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Llywodraeth Cymru
Welsh Government

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

11 September 2023

Dear Huw

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

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

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

Yours sincerely

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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.

Annex A

Question 1

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

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

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

Summary of Infrastructure Consent Procedure:

Pre-application services

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

Pre-application notification

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

Pre-application consultation

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

Applying for infrastructure consent

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

Notice of accepted applications and publicity requirements

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

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

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

Examination

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

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

Deciding applications

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

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

Post-consent

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

Comparison of the new process and existing consenting regimes

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

The relevant stakeholders for each stage have also been identified.

Key Stage in new process	Stakeholders in new process	Comparison of stage to existing consenting processes
Pre-app services	<ul style="list-style-type: none"> • LPA • Applicant • Welsh Ministers 	<p>DNS – reg.6 – 9 (DNS Regulations) Request for pre-application services</p> <ul style="list-style-type: none"> • Pre-application services from LPA or Welsh Ministers
		<p>Electricity Act – Not set out in legislation</p>
		<p>HRO – Not set out in legislation</p>
		<p>TWA 1992 - Not set out in legislation</p>
Notification	<ul style="list-style-type: none"> • LPA • Applicant • Welsh Ministers 	<p>DNS – art.5 – 6 Developments of National Significance (Procedure) (Wales) Order 2016 Notification of proposed development</p> <ul style="list-style-type: none"> • Notice of acceptance by WM to LPA and applicant • Applicant has 12 months to submit application
		<p>Electricity Act – Not set out in legislation</p>

		<p>HRO - Schedule 3 Harbours Act 1964</p> <ul style="list-style-type: none"> • Applicant must give Secretary of State (SoS) notice of intention to make application • SoS accepting notification must decide if the project is EIA
		<p>TWA 1992 – rule 5 Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006</p> <ul style="list-style-type: none"> • Applicants must send draft order no later than 28 days before application
Pre- Application Consultation	<ul style="list-style-type: none"> • LPA • Applicant • Statutory Consultees • Any other persons wishing to make a representation • Welsh Ministers 	<p>DNS – art. 7- 11 Developments of National Significance (Procedure) (Wales) Order 2016 Requirement to carry out pre-application consultation</p> <ul style="list-style-type: none"> • Publicity and consultation before applying for planning permission • Specialist consultees duty to respond • Pre-application consultation reports
		<p>Electricity Act – Not set out in legislation</p>
		<p>HRO – Not set out in legislation</p>
		<p>TWA 1992 - Not set out in legislation</p>
Application	<ul style="list-style-type: none"> • Applicant • PEDW • Welsh Ministers 	<p>DNS – art. 12 – 14 Developments of National Significance (Procedure) (Wales) Order 2016 Applications</p> <ul style="list-style-type: none"> • General requirements • Design and Access Statements

		<p>Electricity Act - Schedule 8 Electricity Act 1989</p> <ul style="list-style-type: none"> • Details of land in application • Details of line, length and nominal voltage in case of electric line <hr/> <p>HRO - Schedule 3 Harbours Act 1964</p> <ul style="list-style-type: none"> • Details the application process, and what must accompany the application <hr/> <p>TWA 1992 - rule 9 Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006</p> <ul style="list-style-type: none"> • Application made in writing to SoS, including required information
Acceptance of Application	<ul style="list-style-type: none"> • Applicant • PEDW • Welsh Ministers 	<p>DNS – art. 15 – 17 Developments of National Significance (Procedure) (Wales) Order 2016 Acceptance of Applications</p> <ul style="list-style-type: none"> • Notice of acceptance • Notice if not a valid application • Relevant timescales <hr/> <p>Electricity Act – Not set out in legislation</p> <hr/> <p>HRO – Schedule 3 Harbours Act 1964</p> <p>No formal ‘acceptance’ of application, though the application will not be considered unless fees have been paid and it complies with the requirements set out in the Act.</p> <hr/> <p>TWA 1992 - Not set out in legislation</p>

