

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



Llywodraeth Cymru
Welsh Government

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

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
Senedd Cymru
Cardiff Bay
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27 June 2023

Dear Llyr,

The Infrastructure (Wales) Bill, introduced into the Senedd on 12 June, contains provisions which require the consent of the appropriate Minister under Schedule 7B to the Government of Wales Act 2006. Further provisions require consultation with the appropriate Minister. To assist consideration of the Bill by the CCEI Committee I attach my letter of 12 May 2023 to the Secretary of State for Levelling Up, Housing and Communities seeking these consents (Doc 1). Discussions between officials are currently ongoing on this matter.

I have also sought the transfer of legislative competence to Senedd Cymru for the consenting of energy generating stations offshore between the edge of the territorial sea and the edge of the Welsh zone (an area roughly between 12 and 200 nautical miles (“nm”) off the shoreline) and to clarify the Senedd’s ability to legislate in respect of energy storage. I attach my letters of 7 January 2022 (Doc 2) and 11 January 2023 (Doc 3) to the Secretary of State for Levelling Up, Housing and Communities, for your information. I have not yet received a response to either letter.

I will keep the Committee informed of our progress on these matters during scrutiny of the Bill. I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,

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

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

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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/1182/23

The Rt. Hon. Michael Gove MP
Secretary of State for Levelling Up, Housing and Communities
Department for Levelling Up, Housing & Communities
2 Marsham Street
London
SW1P 4DF

12 May 2023

Dear Michael,

I am writing about the Infrastructure (Wales) Bill (“the Bill”) I intend to introduce into the Senedd in June 2023.

The Bill will reform the law governing the development of significant infrastructure in Wales. The consenting process in the Bill and any subsequent legislation will:

- be a transparent, consistent and simple, yet rigorous, process which enables local communities to better understand how decisions affect them;
- be able to meet future challenges by being sufficiently flexible to capture the consenting arrangements for developing technologies and any further powers which may be devolved;
- streamline and unify the decision-making process, through enabling the developer to access a one-stop shop whereby as full a range as possible of existing consents, authorisations and licences are integrated into the process which is reflective of the consenting regime currently operational in England;
- improve current standards of service, by way of timescales and the integration of advanced case management technology into the decision-making process; and
- provide certainty in decision-making in being underpinned by a clear policy.

The Bill aims to address difficulties that have arisen for the developers in the existing consenting framework. It will take advantage of the full range of consenting functions within the Senedd’s competence following the devolution of further responsibility for consenting of energy projects, overhead electric lines as well as ports and harbours by the Wales Act 2017. This will progress our shared ambitions in relation to decarbonisation and growing the green economy.

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The Bill and the consents being sought through this letter also provides a system which will address some of the issues raised by the Secretary of State for Wales in a letter to the First Minister of Wales dated 23 December 2022 (Ref 225MISC22) regarding the consenting for Floating Offshore Wind Projects, at least in so far as the Welsh territorial waters. As you may recall, I sought the cooperation of UK Government in transferring legislative competence to the Senedd for the consenting of energy generating stations offshore between the edge of the territorial sea and the edge of the Welsh zone in two letters (MA-JJ-3582 -22 & MA-JJ-2523-22) in 2022. Transference of the requested legislative competence would clearly optimise our proposed new consenting arrangements.

The proposals for the Bill have been assessed against the legislative competence criteria in section 108A of the Government of Wales Act 2006 ("GoWA"). Some provisions within the Bill have been identified which require the consent of the appropriate Minister under the terms of Schedule 7B to GoWA. Details of the intended purpose and effect of these provisions are set out in the Annex to this letter. Further provisions require consultation with the appropriate Minister. Details are also included in the Annex 1.

I am drawing your attention to the narrowness of the powers we are seeking to help us legislate and consent projects effectively and to the fact the proposed provisions will allow recovery of costs for the bodies involved. This is explained in detail in the Annex 1.

My officials will be happy to discuss the details and share the provisions with your officials. The key contact is Neil Hemington at neil.hemington@gov.wales.

As I will be bringing forward the legislation shortly, I would welcome your support in obtaining the relevant consents at the earliest opportunity, with a view to having this agreed prior to introduction of the Bill. I am copying this letter to the Secretary State for Wales.

