Agenda – Climate Change, Environment, and Infrastructure Committee

Meeting Venue:
Committee room 4 Tŷ Hywel
and video Conference via Zoom
Meeting date: 13 September 2023
Meeting time: 09.45

For further information contact:
Marc Wyn Jones
Committee Clerk
0300 200 6565
SeneddClimate@senedd.wales

Private pre-meeting (09.15–09.45)

Briefing from Expert Adviser

Public meeting (09.45–11.55)

1 Introductions, apologies, substitutions, and declarations of interest

(09.45)

2 Infrastructure (Wales) Bill – Evidence session with academics

(09.45–10.45) (Pages 1 – 62)

Hannah Hickman – Associate Professor of Planning Practice, University of the West of England, Bristol

Kelvin MacDonald – Senior Teaching Associate, University of Cambridge

Attached Documents:

Infrastructure Bill – Bill summary

Infrastructure (Wales) Bill – Summary of written evidence

Infrastructure (Wales) Bill – Suggested questions

Paper – Hannah Hickman

Paper – Kelvin MacDonald

Break (10.45–10.55)

3 Infrastructure (Wales) Bill - Evidence session with local planning authorities

(10.55-11.55) (Pages 63 - 71)

Sara Morris - Director of Placemaking, Pembrokeshire Coast National Park Authority

Steve Ball - Development Management, Cardiff Council

Peter Morris - Professional Lead, Planning, Powys County Council

Attached Documents:

Paper - Pembrokeshire Coast National Park Authority

Paper - Welsh Local Government Association

4 Papers to note (11.55)

4.1 Infrastructure (Wales) Bill - Statement of Policy Intent

(Pages 72 - 166)

Attached Documents:

Infrastructure (Wales) Bill - Statement of Policy Intent

4.2 The Environment (Air Quality and Soundscapes) (Wales) Bill - Welsh Government response to the Committee's Stage 1 report

(Pages 167 - 186)

Attached Documents:

Welsh Government response to the Committee's Stage 1 report on the Environment (Air Quality and Soundscapes) (Wales) Bill

4.3 The Environment (Air Quality and Soundscapes) (Wales) Bill - General Principles debate

(Page 187)

Attached Documents:

Correspondence from the Minister for Rural Affairs and North Wales, and

Trefnydd in relation to the General Principles debate on the Environment (Air Quality and Soundscapes) (Wales) Bill

4.4 Downgrade of Dwr Cymru

(Pages 188 – 201)

Attached Documents:

Letter from the Chair to Dwr Cymru in relation to the downgrade of Dwr Cymru

Letter from Jane Dodds MS to the Chair in relation to the downgrade of Dwr Cymru

Response from Dwr Cymru in relation to the letter from the Chair

4.5 Energy Bill LCM

(Pages 202 – 211)

Attached Documents:

Letter from the Minister for Climate Change regarding the UK Energy Bill Legislative Consent Memorandum

Response from the Minister for Climate Change to the Chair in relation to the Legislative Consent Memorandum for the Energy Bill

Letter from the Chair to the Minister for Climate Change in relation to the Energy Bill Legislative Consent Memorandum

Letter from the Chair of the Legislation, Justice and Constitution Committee to the attention of Mr Andrew Bowie MP, Parliamentary Under-Secretary of State for Energy Security and Net Zero in relation to the Legislative Consent Memorandum for the Energy Bill

4.6 Decarbonisation of housing: decarbonising the private housing sector

(Pages 212 – 221)

Attached Documents:

Letter from the Chair to the Minister for Climate Change in relation to decarbonisation of housing: decarbonising the private housing sector

Response from the Minister for Climate Change to the Chair in relation to decarbonisation of housing: decarbonising the private housing sector

4.7 **Net Zero Wales:Carbon Budget 2 - Welsh Government Heat Strategy for Wales consultation**

(Page 222)

Attached Documents:

Letter from the Minister for Climate Change to the chair in relation to the Welsh Government Heat Strategy for Wales consultation.

4.8 **Electric vehicle charging**

(Page 223)

Attached Documents:

Correspondence from the Deputy Minister for Climate Change to the Chair in relation to electrical vehicle (EV) charging infrastructure

5 Motion under Standing Order 17.42 (vi) and (ix) to resolve to exclude the public from the remainder of today's meeting

(11.55)

Private meeting (11.55-12.30)

6 Infrastructure (Wales) Bill - Consideration of evidence received under items 2 and 3

7 Interim Environmental Governance Measures in Wales - consideration of the Committee's draft report

(Pages 224 - 237)

Attached Documents:

Draft report - Report on operation of interim environmental protection measures 2022-23

Agenda Item 2

Document is Restricted

Document is Restricted

Document is Restricted

Infrastructure 35, Hannah Hickman (MA, MSc, MPhil, MRTPI), Associate Professor of Planning Practice, University of the West of England

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan Hannah Hickman | Evidence from Hannah Hickman

Infrastructure (Wales) Bill

Invitation to submit written evidence

Thank you for the opportunity to provide written evidence, ahead of the meeting of the Climate Change, Environment and Infrastructure Committee on the Infrastructure (Wales) Bill on the 13th September 2023.

As requested, I am providing this in the form of brief headline points, which may provide the basis for further discussion with the committee. These points focus on the relationship between consent and delivery, and draw on recent research carried out by the University of the West of England and the University of Sheffield for the National Infrastructure Planning Association, on the operation of the Planning Act 2008 in England from which there is a considerable opportunity to learn from in relation to legislative and policy intent and practice, particularly when it comes to expediting delivery. This report – published in July 2023 - is available here:

https://www.nipa-uk.org/news/nipa-insights-iii-report

My comments are sub-divided into four short sections: (1) the intent of the legislation; (2) the bill's explanatory memorandum; (3) specific comments on the bill; and (4) wider observations.

Intent of the legislation

The intent of the legislation, as set out in section 3.5 of the draft bill's explanatory memorandum (EM), is clear, and reflects considerable evidence on the benefits of streamlining and consolidating existing consenting systems. The comments below are focused on ensuring the intent of the legislation supports future practice. Noting several references in the EM to regulations, some of these observations will be of particular relevance to the content of subsequent regulations, as well as secondary legislation and practitioner guidance.

The Explanatory Memorandum

Section 1.1 / 3.17 / 3.18 / 3.25 refer in various ways to the laudable intent for infrastructure consents to "*contain the full range of authorisation to enable development to be implemented*", in support of the 'one-stop-shop' approach.

Care should be taken to learn here from practice in England, where our research has shown that a considerable number of secondary consents and licenses are still required post-consent to enable development to proceed in construction. In England, we have called for the UK Government to undertake a review of the potential to further streamline the consent regime and minimise the delays and costs associated with post-consent requirements. The Welsh Government should undertake due diligence here, by ensuring – ahead of enactment - thorough sector by sector understanding of the extent of consents and licenses needed both for construction and operation, and the opportunities for these to be assimilated as far as practical within infrastructure consents to support delivery.

Section 3.5 of the EM refers to the overall objective and purpose of the bill, highlighting 'certainty' as the second basis. Significant debate and focus of research on existing practice in England has centred on achieving the right balance between certainty and flexibility.

Our research has provided evidence of increased experience and willingness in using available mechanisms for achieving flexibility within consents (e.g. envelope assessments, using options, limits of deviation etc.), and these tools being used with good effect. But despite that experience built up over 15 years of operation, there is still concern about the consistency of approach and level of support for the use of flexibility mechanisms in consents. The challenge for promoters is in the anticipation of where flexibility might be needed and the value of anticipating risk and uncertainty related to construction methodology, logistics and temporary works into the DCO process. In particular, it is felt that there is still scope for greater clarity and a more coordinated approach at examination, with the role of examination being key in exploring the balance between certainty of decision, and any necessary flexibility needed at delivery. Lack of operational guidance on this in England has created considerable delivery challenges (especially in the context of post-consent change management) and the Welsh Government would be advised to prioritise the production of focused guidance, to the benefit of promoters, communities and the examiner community.

Section 3.14 refers to the chances of success and section 8.82 to the role of clear policy frameworks and 'more certain policy' in underpinning the consenting process going forwards. The Bill itself indicates that a decision must be made in

accordance with the National Development Framework for Wales, any marine plan and any 'infrastructure policy statement' for that type of development issued by Welsh ministers. The development of these policy documents will be a critical piece of this new regime. 'More certain policy' is clearly not the same as certain policy, and the Welsh Government should provide further clarity as to what exactly constitutes the decision-making framework and what policy statements are planned, to ensure efficient decision making. A key question is whether the existing policy frameworks are sufficient (and consistent) for the certainty required for the effective operation of the regime? Having clear mechanisms and timescale for regular review will also be an important element of effective operation in practice.

Impact Assessment – the EM is thorough, but there was a surprising lack of reference to The Well-being of Future Generations (Wales) Act 2015. The connectivity between these two important pieces of legislation needs to be considered.

Section 4.14 draws attention to stakeholder support for fast-track of certain types of development to ensure a proportionate approach. Significant further detail and information is needed on what this will mean in practice. Our research in England supports the need for a fast-track approach for certain schemes, in particular the potential value of a fast track approach for some linear schemes.

