

In my letter of 27 July on the Environmental Protection (Single-use Plastic Products) (Wales) Act 2023, I said that I would commission a review of the circumstances around our correspondence.

The review was carried out by the Director of Propriety and Ethics, who had no previous involvement in this matter, and is now complete. He considered all the relevant documentation and spoke with the key people who were involved in this process, including your senior legal advisers. I have received the review and accepted its recommendations.

I was reassured to learn from the review that everyone involved in this process had acted in good faith and with the intention of giving the best possible advice. As we have noted previously, dealing with international trade obligations after Brexit is new territory for all of us, so it is perhaps unsurprising that we should find some grey areas which need to be worked through as we aim to establish the best approaches for the long term.

The advice given to Ministers was that the best way to comply with the World Trade Organisation (WTO) recommendation of six months between publication and coming into force, was to delay the application of the Welsh Seal. This advice was given in good faith after consideration of the options and risks and in the absence of any precedent. It was recognised as novel.

I recognise your view, however, that the First Minister has a responsibility not to delay unduly the application of the Seal, and that to do so might be seen as frustrating the intention of the Senedd to give prompt effect to legislation which it has approved.

Clearly, I have no wish for the Welsh Government to act in ways which might be seen as disrespectful to the Senedd. In this light, should we find ourselves in similar circumstances again, I appreciate that we will need to collectively consider alternative ways forward.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I am copying this letter to the Chair of Climate Change, Environment and Infrastructure Committee, the Chair of the Legislation, Justice and Constitution Committee and Chair of the Finance Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

MARK DRAKEFORD

Rebecca Evans MS,
Minister for Finance and Local Government

22 September 2023

Dear Rebecca,

Evidence papers supporting the 2024-25 Draft Budget

Many thanks for your [letter](#) of 8 September.

I am grateful for the constructive manner in which you have engaged with the Finance Committee on ways that ministerial written evidence on the Welsh Government's Draft Budget proposals can be improved, with the aim of addressing the issues identified in my [letter](#) of 23 June.

I welcome your intention to confirm when Ministers will provide their evidence papers to Senedd Committees ahead of the 2024-25 budget round. I am also grateful that Senedd Committees will be offered a technical briefing on the Draft Budget.

In terms of your request for a clear indication from the Finance Committee on what would be considered essential for inclusion in ministerial evidence papers, it would not be appropriate for me to provide a single list of proposals without consulting Committee Chairs first.

Whilst I see benefits in developing a high level template for evidence papers, and although I am supportive of co-operation between committees to avoid duplication and overlap in its areas of focus during budget scrutiny, a consistent



approach may be difficult to achieve in practice given that Committees will naturally have different priorities and areas of focus.

I would also want to guard against the development of a template that may foster a prescriptive approach to the provision of written evidence, which may end up diluting the information made available to individual Committees as they seek to hold ministerial spending decisions to account.

The difficulties faced by Ministers in providing specific details for Committees relating to each MEG during the 2024-25 budget is a case in point. Although I recognise the challenges posed by this year's budget timetable, this should not restrict Committees from requesting detailed information relating to individual portfolios as this is crucial to informing public evidence sessions with Ministers, particularly when time to consult with stakeholders is limited.

I am therefore willing to explore ways in which a template could be developed, although I also acknowledge that developing consensus on this issue may take time and that it is unlikely that any changes will be agreed for the forthcoming budget round.

I am copying this response to all Senedd Committees with an interest in budget scrutiny to facilitate further discussions, and will raise this matter at the next meeting of the Chair's Forum on 23 October.

Yours sincerely



Peredur Owen Griffiths MS
Chair of the Finance Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Julie James MS
Minister for Climate Change

25 September 2023

Dear Julie,

Impact of the UK Government's announcement on net zero policies on the delivery of Wales' climate change commitments

You will be aware that, last week, the Prime Minister announced changes to various net zero policies, some of which are in non-devolved areas.

The Committee is keen to understand whether and how the following changes will impact on the delivery of Wales' carbon budgets and carbon emissions reduction targets:

- The five-year delay in the introduction of a ban on petrol and diesel cars;
- The move away from the introduction of more stringent energy performance standards for the private rental sector; and
- The delay in phasing-out gas boilers.

I appreciate that work to assess the impact of these changes may be in its early stages. However, it would be helpful if you could provide an initial analysis, with further information to follow once a detailed analysis has been completed.

I would welcome a response by **Friday 20 October**. This will ensure Members have an opportunity to raise any issues with you during the next general Ministerial scrutiny session, scheduled for 26 October.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Llyr', written on a light-colored background.

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

Croesewir gohebiaeth yn Gymraeg neu Saesneg | We welcome correspondence in Welsh or English.

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

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

Llywodraeth Cymru
Welsh Government

SeneddClimate@senedd.wales

28th September 2023

Dear Llŷr,

The Official Controls (Plant Health) (Prior Notification) and Phytosanitary Conditions (Amendment) Regulations 2023.

I wish to inform the Committee of the intention to consent to the UK Government making and laying The Official Controls (Plant Health) (Prior Notification) and Phytosanitary Conditions (Amendment) Regulations 2023 ("The Regulations") by 26 October 2023.

I received a letter from Lord Benyon, Minister for Biosecurity, Marine and Rural Affairs, requesting consent to the Regulations. The Regulations will be made by the Secretary of State for Environment, Food and Rural Affairs, in exercise of the powers conferred by Articles 5(3), 30(1), 40(3), 41(3) and 105(6) to, Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants. Article 2a (2) of the Regulation (EU) 2016/2031 provides that such Regulations can be made by the Secretary of State with the consent of the Welsh Ministers.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The purpose of the Regulations is to update aspects of the Phytosanitary Conditions Regulations (PCR) to introduce the following changes:

- Deregulate specific GB quarantine pests (QPs) which have been assessed by the Plant Health Risk Group (PHRG) as not meeting the criteria to be a QP.
- The addition of new GB QPs which have been assessed by the PHRG as meeting the criteria to be a QP.
- The addition of new GB provisional quarantine pests (PQPs) which have been assessed by the PHRG as meeting the criteria to be a QP on the basis of a provisional assessment.
- Update import requirements to take account of changes in the material traded.
- Introduce a change missed in a previous SI.
- Formalise an easement in order to make import requirements work in practice.
- Include a derogation which was carried over as retained EU law but which has now expired and needs to be included in GB legislation.

In addition, the Regulations will introduce an amendment to enable provisions within the Borders Target Operating Model (TOM). This provision will amend the Official Control Regulations (OCR) to provide an exception of certain fruit and vegetables to the pre-notification requirements of the OCR.