Yours sincerely,



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

Proposal subject to consent of the appropriate Minister of the Crown under Schedule 7B to the Government of Wales Act 2006

1. Access to evidence at a local inquiry

- 1.1. The Bill provides that evidence at a local inquiry must be heard in public and documentary evidence must be open to the public for inspection. The Bill takes the same approach as in existing planning legislation by allowing exceptions where evidence may pose a risk for reasons of national security. These provisions are based on sections 321 and 321A of the TCPA 1990, as modified by section 321B. The provisions in the Bill are sections 45 and 46.
- 1.2. The Bill allows a ministerial authority to direct the examining authority conducting an inquiry under the Bill that evidence of a kind specified in the direction is to be heard or open to inspection at that inquiry only by persons who are specified in the direction or of a kind specified in it. The conditions are that giving evidence of a particular description in public or making it available for public inspection would be likely to result in the disclosure of information about either national security or measures taken or to be taken to ensure the security of any land or other property, and that the public disclosure of the information would be against the national interest. “Ministerial authority” is defined as either the Welsh Ministers or the Secretary of State.
- 1.3. If a ministerial authority is considering giving a direction, the Counsel General may appoint a person (an appointed person) to represent the interests of any person who will be prevented from hearing or inspecting evidence. The Welsh Ministers may make regulations about the procedure to be followed by a ministerial authority before it gives a direction and about the functions of an appointed person.
- 1.4. The Bill also confers a direction making power on a ministerial authority to direct a responsible person to pay the fees and expenses of the appointed representative. If there is a dispute as to the amount of the fees and expenses, the amount must be decided by the ministerial authority that gave the direction, and any agreed amount must be certified by the ministerial authority and is then recoverable as a debt.
- 1.5. These provisions therefore confer a function on the Secretary of State. Consequently, Minister of the Crown consent is sought under paragraph 8(1)(a) and (c) of Schedule 7B to the Government of Wales Act 2006 (GoWA) to include these provisions in the Bill. In order to amend or revoke any procedural regulations made which confer or impose functions on the Secretary of State under these powers, paragraphs 10 and 11 of Schedule 7B are also engaged and consent under these provisions is also sought. The Minister of the Crown is also consulted under paragraph 11(2) of Schedule 7B to GoWA for the inclusion of these provisions in the Bill.

2. Function to respond to consultation and notification

- 2.1. The Bill includes a function to consult and to respond to consultation in sections 30 and 126.

- 2.2. Section 30 makes provision for pre-application and publicity and sets out that a person who proposes to make an application for infrastructure consent must carry out consultation on the proposed application. Regulations may make provision for, or in connection with the consultation required including the persons or public authorities required to be consulted, , how those consulted must respond and the timescales in which consultation responses must be provided.. Regulations may also require a person consulted to prepare and publish a report about that person's compliance with these requirements.
- 2.3. Section 126 provides that the Welsh Ministers or an examining authority may consult a public authority specified in regulations about a valid application for infrastructure consent. The public authority must give a substantive response within specified timescales, which will be set out in regulations. Regulations may also require a person consulted to prepare and publish a report about that person's compliance with these requirements.
- 2.4. The Bill also makes provision in section 33 (2) requiring the Welsh Ministers to give notice of a valid application to parties including any persons or descriptions of person specified in regulations. Section 33(9) also provides that the Welsh Ministers may direct the applicant to notify a person or description of person of the application once it has been accepted as a valid application.
- 2.5. The public bodies to be consulted or notified may include bodies which are reserved authorities within the meaning of paragraph 8(3) of Schedule 7B to GoWA. It is likely the bodies to be included in regulations will be limited to those wanting to protect their interests in the context of developments to be consented through the new regime proposed in the Bill. They are likely to be similar to those listed in the Developments of National Significance (Procedure) (Wales) Order 2016, and in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. As such, examples of such bodies include regulations include the Coal Authority, the Canal and River Trust, the Maritime and Coastguard Agency, the Civil Aviation Authority, and the Gas and Electric Markets Authority.
- 2.6. It is vital that decisions on infrastructure projects are based on a sound and thorough evidence base, which includes receiving technical and specialist advice. If the regulations were unable to specify reserved authorities, this could be detrimental to the quality and breadth of evidence received and to ensure consistency in matters that span beyond the Welsh boundaries. This can include important matters of safety, for example in respect of navigational routes in the sea or air and any protection requirements associated with them.
- 2.7. It is of benefit to the bodies being consulted and notified to be able to engage effectively in the consenting process as they have specific interests that they will be keen to ensure are protected from any interference caused by infrastructure projects consented through this Bill. As set out in paragraphs 3.1 to 3.4 below, consent is also sought to enable the charging of fees to recover the costs of a reserved authority's engagement in the process, should this be a concern.

