Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:
Hybrid – Committee Room 2, Senedd, and Video conference via Zoom
Meeting date: 25 September 2023
Meeting time: 13.15

For further information contact:
P Gareth Williams
Committee Clerk
0300 200 6565
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1 Introductions, apologies, substitutions and declarations of interest

(13.15)

2 Infrastructure (Wales) Bill: Evidence session

(13.15 – 14.30) (Pages 1 – 159)

Julie James MS, Minister for Climate Change
Neil Hemington, Chief Planner, Welsh Government
Owen Struthers, Head of National Consenting, Welsh Government
Nicholas Webb, Lawyer, Welsh Government

Attached Documents:
LJC(6)-25-23 – Paper 1 – Briefing Paper
LJC(6)-25-23 – Paper 2 – Letter from the Minister for Climate Change, 11 September 2023
LJC(6)-25-23 – Paper 3 – Letter to the Minister for Climate Change, 27 July 2023
LJC(6)-25-23 – Paper 4 – Letter from the Minister for Climate Change to the Climate Change, Environment and Infrastructure Committee, 12 June 2023
LJC(6)-25-23 – Paper 5 – Letter from the Minister for Climate Change: Statement of Policy Intent, 1 September 2023

Break

(14.30 – 14.35)

3 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3

(14.35 - 14.40)

Made Negative Resolution Instruments

3.1 SL(6)379 - The Local Government Officers (Political Restrictions) (Amendment) (Wales) Regulations 2023

(Pages 160 - 161)

Regulations

Explanatory Memorandum

Attached Documents:

LJC(6)-25-23 - Paper 6 - Draft report

3.2 SL(6)380 - The National Health Service (General Medical Services Contracts) (Wales) Regulations 2023

(Pages 162 - 173)

Regulations

Explanatory Memorandum

Attached Documents:

LJC(6)-25-23 - Paper 7 - Draft report

3.3 SL(6)381 - The Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023

(Pages 174 - 176)

Regulations

Explanatory Memorandum

Attached Documents:

LJC(6)-25-23 - Paper 8 - Draft report

4 Inter-Institutional Relations Agreement

(14.40 - 14.45)

4.1 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd, and the Minister for Climate Change: Inter-Ministerial Group for Environment, Food and Rural Affairs

(Pages 177 - 178)

Attached Documents:
LJC(6)-25-23 - Paper 9 - Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, and the Minister for Climate Change, 20 September 2023

5 Papers to note

(14.45 - 14.50)

5.1 Correspondence from the Counsel General and Minister for the Constitution: Strikes (Minimum Service Levels) Act 2023

(Pages 179 - 182)

Attached Documents:
LJC(6)-25-23 - Paper 10 - Letter from the Counsel General and Minister for the Constitution, 19 September 2023

5.2 Correspondence from the First Minister to the Llywydd: The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023

(Pages 183 - 184)

Attached Documents:
LJC(6)-25-23 - Paper 11- Letter from the First Minister to the Llywydd, 21 September 2023

6 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

(14.50)

7 Infrastructure (Wales) Bill: Consideration of evidence

(14.50 - 15.05)

8 International agreements

(15.05 - 15.15) (Pages 185 - 197)

Attached Documents:

LJC(6)-25-23 - Paper 12 - Draft report

Agenda Item 2

Document is Restricted

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

Llywodraeth Cymru
Welsh Government

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

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

11 September 2023

Dear Huw

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

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

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

Yours sincerely

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

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Annex A

Question 1

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

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

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

Summary of Infrastructure Consent Procedure:

Pre-application services

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

Pre-application notification

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

Pre-application consultation

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

Applying for infrastructure consent

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

Notice of accepted applications and publicity requirements

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

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

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

Examination

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

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

Deciding applications

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

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

Post-consent

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

Comparison of the new process and existing consenting regimes

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

The relevant stakeholders for each stage have also been identified.

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

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

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

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

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

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

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

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

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

Question 2

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

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

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

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

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

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

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

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

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

- The different regimes also have different enforcement systems.

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

Question 3

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

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

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

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

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

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

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

Question 4

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

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

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

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

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

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

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

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

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

Table 3 lists order making powers included in the Bill.

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

Question 5

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

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

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

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

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

Question 6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Question 7

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

Part a

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

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

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

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

Example 1 - when the project falls under compulsory criteria

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

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

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

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

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

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

Part b

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

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

Question 8

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

Part a

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

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

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

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

Part b

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

Question 9

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

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

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

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

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

Question 10

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

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

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

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

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

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

Question 11

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

<u>Part a</u>

"Diligent inquiry" means for the applicant to undertake reasonable diligence in investigating land interests. The carrying out of diligent inquiry is an established concept for compulsory acquisition requests as prescribed by the Compulsory Purchase Act 1965 and Acquisition of Land Act 1981. Its meaning is noted in case law[1] and it is an established term prescribed under the Planning Act 2008 as part of the regime for determining nationally significant infrastructure projects by the UK Government where there is to be compulsory acquisition of land.

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

Part b

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

Part c

Please see answer a.

Question 12

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

Part a

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

Part b

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

Question 13

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

Part a

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

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

Part b

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

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

Question 14

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

Part a

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

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

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

Part b

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

Part c

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

Question 15

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

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

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

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

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

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

Question 16

Section 55 enables the Welsh Ministers to make regulations which specify matters that the examining authority or the Welsh Ministers may disregard in deciding an application for infrastructure consent. What is the purpose of this provision and what matters may be disregarded? The Explanatory Memorandum provides no detail about what this provision seeks to achieve, only that the matters "will present a significant level of detail and will also need to be flexible to respond to any future changes in procedure".
This provision is included in recognition of the significant volume of evidence and information that will likely have to be considered by the determining body for an application for infrastructure consent. The purpose of this provision is to help to ensure an efficient decision-making process by disregarding matters that do not provide appropriate or robust evidence in informing the decision on a proposed infrastructure consent. At this time it is considered such evidence and information could include vexatious or frivolous representations, and representations which dispute established national policy prescribed by the Welsh Ministers in the National Development Framework, or Marine Plan. However, during the operation of the new regime it may become necessary to amend the list to make clear what information may be disregarded. For example, policy statements of the UK Government could be added if considered necessary.

Question 17

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

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

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

Question 18

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

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

Question 19

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

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

Question 20

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

Part a

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

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

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

Part b

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

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

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

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

Question 21

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

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

Question 22

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

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

Question 23

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

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

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

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

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

Question 24

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

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

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

Question 25

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

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

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

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

Question 26

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

Part a

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

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

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

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

Part b

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

Welsh Ministers

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

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

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

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

Local planning authorities

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

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

Natural Resources Wales

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

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

Statutory consultees

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

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

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

Question 27

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

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

Question 28

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

Part a

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

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

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

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

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

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

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

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

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

Regulations to limit this power

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

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

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

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

Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Legislation, Justice and Constitution Committee

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Julie James MS
Minister for Climate Change

27 July 2023

Dear Julie,

Infrastructure (Wales) Bill

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

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

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

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

ANNEX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Llywodraeth Cymru
Welsh Government

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

Llŷr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

12 June 2023

Dear Llŷr

Following the introduction of the Infrastructure (Wales) Bill into the Senedd on 12 June, please find attached a copy of the Regulatory Impact Assessment (RIA) Methodology Paper. This document is provided to support the Committee's scrutiny of the Bill. It supplements the RIA by providing the detailed workings behind the costs for the various options outlined for determining infrastructure development applications in the future, as contained in Chapters 7 and 8 of the assessment.

I look forward to providing evidence to the Committee in due course.

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

Yours sincerely

Julie James

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

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

Llŷr Gruffydd MS
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Welsh Parliament
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1 September 2023

Dear Llŷr,

Following the introduction of the Infrastructure (Wales) Bill into the Senedd on 12 June 2023, please find attached a copy of the Statement of Policy Intent on the powers to make subordinate legislation under the Bill. This document is provided to support scrutiny of the Bill by the Senedd.

I look forward to providing further evidence to the Committee in due course.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,

Julie James AS/MS
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Llywodraeth Cymru
Welsh Government

Infrastructure (Wales) Bill

Statement of Policy Intent for Subordinate Legislation to be made under this Bill

September 2023

Infrastructure (Wales) Bill

Statement of Policy Intent for Subordinate Legislation

Introduction

This document provides an indication of the current policy intention for the subordinate legislation that the Welsh Ministers would be empowered or required to make under the provisions of the Infrastructure (Wales) Bill ("the Bill").

The Statement has been prepared in order to assist the Senedd during the scrutiny of the Bill. It should be read in conjunction with the Bill and the Explanatory Memorandum and Explanatory Notes which accompany it.

In accordance with our usual practice when developing subordinate legislation, the Welsh Government will work closely with stakeholders. The detailed proposals will be subject to public consultation in order to inform the final provisions to ensure they are relevant, valid and proportionate.

A suite of guidance documents will also be produced to support the implementation of the Bill.

PART 1 – SIGNIFICANT INFRASTRUTURE PROJECTS

Power(s): Part 1, section 17

Description:

These powers enable the Welsh Ministers to:

- amend Part 1 of the Bill to add a new type of significant infrastructure project or vary or remove an existing significant infrastructure project, and
- make further provision, or amend or repeal existing provision, about the type of project that is, or is not, a significant infrastructure project.

Policy intention:

Criteria and thresholds of qualifying significant infrastructure projects are set out in Part 1. It is essential for the qualifying criteria to remain agile in the face of changing circumstances.

Technology relating to infrastructure, particularly renewable energy, is developing at a fast rate. A process is required which is agile and is able to capture the relevant projects at the right time.

To future-proof the process, this power provides the Welsh Ministers with the ability to alter the thresholds and criteria set out in primary legislation through subordinate legislation.

Topic Area	Description
Section 17 Power to add, vary or remove projects and amend qualifying thresholds	**Background** Technology relating to infrastructure, particularly renewable energy, is developing at a fast rate. The Bill includes a process which is flexible and proportionate to capture relevant projects that should be subject to the new consenting regime. We envisage three scenarios that might require future amendments to the qualifying criteria and thresholds. These are: • changes in technological efficiencies which reduce the area of land required to achieve a higher generating capacity. For example, the Development of National Significance (DNS) threshold for a generating station (rather than onshore wind) is a generating capacity up to 10MW. Technological advances which have occurred since 2015 demonstrate that this threshold can now be achieved more efficiently with a smaller footprint. This is reflected in the Infrastructure Consenting regime threshold being set higher at 50MW rather than 10MW. It is likely that such adjustment will be required again in future to ensure the proportionality of the consenting process. • future policy or legislative changes by the UK Government may require adjustments in the Welsh legislation. For example, the Wales Act 2017 devolved further legislative competence for energy consenting and the Welsh Ministers were able to adjust the DNS regime quickly as the thresholds were prescribed in secondary legislation. • a new or emerging type of energy generation could become commercially available and may need to be captured, such as nuclear fusion. The Welsh Ministers will be able to designate these projects as Significant Infrastructure Projects (SIP).

	Subordinate legislation For the three reasons described above, the Bill allows subordinate legislation to remove or add a type of project from the qualifying criteria contained in Part 1 of the Bill or vary the qualifying thresholds. Regulations may only add a new type of project or vary an existing type of project if the works are to be carried out in Wales, the Welsh marine area, or both, and they fall within the fields specified in section 17(4). As these Regulations may amend, vary or remove enactments of this Act and other Acts of Senedd Cymru, this is a Henry VIII power. Therefore, the subordinate legislation will require scrutiny through the draft affirmative procedure.

PART 2 – REQUIREMENT FOR INFRASTRUCTURE CONSENT

Power(s): Part 2, sections 21, 22 and 26

Description:

These powers enable the Welsh Ministers to:

- add or remove a type of consent/authorisation to the list of consents specified in section 20 which cannot be obtained or given for development that are to be captured by the new consenting process;
- vary the existing cases in relation to which a type of consent is specified in section 20;
- make further provisions in relations to the type of consents and the cases specified in section 20;
- make regulations specifying kinds of projects which could be directed to be a Significant Infrastructure Project; and
- make provisions about procedural matters in connection with the direction making powers specified in section 22, 23 or 24.

Policy intention:

Add or remove a type of consent/authorisation

The Bill prevents developers from being able to obtain consents or authorisations, such as planning permission or consent under section 37 of the Electricity Act 1989, when a project qualifies as a Significant Infrastructure Project (SIP). Section 20 lists the type of consent that can no longer be obtained or given to the extent that an Infrastructure Consent (IC) is required for development.

However, the Bill also allows the Welsh Ministers to be able to modify the qualifying criteria and thresholds of a SIP (as per section 17), to allow flexibility in the consenting regime to respond to future demands and changing circumstances (see Statement of Policy Intent relating to section 17 for more detail).

Where the flexibility provided by section 17 is sought, it is possible that additional consents/authorisations that are no longer required will need to be specified in the Bill. Therefore, regulations provide the ability to modify this list of consents/authorisations or the circumstances by which these consents are or are no longer required through subordinate legislation.

Power to direct a project is a SIP

Where a project falls below the compulsory thresholds set out in Part 1 of the Bill but is considered to be of national significance, for example by generating significant effects, or includes new technology or novel circumstances, the Bill provides the Welsh Ministers with a power to direct such a project is a SIP for determination under the new consenting process.

The Bill sets limitations to this direction making power by requiring subordinate legislation to describe a type of development that may be directed to be considered a Significant Infrastructure Project. These regulations may include thresholds, but they do not have to.

Minor procedural matters concerning how a request for direction should be submitted to the Welsh Ministers and the time scale for the Ministers to decide whether a project or an application is a SIP will also be set in regulations.

Topic Area	**Description**
Section 21 Add or remove a type of consent/authorisation from the list of consents which are no longer required for development as specified in section 20 Vary the cases in relation to which a type of consent is specified in section 20	**Background** This regulation making power is required as direct result of section 17 in Part 1. An Infrastructure Consent (IC) is required to be obtained for any development which is or forms part of a Significant Infrastructure Project (SIP), as specified in Part 1. To stop the twin-tracking of consents or to prevent a developer taking a different route of consent, the Bill prevents other consents for the development or works which qualifies as a SIP from being granted. To the extent that an IC is required, consents and authorisations specified in section 20 of the Bill cannot be given in relation to the SIP where the development forms part of the SIP.

	Power to amend the list of consent/authorisations Section 17 of the Bill allows the Welsh Ministers to modify the criteria and thresholds of qualifying projects. It is possible that additional consents/authorisations no longer required will need to be specified in the Bill to avoid twin-tracking or alternative consenting routes taken by developers. Therefore, regulations provide the ability to modify this list of consents/authorisations or the circumstances by which these consents are or are no longer required through subordinate legislation. **Subordinate legislation** Based on the above, the Bill allows subordinate legislation to amend section 20 of the Bill. This is considered appropriate to future proof the legislation and to respond efficiently to changes in UK legislation. Evidence may also emerge, from industry needs and future policies and government objectives, that further types of consent should be included in this consenting process or to vary the existing cases in relation to which a type of consent is within this process. Responses to emerging evidence may need adjusting more often than it would be possible for the Senedd to legislate. As these Regulations may amend, vary or remove enactments of this Act and other Acts of Senedd Cymru, they will be subject to the Senedd's draft affirmative scrutiny procedure.
Section 22 Make regulations specifying kinds of projects which could be directed to be a Significant Infrastructure Project	**Background** The Bill sets out the criteria and thresholds of SIPs which are currently captured by the new consenting regime. For certain types of projects (largely those with a medium energy 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 SIP. **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 SIP and thus require an IC. 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 SIP 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. For example, development relating to hydrogen production is not currently included in the Bill because it is relatively novel technology and the cases that have come forward so far have a small capacity and are not complex. However, should a new project 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.

	Subordinate legislation However, the Bill has been designed to be transparent and fair and thus the Bill sets limitations to these powers of direction, where subordinate legislation will set out the scope of projects that may be directed to be considered as a SIP for determination under the new consenting process. The Bill provides that the developer can make a request to the Welsh Ministers to determine whether a project is a SIP or the Welsh Ministers can do so unilaterally. Third parties cannot submit a request to the Welsh Ministers. The Welsh Ministers have a duty to respond to a request from a developer. Subordinate legislation will detail the timescale for a response (see section 26). Monitoring of the directions made on developments will also inform any changes to these regulations. If necessary, it may also provide an evidence base to consider changing the mandatory thresholds on the face of the Bill.
Section 26 Make provisions about procedural matters in connection with the direction making powers	**Background** Part 2 of the Bill provides several direction making powers to the Welsh Ministers. These are: • a power to direct that a project or an application is a SIP, and • a power to direct that a project is not a SIP. **Subordinate legislation** Regulations may specify procedural matters in connection with the power of direction conferred on the Welsh Ministers. For example, regulations may specify the time limits for the Welsh Ministers to make a decision on whether a project is a SIP following a request for a direction. Regulations may also specify the form of a request for a direction and the information required to submit with a request to help the Welsh Ministers in the decision-making process.

	Minimum standards will be set in regulations which may include a requirement to submit a location plan as part of a request for a direction along with a description of the proposed development, whether a concurrent or previous application has been submitted in connection with the proposed development and reasons why the developer believes the project is a SIP. These procedural matters are considered suitable for regulations as they will accommodate minor technical details. Flexibility is also required to respond to any procedural changes if considered necessary or appropriate to benefit the consenting process.

PART 3 – APPLYING FOR INFRASTRUCTURE CONSENT

Power(s): Part 3, sections 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38

Description:

These powers enable the Welsh Ministers to:

- set out how and when pre-application services must be provided, where a request is made;
- specify the form and content of a pre-application notification, how it is to be given and the period within which it is to be given;
- specify pre-application consultation requirements;
- set out the procedure for submitting an application for infrastructure consent, including what information and materials must be provided with an application and the process for validation;
- specify publicity and notification requirements following acceptance of a valid application;
- specify the form and content of Local Impact Reports and Marine Impact Reports; and
- set out requirements relating to the compulsory acquisition of land.