The Statutory Instrument (SI) is subject to the negative procedure and is due to be laid before UK Parliament on 26 October 2023. Urgent measures in the Regulations will come into force on 17 November and 24 November 2023, with non-urgent measures coming into force on 2 May 2024.

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 Regulations to be laid by UK Government. The Regulations relate to a devolved area, however, they impact on imports of plant and plant products GB-wide. Many of the changes in the Regulations relate to the importation of plants and plant products. Most of these goods which enter Wales come through English ports and would be subject to their importation legislation. Introducing separate regulations in Wales and England may cause additional burden on the Animal and Plant Health Agency (APHA), business, traders and growers. Regulating on a GB-wide basis ensures a coherent and consistent statute book with the regulations being accessible in a single instrument with no risk of legislative divergence in Great Britain. Additionally, doing Wales-only Regulations for some provisions within this SI would likely have implications for the task of reforming and consolidating plant health legislation following assimilation of the REUL Bill at the end of 2023, as well having implications for notifying the World Trade Organisation (WTO) of the changes.

I would like to reassure this Committee it is normally the policy of the Welsh Government to legislate for Wales in matters of devolved competence. Therefore, I am giving my consent to these Regulations. There is no policy divergence between the Welsh and UK Government in this matter.

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

Yours sincerely,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive, flowing style.

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

Agenda Item 3.5

Y Cymdeithas Ffurfio, Cyfiawnder a'r Cyfansoddiad

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

29 September 2023

Dear Llyr,

You will be aware that the Legislation, Justice and Constitution Committee is responsible for monitoring the implementation of non-trade international agreements in the Sixth Senedd.

During our meeting on 11 September 2023, we considered the Protocol amending the International Convention on the Conservation of Atlantic Tunas (the "Palma Protocol"). The Palma Protocol amends the scope of the International Convention for the Conservation of Atlantic Tunas (the "Convention") to cover sharks and other elasmobranchs that are oceanic, pelagic, and highly migratory found in the Atlantic Ocean. It also makes changes to the working procedures of the International Commission for the Conservation of Atlantic Tunas (the "Commission").

Although international relations is a reserved matter, changes made by the Palma Protocol to the Convention could affect devolved matters, for example, if devolved governments were required to observe and implement recommendations of the Commission relating to devolved matters.

During our consideration of the agreement, we agreed to draw it to your Committee's attention for information. We also intend to write to Welsh Government to request information on:

- its view of the Protocol;

- what internal arrangements are in place to monitor, observe and implement recommendations of the Protocol's Commission in devolved areas; and
- its assessment of whether any steps, including changes, are needed at this stage to ensure Wales is compliant with the amendments made by the Protocol in devolved areas.

Our latest report is [available here](#).

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair

Agenda Item 3.6

**Pwyllgor Newid Hinsawdd,
yr Amgylchedd a Seilwaith**

**Climate Change, Environment,
and Infrastructure Committee**

Mr [REDACTED]

Llanarthne and Area Community Pylon Group

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27 September 2023

Dear Mr [REDACTED],

Thank you for your correspondence in relation to cable-ploughing.

The Committee considered several pieces of correspondence in relation to this matter in its meeting on 20 September.

As you will know, the Committee is unable to directly intervene or influence specific planning matters or applications.

In the first instance, the Committee has agreed to write to the Minister for Climate Change to enquire about the Welsh Government's current stance and consideration of cable-ploughing. The Committee has also agreed to seek further information from those parties who have recently corresponded with us on this matter.

The Committee will consider its next steps once it has received correspondence from the Minister and further information from those parties. I must highlight, however, that given the Committee's current workload, it is unlikely to be able to conduct any work on this matter this side of Christmas.

Therefore, I would be very grateful if you would provide the Committee with any detailed information you may have concerning cable-ploughing technology, with particular reference to its technical and financial viability compared to other technologies.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Llyr', is centered on a light-colored rectangular background.

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

Croesewir gohebiaeth yn Gymraeg neu Saesneg./ We welcome correspondence in Welsh or English.

**Pwyllgor Newid Hinsawdd,
yr Amgylchedd a Seilwaith**

**Climate Change, Environment,
and Infrastructure Committee**

Jonathan Edwards AS

27 September 2023

Annwyl Jonathan,

Thank you for taking the time to correspond with the Committee on the matter of Cable Ploughing Electricity Transmission Lines, and the broader implications for Wales's electricity infrastructure.

We acknowledge your concerns and the sentiments of the local community you represent about the proposed developments in the Tywi Valley.

As you will know, the Committee is unable to directly intervene or influence specific planning matters or applications.

However, the Committee has decided to write to the Minister for Climate Change to enquire about the Welsh Government's current stance and consideration of cable-ploughing.

The Committee will consider its next steps once it has received correspondence from the Minister and further information from those parties who have recently corresponded with us on this matter. I must highlight, however, that given the Committee's current workload, it is unlikely to be able to conduct any work on this matter this side of Christmas.

Our Committee Clerk will contact the relevant parties shortly to request more detailed information.

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.

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

Ein cyf/Our ref: JJ/PO/320/2023

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

Llŷr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee

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2 October 2023

Dear Huw, Llŷr,

I am writing in accordance with the inter-institutional relations agreement, to report on the latest meeting of the Net Zero, Energy and Climate Change Inter-Ministerial Group, held on 14 September 2023. The Deputy Minister for Climate Change attended the meeting on my behalf. The meeting focused on the comments from Chris Stark, Chief Executive of the Climate Change Committee and Heat Decarbonisation.

The meeting also was attended by Mairi McAllan MSP, Cabinet Secretary for Net Zero and Just Transition; Graham Stuart MP, Minister of State Energy Security and Net Zero; and Katrina Godfrey, Permanent Secretary at the Northern Ireland Department of Agriculture, Environment, and Rural Affairs.

Yours sincerely,

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

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Agenda Item 3.8

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/330/2023

Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution Committee
Welsh Parliament
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3 October 2023

Dear Huw,

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

I also attach the Welsh Government's Justice System Impact Identification (JSII) form for the Bill as considered by the Ministry of Justice.

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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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Annex A

Question 1

Section 57 relates to the granting or refusal of infrastructure consent. In your letter to us on 11 September 2023, you stated that you envisage subordinate legislation made under this section will specify that the Welsh Ministers “must only make an order which contains minor changes”. You further stated that “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 should only be minor in nature”. If changes are to be minor, why is the power drafted much wider than is necessary to achieve its purpose?

Response

The intention is that subordinate legislation will specify that an order made by the Welsh Ministers may only include minor changes to the draft order applied for. Even minor changes can be material in some respects and therefore drafting is appropriate.