- 2.8. Receiving a substantive response to consultations in a timely manner from all bodies that need to be engaged in the consenting process is a very important part of the process in dealing with applications efficiently. It also reflects similar requirements for both existing consenting regimes of Development of National Significance (DNS) in Wales and Nationally Significant Infrastructure Projects (NSIP) in both England and Wales.
- 2.9. These provisions therefore confer power by subordinate legislation to confer or impose a function on a reserved authority within paragraph 8(1)(a), and confer power by subordinate legislation to confer or impose a function specifically exercisable in relation to a reserved authority within the meaning of paragraph 8(1)(c) of Schedule 7B to GoWA and therefore Minister of the Crown consent is required. In order to amend or revoke any regulations made which confer or impose functions on a reserved authority under these powers, paragraphs 10 and 11 of Schedule 7B are also engaged. Consequently, Minister of the Crown consent is sought under paragraph 8(1)(a) and (c), 10 and 11, and the Minister of the Crown is consulted under paragraph 11(2) of Schedule 7B to GoWA for the inclusion of these provisions in the Bill.

3. Fees

- 3.1. The Bill includes at section 121(1) a regulation making power which may make provision for the charging of fees by a specified public authority for performing an infrastructure consent function or for an infrastructure consent service. An 'infrastructure consent function' means a function conferred by, under or by virtue of the Act, and an 'infrastructure consent service' means any advice, information or other assistance provided in connection with an application or other specified matter. This specifically includes a response to a consultation or participating in the examination of an application, for example by making a written submission or attending or giving evidence at an inquiry.
- 3.2. Such public authorities may include bodies which are reserved authorities within the meaning of paragraph 8(3) of Schedule 7B to GoWA. Examples of such bodies are the Civil Aviation Authority, the Coal Authority, the Marine Management Organisation and the Water Services Regulation Authority.
- 3.3. As reserved authorities could have a duty to respond to a consultation, and may participate in proceedings, we do not wish to disadvantage reserved authorities from potentially being able to charge a fee to recoup costs on the sole basis that they are reserved authorities. If the regulations were not able to include reserved authorities, it may also dissuade them from fully participating in the examination process which would be detrimental to the quality of evidence received and undermine the process.
- 3.4. As the regulations could be used to confer a function on a reserved authority to be able to charge a fee for certain services, we consider this to amount to conferring a function on a reserved authority and therefore seek the consent of the Minister of the Crown in accordance with paragraph 8(1)(a) and (c) of Schedule 7B. As above, in order to be able to amend or revoke any regulations in the future, consent is also sought under paragraphs 10 and 11 of Schedule 7B and the Minister of the Crown is

consulted under paragraph 11(2) of Schedule 7B to GoWA for the inclusion of these provisions in the Bill.

4. Functions relating to Infrastructure Consent.

- 4.1. Section 60 of the Bill, along with Schedule 1 provides for the matters that can be provided for in an infrastructure consent order. Section 87 provides for the changing or revoking of such an order. This is similar in nature to a Development Consent Order (DCO) for NSIP under the Planning Act 2008.
- 4.2. The matters listed are comprehensive and may include conferring functions on bodies, for example to remove or relocate apparatus in relation to their undertaking or to approve plans or schemes as part of the development. Some of the bodies on which functions may be conferred are likely to be reserved authorities. For example, article 23 of the Swansea Bay Tidal Generating Station Order 2015 provides that no marine works comprised in the authorised development are to be commenced until a scheme to secure safety of navigation has been submitted to, and approved in writing, by the harbour authority for the Port of Swansea in consultation with Trinity House, the Maritime and Coastguard Agency, and others. The Maritime and Coastguard Agency is a reserved authority within the meaning of paragraph 8(3) of Schedule 7B to GoWA.
- 4.3. In the delivery of large-scale infrastructure projects, it is important that effective and appropriate functions linked to the infrastructure project can be included in the infrastructure consent order. Given the emphasis on offshore energy projects and the need for efficiency in providing consent in a timely manner we wish to avoid any potential delays in the process. It is also likely that any function conferred on, or in relation to a reserved authority will ensure they are able to use their expertise effectively and their interests are fully protected within the new infrastructure consenting process. There will be an opportunity to participate in the process resulting in the infrastructure consent order and therefore any functions can be influenced by the body affected.
- 4.4. We therefore seek the consent of the Minister of the Crown under paragraphs 8(1)(a) and (c) to enable the Bill to confer power by subordinate legislation to confer functions on reserved authorities and to modify or remove those functions in this context. In order to remove or modify any functions, if, for example, the infrastructure consent was amended, we also seek consent under paragraphs 10 and 11 and the Minister of the Crown is consulted under paragraph 11(2) of Schedule 7B to GoWA for the inclusion of these provisions in the Bill.

