

Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Virtual – Video conference via Zoom	P Gareth Williams
Meeting date: 9 October 2023	Committee Clerk
Meeting time: 13.30	0300 200 6565
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Remote – Supplementary pack

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

4 Papers to note

(13.40 – 13.45)

4.3 House of Commons' Public Administration and Constitutional Affairs Committee's inquiry into Devolution Capability in Whitehall

(Pages 1 – 13)

Attached Documents:

LJC(6)-27-23 – Paper 9 – PACAC Submission

4.4 Supplementary Legislative Consent Memorandum (Memorandum No. 5) on the Levelling-up and Regeneration Bill

(Pages 14 – 18)

Attached Documents:

LJC(6)-27-23 – Paper 10 – Supplementary Legislative Consent Memorandum
(Memorandum No. 5)

4.5 Correspondence with the Minister for Climate Change: Post-consent motion developments regarding the Energy Bill

(Pages 19 – 47)

Attached Documents:

LJC(6)-27-23 – Paper 11 – Letter from the Minister for Climate Change, 3



October 2023

LJC(6)-27-23 – Paper 12 – Letter to the Minister for Climate Change, 27

September 2023

4.6 Correspondence with the Minister for Climate Change: Infrastructure (Wales) Bill

(Pages 48 – 78)

Attached Documents:

LJC(6)-27-23 – Paper 13 – Letter from the Minister for Climate Change, 3

October 2023

LJC(6)-27-23 – Paper 14 – Letter to the Minister for Climate Change, 27

September 2023

4.7 Correspondence from the Local Government and Housing Committee to the Business Committee: Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Levelling-up and Regeneration Bill

(Pages 79 – 80)

Attached Documents:

LJC(6)-27-23 – Paper 15 – Letter from the Local Government and Housing Committee to the Business Committee, 6 October 2023

8 UK – EU Governance Inquiry

(14.00 – 14.20)

(Pages 81 – 82)

Attached Documents:

LJC(6)-27-23 – Paper 16 – Letter from the First Minister, 6 October 2023

Submission to the House of Commons PACAC inquiry: Devolution capability in Whitehall

September 2023

The Senedd's Legislation, Justice and Constitution Committee has a broad remit which includes the consideration of constitutional matters, intergovernmental relations and legislative consent memoranda laid by the Welsh Government about UK Bills making provision for any purpose within the legislative competence of the Senedd.

Background

Our submission

1. Our submission will focus on two of the themes in your call for evidence:
 - To what extent has the Dunlop Review of Union Capability been implemented and what remains to be addressed?
 - How do the devolved institutions view devolution capability in Whitehall and what approach do they take to building the equivalent knowledge and capability on the part of Ministers and Officials in their own administrations?

Fifth Assembly report

2. The Constitutional and Legislative Affairs Committee in the Fifth Assembly carried out an inquiry into UK governance post-Brexit, publishing a report with 9 recommendations in February 2018.¹ The inquiry looked into how the Welsh and UK governments should work together,

¹ Constitutional and Legislative Affairs Committee, [UK governance post-Brexit](#), February 2018 and Constitutional and Legislative Affairs Committee, [UK governance post-Brexit: summary of evidence](#), May 2018

including extensive work on the understanding of devolution in Whitehall. It found that knowledge and understanding of devolution in Whitehall was poor.

Dunlop Review and intergovernmental relations

General observations

- 3.** Relationships between governments have been important since the inception of devolution but have taken on a greater prominence since the UK left the EU. Our predecessor Committee's 2018 report highlighted the need for significant improvement in this area. It recommended that the Welsh Government enter into an agreement with that Committee to support the scrutiny of intergovernmental activity. The first Inter-Institutional Relations Agreement was agreed in January 2019. A new, updated Agreement for the Sixth Senedd was agreed by the Committee in November 2021² and debated in plenary on 15 December 2021.³ In line with the Agreement, on 18 July 2023 the Welsh Government published its report on intergovernmental relations between 2021 and 2023.⁴
- 4.** The publication of the Dunlop Review marked a positive step in the right direction towards improving intergovernmental relations. However, our assessment is that this has not yet led to the kind of step change that we would like to have seen, not least from our perspective as a parliamentary Committee seeking to scrutinise how governments work together, particularly on legislative matters.
- 5.** While there may have been improvements in individual Whitehall departments, collectively we do not believe that there has been enough progress overall to improve the knowledge and understanding of devolution across Whitehall, and both aspects remain inconsistent.
- 6.** Although we have heard Ministers in the Welsh Government make positive comments about engagement with UK Ministers, we have also heard frustrations from the Welsh Government on numerous occasions about the difficulties they have encountered. For example, regarding late notice of interministerial meetings,⁵ non-attendance of the relevant Secretary of

² Legislation, Justice and Constitution Committee, [Inter-Institutional Relations Agreement between Senedd Cymru and the Welsh Government](#), November 2021

³ [Plenary](#), 15 December 2021, RoP [249-278]

⁴ Welsh Government, [Inter-Institutional relations agreement between the Senedd and the Welsh Government: report on intergovernmental relations covering the period 2021 to 2023. Overview report covering the period April 2021 to March 2023](#), 18 July 2023

⁵ Welsh Government, [Written Statement: Meeting of the UK-EU Relations Interministerial Group](#), 17 February 2022

State at interministerial meetings⁶ and in connection with UK Bills that propose provisions in devolved areas (see later consideration in this submission).

7. Quarterly reports on intergovernmental relations from the UK Government are Whitehall centric, and sometimes confuse formal and informal intergovernmental meetings. The independent standing secretariat announced in the outcome of the 2022 Intergovernmental Relations (IGR) Review has not yet been established, despite commitments from the Secretary of State that it would be in place before the summer recess.⁷ An independent intergovernmental secretariat was a recommendation of the Dunlop Review, and the new disputes resolution process relies upon its creation.

8. More than half of the Interministerial Groups (IMGs) listed in the IGR Review have now been established. The regularity of meetings and the detail of the communiqués varies between IMGs. Some groups, such as the IMG on Environment, Food and Rural Affairs and the IMG for Business and Industry, meet regularly, although the communiqués from the former are much more detailed than the latter. Others, such as the IMG on Safety, Security and Migration and the IMG for Tourism, have only met once. Some policy areas, such as Culture, do not appear to have an IMG in place.

Intergovernmental relationships on UK Bills making provision in devolved areas

9. Our 2021/22 annual report⁸ highlighted the significant increase in the use of UK Bills to propose law in devolved areas, our concerns with this approach and our view that a democratic deficit has been emerging. The 2022/23 period has seen this unfortunate trend continue. Our Committee, and the Senedd more widely, spends a significant amount of time scrutinising legislative consent memoranda for UK Bills without any real ability to influence the primary legislation being made in devolved areas. As a consequence we consider that on too many occasions the Senedd's functions are being bypassed.

10. We recognise that the Senedd has a decision to make on whether to grant or to withhold legislative consent. However, a binary decision - yes or no - to the inclusion of devolved provisions in a UK Bill is not a substitute for line-by-line scrutiny, the ability to table amendments, hear evidence and seek improvements to Bills introduced to the Senedd.

⁶ [Letter from the Minister for Rural Affairs and North Wales, and Trefnydd and Minister for Climate Change](#), 27 April 2023

⁷ House of Commons Levelling Up, Housing and Communities Committee, [Oral evidence: Intergovernmental Relations](#), 27 March 2023

⁸ LJC Committee, [Annual Report 2021/22](#), October 2022, paragraphs 20-32 and 48-59

11. There have also been several examples where the Welsh Government has said that they received late sight of a UK Bill (making provision in devolved areas) before its publication, for example in relation to the Northern Ireland Protocol Bill,⁹ the Levelling-up and Regeneration Bill¹⁰ and the Retained EU Law (Revocation and Reform) Bill.¹¹

12. There have also been occasions where the Welsh and UK governments have not been able to reach agreement on certain provisions, resulting in more than one consent motion being tabled. For example, in relation to the Police, Crime, Sentencing and Courts Bill, agreement between governments was not reached on some provisions; this resulted in the Welsh Government tabling two motions seeking consent in relation to specific provisions listed in each motion. This occurred for debates on 18 January 2022 and 1 March 2022, and on each occasion, the Senedd only agreed to one of the motions.¹² The Bill was subsequently passed by the UK Parliament, including those provisions for which the Senedd refused consent.

13. In March 2023, the Welsh Government told us that “only in the most exceptional circumstances that you would expect there to be disputes ... much of the framework is about the avoidance of disputes and coming to actual agreements” but that the dispute resolution process was a “significant step forward”.¹³ When reporting subsequently on legislative consent memoranda, we have recommended on occasion that the Welsh Government clarify the steps it has taken to resolve differences of opinion where they exist with the UK Government using the new intergovernmental dispute resolution processes. However, according to its responses, the Welsh Government appears reluctant to engage with or use the process.¹⁴

14. In evidence to us on 10 July 2023 the Counsel General and Minister for the Constitution, Mick Antoniw MS, suggested that the IGR dispute resolution process was not suitable for solving issues related to individual UK Bills because of the timescales involved in their scrutiny and passage through the UK Parliament.¹⁵ We sought further clarification on this point¹⁶ and in response he told us:

“The focus of the IGR Review is initially on dispute avoidance. We act in that spirit. Where we have concerns about a particular piece of UK legislation, we seek to work

⁹ [Letter from the Minister for Economy](#), 27 June 2022

¹⁰ Welsh Government, [Revised Legislative Consent Memorandum Levelling-up and Regeneration Bill](#), 25 November 2022, paragraph 3

¹¹ [Letter from the Counsel General and the Minister for the Constitution to the Llywydd](#), 5 October 2022

¹² [Legislative Consent: Police, Crime, Sentencing and Courts Bill](#)

¹³ LJC Committee, [14 March 2023](#), RoP [17-18, 96]

¹⁴ For example see correspondence from the Welsh Government on the UK Infrastructure Bank Bill ([21 November 2022](#)) and Strikes (Minimum Service Levels) Bill ([24 April 2023](#))

¹⁵ LJC Committee, [10 July 2023](#), RoP [161-165]

¹⁶ [Letter to the Counsel General and Minister for the Constitution](#), 24 July 2023, Question 2

with UK Government in the first instance to ensure our positions are understood, with a view to them taking appropriate action to remedy the issue.

It is not the case that the dispute processes in the IGR Review cannot be used in relation to individual UK Bills; however, the associated timetabling would be likely be complex. It can sometimes be very late in a Bill's passage before it becomes clear that agreement at intergovernmental level cannot be reached, and whilst the dispute processes can run quickly, they do not override Parliament's ability to pursue and timetable legislative business."¹⁷

15. We would also draw your attention to our recent consideration of a legislative consent memorandum related to the Energy Bill. On 10 July 2023, we took evidence from the Minister for Climate Change, Julie James MS, on the memorandum.¹⁸ She expressed concern at the lack of engagement with the UK Government (see for example paragraphs 20–21 of the transcript). We wrote to the UK Government on this matter¹⁹ and received a response which, in places, rejects the statements made by the Minister for Climate Change.²⁰ We published our report on 12 September 2023.²¹ During the debate on 12 September the Minister stated:

"Llywydd, this is, unfortunately, a UK Government that does not want to work with devolved Governments, and instead believes processes of consultation and notification are satisfactory safeguards of our constitution. I fundamentally disagree with that view. I could not be clearer that I want to work on a basis of seeking to reach agreement to provide appropriate cross-border regulation that our industry and our citizens need to help us achieve net zero. I've argued the case for the UK Government to work with us. I've asked for the Bill to be delayed so that we can agree a solution that respects this Senedd and our legitimate devolved responsibility.

Finally, I have reminded the UK Government of their own stated commitment to the Sewel convention and that under no circumstance would it be appropriate to pass this Bill without the consent of the Senedd."²²

16. Later in the debate the Minister also stated:

"We had no full text of the Bill before it was introduced. We had small extracts shared in isolation, but the full text, which is 346 pages, was shared the evening before it was published. And it's now infamous in the Welsh Government that you

¹⁷ [Letter from the Counsel General and Minister for the Constitution](#), 4 September 2023, Response to question 2

¹⁸ LJC Committee, [10 July 2023](#), RoP [3-68]

¹⁹ LJC Committee, [Letter to Andrew Bowie MP, Parliamentary Under-Secretary of State for Energy Security and Net Zero](#), 12 July 2023

²⁰ Department for Energy Security & Net Zero, [Letter from Andrew Bowie MP, Minister for Nuclear and Networks](#), 24 July 2023

²¹ LJC Committee, [The Welsh Government's Legislative Consent Memoranda on the Energy Bill](#), September 2023

²² [Plenary](#), 12 September 2023, RoP [330-331]

are summoned to speak to a Minister of the UK Government for a 15-minute conversation and that must happen at 6.30pm on a given night because they're clearly about to announce something the next morning and they've hitherto forgotten to tell you about it."²³

17. However, on the same day, during a consent debate on the Non-Domestic Rating Bill,²⁴ Rebecca Evans MS, the Minister for Finance and Local Government, stated:

*"And in the light of the previous debate, I should, I think, just recognise that the experience with this particular piece of legislation has been a very positive one in terms of the collaborative working between Welsh Government and the UK Government, so I just wanted to put that on record, to demonstrate that it can be done, and I think in this case, it has been a very positive experience, I hope on both sides."*²⁵

18. These last two examples highlight a mixed picture in terms of engagement and also that intergovernmental relations vary depending on the Whitehall departments involved.

Our engagement with UK Ministers in relation to UK Bills

19. We have also raised our own concerns directly with UK Government Ministers about poor intergovernmental relations and have sought their perspective on what we regard as an excessive use of UK Bills to make provision in devolved areas. For example, we wrote to the then Secretary of State for Levelling Up, Housing and Communities, the Rt Hon Greg Clark MP, on 20 July 2022²⁶ and received a response on 30 August 2022,²⁷ which, while relatively positive, did not address matters of detail. The response also made the following observation:

*"This engagement is also important to identify where a UK government bill can include provisions within a devolved legislature's competence and **enable timely pragmatic solutions to policy challenges to deliver for people of Wales freeing up devolved legislatures time** whilst respecting their legislative competence via the legislative consent process."*

20. We do not share the sentiment highlighted in bold (this was again included in follow-up correspondence with his successor, the Rt Hon Michael Gove MP, which we refer to below) as it is not a matter for the UK Government to suggest how the Senedd uses its time or on what it

²³ [Plenary](#), 12 September 2023, RoP [374]

²⁴ It should be noted that on this Bill the Committee's view was the Welsh Government should have introduced its own Bill to Senedd Cymru, and legislated in parallel, rather than use a UK Bill passing through the UK Parliament; LJC Committee, [The Welsh Government's Legislative Consent Memorandum on the Non-Domestic Rating Bill](#), June 2023

²⁵ [Plenary](#), 12 September 2023, RoP [409]

²⁶ [Letter to the Secretary of State for Levelling Up, Housing and Communities](#), 20 July 2022

²⁷ [Letter from the Secretary of State for Levelling Up, Housing and Communities](#), 30 August 2022

should legislate. This text highlights perhaps a lack of understanding about the principles of devolution. We would also add that despite the positive comments about the process in the letter from the Secretary of State, our report on the Welsh Government's legislative consent memorandum on the Levelling-up and Regeneration Bill drew attention to the lack of engagement from the UK Government on that Bill (to which we have also drawn attention in paragraph 11 above).²⁸

21. Following our correspondence with the Rt Hon Greg Clark MP we wrote to the Rt Hon Michael Gove MP asking whether guidance provided on engagement on UK Bills was formal in nature (comparable to devolution guidance notes (DGNs) for example).²⁹ In his response,³⁰ he told us that "Guidance and support is then adapted to the specific circumstances of each bill...", which suggests that no formal process is in place across Whitehall.