Publicity	<ul style="list-style-type: none"> • Applicant • LPA • PEDW • Welsh Ministers 	<p>DNS – art. 18 – 19 Developments of National Significance (Procedure) (Wales) Order 2016 Publicity for applications for planning permission</p> <ul style="list-style-type: none"> • Welsh Ministers must publicise application • LPA must display site notice
		<p>Electricity Act – Reg 4 - 9 of Electricity (Applications for Consent) Regulations 1990 made under s.36(8) Schedule 8 of the Electricity Act 1989</p> <ul style="list-style-type: none"> • Notice published in local paper, served on NRW where it relates to SSSI, any other person SoS specifies • Notice to LPA in case of electric lines • Objections should be received within specified time frame • Applies both off and onshore
		<p>HRO - Schedule 3 Harbours Act 1964</p> <ul style="list-style-type: none"> • Applicant must publish notices in the London Gazette and other ways the SoS may direct. • Opportunity for comment within 42 days of the date the notice first appears in a local paper.
		<p>TWA 1992 - rule 13 - 16 Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006</p> <ul style="list-style-type: none"> • Notices served on all relevant LPAs, coastal authority, publish notice in newspaper • SoS may direct applicant to ensure public is informed
Consultation	<ul style="list-style-type: none"> • LPA 	<p>DNS – art. 22 – 23 Developments of National Significance (Procedure) (Wales) Order 2016</p>

	<ul style="list-style-type: none"> • Applicant • Statutory Consultees • Any other persons wishing to make representation • Welsh Ministers 	Duty to consult before the grant of planning permission <ul style="list-style-type: none"> • Consult with specialist consultees • Duty to respond
		<i>Electricity Act –</i> Not set out in legislation
		<i>HRO -</i> Schedule 3 Harbours Act 1964 <ul style="list-style-type: none"> • SoS must consult any bodies likely to have an interest in the project
		<i>TWA 1992 -</i> Not set out in legislation
Impact Reports	<ul style="list-style-type: none"> • Applicant • LPA • PEDW • NRW • Welsh Ministers 	<i>DNS –</i> art. 25 – 26 Developments of National Significance (Procedure) (Wales) Order 2016 Local Impact Reports <ul style="list-style-type: none"> • Required in relation to applications • Must include prescribed information
		<i>Electricity Act –</i> Not set out in legislation
		<i>HRO –</i> Not set out in legislation
		<i>TWA 1992 -</i> Not set out in legislation
Examination	<ul style="list-style-type: none"> • Applicant • LPA • PEDW • Any relevant statutory consultees 	<i>DNS -</i> reg.28-31 (DNS Regulations) Determination of procedure <ul style="list-style-type: none"> • Person appointed and applicant/LPA notified • Procedure determined
		<i>Electricity Act -</i> Schedule 8 of the Electricity Act 1989

	<ul style="list-style-type: none"> • Welsh Ministers 	<ul style="list-style-type: none"> • Details of when an inquiry would be held
		<p>HRO - Schedule 3 Harbours Act 1964</p> <ul style="list-style-type: none"> • Sets out the parameters for the examination process, and whether an inquiry will be held.
		<p>TWA 1992 – s.11 TWA 1992 rule 21 – 25 Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006</p> <ul style="list-style-type: none"> • SoS may cause a public inquiry for the purposes of an application • Details of examination
Decision	<ul style="list-style-type: none"> • Applicant • LPA • Welsh Ministers 	<p>DNS - reg.35 – 36 (2016 Regulations) art. 28 – 31 Developments of National Significance (Procedure) (Wales) Order 2016 Determination</p> <ul style="list-style-type: none"> • Representations to be taken into account
		<p>Electricity Act - s.36 Electricity Act 1989</p> <ul style="list-style-type: none"> • Consents and conditions
		<p>HRO - Schedule 3 Harbours Act 1964</p> <ul style="list-style-type: none"> • Considerations when making a decision. • Details of considerations in the order
		<p>TWA 1992 – s.13 - 14 TWA 1992</p> <ul style="list-style-type: none"> • SoS will determine whether to grant the making of an order or to not make an order
Post-decision	<ul style="list-style-type: none"> • Applicant • LPA 	<p>DNS - reg.37 (DNS Regulations)</p> <ul style="list-style-type: none"> • Procedure following quashing of a decision