Policy intention:

<u>Pre-application services, notification and consultation</u>

Frontloading the application process for infrastructure consent applications is an important aspect of the overall consenting process, as early engagement with the Welsh Ministers and/or the relevant Local Planning Authority ("LPA"), as well stakeholders and local communities, can help overcome any potential issues with a development proposal at an early stage.

Our policy intention is to introduce a number of pre-application provisions, which are similar to those already specified as part of the 'Developments of National Significance' process. This will include the ability for prospective applicants to request pre-application advice from the Welsh Ministers and/or the relevant LPA, a requirement to notify the Welsh Ministers of an intention to submit an application for infrastructure consent and a requirement for pre-application consultation and engagement to be undertaken before an application may be submitted. This will ensure the Welsh Ministers, LPAs, stakeholders and local communities are all made aware of a proposed development and have the ability to comment and make representations at the earliest opportunity.

Making an application for infrastructure consent

In order to examine an application for infrastructure consent efficiently and to ensure the person(s) examining an application have all the necessary information and evidence before them to make an informed decision, the intention is to specify the form and content of an application, how applications are to be submitted and what information, documents or other materials must be included in an application, as a minimum requirement.

Publicity and notification requirements

To ensure an open and transparent process, as well as affording the opportunity for as many people as possible to view and make representations on an application where one has been validated by the Welsh Ministers, the Bill makes provision for certain publicity and notification requirements to be undertaken.

The policy intention is to utilise as many suitable methods as possible to publicise an application and notify relevant parties. We therefore intend to prescribe what methods these will be, both in terms of developments onshore and offshore, which persons and parties should be targeted during this process and where written notifications and site notices are utilised, what information should be included within these notices.

Local impact reports and marine impact reports

When an application is being examined, it is important the person(s) undertaking the examination are aware of any likely impacts a proposed development would have on a local area or the marine environment. Therefore, the Bill sets out the circumstances in which LPAs (and any community councils) must or may submit a local impact report ("LIR"), or in the case of offshore development, where the relevant marine authority are required to submit a marine impact report ("MIR"). To ensure LIRs and MIRs provide meaningful information, our intention is to specify what these reports must contain, as a minimum.

Compulsory acquisition of land

The primary policy intention for the compulsory acquisition of land is to ensure where an applicant submits their proposal for a significant infrastructure project, and it is necessary to acquire land or rights over land to enable that project, the compulsory

acquisition can be considered and if acceptable approved as part of the resulting infrastructure consent. This will ensure land acquisition matters for infrastructure development are incorporated into the new consenting process, resulting in more certainty.

The specific provisions under Part 3 for compulsory acquisition are intended to ensure where people have an interest in land as part of a proposed infrastructure consent, they are fully consulted and notified on the proposal and the land acquisition element in particular.

Subject to consultation with stakeholders, the current policy intention about the detail to be prescribed in subordinate legislation is summarised below.

Topic Area	**Description**
Section 27 Provision of pre-application services	**Summary** This section provides the Welsh Ministers with a power to make regulations regarding the provision of pre-application services by the Welsh Ministers or local planning authorities. **Background** The provision of pre-application services provides an opportunity for prospective applicants to discuss, among others, any technical aspects relating to the form and content of an application, seek advice on any relevant policies and gain an understanding of any local matters relating to a proposed development site, including potential mitigation. Pre-application services may be sought from the Welsh Ministers, the relevant LPAs, or both. **Subordinate legislation** Form and content of a pre-application service request

	Subordinate legislation will specify the form and content of a pre-application service request to be made by a developer, including what information must accompany a request, such as a site location plan and any other plans or drawings specified. Pre-application service requests will also be subject to a validation process, with the procedure and requirements prescribed in subordinate legislation. This will include a request for pre-application services being considered valid or not within 28 days and an acknowledgement of this decision being issued to the person who requested the pre-application services in writing. <u>Provision of a pre-application service</u> Subordinate legislation will also prescribe what information the Welsh Ministers and LPAs must provide (as a minimum), as part of their pre-application services to help ensure prospective applicants receive an adequate service which provides them with the means to develop their proposal to the benefit of both the local and wider community. This will differ slightly depending on whether an applicant seeks pre-application advice from the Welsh Ministers or Local Planning Authority, however, they have the ability to seek advice from both if considered necessary. We envisage the Welsh Ministers may provide advice on matters such as (but not limited to): • the form and content of the application for infrastructure consent; • any relevant policies and guidance; • the process for obtaining infrastructure consent, including secondary consents. Similarly, we envisage LPAs may provide advice on matters such as (but not limited to): • the relevant planning history of the development site; • any relevant policies (such as those specified in the Local Development Plan); • an indication of any local issues relating to the development site, including potential mitigation; and • any individuals, groups or societies who it may be appropriate to consult.

	There will also be a time limit prescribed in subordinate legislation in which pre-application advice must be provided to a prospective applicant. We envisage this will be 28 days from the date the Welsh Ministers or LPA confirms a pre-application service request as valid, unless an extension of time is agreed in writing, in the case of LPAs, or the Welsh Ministers direct further time is required. <u>Publication of pre application services</u> In addition, subordinate legislation will require both the Welsh Ministers and LPAs to publish details regarding the pre-application services they offer and a schedule of fees, on a website owned or maintained by them. This will help ensure prospective applicants are provided with as much information as possible in relation to the services on offer and how they may interact with these services. To ensure a comprehensive pre-application service, subordinate legislation will allow prospective applicants to request a pre-application meeting with the Welsh Ministers and/or the Local Planning Authority. However, the Welsh Ministers and/or the LPA may decline a meeting, where they consider it unnecessary.
Section 28 Obtaining information about interests in land	**Summary** The section enables the Welsh Ministers to specify in regulations the notice which is given where a proposed application or application for infrastructure consent includes a compulsory acquisition request. **Background** An application for an infrastructure consent which includes a compulsory acquisition request will be required to be accompanied by a ‘book of reference’. The book of reference must contain the names, addresses and contact details of relevant persons with interests in land

	subject to the compulsory acquisition request having been identified by the applicant through diligent inquiry. It is suggested diligent inquiry in this sense means reasonable diligence in investigating land interests. To allow applicants to obtain the names and addresses of people who have an interest in the land to which the application relates, applicants will be allowed to serve a 'land interests notice' to request such information, where the Welsh Ministers authorise them to do so. This engagement by the applicant will establish a relationship with the landowners/interests in land and give them an overview of the project and planning process. **Subordinate legislation** <u>Form and content of notice</u> Subordinate legislation will set out detailed provisions for the applicant to give a land interests notice in order to obtain information on people who have an interest in land relating to the application and who might be entitled to make a claim on the land in question. This should include prescribing the form and content of a notice and the timescales for responding to it. On the form of a notice, we currently anticipate prescribing that applicants must serve a notice in the following manner (but not limited to): serving it in writing; confirming they have the authority to serve it under the infrastructure consent legislation; specifying or describing the land to which the proposal relates; specifying the deadline by which the recipient must give the required information to the applicant; and drawing attention to provisions regarding failure to comply with a notice or giving false information. On the timescales for responding to a notice, we currently anticipate setting a deadline for responding to a notice to be not earlier than the end of the 14 days beginning with the day after the day on which the notice is served on the recipient of the notice. This provision will ensure applicants give sufficient time for those with an interest in land to respond, given those with a land interest could be penalised for failing to do so. Applicants can give a longer deadline to respond than the minimum to be prescribed if they consider it appropriate.

Section 29 Notice of proposed development	**Summary** This section requires a person seeking infrastructure consent to provide notification of their intention to submit an application for infrastructure consent. **Background** As part of the pre-application process, prospective applicants will be required to notify prescribed parties of their intention to submit an application for infrastructure consent. Certain parties will need to be notified in all cases, such as the Welsh Ministers and relevant LPAs and therefore, are specified on the face of the Bill. **Subordinate legislation** <u>Notification of other parties</u> Subordinate legislation will specify any other parties who must be notified, in addition to those set out on the face of the Bill, although they will vary depending on the category or type of development, as well as how and when notification is to be given. These may include bodies and organisations such as the Marine Management Organisation, any relevant community councils and the Civil Aviation Authority. <u>Form and content of a notification of proposed development</u> To ensure a notification of proposed development contains relevant information, subordinate legislation will specify the form and content of a notification, in addition to any information, documents or other materials to accompany a notification, such as (but not limited to) a non-technical description of the proposed development, an indicative timetable for pre-application consultation and a site location plan.

	<u>Acceptance of a notification</u> Upon receiving a notification from a prospective applicant which meets all requirements specified in legislation, the Welsh Ministers will be required to give notice to the prospective applicant that their notification has been accepted. Subordinate legislation will specify the form and content of the notice, how it is to be given and the period within which it is to be given. It is currently envisaged the Welsh Ministers will send written notification of receipt and acceptance of the notification within 10 working days of it being accepted by them, or 30 working days where a direction is sought from the Welsh Ministers to include a proposed development as a significant infrastructure project.
Section 30 Pre-application consultation and publicity	**Summary** This section requires a person who proposes to make an application for infrastructure consent to carry out pre-application consultation. It also provides the Welsh Ministers with the power to specify matters relating to such consultations in regulations, such as who must be consulted and how a consultation is to be carried out. **Background** It is essential local communities and relevant stakeholders are made aware of proposed developments which affect them at the earliest opportunity. This provides for more effective involvement and engagement to help influence schemes. This provision makes it a statutory requirement for prospective applicants to undertake pre-application consultation prior to the submission of a formal application.

	Subordinate legislation <u>Pre-application consultation requirements</u> Subordinate legislation will specify how pre-application must be undertaken and the minimum requirements expected from developers. However, anecdotal evidence from pre-application consultation undertaken as part of the DNS process suggests developers of infrastructure go beyond the statutory minimum pre-application consultation requirements in most cases. We would expect developers seeking infrastructure consent to adopt the same approach. We envisage pre-application consultation to include four requirements (as a minimum): 1. For onshore developments, prospective applicants will be required to display a site notice at, or as close as reasonably possible to, the site of a proposed development in a place which is accessible and clearly visible to the public for the entire representation period (for linear schemes exceeding 5km in length, a site notice must be displayed at intervals of no more than 5km from the start to end of the proposed route, unless it is impractical to do so). Site notices will be required to be displayed for a specified period, which we envisage will be 42 days. There would be no requirement to display site notices for developments in the inshore region. 2. For both developments onshore and in the inshore region, prospective applicants will be required to send written notification to specified parties. We envisage these will be (but not limited to) owners and occupiers of land adjoining the land to which an application relates, statutory consultees, community consultees and any other persons specified. 3. For development on land prospective applicants will be required to publish notice of a proposed development in a minimum of one newspaper circulating in the locality to which a proposed application relates.

	For developments in the Welsh marine area, prospective applicants will be required to publish notice of a proposed application in a minimum of one newspaper and which is likely to come to the attention of those likely to be affected by the proposed development, in Lloyds List and a minimum of one fishing journal (if one is in circulation). 4. Prospective applicants will be required to open and maintain a website dedicated to a proposed development and we will also seek to prescribe what information must be included on a website as a minimum. Websites will need to be opened within 3 months of prospective applicants receiving confirmation from the Welsh Ministers their pre-application notification has been accepted and they must be maintained for not less than 42 days. We envisage websites will need to include information such as (but not limited to) a draft copy of an infrastructure consent order, a plan which identifies the land to which a proposed development relates, an environmental statement (if applicable) and any other plans, drawings and information necessary to describe a proposed development. <u>Providing a substantive response</u> Because various stakeholders will have knowledge and expertise in certain areas, their input and opinions on a proposed development are essential. Therefore, subordinate legislation will specify that where certain persons are consulted at the pre-application stage, they will be required to provide a substantive response, which is currently anticipated to either: • state the statutory consultee has no comment to make; • state the statutory consultee has no objections; • state the statutory consultee has concerns regarding the proposed development and how they can be addressed; or • state the statutory consultee has concerns regarding the proposed development and would be minded to object if an application similar to what is being consulted on is submitted.

	Substantive responses will need to be received by the Welsh Ministers within a period of 42 days, beginning on the day in which written notices is given to those consultees. However, subordinate legislation will provide an extension of time, if there is written agreement between the prospective applicant and the relevant consultee. Based on the requirement to provide a substantive response, subordinate legislation will also introduce performance monitoring, whereby statutory consultees will be required to submit a report to the Welsh Ministers annually, confirming their compliance with any consultation requirements. Subordinate legislation will specify what information is required to be contained in these performance monitoring reports (as a minimum). We anticipate this to include: • the number of occasions in which the statutory consultee was consulted during the year; • the number of occasions a substantive response was submitted; and • the number of occasions a response (either substantive or not) was provided outside the specified period for response, including reasons why the specified period was not adhered to. Subordinate legislation in the context of pre-application requirements will also specify requirements to consult with relevant land interests, where a proposed infrastructure consent includes the compulsory acquisition of land. Land interests must be given the same amount of time as all other consultees, with the time period for publicising and consulting on the proposed application to be completed by the applicant in a 12 month period. It is further recognised at the pre-application stage, additional land interests may be identified that have not been subject to the full statutory pre-application consultation period. In such circumstances, it is considered appropriate to undertake a further land interests consultation with those parties, to ensure fairness in how all land interests are consulted. Subordinate legislation will set out the requirements for a further land interests consultation, which will

	include providing the original statutory pre-application consultation documentation and updated scheme information. It is proposed this further land interests consultation would take place within a time period of not less than 28 days following the date when the last confirmed identified additional party with an interest in land is notified of the consultation.
Section 31 Applying for infrastructure consent	**Summary** This section specifies an application for infrastructure consent must be made to the Welsh Ministers and what must be included with an application as a minimum. This includes specifying the development to which an application relates, a copy of the draft infrastructure consent order and a copy of the pre-application consultation report. It also provides the power for the Welsh Ministers to make regulations in relation to (but not limited to) the form and content of an application, what information, documents or other materials must be included, in addition to those specified on the face of the Bill, and how applications are validated. **Background** To maximise consistency in the consenting process and to ensure the Welsh Ministers (or the examining authority as the case may be) can make a reasoned determination of an application in a timely manner, it is important they have all the necessary information before them at the earliest opportunity. **Subordinate legislation** <u>Form and content of an application</u> Subordinate legislation will prescribe the form and content of an application, how applications are to be submitted and what information, documents or other materials must be included in an application, as a minimum.

	In addition to an application form, we envisage the following may also need to be submitted: • a report which documents progress made in relation to discussions with the LPA(s) in which the proposal is located (or nearest LPAs in relation to offshore proposals) and other consultees in relation to developer contributions; • a plan identifying the land to which a proposed development relates; • any other relevant plans or drawings and information necessary to describe a proposed development, such as a visual assessment of the development; • an environmental statement (where one is required); and • the relevant fee. <u>Timeframe for validating an application</u> The Welsh Ministers are required to provide a notice to the applicant confirming that an application is accepted or not (see section 32), it is intended to set a time limit for doing so in subordinate legislation. We envisage this to be 42 days from the date an application is received where it is required to be submitted with an Environmental Statement, or 28 days where an Environmental Statement is not required. <u>Varying an application once it has been submitted</u> The Bill also makes provision for the varying of applications following submission and after stakeholders, local communities etc. have had an opportunity to make representations at the publicity and notification stage of the process. For example, if a minor change to a proposed scheme would resolve objections raised during the publicity and notification stage. Subordinate legislation will specify applicants will be granted one opportunity to propose a variation to their application and must provide written notice to the Welsh Ministers within 10 working days of the expiry of the representation period of their intention to vary their application.

	Any variation must be minor or non-material in nature. What the Welsh Ministers consider to be minor and non-material will be addressed in guidance, although we are unable to provide specific examples as what may be considered minor or non-material for one development, may not be for another. Where a proposed variation is considered by the Welsh Ministers to be a substantial change, they must not agree the variation. The Welsh Ministers must notify an applicant of their decision to either grant or refuse a proposed variation to an application within 5 working days of receipt of notification of the intention to vary the application. The Welsh Ministers' decision will be final and there will be no opportunity to appeal the decision, although challenges may be brought by judicial review. Where a proposed variation is agreed, the Welsh Ministers may issue a timescale within which the variation may be submitted and may consult on the variation and give notice in any manner and with any person(s) they consider to be appropriate. Should any variation to an application affect the compulsory acquisition of land and land interests affected, further consultation with those land interests may be required at the post application stage, as prescribed under section 38. See section 38 for information on subordinate legislation to be enacted to this effect. It is envisaged that whilst there would be only the one opportunity to change the substance of an application by variation, there may be more than one opportunity for persons with a land interest to get involved, particularly if additional land interests are identified during the application process.
Section 32 Deciding on the validity of an application and notifying the applicant	**Summary** This section requires the Welsh Ministers to decide on the validity of an application where one is submitted to them. It specifies the circumstances in which an application must be considered valid, in addition to notification requirements. It also provides the Welsh Ministers the power to specify in regulations the timeframe within which an application must be submitted for it to be considered valid.