22. Our correspondence with the Rt Hon Michael Gove resulted in the Committee inviting him to give evidence to us on the subject of intergovernmental relations. However, a formal response is still awaited some 7 months later.³¹

Intergovernmental relations post-Brexit

23. The UK's withdrawal from the EU necessitated the development of new domestic structures to manage relations between the governments in areas of law, policy and international relations previously governed or coordinated by the EU. Some new arrangements to undertake this work were agreed as a result of the IGR Review.

24. Historically, intergovernmental cooperation on EU, and international relations, were contained in two concordats as part of a broader Memorandum of Understanding (MoU) agreed in 2013 between the UK Government and the devolved governments.³² An International Relations Concordat was planned as part of the IGR Review; however, it has not yet been agreed. As such, we cannot comment on the extent to which it would replace the arrangements contained in the 2013 MoU to reflect the post-Brexit context. This matter is particularly relevant to your Committee's consideration on what remains to be addressed.

²⁸ LJC Committee, The Welsh Government's Legislative Consent Memoranda on the Levelling-up and Regeneration Bill, February 2023, paragraph 47

²⁹ Letter to Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, 4 November 2022

³⁰ Letter from Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, 12 January 2023

³¹ Letter to Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, 14 June 2023 (latest letter)

³² UK Government, Devolution: Memorandum of Understanding and Supplementary Agreements, October 2013

25. Common Frameworks have emerged as a key mechanism for the development and coordination of policy and legislation across governments in the UK post-Brexit. In response to our recent report on Common Frameworks,³³ the Counsel General and Minister for the Constitution said that the frameworks have the potential to be “enduring, flexible and increasingly significant governance mechanisms for policy areas previously governed by EU law”.³⁴ We note that, on the whole, the common frameworks have been a positive example of intergovernmental working between officials and Ministers with positive examples of joint-decisions being made. For example, the Welsh Government’s report to the Senedd on intergovernmental relations between 2021-2023 notes work on the Public Procurement Common Framework as a structure that is working well.³⁵ However, more recently, the Welsh Government has also warned about examples of UK Government departments taking decisions outside of Common Framework structures, thereby by-passing the processes for coordination within them. This has been noted in particular in relation to frameworks in the areas of the environment, food and rural affairs. We hope that these are isolated examples and that the full potential of Common Frameworks to improve devolution awareness and cooperation between governments can be realised.

26. This commitment to the use of the common frameworks process by all UK Government departments will be even more important in the context of changes to the body of retained EU law that underpins policy areas governed by the frameworks under the *Retained EU Law (Revocation and Reform) Act 2023* (the REUL Act). For example, we are aware³⁶ that work was undertaken through the F-gas Common Framework on the development of The Fluorinated Greenhouse Gases (Amendment) Regulations 2023 which are being made using powers in the REUL Act. Such work will be important given the lack of formal consent mechanism in the REUL Act for circumstances when a UK Minister wishes to exercise a delegated power in a devolved area. To date, there remains a lack of clarity around any informal consent process which may have been agreed between the Welsh and UK governments.³⁷

27. The Committee’s scrutiny of international agreements has yielded new information on intergovernmental ways of working on international obligations. The Welsh Government has advised us of its level of involvement in international agreements negotiation and implementation; whether it had prior knowledge that an agreement was concluded; where

³³ LJC Committee, Common Frameworks, May 2023

³⁴ Letter from the Counsel General and Minister for the Constitution, 22 June 2023

³⁵ Welsh Government, Inter-Institutional relations agreement between the Senedd and the Welsh Government: report on intergovernmental relations covering the period 2021 to 2023. Overview report covering the period April 2021 to March 2023, 18 July 2023

³⁶ Letter from the Minister for Climate Change, 1 September 2023

³⁷ Letter from the Counsel General and Minister for the Constitution, 12 September 2023, Response to question 2

Memorandums of Understanding are in place between the four governments for certain categories of international agreements; the relationships between multiple international agreements and domestic mechanisms; the Welsh Government's approach to its international obligations; and where it holds a different view to the UK Government on legislative competence.

28. We have noted a varied approach across Whitehall departments to engagement with the devolved governments on agreements that fall within or have substantive implications for devolved policy areas. This view is supported by the Welsh Government, which, in February 2023, said in response to another of your inquiries that:

"...it is not possible to say with certainty whether the lead UK Government department always notifies relevant Welsh Government departments, and if so at what stage it does so. This is something that we propose to consider further, together with the UK Government and the other Devolved Governments, when the overall 'Devolution Memorandum of Understanding and Supplementary Agreements' document is reviewed in light of the Inter-Governmental Relations Review outcome."³⁸

29. A general example is that engagement with the devolved governments on international trade negotiations seems to have been broadly positive even where agreement on final negotiating positions and priorities is not possible. Conversely, engagement on non-trade international agreements is more varied, and, regrettably, our scrutiny reports³⁹ frequently note missing or inadequate information on the UK Government's engagement with the devolved governments.

30. Despite this, we have found examples of best practice⁴⁰ and the UK Government has recognised the interests of the devolved governments in international agreements, for which it has described intergovernmental discussions as "critical" for the future.⁴¹

Ways to improve understanding of devolution

31. We acknowledge that from time to time disagreements will occur between governments. However, in our view, the better the understanding of devolution and what it means in practice,

³⁸ Public Administration and Constitutional Affairs Committee, The Scrutiny of International Treaties and other international agreements in the 21st century inquiry, [Written evidence from The Welsh Government](#) (SIT 27)

³⁹ [International Agreements](#), LJC webpage

⁴⁰ Public Administration and Constitutional Affairs Committee, The Scrutiny of International Treaties and other international agreements in the 21st century inquiry, [Written evidence from the LJC Committee](#) (SIT 22)

⁴¹ UK Government, [Government response to the House of Lords International Agreements Sub-committee Report: Treaty Scrutiny, Working Practices](#)

the more likely it is that the frequency of disagreements will diminish and, where they do arise, that they are resolved more swiftly. It is also worth bearing in mind that devolution is not static and there is a need for Whitehall departments to keep pace with changes to the devolution settlement. We also acknowledge that some departments are likely to have a better understanding of devolution than others, for example in departments where engagement occurred as a consequence of the need to discuss EU policy matters while the UK was a Member State.

32. We believe understanding of devolution could be improved in the ways set out below:

The UK Parliament adopting a definitive view of the Sewel Convention

33. In evidence to us on 10 July 2023, the Counsel General and Minister for the Constitution discussed his concerns with the Sewel Convention.⁴² In particular, he noted the need for “a much stronger constitutional status for Sewel”, also saying in the context of how to resolve disputes:

“The crux of the problem with Sewel is either the lack of codification of Sewel—the lack of clarity as to what it means, and the diverse ways in which it is treated—. The fact that we don't have a common position any more, I think, in terms of what Sewel amounts to, is really the core of the problem. Now, maybe that would be the mechanism, by taking all the disputed legislation we've had, collectively, and trying to use the disputes process to try and resolve that. But, can a disputes process resolve what is, ultimately, a political process of a constitutional disagreement that doesn't have a real justiciable status?”⁴³

34. Our predecessor Committee in the Fifth Senedd submitted evidence to the House of Commons Procedure Committee to inform its inquiry on the procedure of the House of Commons and the territorial constitution. In that evidence it stated:

“It is perhaps not surprising therefore that a Convention based on a single contribution to a parliamentary debate has failed to form a satisfactory, long-term basis for the relationship between the devolved legislatures and the UK Parliament.

We therefore believe that the UK Parliament should clearly set out its responsibilities and understanding as regards the application of Sewel Convention and its practical operation, including the meaning of ‘not normally’. (...)

⁴² LJC Committee, 10 July 2023, RoP [161-189 and 240-250]

⁴³ LJC Committee, 10 July 2023, RoP [164]

*In our view there must be a more comprehensive and transparent process that includes a mechanism for ensuring that the views of the Senedd (and the Welsh Government) are set out clearly and at known points in the UK Parliament's legislative process. We do not believe that it would be appropriate for this mechanism to rely on the UK Government's interpretation of the views of the Senedd or the Welsh Government.*⁴⁴

35. We believe that the points made by our predecessor Committee, which are still relevant, need to be addressed.

36. Sometimes, at the start of an autumn term when the UK Parliament enters its conference recess, the fact that parliamentary timetables do not align can mean that Senedd committees cannot consider and report in time to meet a consent motion debate in the Senedd, the timing of which is itself determined by timetabling of the Bill's proceedings through the UK Parliament. At times it can appear that UK Government departments are not prepared to take into account the legislative consent process when timetabling Bills through the UK Parliament or are not aware of how the legislative consent process operates in the Senedd. We believe this position needs to change.

37. Related to this we also believe that there should be more transparency around how the consent process fits into the parliamentary timetable for individual UK Bills. While this may require information to be provided by the UK Government, given that consent should be factored into their legislative planning, we would hope that this would not prove to be problematic.

38. In March 2023, Baroness Drake, Chair of the House of Lords Constitution Committee notified us that the House of Lords Business document now gives fuller and more prominent information about when consent is pending or contested and when it has been granted or withheld. This change was very welcome and we hope that other positive changes can also be put in place.

39. Since 2021, there have been nine occasions where the Senedd has refused consent, only for the UK Parliament to legislate anyway.⁴⁵

40. We believe that problems with the workability of the legislative consent process should not be viewed solely as an issue for the Senedd but as a matter of concern for Whitehall and the UK

⁴⁴ Letter from the LJC Committee, 30 March 2021

⁴⁵ Senedd Research, The Sewel Convention: What happens to UK laws rejected by the Senedd?, July 2023. Since the publication of the article the Senedd has refused consent for 3 further UK Bills.

Parliament, given its importance to the effective functioning of the UK constitution and the existing constitutional framework.

41. Providing a more robust constitutional footing for the Sewel Convention, built around a clearly defined and universally understood process would have the potential to improve the understanding of devolution in Whitehall, providing an incentive to ensure it is factored into work planning in UK Government departments and the UK Parliament, throughout the UK legislative process.

Disputes on matters of legislative competence

42. As we have already referred to above, there appears to us to be some uncertainty about the extent to which the dispute resolution process arising from the IGR Review can be used to resolve disagreements on individual UK Bills. However, one aspect which we believe merits specific consideration concerns disputes on matters of legislative competence. If the new IGR structures as currently constituted are unable to resolve disputes over legislative competence on specific UK Bills, a new mechanism would need to be found. At the very least, governments should be required to publish a statement outlining the areas of dispute that can be considered by both the UK and devolved legislatures before the amending stages of a Bill are concluded.

Regular review and updating of Devolution Guidance Notes (DGNs)⁴⁶

43. DGNs do not appear to have been updated since 2019 and yet they are key in helping civil servants across Whitehall understand devolution. We would ask therefore:

- What are the processes in place in the Civil Service for updating these?
- What are the processes for ensuring they are circulated and used?
- When will DGNs be updated to reflect Common Frameworks and developments around the *United Kingdom Internal Market Act 2020*? For example common frameworks documents have not been updated to reflect the new structures agreed as part of the IGR Review.

44. As we have highlighted above there have been instances where the UK Government's engagement with the Welsh Government has been very late in circumstances where provision in a devolved area is to be included in a UK Bill. It remains unclear to us whether Part 2 of the

⁴⁶ Constitutional and Legislative Affairs Committee, [UK governance post-Brexit](#), February 2018, See recommendation 4

DGN⁴⁷ which covers the inclusion of a UK Parliament Bill is being followed fully. We believe therefore that there would be merit in considering the extent to which this particular DGN is being used and how effective it has been.

45. We also believe that there should be a clear engagement timetable followed for all UK Bills that include devolved provision. Such detailed information should be included in revisions to the DGN we refer to above, alongside updates necessary to reflect the outcome of the IGR Review.

UK Ministers engaging with Senedd Committees

46. Based on our understanding, UK Ministers have a mixed record of engaging with Senedd Committees generally. It can be difficult to secure Ministers' attendance at evidence sessions in the Senedd, with some exceptions. We are aware that some Committees have noted that they have been offered the Secretary of State for Wales when they had requested a Minister from a specific Department.

47. As mentioned above, we have invited the Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities to give evidence to us on intergovernmental relations on two occasions, in February 2023 and by way of a reminder in June 2023. While the second letter was acknowledged, we have yet to receive a formal response.

48. However, Lord Bellamy was willing to appear before the Committee in December 2022 and we found the evidence session to be particularly helpful, with engagement continuing afterwards through correspondence.

⁴⁷ Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales, Last updated 20 April 2018

Agenda Item 4.4

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO.5)

THE LEVELLING UP AND REGENERATION BILL

1. This legislative consent memorandum is laid under Standing Order (SO) 29.2. SO29 prescribes that a legislative consent memorandum (LCM) must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Levelling-up and Regeneration Bill (“the Bill”) was introduced in the House of Commons on 11 May 2022. The Bill can be found here [Levelling-up and Regeneration Bill - Parliamentary Bills - UK Parliament](#)
3. I laid an [LCM on the Bill](#) as introduced on 28 September, [a revised LCM on 25 November](#), an [SLCM on 30 November 2022 \(NO.2\)](#), an [SLCM on 27 April 2023 \(NO.3\)](#) and an [SLCM on 16 August 2023 \(NO.4\)](#).
4. The Bill as amended in Committee (24 May 2023) can be found at: <https://bills.parliament.uk/bills/3155/publications>
5. On 4 July 2023 and 7 July 2023 the UK Government tabled amendments for consideration at House of Lords Report Stage. These amendments concerned Part 1 (Levelling Up Missions), Chapter 1 of Part 3 (Planning Data) and Part 6 (Environmental Outcomes Reports).
6. SLCM (No.4) was laid on 16 August 2023 to deal with amendments concerning Part 1 (Levelling Up Missions) and Part 6 (Environmental Outcomes Reports). The Legislation, Justice and Constitution Committee laid its report on the SLCM (No.4) on 29 September 2023. The Welsh Government will respond to that report ahead of the Plenary Debate on legislative consent, which is due to take place on 17 October 2023.
7. The tabled amendments can be found at <https://bills.parliament.uk/bills/3155/publications>

Policy Objectives

8. The UK Government’s stated policy objective is to reverse geographical disparities between different parts of the UK by spreading opportunity more equally. Under this, the Bill has four overarching objectives:
 - i. To place a duty on the UK Government to set, and report annually on progress towards achieving, levelling up missions to reduce geographical disparities across the United Kingdom;
 - ii. To create a modern framework to support the most radical devolution of powers in modern times through the creation of a new model of combined county authorities to support delivery of the UK Government’s levelling up mission that

'by 2030, every part of England that wants one will have a devolution deal with powers at or approaching the highest level of devolution and a simplified, long-term funding settlement';

- iii. To deliver a new suite of powers for local authorities to regenerate their towns through high street rental auctions and reforms to compulsory purchase to support delivery of the UK Government's levelling up mission that 'by 2030, pride in place, such as people's satisfaction with their town centre and engagement in local culture and community, will have risen in every area of the UK, with the gap between top performing and other areas closing'; and
- iv. To create a planning system which delivers more beautiful and greener homes, with the associated infrastructure and democratic support that neighbourhoods want and deserve.