Question 2

Section 82 relates to the publication and procedures attached to infrastructure consent orders. By virtue of paragraph 29 of Schedule 1, an order can create a criminal offence. Such an order will be subject to the negative scrutiny procedure. Why has the affirmative procedure not been attached to this power?

Response

The Order that is made relates to the granting of an individual development and any criminal offence is relevant and necessary for the granting of the consent. The criminal offences that can be created by an Infrastructure Consent Order are very limited in scope. They will be of local effect and there are limited sentencing powers that may be attached to them.

Because of the pre application processes built into the system, applicants will need to engage with all stakeholders and local communities about any criminal offences they wish to have included in the Order.

The appropriateness for any offences will be one of the aspects that will be scrutinised by the examining authority. These provide suitable safeguards to ensure this power is used appropriately and it will be open to the Welsh Ministers to issue an order without offences that are in the order that was applied for using the power in section 57 of the Bill.

Question 3

Section 88 relates to the procedure for changing and revoking infrastructure consent orders. What persons will always be given notice of a change to or revocation of an infrastructure consent order under section 88(6)?

Response:

The ability to seek an amendment or revocation of an infrastructure consent order has many potential avenues, which presents a degree of complexity. For example, there could be a request to revoke an order from an applicant or LPA. Alternatively, the Welsh Ministers have the power to revoke an order unilaterally.

It is therefore difficult to anticipate who would always be given notice of an amendment or revocation of an infrastructure consent order.

However, as a matter of public law and natural justice, there would always be a requirement to provide notice to the person who originally applied for the infrastructure consent order.

Based on these principles of public law and natural justice, it was concluded it would not be necessary to place this requirement on the face of the Bill.

Question 4

Which public authorities will be consulted under section 126(1) and why are they not included on the face of the Bill?

Response:

It is intended that the list of authorities and bodies to be identified as statutory consultees will be set out in subordinate legislation following a consultation exercise, to ensure that all relevant bodies are engaged in the process. However, it is anticipated many of the authorities and bodies currently consulted as part of the Development of National Significance process will also be statutory consultees for the purposes of this new consenting regime where a development is on land.

It is envisaged that Natural Resources Wales would be consulted in all instances, however, more specialised public bodies would be consulted under certain circumstances. For example, the Ministry of Defence would be consulted when a development that falls within statutory safeguarding zones as issued under the Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002, or when wind developments where any turbine would have a maximum blade tip height of, or exceeding, 11m above ground level and/or has a rotor diameter of, or exceeding, 2.0m.

The list of statutory consultees is considered suitable for regulations, rather than being placed on the face of the Bill as information on consultations with a wide range of public bodies will present a significant level of detail and will also need to be flexible to respond to any future changes in procedure or organisational responsibilities.

Question 5

In question 6 of our letter to you on 27 July 2023 we queried the ability to “legislate swiftly” as a justification for the application of the negative procedure to a number of delegated powers in the Bill. You provided a response in respect of section 127(2)(c) and 127(4). Could you confirm for the record how the need to act “swiftly” is relevant to the choice of procedure for the direction power in section 127(3)?

Response:

Section 127(3) clarifies that directions may relate to specific applications or authorities or to applications or authorities generally. For example, the Welsh Ministers may issue a direction on the way notification is carried out on a particular type of infrastructure project due to changes to a website where the applications register is hosted, or amendments to the statutory consultee list.

It would be beneficial for all parties involved that any adjustments are carried out promptly, otherwise the process may continue to pose an unnecessary burden to those involved. The ability to act swiftly will help ensure there are no unnecessary delays or duplication of work.

Question 6

Section 128 includes a power for the Welsh Ministers to direct that requirements under the Bill do not apply in specified circumstances. Why is it appropriate to include this regulation-making power rather than to make provision on the face of the Bill which set out the specific circumstances?

Response

The consenting regime introduced by the Bill is intended to provide for one process to be used for consenting a wide range of infrastructure developments and in a wide range of different circumstances.

I set out in the Statement of Policy Intent why we need this power and that due to the wide variety of projects and circumstances a level of flexibility would be vastly beneficial to the process.

This power is not uncontrolled, it is limited to areas specified in regulations. This will mean that all stakeholders can influence where this power should or should not be used., It enables the power to respond to changes in the system, or reflect evidence that comes forward during the operation of the system. I believe it is appropriate to use subordinate legislation to limit this power subject to draft affirmative procedure.

Question 7

In your letter of 11 September your written answer in relation to section 128 states that “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”. Will this provision in the Bill, if and when enacted, prevent a future Minister from using this power to disapply requirements which protect rights?

Response

The direction making power is limited to areas specified in Regulations, with these regulations subject to the draft affirmative procedure. The consultation and Senedd scrutiny of those regulations will provide appropriate safeguards. As I detail above, I do not think it is possible to set out provisions on the face of the Bill where a direction may be issued but if you have suggestions for improvements to this section, I would be happy to consider them.

Question 8

Section 137 provides for restrictions to apply to the making of regulations and orders under the Bill. What is the purpose of the drafting of this provision and why has it been included given the operation of section 154 of the *Government of Wales Act 2006*? Why does section 137 only refer to some of the provisions of Schedule 7B to the 2006 Act and not others?

Response

Section 137 of the Bill sets out the restrictions on the scope of the subordinate legislation powers when making provisions that could confer functions on, or modify or remove the functions of, a Minister of the Crown, government department or other reserved authority.

The restrictions in paragraphs 8, 10 and 11 of Schedule 7B to the Government of Wales Act 2006 mentioned in section 137 are of fundamentally different character to other restrictions in Schedule 7B. Most restrictions in Schedule 7B to GOWA 2006 rule things out completely. The restrictions in paragraphs 8, 10 and 11 say that certain things cannot be done unless consent is obtained or consultation is carried out. This has consequences for how best to achieve clarity in the drafting of provisions in Senedd Acts that confer functions on public authorities generally, modify or remove functions of public authorities generally or confer powers to do those things in regulations.

Whilst section 154 of the Government of Wales Act 2006 would have the same effect if section 137 were not in the Bill, it would not be possible to work out from reading the Bill, in combination with GOWA 2006, whether any power in the Bill that appears to authorise the conferral, modification or removal of functions could be used to confer functions on, or modify or remove the functions of, reserved authorities.

In order for a person to understand the scope of the regulation making powers they would need to search for evidence of whether consent had been obtained or

consultation undertaken, and if it had been they would also need to review the correspondence between the Welsh Ministers and the relevant Minister of the Crown to fully understand the provision that could be made in subordinate legislation under the Bill.

By including section 137, the extent of the Welsh Ministers' power to make subordinate legislation is clear from reading the Bill alone and more accessible to users of the legislation.