	Background As part of the validation requirements when an application is submitted, an application can only be accepted if it is received in a timeframe specified in subordinate legislation. **Subordinate legislation** <u>Timeframe for submitting an application</u> To ensure pre-application consultation is undertaken in a thorough manner and not rushed, we envisage specifying a time period of 12 months for an application to be submitted, beginning with the date of publication of a prospective applicant's draft application as part of the pre-application process. Were the applicant to publish a draft application in accordance with the pre-application procedure more than once, then within 12 months of the latest publication of the applicant's draft application. Any application received after the 12-month period will not be accepted and applicants will be required to undertake pre-application consultation again unless the Welsh Ministers have agreed in writing to an extension to the 12-month period.
Section 33 Notice of accepted applications and publicity	**Summary** This section specifies the requirements for publicising an application once it has been accepted as valid by the Welsh Ministers, as well as how stakeholders and local communities are notified. This will provide an opportunity for these parties to submit representations relating to an application if they so wish. It also provides the power to the Welsh Ministers to specify in regulations how such publicity and notification requirements must be undertaken.

	Background Where an application has been validated and accepted by the Welsh Ministers, there will be a requirement to undertake certain publicity and notification requirements to ensure all stakeholders and those with an interest in an application are aware an application has been accepted. **Subordinate legislation** <u>Publicity and notification requirements</u> In the first instance, subordinate legislation will specify such requirements will take the form of written notification to various stakeholders. Although those who would be notified in all cases are specified on the face of the Bill, such as relevant LPAs and community councils, subordinate legislation will prescribe other stakeholders who will need to be notified, although they will vary depending on the type of development proposed. One such example may be owners and/or occupiers of land adjoining the proposed development site. Subordinate legislation will also specify the form and content of these notifications. Subordinate legislation will also specify the requirements and procedure for additional publicity functions to maximise the extent to which interested parties and potential interested parties are made aware of a proposed development and offered the opportunity to make representations. For developments onshore, we envisage these requirements to be (but not limited to): • publishing notice of the application in a minimum of one newspaper circulating in the locality to which an application relates for a minimum period to be specified; and • displaying a site notice at, or as close as reasonably possible to, the site of a proposed development in a place which is accessible and clearly visible to the public for the entire representation period (for linear schemes exceeding 5km in length, a site notice must be displayed at intervals of no more than 5km from the start to end of the proposed route, unless it is impractical to do so).

	For developments offshore, we envisage these requirements to be (but not limited to): • publishing notice of the application in a minimum of one newspaper and which is likely to come to the attention of those likely to be affected by the proposed development. Where the proposal is both on and offshore, this may be the same publication as the onshore requirement; • publishing notice of the application in Lloyd's List; and • publishing notice of the application in a minimum of 1 appropriate fishing journal, if one is in circulation.
Section 34 Regulations about notices and publicity	**Summary** This section provides the Welsh Ministers the power to make regulations relating to the specific procedural and detailed elements of how publicity and notification of an application for infrastructure consent must be undertaken, including the form and content of notices and representations, how notices and representations are to be given and associated timescales. **Background** The Bill provides a regulation-making power in relation to notices given under section 32 or 33, as well as representations on an application given under section 33. **Subordinate legislation** <u>Specific publicity and notification requirements</u> Subordinate legislation will specify the form and content of notices given or displayed as part of the publicity and notification requirements of an application following its acceptance by the Welsh Ministers. We envisage such notices to specify information such as (but not limited to):

	• the name and address of an applicant; • a statement indicating that an application has been made to, and accepted by the Welsh Ministers; • a reference number allocated to an application by the Welsh Ministers; • a summary of the main proposals including whether the application includes a request to authorise the compulsory acquisition of land; • a statement specifying whether the application is EIA development; • specify where a copy of the application and any accompanying documentation may be viewed; • details of a website which hosts information relating to a proposed development, where the applicant is still maintaining one at this stage; • details of how representations can be made; and • the deadline by by which representations must be made (no less than 30 days where an application is accompanied by an environmental statement and no less than 21 days in any other case). Similar to pre-application consultation, where a statutory consultee is consulted at this stage, they will be required to provide a substantive response. The same requirements will apply.
Section 35 Local Impact Reports	**Summary** This section specifies the circumstances in which a local impact report must or may be given to the Welsh Ministers by LPAs or community councils. It also provides the Welsh Ministers the power to make regulations to specify the form and content of a local impact report in regulations. **Background** Where notice of an application is given to LPAs and community councils under section 33(2)(a) and (2)(b)(ii), the notice will either require, or offer the opportunity to, submit a local impact report (“LIR”) to the Welsh Ministers.

	Subordinate legislation <u>Submission of local impact reports</u> For development onshore, an LPA must submit a LIR if a proposed development falls within their authority boundary and any community council may submit an LIR, although there will be no requirement to do so. For development offshore, any LPA or community council given notice of an application may submit an LIR, although there will be no requirement to do so. The purpose of a LIR is to set out what likely impact a proposed development would have on a local area. This information can then be used as evidence during the examination of an application and the Welsh Ministers, or the examining authority as the case may be, must have regard to it in forming their decision. The Bill requires all LIRs, whether mandatory or voluntary, must give details of the likely impact of a proposed development, with other matters specified in subordinate legislation. For LPAs where there is a mandatory requirement to submit an LIR, we envisage subordinate legislation will specify the matters to be included in an LIR as a minimum, which are (but not limited to): • the relevant planning history of the land to which an application relates; • any local designations relevant to the land to which the application relates; • the likely impact of any application in relation to a secondary consent; • any locally applicable planning policies, guidance and other documents relevant to an application, such as those specified in the Local Development Plan or Strategic Development Plan; • draft conditions or obligations which the LPA considers an application should be subject to, if it were granted; and • confirmation the LPA has undertaken any publicity and notification requirements required by them, if applicable.

	Where an LPA or community council wish to submit an LIR voluntarily, we would not expect the same mandatory requirements to apply. Therefore, in these circumstances we envisage subordinate legislation will specify certain minimum requirements, which are (but not limited to): • the likely impact of any application in relation to a secondary consent; • any locally applicable planning policies, guidance and other documents relevant to an application, such as those specified in the Local Development Plan or Strategic Development Plan; and • draft conditions or obligations which the LPA or community council considers an application should be subject to, if it were granted.
Section 36 Marine Impact Reports	**Summary** This section specifies the circumstances in which a marine impact report must be submitted to the Welsh Ministers by Natural Resources Wales ("NRW"). It also provides the Welsh Ministers the power to make regulations to specify the form and content of a marine impact report ("MIR") in regulations. **Background** Where notice of an application is given to NRW under section 33(2)(b)(i), if the draft order submitted with an application for infrastructure consent contains provision for a deemed marine licence, the notice will either require, or offer the opportunity to, submit an MIR to the Welsh Ministers. Natural Resources Wales may submit an MIR in respect of an application for infrastructure consent otherwise than in response to a notice given under section 33(2)(b) or a direction given under subsection (2) before the deadline specified in publicity under section 33(3).

	Subordinate legislation <u>Submission of marine impact reports</u> The purpose of a MIR is to set out what likely impact a proposed development would have on the marine environment. This information can then be used as evidence during the examination of an application and the Welsh Ministers, or the examining authority, must have regard to it in forming their decision. The Bill requires all MIRs, whether mandatory or voluntary, must give details of the likely impact of a proposed development, with other matters specified in subordinate legislation. Subordinate legislation will specify the form and content of a MIR and we envisage these to be (as a minimum): • a description of designations relevant to the area to which an application relates; • the relevant consent history of the area to which an application relates; • any relevant applicable policies and guidance and other documents relevant to an application, such as those set out in the Welsh National Marine Plan; • comments on any draft conditions or obligations included in a deemed marine licence; • any additional conditions which NRW considers an application should be subject to if it were granted.
Section 37 Notice of persons interested in land to which compulsory acquisition request relates	**Summary** The section enables the Welsh Ministers to specify in regulations how an applicant is to provide information on land interests to the Welsh Ministers where an application for infrastructure consent includes a compulsory acquisition request.

	Background An application for an infrastructure consent which includes a compulsory acquisition request will be required to be accompanied by a 'book of reference'. The book of reference must contain the names, addresses and contact details of relevant persons with interests in land subject to the compulsory acquisition request having been identified by the applicant through diligent inquiry. It is suggested diligent inquiry in this sense means reasonable diligence in investigating land interests. **Subordinate legislation** To allow applicants to obtain the names and addresses of people who have an interest in the land to which the application relates, applicants will be allowed to serve a 'land interests notice' to request such information, where the Welsh Ministers authorise them to do so. Section 28 sets out the subordinate legislation requirements that will be prescribed for the giving of such a notice. Subordinate legislation will set out detailed provisions for the definition of a 'book of reference'. This document will require the applicant to give to the Welsh Ministers details on people who have an interest in part of or all the land to which the compulsory acquisition forming part of the infrastructure consent application relates. The book of reference will include the names, addresses and contact details of those individuals. Subordinate legislation will require a book of reference to be kept up to date by the applicant and to notify the Welsh Ministers of any amendments to it as soon as reasonably practicable and no later than up until the deadline for the setting out of the timetable for the examination of the accompanying application.
Section 38 Consultation post-application in relation to compulsory acquisition	**Summary** The section enables the Welsh Ministers to specify in regulations how additional consultation on a submitted application for infrastructure consent is to be undertaken and in what

	circumstances. This additional consultation would only apply where the application includes a compulsory acquisition request. **Background** It is recognised that, where there is a proposed compulsory acquisition of land forming part of an application for infrastructure consent, additional parties may be identified that were not included in the pre-application consultation process. For example, the applicant may propose to include new ('additional') land as part of the proposed infrastructure consent that was not initially included as part of the application submission and there may be a need to consult with those new land interests. Therefore, where a submitted application for infrastructure consent includes a request for the compulsory acquisition of land, the applicant may be required to undertake additional consultation in prescribed circumstances. This is to provide extra safeguards to ensure that those people who may be affected are able to be consulted appropriately and are not disadvantaged because they were not initially identified. **Subordinate legislation** Subordinate legislation will set out detailed provisions for additional consultation on an application for infrastructure consent that includes the compulsory acquisition of land, to take place after the application has been submitted. This should include details of the people that are to be consulted, the consultation timetable and documentation required to be provided by the applicant during the consultation. For example, in the case of where additional land is requested to be included by the applicant post-submission, it is likely to include a requirement to serve notice on all relevant land interests to the proposed infrastructure consent. Also, a requirement to provide details of where the application, including the additional land request, and accompanying documentation may be viewed.

PART 4 – EXAMINATION

Power(s): Part 4, sections 39, 41, 42, 43 and 45

Description:

These powers enable the Welsh Ministers to:

- specify how examining authorities may be appointed, allocating functions and specifying any condition of an appointment;
- specify when a determination of procedure must be made and who must be notified on the decision;
- set out the procedure to be followed in connection with an examination of an application;
- set out the procedure for entering land as part of an examination; and
- specify the procedure to be followed in connection with access to evidence at an inquiry.

Policy intention:

Examining authorities

Due to the different types and scales of development the Bill captures as part of the infrastructure consenting process, it is important the principles of flexibility and proportionality are adopted throughout an examination. This begins with who is best placed to undertake an examination.

Section 39 of the Bill requires the Welsh Ministers to appoint an examining authority to examine an application. This may be one person, or a panel of persons, depending on what is considered most appropriate on a case-by-case basis. Our policy intention is to specify in subordinate legislation the procedure for appointing an examining authority, including how appointments are made or revoked, what functions they will be required to undertake as part of an examination and replacing a person with a panel or persons, or vice versa.

Determination of procedure

As discussed above, in the interests of flexibility and proportionality, section 41 of the Bill provides that an examination may take the form of written representations, a hearing, an inquiry, or any combination of those procedures. For example, it may be appropriate

for an application to be examined via the written representations procedure, however, there may be one or two matters raised where it would be more appropriate for them to examined via a hearing or inquiry.

To ensure a decision on how an application is to be examined is made in a timely manner, our intention is to specify in subordinate legislation the period within which such a decision is to be made and who must be notified of the decision.

Procedure at examination

How different examination procedures are conducted in practice are highly detailed and encompass a wide range of duties and requirements, from how evidence is heard to whether pre-examination meetings are permitted.

Our policy intention is to specify the procedural matters relating to written representations, hearings and inquiries in subordinate legislation, in addition to matters such as how further representations may be sought if required, the circumstances in which an examination is not necessary and how and when hearings and inquiries may be conducted electronically.

Power to enter land

The ability to enter land to which an application for infrastructure consent relates is an important part of the examination process and may provide the examining authority with important information as part of their assessment.

Our policy intention is to specify in subordinate legislation the ability for the examining authority and/or the Welsh Ministers to enter land, with the purpose of inspecting that land as part of an examination. It will also specify any procedural requirements which are considered necessary, such as any notification requirements and who must be notified.

Access to evidence at an inquiry

Where an application for infrastructure consent is being examined by an inquiry, either fully or partially, certain evidence may be presented which could result in the disclosure of information about national security or measures taken (or to be taken) to ensure the security of any land or property. The public disclosure of such information would be against the national interest.

To ensure this does not occur, the Welsh Ministers have the power to issue a direction, allowing only those persons specified in the direction to hear the relevant evidence.

However, should such a direction be issued, the Counsel General may appoint a person to represent the interests of those persons not permitted to hear or inspect the evidence. Our policy intention is to specify in subordinate legislation the procedure to be followed by the Welsh Ministers before a direction is made, in the interests of both fairness and transparency.

Topic Area	**Description**
Section 39 Appointing an examining authority	**Summary** This section provides the Welsh Ministers with a power to specify requirements relating to the appointment of an examining authority, such as how members are appointed, their functions and their conditions of appointment. **Background** The ability for an examining authority to be one person or a panel of persons on a case-by-case basis provides the necessary flexibility and proportionality for applications to be examined. However, circumstances may arise where the initial appointment of an examining authority needs to be changed. For example, replacing one person with another person or a panel of persons (or vice versa) or reducing the size of a panel. **Subordinate legislation** <u>Changing the format of an examining authority</u> To ensure changes can be made to the make-up of an examining authority, subordinate legislation will specify the procedure for replacing a panel with a person or a new panel or replacing a person with a panel or new person. This will include certain formalities such as (but not limited to):

	• how persons are notified of an appointment or revocation of an appointment; and • where a panel has been established, how a lead member of the panel is appointed. <u>Functions of an examining authority</u> Where it is determined a panel of persons would be most appropriate for examining an application, subordinate legislation will specify how members are appointed to a panel and what functions persons on a panel may have. For example, we anticipate where there is a panel of persons, one of those will be appointed as the lead appointed person who will have certain responsibilities which differ from other members of the panel, such as the duty to submit an examination report to the Welsh Ministers.
Section 41 Choice of inquiry, hearing or written procedure	**Summary** This section provides the Welsh Ministers with the power to specify when a determination of examination procedure must be made by and who must be notified of the decision. **Background** The ability for an examining authority to decide whether an application for infrastructure consent should be examined by way of written representations, a hearing, an inquiry, or any combination of these procedures, provides a proportionate and flexible process, effectively tailoring an examination on a case-by-case basis. To account for the need to further examine information in more detail a determination may be varied by a further determination at any time before the application being examined is decided under section 57.

	Subordinate legislation <u>Timeframe for making a determination of examination procedure</u> A determination of procedure should be made in a reasonable timeframe and subordinate legislation will seek to specify a period of 10 working days, beginning at the end of the representation period, for a determination to be made. <u>Notification requirements</u> Where a determination of examination procedure has been made, there is a requirement for the examining authority to notify certain persons of this. Subordinate legislation will specify those persons, who we anticipate being: • the applicant; • the LPA(s) within which a proposed development is located, or the nearest LPA(s) if the application relates to development offshore; • Natural Resources Wales, if the application relates to development offshore; • statutory consultees; • any persons who submitted representations; and • any other persons considered appropriate.
Section 42 Examination procedure	**Summary** This section provides the Welsh Ministers with the power to make regulations about the procedure to be followed in connection with an examination of an application. This includes written representations, hearings and inquiries.

	Background The procedure for examining applications extends beyond the manner in which the proceedings are conducted (i.e. written representations, hearings and inquiries) and also encompasses a wide range of other, related matters. These include matters such as when an examination may not be necessary, how further representations may be requested and how proceedings may be undertaken in person or virtually. Subordinate legislation will set out much of the detail in relation to how examinations are conducted, the more significant aspects of which are outlined below. **Subordinate legislation** <u>Determination of examination procedure</u> As the Bill provides a flexible and proportionate approach to examining applications, it is important those who are to be involved in the examination are made aware of what matters, if any, are to be considered at a hearing or inquiry. Therefore, subordinate legislation will require that when a notice of a determination of procedure is made under section 41 of this Bill, the notice must identify what matters are to be considered at a hearing or inquiry and who will be invited to participate. The notice will also specify whether any further representations are required and whether they are to be given in writing or at a hearing or inquiry. <u>Further representations</u> Circumstances may arise where particular matters set out in representations require further details to ensure the examining authority has all the information before them to make an informed recommendation or decision as to whether an application should be granted infrastructure consent or not. To ensure this is possible, subordinate legislation will provide for further representations to be made, where they are requested. It will specify who is able to make these representations, word limits (for example 3000 words) to ensure such representations are focused and concise and how they must be made.