Section 4.19 draws attention to stakeholder views on the importance of detail regarding 'minor' variations and fast-tracking non-contentious variations. The EM also refers to one of the challenges of the existing DNS process as being limited flexibility for changes (para 3.25). Here, it is critical that post-consent change management is considered very carefully in the detailed review of the bill and in subsequent regulations. Critically, consideration of change management needs to span both consent and post-consent. The post-consent change management process has been a significant challenge in the operation of the NSIP system in England. Our research has shown that there are still significant disincentives in applying for changes because of the delay, resources, time and uncertainty involved. This is particularly an issue for changes that are not fundamentally necessary for project completion, but would achieve additional social, economic, and environmental benefits or allow for technological innovation. Our research showed nearly 50% of practitioners

highlighting potentially beneficial post-consent changes which were not pursued because of the time, complexity, expense and delay in seeking post-consent changes. Promoters were concerned about the lack of a prescribed timescale for decisions on post consent changes (whether material or non-material) and wanted scope for a more pragmatic approach to change where changes can demonstrate compliance with agreed outcomes. A key part of this is about ensuring proportion in relation to environmental assessment and change management.

Section 10.2 refers to the benefits of an evaluation project within 5 years of the implementation. This proposal should be a firm commitment, with details prescribed as to how and who will undertake this review.

Specific comments on the bill

Defining significance. Nowhere in either the legislation or the EM is a definition of 'significant' provided. For the purposes of understanding the thresholds applied and communicating these, this would be of merit. For example, it is noted that some thresholds relate to scale of operation, some to capacity, and some to measures of length etc. Are there any thresholds that might relate to, for example, third party impact, or significance in relation to impact for the service it is delivering?

This issue of significance perhaps relates to the connectivity between this draft legislation and the Final Report of the Expert Review Panel (of the Cross Party Group on the Active Travel Act Review of the Active Travel (Wales) Act 2013) which calls for much greater ambition in the arena of Active Travel. One issue that hold backs active travel schemes is an ambivalence to using compulsory purchase powers to buy land that will be needed to make the space for such schemes. Bringing planning for active travel to a central level, particularly if being directed in some ways by Transport for Wales, could have the advantage of helping create more ambition and expedite decision making in the ways the Infrastructure Bill envisions. This may appear tangential to some of the existing prescribed reasons for centralising decision making on major infrastructure but this legislation could provide an effective means of 'unlocking' more active travel schemes than may otherwise be the case, if appropriate thresholds and criteria are applied. For example, the legal definition of a highway includes cycle tracks and footpaths. With the potential scale of infrastructure (and safety

improvements) being smaller, the lower bound limit of 1km (7 (2) (c)) will, in effect, keep planning decisions for active travel local rather than at the national level.

Part 1 - energy storage schemes do not appear to be defined (with the exception of liquid gas storage). Energy storage is going to become more important, so this may be an omission.

Section 124 – see comment above on clarity and certainty of policy framework.

60 (1) states that "*An infrastructure consent order may impose requirements relating to the development for which consent is granted*". Ensuring the effective operation of the post-consent requirements process is a very important area of operational practice. Here, the sufficient resourcing of local authorities and statutory bodies potentially responsible for discharging requirements is paramount. Whilst our research has seen significant effort by both local authorities and statutory bodies (SBs) to support the timely discharge of requirements in England (and some recent organizational restructuring of SBs to support that), significant delay has been caused at delivery by insufficiency of resource, and SBs in particular have been challenged by some of the unrealistic timescales for discharge set in consents (see also section 4 below). Planning Performance Agreements and cost recovery mechanisms are increasingly being used to support local authority and statutory body input with agreed outcomes, but further support is often needed and practice is very variable in the use of these mechanisms.

Section 81 – removing consent requirements and deeming consent - see section above on post-consent licenses and consents.

Sections 87 / 88 – power to change and procedure for change – see section above on the post-consent change management.

Wider observations

Our research has shown that there is a careful balance to be struck between the quest for speed of consent and its potential consequences for future delivery. There is considerable evidence in England from both promoters and SBs that time both during the consenting process and at delivery is necessary to support innovation. Key here is that the quest for faster and simpler

examination – one of the objectives of this legislation – must not inadvertently cause delays at the delivery stage by leaving key elements for later resolution (in requirements or the need for further consents), or problems in relation to the constructability of key elements of the DCO, resulting in requirements for change. **Post-consent due diligence must be applied in the consideration of this draft legislation**.

Our research in England has shown that key to effective delivery of infrastructure is the people involved, their knowledge and understanding of the infrastructure consenting process and delivery challenges and cultures of working. In particular, early contractor involvement and effective project management pre-through to post- consent, are paramount. Here, the Welsh Government should consider carefully the professional skills required for effective delivery of the new system, and work closely with professional and other relevant bodies. This means action to build capacity and understanding which extends beyond the planning profession and focuses on bringing professions together, particularly drawing together construction, engineering, project management, lawyers, planners, designers, environmental disciplines and programme managers

This written evidence has been provided by:

Hannah Hickman (MA, MSc, MPhil, MRTPI)

Associate Professor of Planning Practice, University of the West of England

Hannah.hickman@uwe.ac.uk

Infrastructure 46, Kelvin MacDonald

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan Kelvin MacDonald | Evidence from Kelvin MacDonald

General principles

What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

Overall, the Bill serves a number of potentially very worthwhile purposes. The Explanatory Memorandum lists these as including; establishing a unified (and simplified and efficient) consenting process, providing a clear strategic and policy framework on which decisions are made and providing a more consistent and inclusive process. All these are laudable aims and I would not query the rationales underlying any of them.

There is also clearly the need for primary legislation to be introduced in order to effect the changes necessary to bring about necessary change. My only caveat on this is that the Bill does rely heavily on secondary legislation both to implement its intentions and, on occasion, to show how parts of an aim will be achieved.

Some of the points made below do suggest parts at which the Bill may need to be more explicit. More generally, the Committee may wish to consider whether the balance between material on the face of the Bill and material to be set out at a later date in Regulation or Guidance is correct.

My evidence focuses mainly on whether the Bill does serve to achieve these four aims and I deal with aspects of each of these in the following sections of this response:
- establishing a unified (and simplified and efficient) consenting process (Parts 2 and 5 of the Bill);
- providing a clear strategic and policy framework on which decisions are made (Part 5);
- providing a more consistent process (Parts 1 and 2); and

· providing a more inclusive process (Parts 3 and 4).

In this evidence, I do not address the – albeit important – issues of compulsory acquisition (Part 6), enforcement (Part 7) nor that item of the Committee's terms of reference that deals with the financial implications of the Bill.

What are your views on the Bill's provisions (set out according to parts below), in particular are they workable and will they deliver the stated policy intention?

Part 1 - Significant infrastructure projects

providing a more consistent process

I equate the desire with consistency with a desire to achieve greater certainty for all those involved – not purely about possible outcomes but about the process that is required to be followed.

In this context, I am not querying the list of SIPs set out in this Part.

However, I note that in a number of cases (such as airports) the operating limits set are, very understandably, lower than those set in the 2008 Planning Act.

As shown below, there are aspects of the regime proposed in the Bill, such as the ability to summons and to require a public authority to give a substantive response within specified timescales (c126) that are different from the 2008 Act regime and it could be that an applicant will be faced with slightly different requirements and procedures for the same class of scheme in Wales as opposed to in England.

I would draw the Committee's attention to those parts where the wording of the Bill can give rise to a degree of uncertainty.

For example, clause 7(3) states that:
'Alteration or improvement of a highway is within this subsection only if … (c) the alteration or improvement is likely to have a significant effect on the environment.'

This leaves open the question as to who decides whether the scheme is likely to have a significant effect on the environment and at what stage this is done. If this is to be done at the screening stage of a habitats regulation assessment, does this require that all highway alterations or improvements are screened and treated as

SIPs until found otherwise?

Similarly, clause 16(3)(c) dealing with radioactive waste geological disposal facilities states as one criteria that:
'... the natural environment which surrounds the facility is expected to act, in combination with any engineered measures, to inhibit the transit of radionuclides from the part of the facility where radioactive waste is to be disposed of to the surface.'

If there is not this expectation, then is a scheme not a SIP and, is not the only way to test whether there is such a valid expectation through the examination process, thus requiring it to be a SIP anyway?

A related uncertainty is potentially provided by the provision in Clause 22 that Welsh Ministers may give directions specifying development as a significant infrastructure project even though the development will be 'partly in Wales' (22(2)(a)).

This appears to conflict with the statutory tests for SIPs set out in Clauses 7 to 16 in which, in every case, the scheme must be '... in Wales ...', '... wholly in Wales ...' or, in the case of railways, '... will ... start, end and remain in Wales.'.

The existence of these statutory test could render clause 18 on Cross-border projects redundant. However, the existence of Clause 22 does introduce the possibility of cross-border projects into the IC regime and could be seen to go against the geographic specificity expressed in Clauses 7 to 16..

Part 2 - Requirement for infrastructure consent

establishing a unified consenting process

Clause 20 lists those consents which would no longer require separate approval under the infrastructure consent regime. I do not wish to comment on this list.

Two significant areas of consent that are not included are environmental (https://naturalresources.wales/permits-and-permissions/environmental-permits/?lang=en) and protected species (https://naturalresources.wales/permits-and-permissions/species-licensing/apply-for-a-protected-species-licence/?lang=en#:~:text=You%20must%20apply%20for%20a%20licence%20from%20Natural,restoring%20a%20pond%20or%20building%20a%20housing%20development) permitting.

This omission is similarly found in the Planning Act 2008 regime and it may be that a true 'one-stop shop' cannot be achieved in these respects. However, it may be worth examining whether these permitting regimes can be brought within the Welsh IC regime, thus achieving even greater coherence, transparency, certainty and efficiency.

This reflection is drawn in part from my own experience of dealing with applications in which delays by Natural England or the Environment Agency in issuing such permits can lead to uncertainty as to whether the Examining Authorities recommendation is robust.

Part 3 - Applying for infrastructure consent

establishing a simplified and efficient consenting process

Clause 32 deals with decisions on the validity of an application. It does so in two fairly short sub-clauses (32(1) and 32(2)) – although it is noted that clause 31 does deal with the possibility of secondary legislation adding to the criteria to be fulfilled for acceptance.