Summary of the Bill

9. A summary of the Bill was provided in the original revised Legislative Consent Memorandum (LCM) laid on 25 November 2022.
10. The Bill as introduced made provision for the setting of levelling-up missions and reporting on progress in delivering them; about local democracy; about town and country planning; about Community Infrastructure Levy; about the imposition of Infrastructure Levy; about environmental outcomes reports for certain consents and plans; about regeneration; about the compulsory purchase of land; about information and records relating to land, the environment or heritage; for the provision for pavement licences to be permanent; about governance of the Royal Institution of Chartered Surveyors; about vagrancy and begging; and for connected purposes.
11. Further information about the Bill can be found within the first LCM laid <https://senedd.wales/media/5gdfx1u1/lcm-ld15356-e.pdf>

Update on position since the publication of the Legislative Consent Memorandum (No.4)

12. On 28 September 2023 the UK Government tabled amendments for consideration at House of Lords Final Stages. These amendments concern Part 6 (Environmental Outcomes Reports). These amendments affect provisions contained within the Bill as introduced that fall within the legislative competence of the Senedd.

Amendments tabled to the Bill for consideration at House of Lords Report and Final Stages for which consent is required.

Environmental Improvement Plan provisions

Amendment 104

13. Amendment 104 inserted into clause 143 (in the Bill as amended at Committee Stage) reference to the current “environmental improvement plan” (within the meaning of Part 1 of the Environment Act 2021). The effect of this amendment would place a duty on the Welsh Ministers (as an “appropriate authority”) to have to consider the current Environmental Improvement Plan (within the meaning of Part 1 of the Environment Act 2021) when making Environmental Outcomes Reports (EOR) regulations when acting alone or jointly.
14. Discussions had taken place between Welsh Government and UK Government officials regarding this proposed provision. Welsh Government officials advised the UK Government that the equivalent provision in Wales to the “national natural resources policy” was provided for by section 9 of the Environment (Wales) Act 2016. Welsh Government officials requested that amendment 104 reflect this, however, this was overlooked at that time and amendment 104 was agreed during Report Stage.
15. Discussions have been ongoing since and the UK Government has tabled a motion in lieu of Lords Amendment 90 to rectify this.

Motion in lieu of Lords Amendment 90

16. The motion in lieu of Lords Amendment 90 will amend the reference to “current environmental improvement plan” in the context of EOR regulations made by the Welsh Ministers. The amendment requires the Welsh Ministers to have regard to “national natural resources policy” within the meaning of section 9 of the Environment (Wales) Act 2016 and not the current Environmental Improvement Plan (within the meaning of Part 1 of the Environment Act 2021).

Commencement provisions

Amendment 315

17. Chapter 1 of Part 3 and Part 6 of the Bill contain powers that are exercisable concurrently by the Secretary of State and the Senedd/Welsh Ministers. During ongoing discussions with the UK Government, at the request of the Welsh Government, a new clause was inserted into the Bill (see clause 245 of the Bill, as amended at Report Stage) that would remove the restrictions on the Senedd in relation to these concurrent powers by adding the Bill to the list of enactments in paragraphs 9(8)(b) and 11(6)(b) of Schedule 7B of the Government of Wales Act. The effect of this would mean the Senedd can alter the concurrent arrangements in future without needing the UK Government’s prior agreement.
18. Amendment 315 deals with the commencement provisions for (now) clause 245 and as tabled, it provided that clause 245 would come into force on such day as the Secretary of State may appoint by regulations. This provision was agreed shortly after tabling during Report stage.
19. This commencement provision was not acceptable to the Welsh Government, and during ongoing discussions, the UK Government agreed to table a motion in lieu of Lords Amendment 285 to address this.

Motion in lieu of Lords Amendment 285

20. The motion in lieu of Lords amendment 285 will mean that clause 245 will come into force at the end of the period of two months beginning with the day on which this Act is passed.

Welsh Government position on the proposed amendments

21. In SLCM 4 I identified that the provisions in respect of environmental outcomes reports are beneficial, and I was in support of their application to Wales.
22. The amendments made here mean that the legislative framework for making EOR regulations is specific to Wales and the commencement amendments ensure our devolution settlement is not affected.

Financial implications

23. There are no financial implications for Wales in relation to the amendments.
24. The financial impact of the Bill as affects Wales is summarised in the LCMs laid on 28 September and 25 November.

Conclusion

25. I still consider the overall provisions in respect for EOR are appropriate for Wales and these amendments resolve issues in the drafting that mean I recommend the Senedd consents to this Bill.

Julie James MS
Minister for Climate Change
05 October 2023

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

Agenda item 4.5


Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/330/2023

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

3 October 2023

Dear Huw,

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

I also attach the Welsh Government's Justice System Impact Identification (JSII) form for the Bill as considered by the Ministry of Justice.

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

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

Yours sincerely,



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

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

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

Annex A

Question 1

Section 57 relates to the granting or refusal of infrastructure consent. In your letter to us on 11 September 2023, you stated that you envisage subordinate legislation made under this section will specify that the Welsh Ministers “must only make an order which contains minor changes”. You further stated that “whilst on the face of the Bill there is reference to changes to an application being “material”, the regulations will provide clarification that any changes made should only be minor in nature”. If changes are to be minor, why is the power drafted much wider than is necessary to achieve its purpose?

Response

The intention is that subordinate legislation will specify that an order made by the Welsh Ministers may only include minor changes to the draft order applied for. Even minor changes can be material in some respects and therefore drafting is appropriate.

Question 2

Section 82 relates to the publication and procedures attached to infrastructure consent orders. By virtue of paragraph 29 of Schedule 1, an order can create a criminal offence. Such an order will be subject to the negative scrutiny procedure. Why has the affirmative procedure not been attached to this power?

Response

The Order that is made relates to the granting of an individual development and any criminal offence is relevant and necessary for the granting of the consent. The criminal offences that can be created by an Infrastructure Consent Order are very limited in scope. They will be of local effect and there are limited sentencing powers that may be attached to them.

Because of the pre application processes built into the system, applicants will need to engage with all stakeholders and local communities about any criminal offences they wish to have included in the Order.

The appropriateness for any offences will be one of the aspects that will be scrutinised by the examining authority. These provide suitable safeguards to ensure this power is used appropriately and it will be open to the Welsh Ministers to issue an order without offences that are in the order that was applied for using the power in section 57 of the Bill.

Question 3

Section 88 relates to the procedure for changing and revoking infrastructure consent orders. What persons will always be given notice of a change to or revocation of an infrastructure consent order under section 88(6)?

Response:

The ability to seek an amendment or revocation of an infrastructure consent order has many potential avenues, which presents a degree of complexity. For example, there could be a request to revoke an order from an applicant or LPA. Alternatively, the Welsh Ministers have the power to revoke an order unilaterally.

It is therefore difficult to anticipate who would always be given notice of an amendment or revocation of an infrastructure consent order.

However, as a matter of public law and natural justice, there would always be a requirement to provide notice to the person who originally applied for the infrastructure consent order.

Based on these principles of public law and natural justice, it was concluded it would not be necessary to place this requirement on the face of the Bill.

Question 4

Which public authorities will be consulted under section 126(1) and why are they not included on the face of the Bill?

Response:

It is intended that the list of authorities and bodies to be identified as statutory consultees will be set out in subordinate legislation following a consultation exercise, to ensure that all relevant bodies are engaged in the process. However, it is anticipated many of the authorities and bodies currently consulted as part of the Development of National Significance process will also be statutory consultees for the purposes of this new consenting regime where a development is on land.

It is envisaged that Natural Resources Wales would be consulted in all instances, however, more specialised public bodies would be consulted under certain circumstances. For example, the Ministry of Defence would 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.

The list of statutory consultees is considered suitable for regulations, rather than being placed on the face of the Bill as information on consultations with a wide range of public bodies will present a significant level of detail and will also need to be flexible to respond to any future changes in procedure or organisational responsibilities.

Question 5

In question 6 of our letter to you on 27 July 2023 we queried the ability to “legislate swiftly” as a justification for the application of the negative procedure to a number of delegated powers in the Bill. You provided a response in respect of section 127(2)(c) and 127(4). Could you confirm for the record how the need to act “swiftly” is relevant to the choice of procedure for the direction power in section 127(3)?

Response:

Section 127(3) clarifies that directions may relate to specific applications or authorities or to applications or authorities generally. For example, the Welsh Ministers may issue a direction on the way notification is carried out on a particular type of infrastructure project due to changes to a website where the applications register is hosted, or amendments to the statutory consultee list.

It would be beneficial for all parties involved that any adjustments are carried out promptly, otherwise the process may continue to pose an unnecessary burden to those involved. The ability to act swiftly will help ensure there are no unnecessary delays or duplication of work.

Question 6

Section 128 includes a power for the Welsh Ministers to direct that requirements under the Bill do not apply in specified circumstances. Why is it appropriate to include this regulation-making power rather than to make provision on the face of the Bill which set out the specific circumstances?

Response

The consenting regime introduced by the Bill is intended to provide for one process to be used for consenting a wide range of infrastructure developments and in a wide range of different circumstances.

I set out in the Statement of Policy Intent why we need this power and that due to the wide variety of projects and circumstances a level of flexibility would be vastly beneficial to the process.

This power is not uncontrolled, it is limited to areas specified in regulations. This will mean that all stakeholders can influence where this power should or should not be used., It enables the power to respond to changes in the system, or reflect evidence that comes forward during the operation of the system. I believe it is appropriate to use subordinate legislation to limit this power subject to draft affirmative procedure.

Question 7

In your letter of 11 September your written answer in relation to section 128 states that “under no circumstances is it intended the subordinate legislation will enable a direction to be issued to disapply requirements which protect rights or ensure no offences are committed”. Will this provision in the Bill, if and when enacted, prevent a future Minister from using this power to disapply requirements which protect rights?

Response

The direction making power is limited to areas specified in Regulations, with these regulations subject to the draft affirmative procedure. The consultation and Senedd scrutiny of those regulations will provide appropriate safeguards. As I detail above, I do not think it is possible to set out provisions on the face of the Bill where a direction may be issued but if you have suggestions for improvements to this section, I would be happy to consider them.

Question 8

Section 137 provides for restrictions to apply to the making of regulations and orders under the Bill. What is the purpose of the drafting of this provision and why has it been included given the operation of section 154 of the *Government of Wales Act 2006*? Why does section 137 only refer to some of the provisions of Schedule 7B to the 2006 Act and not others?

Response

Section 137 of the Bill sets out the restrictions on the scope of the subordinate legislation powers when making provisions that could confer functions on, or modify or remove the functions of, a Minister of the Crown, government department or other reserved authority.

The restrictions in paragraphs 8, 10 and 11 of Schedule 7B to the Government of Wales Act 2006 mentioned in section 137 are of fundamentally different character to other restrictions in Schedule 7B. Most restrictions in Schedule 7B to GOWA 2006 rule things out completely. The restrictions in paragraphs 8, 10 and 11 say that certain things cannot be done unless consent is obtained or consultation is carried out. This has consequences for how best to achieve clarity in the drafting of provisions in Senedd Acts that confer functions on public authorities generally, modify or remove functions of public authorities generally or confer powers to do those things in regulations.

Whilst section 154 of the Government of Wales Act 2006 would have the same effect if section 137 were not in the Bill, it would not be possible to work out from reading the Bill, in combination with GOWA 2006, whether any power in the Bill that appears to authorise the conferral, modification or removal of functions could be used to confer functions on, or modify or remove the functions of, reserved authorities.

In order for a person to understand the scope of the regulation making powers they would need to search for evidence of whether consent had been obtained or

consultation undertaken, and if it had been they would also need to review the correspondence between the Welsh Ministers and the relevant Minister of the Crown to fully understand the provision that could be made in subordinate legislation under the Bill.

By including section 137, the extent of the Welsh Ministers' power to make subordinate legislation is clear from reading the Bill alone and more accessible to users of the legislation.

Question 9

Should the Bill be passed and enacted, when do you envisage all provisions of the Bill and the accompanying subordinate legislation being fully in force?

Response:

The principles of the Bill (i.e. the creation of Significant Infrastructure Project) and the powers to make regulations to implement the Bill will come into force the day after the Bill receives Royal Assent. We anticipate the implementation period will take a year, subject to the outcome of consultations on subordinate legislation.

Question 10

In your view, will further primary legislation be required in the near future in the field of planning? What are the timescales for the preparation and introduction of this proposed legislation?

Response:

This Bill sits outside Town and Country planning, however there is no intention to introduce any other primary planning legislation in this Senedd term other than the Consolidation Bill.

The planning consolidation Bill will bring together provisions from the multiple pieces of legislation that currently set out the legislative framework for planning in Wales. It is hoped that this will enable people using the planning system in Wales to refer to a single, fully bilingual act containing all the relevant law. It is anticipated that the Planning Consolidation Bill will be introduced to the Senedd during 2024.

Question 11

What consideration has been given to accessibility and alignment of legislation in this area, particularly given the future legislative landscape includes a planning consolidation Bill?

Response:

The Bill is a standalone piece of legislation and therefore the language used has been drafted with accessibility in mind.

The drafting of the Bill will ensure that the existing planning system and associated legislation are largely unaffected.

The Bill contains consequential provisions to amend existing legislation to ensure alignment within the area of planning and infrastructure. The exercise of these consequential modification powers cannot be used widely and are limited. It cannot be used to do anything contrary to the provisions of the Bill that the Senedd will have considered and approved.

The Planning Consolidation Bill will incorporate any changes to wider legislation made by this Bill which are within the scope of the consolidation project.

Question 12 (in cover letter)

[please explain] How the Bill will enable the Welsh Government to take on further devolved powers and what policy areas those powers will cover?

Response

The Bill is designed so that there is sufficient flexibility to take account of new and emerging technology or were the Senedd received legislative competency above the existing thresholds.

The reference in the Explanatory Memorandum over aspirations for further devolved powers was not intended to refer to any specific matters but reflects that the process established by the Bill is fit for purpose and ensures that Wales can deal with large scale infrastructure projects in a timely and effective manner.

Notwithstanding that, my letters to the UK Government clearly set out two areas which the Bill could cover.

Offshore region

The Bill does not extend beyond the territorial sea, which is approximately 12 nautical miles offshore as the Senedd only has legislative competence in relation to 'Wales', as defined in the Government of Wales Act.

The Welsh Ministers retain executive competence in the Welsh zone (an area between roughly 12 and 200 nm from the coast of Wales) to consent to energy generating stations up to 350MW under the process set out in the Electricity Act 1989. There is therefore no fundamental difference in 'who' will consent a generating station offshore – however the procedure will be different depending on where the project is located.