Question 9

Should the Bill be passed and enacted, when do you envisage all provisions of the Bill and the accompanying subordinate legislation being fully in force?

Response:

The principles of the Bill (i.e. the creation of Significant Infrastructure Project) and the powers to make regulations to implement the Bill will come into force the day after the Bill receives Royal Assent. We anticipate the implementation period will take a year, subject to the outcome of consultations on subordinate legislation.

Question 10

In your view, will further primary legislation be required in the near future in the field of planning? What are the timescales for the preparation and introduction of this proposed legislation?

Response:

This Bill sits outside Town and Country planning, however there is no intention to introduce any other primary planning legislation in this Senedd term other than the Consolidation Bill.

The planning consolidation Bill will bring together provisions from the multiple pieces of legislation that currently set out the legislative framework for planning in Wales. It is hoped that this will enable people using the planning system in Wales to refer to a single, fully bilingual act containing all the relevant law. It is anticipated that the Planning Consolidation Bill will be introduced to the Senedd during 2024.

Question 11

What consideration has been given to accessibility and alignment of legislation in this area, particularly given the future legislative landscape includes a planning consolidation Bill?

Response:

The Bill is a standalone piece of legislation and therefore the language used has been drafted with accessibility in mind.

The drafting of the Bill will ensure that the existing planning system and associated legislation are largely unaffected.

The Bill contains consequential provisions to amend existing legislation to ensure alignment within the area of planning and infrastructure. The exercise of these consequential modification powers cannot be used widely and are limited. It cannot be used to do anything contrary to the provisions of the Bill that the Senedd will have considered and approved.

The Planning Consolidation Bill will incorporate any changes to wider legislation made by this Bill which are within the scope of the consolidation project.

Question 12 (in cover letter)

[please explain] How the Bill will enable the Welsh Government to take on further devolved powers and what policy areas those powers will cover?

Response

The Bill is designed so that there is sufficient flexibility to take account of new and emerging technology or were the Senedd received legislative competency above the existing thresholds.

The reference in the Explanatory Memorandum over aspirations for further devolved powers was not intended to refer to any specific matters but reflects that the process established by the Bill is fit for purpose and ensures that Wales can deal with large scale infrastructure projects in a timely and effective manner.

Notwithstanding that, my letters to the UK Government clearly set out two areas which the Bill could cover.

Offshore region

The Bill does not extend beyond the territorial sea, which is approximately 12 nautical miles offshore as the Senedd only has legislative competence in relation to 'Wales', as defined in the Government of Wales Act.

The Welsh Ministers retain executive competence in the Welsh zone (an area between roughly 12 and 200 nm from the coast of Wales) to consent to energy generating stations up to 350MW under the process set out in the Electricity Act 1989. There is therefore no fundamental difference in 'who' will consent a generating station offshore – however the procedure will be different depending on where the project is located.

My request for legislative competence in this area was to address this issue and to enable the Bill to function effectively in streamlining and modernising the consenting process in this region?.

Battery storage

In terms of Energy storage, the Senedd's legislative competence where it concerns the consenting of energy is capped at 350MW (excluding onshore wind).

Above this threshold the UK Nationally Significant Infrastructure Project (NSIP) regime would be the consenting mechanism. However, in 2020 storage was removed from the NSIP process which resulted in an anomaly between the operation of the two regimes.

Therefore, where a scheme which either solely or mainly generates electricity from storage exceeds 350MW, it is not clear whether the Senedd would have power to legislate how such schemes are consented. The Welsh Ministers, through Local Planning Authorities, would retain executive competence to consider such schemes under the Town and Country Planning Act 1990 onshore, which may not be appropriate for all such schemes.

Again, my request to the UK Government was seeking clarity in this area.

Question 13 (in subsequent letter)

[Can you] provide us with an update on intergovernmental discussions and agreements reached relating to the UK Government's Energy Bill since the Senedd voted and did not agree to provide legislative consent for the relevant provisions in the Bill.

Response

I met with Minister Bowie on 13 September 2023 following the vote in the Senedd to withhold consent to the UK Energy Bill. I repeated my concerns with respect to the UK Government legislating on matters within our devolved competence without the consent of the Senedd. However, it was clear that the UK Government intend to continue the progress of the Bill and their intention for the Bill to receive Royal Assent in October.

During the meeting I was clear that in terms of policy direction set out in the Bill the Welsh Government is broadly aligned with the UK Government. Given this I highlighted my desire to work constructively to implement the Bill to ensure that the needs of Wales are appropriately taken into account. Minister Bowie stated his ambition to work constructively with the Devolved Governments and fulfil the requirements in the Bill for consultation before new regulations and polices come into effect.



Llywodraeth Cymru
Welsh Government

Justice System Impact Identification

Form

Overview

Welsh Government officials are submitting this form

- ~~• For information and discussion about the implications~~
- **For assessment by the Ministry of Justice**
(Delete the statement which does not apply)

The Welsh Government's assessment of the impacts of this legislation on the justice system is that it has

- ~~• No or negligible potential impact~~ (in this case complete the JSII form only up to and including question 4.5)
- **Low potential impact**
- ~~• Medium or High potential impact~~
(Delete those which do not apply)

This is because:

The proposed legislation, although it introduces new offences and civil proceedings, brings together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime. The new form of consent will be known as an 'Infrastructure Consent' ("IC") for development or works with the objective of constructing and/or changing use to create a 'Significant Infrastructure Project' ("SIP"). The categories of infrastructure which the process is mainly expected to capture are energy, transport, waste and water, with minimum thresholds requiring only the most significant of such infrastructure to be captured by the process.

The number of enforcement cases is anticipated to be minimal based on the current understanding that there have been no equivalent prosecutions or enforcement in relation to Developments of National Significance and Development Consent Orders which are the regimes the proposed powers are based upon. It is also estimated that there would only be around five Infrastructure Consent applications a year and therefore enforcement figures are likely to be low.

The Civil Procedure Rules would need to be updated to reflect the timescales for Judicial review. There are no planning specific sentencing guidelines and so there would not be a need to update guidance. It is considered that there would be no cost associated with the proposals to the justice system.

1. Bill Title

1.1. Working title of Bill

Infrastructure Consent and Planning (Wales) Bill

2. Policy lead contact details

2.1. Name / Job Title

2.2. Department / office /
business area

Planning Directorate

2.3. Telephone number

2.4. Email address

2.5. a) Date of submission of
this form

Date of Submission: 20 January 2023

2.6. b) When is a response
required?