	<u>Proceeding straight to a decision</u> There is a possibility, although rare, that following the period of publicity and notification, no representations are received. Should this occur, the requirement for an examination is not needed and subordinate legislation will state the examining authority may proceed straight to a decision based on the application and any supporting information and documentation submitted with it. <u>Written representations procedure</u> Where an application is examined via the written representations procedure (either fully or partially), an application is considered based on any representations received during the publicity and notification stage. Where the examining authority examines an application, but it is to be decided by the Welsh Ministers, the examining authority will be required to produce a report, setting out their findings and conclusions from the representations received and make a recommendation to the Welsh Ministers on whether infrastructure consent should be granted or refused. However, this requirement is already set out on the face of the Bill at section 49. It may also be the case that the examining authority is also the determining authority, rather than the Welsh Ministers. In such circumstances, the examining authority will also be required to produce a report. However, there will be no requirement to submit this to the Welsh Ministers as they are not the determining authority in these cases. Therefore, there is no requirement to legislate for this, either on the face of the Bill or in subordinate legislation. <u>Hearing and Inquiry procedure</u> The procedure for hearings and inquiries will be largely the same, although with minor differences. Subordinate legislation will specify the procedure to be followed where an

	application is examined by a hearing or inquiry (either fully or partially) and will include matters such as: • when a hearing or inquiry must take place. We envisage this will be no later than 10 weeks following the close of the representation period for hearings and 13 weeks for inquiries (as they are more complex cases) and at least 1 week after the end of a period allowed for further representations to be made; • setting out the ability to hold pre-inquiry inquiry meetings and how such meetings would be conducted, such as (but not limited to) when and how notice of a meeting is to be given and the functions of the examining authority at the meeting; • where a hearing or inquiry is to be held and what publicity and notification will need to take place to advertise a hearing, such as site notices, publications in local newspapers / journals and written notices. The requirements will vary depending on whether a proposed development is on land or in the inshore region; • who may participate in a hearing, such as applicants, LPAs, NRW and other persons specified by the Welsh Ministers; • specific procedural matters during a hearing or inquiry, such as how they are conducted, specifying what matters are to be discussed, who is entitled to call evidence and when cross-examination is permitted; and • the procedure to be followed once a hearing or inquiry is closed, including the requirements to produce reports in the same manner as identified under the written representations procedure. <u>Changing procedure during an examination</u> To account for the possible need to consider information in more detail the examination procedure may be varied during the period of examination, if considered necessary. This will apply to the written representations, hearings and inquiries methods of examination.

	<u>Power to direct matters to be dealt with by the examining authority or the Welsh Ministers</u> Where an examining authority has the function of examining an application, 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 (although unlikely) and may come to view the proceedings would be more appropriately dealt with by the examining authority. The Bill provides the Welsh Ministers the power to issue a direction, transferring the undertaking of proceedings from the examining authority to themselves, or vice versa. In either scenario, subordinate legislation 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. <u>Virtual / hybrid hearings and inquiries</u> The Covid-19 pandemic highlighted a limitation with the existing hearings and inquiries procedures, as legislation specified they must be held in person. This resulted in examinations being postponed because gatherings and interactions were substantially restricted. To ensure we have sufficient flexibility to allow for hearings and inquiries to be held virtually, where considered appropriate, subordinate legislation will prescribe the principles and parameters of virtual meetings. This may include matters such as who will have the power to determine whether proceedings should be undertaken virtually, how virtual proceedings are publicised (such as via e-mails) and how hybrid proceedings would operate in practice.

Section 43 Power to enter land as part of examination	**Summary** This section provides the Welsh Ministers the power to make regulations relating to authorising entry onto land as part of the examination of an application. **Background** During an examination, the examining authority (or the Welsh Ministers as the case may be) may consider it necessary or beneficial to physically visit and inspect the site of a proposed development as part of their assessment of an application. **Subordinate legislation** <u>Procedure for entering land</u> Subordinate legislation will provide the examining authority and the Welsh Ministers (whoever is undertaking the examination) the necessary power to enter and inspect land for the purposes of an examination, although this can only be land relating to the application which is being examined. Best practice would dictate the examining authority, or the Welsh Ministers would notify the applicant and other persons considered necessary of their intention to enter land as part of an examination. Therefore, subordinate legislation will provide that the examining authority or the Welsh Ministers may send written notification to applicants and any other persons considered necessary, which would also include the proposed date and time of the inspection. However, to ensure the timetable for examination is not delayed, we currently anticipate subordinate legislation will specify the examining authority or the Welsh Ministers are not required to defer an inspection where any person (including the applicant) is not present at the time of an inspection.

Section 45 Access to evidence at inquiry	**Summary** This section provides the Welsh Ministers the power to make regulations relating to the procedure to be followed before a direction is given which would prevent certain parties from hearing a particular piece of evidence at an inquiry, where specified criteria are met. **Background** During an inquiry where evidence is heard in public, there is the possibility for evidence to be produced which may result in the disclosure of information about national security or measures taken, or to be taken, to ensure the security of any land or other property. Where this occurs, the Welsh Ministers may direct the examining authority that such evidence may only be heard or available for inspection by persons specified in the direction. **Subordinate legislation** <u>Procedure before a direction is given</u> Subordinate legislation will specify the procedure for when the Welsh Ministers are minded to make a direction under this section of the Bill. This will include matters such as (but not limited to): • the functions of an appointed representative, who will represent the interests of persons prevented from hearing or viewing certain evidence; • the requirement for the Welsh Ministers to publicise a request for a direction to be made and what this will entail, such as displaying site notices and serving notice on prescribed persons; • the ability to hold a hearing where matters relating to a request for a direction would be resolved by a hearing, as well as specifying the hearing procedure; and • how persons are notified of a decision whether a direction is made or not.

PART 5 – DECIDING APPLICATIONS FOR INFRASTRUCTURE CONSENT

Power(s): Part 5, sections 52, 53, 54, 55, 56, 57 and 59

Description:

These powers enable the Welsh Ministers to:

- specify which types of applications and categories of development are to be determined by an examining authority and which are determined by the Welsh Ministers;
- specify further conditions which the Welsh Ministers must be satisfied are met in deciding an application otherwise in accordance with the statutory policies;
- specify any further matters which a determination must have regard to and which matters may be disregarded;
- amend the timetable for when a determination must be made by;
- set out the procedure where the Welsh Ministers propose to make an infrastructure consent order which is materially different to what was proposed in an application; and
- specify who must be provided with a copy of a statement of reasons, following the grant or refusal of infrastructure consent.

Policy intention:

<u>Who decides an application?</u>

With the Bill capturing a wide range of infrastructure and energy projects, with varying scales and impacts, it may not always be appropriate for the Welsh Ministers to determine every application.

To provide an element of proportionality, certainty and transparency, our policy intention is to specify in subordinate legislation those application and development types which the examining authority will determine. Any application or development not specified will fall to the Welsh Ministers to make the determination.

However, it should be noted the Bill provides a power for the Welsh Ministers to direct an application which would usually be determined by the examining authority to instead be determined by themselves and vice-versa. This would be used on a case-by-case basis.

Duty to decide applications in accordance with statutory policies and have regard to other matters

The Bill requires the determining authority to make their decision in accordance with statutory policies, which are specified on the face of the Bill. However, there are certain circumstances where it would not be appropriate to do so, such as where it would lead to the Welsh Ministers being in breach of any duty imposed on them by, or under, any enactment. These are also specified on the face of the Bill. There may also be other circumstances which we are unable to anticipate at this point in time. Therefore, the policy intention is to provide the necessary flexibility to specify such circumstances in subordinate legislation, should the need arise.

The determining authority is also required to have regard to certain matters when considering an application. Although a number of these are specified on the face of the Bill, subordinate legislation may specify other matters which the determining authority must have regard to.

Matters which may be disregarded

An application for infrastructure consent may be subject to a large volume of evidence and representations from various stakeholders and interested parties. To ensure the determination of an application can proceed in a timely manner, our policy intention is to specify in subordinate legislation matters which the determining authority may disregard if received. For example, this may include representations considered vexatious or frivolous and representations which relate to, or dispute, policy set out in Future Wales, the Marine Plan or an infrastructure policy statement.

Timetable for deciding applications

The Bill specifies a 52-week period in which an application must be determined, beginning when the application is accepted as valid. Although this is considered appropriate at this time, the implementation of the consenting process may give rise to certain application types requiring shorter or longer periods.

Granting or refusing infrastructure consent

The examining authority or the Welsh Ministers will be required to either grant or refuse an application for infrastructure consent. Where consent is to be granted (following a decision by either the examining authority or the Welsh Ministers) the Welsh Ministers must make the order. However, the Bill provides the ability for the Welsh Ministers to make an infrastructure consent order on terms

which are materially different from those proposed in the application. In such circumstances the necessary procedure will be set out in subordinate legislation.

Reasons for a decision to grant or refuse infrastructure consent

Regardless of whether an application for infrastructure consent is granted or refused, the examining authority or the Welsh Ministers (whoever made the decision) will be required to prepare a statement of their reasons as to why an application was granted or refused. In the interests of transparency, these statements are required to be published and sent to persons specified in subordinate legislation.

Subject to consultation with stakeholders, the current policy intention about the detail to be prescribed in subordinate legislation is summarised below.

Topic Area	**Description**
Section 52 Functions of deciding applications	**Summary** This section provides the power to specify what applications the examining authority has responsibility for deciding. Any application not specified will fall to the Welsh Ministers to decide. This section also provides the Welsh Ministers with the power to direct an application which would usually be determined by the examining authority to be determined instead by themselves and vice-versa. **Background** The function of deciding an application may rest with either the Welsh Ministers or the examining authority, depending on the type or category of development being applied for.

	Subordinate legislation <u>Specifying application types for determination</u> To ensure consistency and clarity in the consenting process, subordinate legislation will specify those applications which are to be determined by the examining authority following the close of an examination. Any applications not included in subordinate legislation, by virtue of the type or category of development specified in the subordinate legislation, will be decided by the Welsh Ministers. We are not anticipating specifying any particular development types in subordinate legislation at this time. However, it is possible certain developments will be specified in the future, where they are straightforward and do not warrant a decision by the Welsh Ministers. Examples could be the alteration of a railway captured within the Bill, or an application which does not receive any representations or objections at the publicity and notification stage can be determined by the examining authority.
Section 53 Duty to decide applications in accordance with statutory policies	**Summary** This section specifies the statutory policies in which applications must be decided in accordance with and the circumstances in which this would not apply. **Background** The Welsh Ministers or the examining authority (as the case may be) must decide an application for infrastructure consent in accordance with statutory policy specified in the Bill, unless doing so would either: • lead to the United Kingdom being in breach of any of its international obligations; • lead to the Welsh Ministers being in breach of any duty imposed on them by or under any enactment;

	• be unlawful by virtue of any enactment; or • lead to development having an adverse impact that would outweigh its benefits. **Subordinate legislation** <u>Specifying other matters</u> Where relevant, subordinate legislation may specify any further conditions of which the Welsh Ministers or the examining authority (as the case may be) must be satisfied for deciding an application otherwise than in accordance with statutory policy specified in the Bill. This power is intended to be very narrowly used as a safeguard in exceptional occurrences. This would provide a safeguard in the case statutory policies give rise to unintended consequences. Such circumstances could arise where we may need to respond to case law, for example the R. (on the application of Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport [2021] EWHC 2161 (Admin).
Section 54 Duty to have regard to specific matters when making decisions on applications	**Summary** This section specifies the matters in which the examining authority or the Welsh Ministers must have regard to when deciding an application for infrastructure consent. **Background** In deciding an application for infrastructure consent, the Welsh Ministers or the examining authority (as the case may be) must have regard to certain matters specified on the face of the Bill, such as any local or marine impact reports and other material considerations.

	Subordinate legislation <u>Matters to be specified</u> Due to the wide array of development types captured by the infrastructure consenting process, subordinate legislation will specify any other matters which the determining authority must also have regard to when deciding an application, which will be specific to particular kinds of development. For example, this could potentially include cross-boundary developments where it may be considered appropriate to have regard to representations received on the part of a development located in England.
Section 55 Matters that may be disregarded when making decisions on applications	**Summary** This section provides a regulation-making power to specify matters which may be disregarded when making a decision on an application for infrastructure consent. **Background** Following the examination of an application for infrastructure consent, the Welsh Ministers or the examining authority (as the case may be) will likely have to consider a significant volume of evidence and information to reach an informed decision. **Subordinate legislation** <u>Matters which may be disregarded</u> To allow for an efficient decision-making process for applications for infrastructure consent, subordinate legislation will specify the matters which the Welsh Ministers or the examining authority (as the case may be) may disregard when deciding an application for infrastructure

	consent. We envisage such matters to include (but not limited to) representations considered vexatious or frivolous and representations which dispute policy set out in an infrastructure policy statement, the National Development Framework for Wales or any Marine Plan prepared and adopted by the Welsh Ministers.
Section 56 Timetable for deciding application for infrastructure consent	**Summary** This section specifies the period within which the examining authority or the Welsh Ministers must decide an application for infrastructure consent, in addition to the ability to extend the timeframe and notification requirements. **Background** The infrastructure consenting process is built on the premise of certainty for developers and communities and provides a statutory timeframe within which applications must be determined. The timeframe for a decision should start on the day in which the application for an IC has been accepted and considered valid by the Welsh Ministers. The Bill enables the Welsh Ministers to suspend the timeframe in which an application must be determined. There are occasions, which not by fault of the Welsh Ministers, the application process may require a suspension. Examples of where a suspension would be considered reasonable in the context of an infrastructure consent order may be: • where legal undertakings between local planning authorities, third parties and the applicants require resolution; • where there is a significant change or review of policy; • where an applicant requests to make an amendment to a scheme; • where essential parties fail to attend a hearing;

	• there is a change emerging during the examination requiring the draft IC to be amended, for example it may be necessary for the IC to become a statutory instrument or *vice versa.* The Welsh Ministers may, by direction, extend the timescale. They must notify the applicant and any other person specified in regulations of the direction. **Subordinate legislation** <u>Power to amend the timetable</u> The Bill imposes a duty to the Welsh Ministers to notify the applicant that a direction to extend the timetable has been issued (see section 56(4)). Regulations may specify other persons that the Welsh Ministers must notify. At this stage, it is not envisaged that others must be specifically notified by the Welsh Ministers, considering that the Bill also poses a duty to keep a public record of the applications' examinations. However, evidence may emerge through operation of the process that more specified persons should be notified. The Bill enables the Welsh Ministers to amend the statutory time period through secondary legislation. 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.
Section 57 Grant or refusal of infrastructure consent	**Summary** This section requires an application for infrastructure consent to be either granted or refused where a decision has been made. It also specifies notification requirements of a decision and provides a power to prescribe the procedure where a decision has been made on an application which is materially different from which was originally submitted.

	Background Following the submission and acceptance of an application for infrastructure consent and prior to the examination of the application, applicants can request to vary their application by submitting written notice to the Welsh Ministers. This may occur where representations are received during the publicity and notification stage of the process which suggest variations to a proposed development to ease its passage through examination. Although such variations would be limited to minor and non-material amendments (determined at the discretion of the Welsh Ministers on the case-by-case basis), it would represent a change to what was originally being applied for. In addition, circumstances may arise where the Welsh Ministers or the examining authority (as the case may be) initiate a change to a proposed development during examination, which would resolve issues raised by stakeholders which are considered to be more than minor material. **Subordinate legislation** <u>Making an order on terms materially different from what was applied for</u> The Bill provides the Welsh Ministers with a regulation-making power for the procedure to be followed if they propose to make an infrastructure consent order on terms which are materially different from those proposed in the application. We envisage subordinate legislation will specify that the Welsh Ministers must not make an order which is more than minor materially different than what was originally applied for in an 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.

Section 59 Reasons for decision to grant or refuse infrastructure consent	**Summary** This section requires the examining authority or the Welsh Ministers (whoever made the decision) to prepare a statement of reasons, regardless of whether an application for infrastructure consent is granted or refused. **Background** Where the Welsh Ministers or the examining authority (as the case may be) have decided an application, they will be required to prepare a statement of reasons for deciding to either make an order granting infrastructure consent or to refuse infrastructure consent to ensure applicants are aware of the reasons why such a determination was reached. However, there will also be parties in addition to applicants with an interest into the reasons why a determination to either make an order granting infrastructure consent or to refuse infrastructure consent was reached, such as the local community. **Subordinate legislation** <u>Who a statement of reasons will be sent to?</u> Subordinate legislation will specify those persons, in addition to applicants, who must be provided with a copy of a statement of reasons, although these persons will vary depending on the type or category of development to which an application relates. We anticipate such persons to 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.

	<u>Publishing statements of reasons</u> Although not set in legislation, guidance will also set out the requirements for publishing statements of reasons by the Welsh Ministers, which we envisage to be a combination of written notices, notices in relevant publications (such a newspapers or fishing journals) and publication on a website owned and maintained by the Welsh Ministers.

PART 6 – INFRASTRUCTURE CONSENT ORDERS

Power(s): Part 6, sections 60, 62, 69, 81, 85, 88, 91, 92 and 93

Description: These powers enable the Welsh Ministers to:

- modify Part 1 of Schedule 1, which sets out matters in which infrastructure consent orders may make ancillary provision relating to development;
- set out requirements relating to the compulsory acquisition of land;
- make provision about when a requirement for a specified consent may be removed or deem a consent to have been granted;
- make provisions for the details of the procedure to follow for correcting an error in a decision document;
- make provisions for the details of the procedure to follow for changing and revoking an Infrastructure Consent (IC);
- set out the default duration of an IC;
- make provision about steps that must be taken in relation to a power to compulsorily acquire land;
- make exceptions to the definition of “material operation”; and
- set details of when a legal challenge may be made in certain circumstances.

Policy intention:

Powers to modify Part 1 of Schedule 1

Part 1 of Schedule 1 lists matters relating to, or to matters ancillary to, the development for which consent is granted. These include, for example, the acquisition of land by agreement or compulsorily. It is intended to allow the Welsh Ministers to modify this list to future proof the Bill.

Compulsory acquisition of land

Where an applicant submits their proposal for a significant infrastructure project (SIP), and it is necessary to acquire land or rights over land to enable that project, the compulsory acquisition can be considered, and if acceptable, approved as part of the resulting infrastructure consent. This will ensure land acquisition issues for infrastructure development are incorporated into the new consenting process, resulting in more certainty.