	<ul style="list-style-type: none"> • Welsh Ministers 	<p><i>Electricity Act</i> - s.36C Electricity Act 1989</p> <ul style="list-style-type: none"> • Consents for electric lines may be varied or revoked • Variation of consents
		<p><i>HRO</i> – Not set out in legislation</p>
		<p><i>TWA 1992</i> - Not set out in legislation</p>

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

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

Question 2

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

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

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

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

- The DNS process specifies a clear and consistent pre-application process to help engage stakeholders and communities at the earliest opportunity. The other regimes set out above do not have a formal pre-application process.
- There are different publicity and notification requirements, such as the requirement to display site notices, which certain consenting regimes do not require (for example, the Harbours Act 1964).
- There are different requirements for the type of information that must be submitted with an application.
- Certain matters and objections / representations are dealt with by way of examination as part of the DNS process which may be undertaken via written representations, a hearing, an inquiry, or any combination of these procedures. Conversely, the other consenting regimes may only consider matters to be heard by an inquiry.
- Some regimes do not enable compulsory acquisition of land or the granting of necessary wayleaves over land, whereas others do.
- The different regimes also have different enforcement systems.

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

Question 3

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

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

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

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

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

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

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

Question 4

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

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

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

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

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

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

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

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

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

Table 3 lists order making powers included in the Bill.

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

Question 5

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

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

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

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

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

Question 6

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

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

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

Part 2 of the Bill – Section 26

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

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

Part 3 of the Bill – Sections 27(1), 28(5), 29(1)(d), 30(2) and (3), 31(4), 31(5) 33(2)(c), 33(3), 33(5), 35(4)(b), 36(4)(b), 37(2) and (3), and 38

Part 3 of the Bill sets out the process for applying for infrastructure consent. Regulation making powers relate to pre-application services, notification, pre-application consultation and publicity, submitting an application, notice of acceptance and notices of persons interested in land to which compulsory acquisition relates.

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

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

Part 4 of the Bill – Sections 41(3), 41(5), 42, and 45(6)

Part 4 of the Bill relates to the examination of applications for infrastructure consent. The sections listed above relate to the choice of inquiry, hearing or written procedure, examination procedure and access to evidence at inquiry.

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

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

Part 5 of the Bill – Sections 52(1), 53(4), 54(d), 55, 56(4) and (6), 57(6), 59(3)

Part 5 of the Bill relates to deciding applications for infrastructure consent.

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

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

Part 6 of the Bill – Sections 62(4), 69(1) and (2), 81(1), 81(4) 85, 88(1) to (3) and (5) to (7), 91(3), 92(2) and 93(7)(b)

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

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

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

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

Part 7 of the Bill – Sections 110(8) and 115(1)

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

Part 8 of the Bill – Sections 125(6) and (7), 126(1), (3) and (4), 127(2)(c) and (4)

Part 8 provides a number of supplementary functions to the Bill. The Sections listed above relate to requirements in connection with an application register, power to consult and duty to respond, and the charging of fees. Subordinate legislation will set out matters of detail, such as information to be contained within the applications register and a list of statutory consultees.

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

Part 9 of the Bill – Sections 133(2)(e) and 141

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

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

Question 7

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

Part a

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

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

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

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

Example 1 - when the project falls under compulsory criteria

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

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

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

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

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

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

Part b

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

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

Question 8

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

Part a

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

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

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

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

Part b

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

Question 9

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

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

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

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

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

Question 10

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

The persons specified in regulations in these circumstances are anticipated to be statutory consultees. Who is considered to be a statutory consultee will vary on a case-by-case basis, depending on the type of development being proposed.