My request for legislative competence in this area was to address this issue and to enable the Bill to function effectively in streamlining and modernising the consenting process in this region?.

Battery storage

In terms of Energy storage, the Senedd's legislative competence where it concerns the consenting of energy is capped at 350MW (excluding onshore wind).

Above this threshold the UK Nationally Significant Infrastructure Project (NSIP) regime would be the consenting mechanism. However, in 2020 storage was removed from the NSIP process which resulted in an anomaly between the operation of the two regimes.

Therefore, where a scheme which either solely or mainly generates electricity from storage exceeds 350MW, it is not clear whether the Senedd would have power to legislate how such schemes are consented. The Welsh Ministers, through Local Planning Authorities, would retain executive competence to consider such schemes under the Town and Country Planning Act 1990 onshore, which may not be appropriate for all such schemes.

Again, my request to the UK Government was seeking clarity in this area.

Question 13 (in subsequent letter)

[Can you] provide us with an update on intergovernmental discussions and agreements reached relating to the UK Government's Energy Bill since the Senedd voted and did not agree to provide legislative consent for the relevant provisions in the Bill.

Response

I met with Minister Bowie on 13 September 2023 following the vote in the Senedd to withhold consent to the UK Energy Bill. I repeated my concerns with respect to the UK Government legislating on matters within our devolved competence without the consent of the Senedd. However, it was clear that the UK Government intend to continue the progress of the Bill and their intention for the Bill to receive Royal Assent in October.

During the meeting I was clear that in terms of policy direction set out in the Bill the Welsh Government is broadly aligned with the UK Government. Given this I highlighted my desire to work constructively to implement the Bill to ensure that the needs of Wales are appropriately taken into account. Minister Bowie stated his ambition to work constructively with the Devolved Governments and fulfil the requirements in the Bill for consultation before new regulations and polices come into effect.



Llywodraeth Cymru
Welsh Government

Justice System Impact Identification

Form

Overview

Welsh Government officials are submitting this form

- ~~• For information and discussion about the implications~~
- For assessment by the Ministry of Justice
(Delete the statement which does not apply)

The Welsh Government’s assessment of the impacts of this legislation on the justice system is that it has

- ~~• No or negligible potential impact~~ (in this case complete the JSII form only up to and including question 4.5)
- Low potential impact
- ~~• Medium or High potential impact~~
(Delete those which do not apply)

This is because:

The proposed legislation, although it introduces new offences and civil proceedings, brings together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime. The new form of consent will be known as an ‘Infrastructure Consent’ (“IC”) for development or works with the objective of constructing and/or changing use to create a ‘Significant Infrastructure Project’ (“SIP”). The categories of infrastructure which the process is mainly expected to capture are energy, transport, waste and water, with minimum thresholds requiring only the most significant of such infrastructure to be captured by the process.

The number of enforcement cases is anticipated to be minimal based on the current understanding that there have been no equivalent prosecutions or enforcement in relation to Developments of National Significance and Development Consent Orders which are the regimes the proposed powers are based upon. It is also estimated that there would only be around five Infrastructure Consent applications a year and therefore enforcement figures are likely to be low.

The Civil Procedure Rules would need to be updated to reflect the timescales for Judicial review. There are no planning specific sentencing guidelines and so there would not be a need to update guidance. It is considered that there would be no cost associated with the proposals to the justice system.

1. Bill Title

1.1. Working title of Bill

Infrastructure Consent and Planning (Wales) Bill

2. Policy lead contact details

2.1. Name / Job Title

2.2. Department / office /
business area

Planning Directorate

2.3. Telephone number

2.4. Email address

2.5. a) Date of submission of
this form

Date of Submission: 20 January 2023

2.6. b) When is a response
required?

Response Requested by: 24 March 2023

3. Additional contact details

3.1. Legal Contact

3.2. Telephone number

3.3. Email address

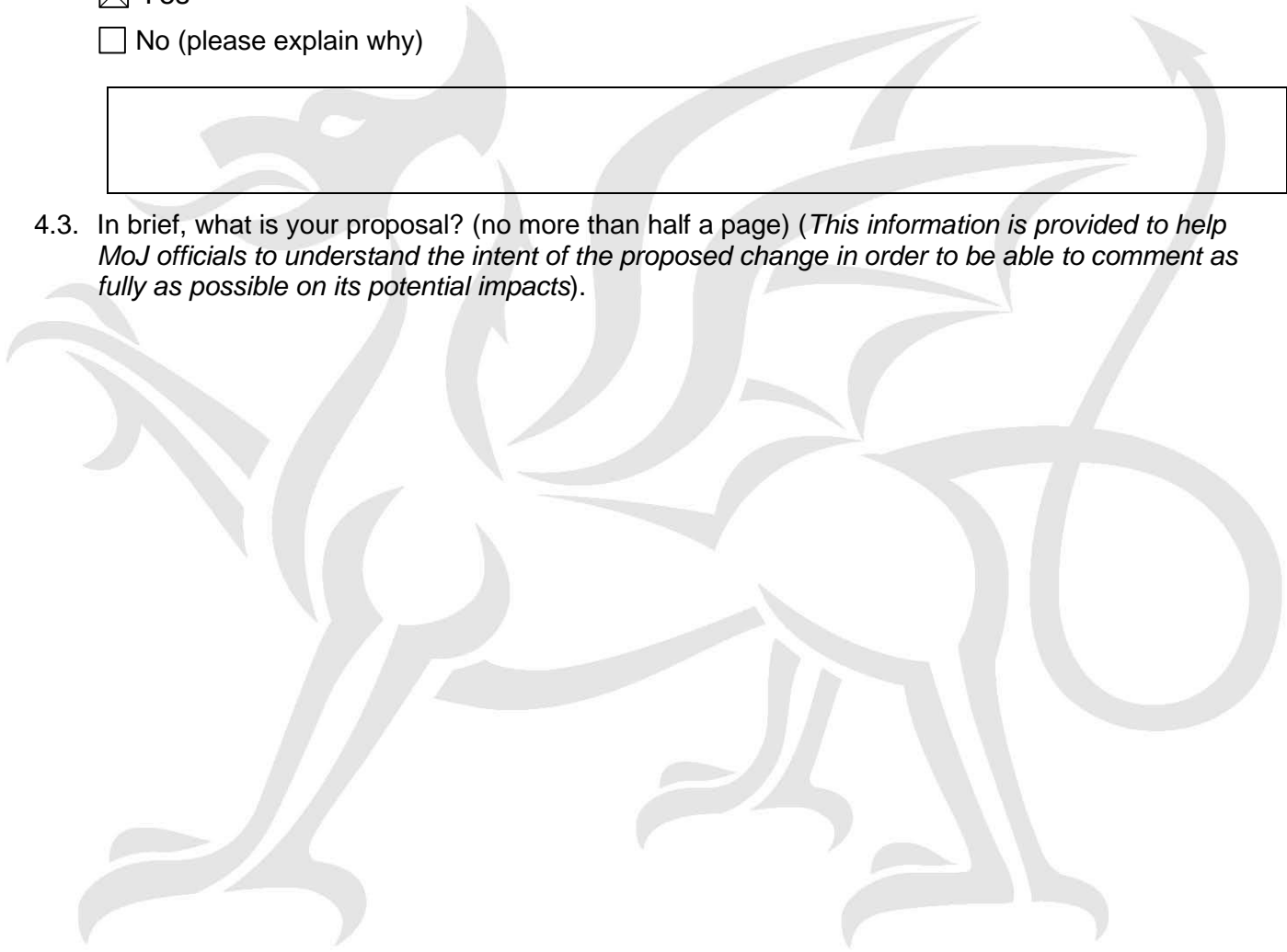
4. General information

- 4.1. Please provide a) contact details of your lead official for the appraisal of costs or savings and;
b) the Justice Policy lead if known.

- 4.2. Have you notified the judicial office of your proposals by completing Desk Instruction 7? (please seek advice from your legal advisors)

- Yes
 No (please explain why)

- 4.3. In brief, what is your proposal? (no more than half a page) *(This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts).*



Legislation is required for the purpose of establishing a unified process for the consenting of the development of infrastructure in Wales and in Welsh waters. This primary legislation would create a bespoke and flexible consenting process for infrastructure projects in Wales, detaching their consenting from current arrangements and into a new form of consent, which contains the full range of authorisations required to enable a development. This would simplify the process for developers, communities and consultees as the current procedures often vary according to the different consenting regimes.

The new form of consent will be known as an 'Infrastructure Consent' ("IC") for development or works with the objective of constructing and/or changing use to create a 'Significant Infrastructure Project' ("SIP"). The categories of infrastructure which the process is mainly expected to capture are energy, transport, waste and water, with minimum thresholds requiring only the most significant of such infrastructure to be captured by the process.

As decisions made on an IC will be made by the Welsh Ministers, all decisions will be final. The only available avenue for challenge will be through the courts, which is the current mechanism for planning appeals and applications called in by the Welsh Government. This provides a 6 week period by which the decision may be challenged in the High Court under judicial review.

Local Planning Authorities are proposed to be the main onshore enforcement authority, with the Welsh Ministers as the relevant authority offshore. Enforcement provisions will be mainly based on existing enforcement provisions for large infrastructure developments within the Planning Act 2008, and partially the Town and Country Planning Act (TCPA) 1990 and the Local Government Act 1972. The proposed offences and civil proceedings are set out in further detail within this form.

Current consenting regimes have differing levels of consistency and the processes are spread over a series of Acts which have been modified significantly, which can be confusing for the user and duplicate work. This can significantly increase the costs of applications and can act as a barrier to bringing forward proposals and cause frustration and confusion.

The legislation will impact upon all those involved in the planning system, including applicants, determining authorities, consultees and communities. The objective is to improve access to the planning system for all by simplifying and consolidating the existing fragmentary planning regime.

4.4. Please indicate when you will be undertaking a post-implementation review of this legislation and the enforcement actions arising from it?

It is anticipated that the proposed consenting regime will be fully operational by Mid-2025.

The monitoring and evaluation of the legislation will be undertaken in a number of ways including:

- Research, evaluation and data collection techniques;
- Evaluation project within 3 years of implementation of the regime to measure outcomes;
- Statutory targets set for the determination of applications for Infrastructure Consent;
- Formal monitoring of Planning and Environment Decisions Wales (PEDW) in relation to Infrastructure Consent applications.

4.5. Is this legislative proposal similar in any way to legislation being brought forward in England? If so, please name that legislation and identify below any ways in which the legislation brought forward in Wales will differ.

If the legislation has no substantive difference from that in England, there may be no need to complete all parts of the JSII form.

No.

4.6. Please specify the name of any other related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

The aspects of the Bill covered in this JSII will be brought into force by commencement order(s). Subordinate legislation in relation to offences will be subject to the negative procedure. There is no procedure for the statutory instrument in section 82(4) [J511(4)].

4.7. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

- a) It is anticipated that all aspects of the legislation to enable the new consenting regime to operate will be in force by Mid-2025. This is dependent on the date of Royal Assent.
- b) This is unknown as this will depend on compliance with the various powers but would not be before the consenting regime is operational.

4.8. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

- Individuals
- Private Institutions (e.g. Businesses)
- Public Institutions (e.g. Government Departments)

The persons affected by these provisions include applicants, the landowner (if not the applicant), any occupier of the land and any person carrying out operations on the land or using it for any purpose.

The proposals will give local planning authorities powers to undertake enforcement action, including rights to enter land and issuing notices.

The proposals will give Welsh Ministers powers to undertake enforcement action, including rights to enter land, issuing notices, applying for injunctions and creating offences. The creation of offences is limited to being in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour.

4.9. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the MoJ administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- Wales only
- England
- Scotland
- Northern Ireland

Other (Please Specify)

The legislation will only apply to Wales.

4.10. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland;-

- a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?
- b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

The provisions will apply to both those resident to, and those living outside of Wales, as enforcement action is essentially taken out against the landowner, applicant, or those undertaking any unauthorised works regardless of residence. This reflects the current legislative approach.

A communications plan supporting the Bill outlines the various methods to ensure relevant stakeholders are aware of the legislation and its implications for them.

4.11. What are the options under consideration and how does this change the existing situation?

There are 4 options under consideration, which are set out below:

Option 1 - Do nothing. Applications for infrastructure to be determined according to the current legislative arrangements. No change to the current justice system, this option would retain a fragmented consenting regime which does not provide the one-stop shop the development industry seeks.

Option 2 – Establish a new form of ‘Welsh Infrastructure Consent’ for development or works with the objective of constructing and/or changing use to create a ‘Welsh Infrastructure Project’. This is the preferred option and the details of this are included in this form.

Option 3 – Establish an independent consenting body to determine ‘Welsh Infrastructure Consents’. This option would use the same approach to the justice system as Option 2.

Option 4 – Establish a streamlined regime to be determined by a consenting unit within Welsh Government. There would be no change to the current justice system in this option.

The anticipated scale of impact is anticipated to be minimal due to nature and scale of Infrastructure Consent applications. This is discussed in more detail in the sections below.

4.12. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

It is proposed that disputes in relation to compensation including:

- Whether compensation should be paid;
- How much compensation should be paid;
- Apportionment of compensation;
- Compensation in relation to damage to land or property.

are to be referred to and dealt by the Upper Tribunal.

Criminal Offences and Civil Penalties and Sanctions

4.13. Which of the following are you creating /amending? (Tick all that apply)

- Civil Sanctions
- Fixed Penalties
- Civil Orders
- Criminal Sanctions
- Criminal Offences
- Other (Please Specify)

4.14. If you are creating a criminal offence, is it:

- Summary Only (heard before a bench of lay magistrates / judge only)
- Triable Either Way
- Indictable Only (heard before a judge and jury)

In cases where the maximum penalty is to be an unlimited fine, and a triable either way offence is warranted, please explain why a summary only offence is not considered appropriate. This is especially relevant if few, if any, cases are anticipated.

Four of the offences are proposed to be triable either way, see section 4.17 below. The proposals are to bring together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime. The proposed approach reflects the existing legislation in the Planning Act 2008, TCPA 1990 and the Local Government Act 1972 because enforcing authorities are familiar with those existing processes, there would be no need to train those authorities in enforcing authorities in dealing with different types of offence, and those existing methods of enforcement have been relatively successful to date in acting as deterrents in the context of major infrastructure projects. The changes from summary only to triable either way reflect the analysis undertaken following the Law Commission report for the consolidation of planning law in Wales¹.

4.15. Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be an increased / reduced need for enforcement action? Please also include the anticipated costs of enforcement and how it will be funded.

Local planning authorities and the Welsh Ministers will be responsible for undertaking enforcement action. There is not expected to be an increased need for enforcement action as the policy proposals seek to bring various existing consenting processes under one, consistent process. Therefore, there will likely be no change to levels of enforcement action already undertaken.

4.16. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

The proposed provisions replicate existing provisions in the Planning Act 2008 and TCPA 1990. We are not aware of any prosecutions under the existing legislation in relation to Developments of National Significance or Development Consent Orders.

The number is anticipated to be low, due to the potential size and scale of development captured under the unified consenting process resulting in few applications being submitted each year (estimated at around 5 per year) and the fact that any formal enforcement action undertaken via the planning system is generally a last resort (in the first instance, the enforcing authority would usually attempt to rectify and potential breaches of planning control through informal discussions).