Response Requested by: 24 March 2023

3. Additional contact details

3.1. Legal Contact

3.2. Telephone number

3.3. Email address

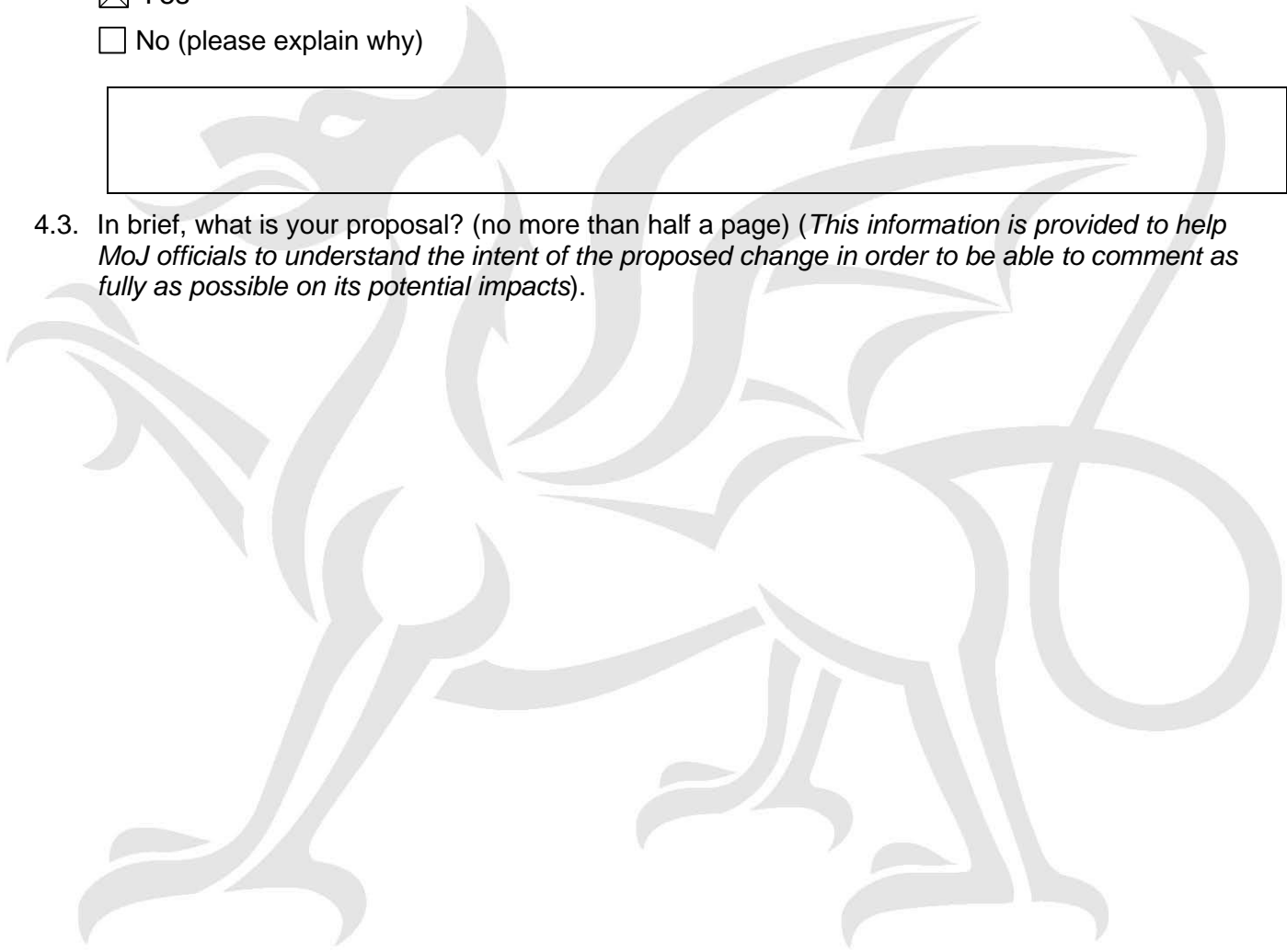
4. General information

- 4.1. Please provide a) contact details of your lead official for the appraisal of costs or savings and;
b) the Justice Policy lead if known.

- 4.2. Have you notified the judicial office of your proposals by completing Desk Instruction 7? (please seek advice from your legal advisors)

- Yes
 No (please explain why)

- 4.3. In brief, what is your proposal? (no more than half a page) *(This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts).*



Legislation is required for the purpose of establishing a unified process for the consenting of the development of infrastructure in Wales and in Welsh waters. This primary legislation would create a bespoke and flexible consenting process for infrastructure projects in Wales, detaching their consenting from current arrangements and into a new form of consent, which contains the full range of authorisations required to enable a development. This would simplify the process for developers, communities and consultees as the current procedures often vary according to the different consenting regimes.

The new form of consent will be known as an 'Infrastructure Consent' ("IC") for development or works with the objective of constructing and/or changing use to create a 'Significant Infrastructure Project' ("SIP"). The categories of infrastructure which the process is mainly expected to capture are energy, transport, waste and water, with minimum thresholds requiring only the most significant of such infrastructure to be captured by the process.

As decisions made on an IC will be made by the Welsh Ministers, all decisions will be final. The only available avenue for challenge will be through the courts, which is the current mechanism for planning appeals and applications called in by the Welsh Government. This provides a 6 week period by which the decision may be challenged in the High Court under judicial review.

Local Planning Authorities are proposed to be the main onshore enforcement authority, with the Welsh Ministers as the relevant authority offshore. Enforcement provisions will be mainly based on existing enforcement provisions for large infrastructure developments within the Planning Act 2008, and partially the Town and Country Planning Act (TCPA) 1990 and the Local Government Act 1972. The proposed offences and civil proceedings are set out in further detail within this form.

Current consenting regimes have differing levels of consistency and the processes are spread over a series of Acts which have been modified significantly, which can be confusing for the user and duplicate work. This can significantly increase the costs of applications and can act as a barrier to bringing forward proposals and cause frustration and confusion.

The legislation will impact upon all those involved in the planning system, including applicants, determining authorities, consultees and communities. The objective is to improve access to the planning system for all by simplifying and consolidating the existing fragmentary planning regime.

4.4. Please indicate when you will be undertaking a post-implementation review of this legislation and the enforcement actions arising from it?

It is anticipated that the proposed consenting regime will be fully operational by Mid-2025.

The monitoring and evaluation of the legislation will be undertaken in a number of ways including:

- Research, evaluation and data collection techniques;
- Evaluation project within 3 years of implementation of the regime to measure outcomes;
- Statutory targets set for the determination of applications for Infrastructure Consent;
- Formal monitoring of Planning and Environment Decisions Wales (PEDW) in relation to Infrastructure Consent applications.

