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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
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

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
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

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

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

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:

<u>Add or remove a type of consent/authorisation</u>

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** <u>Form and content of a pre-application service request</u>

	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 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.

	Proceeding straight to a decision 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. Written representations procedure 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. Hearing and Inquiry procedure 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.

	Power to direct matters to be dealt with by the examining authority or the Welsh Ministers 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. Virtual / hybrid hearings and inquiries 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.

	Publishing statements of reasons 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:

<u>Powers to modify Part 1 of Schedule 1</u>

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.

<u>Compulsory acquisition of land</u>

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:

<u>Charging of Fees</u>

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** <u>Circumstances for dispensing requirements</u> <u>*Examples*</u> *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.