The specific provisions under Part 6 for compulsory acquisition are intended to ensure detailed matters on the process for compulsorily acquiring land as part of an infrastructure consent can be set out appropriately.

Extinguished and deemed consents

The Bill enables the Welsh Ministers, when determining or making an IC, to effectively disapply the need for certain orders, consents, licences, grants, permissions or authorisations which are within the legislative competence of the Senedd to be obtained in relation to the works which are approved by the IC. These consents are to be specified in subordinate legislation. It also enables the IC to deem any consents specified in subordinate legislation.

This is intended to streamline the consenting process, avoiding delays post-consent when implementing an infrastructure project.

Correcting an error in a decision document

The intention for the procedure for correcting an error (including an omission) in a decision document is that there may be occasions where a decision document is published containing an obvious and correctable error. It is important that there is a procedure in place to ensure the speedy correction of a decision notice.

Changing and revoking an IC

The intention for the procedure for changing and revoking IC is to enable occasions following the granting of consent, where amendments may be proposed to an existing infrastructure consent or a requirement for an infrastructure consent order to be revoked.

Duration of infrastructure consent order and when development begins

The rationale for limiting the duration of a consent is to ensure developers have a fixed period within which to act on the consent in order to aid certainty for the local community and other stakeholders. It would not be appropriate for a developer to hold a consent for a significant project with no end date, particularly when over time the policy considerations, for example environmental standards, can change.

Time period for making a legal challenge to an application for change or revocation of an infrastructure consent order

The Bill provides the ability for certain decisions to be challenged by means of judicial review and, in each case, the claim form must be filed before the end of a 6-week period. The beginning of the time period in relation to an application for change or revocation of an infrastructure consent order is specified in regulations.

These are procedural matters and it is considerate appropriate they should be set in subordinate legislation.

Topic Area	**Description**
Section 60(5) What may be included in an infrastructure consent order	**Background** When an IC is granted, it may be subject to conditions specified in the consent. These conditions or provisions may relate to matters relating to, or to matters ancillary to, the development for which consent is granted. For example, it may relate to the acquisition of land, either by agreement or compulsorily or the extinguishment of rights over land and water. The list of matters relating to development is contained in Part 1 of Schedule 1 to the Bill. **Subordinate legislation** *Power to modify the list* To future proof the Bill, it enables the Welsh Ministers to modify the list included in Part 1 of Schedule 1 by subordinate legislation.

	The list has been compiled comprehensively and is likely to be exhaustive at this point in time. However, for example, should further devolution be granted to the Welsh Government, it is likely that additional matters relating to development may be beneficial to be part of an IC. As regulations under section 60(5) may add, vary or remove a matter listed in Part 1 of Schedule 1 they will be subject to the Senedd's draft affirmative scrutiny procedure.
Section 62 Land to which authorisation of compulsory acquisition can relate	**Background** For an infrastructure consent order to authorise the compulsory acquisition of land, relevant procedures prescribed elsewhere in the Bill, for example consultation under section 30, will need to be followed. **Subordinate legislation** Subsection (4) would allow the Welsh Ministers to specify that these procedures must have been followed before a compulsory acquisition as part of an infrastructure consent can be authorised.
Section 69 Notice of authorisation of compulsory acquisition	**Background** Where an infrastructure consent which includes a compulsory acquisition request is granted by the Welsh Ministers, the prospective purchaser will be required to notify each qualifying person of this decision via the service of notice ("a notice of compulsory acquisition"). The serving of a notice of compulsory acquisition will be an important procedure as once an infrastructure consent which includes a compulsory acquisition request is granted, the power to compulsory acquire land associated with a significant infrastructure project will become operative on the date on which the notice of compulsory acquisition is first served.

	Subordinate legislation Subordinate legislation will set out detail on the process for the serving of a notice and what it should contain. In terms of the displaying a notice, this is likely to require the notice to be affixed to a conspicuous object or objects on or near the land related to the consent and be kept in place by the prospective purchaser until the end of the period of 6 weeks beginning with the date on which the consent is granted, so far as practicable. In terms of giving the notice, this is likely to be served to all of those with affected land interests (owners, lessees and occupiers). In terms of in the content of the notice, this is likely to include stating the title of the relevant consent; describing where the notice is to be affixed; stating the title of the relevant Welsh Minister who granted the infrastructure consent and date on which it was published; describing the right in a case where the infrastructure consent authorises the compulsory acquisition of a right over land by the creation of a new right; and stating that the infrastructure consent includes provision authorising the compulsory acquisition of a right over the land by the creation of a right over it or (as the case may be) the compulsory acquisition of the land. This will allow the Welsh Ministers flexibility in the serving and publishing of this notice.
Section 81 Removing consent requirements and deeming consents	**Background** In order to implement and develop a SIP, consent would normally be required for a number of ancillary matters. To provide a ‘one stop shop’ approach, it is proposed to give the option to applicants to rationalise the different secondary consents required for ancillary matters into the main consent.

	Subordinate legislation <u>Removing consent requirements or deeming consents</u> To implement a true unified consenting process, the IC issued by the Welsh Ministers may also have the effect of giving permission, authorising, approving, consenting, licensing or granting ancillary matters. Where a consent is either deemed or extinguished, in practice it will be for the developer to specify whether they would like to seek the deeming or extinguishment of the consent (i.e. that the consent is not required any longer). However, ultimately, the power will lie with the Welsh Ministers to deem or extinguish the consent. The Bill adopts a qualified approach, which deems that a relevant consenting authority has given authorisation for the use of its consent/licence/authorisation within the IC. However, the relevant consenting authority will be given the opportunity to decline for that ancillary consent/licence/authorisation to be included within the IC. This is specified on the face of the Bill at sections 81(2) and (3). However, the Welsh Ministers have the power to deem any consents which are specified in regulations. See section 81(4). <u>Regulations for deemed and extinguished consents</u> The Bill allows the Welsh Ministers to specify in subordinate legislation exceptions to sections 81(2) and (3), effectively allowing the Welsh Ministers to remove the requirement for, or deem specified consents without the consent (explicit or silent) of the relevant authority. These regulations specify exceptions to the need to get the consent of the relevant authority. The decision maker will be able to impose conditions on these consents. For example, the regulations may:

	• 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 Hedgerows Regulations 1997.
Section 85 Correcting errors: regulations	**Background** To maintain the integrity of a decision document (notice of refusal or infrastructure consent order), the Welsh Ministers will have powers to correct a decision. This will only occur if the error doesn't materially change an IC. As any minor correction to a decision will not prejudice any party, it is not considered necessary for the wording of the decision to be consulted upon in all instances, particularly where its meaning will not change. However, where a significant error occurs, it is considered more extensive consultation will be required. The error may be identified by the applicant upon review of their consent, by the Welsh Ministers, the appointed person, or by other parties with an interest in the decision. The power to correct errors in decision documents may be exercised on receipt of a request in writing or without a request. If the error being corrected is in relation to a notice of refusal, the applicant must be given notice. **Subordinate legislation** The Bill makes provision for or in connection with the procedure for correcting an error in a decision document, and in relation to the effect of making a correction, or not making a correction. We anticipate subordinate legislation will specify: • Details of the consultation which must take place as a result of making a decision to correct a decision document, if it is considered necessary. This will include interested parties and stakeholders.

	• The Welsh Ministers must provide a minimum of 14 days for those parties to respond to the proposed correction. The Welsh Ministers may provide further representation periods should they consider necessary. • When a decision on whether to make a correction or not make a correction is made, Welsh Ministers will provide reasoning for the decision. • The correction will come into effect on the date of the decision by the Welsh Ministers. • Any correction does not the affect time period during which development must commence, i.e. to be from the date the order of the original consent, not from the date of the correction. • Where a correction is not made the original decision continues to have force and no steps undertaken pursuant to the proposed error correction affects the original decision.
Section 88 Procedure: changing and revoking infrastructure consent orders	**Background** Where an infrastructure consent order is granted, the nature of large-scale infrastructure projects mean it would not be uncommon for changes to be required to a development, either before or during construction. This section makes provision for a formal process for applicants to apply for a change to the infrastructure consent order. The Bill introduces a single process for making amendments to an infrastructure consent order which cover both non-material and material amendments. Any amendments which, in the Welsh Ministers' opinion, are substantial amendments will require the submission of a new application for infrastructure consent.

	Non-material and material amendments are not defined in legislation because there are several factors which must be considered and will vary on a case-by-case basis. These include the context of the overall scheme, the change(s) being sought to the existing infrastructure consent order and the specific circumstances of the site and surrounding area. Generally, but not in all cases, amendments which are likely to be material will be those which: • alter land rights (i.e. compulsory acquisition of land); • require changes to an EIA; • invoke the need for an additional HRA; or • require an additional licence for European Protected Species. **Subordinate legislation** The Bill makes provision for or in connection with the procedure for changing and revoking infrastructure consent orders. It is anticipated subordinate legislation will include: • Details of the procedure to be followed before an application under section 87 is made. This shall include a requirement to submit written notification to the Welsh Ministers and LPA(s) within which the site is located or adjacent to where the site is offshore, when proposing amendments to an existing infrastructure consent order. We anticipate regulations will detail what information should accompany the notification, including, but not limited to: - a description of the proposed change(s); - a statement confirming whether the change is, in the view of the applicant, non-material or more than non-material; and - details of any consultation carried out. This will follow the procedure for publicity and notification requirements as set out in section 33 of these Statements of Policy Intent.

	• Details of what should be submitted with an application for changing or revoking a consent and how it should be made. We anticipate subordinate legislation will include, but not be limited to: - details of the applicant; - details of the change being applied for and a statement confirming whether the change is, in the view of the applicant, non-material or more than non-material; and - any documents and plans considered necessary to support the application. • Details for the procedure for the validation of an application for changing or revoking consent. Once an application, together with supporting documentation, is submitted to the Welsh Ministers, they will be required to determine whether it is valid or not within a specified timescale. Where an application is received and not considered valid (i.e. information or documentation is missing), the Welsh Ministers must notify the applicant as soon as reasonably practicable with the reasons why their application is not considered valid. Where an applicant has applied on the basis of the application being non-material, but the Welsh Ministers later determine the application is more than non-material, this determination will not prejudice the validity of the application unless supplemental information is required. • Details of the determination whether amendments are non-material or material. This shall include, but not be limited to: - the Welsh Ministers making a judgement on whether they consider a proposed change(s) to be non-material or material, based on the information provided by an applicant and policy-based criteria.

	- if a change(s) is considered non-material, the Welsh Ministers or the appointed person must proceed to a decision. - the power to reserve the ability to consider a proposed change(s) judged to be more than non-material where other material considerations dictate the change(s) is material. • Details of the procedure for changing and revoking an infrastructure consent. We anticipate subordinate legislation to include, but not be limited to: - the procedure to be followed before an application for changing or revoking a consent (under section 87) is made. - the making of such application. - the decision-making process in relation to whether to grant or refuse an application for changing or revoking a consent, including the duty to consult, the timeframe for consultation, details of publicising the application, details of appointed persons, examination procedure, details of policies and documents to be taken into account in the consideration of an application to change or revoke an infrastructure consent order.
Sections 91 and 92 Duration of infrastructure consent order and when development begins	**Background** The Bill requires at section 91 that the development to which the IC is granted must begin before the end of a period prescribed in regulations. If the development is not begun before the end of the prescribed period, the IC ceases to have effect at the end of that period. Development is taken to begin on the earliest date on which any lawful material operation has been undertaken. (See section 92).

	Subordinate legislation <u>Prescribed period</u> It is envisaged that a maximum period of 5 years will be prescribed in regulations in line with the Development of National Significance regime. In the interests of ensuring timely delivery of infrastructure discussions will be held to encourage development to be begun at the earliest opportunity, with the infrastructure consent able to set a shorter period of implementation should this be desirable and practical for the individual development. There is no requirement for the prescribed period to be stated in the infrastructure consent order. Where a prescribed period is set out in the IC and it differs from the period set out in regulations, the period set out in the IC shall apply. <u>Compulsory purchase</u> Where the IC authorises the compulsory purchase of land, steps of a prescribed description must be taken in relation to it before the end of the prescribed period, or such different period set out in the IC. Subordinate legislation will further set out that where an IC authorises the compulsory acquisition of land, and a notice (essentially a notice enabling the acquiring authority to start the process to acquire or take possession of the land) is served under section 5 of the Compulsory Purchase Act 1965, that notice must be served before the end of a period of 5 years beginning on the date on which the IC is granted. The prescribed period and prescribed steps in case of compulsory acquisition of land is set in subordinate legislation because these are procedural matters. Should evidence emerge in future that different procedures pertaining the commencement of an IC should be in place, the Welsh Ministers will have the power to amend these arrangements promptly.

	<u>Material operations</u> 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 establishing when development has begun. The need to exclude certain operations from the definition of material operation enables clarity to be provided about when development has begun. It is anticipated the regulations will specify that any steps taken in regard to compulsory acquisition (for example the serving of a notice) will not constitute a material operation on its own.
Section 93 Legal challenges	**Summary** This section specifies the circumstances and time limits for where matters relating to an infrastructure consent order (including amendments or revocations) may be challenged. **Background** As decisions relating to infrastructure consent orders (including amendments and revocations) can only be made by the Welsh Ministers, there is no statutory right of appeal. However, challenges may be brought by judicial review. In general, the timescales for bringing a judicial review are specified on the face of the Bill. However, there is one regulation making power in relation to timings in section 93(7)(b) which relates to a claim brought under section 93(6). Section 93(6) provides for a legal challenge to be made for anything else done or omitted to be done by an examining authority or the Welsh Ministers in relation to an application for infrastructure consent or an application to change or

	revoke an infrastructure consent order. However, such a claim must be made within a period of 6 weeks beginning with the day after the relevant day. **Subordinate legislation** Subordinate legislation will specify the relevant day where an infrastructure consent order is amended or revoked. <u>Specifying the meaning of "the relevant day"</u> Regarding the meaning of "the relevant day" in relation to proceedings for questioning anything else done, or omitted to be done, by an examining authority or the Welsh Ministers in relation to an application to change or revoke an infrastructure consent order, we anticipate subordinate legislation will specify this means the day on which: • the application is withdrawn; • the infrastructure consent order is published or (if later) the statement of reasons for making the order is published (only applicable to amendments to an infrastructure consent order); • notice of a decision to grant an application for amending or revoking an infrastructure consent order is issued or (if later) the statement of reasons is published; or • notice of a decision to refuse an application for amending or revoking an infrastructure consent order is issued or (if later) the statement of reasons for refusal is published. However, this will need to be progressed in line with the procedural requirements specified in subordinate legislation for how infrastructure consent orders may be amended or revoked and could be subject to change.

PART 7 – ENFORCEMENT

Power(s): Part 7, sections 110 and 115

Description:

These powers enable the Welsh Ministers to:

- specify matters to be included in notices of unauthorised development which are not set out on the face of the Bill; and
- specify the circumstances or activities which a temporary stop notice may not prohibit.

Policy intention:

Notices of unauthorised development

The Bill specifies two scenarios in which a person may commit an offence. These are development without an infrastructure consent order (if one is required) and a breach of, or failure to comply with, the terms set out in an infrastructure consent order.

Where a person is found guilty of such an offence, the relevant enforcing authority (either the local planning authority ("LPA") or the Welsh Ministers) can issue a notice of unauthorised development.

Such notices will be required to contain certain pieces of information in all cases and these are specified on the face of the Bill. For example, setting out the timeframe in which any steps specified in the notice to remedy a breach must be taken. However, there may be additional information to be included, but not in all cases. Our policy intention would be to specify such information in regulations and the circumstances it would be required.

Temporary stop notices

The Bill introduces the ability for LPAs to issue a temporary stop notice, with the purpose of providing LPAs time to consider whether further enforcement action should be taken against development being carried out without the necessary consent or a breach of, or failure to comply with, the terms of a consent, where they consider it to be a matter of urgency.

The effect of a temporary stop notice can require an activity which relates to development being carried out without the necessary consent or a breach of, or failure to comply with, the terms of a consent, to cease immediately from the time a notice takes effect for a prescribed period.

However, there are certain restrictions on when a temporary stop notice can be served, if, for example, it would infringe on certain human rights. Our policy intention is to specify in regulations any other circumstances in which a temporary stop notice may not be served.

Topic Area	**Description**
Section 110 Notice of unauthorised development	**Summary** This section provides the Welsh Ministers and local planning authorities the power to serve a notice of unauthorised development, where a person has been found guilty of an offence relating to either development without infrastructure consent (where such a consent is required) or a breach of, or failure to comply with, the terms of an infrastructure consent order. **Background** The Bill specifies certain matters which must be included in a notice of unauthorised development in all cases, such as the period within which any steps specified in a notice must be taken. However, it also provides a regulation-making power for additional matters which must also be specified and may vary on a case-by-case basis. **Subordinate legislation** <u>Additional matters specified in a notice of unauthorised development</u> Because a person on whom a notice of unauthorised development is served will have already been found guilty of an offence, such notices will only usually be required to state what steps

	must be taken to remedy the breach and the timeframe in which such steps must be undertaken. These are specified on the face of the Bill. However, it may appear necessary to the relevant enforcing authority (usually the LPA in the first instance but may be the Welsh Ministers) for additional information to be included in a notice of unauthorised development in particular circumstances, or for certain application/development types. The regulation-making power in this section provides the necessary flexibility to introduce such additional information. For example, it may be determined the precise boundaries of the land to which the notice relates should be included.
Section 115 Restrictions on power to issue temporary stop notice	**Summary** This section specifies the circumstances in which a temporary stop notice may not be issued and what it may not prohibit. **Background** Temporary stop notices are a useful enforcement tool to allow time to consider whether further enforcement action should be taken against development being carried out without the necessary consent or a breach of, or failure to comply with, the terms of a consent when considered a matter of urgency. They can require an activity which relates to development being carried out without the necessary consent or a breach of, or failure to comply with, the terms of a consent, to cease immediately from the time a notice takes effect. Because of the immediate and restrictive impacts of a temporary stop notice, the Bill specifies such a notice may not prohibit the use of a building as a dwellinghouse or an activity, or in circumstances specified in subordinate legislation.