4.5. Is this legislative proposal similar in any way to legislation being brought forward in England? If so, please name that legislation and identify below any ways in which the legislation brought forward in Wales will differ.

If the legislation has no substantive difference from that in England, there may be no need to complete all parts of the JSII form.

No.

4.6. Please specify the name of any other related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

The aspects of the Bill covered in this JSII will be brought into force by commencement order(s). Subordinate legislation in relation to offences will be subject to the negative procedure. There is no procedure for the statutory instrument in section 82(4) [J511(4)].

4.7. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

- a) It is anticipated that all aspects of the legislation to enable the new consenting regime to operate will be in force by Mid-2025. This is dependent on the date of Royal Assent.
- b) This is unknown as this will depend on compliance with the various powers but would not be before the consenting regime is operational.

4.8. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

- Individuals
- Private Institutions (e.g. Businesses)
- Public Institutions (e.g. Government Departments)

The persons affected by these provisions include applicants, the landowner (if not the applicant), any occupier of the land and any person carrying out operations on the land or using it for any purpose.

The proposals will give local planning authorities powers to undertake enforcement action, including rights to enter land and issuing notices.

The proposals will give Welsh Ministers powers to undertake enforcement action, including rights to enter land, issuing notices, applying for injunctions and creating offences. The creation of offences is limited to being in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour.

4.9. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the MoJ administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- Wales only
- England
- Scotland
- Northern Ireland

Other (Please Specify)

The legislation will only apply to Wales.

4.10. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland;-

- a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?
- b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

The provisions will apply to both those resident to, and those living outside of Wales, as enforcement action is essentially taken out against the landowner, applicant, or those undertaking any unauthorised works regardless of residence. This reflects the current legislative approach.

A communications plan supporting the Bill outlines the various methods to ensure relevant stakeholders are aware of the legislation and its implications for them.

4.11. What are the options under consideration and how does this change the existing situation?

There are 4 options under consideration, which are set out below:

Option 1 - Do nothing. Applications for infrastructure to be determined according to the current legislative arrangements. No change to the current justice system, this option would retain a fragmented consenting regime which does not provide the one-stop shop the development industry seeks.

Option 2 – Establish a new form of ‘Welsh Infrastructure Consent’ for development or works with the objective of constructing and/or changing use to create a ‘Welsh Infrastructure Project’. This is the preferred option and the details of this are included in this form.

Option 3 – Establish an independent consenting body to determine ‘Welsh Infrastructure Consents’. This option would use the same approach to the justice system as Option 2.

Option 4 – Establish a streamlined regime to be determined by a consenting unit within Welsh Government. There would be no change to the current justice system in this option.

The anticipated scale of impact is anticipated to be minimal due to nature and scale of Infrastructure Consent applications. This is discussed in more detail in the sections below.

4.12. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

It is proposed that disputes in relation to compensation including:

- Whether compensation should be paid;
- How much compensation should be paid;
- Apportionment of compensation;
- Compensation in relation to damage to land or property.

are to be referred to and dealt by the Upper Tribunal.

Criminal Offences and Civil Penalties and Sanctions

4.13. Which of the following are you creating / amending? (Tick all that apply)

- Civil Sanctions
- Fixed Penalties
- Civil Orders
- Criminal Sanctions
- Criminal Offences
- Other (Please Specify)

4.14. If you are creating a criminal offence, is it:

- Summary Only (heard before a bench of lay magistrates / judge only)
- Triable Either Way
- Indictable Only (heard before a judge and jury)

In cases where the maximum penalty is to be an unlimited fine, and a triable either way offence is warranted, please explain why a summary only offence is not considered appropriate. This is especially relevant if few, if any, cases are anticipated.

Four of the offences are proposed to be triable either way, see section 4.17 below. The proposals are to bring together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime. The proposed approach reflects the existing legislation in the Planning Act 2008, TCPA 1990 and the Local Government Act 1972 because enforcing authorities are familiar with those existing processes, there would be no need to train those authorities in enforcing authorities in dealing with different types of offence, and those existing methods of enforcement have been relatively successful to date in acting as deterrents in the context of major infrastructure projects. The changes from summary only to triable either way reflect the analysis undertaken following the Law Commission report for the consolidation of planning law in Wales¹.

4.15. Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be an increased / reduced need for enforcement action? Please also include the anticipated costs of enforcement and how it will be funded.

Local planning authorities and the Welsh Ministers will be responsible for undertaking enforcement action. There is not expected to be an increased need for enforcement action as the policy proposals seek to bring various existing consenting processes under one, consistent process. Therefore, there will likely be no change to levels of enforcement action already undertaken.

4.16. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

The proposed provisions replicate existing provisions in the Planning Act 2008 and TCPA 1990. We are not aware of any prosecutions under the existing legislation in relation to Developments of National Significance or Development Consent Orders.

The number is anticipated to be low, due to the potential size and scale of development captured under the unified consenting process resulting in few applications being submitted each year (estimated at around 5 per year) and the fact that any formal enforcement action undertaken via the planning system is generally a last resort (in the first instance, the enforcing authority would usually attempt to rectify and potential breaches of planning control through informal discussions).

4.17. Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

This means that seven of the offences are summary only, to be heard by the Magistrates' court. Four of the offences are summary or indictment, to be heard either by the Magistrates or Crown Courts, we anticipate the vast majority of cases (if they do go court) would be heard in the Magistrates' Court.

Proposed Offence	Proposed Mode of Trial	Existing legislation (Planning Act 2008 unless otherwise stated)
26(5)[J225]	Summary	Same as 52(9)
26(6)[J225]	Summary	Same as 52(9)
41(6)[J042A]	Either Summary or Indictment	Change from summary to either way and removed power of imprisonment. s.250(3) (Local Government Act 1972)
104[J460]	Either Summary or Indictment	Same as s.160
105[J461]	Either Summary or Indictment	Same as s.161
109(2)[J465]	Summary	Same as s.165(2)
112(3)[J468]	Summary	Same as s.168
112(5)[J468]	Either Summary or Indictment	Change from summary to either way s.168
115(2)[J470]	Summary	Same as s.170(6)
120[J478]	Either Summary or Indictment	Same as s.171G (Town and Country Planning Act 1990)
125(6)[J450]	Summary	Same as s.53(5)
Sch.1 Para 30[J504s]	Summary	Same as Sch. 5 Para 32B
Sch. 3 Para 10[J]	Not applicable - disapplying offences	

4.18. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

s.26(5)[j225]

A person convicted of non-compliance with a notice requiring information about interests in the land, or providing false information is liable (on summary conviction) to a fine.

s.26(6)[j225]

A person convicted of providing false information to notice requiring information about interests in the land is liable (on summary conviction or conviction on indictment) to a fine.