Because these consultees will have knowledge and expertise in certain areas, their input and opinions on a proposed development are considered vital. Therefore, where a statutory consultee is given notice of a proposed development, they will be required to respond to the notice in the form of a substantive response, which must also be submitted to the Welsh Ministers within a specified period.

It is anticipated a substantive response will state the statutory consultee:

- Has no comment to make;
- Has no objections;
- Has concerns regarding the proposed development and how these concerns can be addressed; or
- Has concerns regarding the proposed development and would be minded to object.

The Regulations may only impose a requirement where it falls under one of the categories specified in section 34(1)(a) to (d).

Question 11

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

Part a

“Diligent inquiry” means for the applicant to undertake reasonable diligence in investigating land interests. The carrying out of diligent inquiry is an established concept for compulsory acquisition requests as prescribed by the Compulsory Purchase Act 1965 and Acquisition of Land Act 1981. Its meaning is noted in case law¹ and it is an established term prescribed under the Planning Act 2008 as part of the regime for determining nationally significant infrastructure projects by the UK Government where there is to be compulsory acquisition of land.

¹ See: R v Secretary of State for Transport ex parte Blackett [1992] 1 WLUK 524 (HC).

Part b

The carrying out of diligent inquiry will be considered by the determining body for the application during the assessment of whether to grant compulsory acquisition. This will be considered on a case-by-case basis and supplemented by guidance that will assist both the applicant and the determining body. The guidance is likely to contain information on methods of best practice including research on title information, land interest questionnaires, companies house searches, site investigations and web based research to assist in ensuring diligent inquiry has been undertaken.

Part c

Please see answer a.

Question 12

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

Part a

There are two distinct regulation making powers in Section 38. Subsection (1) allows regulations to be made requiring an applicant to carry out consultation where the application for an ICO contains a request for compulsory acquisition. Subsection 2 is a separate regulation making power allowing for regulations to specify the circumstances when that consultation will take place and to make other provisions in connection with the consultation. Subsection (3) provides examples of what may be contained in regulations made under subsection (2). The reference to subsection (2) is therefore correct.

Part b

At this point in time, we anticipate further consultation under regulations prescribed by Section 38 would only be required where additional land interests are identified following the submission of an application for infrastructure consent that includes a compulsory acquisition request.

Question 13

Section 42 enables regulations to be made that will make provision about the procedure to be followed in connection with the examination of an application under Part 4 of the Bill. a) Please would you provide further explanation and clarity regarding the direction specified in subsection (3), and confirm which power will be relied upon in order to ‘switch’ decision maker (from the Welsh Ministers to the examining authority, and vice versa). b) The Explanatory Memorandum, in describing the appropriateness of the regulation-making power in section 42, states the details in the regulations will accommodate a “significant level of detail which would encumber the reading of the Bill”. The regulations will be subject to the negative procedure. A similar explanation is provided for the regulation-making power in section 128 of the Bill which is subject to the affirmative procedure. Could you explain further what this means and why you take the view that this is a minor matter?

Part a

The power for the Welsh Ministers to issue a direction, transferring the undertaking of proceedings from the examining authority to themselves, or vice versa is provided by Section 52, Subsection (4) of the Bill.

The direction making power is intended to provide flexibility to ultimately ensure the final decision on an application is made by the appropriate body. A change to the determining body may be appropriate where an examining authority is examining an application and matters may arise which are, for example, particularly controversial and it would be more appropriate for the Welsh Ministers to take over and undertake the proceedings. Similarly, the Welsh Ministers may be examining an application and may come to view the proceedings would be more appropriately dealt with by the examining authority; for example where no representations or objections have been received to the application. The Regulations under Section 42 will specify the procedure to be followed in these circumstances. This will include matters such as (but not limited to) who is to be notified of a direction and the timeframe within which such notification must occur so as to not unduly impact on the decision making process.