However, I note that the relevant provisions in the 2008 Planning Act (s55 - https://www.legislation.gov.uk/ukpga/2008/29/section/55) set a higher bar for acceptance of an application and include, potentially importantly, a test 'that the application (including accompaniments) is of a standard that the Secretary of State considers satisfactory' (s55(3)(f)). This test allows an Examining Inspector to make a judgement as to whether the material submitted is of a standard and comprehensive enough to allow a meaningful examination of it to take place and a sound recommendation to be made to, in that case, the relevant Secretary of State.

In my previous experience as an Examining Inspector, I have used this provision to reject two applications as requiring more detail to be provided before they can be certified as being valid. The Bill does not contain this provision and this could lead to an unsatisfactory or even aborted examination (and to an increased chance of judicial review) if an unsatisfactory application is accepted.

The existence of s55 in the 2008 Act has led to the publication of a 's55 checklist' (https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010129/EN010129-000162-Slough%20-%20s55%20checklist%20INTERNAL.pdf) by the Planning Inspectorate which can

serve to provide more certainty to an applicant as to what the Inspectorate is looking for.

Part 4 - Examining applications

providing a more inclusive process

Clause 41 provides the examining authority with the ability to choose one, or a combination, of a local inquiry, a hearing and/or on the basis of representations in writing.

First, it is noted that these terms are not defined in clause 140 (General interpretation). Second, it is noted that the Bill gives the power to make Regulations as to the conduct at local inquiries and at hearings and requires Welsh Ministers to publish criteria against which a choice of hearing will be determined.

The Explanatory Memorandum does not appear to justify this clause. The Memorandum does state, with reference to the consultation that:
'There was overall support to remove inquiries from determining ICs and for hearings only to be held in their place, for reasons of providing fair and inclusive participation, as well as the belief among some respondents that inquiries can be long and protracted, impact project programmes and are costly. However, there was a preference amongst some respondents for cross-examination to be retained.'

However, I feel that one of the defining attributes of Nationally Significant Infrastructure Projects system of examination is that it is inquisitorial rather than adversarial. This is shown most directly by the fact that in this system, it is the examining authority that does questioning and cross-examination (except in one specified circumstance) rather than the legal representatives of the parties present.

In my experience, this leads to a more focussed and more inclusive system and helps to achieve the stated objective of providing a more inclusive process with the Minister telling your Committee that, "... one of the things I very much like about this new system is it gives communities more involvement and more opportunity to be heard."

However, I also note that clause 44 gives the Examining Authority the power both to summons witnesses to attend an inquiry and to take evidence on oath. This is a

provision that is missing from the 2008 Act and may, on very rare occasions, have been useful in the hearings that I held. I do recognise that, in such cases, despite what I have stated above, an inquiry may become more inquisitorial.

I also note that the Bill contains the power to direct further examination (clause 50). This power too is missing from the 2008 Act and may, on occasion, have been beneficial in a number of key complex cases. The absence of this power in current legislation has led to the situation where the relevant Secretary of State has themselves called for further evidence and for comments on that evidence after the examination period has closed in a way that may be seen as being less accessible and transparent than the process of examination by an Examining Authority. Clause 50 may serve to rectify this anomaly and to make any post report period more open.

Finally, I note that the Bill does not contain a provision that I have found to be useful in my working experience. S87(1) of the 2008 Planning Act states that, 'It is for the Examining authority to decide how to examine the application'. This provision is useful if, as has happened in my experience, a party queries an action by the Examining Authority, for example, during a hearing.

Part 5 - Deciding applications for infrastructure consent

providing a clear strategic and policy framework on which decisions are made.

Clause 53 places a duty on decision makers to decide applications in accordance with statutory policies.

I feel that this is one of the most important parts of the Bill but one which risks leading to confusion and challenge in practice.

The Clause specifies relevant infrastructure policy statements, the National Development Framework for Wales and marine plans with relevant policy statements taking policy precedence in cases of policy incompatibility.

This gives rise to a number of interrelated points. First, there are clearly and understandably no examples of infrastructure policy statements as yet but, importantly, whilst the Bill allows for Regulations in this respect, there is no indication on the face of the Bill as to what they should contain with Clause 124 setting a low bar as to what may constitute an infrastructure policy statement.

One of, if not the, key features of national policy statements (NPS) produced under

the 2008 Act is that they are designed to establish the need for a particular type of development, thus avoiding very lengthy examination of need during the examination period. Where a 2008 Act NPS does not establish need, as is the case with the Airports NPS beyond Heathrow Third Runway, an examination and post-examination processes can get bogged down around this issue – as I know from experience.

The issue of establishing need was one of the drivers for introducing a new regime for dealing with major infrastructure projects through the 2008 Act as too many inquiries under the previous system were taking many months arguing whether there was the need for a project or not.

It is worth considering, therefore, whether the Bill should specify that an infrastructure policy statement should, at a minimum, cover the issue of need.

Secondly, the Bill does not specify the process through which infrastructure policy statements are adopted and, specifically, does not require that these are considered by the Senedd as part of their adoption process. Given the importance of these documents, the Committee may wish to consider whether such a requirement should be on the face of the Bill.

Third, an initial and non-rigorous search of 'Future Wales – The National Plan 2040 (https://www.gov.wales/sites/default/files/publications/2021-02/future-wales-the-national-plan-2040.pdf), which states that it is the national development framework for Wales, shows that a number of categories of SIPs, such as ports and radioactive waste geological disposal are not covered in policy terms. Therefore, unless a comprehensive set of infrastructure policy statements are produced, there will be a policy void.

There could also be a policy void if Welsh Ministers exercised their powers under clauses 22 or 23 to bring other schemes into the regime of a type for which no infrastructure policy statement existed.

There also remains the question of the status of other published national policy guidance, notably Planning Policy Wales (https://www.gov.wales/sites/default/files/publications/2021-02/planning-policy-wales-edition-11_0.pdf) but also including Technical Advice Notes (https://www.gov.wales/technical-advice-notes) and Circulars (https://www.gov.wales/planning-circulars) (whilst noting in passing that the collection of extant Circulars includes one that is 55 years old

(https://www.gov.wales/sites/default/files/publications/2022-07/planning-inquiry-commissions-circular-5968-v2.pdf) advising on the setting up of a new system for dealing with major infrastructure projects …).

Finally in this Part, the timetable set out in s56(1)(a) may seem to be ambitious. Whilst current moves are being made to streamline some examinations, the English system has normally allowed six months for the inquiry, three months for the EA's report and three months for SoS decision – equalling a year. However, this does not include a period between validation and the start of the examination (the period for the receipt of representations etc.) and this should be included in any timescale.'

Part 6 - Infrastructure consent orders

My evidence does not directly cover this Part of the Bill.

Part 7 - Enforcement

My evidence does not directly cover this Part of the Bill.

Part 8 - Supplementary functions

My evidence does not directly cover this Part of the Bill.

Part 9 - General provisions

My evidence does not directly cover this Part of the Bill.

What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

Some of these are covered within the evidence given above under Parts 1 to 5.

How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)?

My evidence does not directly cover this question.

Are any unintended consequences likely to arise from the Bill?

Some of these are covered within the evidence given above under Parts 1 to 5.

What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

My evidence does not directly cover this question.

Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

No.

Infrastructure 14, Pembrokeshire Coast National Park Authority

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | **Climate Change, Environment, and Infrastructure Committee**

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan Awdurdod Parc Cenedlaethol Arfordir Penfro | Evidence from Pembrokeshire Coast National Park Authority

General principles

What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

The Authority is supportive of the general principle of a simplified new consenting regime and recognises the efficiencies that this approach offers. PCNPA would like to stress however the importance of ensuring that within this streamlined process, environmental protections and processes are not diminished or reduced. This is particularly critical in relation to applications which may have an impact on areas such as National Parks which are recognised as nationally important landscapes. It is also however critical for areas designated as Sites of Special Scientific Interest or Special Areas of Conservation. PCNPA requests that the Committee consider carefully the need to ensure that existing protections remain robust, with no dilution of standards of environmental protection – particularly key given both the climate and nature emergencies currently facing Wales.

What are your views on the Bill's provisions (set out according to parts below), in particular are they workable and will they deliver the stated policy intention?

Part 1 - Significant infrastructure projects

No response.

Part 2 - Requirement for infrastructure consent

No response.

Part 3 - Applying for infrastructure consent

No response.

Part 4 - Examining applications

No response.

Part 5 - Deciding applications for infrastructure consent

No response.

Part 6 - Infrastructure consent orders

No response.

Part 7 - Enforcement

No response.

Part 8 - Supplementary functions

No response.

Part 9 - General provisions

No response.

What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

No response.

How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)?

No response.

Are any unintended consequences likely to arise from the Bill?

No response.

What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

PCNPA would also like to take this opportunity to highlight the impact that the planning fee arrangements through the current system for Developments of National Significance (DNS's) have had on Local Planning Authorities. Under the current system Local Planning Authorities only receive 20% of fee income from DNS applications, despite a significant workload associated with these. This has represented a significant loss of income to many LPAs across Wales. PCNPA also has experience of needing to input into a neighbouring LPAs DNS Local Impact

Report but receiving no fee payment for this under the present system. It is hoped that the development of new regulations to accompany the Infrastructure (Wales) Bill allow this key issue to be considered. We would also ask that the Committee give careful thought about how proposals in neighbouring Authorities may generate workloads for neighbouring Authorities and how this might be addressed through a revised fee structure for the new system. Providing Local Authorities with sufficient resource to support their work in feeding back on Infrastructure Consents is essential if local issues and impacts are to be properly considered.

Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

PCNPA understand that WG officers have informally advised that the Infrastructure (Wales) Bill is likely to be implemented by mid 2025. Transition arrangements will depend on what stage existing applications are in within the system. It would be very helpful if WG could ensure clarity for the transitional arrangements that will be applied to existing applications already lodged under separate existing regimes.

August 2023

Awdurdod
Parc Cenedlaethol
Arfordir Penfro
Parc Llanion, Doc Penfro
Sir Benfro SA72 6DY

Pembrokeshire Coast
National Park
Authority
Llanion Park, Pembroke Dock
Pembrokeshire SA72 6DY

Ffôn/Tel:
01646 624800

Ffacs/Fax:
01646 689076

pcap@arfordirpenfro.org.uk
pcnp@pembrokeshirecoast.org.uk

www.arfordirpenfro.cymru
www.pembrokeshirecoast.wales

To: Welsh Government Climate Change, Environment and Infrastructure Committee by email

Dear Sir/Madam,

RE: Infrastructure (Wales) Bill Consultation

I am writing to you on behalf of the Pembrokeshire Coast National Park Authority with regard to the current consultation you are running on the Infrastructure (Wales) Bill. The general principles of the Bill were considered by Authority Members in its meeting of July 2023. The Authority is grateful for the opportunity to comment on the proposals which represent a significant change to the way in which large infrastructure developments will be processed in Wales.

The Authority is supportive of the general principle of a simplified new consenting regime and recognises the efficiencies that this approach offers. PCNPA would like to stress however the importance of ensuring that within this streamlined process, environmental protections and processes are not diminished or reduced. This is particularly critical in relation to applications which may have an impact on areas such as National Parks which are recognised as nationally important landscapes. It is also however critical for areas designated as Sites of Special Scientific Interest or Special Areas of Conservation. PCNPA requests that the Committee consider carefully the need to ensure that existing protections remain robust, with no dilution of standards of environmental protection – particularly key given both the climate and nature emergencies currently facing Wales.

PCNPA would also like to take this opportunity to highlight the impact that the planning fee arrangements through the current system for Developments of National Significance (DNS's) have had on Local Planning Authorities. Under the current system Local Planning Authorities only receive 20% of fee income from DNS applications, despite a significant workload associated with these. This has represented a significant loss of income to many LPAs across Wales. PCNPA also has experience of needing to input into a neighbouring LPAs DNS Local Impact Report but receiving no fee

Cymraeg

Rydym yn croesawu cael gohebiaeth yn Gymraeg, a byddwn yn ateb gohebiaeth yn Gymraeg. Na fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh, and will respond to any correspondence in Welsh. Corresponding in Welsh will not lead to delay.

payment for this under the present system. It is hoped that the development of new regulations to accompany the Infrastructure (Wales) Bill allow this key issue to be considered. We would also ask that the Committee give careful thought about how proposals in neighbouring Authorities may generate workloads for neighbouring Authorities and how this might be addressed through a revised fee structure for the new system. Providing Local Authorities with sufficient resource to support their work in feeding back on Infrastructure Consents is essential if local issues and impacts are to be properly considered.

Finally PCNPA understand that WG officers have informally advised that the Infrastructure (Wales) Bill is likely to be implemented by mid 2025. Transition arrangements will depend on what stage existing applications are in within the system. It would be very helpful if WG could ensure clarity for the transitional arrangements that will be applied to existing applications already lodged under separate existing regimes.

I hope that the above is helpful in informing the Committees consideration of this hugely important legislation for Wales.

Yours sincerely,

Cllr Di Clements

Chair of the Pembrokeshire Coast National Park Authority

Infrastructure 48, Welsh Local Government Association

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan Mae Cymdeithas Llywodraeth Leol Cymru | Evidence from Welsh Local Government Association

General principles

What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

1. The principles of the Bill are supported in that it is considered that a single Infrastructure Consent regime will consolidate and simplify a myriad of consenting regimes.

2. Local Authorities are correctly and rightly seen to have an important, central role in the proposed consenting process from pre-application stages through to the discharge of conditions, etc.

3. Local Authorities are well placed to provide their local and specialist knowledge on issues and potential impacts of proposed Significant Infrastructure Projects but crucially they must be sufficiently resourced to support the proposed single infrastructure consenting regime.

4. As the proposed regime is a single consenting regime which will consolidate and replace a number of separate consenting regimes, the process will draw in a wide range of Local Authority services and their supporting specialist consultants e.g. local highway authority, land drainage, sustainable drainage approval body, common land, rights of way, environmental health, planning, biodiversity / ecology, solicitor costs for preparing agreements and obligations, etc. As such, the proposed fee regulations must reflect this wider input and involvement and the cost to be borne by Local Authorities and should not duplicate the DNS fee regulations because the DNS system is much narrower in its scope.

5. Local Authorities are supportive of assisting the examination process and attending the examination if required, but they must be recompensed for doing so.

6. As another example, experiences drawn from the existing DNS regime have shown that the discharge of planning conditions can require Local Authorities to procure specialist consultancy support not available internally within an Authority. This additional cost should be reflected in the proposed fee regulations.

7. It is expected that the proposed approach will result in prospective applicants wishing to front-load the preparation of Significant Infrastructure Project applications in order to ensure that applications are sound at the time of their submission. Prospective applicants can be expected to want to engage early with Local Authorities in order to ensure issues are addressed by the time of submission and that Local Impact Reports are positive and favourable. As such Local Authorities can be expected under the proposed regime to be placed under further and increased demands to engage and support the early development and evolution of Significant Infrastructure Projects. This has resource and capacity implications for Local Authorities.

8. Whilst Planning Performance Agreements have been successfully used by Local Authorities, capacity, resource and procurement challenges are already experienced by Local Authorities and are a significant challenge. These are current practical issues and potential barriers that will need to be addressed if the regime is to meet its objectives as intended.

9. The WLGA would welcome further discussion with Wesh Government on the detailed implementation of the Bill and in particular how efficiencies can best be achieved to enable the Bill's objectives to be met. Moreover, some Local Authorities, as well as PEDW, are already being put under significant pressure by Development of National Significance projects as applicants look to escalate projects and there is the real prospect that the number of DNS applications combined with SIP applications cannot be adequately supported by Local Authorities. Consideration should be given to validation requirements and potentially to a prioritisation system for potential SIP applications in order to ensure limited resources are used and managed in the most effective way.

10. The proposed 5 week period for Local Authorities to prepare and approve a Local Impact Report is challenging. It is considered that this should be extended to 8 weeks.

Specific Comments:

11. Clarity is required on the amendment process and procedures (material or non-material amendments) post IC approval e.g. will sustainable drainage amendments be possible? Which Authority is responsible for determing the amendment?

12. Welcome the opportunity for further consultation and input in relation to:

- The supporting regulations to be prepared e.g. Local Impact Reports and Fees;

- The proposed Relevant Policy Statements. Clarity is required over the process and timescale for preparing these as these will be critical to determination. The timing and materiality of these for DNS applications and the transition period will need to be made clear.

13. Clarity over the enforcement responsibilities of different authorities is required.

14. The National Development Framework is referenced, but Strategic Development Plans and Local Development Plans / LDP-lites should also be material considerations.

What are your views on the Bill's provisions (set out according to parts below), in particular are they workable and will they deliver the stated policy intention?

Part 1 - Significant infrastructure projects

No response.

Part 2 - Requirement for infrastructure consent

No response.

Part 3 - Applying for infrastructure consent

No response.

Part 4 - Examining applications

No response.

Part 5 - Deciding applications for infrastructure consent

No response.

Part 6 - Infrastructure consent orders

No response.

Part 7 - Enforcement

No response.

Part 8 - Supplementary functions

No response.

Part 9 - General provisions

No response.

What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

No response.

How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)?

No response.

Are any unintended consequences likely to arise from the Bill?

No response.

What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

No response.

Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

No response.

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

Llywodraeth Cymru
Welsh Government

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

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

1 September 2023

Dear Llŷr,

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

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

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

Yours sincerely,

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

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Llywodraeth Cymru
Welsh Government

Infrastructure (Wales) Bill

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

September 2023

Infrastructure (Wales) Bill

Statement of Policy Intent for Subordinate Legislation

Introduction

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

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

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

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

PART 1 – SIGNIFICANT INFRASTRUTURE PROJECTS

Power(s): Part 1, section 17

Description:

These powers enable the Welsh Ministers to:

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

Policy intention:

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

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

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

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

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

PART 2 – REQUIREMENT FOR INFRASTRUCTURE CONSENT

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

Description:

These powers enable the Welsh Ministers to:

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

Policy intention:

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

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

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

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

Power to direct a project is a SIP

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

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

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

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

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

	sufficient to determine whether a project is of such significance and complexity that it merits consenting through a unified consenting process. Therefore, where a development is of national significance to Wales the Welsh Ministers may give a direction to specify that a proposed development is a SIP. **Example 1 – when the project falls under compulsory criteria** Where a project falls just under the compulsory criteria of the Bill but it is likely to raise significant concerns due to its location or complexity, the Welsh Ministers can direct that the project is to be classed as a SIP and thus require an IC. For example, a proposed solar farm with a generating capacity of 30MW but located in the proximity of an ecological sensitive receptor may be directed by the Welsh Ministers to be classed as a SIP due to its potential significant impacts. **Example 2 – when the project contains new technology or novel circumstances** In addition to the power to direct when a project is below the compulsory thresholds, the Bill provides the Welsh Ministers with a degree of flexibility in considering whether new technology or novel circumstances should fall under the consenting regime. For example, development relating to hydrogen production is not currently included in the Bill because it is relatively novel technology and the cases that have come forward so far have a small capacity and are not complex. However, should a new project come forward which involve a higher complexity and potential significant impacts, these projects may benefit from inclusion in the new unified consenting regime, due to their novel circumstances.