s.41(6)[J042A]

A person convicted of non-compliance with a summons to a local inquiry, or they alter, suppress, conceal or destroy a required document is liable (on summary conviction or conviction on indictment) to a fine.

s.104[J460]

A person convicted of undertaking development without the required infrastructure consent is liable (on summary conviction or conviction on indictment) to a fine.

s.105[J461]

A person convicted of breach of an infrastructure consent order or failure to comply with an infrastructure consent order is liable (on summary conviction or conviction on indictment) to a fine.

s.109(2)[J465]

A person who intentionally obstructs a person who has the right of entry is liable (on summary conviction) to a fine.

s.112(3)[J468]

A person convicted of non-compliance with an information notice within 21 days, unless they have a reasonable excuse is liable (on summary conviction) to a fine.

s.112(5)[J468]

A person convicted of providing false or misleading information when complying with a requirement of an information notice is liable (on summary conviction or on a conviction on indictment) to a fine.

s.115(2)[J470]

A person convicted of intentionally obstructing a person who has the power to enter the land and take steps, following the period within a notice of unauthorised development, is liable (on summary conviction) to a fine.

s.120[J478]

A person convicted of non-compliance with a temporary stop notice, which may be in relation to one or more period for the same notice, and they could not prove they did not know or reasonable be expected to know about it, is liable (on summary conviction or on conviction on indictment) to a fine. In determining the amount of the fine, the court must have regard to any financial benefit which has accrued or appeared to accrue to the person convicted.

s.125(6)[j450]

A person convicted of wilfully obstructing a person who is authorised by the Welsh Minister to enter land in connection with an infrastructure consent order is liable (on summary conviction) to a fine.

Sch.1 Para 30[J504s]

The creation of offences (under Sch. 1 Para 30) in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour would be liable (on summary conviction) to a fine not exceeding level 3 on the standard scale. The person would not be liable to imprisonment.

5.

Summary Table

Proposed Offence	Proposed Fine	Existing legislation (Planning Act 2008 unless otherwise stated)
26(5)[J225]	Unlimited	Change from not exceeding level 5 on standard scale. s.52(6)
26(6)[J225]	Unlimited	Change from not exceeding level 5 on standard scale. s.52 (7)
41(6)[J042A]	Unlimited	Change from not exceeding level 3 on standard scale. s.250 (Local Government Act 1972)
104[J460]	Unlimited	Change from not exceeding 50,000 for summary trial, no change for trial by indictment. s.160
105[J461]	Unlimited	Change from not exceeding 50,000 for summary trial, no change for trial by indictment. s.161
109(2)[J465]	Unlimited	Same 165(2)
112(3)[J468]	Unlimited	Same 168
112(5)[J468]	Unlimited	Change from not exceeding level 5 on standard scale. s.168
115(2)[J470]	Unlimited	Same as 170(6)
120[J478]	Unlimited	Same as 171G (Town and Country Planning Act 1990)
125(6)[J450]	Unlimited	Same as 53(5)
Sch.1 Para 30[J504s]	Not exceeding level 3 on standard scale	Same as Sch. 5 Para 32B

5.1. Please itemise details of any proxy or current offences and / or penalties on which the proposed penalties are based. If mirroring / comparing existing legislation, ensure that reference is made to the most recent versions of the legislation (via Westlaw, the online legal research service) as this is not always available online. Please refer to page 8 of the JSII guidance on how to obtain data relating to the number of cases brought forward under the legislation you have identified.

The proposed offences and the existing legislation that they are based upon are set out in the table below. See also section 4.19.

Proposed Legislation Section	Existing Legislation based on	Offence
26(5) [J225]	52(6) Planning Act 2008	Non-compliance with a notice requiring information about interests in the land
26(6)[J225]	52(7) Planning Act 2008	Providing false information to notice requiring information about interests in the land
41(6) [J042A]	250(2) – (3) Local Government Act 1972	Non-compliance with a summons to a local inquiry, or they alter, suppress, conceal or destroy a required document.
104 [J460]	160 Planning Act 2008	Undertaking development without the required infrastructure consent.
105 [J461]	161 Planning Act 2008	Breach of an infrastructure consent order or failure to comply with an infrastructure consent order.
109(2) [J465]	165(2) Planning Act 2008	Intentional obstruction of a person who has the right of entry.
112(3) [J468]	168(1) Planning Act 2008	Non-compliance with an information notice within 21 days, unless they have a reasonable excuse.
112(5)[J468]	168(4) Planning Act 2008	Providing false or misleading information when complying with a requirement of an information notice.
115(2) [J470]	170(6) Planning Act 2008	Intentional obstruction of a person who has the power to enter the land and take steps, following the period within a notice of unauthorised development.
120 [J478]	171G Town and Country Planning Act 1990	Non-compliance with a temporary stop notice, which may be in relation to one or more period for the same notice, and they could not prove they did not know or reasonable be expected to know about it.
125(6) [J450]	53(5) Planning Act 2008	Wilful obstruction of a person who is authorised by the Welsh Minister to enter land in connection with an infrastructure consent order
Sch. 1 Para 30 [J504s]	Sch.5 Para 32B Planning Act 2008	Creation of offences in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour. This is limited by s.58(7)[J504(7)] which means that an Infrastructure Consent Order cannot create an offence, give a power to create an offence or change an existing power to create offences.
Sch. 3 Para 10	58(4) & 118(2) Historic Environment (Wales) Bill as introduced 4 July 2022.	Exception to offences of damaging certain monuments of special historic interest. Disapplication of offence of intentionally damaging a listed building.

5.2. Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.



The equivalent existing power for offences is set out in the table above (para 4.19). The impacts to Civil proceedings are set out below:

Proposed Legislation Section	Existing Legislation based on	Civil proceedings
92[J139]	Sch. 6 Para 7 Planning Act 2008	Compensation - Disputes in relation to apportionment of costs as a result of a revocation made to the Upper Tribunal
95[J142]	Sch. 6 Para 7 Planning Act 2008 (varied)	Compensation - Disputes in relation to compensation for revocation made to the Upper Tribunal
98[J513]	118 Planning Act 2008	Legal challenges relating to applications for orders granting development consent
100(5)[J207]	106C Town and Country Planning Act 1990	Legal challenges relating to infrastructure consent obligations.
103(4)[J601]	152 Planning Act 2008	Compensation in case where no right to claim in nuisance
108[J464]	164 Planning Act 2008	Power for a justice of the peace to issue a warrant to enable entry to land for enforcement purposes.
109(6)[J465]	165(5) Planning Act 2008	Rights of entry – disputes in relation to compensation for rights of entry
114[J472]	170 (via regs under (4)) Planning Act 2008 s.276, 289, 294 Public Health Act 1936	Execution of works required by notice of unauthorised development – order requiring steps to be taken in relation to a notice of unauthorised development
122[J481]	171 Planning Act 2008	Injunctions – against an actual or expected activity which is an offence under j460 or j461
124(4)[210]	95(4)&(5) Planning Act 2008 250 Local Government Act 1972	Orders relating to costs of parties on examination proceedings and recovery of costs.
125(9)[J450]	53(8) Planning Act 2008	Rights of entry – disputes over costs, damage to land