	Subordinate legislation <u>Further matters and circumstances which a temporary stop notice may not prohibit</u> 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 implications on health and safety, or national security. Furthermore, it should be noted 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 appropriate.

PART 8 – SUPPLEMENTARY FUNCTIONS

Power(s): Part 8, sections 121, 125, 126, 127, 128 and 129

Description:

These powers enable the Welsh Ministers to:

- make provisions for or in connection with the charging of fees;
- make provisions on the requirements for or in connection with the creation and maintenance of an applications register;
- make provisions on the power to consult and the duty to respond to consultations;
- make provisions for recovery of costs incurred by public authorities for things done in pursuance of a direction;
- make provisions limiting the power of the Welsh Ministers to disapply requirements, and
- make regulations about Crown Applications.

Policy intention:

Charging of Fees

The Bill ensures costs incurred as part of the application process for an infrastructure consent order can be recovered. Fees will be based on the full cost of providing services.

Subordinate legislation will provide further detail regarding such fees, which will be charged at various stages of the application process and the post-decision stage. It is our intention that the fee regime is simple and transparent and so to achieve this, the fees prescribed in subordinate legislation will contain fixed and daily rates, and some fees will be scaled depending on the complexity of a case.

There is the potential for other fees to be included in regulations, such as the charging of fees by a specified public authority for providing services or functions in relation to an application for infrastructure consent.

Creation and maintenance of an applications register

The Bill requires that a register of applications or prospective applications must be maintained and publicised by the Welsh Government, which is considered the most appropriate authority to maintain the register. The Local Planning Authority (LPA) will also make information available more locally such as in the area of the application site.

It is policy intention for the Welsh Ministers and the LPA to maintain a register of pre-application services provided to prospective applicants. The purpose of this is to provide transparency by affording any person who wishes to do so, an opportunity to exercise their rights to information in a timely fashion. Furthermore, it will benefit both the LPA and the Welsh Ministers, should they require access to historical records in the future.

The details of what information should be included within the register and how it should be published and made available will be prescribed in subordinate legislation.

Statutory consultees

Consultations conducted during the examination of an application with statutory consultees is a principle already in place in the Developments of National Significance (DNS) consenting regime. Similar provisions are included in the Bill to ensure the effective engagement and involvement of specified public bodies.

It is intended that consultations will be undertaken when a valid application is received by the Welsh Ministers. The Bill includes a duty to respond to consultations and subordinate legislation will specify the form and content of a substantive response and the time period for providing it.

It is intended to specify the statutory consultees lists and the circumstances in which they will be engaged in subordinate legislation following a consultation exercise, to ensure that all relevant bodies are engaged in the process.

Recovering fees in respect of directions

The Bill allows the Welsh Ministers to give a direction to a planning authority, Natural Resources Wales or a devolved Welsh authority specified in regulations, to do things in respect of an application. Regulations may make provision for or in connection with the recovery of costs incurred by public authorities when carrying out a direction.

Provisions limiting the power of the Welsh Ministers to disapply requirements

The Bill contains a provision which enables the Welsh Ministers, where they are satisfied there would be no detriment to procedural fairness, to dispense with some procedural requirements they consider unnecessary, by direction. As the consenting process defined in the Bill is prescriptive, there are limited circumstances in which certain procedural requirements may add no value to the process and be considered unnecessary. In order to continue to expedite the consenting process, the Welsh Ministers have the power to dispense with certain requirements where they believe there would be no detriment to procedural fairness.

The power to give directions includes the power to vary or revoke the direction.

This power is limited through subordinate legislation which will specify the requirements that may be disapplied by direction and must require directions to be published and contain the Welsh Ministers reasoning.

Crown applications

Crown applications where proposed developments may contain sensitive information may require special procedures in the pre-application and examination stage.

Topic Area	**Description**
Sections 121 and 127 Make provisions for or in connection with the charging of fees	**Summary** Section 121 ensures that any costs incurred as part of the application process for an infrastructure consent order can be recovered. **Background** It is our intention to provide a mechanism through subordinate legislation for fees to be charged at various stages of the application process. This will also be extended to the post-

	decision stage, where future applications may be submitted to either revoke or amend an infrastructure consent order. Any relevant fees will be based on the full cost of providing services. The process for applying for infrastructure consent will require significant input from the Welsh Ministers, LPAs and other specialist consultees. It is our intention that these parties will be able to recover their costs for any input required. It is our intention that the fee regime is simple and transparent and so to achieve this, the fees will contain fixed and daily rates. The intention is that these rates are published by the Welsh Ministers. 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. It is also our intention that some fees will be scaled, depending on the complexity of a case, for example if the application requires a Statutory Instrument (SI) or not. If an application is more complex, and will likely be an SI case, a higher fee will be charged compared to a less complex case that will not require an SI. **Subordinate legislation** <u>Fees for Pre-application Services</u> The subordinate legislation will prescribe fees for pre-application services from both Welsh Ministers and LPAs. It will also prescribe for refunds, in certain circumstances, and make provision to charge for pre-application meetings. <u>Fees for pre-application consultation</u> Prior to applying for infrastructure consent, applicants will be required to inform the Welsh Ministers and other relevant stakeholders of their intention to commence pre-application consultation. This will be in the form of a pre-application notification, which will require certain

	administrative functions to process and respond to. To offset this cost, it is our intention to charge a fixed fee. <u>Application fees</u> Application fees will consist of both fixed and variable fees, as certain elements of the process will be of a standard nature and others will depend on the size and scale of a proposed development. The examination of an application will be charged on a variable rate, and this will help to reduce examination costs, and ensure applicants are only being charged for the time spent examining and determining their application. <u>Fees for Local or Marine Impact Report</u> It is our intention that LPAs and NRW will receive a fee for submitting a Local or Marine Impact Report (MIR/LIR), during the application process. This will be a fixed fee, as the LIR or MIR will likely contain standard information. <u>Fees for Determination and Post-Decision</u> It is our intention for Welsh Ministers to charge a fixed fee for the determination of an infrastructure consent order. There will also be fees for applying to amend or revoke an infrastructure consent order. <u>Other fees</u> There is the potential for other fees to be included in regulations, such as the charging of fees by a specified public authority. The power within the Bill in relation to fees is wide, and regulations may make provision including: • when a fee may, and may not, be charged;

	• the amount that may be charged; • what may, and may not, be taken into account in calculating the amount charged; • who is liable to pay a fee charged; • to whom fees are to be paid; • when a fee charged is payable; • the recovery of fees charged; • waiver, reduction or repayment of fees; • the effect of paying or failing to pay fees charged; • the transfer of fees payable to one person to another person; • the supply or publication of information for any purpose of the regulations. <u>Section 127</u> This section provides the ability for those public authorities to recover their costs for things carried out under direction from the Welsh Ministers. Where certain functions are carried out (e.g posting of site notice) it is our intention a fixed fee is paid for this function.
Section 125 Make provisions on the requirements for or in connection with the creation and maintenance of an applications register	**Background** To ensure the public are aware of potential projects in their area, the Bill requires that a register of applications or prospective applications must be maintained and publicised by the Welsh Ministers. The Welsh Ministers' register of IC applications and prospective applications will include pre-application services given to a prospective applicant. Prospective applications mean those who have notified the Welsh Ministers (section 29) or where the Welsh Ministers have determined that they are a SIP by direction (section 22). The form of the register is to be set in subordinate legislation.

	Subordinate legislation <u>Form of the register</u> Regulations will enable the Welsh Ministers to set out the form and content of the register and the stages which must be documented in the register. For example, the register may be in the form of a website. Regulations may also enable the Welsh Ministers to require the LPA to maintain a register of IC applications and any valid pre-application services provided by the LPA to a prospective applicant. The register of projects must be maintained for public inspection. It is envisaged that the register of applications and prospective applications maintained by the Welsh Ministers must contain a copy of: • any notification made to the Welsh Ministers; • any notification of receipt of an application to the Welsh Ministers; • any notice of acceptance given by the Welsh Ministers in relation to the application, including in relation to withdrawal of the application; • any notification the application has not been accepted; • any written representations received by the Welsh Ministers in response to any invitation for representations set by the Welsh Ministers and within the timescale set by the Welsh Ministers. • any written notice of decision relating to the application; and • any revised notice of decision, such as an amendment or correction of error. In respect of pre-application services: • a copy of a pre-application service request form (including all plans and drawings submitted with a form);

	• details of the pre-application services provided by them; and • a document identifying the land to which a proposed development relates (i.e. site address or a red line boundary map). Each request must be placed on the register as soon as practicable, unless the applicant requests in writing for the information to be placed on the register at a later date. This date must not be later than the day the applicant formally notifies the Welsh Ministers of a prospective IC application. The written request submitted by the applicant must contain reasons and justifications to publish the request on the register at a later date (i.e. if the information is commercially sensitive) and it shall be for the Welsh Ministers to determine whether the reasons and justifications for non-disclosure outweigh the public interest. However, the Welsh Ministers must apply a presumption in favour of disclosure. Where the public authority does not consider the reasons and justifications for non-disclosure outweigh the public interest, the request must be published on the register as soon as practicable. We currently propose subordinate legislation will a require the LPA to maintain a register of IC applications and valid pre-application services given within its area. It is anticipated the register will include details of: In respect of IC applications: • any notice of acceptance given by the Welsh Ministers in relation to the application; • any written notice of decision relating to the application, including in relation to withdrawal; and • any revised notice of decision, such as an amendment or correction of error. In respect of pre-application services by the LPA:

	• a copy of a pre-application service request form (including all plans and drawings submitted with a form); • details of the pre-application services provided by the LPA; and • a document identifying the land to which a proposed development relates (i.e. site address or a red line boundary map).
Section 126 Make provisions on the power to consult and the duty to respond to consultations	**Background** This section provides the Welsh Ministers or examining authority the power to consult public bodies specified in regulations. The section also confers a duty to respond on those statutory consultees. **Subordinate legislation** <u>Duty to consult and to provide a response</u> This provision provides the statutory basis for the Welsh Ministers or examining authority to consult a public body specified in subordinate legislation as part of the examination process, with the result that the authority has a duty to give a substantive response to that consultation within a specified timeframe. Statutory consultees have knowledge and expertise in certain areas, and so their input during examination is considered vital. This provides the opportunity for specialist expertise to inform the examining authority during examination. It also ensures that a development which received consent will be implemented in accordance with the consenting order, minimising the risk of post consenting changes due to unforeseen factors. The Bill places a duty on the Welsh Ministers or the examining authority to consult a specified public authority. Regulations will determine a list of statutory consultees and the circumstances upon which they will be consulted.

	For example, Natural Resource Wales will be consulted in all instances. Another example is that the Ministry of Defence will 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. Subordinate legislation will prescribe the criteria for the form, content and requirements of consultation responses. This will ensure that an appropriate input is provided during the examination process. For example, a substantive response may include: • whether the consultee has no comment to make or no objection; • advise the Welsh Ministers or examining authority of any concerns identified in relation to the proposed development and how those concerns can be addressed by the applicant; • advise that the consultee objects to the proposed development and sets out the reasons for the objection. Subordinate legislation will also specify the timeframe a response must be received in. This will include a specified time period, as well as the option for an agreed time period made in writing between the statutory consultee and the Welsh Ministers. <u>Specialist Consultee Reporting</u> Based on the requirement to provide a substantive response, it is appropriate for subordinate legislation to introduce performance monitoring to ensure compliance with any consultation requirements. Subordinate legislation will require an authority consulted under this section of

	the Bill to provide a report to the Welsh Ministers about the authority's compliance with the consultation requirements. Reports will relate to a 12 month period, and subordinate legislation will specify what information is required to be contained in these reports (as a minimum). We anticipate this to include: • the number of occasions in which the statutory consultee was consulted during the year; • the number of occasions a substantive response was submitted; and • the number of occasions a response (either substantive or not) was provided outside the specified period for response, including reasons why the specified period was not adhered to. Reports will need to be submitted in a form published by the Welsh Ministers.
Section 128 Make provisions limiting the power of the Welsh Ministers to disapply requirements	**Background** The consenting process introduced by the Bill is intended to be a one stop shop for the consenting of infrastructure in Wales. It provides for one process specified by a suite of regulations to be used for consenting a wide range of infrastructure developments and in a wide range of different circumstances. The process is intended to be relatively prescriptive, similar to the DNS process. For example, subordinate legislation will prescribe in detail how consultations must be conducted to inform an application and during examination 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 in limited circumstances be disproportionate to the application or its likely impacts. 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. **Subordinate legislation** Circumstances for dispensing requirements *Examples* *Example 1: Publicity* 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. *Example 2: Engagement* Subordinate legislation will set requirements that an 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. *Example 3: Consultation* 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 with some of the 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 with, it would be important for the reasons for those requirements to be dispensed with to be published.

	<u>Regulations to limit this power</u> 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 disapplied by direction. At this time it is proposed to limit this power to pre-application procedures (sections 29 and 30) and to some application procedures (sections 31, 32, 33 and 35) as well as the procedure for correcting errors in a consent (sections 84 and 85) or changing or revoking an infrastructure consent (section 137). Under no circumstances is it intended the subordinate legislation will enable a direction to be issued to disapply requitements 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 with a requirement and to specify the reason behind the dispensation. The subordinate legislation will require scrutiny through the affirmative procedure.
Section 129 Make regulations about Crown Applications	**Background** When making an application for an IC, there are certain circumstances which may require the application to be considered in a different way or for procedural aspects to be dispensed with. This may be in the case of Crown Development, and where such development may contain sensitive information where disclosure may not be in the public interest. Furthermore, in cases where national security directions apply the Crown may choose not to disclose some of the details of a proposed development on the grounds that national security (or the security of premises or other property) might otherwise be compromised.

	Subordinate legislation The Bill enables the Welsh Ministers to modify or exclude any statutory provision relating to pre-application procedure, the making of an application, examination and decision-making relating to an IC, where the application is made by or on behalf of the Crown. For example, regulations may detail how examinations may be conducted where the Crown is withholding sensitive information or matters pertaining to national security may not be disclosed to the public. Additionally, special procedures may be set in subordinate legislation to allow for some Crown developments to be determined as a matter of urgency.

PART 9 – GENERAL PROVISIONS

Power(s): Part 9, sections 133 and 141

Description:

These powers enable the Welsh Ministers to:

- specify any other way to give notices and other documents to a person, and
- make supplementary, incidental, transitional or consequential provisions.

Policy intention:

Specify any other way to give notices

The Bill is designed to encourage electronic working as the basis for the infrastructure consenting process enabling any notice, correspondence or document required to be submitted or issued electronically and to give electronic communications the same status as paper communications. While this is the case, there will remain the option of giving any document in paper format to enable participation from parties whose preference is not to use electronic communications.

Make supplementary, incidental, transitional or consequential provisions

This section sets out a regulation making power which may be used by the Welsh Ministers to make supplementary, incidental, transitional or consequential provisions. These regulations may amend, modify, repeal or revoke any enactment (including an enactment contained in this Bill).

Topic Area	Description
Sections 133 Specify any other way to give notices and other documents to a person	**Background** The majority of applications for major infrastructure are submitted electronically. This is largely due to the number of plans and supporting documents which accompanies such projects. There are also benefits to electronic submission in that information can easily be transferred online and any notification which requires a copy of the application to be sent to a consultee can be undertaken electronically. In respect of any notice, statement, other document or copies of other documents referred to in the Bill which are required to be served, given, or supplied, they may be served, given or supplied by: • delivering it to the person on whom it is to be given; • leaving it at the usual or last known place of abode of that person; • sending it by post in a prepaid registered letter; • sending it by electronic communications. **Subordinate legislation** Regulations will specify any other way to give notices and documents. The list included in section 133 is exhaustive but communication methods evolve very quickly and there might be a new way of communicating in future which may be added to the list included in section 133. This regulation making power allows the Welsh Ministers to add ways of giving notices to the list.

Section 141	**Background** This section sets out a regulation making power which may be used by the Welsh Ministers to make supplementary, incidental, and consequential provision and transitional or saving provisions. These regulations may amend, modify, repeal or revoke any enactment (including an enactment contained in this Bill). **Subordinate legislation** To ensure smooth transition between the old processes and the new regime, transitional arrangements are likely to be needed. It is not possible to say at this point what legislation may need to be adjusted, but an example of a transitional provision generally is the ‘saving’ of existing legislation so that it continues to apply where a project is being considered under an old regime.

SCHEDULE 2 – COMPENSATION FOR CHANGING OR REVOKING INFRASTRUCTURE CONSENT ORDERS

Power(s): Paragraphs 1(3) and 2(1)

Description:

These powers enable the Welsh Ministers to:

- make provisions about the way in which a claim for compensation for changing or revoking Infrastructure Consent Orders ("ICO") is made.
- make provisions about the minimum amount of compensation for depreciation in relation to an application for changing or revoking ICOs.

Policy intention:

Where an infrastructure consent order is changed or revoked by the Welsh Ministers without an application being made, the Bill provides the ability for those who have an interest in the land to claim compensation for any financial losses occurred as a result of the change or revocation. These paragraphs make provisions for Welsh Ministers to set out the details of the procedure for making a claim for compensation and setting the minimum amount of compensation for depreciation.