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

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

PART 3 – APPLYING FOR INFRASTRUCTURE CONSENT

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

Description:

These powers enable the Welsh Ministers to:

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

Policy intention:

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

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

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

Making an application for infrastructure consent

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

Publicity and notification requirements

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

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

Local impact reports and marine impact reports

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

Compulsory acquisition of land

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 4 – EXAMINATION

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

Description:

These powers enable the Welsh Ministers to:

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

Policy intention:

Examining authorities

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

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

Determination of procedure

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

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

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

Procedure at examination

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

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

Power to enter land

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

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

Access to evidence at an inquiry

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

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

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

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

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

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

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

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

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

	<u>Power to direct matters to be dealt with by the examining authority or the Welsh Ministers</u> Where an examining authority has the function of examining an application, matters may arise which are, for example, particularly controversial and it would be more appropriate for the Welsh Ministers to take over and undertake the proceedings. Similarly, the Welsh Ministers may be examining an application (although unlikely) and may come to view the proceedings would be more appropriately dealt with by the examining authority. The Bill provides the Welsh Ministers the power to issue a direction, transferring the undertaking of proceedings from the examining authority to themselves, or vice versa. In either scenario, subordinate legislation will specify the procedure to be followed in these circumstances. This will include matters such as (but not limited to) who is to be notified of a direction and the timeframe within which such notification must occur. <u>Virtual / hybrid hearings and inquiries</u> The Covid-19 pandemic highlighted a limitation with the existing hearings and inquiries procedures, as legislation specified they must be held in person. This resulted in examinations being postponed because gatherings and interactions were substantially restricted. To ensure we have sufficient flexibility to allow for hearings and inquiries to be held virtually, where considered appropriate, subordinate legislation will prescribe the principles and parameters of virtual meetings. This may include matters such as who will have the power to determine whether proceedings should be undertaken virtually, how virtual proceedings are publicised (such as via e-mails) and how hybrid proceedings would operate in practice.

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

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

PART 5 – DECIDING APPLICATIONS FOR INFRASTRUCTURE CONSENT

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

Description:

These powers enable the Welsh Ministers to:

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

Policy intention:

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

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

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

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

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

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

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

Matters which may be disregarded

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

Timetable for deciding applications

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

Granting or refusing infrastructure consent

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

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

Reasons for a decision to grant or refuse infrastructure consent

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

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

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

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

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

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

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

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

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

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

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

PART 6 – INFRASTRUCTURE CONSENT ORDERS

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

Description: These powers enable the Welsh Ministers to:

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

Policy intention:

Powers to modify Part 1 of Schedule 1

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

Compulsory acquisition of land

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

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

Extinguished and deemed consents

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

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

Correcting an error in a decision document

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

Changing and revoking an IC

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

Duration of infrastructure consent order and when development begins

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

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

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

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

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

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

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

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

	• deem a consent to establish a safety zone around renewable energy installations under section 95 of the Energy Act 2004; • extinguish any requirement under the Hedgerows Regulations 1997.
Section 85 Correcting errors: regulations	**Background** To maintain the integrity of a decision document (notice of refusal or infrastructure consent order), the Welsh Ministers will have powers to correct a decision. This will only occur if the error doesn't materially change an IC. As any minor correction to a decision will not prejudice any party, it is not considered necessary for the wording of the decision to be consulted upon in all instances, particularly where its meaning will not change. However, where a significant error occurs, it is considered more extensive consultation will be required. The error may be identified by the applicant upon review of their consent, by the Welsh Ministers, the appointed person, or by other parties with an interest in the decision. The power to correct errors in decision documents may be exercised on receipt of a request in writing or without a request. If the error being corrected is in relation to a notice of refusal, the applicant must be given notice. **Subordinate legislation** The Bill makes provision for or in connection with the procedure for correcting an error in a decision document, and in relation to the effect of making a correction, or not making a correction. We anticipate subordinate legislation will specify: • Details of the consultation which must take place as a result of making a decision to correct a decision document, if it is considered necessary. This will include interested parties and stakeholders.

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

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

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

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

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

	<u>Material operations</u> Section 92 states that development is taken to begin on the earliest day that any material operation is undertaken. Subsection (2) enables regulations to set out the kinds of operations that are not a “material operation” for the purposes of establishing when development has begun. The need to exclude certain operations from the definition of material operation enables clarity to be provided about when development has begun. It is anticipated the regulations will specify that any steps taken in regard to compulsory acquisition (for example the serving of a notice) will not constitute a material operation on its own.
Section 93 Legal challenges	**Summary** This section specifies the circumstances and time limits for where matters relating to an infrastructure consent order (including amendments or revocations) may be challenged. **Background** As decisions relating to infrastructure consent orders (including amendments and revocations) can only be made by the Welsh Ministers, there is no statutory right of appeal. However, challenges may be brought by judicial review. In general, the timescales for bringing a judicial review are specified on the face of the Bill. However, there is one regulation making power in relation to timings in section 93(7)(b) which relates to a claim brought under section 93(6). Section 93(6) provides for a legal challenge to be made for anything else done or omitted to be done by an examining authority or the Welsh Ministers in relation to an application for infrastructure consent or an application to change or

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

PART 7 – ENFORCEMENT

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

Description:

These powers enable the Welsh Ministers to:

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

Policy intention:

Notices of unauthorised development

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

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

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

Temporary stop notices

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

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

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

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

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

	Subordinate legislation <u>Further matters and circumstances which a temporary stop notice may not prohibit</u> The main purpose of restricting the use of a temporary stop notices is to ensure certain rights an individual may have are not affected, or where the issuing of such a notice would have implications on health and safety, or national security. Furthermore, it should be noted this power mirrors section 171F(1)(b) of the Town and Country Planning Act 1990 and certain restrictions may be introduced in the wider planning system which would also be relevant to applications for infrastructure consent. Therefore, this provides the necessary flexibility to align with the wider planning system, where appropriate.

PART 8 – SUPPLEMENTARY FUNCTIONS

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

Description:

These powers enable the Welsh Ministers to:

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

Policy intention:

Charging of Fees

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

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

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

Creation and maintenance of an applications register

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

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

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

Statutory consultees

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

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

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

Recovering fees in respect of directions

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

Provisions limiting the power of the Welsh Ministers to disapply requirements

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

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

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

Crown applications

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

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

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

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

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

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

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

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

	For example, Natural Resource Wales will be consulted in all instances. Another example is that the Ministry of Defence will be consulted when a development that falls within statutory safeguarding zones as issued under the Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002, or when wind developments where any turbine would have a maximum blade tip height of, or exceeding, 11m above ground level and/or has a rotor diameter of, or exceeding, 2.0m. Subordinate legislation will prescribe the criteria for the form, content and requirements of consultation responses. This will ensure that an appropriate input is provided during the examination process. For example, a substantive response may include: • whether the consultee has no comment to make or no objection; • advise the Welsh Ministers or examining authority of any concerns identified in relation to the proposed development and how those concerns can be addressed by the applicant; • advise that the consultee objects to the proposed development and sets out the reasons for the objection. Subordinate legislation will also specify the timeframe a response must be received in. This will include a specified time period, as well as the option for an agreed time period made in writing between the statutory consultee and the Welsh Ministers. <u>Specialist Consultee Reporting</u> Based on the requirement to provide a substantive response, it is appropriate for subordinate legislation to introduce performance monitoring to ensure compliance with any consultation requirements. Subordinate legislation will require an authority consulted under this section of

	the Bill to provide a report to the Welsh Ministers about the authority's compliance with the consultation requirements. Reports will relate to a 12 month period, and subordinate legislation will specify what information is required to be contained in these reports (as a minimum). We anticipate this to include: • the number of occasions in which the statutory consultee was consulted during the year; • the number of occasions a substantive response was submitted; and • the number of occasions a response (either substantive or not) was provided outside the specified period for response, including reasons why the specified period was not adhered to. Reports will need to be submitted in a form published by the Welsh Ministers.
Section 128 Make provisions limiting the power of the Welsh Ministers to disapply requirements	**Background** The consenting process introduced by the Bill is intended to be a one stop shop for the consenting of infrastructure in Wales. It provides for one process specified by a suite of regulations to be used for consenting a wide range of infrastructure developments and in a wide range of different circumstances. The process is intended to be relatively prescriptive, similar to the DNS process. For example, subordinate legislation will prescribe in detail how consultations must be conducted to inform an application and during examination or how the examining authority will notify interested parties upon receiving a valid application. In being prescriptive, it is recognised that legislation may oblige parties to fulfil requirements which may in limited circumstances be disproportionate to the application or its likely impacts. The Bill aims to ensure a transparent and fair examination process but also to be efficient and

	timely. In order to continue to expedite the consenting process, the Welsh Ministers have the power to dispense with certain procedural requirements but only where they believe there would be no detriment to procedural fairness. **Subordinate legislation** Circumstances for dispensing requirements *Examples* *Example 1: Publicity* Subordinate legislation will set out publicity requirements. In the instances of a linear route, such as a railway or a new road, this may include multiple notices. However, where additional publicity occurs for a relatively minor amendment to the scheme, the Welsh Ministers may see no reason to publicise this amendment in the same way. *Example 2: Engagement* Subordinate legislation will set requirements that an applicant will have to fulfil during the pre-application consultation. If the regulation requires public events to consult on a proposed development, there might be instances where this will not be physically possible, for example during a pandemic. *Example 3: Consultation* Subordinate legislation will set consultation requirements associated with the correction of errors in a decision. Depending on the nature of the correction, it may be appropriate to dispense with some of the consultation requirements. In such instances, it would be helpful and proportionate for the Welsh Ministers to exercise a power which enables them to dispense with a procedural requirement or requirements set out in the Bill or regulations. In the interests of transparency, where requirements are dispensed with, it would be important for the reasons for those requirements to be dispensed with to be published.