Creation of the offences and civil proceedings is considered to be both proportionate and necessary to deliver the Infrastructure Consent and Planning (Wales) Bill objectives. The proposed penalties reflect existing legislation in the Planning Act 2008, the TCPA 1990, the Local Government Act 1972 and the Public Health Act 1936. The proposals are to bring together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime which would otherwise be subject to the offences and penalties within the existing legislation as outlined in this form. It is therefore considered that this would not result in additional costs to the justice system. The approach taken in s.124(4) reflects the powers in the Planning Act 2008 and the Local Government Act 1972, reflects the drafting style for the equivalent provisions in the emerging Historic Environment (Wales) Bill², which is currently in the Senedd to ensure consistency and reflect modern drafting.

- 5.3. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

The impact on an individual found guilty reflects the current situation for the planning related offences these are based upon, including criminal record, fines etc.

- 5.4. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

There is a duty for the public sector in the infrastructure consenting process under the Bill, including enforcement. There is the opportunity for individuals or businesses to challenge the process using judicial review.

6. HM Courts & Tribunals Service and the Welsh Tribunals Service

Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

- 6.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

It is anticipated that there is unlikely to be an impact on the number of cases being taken to court or through the Upper Tribunal due to the proposals seek to bring various existing consenting processes under one, consistent process.

- 6.2. Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

- No
 Yes (please provide details)

The proposals are not introducing a new duty in this manner.

Appeal Rights

- 6.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or Welsh Tribunals)?

The Bill allows appeals to the Administrative Court through judicial review as there are numerous decisions in the Bill made by a public body. The Bill also allows for a reduction of time limits in which to bring proceedings for JR contained in CPR 54(1) from 3 months to 6 weeks, in line with the planning system. Although this is a new right of appeal under the legislation, the effect is that the proposals seek to bring various existing consenting processes under one, consistent process. These will be handled by HM Courts & Tribunals Service rather than Welsh Tribunals as is currently the case.

- 6.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

No.

Alternative Dispute Resolution

- 6.5. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

This already occurs in planning enforcement related matters. Formal enforcement action is often considered to be a 'last resort' by the enforcing authority, who will often use more informal / mediation tactics, depending upon the scale / type of offence. For example, if a local planning authority is notified of an unauthorised development, they may consider it more appropriate in that particular circumstance to request the developer submit a retrospective planning application, rather than immediately issue an enforcement notice, or any other type of enforcement action. However, they are also provided with the tools necessary if it is considered development should stop immediately for certain reasons, such as temporary stop notices.

Prosecution and Enforcement

- 6.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

It would likely be the Local Planning Authority that would bring any prosecutions. The Counsel General will also have powers to bring any prosecutions under section 67 of the Government of Wales Act 2006.

- 6.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

Yes, an individual can apply to High Court Enforcement Offers to recover that debt which reflects current practice.

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

- 6.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

The Bill allows for a reduction of time limits in which to bring proceedings for judicial review contained in Civil Procedure Rule 54(1) from 3 months to 6 weeks, in line with the planning system. The timescales for the implementation and operation of the proposals are set out in section 4.7.

- 6.9. Will the proposals require sentencing and / or penalty guidelines to be amended?

No.

7. Legal Aid and Court Fees

- 7.1. What evidence is there that individuals affected by your proposal will be able to secure and afford:

- legal representation and legal advice in order to secure a fair hearing of their case
- associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

It is unlikely that Legal Aid would be available, however this would depend on the complexity of the case. The award of costs would be issued by the judge. Estimates of complexity, length and costs of cases are no possible due to the current understanding that there have been no equivalent prosecutions or enforcement in relation to Developments of National Significance and Development Consent Orders which are the regimes the proposed powers are based upon. It is also estimated that there would only be around five Infrastructure Consent applications a year and therefore enforcement figures are likely to be low.

7.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- Legal aid not available (please provide supporting evidence)

7.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

N/A

8. Prisons and Offender Management Services

Impact on HM Prison Services

8.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

No.

8.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.

No.



9. Main Justice System Impacts Identified

9.1. Volumes and Costs or Savings (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Criminal Offences and Sanctions	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
Civil Penalties	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
HM Courts & Tribunals Services	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
Welsh Tribunals	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	

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Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Legal Aid	_____	_____	_____		
	_____	_____	_____		
	_____	_____	_____		
Notes:-					

9.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):

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Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs or savings p.a. (£) ³ (please provide numeric estimate and min-max range)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
Notes:					

Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored in to the financial assessment of your legislation.

³ The MoJ publish statistics on "Prison cost per place and cost per prisoner:" - see <https://www.gov.uk/government/statistics/announcements/prison-cost-per-place-and-cost-per-prisoner-2017-to-2018>

**Local Government
and Housing Committee**

Elin Jones MS
Y Llywydd
Chair, Business Committee

6 October 2023

Annwyl Lywydd,

**Supplementary Legislative Consent Memorandum (Memorandum No 4) for the Levelling-up and
Regeneration Bill**

You will be aware that the Local Government and Housing Committee has been considering legislative consent memoranda in relation to the Levelling-up and Regeneration Bill and that we published a report on the original, revised and supplementary memoranda on 13 February. You will also be aware that we wrote to you on 18 May, explaining that we had considered Supplementary Legislative Consent Memorandum (No.3) ("SLCM No.3") and that we had decided not to report on it. This was due to the amendments detailed in SLCM No.3 relating to environmental outcomes reports which do not fall within the Committee's remit.

On 12 September, Business Committee agreed to invite us, and three other committees, to consider Supplementary Legislative Consent Memorandum (No.4) ("SLCM No.4") and to report by 13 October. We have considered SLCM No.4 and note that the amendments detailed in SLCM No.4 relate to the levelling-up missions, planning and the environment.

On that basis, and the fact that it has been referred to other committees which may have a greater interest in these amendments, we decided not to report on the memorandum.

I am copying this letter to the Legislation, Justice and Constitution Committee; the Economy, Trade and Rural Affairs Committee; and the Climate Change, Environment and Infrastructure Committee.

Yours sincerely



John Griffiths MS

Chair, Local Government and Housing Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.