4.17. Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

This means that seven of the offences are summary only, to be heard by the Magistrates' court. Four of the offences are summary or indictment, to be heard either by the Magistrates or Crown Courts, we anticipate the vast majority of cases (if they do go court) would be heard in the Magistrates' Court.

Proposed Offence	Proposed Mode of Trial	Existing legislation (Planning Act 2008 unless otherwise stated)
26(5)[J225]	Summary	Same as 52(9)
26(6)[J225]	Summary	Same as 52(9)
41(6)[J042A]	Either Summary or Indictment	Change from summary to either way and removed power of imprisonment. s.250(3) (Local Government Act 1972)
104[J460]	Either Summary or Indictment	Same as s.160
105[J461]	Either Summary or Indictment	Same as s.161
109(2)[J465]	Summary	Same as s.165(2)
112(3)[J468]	Summary	Same as s.168
112(5)[J468]	Either Summary or Indictment	Change from summary to either way s.168
115(2)[J470]	Summary	Same as s.170(6)
120[J478]	Either Summary or Indictment	Same as s.171G (Town and Country Planning Act 1990)
125(6)[J450]	Summary	Same as s.53(5)
Sch.1 Para 30[J504s]	Summary	Same as Sch. 5 Para 32B
Sch. 3 Para 10[J]	Not applicable - disapplying offences	

4.18. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

s.26(5)[j225]

A person convicted of non-compliance with a notice requiring information about interests in the land, or providing false information is liable (on summary conviction) to a fine.

s.26(6)[j225]

A person convicted of providing false information to notice requiring information about interests in the land is liable (on summary conviction or conviction on indictment) to a fine.

s.41(6)[J042A]

A person convicted of non-compliance with a summons to a local inquiry, or they alter, suppress, conceal or destroy a required document is liable (on summary conviction or conviction on indictment) to a fine.

s.104[J460]

A person convicted of undertaking development without the required infrastructure consent is liable (on summary conviction or conviction on indictment) to a fine.

s.105[J461]

A person convicted of breach of an infrastructure consent order or failure to comply with an infrastructure consent order is liable (on summary conviction or conviction on indictment) to a fine.

s.109(2)[J465]

A person who intentionally obstructs a person who has the right of entry is liable (on summary conviction) to a fine.

s.112(3)[J468]

A person convicted of non-compliance with an information notice within 21 days, unless they have a reasonable excuse is liable (on summary conviction) to a fine.

s.112(5)[J468]

A person convicted of providing false or misleading information when complying with a requirement of an information notice is liable (on summary conviction or on a conviction on indictment) to a fine.

s.115(2)[J470]

A person convicted of intentionally obstructing a person who has the power to enter the land and take steps, following the period within a notice of unauthorised development, is liable (on summary conviction) to a fine.

s.120[J478]

A person convicted of non-compliance with a temporary stop notice, which may be in relation to one or more period for the same notice, and they could not prove they did not know or reasonable be expected to know about it, is liable (on summary conviction or on conviction on indictment) to a fine. In determining the amount of the fine, the court must have regard to any financial benefit which has accrued or appeared to accrue to the person convicted.

s.125(6)[j450]

A person convicted of wilfully obstructing a person who is authorised by the Welsh Minister to enter land in connection with an infrastructure consent order is liable (on summary conviction) to a fine.

Sch.1 Para 30[J504s]

The creation of offences (under Sch. 1 Para 30) in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour would be liable (on summary conviction) to a fine not exceeding level 3 on the standard scale. The person would not be liable to imprisonment.

5.

Summary Table

Proposed Offence	Proposed Fine	Existing legislation (Planning Act 2008 unless otherwise stated)
26(5)[J225]	Unlimited	Change from not exceeding level 5 on standard scale. s.52(6)
26(6)[J225]	Unlimited	Change from not exceeding level 5 on standard scale. s.52 (7)
41(6)[J042A]	Unlimited	Change from not exceeding level 3 on standard scale. s.250 (Local Government Act 1972)
104[J460]	Unlimited	Change from not exceeding 50,000 for summary trial, no change for trial by indictment. s.160
105[J461]	Unlimited	Change from not exceeding 50,000 for summary trial, no change for trial by indictment. s.161
109(2)[J465]	Unlimited	Same 165(2)
112(3)[J468]	Unlimited	Same 168
112(5)[J468]	Unlimited	Change from not exceeding level 5 on standard scale. s.168
115(2)[J470]	Unlimited	Same as 170(6)
120[J478]	Unlimited	Same as 171G (Town and Country Planning Act 1990)
125(6)[J450]	Unlimited	Same as 53(5)
Sch.1 Para 30[J504s]	Not exceeding level 3 on standard scale	Same as Sch. 5 Para 32B

5.1. Please itemise details of any proxy or current offences and / or penalties on which the proposed penalties are based. If mirroring / comparing existing legislation, ensure that reference is made to the most recent versions of the legislation (via Westlaw, the online legal research service) as this is not always available online. Please refer to page 8 of the JSII guidance on how to obtain data relating to the number of cases brought forward under the legislation you have identified.

The proposed offences and the existing legislation that they are based upon are set out in the table below. See also section 4.19.

Proposed Legislation Section	Existing Legislation based on	Offence
26(5) [J225]	52(6) Planning Act 2008	Non-compliance with a notice requiring information about interests in the land
26(6)[J225]	52(7) Planning Act 2008	Providing false information to notice requiring information about interests in the land
41(6) [J042A]	250(2) – (3) Local Government Act 1972	Non-compliance with a summons to a local inquiry, or they alter, suppress, conceal or destroy a required document.
104 [J460]	160 Planning Act 2008	Undertaking development without the required infrastructure consent.
105 [J461]	161 Planning Act 2008	Breach of an infrastructure consent order or failure to comply with an infrastructure consent order.
109(2) [J465]	165(2) Planning Act 2008	Intentional obstruction of a person who has the right of entry.
112(3) [J468]	168(1) Planning Act 2008	Non-compliance with an information notice within 21 days, unless they have a reasonable excuse.
112(5)[J468]	168(4) Planning Act 2008	Providing false or misleading information when complying with a requirement of an information notice.
115(2) [J470]	170(6) Planning Act 2008	Intentional obstruction of a person who has the power to enter the land and take steps, following the period within a notice of unauthorised development.
120 [J478]	171G Town and Country Planning Act 1990	Non-compliance with a temporary stop notice, which may be in relation to one or more period for the same notice, and they could not prove they did not know or reasonable be expected to know about it.
125(6) [J450]	53(5) Planning Act 2008	Wilful obstruction of a person who is authorised by the Welsh Minister to enter land in connection with an infrastructure consent order
Sch. 1 Para 30 [J504s]	Sch.5 Para 32B Planning Act 2008	Creation of offences in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour. This is limited by s.58(7)[J504(7)] which means that an Infrastructure Consent Order cannot create an offence, give a power to create an offence or change an existing power to create offences.
Sch. 3 Para 10	58(4) & 118(2) Historic Environment (Wales) Bill as introduced 4 July 2022.	Exception to offences of damaging certain monuments of special historic interest. Disapplication of offence of intentionally damaging a listed building.

5.2. Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.



The equivalent existing power for offences is set out in the table above (para 4.19). The impacts to Civil proceedings are set out below:

Proposed Legislation Section	Existing Legislation based on	Civil proceedings
92[J139]	Sch. 6 Para 7 Planning Act 2008	Compensation - Disputes in relation to apportionment of costs as a result of a revocation made to the Upper Tribunal
95[J142]	Sch. 6 Para 7 Planning Act 2008 (varied)	Compensation - Disputes in relation to compensation for revocation made to the Upper Tribunal
98[J513]	118 Planning Act 2008	Legal challenges relating to applications for orders granting development consent
100(5)[J207]	106C Town and Country Planning Act 1990	Legal challenges relating to infrastructure consent obligations.
103(4)[J601]	152 Planning Act 2008	Compensation in case where no right to claim in nuisance
108[J464]	164 Planning Act 2008	Power for a justice of the peace to issue a warrant to enable entry to land for enforcement purposes.
109(6)[J465]	165(5) Planning Act 2008	Rights of entry – disputes in relation to compensation for rights of entry
114[J472]	170 (via regs under (4)) Planning Act 2008 s.276, 289, 294 Public Health Act 1936	Execution of works required by notice of unauthorised development – order requiring steps to be taken in relation to a notice of unauthorised development
122[J481]	171 Planning Act 2008	Injunctions – against an actual or expected activity which is an offence under j460 or j461
124(4)[210]	95(4)&(5) Planning Act 2008 250 Local Government Act 1972	Orders relating to costs of parties on examination proceedings and recovery of costs.
125(9)[J450]	53(8) Planning Act 2008	Rights of entry – disputes over costs, damage to land

Creation of the offences and civil proceedings is considered to be both proportionate and necessary to deliver the Infrastructure Consent and Planning (Wales) Bill objectives. The proposed penalties reflect existing legislation in the Planning Act 2008, the TCPA 1990, the Local Government Act 1972 and the Public Health Act 1936. The proposals are to bring together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime which would otherwise be subject to the offences and penalties within the existing legislation as outlined in this form. It is therefore considered that this would not result in additional costs to the justice system. The approach taken in s.124(4) reflects the powers in the Planning Act 2008 and the Local Government Act 1972, reflects the drafting style for the equivalent provisions in the emerging Historic Environment (Wales) Bill², which is currently in the Senedd to ensure consistency and reflect modern drafting.

- 5.3. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

The impact on an individual found guilty reflects the current situation for the planning related offences these are based upon, including criminal record, fines etc.

- 5.4. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

There is a duty for the public sector in the infrastructure consenting process under the Bill, including enforcement. There is the opportunity for individuals or businesses to challenge the process using judicial review.

6. HM Courts & Tribunals Service and the Welsh Tribunals Service

Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

- 6.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

It is anticipated that there is unlikely to be an impact on the number of cases being taken to court or through the Upper Tribunal due to the proposals seek to bring various existing consenting processes under one, consistent process.

- 6.2. Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

- No
 Yes (please provide details)

The proposals are not introducing a new duty in this manner.

Appeal Rights

- 6.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or Welsh Tribunals)?

The Bill allows appeals to the Administrative Court through judicial review as there are numerous decisions in the Bill made by a public body. The Bill also allows for a reduction of time limits in which to bring proceedings for JR contained in CPR 54(1) from 3 months to 6 weeks, in line with the planning system. Although this is a new right of appeal under the legislation, the effect is that the proposals seek to bring various existing consenting processes under one, consistent process. These will be handled by HM Courts & Tribunals Service rather than Welsh Tribunals as is currently the case.

- 6.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

No.

Alternative Dispute Resolution

- 6.5. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

This already occurs in planning enforcement related matters. Formal enforcement action is often considered to be a 'last resort' by the enforcing authority, who will often use more informal / mediation tactics, depending upon the scale / type of offence. For example, if a local planning authority is notified of an unauthorised development, they may consider it more appropriate in that particular circumstance to request the developer submit a retrospective planning application, rather than immediately issue an enforcement notice, or any other type of enforcement action. However, they are also provided with the tools necessary if it is considered development should stop immediately for certain reasons, such as temporary stop notices.

Prosecution and Enforcement

- 6.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

It would likely be the Local Planning Authority that would bring any prosecutions. The Counsel General will also have powers to bring any prosecutions under section 67 of the Government of Wales Act 2006.

- 6.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

Yes, an individual can apply to High Court Enforcement Offers to recover that debt which reflects current practice.

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

- 6.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

The Bill allows for a reduction of time limits in which to bring proceedings for judicial review contained in Civil Procedure Rule 54(1) from 3 months to 6 weeks, in line with the planning system. The timescales for the implementation and operation of the proposals are set out in section 4.7.

- 6.9. Will the proposals require sentencing and / or penalty guidelines to be amended?

No.

7. Legal Aid and Court Fees

- 7.1. What evidence is there that individuals affected by your proposal will be able to secure and afford:
- legal representation and legal advice in order to secure a fair hearing of their case
 - associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

It is unlikely that Legal Aid would be available, however this would depend on the complexity of the case. The award of costs would be issued by the judge. Estimates of complexity, length and costs of cases are no possible due to the current understanding that there have been no equivalent prosecutions or enforcement in relation to Developments of National Significance and Development Consent Orders which are the regimes the proposed powers are based upon. It is also estimated that there would only be around five Infrastructure Consent applications a year and therefore enforcement figures are likely to be low.

7.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- Legal aid not available (please provide supporting evidence)

7.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

N/A

8. Prisons and Offender Management Services

Impact on HM Prison Services

8.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

No.

8.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.

No.



9. Main Justice System Impacts Identified

9.1. Volumes and Costs or Savings (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Criminal Offences and Sanctions	---	---	---		
	---	---	---		
	---	---	---		
Civil Penalties	---	---	---		
	---	---	---		
	---	---	---		
HM Courts & Tribunals Services	---	---	---		
	---	---	---		
	---	---	---		
Welsh Tribunals	---	---	---		
	---	---	---		
	---	---	---		

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Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Legal Aid	_____	_____	_____		
	_____	_____	_____		
	_____	_____	_____		
Notes:-					

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9.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):

Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs or savings p.a. (£) ³ (please provide numeric estimate and min-max range)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
Notes:					

Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored in to the financial assessment of your legislation.

³ The MoJ publish statistics on "Prison cost per place and cost per prisoner:" - see <https://www.gov.uk/government/statistics/announcements/prison-cost-per-place-and-cost-per-prisoner-2017-to-2018>

Julie James MS
Minister for Climate Change

27 September 2023

Dear Julie

Follow-up to evidence session on 25 September 2023 – Energy Bill

Thank you again for attending our meeting on 25 September 2023.

During the meeting you committed to provide us with an update on intergovernmental discussions and agreements reached relating to the UK Government's Energy Bill since the Senedd voted and did not agree to provide legislative consent for the relevant provisions in the Bill.

We would be grateful to receive a response by 18 October 2023.

Yours sincerely,



Huw Irranca-Davies
Chair

Agenda Item 4.6

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/330/2023

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

3 October 2023

Dear Huw,

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

I also attach the Welsh Government's Justice System Impact Identification (JSII) form for the Bill as considered by the Ministry of Justice.

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

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

Yours sincerely,

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

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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

Annex A

Question 1

Section 57 relates to the granting or refusal of infrastructure consent. In your letter to us on 11 September 2023, you stated that you envisage subordinate legislation made under this section will specify that the Welsh Ministers “must only make an order which contains minor changes”. You further stated that “whilst on the face of the Bill there is reference to changes to an application being “material”, the regulations will provide clarification that any changes made should only be minor in nature”. If changes are to be minor, why is the power drafted much wider than is necessary to achieve its purpose?

Response

The intention is that subordinate legislation will specify that an order made by the Welsh Ministers may only include minor changes to the draft order applied for. Even minor changes can be material in some respects and therefore drafting is appropriate.

Question 2

Section 82 relates to the publication and procedures attached to infrastructure consent orders. By virtue of paragraph 29 of Schedule 1, an order can create a criminal offence. Such an order will be subject to the negative scrutiny procedure. Why has the affirmative procedure not been attached to this power?