Part b

Section 42 provides the Welsh Ministers with a power to make regulations about the procedure to be followed in connection with the examination of an application under Part 4. This does not only cover the procedures where a direction in respect of the decision maker is to be issued. The regulations may make provision about the procedure to be followed in connection with making a determination under Section 41, about how an application is to be examined, about matters preparatory and subsequent to an examination, about the conduct of an examination, including the procedure for transferring the examination of an application to another body. The regulations will therefore prescribe a significant level of detail that would encumber the reading of the Bill. In addition, the content is both very technical and relatively minor in nature, and may need to be amended and therefore is subject to the negative procedure.

Conversely, the regulation making power in Section 128 will confer further powers on the Welsh Ministers. Therefore it is considered appropriate for regulations prescribed under Section 128 to be subject to the draft affirmative procedure.

Question 14

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

Part a

The principles applying to the powers to enter land will be prescribed through subordinate legislation. At this time we envisage they will be:-

- The land must relate to the application which is being examined;
- The Welsh Ministers or examining authority who will enter land as part of an examination are to notify the applicant and other persons considered necessary of their intention to do so. Other persons will likely include the owner/occupier of the land and providing them with a period of notice. The notification will be in writing and will include the proposed date and time of the inspection; and
- The timetable for examining an application will not be delayed as a result of a site visit. Subordinate legislation will provide that the Welsh Ministers or examining authority will not be required to defer an inspection where any person (including the applicant) is not present at the time of an inspection.

The principle to enter land as part of examination will be established by the Bill. The details are not on the face of the Bill as they relate to technical procedural matters for the entering onto land. Prescribing them in subordinate legislation will ensure flexibility to account for a potential need to amend those detailed requirements in future. This is similar to what currently occurs under the regime for determining nationally significant infrastructure projects by the UK Government. The principle to enter land as part of the examination of applications under that regime is established by Section 97, Subsection 3 of the Planning Act 2008. Detailed matters for the entering onto land and undertaking site inspections are prescribed by Rule 16 of the Infrastructure Planning (Examination Procedure) Rules 2010. The procedure for undertaking site inspections as part of the ‘Developments of National Significance’ regime is also established by subordinate legislation, under Regulation 16 of the Developments of National Significance (Wales) Regulations 2016.

Part b

The phrase “a person, alone or with others” for the purpose of Section 43 covers those persons who would be required to carry out an assessment of the site to inform the examination, for example the Inspector assigned to examine the application. It is recognised it may be necessary for more than one person with different specialisms to assess the site where it has a range of considerations (for example where a site may have ecological and highways considerations).

Part c

The matters to be prescribed under Section 43 in regulations relate to the procedure for persons to enter land as part of the examination of an application. It is considered appropriate for those regulations to be subject to negative procedure. They will prescribe technical matters of detail regarding a process for which the principle will already have been established through primary legislation. Further, the matters are considered to be minor discretionary procedural matters in the wider consenting process. If these requirements are to be updated in future, it would be important to legislate swiftly in order to avoid any delays in determining infrastructure applications.

Question 15

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

Regulations to specify the functions of an appointed representative will include, but are not limited to, the following:

- Representing the interests of the affected person by, for example, taking instructions from the affected person before receiving copies of closed or potentially closed evidence, dealing with preliminary matters, making submissions and cross-examining witnesses;
- Ensuring that the copies of the closed evidence or potentially closed evidence are returned to the person who supplied them as soon as practicable after inquiry proceedings; and
- To make applications to the Court in respect of any of its functions.

Similar legislation listing the functions of an appointed representative for the purposes of giving evidence in the planning system is prescribed under Regulation 4

of the Planning (National Security Directions and Appointed Representatives) (Wales) Regulations 2006.

It is considered there is a need to allow for flexibility in specifying functions of an appointed representative in the regulations as it is possible certain functions may no longer be required in future or there may be a need to add additional functions due to changes in examination procedure. For example, if in future it is considered advances can be made to improve the efficiency of how an examination is carried out (this could be through use of technology), the functions of the appointed representative may need to be modified in order to reflect an updated process.