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

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

PART 9 – GENERAL PROVISIONS

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

Description:

These powers enable the Welsh Ministers to:

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

Policy intention:

Specify any other way to give notices

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

Make supplementary, incidental, transitional or consequential provisions

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

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

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

SCHEDULE 2 – COMPENSATION FOR CHANGING OR REVOKING INFRASTRUCTURE CONSENT ORDERS

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

Description:

These powers enable the Welsh Ministers to:

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

Policy intention:

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

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

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

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

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/2233/23

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

1 September 2023

Dear Llyr,

Thank you for sending me the Climate Change, Environment and Infrastructure Committee Report published on 14 July 2023 in relation to the Environment (Air Quality and Soundscapes) (Wales) Bill ("the Bill").

Please see my response in Annex 1 below to the set of recommendations within the report. I have also written today to the Chair of the Legislation, Justice and Constitution Committee and the Chair of the Finance Committee to set out my response to their recommendations.

Please note I have been able, in this case, to provide a response to most of the recommendations in the report in advance of the General Principles Debate. However, normal practice is for Ministers to provide an explanation of the Government's response to the recommendations in each Committee report during the Stage 1 debate and in most, but not all, circumstances provide further detail through a formal letter. This response does not indicate a future departure from this practice.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

Yours sincerely,

Julie James

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

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Annex 1

Response to Recommendations within the Climate Change, Environment and Infrastructure Committee Report which was published on 14 July 2023 in relation to the Environment (Air Quality and Soundscapes) (Wales) Bill ("the Bill")

Recommendation 1.

The Committee recommends that the Senedd supports the general principles of the Bill.

I support this recommendation.

Recommendation 2.

The Minister should bring forward amendments at Stage 2 to include measures aimed at reducing air pollution from agricultural emissions and improving air quality.

I agree with the Committee that Welsh Ministers should provide information on action required to reduce air pollution from agricultural emissions. However, whilst I agree with the spirit of this recommendation, I do not think an amendment to the Bill is necessary as the national air quality strategy will outline the policies and cross-Government and sector measures to achieve our objectives for cleaner air in Wales. This will include action to ensure any new air quality targets are met.

Alongside this, we have a wide range of work already underway to reduce agricultural pollution and its impact on our environment. Further details on the action we are taking can be found at Annex 2.

Recommendation 3.

The Minister should use the Bill to encourage active travel. As a minimum, we expect the Minister to bring forward amendments at Stage 2 to ensure the Bill provides for the promotion of active travel as a means of reducing air pollution from vehicle emissions and improving air quality.

The Section 8 'Duty to Promote Awareness of Air Pollution' is a broad duty which enables us to take targeted action relating to a range of pollutants and sources including active travel. Discussions are ongoing on potential options for giving effect to this recommendation in a way which works within the policy intention and scope of the Bill.

Recommendation 4.

The Minister should bring forward amendments at Stage 2 to address the fact that the references to 'Secretary of State' in section 80 of the 1995 Act have resulted in confusion for the end user of the legislation because, in relation to Wales, it is the Welsh Ministers that are under a duty to prepare and publish a national air quality strategy, and to review that strategy.

Whilst I agree this is a point that would benefit from clarity, there are many references to 'Secretary of State' on the statute book with regard to older legislation which need to be read in conjunction with applicable Transfer of Functions Orders and relevant provisions contained within the Government of Wales Act 2006. Making a change to the Secretary of State references in section 80 would create inconsistency and confusion. I can, however, commit to clarifying this point in the Explanatory Memorandum and/or the Explanatory Note.

Recommendation 5.

The Minister should bring forward amendments at Stage 2 to place a duty on the Welsh Ministers to make regulations setting air quality targets for all pollutants covered by the World Health Organisation Air Quality Guidelines, and for ammonia. This should supplement, rather than replace, the discretionary power to set targets for any matter relating to air quality in Wales. Regulations must be made no later than three years after the day on which the Act receives Royal Assent. If the Minister is minded to accept this recommendation, we would be content for the Welsh Ministers to have a power to make regulations to amend the list of pollutants set out on the face of the Bill.

I am currently unable to respond to this recommendation as this is a significant change from the current duties in relation to air quality targets in the Bill, with wide ranging cross-Government and sector impacts. In addition, factors including potential financial, health, environmental, economic and socio-economic impacts must be assessed. I can assure you that we are in the process of considering it fully. I will write back to you separately on this matter in due course.

Recommendation 6.

If the Minister is unwilling to accept Recommendation 5, she should:

- **bring forward amendments at Stage 2 to place a duty on the Welsh Ministers to make regulations setting air quality targets for nitrogen dioxide and ammonia. Regulations must be made no later than three years after the day on which the Act receives Royal Assent; and**

I am currently unable to respond to this recommendation as this is a significant change from the current duties in relation to air quality targets in the Bill, with wide ranging cross-Government and sector impacts. In addition, factors including potential financial, health, environmental, economic and socio-economic impacts must be assessed. I can assure you that we are in the process of considering it fully. I will write back to you separately on this matter in due course.

- **commit to address any data/evidence gaps that may be a barrier to setting targets for all remaining pollutants covered in the WHO AQG. She should also commit to report back to the Senedd on progress towards the development of targets annually after the Act receives Royal Assent.**

I accept this part of the recommendation. As I have set out in Committee, we already have an extensive evidence project underway to consider the case for setting targets referenced in the World Health Organisation air quality guidelines. This recommendation highlights the need for an evidence-based approach to developing new targets.

Recommendation 7.

The Minister should bring forward amendments at Stage 2 to provide that regulations to set a $PM_{2.5}$ target must be made no later than two years after the day on which the Act receives Royal Assent.

I resist this recommendation as laying regulations within two years of Royal Assent is not achievable. My officials gave an oral briefing to the committee and provided a written technical briefing to the committee in June which explains the necessity of the three-year timeline. This project has wide ranging cross-Government and sector impacts. In addition, factors including potential financial, health, environmental, economic and socio-economic impacts must be assessed. We must also ensure appropriate time is made available for engagement, consultation, scrutiny by the Senedd and drafting of the regulations.

Recommendation 8.

The Minister should bring forward amendments at Stage 2 to provide that air quality targets set under the Bill may be long-term targets but need not be. The purpose of this is to enable the Welsh Ministers to set interim targets a trajectory towards a long-term target, and to set short-term targets for newly emerging pollutants.

I agree it is important for Welsh Ministers to have powers to set interim targets and we already have existing powers to do this, the same as we do for any short-term air quality target. Therefore, the Bill does not need to be amended to provide for this. These interim targets can be statutory or non-statutory, to demonstrate a trajectory towards compliance with longer-term targets.

In addition, when setting and reviewing targets under the framework, the Bill requires Welsh Ministers to seek advice from relevant experts and have regard to scientific knowledge. There are a range of existing types of air quality target which depend on the nature of the pollutant. The need for any interim target, the form it should take and when it should apply would be expected to form part of this initial and on-going advice.

Recommendation 9.

The Minister should bring forward amendments at Stage 2 to provide that the Welsh Ministers must have regard to the latest World Health Organisation Air Quality Guidelines when setting air quality targets.

World Health Organisation (WHO) air quality guidelines will be considered as part of Welsh Ministers' duty under the Bill to have regard to scientific knowledge when setting targets. The WHO by the nature of its remit, periodically issues health-based recommendations to assist governments and civil society in reducing human exposure to air pollution and its adverse effects. Air Quality Guidelines are not legally binding standards; however, they do provide us and other countries with an evidence-informed tool, which they can use to inform legislation and policy. It is intended that Governments should consider their unique, local conditions when utilising the guidelines, as well as the feasibility of achieving the guidelines, and the non-health related costs. The committee will be aware of the duties Welsh Government must adhere to when developing regulations. For example, our well-being of future generations duties. The requirement to "have regard" to scientific knowledge on air pollution when making the target regulations means the WHO Guidelines will be used exactly as the WHO intends them to be used.

The supporting documentation to the Bill, including the Explanatory Notes, make it clear the WHO air quality guidelines will be taken into account when targets are being developed. For these reasons I do not think an amendment is required.

Recommendation 10.

The Minister should bring forward amendments at Stage 2 to include a requirement on the Welsh Ministers to consult relevant stakeholders before making regulations to set air quality targets. Statutory consultees should include (but need not be limited to) those listed in new section 87(7B) of the Environment Act 1995 (to be inserted by section 12 of the Bill).

Whilst I support the spirit of this recommendation, I do not consider an amendment is necessary. The Welsh Government has already committed to consulting before making such regulations and I restate that commitment here. There will be a full public consultation before making regulations setting long-term targets. These regulations are also subject to the affirmative procedure, so are subject to Senedd approval before being made.

Recommendation 11.

The Minister should bring forward amendments at Stage 2 to ensure the Bill provides for regular reporting to the Senedd on progress towards the delivery of air quality targets. This could be achieved by including a duty on the Welsh Ministers to report annually to the Senedd on progress. This should complement rather than replace the reporting and review provisions set out in sections 5 and 6.

The Committee is asked to note that in addition to the reporting requirements in sections 5 and 6 of the Bill, section 7 places a specific duty on Welsh Ministers to make arrangements to collect data about air quality in Wales to enable them to monitor the progress towards meeting targets set and ensure the data is published. This is a further example of how we will be transparent in showing progress towards meeting new targets set under the Bill.