5. Regulations and Orders: Restrictions

- 5.1. It is intended that the Bill will contain provision in section 137 which sets out the restrictions on the exercise of the regulation and order making powers in the Bill as set out above. My officials will share the drafting of this provision.

Proposal Requiring Consultation with the Appropriate Minister of the Crown

6. Transport and Works Act 1992

- 6.1. The Bill provides that, to the extent that infrastructure consent is required for development, the development may not be authorised by an order under section 1 or 3 of the Transport and Works Act 1992 (section 20(2)(b)). The Bill also provides that, to the extent that provision for or relating to a matter may be included in an infrastructure consent order, an order under section 1 or 3 of the Transport and Works Act 1992 may not include provision of the same kind (section 60(8)(b)). Sections 1 and 3 of the Transport and Works Act 1992 deal with orders as to railways, tramways, inland waterways etc.
- 6.2. The Secretary of State retains the power to make Orders in relation to Wales, where a Transport for Works Act Order applies in England and Wales (e.g. cross border), under section 1 of the Transport for Works Act 1992 by virtue of the National Assembly for Wales Transfer of Functions Order 1999/672 ("TFO 1990"). Schedule 1 to the TFO 1990 transfers the powers to the then Assembly in relation to the Transport and Works Order 1992, except "the order-making function under sections 1 and 3 where any order made thereunder would have effect both in Wales and England...". Schedule 2 to the TFO 1990 states "The order, rule and regulation-making functions of the Secretary of State under sections 1, 3, 6, 7(4), 8, 10 and 15 shall be exercisable only with the agreement of the Assembly".
- 6.3. The Secretary of State will retain this power, it is only where the project meets the criteria of a significant infrastructure project under the Bill that infrastructure consent must be sought, rather than applicants being able to use the Transport and Works Act.
- 6.4. These provisions engage paragraph 11(2) of Schedule 7B to GoWA and so we are consulting the appropriate Minister about the provisions.

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Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-JJ-3582-JJ

Rt Hon Michael Gove MP
Secretary of State for Levelling up, Housing and Communities

By email: correspondence@communities.gov.uk

7 January 2022

Dear Michael

I am writing to you regarding two matters which have come to my attention relating to the consenting of energy generating stations. I am writing to seek your cooperation in transferring legislative competence for certain matters to Senedd Cymru (“the Senedd”), which would aid in the establishment of an effective and modern consenting regime which operates alongside those handled by the UK Government.

Specifically, I am requesting that the Senedd is transferred legislative competence:

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

In relation to point (a), where it concerns the consenting of generating stations offshore, the Senedd currently has legislative competence in relation to Wales, up to the limits of the territorial sea, which is an area roughly 12nm from the shoreline. Beyond that (12-200nm), the Welsh Ministers have executive competence to consent such schemes, and are tied to consenting such schemes under section 36 of the Electricity Act 1989. This is an outdated process which has been superseded for the majority of offshore schemes in English waters.

The Welsh Government is seeking to deliver a unified infrastructure consenting process to place it on similar terms with those schemes in English waters consented under the Planning Act 2008, which extends to the edge of the English zone (0-200nm). At present, the Welsh Ministers cannot deliver a similar process as the Senedd is confined to legislating in relation to the territorial sea (0-12nm), which may cause operational difficulties for developers.

A similar issue has recently arisen in respect of the Senedd’s legislative competence relating to fishing and amendments have been made by section 45 of the Fisheries Act

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2020 to section 108A, Schedule 7A and a range of other provisions in the Government of Wales Act 2006 to extend legislative competence where it relates to fishing, fisheries or fish health to the Welsh zone beyond the seaward limit of the territorial sea (0-200nm). This provides a useful precedent, where I would suggest similar amendments would also be appropriate in the context of the consenting of offshore energy generating stations by the Welsh Government.