Question 16

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

This provision is included in recognition of the significant volume of evidence and information that will likely have to be considered by the determining body for an application for infrastructure consent. The purpose of this provision is to help to ensure an efficient decision-making process by disregarding matters that do not provide appropriate or robust evidence in informing the decision on a proposed infrastructure consent. At this time it is considered such evidence and information could include vexatious or frivolous representations, and representations which dispute established national policy prescribed by the Welsh Ministers in the National Development Framework, or Marine Plan. However, during the operation of the new regime it may become necessary to amend the list to make clear what information may be disregarded. For example, policy statements of the UK Government could be added if considered necessary.

Question 17

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

The Bill enables the Welsh Ministers to amend the statutory time period through secondary legislation under subsection 56(6). At this time it is not envisaged the time period will be amended, however evidence may emerge through operation of the process that indicates a shorter or longer timescale may be more appropriate.

This regulation making power can only amend subsection 56(1)(a). As this is a procedural matter, i.e. changing the number of weeks the Welsh Ministers have to decide an application, it is not believed that the draft affirmative procedure is necessary.

Question 18

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

In respect of the Welsh Ministers proposing “materially different” changes to an application. We envisage subordinate legislation will specify that the Welsh Ministers must only make an order which contains minor changes to what was originally applied for in the application for infrastructure consent. This will ensure parity between what types of amendments and variations are considered to be acceptable where they are requested via a separate application to vary or amend an existing infrastructure consent. For example, they can only be non-material or minor material. Therefore, whilst on the face of the Bill there is reference to changes to an application being “material”, the regulations will provide clarification that any changes made by the Welsh Ministers in an order should only be minor in nature. As the regulations will specify a technical matter of detail on the procedure to be followed for changes the Welsh Ministers can make to an application, they are considered suitable to be subject to negative procedure.

Question 19

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

Subordinate legislation provided under section 59(3) will specify those persons who must be provided with a copy of a statement of reasons. At this time, we anticipate the applicant will always be provided with the statement of reasons. Other persons notified will vary depending on the type or category of development to which an application relates. We anticipate such persons could include relevant LPAs and community councils, statutory consultees who were consulted as part of the application process, any person who made representations on an application and any other persons considered appropriate by the examining authority or the Welsh Ministers.

Question 20

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

Part a

In order to implement and develop a Significant Infrastructure Project, consent would normally be required for a number of ancillary matters. To implement a true unified consenting process, the Infrastructure Consent issued by the Welsh Ministers may also have the effect of giving permission, authorising, approving, consenting, licensing or granting these ancillary matters.

There are no specific consents on the face of the Bill because subsections 81(1) (a) and (b) allow an infrastructure consenting order to include any ancillary consent issued by a relevant authority and not listed in part 2 of the Bill.

The Bill adopts a qualified approach, which requires that a relevant consenting authority has given authorisation for the use of its consent/licence/authorisation within the Infrastructure Consent. This is specified on the face of the Bill at sections 81(2) and (3).

Part b

Section 82(4) allows the Welsh Ministers to specify in subordinate legislation authorisations/permissions/consents which will not be subject to sections 81(2) and (3). This has the effect of allowing the Welsh Ministers to deem a consent without the consent (explicit or silent) of the relevant authority.

These regulations will be subject to further consultation, but they may for example:

- deem a consent to establish a safety zone around renewable energy installations under section 95 of the Energy Act 2004.
- extinguish any requirement under the Hedgerow Regulations 1997.

The exceptions are not on the face of the Bill as they will be subject to further consultation with relevant stakeholders and may need to be amended during the operation of the consenting process.

Question 21

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

Section 138(5) of the Bill applies to negative procedure to any regulations made under the Act which are not listed in section 138(4). This does not apply to infrastructure consent orders as they are not regulations. Infrastructure consent orders are not subject to either the negative or affirmative procedure, however where the criteria in section 82 are met and the order is contained in a statutory instrument, it must be laid before the Senedd along with the latest version any plan and the statement of reasons for granting the order.