Response

The Order that is made relates to the granting of an individual development and any criminal offence is relevant and necessary for the granting of the consent. The criminal offences that can be created by an Infrastructure Consent Order are very limited in scope. They will be of local effect and there are limited sentencing powers that may be attached to them.

Because of the pre application processes built into the system, applicants will need to engage with all stakeholders and local communities about any criminal offences they wish to have included in the Order.

The appropriateness for any offences will be one of the aspects that will be scrutinised by the examining authority. These provide suitable safeguards to ensure this power is used appropriately and it will be open to the Welsh Ministers to issue an order without offences that are in the order that was applied for using the power in section 57 of the Bill.

Question 3

Section 88 relates to the procedure for changing and revoking infrastructure consent orders. What persons will always be given notice of a change to or revocation of an infrastructure consent order under section 88(6)?

Response:

The ability to seek an amendment or revocation of an infrastructure consent order has many potential avenues, which presents a degree of complexity. For example, there could be a request to revoke an order from an applicant or LPA. Alternatively, the Welsh Ministers have the power to revoke an order unilaterally.

It is therefore difficult to anticipate who would always be given notice of an amendment or revocation of an infrastructure consent order.

However, as a matter of public law and natural justice, there would always be a requirement to provide notice to the person who originally applied for the infrastructure consent order.

Based on these principles of public law and natural justice, it was concluded it would not be necessary to place this requirement on the face of the Bill.

Question 4

Which public authorities will be consulted under section 126(1) and why are they not included on the face of the Bill?

Response:

It is intended that the list of authorities and bodies to be identified as statutory consultees will be set out in subordinate legislation following a consultation exercise, to ensure that all relevant bodies are engaged in the process. However, it is anticipated many of the authorities and bodies currently consulted as part of the Development of National Significance process will also be statutory consultees for the purposes of this new consenting regime where a development is on land.

It is envisaged that Natural Resources Wales would be consulted in all instances, however, more specialised public bodies would be consulted under certain circumstances. For example, the Ministry of Defence would 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.

The list of statutory consultees is considered suitable for regulations, rather than being placed on the face of the Bill as information on consultations with a wide range of public bodies will present a significant level of detail and will also need to be flexible to respond to any future changes in procedure or organisational responsibilities.

Question 5

In question 6 of our letter to you on 27 July 2023 we queried the ability to “legislate swiftly” as a justification for the application of the negative procedure to a number of delegated powers in the Bill. You provided a response in respect of section 127(2)(c) and 127(4). Could you confirm for the record how the need to act “swiftly” is relevant to the choice of procedure for the direction power in section 127(3)?

Response:

Section 127(3) clarifies that directions may relate to specific applications or authorities or to applications or authorities generally. For example, the Welsh Ministers may issue a direction on the way notification is carried out on a particular type of infrastructure project due to changes to a website where the applications register is hosted, or amendments to the statutory consultee list.

It would be beneficial for all parties involved that any adjustments are carried out promptly, otherwise the process may continue to pose an unnecessary burden to those involved. The ability to act swiftly will help ensure there are no unnecessary delays or duplication of work.

Question 6

Section 128 includes a power for the Welsh Ministers to direct that requirements under the Bill do not apply in specified circumstances. Why is it appropriate to include this regulation-making power rather than to make provision on the face of the Bill which set out the specific circumstances?

Response

The consenting regime introduced by the Bill is intended to provide for one process to be used for consenting a wide range of infrastructure developments and in a wide range of different circumstances.

I set out in the Statement of Policy Intent why we need this power and that due to the wide variety of projects and circumstances a level of flexibility would be vastly beneficial to the process.

This power is not uncontrolled, it is limited to areas specified in regulations. This will mean that all stakeholders can influence where this power should or should not be used., It enables the power to respond to changes in the system, or reflect evidence that comes forward during the operation of the system. I believe it is appropriate to use subordinate legislation to limit this power subject to draft affirmative procedure.

Question 7

In your letter of 11 September your written answer in relation to section 128 states that “under no circumstances is it intended the subordinate legislation will enable a direction to be issued to disapply requirements which protect rights or ensure no offences are committed”. Will this provision in the Bill, if and when enacted, prevent a future Minister from using this power to disapply requirements which protect rights?

Response

The direction making power is limited to areas specified in Regulations, with these regulations subject to the draft affirmative procedure. The consultation and Senedd scrutiny of those regulations will provide appropriate safeguards. As I detail above, I do not think it is possible to set out provisions on the face of the Bill where a direction may be issued but if you have suggestions for improvements to this section, I would be happy to consider them.

Question 8

Section 137 provides for restrictions to apply to the making of regulations and orders under the Bill. What is the purpose of the drafting of this provision and why has it been included given the operation of section 154 of the *Government of Wales Act 2006*? Why does section 137 only refer to some of the provisions of Schedule 7B to the 2006 Act and not others?

Response

Section 137 of the Bill sets out the restrictions on the scope of the subordinate legislation powers when making provisions that could confer functions on, or modify or remove the functions of, a Minister of the Crown, government department or other reserved authority.

The restrictions in paragraphs 8, 10 and 11 of Schedule 7B to the Government of Wales Act 2006 mentioned in section 137 are of fundamentally different character to other restrictions in Schedule 7B. Most restrictions in Schedule 7B to GOWA 2006 rule things out completely. The restrictions in paragraphs 8, 10 and 11 say that certain things cannot be done unless consent is obtained or consultation is carried out. This has consequences for how best to achieve clarity in the drafting of provisions in Senedd Acts that confer functions on public authorities generally, modify or remove functions of public authorities generally or confer powers to do those things in regulations.

Whilst section 154 of the Government of Wales Act 2006 would have the same effect if section 137 were not in the Bill, it would not be possible to work out from reading the Bill, in combination with GOWA 2006, whether any power in the Bill that appears to authorise the conferral, modification or removal of functions could be used to confer functions on, or modify or remove the functions of, reserved authorities.

In order for a person to understand the scope of the regulation making powers they would need to search for evidence of whether consent had been obtained or

consultation undertaken, and if it had been they would also need to review the correspondence between the Welsh Ministers and the relevant Minister of the Crown to fully understand the provision that could be made in subordinate legislation under the Bill.

By including section 137, the extent of the Welsh Ministers' power to make subordinate legislation is clear from reading the Bill alone and more accessible to users of the legislation.

Question 9

Should the Bill be passed and enacted, when do you envisage all provisions of the Bill and the accompanying subordinate legislation being fully in force?

Response:

The principles of the Bill (i.e. the creation of Significant Infrastructure Project) and the powers to make regulations to implement the Bill will come into force the day after the Bill receives Royal Assent. We anticipate the implementation period will take a year, subject to the outcome of consultations on subordinate legislation.

Question 10

In your view, will further primary legislation be required in the near future in the field of planning? What are the timescales for the preparation and introduction of this proposed legislation?

Response:

This Bill sits outside Town and Country planning, however there is no intention to introduce any other primary planning legislation in this Senedd term other than the Consolidation Bill.

The planning consolidation Bill will bring together provisions from the multiple pieces of legislation that currently set out the legislative framework for planning in Wales. It is hoped that this will enable people using the planning system in Wales to refer to a single, fully bilingual act containing all the relevant law. It is anticipated that the Planning Consolidation Bill will be introduced to the Senedd during 2024.

Question 11

What consideration has been given to accessibility and alignment of legislation in this area, particularly given the future legislative landscape includes a planning consolidation Bill?

Response:

The Bill is a standalone piece of legislation and therefore the language used has been drafted with accessibility in mind.

The drafting of the Bill will ensure that the existing planning system and associated legislation are largely unaffected.

The Bill contains consequential provisions to amend existing legislation to ensure alignment within the area of planning and infrastructure. The exercise of these consequential modification powers cannot be used widely and are limited. It cannot be used to do anything contrary to the provisions of the Bill that the Senedd will have considered and approved.

The Planning Consolidation Bill will incorporate any changes to wider legislation made by this Bill which are within the scope of the consolidation project.

Question 12 (in cover letter)

[please explain] How the Bill will enable the Welsh Government to take on further devolved powers and what policy areas those powers will cover?

Response

The Bill is designed so that there is sufficient flexibility to take account of new and emerging technology or were the Senedd received legislative competency above the existing thresholds.

The reference in the Explanatory Memorandum over aspirations for further devolved powers was not intended to refer to any specific matters but reflects that the process established by the Bill is fit for purpose and ensures that Wales can deal with large scale infrastructure projects in a timely and effective manner.

Notwithstanding that, my letters to the UK Government clearly set out two areas which the Bill could cover.

Offshore region

The Bill does not extend beyond the territorial sea, which is approximately 12 nautical miles offshore as the Senedd only has legislative competence in relation to 'Wales', as defined in the Government of Wales Act.

The Welsh Ministers retain executive competence in the Welsh zone (an area between roughly 12 and 200 nm from the coast of Wales) to consent to energy generating stations up to 350MW under the process set out in the Electricity Act 1989. There is therefore no fundamental difference in 'who' will consent a generating station offshore – however the procedure will be different depending on where the project is located.

My request for legislative competence in this area was to address this issue and to enable the Bill to function effectively in streamlining and modernising the consenting process in this region?.

Battery storage

In terms of Energy storage, the Senedd's legislative competence where it concerns the consenting of energy is capped at 350MW (excluding onshore wind).

Above this threshold the UK Nationally Significant Infrastructure Project (NSIP) regime would be the consenting mechanism. However, in 2020 storage was removed from the NSIP process which resulted in an anomaly between the operation of the two regimes.

Therefore, where a scheme which either solely or mainly generates electricity from storage exceeds 350MW, it is not clear whether the Senedd would have power to legislate how such schemes are consented. The Welsh Ministers, through Local Planning Authorities, would retain executive competence to consider such schemes under the Town and Country Planning Act 1990 onshore, which may not be appropriate for all such schemes.

Again, my request to the UK Government was seeking clarity in this area.

Question 13 (in subsequent letter)

[Can you] provide us with an update on intergovernmental discussions and agreements reached relating to the UK Government's Energy Bill since the Senedd voted and did not agree to provide legislative consent for the relevant provisions in the Bill.

Response

I met with Minister Bowie on 13 September 2023 following the vote in the Senedd to withhold consent to the UK Energy Bill. I repeated my concerns with respect to the UK Government legislating on matters within our devolved competence without the consent of the Senedd. However, it was clear that the UK Government intend to continue the progress of the Bill and their intention for the Bill to receive Royal Assent in October.

During the meeting I was clear that in terms of policy direction set out in the Bill the Welsh Government is broadly aligned with the UK Government. Given this I highlighted my desire to work constructively to implement the Bill to ensure that the needs of Wales are appropriately taken into account. Minister Bowie stated his ambition to work constructively with the Devolved Governments and fulfil the requirements in the Bill for consultation before new regulations and polices come into effect.



Llywodraeth Cymru
Welsh Government

Justice System Impact Identification

Form

Overview

Welsh Government officials are submitting this form

- ~~For information and discussion about the implications~~
- **For assessment by the Ministry of Justice**
(Delete the statement which does not apply)

The Welsh Government's assessment of the impacts of this legislation on the justice system is that it has

- ~~No or negligible potential impact~~ (in this case complete the JSII form only up to and including question 4.5)
- **Low potential impact**
- ~~Medium or High potential impact~~
(Delete those which do not apply)

This is because:

The proposed legislation, although it introduces new offences and civil proceedings, brings together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime. The new form of consent will be known as an 'Infrastructure Consent' ("IC") for development or works with the objective of constructing and/or changing use to create a 'Significant Infrastructure Project' ("SIP"). The categories of infrastructure which the process is mainly expected to capture are energy, transport, waste and water, with minimum thresholds requiring only the most significant of such infrastructure to be captured by the process.

The number of enforcement cases is anticipated to be minimal based on the current understanding that there have been no equivalent prosecutions or enforcement in relation to Developments of National Significance and Development Consent Orders which are the regimes the proposed powers are based upon. It is also estimated that there would only be around five Infrastructure Consent applications a year and therefore enforcement figures are likely to be low.

The Civil Procedure Rules would need to be updated to reflect the timescales for Judicial review. There are no planning specific sentencing guidelines and so there would not be a need to update guidance. It is considered that there would be no cost associated with the proposals to the justice system.

1. Bill Title

1.1. Working title of Bill

Infrastructure Consent and Planning (Wales) Bill

2. Policy lead contact details

2.1. Name / Job Title

2.2. Department / office /
business area

Planning Directorate

2.3. Telephone number

2.4. Email address

2.5. a) Date of submission of
this form

Date of Submission: 20 January 2023

2.6. b) When is a response
required?

Response Requested by: 24 March 2023

3. Additional contact details

3.1. Legal Contact

3.2. Telephone number

3.3. Email address

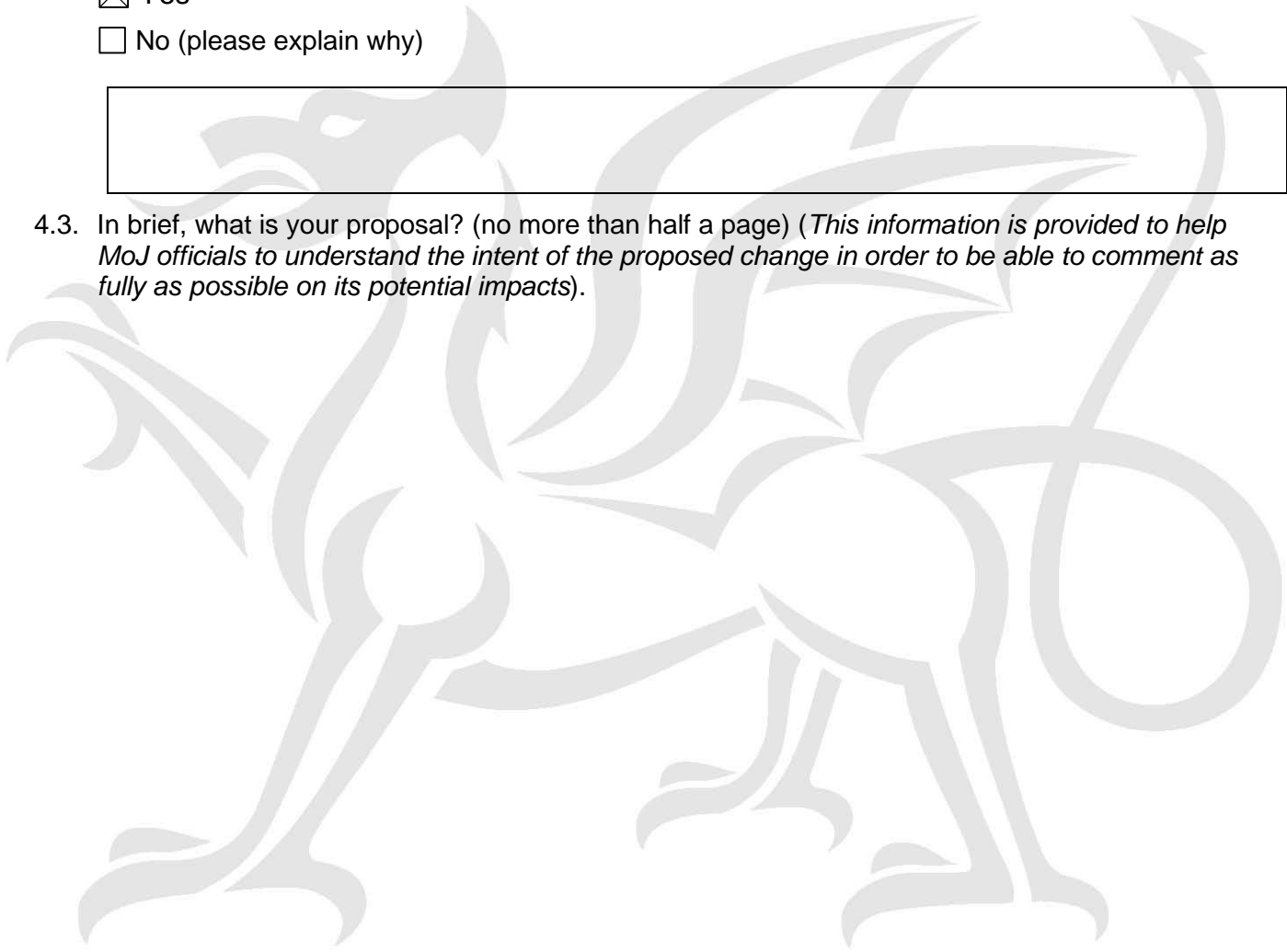
4. General information

- 4.1. Please provide a) contact details of your lead official for the appraisal of costs or savings and;
b) the Justice Policy lead if known.