Further, the national air quality strategy already outlines the policies and measures to achieve our long-term objectives for clean air.

In saying this, I recognise the Committee's desire for regular reporting. If the target has been met, I also acknowledge the Bill is silent on any further reporting requirements. In policy terms, I do not think it would be right for compliance reporting and the provision of data to end once a target has been met. I am therefore proposing to make an amendment which will ensure the Welsh Ministers will be under a duty to maintain any standard achieved by virtue of any target set under the Bill. In addition, I propose that Welsh Ministers will be under a duty to ensure that reporting requirements are in place in relation to their duty to maintain standards. I have also given a commitment to report annually on the national air quality strategy.

I think the combination of these duties will provide the right balance of reporting before, during and after the date by which targets must be met.

Recommendation 12.

The Minister should bring forward amendments at Stage 2 to ensure the Welsh Ministers must have regard to the latest World Health Organisation Air Quality Guidelines when reviewing targets in accordance with section 6.

As stated in my response to Recommendation 9, the WHO air quality guidelines are and will be considered as part of Welsh Ministers' duty to have regard to scientific knowledge when setting targets. However, it is important to note that the WHO's air quality guidelines are neither standards nor legally binding criteria. Governments should consider their unique, local conditions when utilising the guidelines.

The Bill as drafted requires Welsh Ministers to have regard to scientific knowledge on air pollution, which would include the WHO air quality guidelines. The supporting documentation to the Bill, including the Explanatory Notes, makes it clear the WHO air quality guidelines will be taken into account when targets are being developed. For these reasons I do not think an amendment as recommended is required.

Recommendation 13.

The Minister should:

- **clarify the timescale she is working towards for extending and enhancing existing air quality monitoring capabilities;**
- **provide further details on how data collection will be improved for the purpose of setting and monitoring progress towards air quality targets; and**
- **provide an update on progress towards the development of the national air pollution monitoring and assessment service for Wales, including a revised timetable for implementation of the service.**

I accept this recommendation. The National Targets framework requires Welsh Ministers to put in place arrangements for data collection to assess progress made towards targets once they have been set, and to ensure the data is published. Closely related to the duty to collect and publish data, the Clean Air Plan for Wales includes the commitment to develop and implement a national Air Quality Monitoring and Assessment Service for Wales.

The Explanatory Memorandum and Regulatory Impact Assessment describes at pages 84 – 91 the anticipated costs and timescales in relation to air quality monitoring, modelling and reporting capabilities necessary to measure, assess and report on compliance with specific targets. Decisions on monitoring technologies and siting will be evidence-based and directed by independent expert advice to ensure the data best represents progress towards the targets set. Where it is possible, we would like the extended networks to inform existing local and national legislative regimes to support coherent actions taken because of the measurements.

The Service is being considered and developed alongside the air quality monitoring requirements. We are working closely with Natural Resources Wales, Public Health Wales, local authorities, the Clean Air Advisory Panel and other partners in the consideration and development of the Service and enhanced air quality monitoring in Wales.

Recommendation 14.

The Minister should bring forward amendments at Stage 2 placing a duty on the Welsh Ministers to report annually to the Senedd on the steps taken to promote awareness of air pollution and progress towards actions set out in the delivery plan. We would be content for this report to be part of the wider annual report on progress towards delivery of the national air quality strategy (see Recommendation 15).

We have already committed to report annually on the national air quality strategy and are expecting the delivery plan to form part of this. Due to the timing of this report however, the delivery plan will need to be reported on separately in the first instance to meet the annual requirement. I am willing to make this commitment in the Explanatory Memorandum but do not agree that an amendment to the Bill is necessary for this purpose.

Recommendation 15.

The Minister should bring forward amendments at Stage 2 to include a duty on the Welsh Ministers to report annually to the Senedd on progress towards the delivery of the national air quality strategy.

I appreciate and agree with the level of importance placed on reporting and transparency by the Committee. However, the Welsh Government has already committed to reporting annually on the national air quality strategy. I am happy to restate that commitment in the Explanatory Memorandum to the Bill.

Recommendation 16.

The Minister should provide further details of how the Welsh Government will monitor and report on compliance with the duty on local authorities and relevant Welsh public authorities to have regard to the national air quality strategy.

I accept this recommendation. We will monitor and report on compliance with the duty on local authorities and relevant Welsh public authorities to have regard to the national air quality strategy through existing mechanisms. We will work closely with local authorities when developing the national air quality strategy and the policies within it. The LAQM regime requires local authorities to submit annual progress reports. Welsh Government will report on the national air quality strategy on an annual basis and we also publish the Air Quality in Wales report.

Recommendation 17.

The Minister should commit to ensuring that any additional costs to local authorities and relevant Welsh public authorities arising from the duty to have regard to the national air quality strategy will be met with an appropriate level of funding.

We have worked closely with local authorities as we developed our Clean Air Plan for Wales and this Bill, and we will continue this close work when developing the national air quality strategy and this includes options for provision of appropriate funding.

Recommendation 18.

The Minister should consider bringing forward amendments at Stage 2 to ensure other NHS organisations, the Office of the Future Generations Commissioner and Public Service Boards are listed as statutory consultees when reviewing the national air quality strategy.

I accept this recommendation and we will bring forward an amendment to reflect this recommendation.

Recommendation 19.

The Minister should commit to keeping the budget allocation for the newly established Local Air Quality Management Support Fund under review.

I accept this recommendation and will commit to keeping the budget allocation for the newly established Local Air Quality Management Support Fund under review.

Recommendation 20.

The Minister should amend the Bill:

- **to place a duty on local authorities to prepare and publish an air quality strategy setting out the steps they will take to improve air quality across their area; and**
- **to enable two or more neighbouring authorities to jointly prepare a strategy to meet the duty outlined above.**

Our statutory guidance already outlines the option for individual or groups of local authorities to develop air quality strategies. By making this a statutory duty we would be adding further burden to local authority resources.

I commit instead to updating statutory guidance and improving the annual progress report process to drive action and encourage join-up across relevant local authority strategies. Corporate Joint Committees also provide a mechanism to ensure air quality is considered in relation to transport and land use planning on a regional basis.

Recommendation 21.

If the Minister is unwilling to accept Recommendation 20, she should commit to strengthening Welsh Government guidance on LAQM to set a strong expectation for local authorities to develop local/regional air quality strategies.

I accept this recommendation. I commit to strongly encouraging local authorities to develop local or regional air quality strategies in our updated guidance.

Recommendation 22.

The Minister should bring forward amendments at Stage 2 to ensure that section 18 of the Clean Air Act 1993 outlines the circumstances where a local authority should declare a Smoke Control Area. If the Minister is unwilling to do this, she should commit to covering this issue in statutory guidance (see Recommendation 23).

I resist this recommendation. I have committed to publish guidance on smoke control and will work with local authorities to understand the information they need for establishing smoke control areas as part of this process. Declaring a smoke control area can have significant implications for individual households and so it is important we have the ability to amend this over time, which the amendment detailed in the recommendation would not allow.

Recommendation 23.

The Minister should bring forward amendments at Stage 2 to place a duty on the Welsh Ministers to issue guidance to local authorities on the exercise of their functions under Part III of the Clean Air Act 1993. The guidance should outline the circumstances where a local authority would be expected to declare a Smoke Control Areas, among other things.

I appreciate the need for guidance powers to enable the Welsh Ministers to issue guidance in relation to the exercise of local authority functions under Part III of the Clean Air Act.

The Bill already contains a provision requiring local authorities to have regard to guidance issued by Welsh Ministers. I have also committed in the Explanatory Memorandum to publishing statutory guidance. Therefore, I do not believe there is a need to create a statutory duty to issue guidance.

Recommendation 24.

The Minister should set out the criteria that will be used to determine whether a local authority should be directed by the Welsh Ministers to declare a Smoke Control Area. The guidance issued to authorities (see Recommendation 22) should clarify this criteria.

I accept this recommendation in principle. While I am unable to confirm these criteria at present, I can commit to doing so when the Smoke Control Area guidance is published, which we have committed to do by March 2025.

Recommendation 25.

The Minister should consider whether and how smoke control coverage could be extended across Wales without adversely impacting on households who rely on solid fuels for heating and cooking.

I accept this recommendation. I can confirm this is an ongoing consideration which will be part of the next steps following legislation.

Recommendation 26.

The Minister should clarify which measures set out in its consultation on reducing emissions from domestic solid fuel burning could be brought forward using existing regulation-making powers and which would require further primary legislation.

I accept this recommendation. When I publish the outcomes of the consultation and our next steps to reduce emissions from domestic solid fuel burning, I will write to the committee with this information.

Recommendation 27.

Before the Stage 1 debate, the Minister should publish the Welsh Government's response to its consultation on reducing emissions from domestic solid fuel burning, including next steps. The response should include a revised timetable for making regulations that is suitably ambitious.

Although I am unable to commit to publishing the summary of responses before the stage 1 debate, I will publish this as soon as possible. I will include this in the information I send to the committee under recommendation 26.

Recommendation 28.

The Minister should bring forward an amendment(s) at Stage 2 to include a duty on the Welsh Ministers to consult before making a trunk road charging scheme for the purpose of reducing or limiting air pollution. Consultees must include those who are likely to be affected by the proposed charging scheme, including the public and businesses.

I fully understand and agree with the importance placed on public consultation by the Committee. In this case, however, a duty to consult would not add value considering the existing imperative to do so. I reiterate my commitment to consult before making a trunk road charging scheme for the purpose of reducing or limiting air pollution.