Topic Area	Description
Paragraph 1(3) Changing or revoking an infrastructure consent order: compensation procedure	**Background** Where an ICO has been granted, powers in section 87 of the Bill enable the Welsh Ministers to change or revoke an ICO, either upon application or unilaterally. Where the Welsh Ministers make a change to an ICO unilaterally which would have a material impact on the consent given, or revoke an ICO, there may be financial implications on those

	who have an interest in the land to which the consent relates. For example, the modification or revocation of an ICO could possibly cause partial or complete loss in income for those with an interest in the land to which it relates. In such circumstances, there would be a reasonable expectation for them to be compensated for their loss. Accordingly, provision is made to enable those with an interest in the land to put forward a claim for compensation to the Welsh Ministers. As the Welsh Ministers are the determining authority for an ICO and will also have the power to amend or revoke an ICO, it is considered appropriate for any claim relating to compensation to be made to Welsh Ministers. Furthermore, as the determining authority, it is also considered appropriate that any successful claim for compensation is paid by the Welsh Ministers, given it will ultimately be their decision on whether to amend or revoke an ICO. **Subordinate legislation** The Bill makes provision for the way in which, and the period within which, a claim for compensation under this paragraph must be made. It is anticipated subordinate legislation will include: • what a claim for compensation should contain, including (but not limited to): - details of the applicant/agent (inc name and address); - a statement as to whether the claimant has an interest in the land to which the relevant order relates or is a person for whose benefit the development consent order has effect; - the original ICO reference for the relevant order; - details of the expenditure, loss or damage which is the subject of the claim; - documents and evidence to support the claim and any other supporting documents; • set a timeframe of 6 months in which to submit a claim for compensation.

Paragraph 2(1) Compensation for depreciation: minimum amount	**Background** There may be instances where the land associated with an ICO can cover large areas and potentially cross over multiple local authority boundaries. As a result, different areas of the land may be affected more than others for the purposes of an ICO in terms of land depreciation and the amount of compensation payable. This will depend on how each of those parts is affected by the amendment to, or revocation of, the ICO. Paragraph 2(1) enables regulations to set a value at which point the compensation in relation to depreciation of land value is apportioned. **Subordinate legislation** We are aware the Town and Country Planning system has set compensation for depreciation in land value may be apportioned where the level of compensation exceeds £20. We will consider if this level should apply to this regime.

SL(6)379 – The Local Government Officers (Political Restrictions) (Amendment) (Wales) Regulations 2023

Background and Purpose

The Local Government Officers (Political Restrictions) Regulations 1990 ("the **1990 Regulations**") impose restrictions on the public political activities of local government officers in posts which are politically restricted for the purposes of Part 1 of the Local Government and Housing Act 1989 ("**restricted posts**").

The restrictions take the form of terms and conditions that are deemed to be incorporated into those officers' terms of appointment and conditions of employment ("**the restrictions**").

These Regulations extend the restrictions to officers of a corporate joint committee established by regulations under Part 5 of the Local Government and Elections (Wales) Act 2021 ("**CJC**") where those officers are appointed to, or employed in, restricted posts.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. **Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 3 inserts a new definition of "*local authority*" in regulation 2 of the 1990 Regulations which provides that, for the purposes of the 1990 Regulations, a local authority includes a CJC.

In the Schedule to the 1990 Regulations, which contains the restrictions, there are a number of references to a local authority. For example, paragraph 2C of that Schedule provides for immediate termination of appointment in circumstances where a relevant office holder gives notice to "the local authority" of an intention to become a candidate at a Senedd election.

The Government is therefore asked to clarify the intended effect of regulation 3 of these Regulations, insofar as it relates to each of the references to "local authority" appearing in the Schedule to the 1990 Regulations.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

2. **Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.**

The Explanatory Memorandum notes that these Regulations are:

> *"…part of a package of instruments which underpin the establishment of CJCs and which seek to ensure CJCs are subject to the same administrative and governance requirements as local government."*

Welsh Government response

A Welsh Government response to the first reporting point is required.

Legal Advisers
Legislation, Justice and Constitution Committee
18 September 2023

SL(6)380 – The National Health Service (General Medical Services Contracts) (Wales) 2023

Background and Purpose

These Regulations revoke and replace the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004 ("the 2004 Regulations").

The Regulations set out the framework for General Medical Services ("GMS") contracts under Part 4 of the National Health Service (Wales) Act 2006 ("the Act"). The GMS contractor will hold a common Unified GMS contract ("Unified Contract") with a local health board ("LHB") for the provision of NHS primary medical services to patients, against which it is intended that they can easily demonstrate high levels of quality standards and care.

The Explanatory Memorandum to the Regulations states that Unified Contract aims to:

- simplify what services all GP practices in Wales provide as part of the NHS, and how they evidence assurance of service delivery;
- align general practice with developing service models for delivery of care, based around the ethos of prudent healthcare;
- make it easier for patients and healthcare professionals to understand responsibilities for the provision of services;
- reduce administrative bureaucracy;
- free up time and resource for service delivery; and
- enable use of data and technology to help plan resources and delivery of services.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following 53 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. **Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

The Misuse of Drugs Act 1971 is referenced 6 times in the Regulations but that Act is not defined and no footnote or citation appears anywhere in the Regulations in relation to that Act.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

There are several instances of terms which are defined in regulation 3(1) not then being used correctly later in the Regulations, including:

a) In regulation 2(a) and Schedule 6 there is reference to the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004. However, this has been defined as "the 2004 Regulations" by regulation 3(1).
b) In regulation 17(1), there is a reference to a "general medical services contract". However, this has been defined in regulation 3(1) as "GMS contract".
c) In Schedule 2, in paragraph 1(2)(a) and (3), there are references to "Public Health Wales NHS Trust". However, this body has been defined as "Public Health Wales" in regulation 3(1).

It is important that defined terms are used consistently or if a different meaning is intended that this is clearly explained.

3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 3 provides for a definition of "national disqualification". The definition contains a sub-paragraph (iv) which states:

> *sections 83, 86, 103 or 105 (performers of pharmaceutical services and assistants) of the Act*

Ordinarily, and in the remainder of the definition, references to statutory provisions are to the section number followed by the section heading. There is no reference to the section headings for sections 83, 86 or 103 in this definition (albeit section 86 is referenced with its full heading earlier in regulation 3 which may explain why the heading for section 86 is omitted here). Further, the heading of section 105 of the Act is "Supplementary Lists". None of the section numbers referred to in the definition are entitled "Performers of pharmaceutical services and assistants".

4. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 3(1), in the definitions of "the 2004 Regulations" and the "Pharmaceutical Regulations", in the Welsh text, the word "(Wales)" in the titles of those SIs has been incorrectly translated as "(Mawrth)" which can mean Tuesday, the month of March, the planet Mars, or the Roman god of war Mars, depending on the context.

5. **Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.**

In regulation 3(1), in the definition of "adjudicator", in the Welsh text, the translation has misinterpreted the meaning of "paragraph 106(5) of Schedule 3" by linking that Schedule to "the Act" mentioned earlier in the reference to "section 7(8) of the Act" in that definition. This is done by adding the female preposition "iddi" after the reference to "paragraph 106(5) of Schedule 3" in the Welsh text. Therefore, the reader of the Welsh text is misled to believe that paragraph 106(5) of Schedule 3 is found in the Act. But, it is referring to the paragraph 106(5) of Schedule 3 found later in these Regulations.

6. **Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

In regulation 3(1), in the definition of "Local Health Board", the phrase "unless the context otherwise requires" has been used. However, the Welsh Government's drafting guidelines, Writing Laws for Wales, paragraph 4.8(5), states that it generally is not helpful to the reader to use that phrase and that it should be explained where the definition applies. Further explanation would therefore assist in this regard.

7. **Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 3(1) provides for a definition of "online practice profile" which makes reference to the NHS website. "NHS website" is not defined in the Regulations, and as there are numerous NHS websites across the UK and within Wales there may be confusion as to which website is being referred to.

8. **Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 3(1) provides for a definition of "optometrist independent prescriber" which includes optometrists registered in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of the Opticians Act 1989. Section 8B was repealed by the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019 ("the 2019 Regulations"). This repealed provision is also referred to in the definition of paragraph (d) of the definition of "supplementary prescriber". Clarification is required as to whether the saving provision in the 2019 Regulations applicable to section 8B(1)(a) remains applicable or whether reference to section 8B(1)(a) is now obsolete. If the saving provision remains applicable then further information on this point would have been useful in a footnote.

9. **Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.**

In regulation 3(1), in the definition of "optometrist independent prescriber", in the Welsh text, the term "dispensing opticians" has been translated as "optegwyr fferyllol". This suggests to

the reader of the Welsh text that it means "pharmaceutical opticians" or "pharmacy opticians" in the context of the terminology used for "dispensing" elsewhere in these Regulations. The Welsh Government's website has standardised the translation of the term with status A as "optegwyr cyflenwi", and "optegwyr gweinyddu" would also appear to be another possibility as "gweinyddu" has been used for "dispensing" in these Regulations.

10. **Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 3(1) provides for a definitions of "paramedic independent prescriber", "registered paramedic", "registered radiographer" and "therapeutic radiographer independent prescriber", all of which refer to the Health and Care Professions Council register. Regulation 3(1) also provides definitions for "pharmacist independent prescriber", "registered pharmacist" and "supplementary prescriber" which refer to the General Pharmaceutical Council Register. Unlike other registers such as these which are referred to in the Regulations, these registers are not defined, nor is there any information included as to the statutory or other basis for the existence of such registers in these definitions.

11. **Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 3(1) provides for a definition of "pharmaceutical services" and states that it includes "directed services", but the Regulations do not define or provide any further information as to the meaning of "directed services", which would assist the reader in understanding this definition.

12. **Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 3(1) provides for a definition of "physiotherapist independent prescriber" which refers to a person who is registered under article 5 of the Health and Social Work Professions Order 2002. There is no such Order. The citation in the footnote indicates that the correct Order is the Health Professions Order 2001.

13. **Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 3(1) provides for a definition of "Pre-employment Checks Standards" and states that they must include elements of the NHS Employment Checks Standards published by the NHS Confederation. It appears that these Standards are in fact published by NHS Employers, which is the employers' organisation for the NHS England. It would be helpful if the Welsh Government could confirm whether this is correct, and why only five of the six Standards are included in the definition of "Pre-employment Checks Standards" (the work health assessments standard being omitted).

14. **Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 3(1) provides for a definition of "prescription form" which makes reference to an "NHS Foundation Trust", but this latter term is not defined in regulation 3(1).

15. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 3(1) provides for a definition of "regulatory or supervisory body" which includes "any other body listed in section 25(2) of the National Health Service Reform and Health Care Professions Act 2002". Section 25(2) sets out the functions of the Professional Standards Authority for Health and Social Care and does not include a list of bodies. Clarification is therefore required as to whether the reference should in fact be to section 25(3).

16. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 3(1) provides for a definition of "repeatable prescription" which makes reference to a "dispensing doctor". All of the other terms in the definition are defined elsewhere but a definition for the term "dispensing doctor" is not provided. "Dispensing doctor" is also referred to in paragraph 60(2) of Schedule 3. It would be useful for the reader to have clarity on who a dispensing doctor is.

17. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In regulation 3(1), in the definition of "repeatable prescriber", there are drafting errors in paragraphs (b), and (c)(ii) and (iii) where there are references to "the 2006 Act". However, there is no definition of "the 2006 Act" in these Regulations and it appears to be referring to the defined term "the Act".

18. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 5(3)(c) refers to the National Health Service (Vocational Training) Regulations (Northern Ireland) 1998. The reference should be to the Medical Practitioners (Vocational Training) Regulations (Northern Ireland) 1998.

19. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulations 5(5) and 6(2)(f), in the Welsh text, "December" has been incorrectly translated as the month of "March".

20. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 6(2)(f) makes reference to a person who has been convicted in the UK of a criminal offence (other than murder) committed on or after 14 December 2001 and has been

sentenced to a term of imprisonment of longer than 6 months. Could clarification be provided as to why a specific date is necessary?

21. **Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Regulation 6(2)(g) and paragraph 119(3)(h) of Schedule 3 refers to offence committed on or after 26 August 2002. Could clarification be provided as to why a specific date is necessary?

22. **Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Regulation 6(2)(h) refers to offences committed on or after 1 March 2004. Could clarification be provided as to why a specific date is necessary?

23. **Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.**

In regulation 17(2)(a), in the English text, "its" has been used without an earlier reference to a noun which means that it is not clear what the "its" is referring to in paragraph (2). In the Welsh text, the phrase "the contractor's" has been used in the translation in the corresponding place, which is clearer if it has interpreted the meaning correctly.

24. **Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.**

In regulation 17(4), in the definition of "disease", in the Welsh text, "three-character" has been translated as "tri-chymeriad". "Cymeriad" has several meanings in Welsh including the characteristics or reputation of a person or area etc. However, "three-character" in this context refers to a code with letters and numbers used to identify a disease so "cymeriad" doesn't seem to correctly convey the meaning of "character" in this phrase. Other words such as "nod" or "symbol" would seem to be more appropriate in this context.

25. **Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.**

In regulation 28(11)(c), there is a difference between the language texts, as all of the closing words in the English text after paragraph (ii) are missing from the translation. As a result, the Welsh translation does not make sense or convey the meaning of the English text. Further, in the Welsh text, "their" in the phrase "(or their equivalent)" has been translated as meaning only "the providers". If it is referring to both "contractors or providers" or if it is referring to the "unified services" then the translation is incorrect and has misinterpreted the meaning of the phrase.

26. **Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.**

In Schedule 1, in the second column of Table 1, there is a difference between the English and Welsh texts. In the Welsh text, "Marine" in the title of "Naval and Marine Pay and Pensions Act 1865" has been translated as "Môr" which has several possible meanings including "sea", "relating to the sea" or "ocean". However, the "Marine" is referring to soldiers who would be described today as "Royal Marine Commandos". Therefore, the meaning has been incorrectly interpreted and does not convey the meaning of "Marine" in the title of that Act. Words such as "Morlu" or "Môr-filwyr" would have been more appropriate in the context.

27. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In Schedule 2, in paragraph 1(1)(b), there is a difference between the English and Welsh text. In the English text, there is a reference to "paragraph 78 of Schedule 3". However, in the Welsh text this reference has been translated as "paragraph 79 of Schedule 3".

28. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In Schedule 2, in paragraph 7(1)(b), the phrase "such vaccines and immunisations" has been used in the English text. However, in the Welsh text, it has been translated as meaning "such vaccinations and immunisations". Therefore, there is a difference in meaning between both language texts. The Welsh text appears to be correct as in in paragraph 7(1)(a) and the earlier paragraph 3(2)(b) of this Schedule , the phrase "vaccinations and immunisations" was used in the English text.

29. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Paragraph 3(2)(a) of Schedule 2 requires a contractor to offer to provide vaccinations and immunisations to children. Unlike elsewhere in the Regulations, paragraph 3(2)(a) does not limit this duty to children for whom the contractor has responsibility under the contract. Clarification would therefore be useful as to whether the paragraph 3(2)(a) is intended to impose a duty to make the offer only to children for whom the contractor has responsibility under the contract and, if so, why this is not explicitly stated.

30. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Paragraphs 16, 18 and 19 of Schedule 3 relates to the provision of "services" by a contractor's cluster and contributions to the GP Collaborative. The word "services" is included in several definitions within the Regulations but is not itself defined. It would therefore assist the reader to have clarity regarding which services are referred to in paragraphs 16, 18 and 20 of Schedule 3.

31. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

There is an error in the references contained in paragraph 22(b)(i) of Schedule 3. References in the Welsh version to "baragraff 44(1)(a)" and "baragraff 44(1)(b)" should be to "baragraff 43(1)(a)" and "baragraff 43(1)(b)". The English version appears to be correct.

32. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

There is an inconsistency between the English and Welsh versions at paragraph 39(3) of Schedule 3. The provision in English says "subject to paragraph 41", whilst the Welsh version says "subject to paragraph 42". The English reference appears to be correct.

33. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

There is an inconsistency between the English and Welsh versions at paragraphs 49(8) and paragraph 50(1)(b) of Schedule 3. The Welsh version of the Regulations contains cross-referencing errors, so that references to paragraph 58 should be to paragraph 57.

34. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Paragraphs 49, 50 and 51 of Schedule 3 refers to the patient's authorised person in the context of prescriptions. The term "authorised person" is not defined and it is therefore not clear who a patient's authorised person would be or how someone can be made an authorised person.

35. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Paragraphs 50 of Schedule 3 refers to a contractor's EPS go live date, but the Regulations provide no information as to what this is or how it is to be determined. Further clarification would assist the reader in this regard.

36. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Paragraph 51(1) of Schedule 3 refers to "DHCW", but the Regulations do not define this acronym nor is any footnote included to confirm what this is.

37. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In paragraph 79(3) of Schedule 3, "Welsh GP Record" is defined, however in paragraph 79(1) of the English version it is also defined as '(WGPR)' and only 'WGPR' is used in paragraph 79(2). This issue does not occur in the Welsh version of the Regulations.

38. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Paragraph 92 of Schedule 3 deals with the provision of information to a relevant person. The term "relevant person" is defined in paragraph 92(3) to include a medical officer, nursing officer, occupational therapist or physiotherapist (plus one other not relevant to this reporting point). Paragraph 92(4) goes on the define each of these roles save for nursing officer, a definition for this term is missing and therefore it is not possible to determine who a nursing officer is for the purpose of paragraph 92.

39. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In paragraph 114(4) of Schedule 3, the English version states that the paragraph is without prejudice to any other rights to terminate the contract that the LHB contractor may have. The Welsh version only refers to the contractor and does not include the LHB.

40. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Paragraph 117(6) of Schedule 3 makes reference to a Fitness to Practise Panel and an Interim Orders Panel under the Medical Act 1983. That Act has been amended so that a Fitness to Practise Panel is now a Medical Practitioners Tribunal and an Interim Orders Panel is an Interim Orders Tribunal.

41. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Paragraph 119(3)(v) of Schedule 3 permits an LHB to terminate a contract where the contractor has refused to be medically examined due to concerns that they are incapable of providing services under the contract. It goes on to state that such termination may occur in such a case where the contract is with two or more individuals or a company and the LHB is satisfied that the contractor is taking adequate steps to deal with the matter. It appears odd that the LHB has the right to terminate the contract even when it is satisfied that adequate steps are being taken to deal with the matter, therefore clarification is required as to whether this is correct or whether termination should only be an option where the LHB is not satisfied that the matter is being dealt with.

42. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

There is an referencing inconsistency between the English and Welsh texts in paragraph 126(1) of Schedule 3. The English version reads '123(2)' and the Welsh version reads '123'.

43. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Paragraph 128(4)(a) of Schedule 3 requires the completion of the Clinical Governance Practice Self-Assessment Tool and the Information Governance Toolkit. No further

information is provided in relation to these two terms and they are not defined in the Regulations.

44. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

There is an inconsistency between the English and Welsh texts in paragraph 135 of Schedule 3. Sub-paragraph (1) of paragraph 135 of the Welsh version is missing. The text is correct but the '—(1)' is missing.

45. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Paragraph 135(2) of Schedule 3 requires the services to be provided in a manner that assists the LHB to comply with the Health and Care Standards and the Duty of Quality Guidance. No further information is provided in relation to these two terms and they are not defined in the Regulations.

46. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Paragraph 1(w) of Schedule 4 contains an incomplete reference. It refers to paragraph 60(2)(b) but does not go on to confirm where that paragraph is to be found. There is no paragraph 60(2)(b) in Schedule 4, it appears that it should refer to Schedule 3.

47. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Paragraph 1(2) of Schedule 5 amends the definition of "Medical Regulations" in the National Health Service (Performers Lists) (Wales) Regulations 2004. It is presumed that the intention is that the definition will now refer to the Regulations, but as amended the title will be incorrect – it will refer to the "National Health Service (General Medical Services) (Wales) Regulation 2023", with the word "Contracts" being omitted.

48. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Paragraph 1(3) of Schedule 5 amends the National Health Service (Performers Lists) (Wales) Regulations 2004 to make reference in those regulations to regulation 10(6) of these Regulations. However, these Regulations do not include a regulation 10(6).

49. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In Schedule 5, in paragraph 2(2)(a)(iii) and (iv)(bb), the description identifies a figure "6" to be substituted by the amendment. However, it can be argued that it is not sufficiently clear as there are references in the definitions of "patient list" and "repeatable prescriber" to "the 2006

Act". Therefore, the description fails to distinguish between the "6" in "the 2006 Act" and where it occurs on its own in those definitions.

50. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Paragraph 2(2)(a)(iv)(aa) of Schedule 5 amends the National Health Service (Pharmaceutical Services) (Wales) Regulations 2002 ("the 2002 Regulations") to replace references to paragraph 40 of Schedule 6 to the 2004 Regulations with references to paragraph 53 of Schedule 3 to these Regulations. However, the content of paragraph 40 of Schedule 6 is very similar to paragraph 52 of these Regulations, therefore it appears that the reference to paragraph 53 should be to paragraph 52.

51. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Paragraph 2(2)(b) of Schedule 5 amends the 2002 Regulations to replace references to paragraphs 47 to 51 of Schedule 6 to the 2004 Regulations with references to paragraphs 60 and 61 of Schedule 3 to these Regulations. Paragraphs 47 to 51 refer to dispensing services, but only paragraph 60 of Schedule 3 to these Regulations refers to such services. It therefore appears that paragraph 61 is referred to in error.

52. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Paragraph 2(3)(a)(ii) of Schedule 5 amends the 2002 Regulations to replace reference to paragraph 42(2) of Schedule 6 to the 2004 Regulations with references to paragraph 56 of Schedule 3 to these Regulations. However, it is not clear whether the intention is to insert a reference to the whole of paragraph 56 of Schedule 3 instead of paragraph 42(2) of Schedule 6, or whether the new reference should only be to a sub-paragraph within paragraph 56. Further, it is also not clear whether the reference to paragraph 56 should be to paragraph 55.

53. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Paragraph 2(3)(c)(i) of Schedule 5 amends the 2002 Regulations to replace reference to paragraphs 89A and 90 of Schedule 6 to the 2004 Regulations with references to paragraph 102 of Schedule 3 to these Regulations. However, the content of paragraph 89A of Schedule 6 is very similar to paragraph 101 of Schedule 3 to these Regulations, therefore it appears that the reference to paragraph 102 should be to paragraph 101. On the same basis, paragraph 3(c)(ii) of Schedule 5 seems to incorrectly refer to paragraph 103 of these Regulations where it should refer to paragraph 102.

Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

54. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The Explanatory Note states that the Regulations set out, for Wales, the framework for general medical services contracts under section 42 of the National Health Service Act 2006, which is then defined for the purpose of the remainder of the Explanatory Note as "the Act". The Act referred to is incorrect, the correct Act is the National Health Service (Wales) Act 2006. Although the Explanatory Note does not form part of the Regulations, which do refer to the correct Act, this error may cause confusion for the reader, particularly as the National Health Service Act 2006 is also an Act of the UK Parliament. Using an incorrect reference for a defined term also means that the remainder of the Explanatory Note contains incorrect references.

55. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Although the Committee notes that they do not form part of these Regulations themselves, over 100 typographical, grammatical and footnote errors have been found in these Regulations which have been notified separately to Welsh Government officials. In particular, footnotes are a useful tool for readers of legislation only insofar as they are accurate and the Committee therefore encourages the Welsh Government to ensure that this is the case.

Welsh Government response

A Welsh Government response is required for all reporting points.

Legal Advisers
Legislation, Justice and Constitution Committee
19 September 2023

SL(6)381 – The Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023

Background and Purpose

The Public Service Pensions and Judicial Offices Act 2022 (the "2022 Act") makes provision to address age based discrimination in public service pension schemes. The 2022 Act was made following a finding in the case of the *Secretary of State for the Home Department & the Welsh Ministers v Sargeant & Others* [2018] EWC Civ 2844 that transitional protections in reformed firefighters' pension schemes were unlawfully discriminatory on the basis of age. In relation to Wales, those provisions were set out in the Firefighters Pension Scheme (Wales) Regulations 2015.

The first phase of the remedy set out in the 2022 Act was implemented by the Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2022 (SI 2022/343 (W.85)).

These regulations make provision to implement the second phase of the remedy set out in the 2022 Act.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. **Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In the Welsh text of regulation 23(2)(b), it appears that "a'r swm amgen" should read "ac mae'r swm amgen".

The Welsh and English texts of regulation 29(1)(a) appear to be different – it appears that the Welsh text is correct by expressly referring to A's divorce **or** annulment.

In the Welsh text of regulation 39(2), it appears that "pe bai'r hawliau hynny" should read "pe bai'r hawliau hynny wedi bod".

In the Welsh text of regulation 41(4), it appears that "adran 89(1)" should read "adran 86(1)".

The Welsh and English texts of regulation 46 appear to be different. At the end of the regulation, the Welsh text refers to the condition that the relevant date is not later than 1 October 2024, while the English text refers to the condition that the relevant date is later than 1 October 2024.

In the Welsh text of regulation 65(4), it appears that "gwasanaeth adferadwy" should read "gwasanaeth rhwymedïol".

2. **Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

The term "end of the section 6 election period" is defined by reference to the 2022 Act in a footnote to regulation 10(5). However the term "end of the section 6 election period" is first used in regulation 4(4)(a), with no signpost for the reader as to the location of the definition.

The Welsh Government is asked to explain why the footnote containing the definition is not included in regulation 4(4)(a) to accompany the first reference to "end of the section 6 election period".

3. **Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In regulation 22(2), the closing words of the definition of "legacy scheme amount" refer to "section 29(2)" but it is not clear which legislation is being referred to.

4. **Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Regulation 32 makes provision for remedial arrangements to pay voluntary contributions. A remedy member may enter into an agreement to pay voluntary contributions to the member's legacy scheme for added benefits (see regulation 32(2)). Regulation 32(3)(b) states that the member may only enter into such an agreement if (amongst other matters):

> *"the scheme manager is satisfied that it is more likely than not that, but for a relevant breach of a non-discrimination rule, M would, during the period of M's remedial service, have entered into the same or similar arrangement,"*

It is unclear from the provision how the scheme manager is to be satisfied that this is the case, and what matters may tend to satisfy a scheme manager as to the position. We note the requirement in regulation 32(4)(b) to provide any information the scheme manager reasonably requires to be provided to them. However, this does not explain the circumstances that would allow the scheme manager to make this decision, just that the information to allow that to happen will be required.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

5. **Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd**

These Regulations come into force on 1 October 2023. However, they make retrospective provision. The Explanatory Memorandum at paragraph 2.2 states as follows:

> *"2.2 These Regulations … make retrospective provision in consequence of the retrospective reversion tro legacy pension schemes for fightfighters' remediable service under section 2(1) of the [2022 Act]. Retrospective provision in these Regulations is made in accordance with section 3(3)(b) of the Public Service Pensions Act 2013…"*

6. **Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd**

These Regulations make complex technical provision relating to firefighter pensions. It is noted that more could have been done to make these Regulations accessible to the reader.

For example, Part 4 of the Regulations makes many references to "WRPA 1999". A footnote to the first use of this term informs the reader that, in accordance with section 110(1) of the 2022 Act, "WRPA 1999" means the Welfare Reform and Pensions Act 1999. As this Act appears to be central to the interpretation of Part 4 of these Regulations, it would be more accessible if "WRPA 1999" had been defined within the Regulations themselves.

Welsh Government response

A Welsh Government response is required.

Legal Advisers
Legislation, Justice and Constitution Committee
19 September 2023

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

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

Llywodraeth Cymru
Welsh Government

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

Huw.Irranca-Davies@senedd.wales

20th September 2023

Dear Huw,

In accordance with the inter-institutional relations agreement, we wish to notify you a meeting of the Inter- Ministerial Group for Environment, Food and Rural Affairs was held on 13 September 2023.

The meeting was chaired by Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd. The meeting was also attended by Julie James MS, Minister for Climate Change, Mairi Gougeon MSP, Cabinet Secretary for Rural Affairs, Land Reform and Islands, Dr Therese Coffey MP, Secretary of State for Environment, Food and Rural Affairs, Lord Benyon, Minister of State for Biosecurity, Marine and Rural Affairs; James Davies MP, Parliamentary Under–Secretary of State for Wales and Mrs Katrina Godfrey, Permanent Secretary in absence of Northern Ireland Minister.

The meeting opened with a discussion on preparations for the implementation of the Windsor Framework. Work has been completed at pace to ensure we are ready for implementation of the majority of the framework on 1 October 2023. The pet travel scheme and GB labelling are due to come into force next year. Collaboration will continue in order to ensure these are ready for 2024.

There was a discussion on the preparations for COP28 and how we can identify the shared domestic priority areas to focus our net zero efforts.

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Following this the Scottish Government presented a paper on their proposal to ban the possession and sale of rodent glue traps in Scotland and its interaction with the Internal Market Act. The Scottish Government is looking to the other governments to confirm they have received all the information required to make a final decision on whether or not to support an exclusion.

The final substantive item involved a discussion on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the importance of ensuring the devolved governments are involved in discussions for the EFRA-facing aspects for future free trade agreements.

Finally, there was a number of any other business items, including the Dangerous Dog Act, water quality monitoring, the Live Export Bill and a ban on wet wipes containing plastic. Ministers agreed to joint work to look at current approaches to water quality monitoring and reporting in each country.

The next meeting will be held in November.

A communique regarding this meeting will be published on the UK Government website at https://www.gov.uk/government/publications/communique-from-the-inter-ministerial-group-for-environment-food-and-rural-affairs.

Regards,

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

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

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Counsel General and Minister for the Constitution

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref CG/PO/313/2023
Ein cyf/Our ref CG/PO/313/2023

Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution Committee
SeneddLJC@senedd.wales

19th September 2023

Dear Huw,

Earlier this year, we laid before the Senedd a Legislative Consent Memorandum (LCM) on the UK Government's Strikes (Minimum Service Levels) Bill. The LCM was debated in the Senedd on 25 April and the Senedd refused its consent.

Despite a series of defeats in the House of Lords, the Bill completed its legislative journey through the UK Parliament and became an Act of Parliament on 20 July. We remain concerned the Act will have a wholly detrimental impact upon devolved public services and social partnership relationships in Wales.

I attach my latest letter to the UK Government on this issue. The letter sets out the Welsh Government's approach to ongoing engagement around the implementation of the Act and our views on the draft Code of Practice on Reasonable Steps.

Yours sincerely,

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

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Mick Antoniw AS/MS
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Counsel General and Minister for the Constitution

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref CG/PO/310/2023
Ein cyf/Our ref CG/PO/310/2023

Kevin Hollinrake MP
Parliamentary Under Secretary of State
Department for Business and Trade
Old Admiralty Building
London
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Hollinrake@businessandtrade.gov.uk

19th September 2023

Dear Kevin Hollinrake MP,

I note the UK Government are working to implement the Strikes (Minimum Service Levels) Act, with the development of non-statutory guidance, statutory guidance, and regulations on minimum service levels.

Your Department launched a formal consultation on a 'Code of Practice on Reasonable Steps' and is seeking views on guidance on the 'Issuing of Work Notices'. I also note relevant UK Government Departments will seek to engage us on the development of minimum service levels in respect of various services, including devolved services.

The stance of the Welsh Government has not fundamentally changed now the Bill has become an Act. We continue to have fundamental concerns about the impact of the Act on devolved public services and the very significant potential to destabilise the social partnership relationships at the heart of public service delivery in Wales.

In our view, this Act is unnecessary and probably unworkable. Safeguarding Welsh interests, rather than facilitating the implementation of a counter-productive and damaging Act frames our approach to engaging on its detail.

I have a number of points to make in relation to your consultation on the Code of Practice on Reasonable Steps.

1. Taken as a package of measures, the 'reasonable steps' are onerous, excessive and overly prescriptive. The draft Code essentially requires trade unions to act on behalf of employers in requisitioning some workers during periods of strike action. It requires trade unions to act in ways that undermine their own industrial action - action which has

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a clear and lawful democratic mandate - by publicly and actively encouraging some members to desist from striking while encouraging others to strike. This enforced mixed messaging will cause confusion for workers and for employers and management, who will be expected to navigate such an unnecessarily complex process. It is almost certainly bound to have a more general chilling effect on observance of strike action, whether workers are named in a work notice or not. The draft Code illustrates a complete lack of understanding of how trade unions work and their relationships with their members.

2. It is noticeable the 'reasonable steps' place significant additional requirements on trade unions to issue timely communications to their members. According to the draft Code, this is to be achieved issuing a so called 'compliance notice' to any members named in a work notice, and a more general 'information notice' to members as a whole. Aside from the resource overhead this places upon trade unions, it is noticeable the draft Code recognises the time pressures involved in issuing these communications and suggests electronic methods should be considered. The irony will not be lost that the UK Government recommends trade unions use electronic methods for the purposes set out in the draft Code, but at the same time continues to oppose International Labour Organisation (ILO) and trade union calls for electronic balloting. At best, this approach to electronic methods being appropriate for the 'reasonable steps', but inappropriate in statutory ballots is an example of muddled and inconsistent thinking, at worst it is a blatant and egregious example of hypocrisy.

3. The issue of picketing is not mentioned at all in the Strikes (Minimum Service Levels) Act and yet a 'reasonable step' within the draft Code of Practice covers picketing. The draft Code contains significant additional and unreasonable expectations of trade unions and picket supervisors in particular. The draft Code places picket supervisors in an invidious position by expecting them to encourage workers named in a work notice to attend work. This section of the Code risks compromising effective and lawful picketing which should have been discussed and scrutinised during the passage of the legislation. It is disingenuous to introduce such a significant requirement in draft statutory guidance, when the issue was barely mentioned prior to the legislation being passed.

Trade Unions and workers face prescriptive statutory guidance in the draft Code and the prospect of significant financial penalties and dismissal for non-compliance. Employers face no such sanctions, and instead have considerable power to requisition workers through a work notice, with relatively loose non-statutory guidance on the approach they should consider. This approach is neither fair nor balanced and will not contribute to a more constructive industrial relations environment.

I have asked my officials to respond to your officials with a number of specific comments on the draft non-statutory guidance on the issuing of work notices.

Finally, I know my Ministerial colleagues and Welsh Government officials are receiving approaches to engage in discussions on setting minimum service levels in passenger rail, fire and rescue, and health services. Our approach to these requests will remain consistent – our aim is to safeguard Welsh interests in these devolved services and to mitigate the many negative impacts of this Act.

In any event, and in contrast to the approach of the UK Government, we will continue to serve the people of Wales by working with devolved public service employers and trade unions to promote a culture of social partners working constructively together.

Yours sincerely,

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
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Elin Jones MS
Llywydd
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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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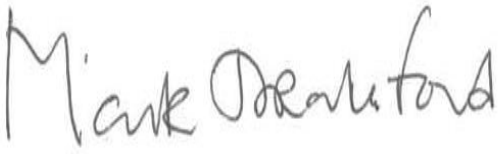
I am copying this letter to the Chair of Climate Change, Environment and Infrastructure Committee, the Chair of the Legislation, Justice and Constitution Committee and Chair of the Finance Committee.

Yours sincerely,



MARK DRAKEFORD

Agenda Item 8

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