- 4.2. Have you notified the judicial office of your proposals by completing Desk Instruction 7? (please seek advice from your legal advisors)

- Yes
 No (please explain why)

- 4.3. In brief, what is your proposal? (no more than half a page) *(This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts).*



Legislation is required for the purpose of establishing a unified process for the consenting of the development of infrastructure in Wales and in Welsh waters. This primary legislation would create a bespoke and flexible consenting process for infrastructure projects in Wales, detaching their consenting from current arrangements and into a new form of consent, which contains the full range of authorisations required to enable a development. This would simplify the process for developers, communities and consultees as the current procedures often vary according to the different consenting regimes.

The new form of consent will be known as an 'Infrastructure Consent' ("IC") for development or works with the objective of constructing and/or changing use to create a 'Significant Infrastructure Project' ("SIP"). The categories of infrastructure which the process is mainly expected to capture are energy, transport, waste and water, with minimum thresholds requiring only the most significant of such infrastructure to be captured by the process.

As decisions made on an IC will be made by the Welsh Ministers, all decisions will be final. The only available avenue for challenge will be through the courts, which is the current mechanism for planning appeals and applications called in by the Welsh Government. This provides a 6 week period by which the decision may be challenged in the High Court under judicial review.

Local Planning Authorities are proposed to be the main onshore enforcement authority, with the Welsh Ministers as the relevant authority offshore. Enforcement provisions will be mainly based on existing enforcement provisions for large infrastructure developments within the Planning Act 2008, and partially the Town and Country Planning Act (TCPA) 1990 and the Local Government Act 1972. The proposed offences and civil proceedings are set out in further detail within this form.

Current consenting regimes have differing levels of consistency and the processes are spread over a series of Acts which have been modified significantly, which can be confusing for the user and duplicate work. This can significantly increase the costs of applications and can act as a barrier to bringing forward proposals and cause frustration and confusion.

The legislation will impact upon all those involved in the planning system, including applicants, determining authorities, consultees and communities. The objective is to improve access to the planning system for all by simplifying and consolidating the existing fragmentary planning regime.

4.4. Please indicate when you will be undertaking a post-implementation review of this legislation and the enforcement actions arising from it?

It is anticipated that the proposed consenting regime will be fully operational by Mid-2025.

The monitoring and evaluation of the legislation will be undertaken in a number of ways including:

- Research, evaluation and data collection techniques;
- Evaluation project within 3 years of implementation of the regime to measure outcomes;
- Statutory targets set for the determination of applications for Infrastructure Consent;
- Formal monitoring of Planning and Environment Decisions Wales (PEDW) in relation to Infrastructure Consent applications.

4.5. Is this legislative proposal similar in any way to legislation being brought forward in England? If so, please name that legislation and identify below any ways in which the legislation brought forward in Wales will differ.

If the legislation has no substantive difference from that in England, there may be no need to complete all parts of the JSII form.

No.

4.6. Please specify the name of any other related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

The aspects of the Bill covered in this JSII will be brought into force by commencement order(s). Subordinate legislation in relation to offences will be subject to the negative procedure. There is no procedure for the statutory instrument in section 82(4) [J511(4)].

4.7. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

- a) It is anticipated that all aspects of the legislation to enable the new consenting regime to operate will be in force by Mid-2025. This is dependent on the date of Royal Assent.
- b) This is unknown as this will depend on compliance with the various powers but would not be before the consenting regime is operational.

4.8. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

- Individuals
- Private Institutions (e.g. Businesses)
- Public Institutions (e.g. Government Departments)

The persons affected by these provisions include applicants, the landowner (if not the applicant), any occupier of the land and any person carrying out operations on the land or using it for any purpose.

The proposals will give local planning authorities powers to undertake enforcement action, including rights to enter land and issuing notices.

The proposals will give Welsh Ministers powers to undertake enforcement action, including rights to enter land, issuing notices, applying for injunctions and creating offences. The creation of offences is limited to being in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour.

4.9. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the MoJ administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- Wales only
- England
- Scotland
- Northern Ireland

Other (Please Specify)

The legislation will only apply to Wales.

4.10. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland;-

- a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?
- b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

The provisions will apply to both those resident to, and those living outside of Wales, as enforcement action is essentially taken out against the landowner, applicant, or those undertaking any unauthorised works regardless of residence. This reflects the current legislative approach.

A communications plan supporting the Bill outlines the various methods to ensure relevant stakeholders are aware of the legislation and its implications for them.

4.11. What are the options under consideration and how does this change the existing situation?

There are 4 options under consideration, which are set out below:

Option 1 - Do nothing. Applications for infrastructure to be determined according to the current legislative arrangements. No change to the current justice system, this option would retain a fragmented consenting regime which does not provide the one-stop shop the development industry seeks.

Option 2 – Establish a new form of ‘Welsh Infrastructure Consent’ for development or works with the objective of constructing and/or changing use to create a ‘Welsh Infrastructure Project’. This is the preferred option and the details of this are included in this form.

Option 3 – Establish an independent consenting body to determine ‘Welsh Infrastructure Consents’. This option would use the same approach to the justice system as Option 2.

Option 4 – Establish a streamlined regime to be determined by a consenting unit within Welsh Government. There would be no change to the current justice system in this option.

The anticipated scale of impact is anticipated to be minimal due to nature and scale of Infrastructure Consent applications. This is discussed in more detail in the sections below.

4.12. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

It is proposed that disputes in relation to compensation including:

- Whether compensation should be paid;
- How much compensation should be paid;
- Apportionment of compensation;
- Compensation in relation to damage to land or property.

are to be referred to and dealt by the Upper Tribunal.

Criminal Offences and Civil Penalties and Sanctions

4.13. Which of the following are you creating / amending? (Tick all that apply)

- Civil Sanctions
- Fixed Penalties
- Civil Orders
- Criminal Sanctions
- Criminal Offences
- Other (Please Specify)

4.14. If you are creating a criminal offence, is it:

- Summary Only (heard before a bench of lay magistrates / judge only)
- Triable Either Way
- Indictable Only (heard before a judge and jury)

In cases where the maximum penalty is to be an unlimited fine, and a triable either way offence is warranted, please explain why a summary only offence is not considered appropriate. This is especially relevant if few, if any, cases are anticipated.

Four of the offences are proposed to be triable either way, see section 4.17 below. The proposals are to bring together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime. The proposed approach reflects the existing legislation in the Planning Act 2008, TCPA 1990 and the Local Government Act 1972 because enforcing authorities are familiar with those existing processes, there would be no need to train those authorities in enforcing authorities in dealing with different types of offence, and those existing methods of enforcement have been relatively successful to date in acting as deterrents in the context of major infrastructure projects. The changes from summary only to triable either way reflect the analysis undertaken following the Law Commission report for the consolidation of planning law in Wales¹.

4.15. Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be an increased / reduced need for enforcement action? Please also include the anticipated costs of enforcement and how it will be funded.

Local planning authorities and the Welsh Ministers will be responsible for undertaking enforcement action. There is not expected to be an increased need for enforcement action as the policy proposals seek to bring various existing consenting processes under one, consistent process. Therefore, there will likely be no change to levels of enforcement action already undertaken.

4.16. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

The proposed provisions replicate existing provisions in the Planning Act 2008 and TCPA 1990. We are not aware of any prosecutions under the existing legislation in relation to Developments of National Significance or Development Consent Orders.

The number is anticipated to be low, due to the potential size and scale of development captured under the unified consenting process resulting in few applications being submitted each year (estimated at around 5 per year) and the fact that any formal enforcement action undertaken via the planning system is generally a last resort (in the first instance, the enforcing authority would usually attempt to rectify and potential breaches of planning control through informal discussions).

4.17. Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

This means that seven of the offences are summary only, to be heard by the Magistrates' court. Four of the offences are summary or indictment, to be heard either by the Magistrates or Crown Courts, we anticipate the vast majority of cases (if they do go court) would be heard in the Magistrates' Court.

Proposed Offence	Proposed Mode of Trial	Existing legislation (Planning Act 2008 unless otherwise stated)
26(5)[J225]	Summary	Same as 52(9)
26(6)[J225]	Summary	Same as 52(9)
41(6)[J042A]	Either Summary or Indictment	Change from summary to either way and removed power of imprisonment. s.250(3) (Local Government Act 1972)
104[J460]	Either Summary or Indictment	Same as s.160
105[J461]	Either Summary or Indictment	Same as s.161
109(2)[J465]	Summary	Same as s.165(2)
112(3)[J468]	Summary	Same as s.168
112(5)[J468]	Either Summary or Indictment	Change from summary to either way s.168
115(2)[J470]	Summary	Same as s.170(6)
120[J478]	Either Summary or Indictment	Same as s.171G (Town and Country Planning Act 1990)
125(6)[J450]	Summary	Same as s.53(5)
Sch.1 Para 30[J504s]	Summary	Same as Sch. 5 Para 32B
Sch. 3 Para 10[J]	Not applicable - disapplying offences	

4.18. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

s.26(5)[j225]

A person convicted of non-compliance with a notice requiring information about interests in the land, or providing false information is liable (on summary conviction) to a fine.

s.26(6)[j225]

A person convicted of providing false information to notice requiring information about interests in the land is liable (on summary conviction or conviction on indictment) to a fine.

s.41(6)[J042A]

A person convicted of non-compliance with a summons to a local inquiry, or they alter, suppress, conceal or destroy a required document is liable (on summary conviction or conviction on indictment) to a fine.

s.104[J460]

A person convicted of undertaking development without the required infrastructure consent is liable (on summary conviction or conviction on indictment) to a fine.

s.105[J461]

A person convicted of breach of an infrastructure consent order or failure to comply with an infrastructure consent order is liable (on summary conviction or conviction on indictment) to a fine.

s.109(2)[J465]

A person who intentionally obstructs a person who has the right of entry is liable (on summary conviction) to a fine.

s.112(3)[J468]

A person convicted of non-compliance with an information notice within 21 days, unless they have a reasonable excuse is liable (on summary conviction) to a fine.

s.112(5)[J468]

A person convicted of providing false or misleading information when complying with a requirement of an information notice is liable (on summary conviction or on a conviction on indictment) to a fine.

s.115(2)[J470]

A person convicted of intentionally obstructing a person who has the power to enter the land and take steps, following the period within a notice of unauthorised development, is liable (on summary conviction) to a fine.

s.120[J478]

A person convicted of non-compliance with a temporary stop notice, which may be in relation to one or more period for the same notice, and they could not prove they did not know or reasonable be expected to know about it, is liable (on summary conviction or on conviction on indictment) to a fine. In determining the amount of the fine, the court must have regard to any financial benefit which has accrued or appeared to accrue to the person convicted.

s.125(6)[j450]

A person convicted of wilfully obstructing a person who is authorised by the Welsh Minister to enter land in connection with an infrastructure consent order is liable (on summary conviction) to a fine.

Sch.1 Para 30[J504s]

The creation of offences (under Sch. 1 Para 30) in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour would be liable (on summary conviction) to a fine not exceeding level 3 on the standard scale. The person would not be liable to imprisonment.

5.

Summary Table

Proposed Offence	Proposed Fine	Existing legislation (Planning Act 2008 unless otherwise stated)
26(5)[J225]	Unlimited	Change from not exceeding level 5 on standard scale. s.52(6)
26(6)[J225]	Unlimited	Change from not exceeding level 5 on standard scale. s.52 (7)
41(6)[J042A]	Unlimited	Change from not exceeding level 3 on standard scale. s.250 (Local Government Act 1972)
104[J460]	Unlimited	Change from not exceeding 50,000 for summary trial, no change for trial by indictment. s.160
105[J461]	Unlimited	Change from not exceeding 50,000 for summary trial, no change for trial by indictment. s.161
109(2)[J465]	Unlimited	Same 165(2)
112(3)[J468]	Unlimited	Same 168
112(5)[J468]	Unlimited	Change from not exceeding level 5 on standard scale. s.168
115(2)[J470]	Unlimited	Same as 170(6)
120[J478]	Unlimited	Same as 171G (Town and Country Planning Act 1990)
125(6)[J450]	Unlimited	Same as 53(5)
Sch.1 Para 30[J504s]	Not exceeding level 3 on standard scale	Same as Sch. 5 Para 32B

5.1. Please itemise details of any proxy or current offences and / or penalties on which the proposed penalties are based. If mirroring / comparing existing legislation, ensure that reference is made to the most recent versions of the legislation (via Westlaw, the online legal research service) as this is not always available online. Please refer to page 8 of the JSII guidance on how to obtain data relating to the number of cases brought forward under the legislation you have identified.

The proposed offences and the existing legislation that they are based upon are set out in the table below. See also section 4.19.

Proposed Legislation Section	Existing Legislation based on	Offence
26(5) [J225]	52(6) Planning Act 2008	Non-compliance with a notice requiring information about interests in the land
26(6)[J225]	52(7) Planning Act 2008	Providing false information to notice requiring information about interests in the land
41(6) [J042A]	250(2) – (3) Local Government Act 1972	Non-compliance with a summons to a local inquiry, or they alter, suppress, conceal or destroy a required document.
104 [J460]	160 Planning Act 2008	Undertaking development without the required infrastructure consent.
105 [J461]	161 Planning Act 2008	Breach of an infrastructure consent order or failure to comply with an infrastructure consent order.
109(2) [J465]	165(2) Planning Act 2008	Intentional obstruction of a person who has the right of entry.
112(3) [J468]	168(1) Planning Act 2008	Non-compliance with an information notice within 21 days, unless they have a reasonable excuse.
112(5)[J468]	168(4) Planning Act 2008	Providing false or misleading information when complying with a requirement of an information notice.
115(2) [J470]	170(6) Planning Act 2008	Intentional obstruction of a person who has the power to enter the land and take steps, following the period within a notice of unauthorised development.
120 [J478]	171G Town and Country Planning Act 1990	Non-compliance with a temporary stop notice, which may be in relation to one or more period for the same notice, and they could not prove they did not know or reasonable be expected to know about it.
125(6) [J450]	53(5) Planning Act 2008	Wilful obstruction of a person who is authorised by the Welsh Minister to enter land in connection with an infrastructure consent order
Sch. 1 Para 30 [J504s]	Sch.5 Para 32B Planning Act 2008	Creation of offences in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour. This is limited by s.58(7)[J504(7)] which means that an Infrastructure Consent Order cannot create an offence, give a power to create an offence or change an existing power to create offences.
Sch. 3 Para 10	58(4) & 118(2) Historic Environment (Wales) Bill as introduced 4 July 2022.	Exception to offences of damaging certain monuments of special historic interest. Disapplication of offence of intentionally damaging a listed building.