Question 22

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

Section 84(4) does include an order-making power for the making of an Infrastructure Consent Order (where it is a statutory instrument) due to the correction of an error in a decision document. Thank you for bringing this matter to our attention, the Explanatory Memorandum will be amended at the next opportunity to reflect this order-making power. The Explanatory Memorandum will also be amended to include section 57(1)(a) which contains the order-making power to make an order granting infrastructure consent (“an infrastructure consent order”) where it is a statutory instrument.

Question 23

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

The power at section 88 of the Bill provides the Welsh Ministers with a power to make regulations about the procedure for changing and revoking infrastructure consent orders.

The Regulations will prescribe matters specifically relating to the changing and revoking process, for example, how an application is to be made, what supporting information and documents must be submitted with an application, what consultation is undertaken and details of the decision-making process. The extent of these procedures would encumber the reading of the Bill and are considered a minor procedural and technical matter in the wider consenting process.

The negative procedure is considered appropriate for this section, as it relates to procedural elements of the process for changing and revoking an infrastructure consent. The negative procedure for these regulations also allows for flexibility, and the opportunity to respond to changes in a timely manner to ensure the infrastructure consenting system is kept up to date, for example, should we decide to amend the publicity requirements to account for changes in technology.

However, the regulation making power in Section 128 will confer further powers on the Welsh Ministers. Therefore, it is considered appropriate for regulations prescribed under Section 128 to be subject to the draft affirmative procedure.

Question 24

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

Section 92 states that development is taken to begin on the earliest day that any material operation is undertaken. Subsection (2) enables regulations to set out the kinds of operations that are not a “material operation” for the purposes of commencement.

The exclusion of certain operations from the definition of material operation enables clarity. For example, it is anticipated the regulations will specify that soil and water sampling will not constitute a material operation on its own thus it will not be taken as beginning of development for the purpose of the duration of an infrastructure consenting order.

Question 25

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

The main purpose of restricting the use of a temporary stop notices is to ensure certain rights an individual may have are not affected, or where the issuing of such a notice would have other negative implications, for example on health and safety or national security.

This power mirrors section 171F(1)(b) of the Town and Country Planning Act 1990 and certain restrictions may be introduced in the wider planning system which would

also be relevant to applications for infrastructure consent. Therefore, this provides the necessary flexibility to align with the wider planning system, where relevant.

Question 26

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

Part a

The Bill provides the Welsh Ministers power to make regulations in relation to the charging of fees by a specified public authority providing functions in relation to an infrastructure consent. To achieve a fee regime that is simple and transparent, it is envisaged fees will be combination of fixed and variable rates. Costs can vary depending on size, scale and location of a proposed development and other factors such as inflation can impact on costs. The existence of a variable rate within the process allows for such flexibility.

I have already mentioned in the Climate Change, Environment and Infrastructure Committee session on the 6 July that I am keen that fees are charged on a cost-recovery basis. This power will enable me to achieve this by allowing public bodies to charge fees.

I anticipate the public authorities that will be specified by regulations are:

- Welsh Ministers;
- Local Planning Authorities, Natural Resources Wales; and
- Certain Statutory Consultees

Part b

The public authorities that will be permitted to charge fees in relation to infrastructure consent orders are also the bodies on which functions can be conferred. Nevertheless, a public body undertaking a function or service as part of the Bill does not necessarily mean that a fee can be charged. The charging of fees must be reasonable and appropriate.

Welsh Ministers

The Welsh Ministers, or those appointed on their behalf (such as PEDW), will be required to undertake the following functions in relation to an application for infrastructure consent:

- Provide pre-application services (where requested);
- Respond to a pre-application notification form;
- Validate an application once submitted;
- Undertake any relevant publicity and notification requirements;

- Consider variations to an application (if requested by an applicant);
- Undertake the examination of an application; and
- Making a decision on application.