In relation to point (b), as part of the agenda to remove barriers in relation to energy storage, a change was made in 2019 by the Welsh Ministers to remove energy storage (excluding pumped hydroelectric) from the calculation of the generating capacity of generating stations where the Welsh Ministers were the onshore consenting authority. A similar change was made in 2020 in respect of generating stations where the Secretary of State was the consenting authority under the Planning Act 2008 by way of the Infrastructure Planning (Electricity Storage Facilities) Order 2020 and the Electricity Storage Facilities (Exemption) (England and Wales) Order 2020 (“the Orders”).

The Orders made by the Secretary of State to disregard energy storage (excluding pumped hydroelectric storage) from the calculation of generating capacity combined with changes made by the Wales Act 2017 to devolve further legislative competence has resulted in an anomaly between the operation of the two regimes which would benefit from alignment.

Currently the Senedd’s legislative competence where it concerns the consenting of energy is capped at 350MW (excluding onshore wind). Therefore, the Senedd may only legislate for schemes up to 350MW. Were a scheme which either solely or mainly generates electricity from storage to exceed 350MW, it is not clear whether the Senedd would have power to legislate how such schemes are consented. However, as a consequence of the Orders made by the Secretary of State in 2020, the Welsh Ministers, through Local Planning Authorities, would retain executive competence to consider such schemes under the Town and Country Planning Act 1990 onshore, which may not be appropriate for all such schemes.

It is essential the legislative competence set out in (a) and (b) is transferred to the Senedd to at least provide one point of contact and a more streamlined approach for developers of energy projects in Wales, particularly renewable energy. This administrative efficiency would be of benefit to the development industry.

I believe the transfer of competence for these matters will reduce regional disparities within the United Kingdom, and allow Wales to compete on the same footing as England where it concerns having an appropriate consenting process for on and offshore renewables, while also supporting the journey towards ‘net zero’.

I welcome further cooperation between our Governments on these matters to ensure this beneficial solution for all parties can be realised. I note provision could be contained in the upcoming Planning Bill, which was contained in the Queen’s speech in May 2021.

Yours sincerely



Julie James AS/MS

Y Gweinidog Newid Hinsawdd
Minister for Climate Change

CC –

Secretary of State for Wales (correspondence@ukgovwales.gov.uk)

Secretary of State for Business, Energy and Industrial Strategy (enquiries@beis.gov.uk)

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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-JJ-2523-22

Rt Hon Michael Gove MP
Secretary of State for Levelling up, Housing and Communities

correspondence@levellingup.gov.uk

11 January 2023

Dear Mr Gove

I am writing to you to request an urgent response to my previous correspondence to your predecessor dated 7 January 2022 regarding two matters relating to the consenting of energy generating stations. I am also writing further to correspondence dated 23 December 2022 from the Secretary of State for Wales to me regarding the need to progress floating offshore wind projects in the Celtic Sea. Both are attached for your information.

I seek your cooperation in transferring legislative competence for certain matters to Senedd Cymru ("the Senedd"), which would aid in the establishment of an effective and modern consenting regime which operates alongside those handled by the UK Government, which may consent, among other things, offshore renewables.

Specifically, I am asking for a response to my previous request that the Senedd is transferred legislative competence:

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

The Welsh Government is currently drafting legislation which introduces a unified infrastructure consenting process and it is essential the legislative competence set out in (a) and (b) is transferred to the Senedd to enable the scope of that process to be defined. Hence, this request has become urgent.

I believe the transfer of competence for these matters will reduce disparities within the United Kingdom, and allow Wales to compete on the same footing as England where it concerns having an appropriate consenting process for on and offshore renewables, while also supporting the journey towards 'net zero'. Furthermore, it would provide the development industry and the Welsh Government the administrative efficiency of having

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one point of contact and a more streamlined approach for the consenting of infrastructure in Wales, particularly renewable energy. It will also help achieve the aims set out by the Secretary of State for Wales to make timely decisions on the anticipated pipeline of applications to deliver the planned 4GW of capacity in the Celtic Sea by 2035.

I welcome further cooperation between our Governments on this matter to ensure this beneficial solution for all parties can be realised urgently.

Yours sincerely



Julie James AS/MS

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Secretary of State for Wales (correspondence@ukgovwales.gov.uk)

Secretary of State for Business, Energy and Industrial Strategy (enquiries@beis.gov.uk)