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Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/1672/23

Huw Irranca-Davies MS
Chair,
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

26 June 2023

Dear Huw,

Following my correspondence of 16 May I am writing to inform the Committee I have received a letter from Rt Hon Jesse Norman MP, Minister of State, seeking formal agreement from the Welsh Ministers to make a Statutory Instrument (“SI”), “The Transport and Works (Applications, Objections and Inquiries Procedure) (Amendment) (England and Wales) Rules 2023” (“the 2023 Rules”).

I have agreed to the UK Government laying and making the 2023 Rules. The UK Government’s intention is the SI will be laid before Parliament on 14 July 2023, with a coming into force date of 11 August 2023.

As previously explained, the 2023 Rules would make changes to the process for submitting and processing applications for Orders under the Transport and Works Act 1992 (“the TWA”), as set out in the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“the 2006 Rules”) and the Transport and Works (Inquiries Procedure) Rules 2004 (“the 2004 Rules”), to remove reliance on paper documents and to enable the use of electronic methods of communication and submission.

The TWA is, in the main, an Act which enables the Secretary of State (“SofS”) to make Orders relating to, or to matters ancillary to, the construction or operation of railways, tramways and other guided transport systems. It also enables the SofS to make Orders relating to works interfering with public rights of navigation.

The Welsh Ministers may exercise, among other things, the power to make Orders under the TWA in Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (“the TFO”).

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

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

The 2006 Rules

The functions of the SofS, namely the relevant rule-making powers under s.6, 7(4) and 10 of the TWA, under which the 2006 Rules are made, were not transferred by the TFO. Therefore, the Welsh Ministers do not have the ability to amend or make rules under the relevant rule-making powers.

Article 5 and Schedule 2 of the TFO provide that those functions of the SofS, so far as they are exercisable in relation to Wales, can be exercised only with the agreement of the Welsh Ministers. This includes the relevant rule-making powers under the TWA. So, the agreement of the Welsh Ministers is legally required before the changes to the 2006 Rules, as proposed in the 2023 Rules, can be made.

The 2004 Rules

The 2004 Rules are made under section 9 of the Tribunals and Inquiries Act 1992 (“the TIA”). Section 9(7) of the TIA provides that in the application of section 9 to inquiries held in Wales by or on behalf of the Welsh Ministers, the power in subsection (1) to make rules is exercisable by the Welsh Ministers (and not by the Lord Chancellor). Consequently, any amendments made to the 2004 Rules in respect of inquiries held in Wales by or on behalf of the Welsh Ministers will need to be made by the Welsh Ministers. At this stage the Welsh Government is not legislating to make amendments to the 2004 Rules.

The 2023 Rules amend both the 2006 Rules and 2004 Rules. However, for the reasons detailed above, the amendments to the 2004 Rules will apply to England only. The amendments to the 2006 Rules will apply in England and Wales.

The proposed minor changes to the 2006 Rules accord with the Welsh Government’s wider agenda to streamline consenting processes and would have environmental benefits by removing the need to provide paper documents for TWA applications.

The 2023 Rules do not have implications for the Programme for Government.

Yours sincerely,



Julie James AS/MS

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