The Welsh Ministers could potentially be required to undertake similar functions where an amendment is requested to an infrastructure consent order following the grant of consent, as well as functions relating to the revocation of an infrastructure consent order. It is our intention for Welsh Ministers to charge a fee for the processing and determination of an infrastructure consent order.

Local planning authorities

Local planning authorities (“LPA”) will be required to undertake the following functions in relation to an application for infrastructure consent:

- Provide pre-application services (where requested);
- Submit a local impact report; and
- Attendance at examination (where relevant).

Natural Resources Wales

Natural Resources Wales (“NRW”) will be required to undertake the following functions in relation to an application for infrastructure consent that contains provision for a deemed marine licence:

- Submit a marine impact report (MIR)
- Attendance at examination (where relevant).

Statutory consultees

Statutory consultees will be required to undertake the following functions in relation to an application for infrastructure consent:

- Responding to consultations in the form of a substantive response; and
- Attendance at examination (where relevant).

Regarding the conferring of functions on statutory consultees, you may be aware that I have sought Minister of Crown consent for these provisions to apply to certain statutory consultees. In correspondence with the Chair of the Climate Change, Environment and Infrastructure Committee in June 2023, copied to the Chair of this Committee, I attached my letter to the Secretary of State for Levelling Up, Housing and Communities seeking those consents. Discussions between officials are on-going on this matter.

Question 27

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

The direction-making power requiring public authorities to undertake any relevant matters in respect of infrastructure consent applications made to the Welsh Ministers is provided under Section 127(1). Section 127(3) provides clarification on how such directions are to be given. We note there is an error in the subordinate legislation table which suggests that section 127(3) contains a regulation making power. This is incorrect and we will amend the Explanatory Memorandum accordingly at the next opportunity.

Question 28

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

Part a

The consenting process introduced by the Bill is intended to be a one stop shop for the consenting of infrastructure in Wales. A single process will be used for a wide range of infrastructure developments and in a wide range of different circumstances.

The process is intended to be prescriptive, for example, subordinate legislation will prescribe in detail how consultations must be conducted, or how the examining authority will notify interested parties upon receiving a valid application.

In being prescriptive, it is recognised that legislation may oblige parties to fulfil requirements which may be excessive in some limited circumstances. The Bill aims to ensure a transparent and fair examination process but also to be efficient and timely. In order to continue to expedite the consenting process, the Welsh Ministers have the power to dispense with certain procedural requirements but only where they believe there would be no detriment to procedural fairness.

The following are examples of circumstances where dispensing requirements may be considered.

For example, subordinate legislation will set out publicity requirements. In the instances of a linear route, such as a railway or a new road, this may include multiple notices. However, where additional publicity occurs for a relatively minor

amendment to the scheme, the Welsh Ministers may see no reason to publicise this amendment in the same way.

Another example is where subordinate legislation will set requirements that applicant will have to fulfil during the pre-application consultation. If the regulation requires public events to consult on a proposed development, there might be instances where this will not be physically possible, for example during a pandemic.

A final example is where subordinate legislation will set consultation requirements associated with the correction of errors in a decision. Depending on the nature of the correction, it may be appropriate to dispense on some consultation requirements.

In such instances, it would be helpful and proportionate for the Welsh Ministers to exercise a power which enables them to dispense with a procedural requirement or requirements set out in the Bill or regulations. In the interests of transparency, where requirements are dispensed, it would be important for the reasons for those requirements to be dispensed are published.

Regulations to limit this power

Due to the nature of this power, it is intended to limit its scope through subordinate legislation which must specify the requirements that may be dis-applied by direction.

At this time, it is anticipated this power will be limited to pre-application procedures, to some application procedures, and the procedure for correcting errors in a consent or changing or revoking an infrastructure consent.

Under no circumstances is it intended the subordinate legislation will enable a direction to be issued to disapply requirements which protect rights or ensure no offences are committed, such as procedures relating to compulsory purchase.

Regulations will also place a duty on the Welsh Ministers to publish any direction which dispenses a requirement and to specify the reason behind the dispensation.