5.2. Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.



The equivalent existing power for offences is set out in the table above (para 4.19). The impacts to Civil proceedings are set out below:

Proposed Legislation Section	Existing Legislation based on	Civil proceedings
92[J139]	Sch. 6 Para 7 Planning Act 2008	Compensation - Disputes in relation to apportionment of costs as a result of a revocation made to the Upper Tribunal
95[J142]	Sch. 6 Para 7 Planning Act 2008 (varied)	Compensation - Disputes in relation to compensation for revocation made to the Upper Tribunal
98[J513]	118 Planning Act 2008	Legal challenges relating to applications for orders granting development consent
100(5)[J207]	106C Town and Country Planning Act 1990	Legal challenges relating to infrastructure consent obligations.
103(4)[J601]	152 Planning Act 2008	Compensation in case where no right to claim in nuisance
108[J464]	164 Planning Act 2008	Power for a justice of the peace to issue a warrant to enable entry to land for enforcement purposes.
109(6)[J465]	165(5) Planning Act 2008	Rights of entry – disputes in relation to compensation for rights of entry
114[J472]	170 (via regs under (4)) Planning Act 2008 s.276, 289, 294 Public Health Act 1936	Execution of works required by notice of unauthorised development – order requiring steps to be taken in relation to a notice of unauthorised development
122[J481]	171 Planning Act 2008	Injunctions – against an actual or expected activity which is an offence under j460 or j461
124(4)[210]	95(4)&(5) Planning Act 2008 250 Local Government Act 1972	Orders relating to costs of parties on examination proceedings and recovery of costs.
125(9)[J450]	53(8) Planning Act 2008	Rights of entry – disputes over costs, damage to land

Creation of the offences and civil proceedings is considered to be both proportionate and necessary to deliver the Infrastructure Consent and Planning (Wales) Bill objectives. The proposed penalties reflect existing legislation in the Planning Act 2008, the TCPA 1990, the Local Government Act 1972 and the Public Health Act 1936. The proposals are to bring together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime which would otherwise be subject to the offences and penalties within the existing legislation as outlined in this form. It is therefore considered that this would not result in additional costs to the justice system. The approach taken in s.124(4) reflects the powers in the Planning Act 2008 and the Local Government Act 1972, reflects the drafting style for the equivalent provisions in the emerging Historic Environment (Wales) Bill², which is currently in the Senedd to ensure consistency and reflect modern drafting.

- 5.3. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

The impact on an individual found guilty reflects the current situation for the planning related offences these are based upon, including criminal record, fines etc.

- 5.4. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

There is a duty for the public sector in the infrastructure consenting process under the Bill, including enforcement. There is the opportunity for individuals or businesses to challenge the process using judicial review.

6. HM Courts & Tribunals Service and the Welsh Tribunals Service

Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

- 6.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

It is anticipated that there is unlikely to be an impact on the number of cases being taken to court or through the Upper Tribunal due to the proposals seek to bring various existing consenting processes under one, consistent process.

- 6.2. Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

- No
 Yes (please provide details)

The proposals are not introducing a new duty in this manner.

Appeal Rights

- 6.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or Welsh Tribunals)?

The Bill allows appeals to the Administrative Court through judicial review as there are numerous decisions in the Bill made by a public body. The Bill also allows for a reduction of time limits in which to bring proceedings for JR contained in CPR 54(1) from 3 months to 6 weeks, in line with the planning system. Although this is a new right of appeal under the legislation, the effect is that the proposals seek to bring various existing consenting processes under one, consistent process. These will be handled by HM Courts & Tribunals Service rather than Welsh Tribunals as is currently the case.

- 6.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

No.

Alternative Dispute Resolution

6.5. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

This already occurs in planning enforcement related matters. Formal enforcement action is often considered to be a 'last resort' by the enforcing authority, who will often use more informal / mediation tactics, depending upon the scale / type of offence. For example, if a local planning authority is notified of an unauthorised development, they may consider it more appropriate in that particular circumstance to request the developer submit a retrospective planning application, rather than immediately issue an enforcement notice, or any other type of enforcement action. However, they are also provided with the tools necessary if it is considered development should stop immediately for certain reasons, such as temporary stop notices.

Prosecution and Enforcement

6.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

It would likely be the Local Planning Authority that would bring any prosecutions. The Counsel General will also have powers to bring any prosecutions under section 67 of the Government of Wales Act 2006.

6.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

Yes, an individual can apply to High Court Enforcement Offers to recover that debt which reflects current practice.

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

6.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

The Bill allows for a reduction of time limits in which to bring proceedings for judicial review contained in Civil Procedure Rule 54(1) from 3 months to 6 weeks, in line with the planning system. The timescales for the implementation and operation of the proposals are set out in section 4.7.

6.9. Will the proposals require sentencing and / or penalty guidelines to be amended?

No.

7. Legal Aid and Court Fees

7.1. What evidence is there that individuals affected by your proposal will be able to secure and afford:

- a) legal representation and legal advice in order to secure a fair hearing of their case
- b) associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

It is unlikely that Legal Aid would be available, however this would depend on the complexity of the case. The award of costs would be issued by the judge. Estimates of complexity, length and costs of cases are no possible due to the current understanding that there have been no equivalent prosecutions or enforcement in relation to Developments of National Significance and Development Consent Orders which are the regimes the proposed powers are based upon. It is also estimated that there would only be around five Infrastructure Consent applications a year and therefore enforcement figures are likely to be low.

7.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- Legal aid not available (please provide supporting evidence)

7.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

N/A

8. Prisons and Offender Management Services

Impact on HM Prison Services

8.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

No.

8.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.

No.



9. Main Justice System Impacts Identified

9.1. Volumes and Costs or Savings (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Criminal Offences and Sanctions	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
Civil Penalties	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
HM Courts & Tribunals Services	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
Welsh Tribunals	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	

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Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Legal Aid	_____	_____	_____		
	_____	_____	_____		
	_____	_____	_____		
Notes:-					

9.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):

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Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs or savings p.a. (£) ³ (please provide numeric estimate and min-max range)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
Notes:					

Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored in to the financial assessment of your legislation.

³ The MoJ publish statistics on "Prison cost per place and cost per prisoner:" - see <https://www.gov.uk/government/statistics/announcements/prison-cost-per-place-and-cost-per-prisoner-2017-to-2018>

Julie James MS
Minister for Climate Change

27 September 2023

Dear Julie

Infrastructure (Wales) Bill – follow-up to evidence session on 25 September 2023

Thank you again for attending our meeting on 25 September 2023 to discuss the Infrastructure (Wales) Bill.

As advised at the close of the session, there are also a number of questions which we would have liked to ask but time did not allow. As such, I would be grateful for your response to the questions in the annex by 10 October 2023.

You also committed to provide us with the following information, which we too would be grateful to receive by 10 October:

- how the Bill will enable the Welsh Government to take on further devolved powers and what policy areas those powers will cover;
- the Welsh Government's justice impact assessment for the Bill and the relevant correspondence with the Ministry of Justice.

Yours sincerely,



Huw Irranca-Davies
Chair

Annex

1. Section 57 relates to the granting or refusal of infrastructure consent. In your **letter** to us on 11 September 2023, you stated that you envisage subordinate legislation made under this section will specify that the Welsh Ministers “must only make an order which contains minor changes”. You further stated that “whilst on the face of the Bill there is reference to changes to an application being “material”, the regulations will provide clarification that any changes made....should only be minor in nature”. If changes are to be minor, why is the power drafted much wider than is necessary to achieve its purpose?
2. Section 82 relates to the publication and procedures attached to infrastructure consent orders. By virtue of paragraph 29 of Schedule 1, an order can create a criminal offence. Such an order will be subject to the negative scrutiny procedure. Why has the affirmative procedure not been attached to this power?
3. Section 88 relates to the procedure for changing and revoking infrastructure consent orders. What persons will always be given notice of a change to or revocation of an infrastructure consent order under section 88(6)?
4. Which public authorities will be consulted under section 126(1) and why are they not included on the face of the Bill?
5. In question 6 of our **letter** to you on 27 July 2023 we queried the ability to “legislate swiftly” as a justification for the application of the negative procedure to a number of delegated powers in the Bill. You provided a response in respect of section 127(2)(c) and 127(4). Could you confirm for the record how the need to act “swiftly” is relevant to the choice of procedure for the direction power in section 127(3)?
6. Section 128 includes a power for the Welsh Ministers to direct that requirements under the Bill do not apply in specified circumstances. Why is it appropriate to include this regulation-making power rather than to make provision on the face of the Bill which set out the specific circumstances?
7. In your letter of 11 September your written answer in relation to section 128 states that “under no circumstances is it intended the subordinate legislation will enable a direction to be issued to disapply requirements which protect rights or ensure no offences are committed”. Will this provision in the Bill, if and when enacted, prevent a future Minister from using this power to disapply requirements which protect rights?
8. Section 137 provides for restrictions to apply to the making of regulations and orders under the Bill. What is the purpose of the drafting of this provision and why has it been included given the operation of section 154 of the *Government of Wales Act 2006*? Why does section 137 only refer to some of the provisions of Schedule 7B to the 2006 Act and not others?

9. Should the Bill be passed and enacted, when do you envisage all provisions of the Bill and the accompanying subordinate legislation being fully in force?

10. In your view, will further primary legislation be required in the near future in the field of planning? What are the timescales for the preparation and introduction of this proposed legislation?

11. What consideration has been given to accessibility and alignment of legislation in this area, particularly given the future legislative landscape includes a planning consolidation Bill?

Elin Jones MS
Y Llywydd
Chair, Business Committee

6 October 2023

Annwyl Lywydd,

Supplementary Legislative Consent Memorandum (Memorandum No 4) for the Levelling-up and Regeneration Bill

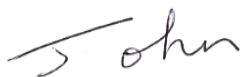
You will be aware that the Local Government and Housing Committee has been considering legislative consent memoranda in relation to the Levelling-up and Regeneration Bill and that we published a report on the original, revised and supplementary memoranda on 13 February. You will also be aware that we wrote to you on 18 May, explaining that we had considered Supplementary Legislative Consent Memorandum (No.3) ("SLCM No.3") and that we had decided not to report on it. This was due to the amendments detailed in SLCM No.3 relating to environmental outcomes reports which do not fall within the Committee's remit.

On 12 September, Business Committee agreed to invite us, and three other committees, to consider Supplementary Legislative Consent Memorandum (No.4) ("SLCM No.4") and to report by 13 October. We have considered SLCM No.4 and note that the amendments detailed in SLCM No.4 relate to the levelling-up missions, planning and the environment.

On that basis, and the fact that it has been referred to other committees which may have a greater interest in these amendments, we decided not to report on the memorandum.

I am copying this letter to the Legislation, Justice and Constitution Committee; the Economy, Trade and Rural Affairs Committee; and the Climate Change, Environment and Infrastructure Committee.

Yours sincerely



John Griffiths MS

Chair, Local Government and Housing Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



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

6 October 2023

Dear Huw,

At my appearance before your committee (18 September) I agreed to write to confirm the Welsh Government's strategic forward approach to the European Union.

Since the UK exited the European Union at the start of 2020, our aim has been to maintain the Welsh Government's profile as a European country. From 2016 onwards, we repeatedly stated that Wales is, and will always be, a European country, inside or outside the EU. The Welsh Government believes it is both desirable and likely that the UK will develop a more productive form of Brexit and that, as we do so, the Welsh Government should be well-placed to maximise the advantages of an improving relationship in practical ways.

We committed in our Programme for Government to maintain our office in Brussels precisely for these purposes. During the 20 years before Brexit, the Welsh Government built up capital with the EU as an engaged participant. Since Brexit we have invested effort and energy into maintaining this capital. The Brussels Office helps us to maintain connections and keep up to date with EU developments in which we retain an interest.

To complement this work, we appointed Derek Vaughan to act as a representative, tasked with sustaining high level relationships in Brussels with a mandate from the Welsh Government. Derek has drawn on his experience and networks to maintain visibility for Wales with stakeholders including MEPs, the Commission and other decision-makers and opinion formers. We believe Derek's work, alongside our other officials, has been a real benefit for Welsh profile at a time when the overall UK image has, frankly, struggled for traction.

I have myself made it a priority to visit Brussels at least annually and I have encouraged other ministers to visit when useful opportunities arise. I was pleased to see the Minister for Economy addressing the Regional Policy committee of the European Parliament earlier this year. I am supportive of Members from all sides visiting Brussels and elsewhere in the

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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.

course of their work; as a country, we must do all we can to send out positive signals about Wales' engagement with Europe.

Beyond Brussels, we work actively to develop and maintain partnerships across Europe. I visited Brittany, for example, during August both for bi-lateral purposes and to engage with the newly-established Celtic Forum of nations and regions. We participate in other multi-member regional networks such as the CPMR, the Vanguard Initiative (which Wales currently leads), and we have a high profile in the community of "Lesser Used Languages". We have active bi-lateral relationships with countries and regions including Ireland, Brittany, Basque Country, Flanders and others. In addition to Brussels, we have officials based in Dublin, Paris and Berlin working on trade and other issues alongside colleagues in the UK embassies. We encourage and receive significant inward visits to Wales from our European partners and friends on a very regular basis. We encourage traders to develop and maintain exports to Europe, and Wales remains firmly open to investors.

The UK Government's relationship with the EU went through a very negative and damaging period. More recently, the Windsor Framework and UK access to Horizon are modest steps in the right direction, though I must record my regret that innovators and researchers missed several years of access to Horizon through poor UK Government positioning.

I would like to see us go significantly further in a relationship with the EU. The Welsh Government would like, for example, to access the EU's ERASMUS programme; we were particularly disappointed at the UK Government's refusal to include this in their withdrawal agreement. Our hope is that ERASMUS and other programmes will become available to us in the years ahead; in the meantime, our TAIH programme facilitates exchanges in both directions for young people across Europe.

We also regret that the UK Government seems determined to abandon measures originating from the EU which protect our water and environment. The Welsh Government is determined, where we have powers, to main at least EU-levels of environmental protection for our land, water and air. We hope that a future UK Government will propose negotiations with the EU on a veterinary agreement to facilitate the movement of livestock and food across our external borders.

In summary, the Welsh Government is forging a positive relationship for Wales with Europe. We believe this represents investment in our future. We welcome the committee's support for this work and we urge all Members to contribute when opportunity arises to maintaining positive relations with Europe.

Yours sincerely,

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

MARK DRAKEFORD