Furthermore, the Welsh Transport Appraisal Guidance (WelTAG) clearly outlines the importance of stakeholder involvement and public engagement in gathering evidence of the need for an intervention. WelTAG is a collaborative process, requiring the involvement of people who may be affected by decisions whilst gathering evidence on the impacts of proposed options and the consequences of doing nothing.

Recommendation 29.

The Minister should bring forward an amendment(s) at Stage 2 to ensure that net proceeds from trunk road charging schemes made for the purpose of reducing or limiting air pollution are used for the purpose of directly or indirectly facilitating the achievement of policies relating to air quality, including active travel.

I resist this recommendation. Whilst I agree with the principle of using funds for sustainable transport and air quality purposes, hypothecation would have the effect of reducing flexibilities and opportunities to ensure value for money considerations. I believe the process set out in Schedule 2 of the Bill will already enable us to achieve the Committee's intent. This will allow for an appropriate degree of flexibility over how to use the funds to best effect, not unduly constrained by legislation.

To ensure a focus on air quality in budget decision-making, the process provided in Schedule 2 requires an assessment of the expected effect of proposals on air quality. Active travel schemes would be expected to fall within this definition given their capacity to offset polluting emissions from vehicle journeys saved.

Recommendation 30.

The Welsh Government should set out a timeline for the introduction of the regulations to give effect to new levels of fines, including when consultation is due to take place.

I accept this recommendation. The Explanatory Memorandum will be amended to include a timeline.

Recommendation 31.

The Welsh Government should work with local authorities to develop and implement a comprehensive public awareness campaign to educate the public about the harmful effects of idling.

I accept this recommendation. We recognise in our Clean Air Plan that effective communication about air quality to deliver behaviour change is key to protecting the environment and the health of current and future generations. Given the importance of awareness-raising as part of wider action to tackle unnecessary stationary vehicle engine idling, it follows that support should be given to a comprehensive campaign. The Explanatory Memorandum already refers to opportunities to deliver anti-idling campaigns in partnership with local authorities. This can be included within our promoting awareness delivery plan.

Recommendation 32.

The Welsh Government should include a definition of soundscapes on the face of the Bill or, alternatively, in the Explanatory Memorandum.

I accept the second suggestion made in this recommendation. I agree that there needs to be clarity on the meaning of soundscapes but a definition on the face of the Bill would reduce flexibility and not allow us to be responsive to change. I commit to a definition of soundscapes being inserted into both the Explanatory Memorandum and the national strategy on soundscapes itself. This preferred approach is consistent with the oral advice presented to the Committee by the Institute of Acoustics on 11 May.

Recommendation 33.

The Welsh Government should create an expert advisory panel comprising scientific networks, charities, and royal colleges working in the field of soundscapes.

I agree Welsh Ministers should receive expert advice on this subject area, but there is a question of whether the added value of establishing a formal panel (over and above commissioning advice on an ad hoc basis) would outweigh the administrative costs, and whether it would provide the necessary flexibility. We will consider the merits of the proposal in light of responses submitted to the open consultation on the Noise and Soundscape Plan 2023-2028, which closes on 2 October and asks a question specifically on this subject. We will also be taking a close interest in the UK Government's response to the House of Lords Science and Technology Committee's recent recommendation to establish an interdisciplinary, independent advisory panel for noise, as there may be potential for some UK-wide joint working in this area. I commit to updating the Committee on any decisions made in regard to this.

Recommendation 34.

The Welsh Government should set out what additional resources it will provide to local authorities and public bodies to address existing knowledge gaps and enhance their capacity to implement soundscapes policies effectively.

We will not be able to provide a full response to this recommendation until we have fully considered the responses submitted to the open consultation on the Noise and Soundscape Plan 2023-2028 which closes on 2 October, had further discussions with partner organisations, and made decisions in relation to the new TAN 11. I can commit to providing the Committee with an update in the new year when further information becomes available.

Recommendation 35.

The Welsh Government should actively involve key stakeholders in the preparation and review of the National Soundscapes Strategy. The Minister should explain the extent to which key stakeholders were involved in the draft Strategy, which was published for consultation on 26 June 2023.

I accept this recommendation and confirm that the Welsh Government can commit to actively involving key stakeholders in the preparation and review of the National Soundscapes Strategy.

The draft Noise and Soundscape Plan for Wales 2023-2028 is not the first such Plan, and the policies it contains are not new to those already working in this area. The draft Plan we are currently consulting on for 14 weeks is the latest synthesis/update of all existing Welsh Government policies in this area, which are largely already in the public domain and have been the subject of many discussions with relevant stakeholders over recent years. Much of its content should look familiar to those who are acquainted with the Noise and Soundscape Action Plan 2018-2023 and the draft new TAN 11 we consulted on last year, both of which were developed collaboratively with external partners. Consisting largely of already established Welsh Government policies, this updated Plan has not required the same level of co-production with external stakeholders as would a first strategy in a new policy area beginning from scratch, or a revised strategy proposing a fundamental change in policy direction.

The Committee should appreciate that the document itself could not be shared with the full membership of such large organisations as the Institute of Acoustics (IOA) and Chartered Institute for Environmental Health (CIEH) until I had approved it for public consultation. However, a near-final draft was shared with senior individuals within the IOA, Association of Noise Consultants, Noise Abatement Society, CIEH and UK Acoustics Network, including some who have been under contract to the Welsh Government to support us in relation to noise mapping, heat pump noise and soundscape design, and others who have no contractual ties to the Welsh Government, on a trust basis ahead of the public consultation, to check for any show-stoppers or serious omissions. Improvements were made as a result of suggestions received.

The Welsh Government is engaging actively with stakeholders during the 14-week public consultation, including meetings with noise regulators (Natural Resources Wales and local authorities), the Wales Landscape Group, the IOA Welsh Branch, and the CIEH's Noise Management Conference.

The first national soundscapes strategy to be developed after the Bill becomes an Act will be due in 2028 and will be produced by the next Welsh Government. Our current consultation not only seeks views on this year's draft Noise and Soundscape Plan, but it also suggests that if skills and experience relating to soundscape increase over the course of the next five years, a revised national soundscapes strategy in 2028 could be more ambitious in terms of its expectations of practitioners than the one we are consulting on this year. The views being gathered from key stakeholders now will inform the noise and soundscape policy development of both this and the next administration and help shape the strategy that will be produced under this Act in 2028.

Annex 2

Tackling Agricultural Pollution in Wales

The following is information on a range of measures we have to tackle agricultural pollution in Wales and its impact on our environment:

Control of Agricultural Pollution Regulations

The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (the CoAP Regulations), which came into force on 1 April 2021, are based on long-standing good practice recommendations designed to prevent agricultural pollution.

While the primary aim of the CoAP Regulations is to reduce water pollution, the measures are designed to avoid pollution swapping and to prevent or minimise increased losses of nutrients to the environment, which includes ammonia. By taking this approach, the CoAP Regulations deliver against a wide range of Wales' international and domestic responsibilities and provide a holistic response to environmental challenges related to ammonia emissions.

The CoAP Regulations include the following measures:

- Nutrient Management Planning;
- Sustainable fertiliser applications linked to the requirement of the crop;
- Protection of water from pollution related to when, where and how fertilisers are spread; and
- Manure storage standards;

The CoAP Regulations must be reviewed at least every four years. Each review of the regulations will continue to consider losses of nutrients to the environment, including ammonia. The Welsh Government has committed to giving further consideration to proposals received for alternative measures, submitted under Regulation 45, as part of the next 4-year review. The proposals received include measures which may be beneficial for reducing ammonia emissions from agricultural activities.

Habitats Regulations Assessment, Environmental Permitting and Town and Country Planning legislation

The Habitats Regulations Assessment process under the Conservation of Habitats and Species Regulations 2017 determines if an environmental permit application or an application for planning permission could negatively impact recognised protected European sites, including by ammonia emissions. The impact of the permit or permission could be on or near the designated European site. It could also be applied at feeding areas used by a species from a designated European site.

If it is determined a permit or permission could negatively impact these sites the application for a permit or permission must be refused, unless there are ways to avoid or mitigate any potential impact.

An environmental permit is required under the Environmental Permitting (England and Wales) Regulations 2016 if a farm has more than 40,000 places for poultry, more than 2,000 places for production pigs (over 30kg), or more than 750 places for sows.

Agricultural developments which release ammonia include:

- Poultry Farming: includes chickens, turkeys, guinea fowl, ducks, geese, quails, pigeons, pheasants and partridges reared or kept in captivity for breeding, the production of meat or eggs for consumption, or for restocking supplies of game.
- Pig farming: all types.
- Dairy farming: all types.
- Beef farming: all types.
- Anaerobic digestion and associated activity: open storage of feedstock and digestate.
- Slurry stores: all types.
- Use of urea for nitrogen oxide reduction.
- Landspreading: if a farm is required to carry out a habitats regulation assessment (HRA), Environmental Impact Assessment (EIA), or are within close proximity to a sensitive site then landspreading must be included in the assessments of impacts.

When manure or slurry are applied to land with no demonstrable benefit to the soil or crop growth, or when they exceed the nutrient requirements of the crop, they are considered waste. Also manure and slurry used in a treatment process, or stored prior to a treatment process, for example composting or Anaerobic Digestion (AD), is waste. These operations are subject to the Environmental Permitting (England and Wales) Regulations 2016 and require an environmental permit or exemption. If any harm is caused to the environment or human health at any point through the collection, storage or use of manures or slurry they become waste.

Under the Environmental Permitting (England and Wales) Regulations 2016, it is an offence to cause or knowingly permit a discharge of poisonous, noxious or polluting matter or solid waste matter into controlled waters, including groundwater and surface waters, unless permitted by Natural Resources Wales.

Part 2 of the Code of Good Agricultural Practice (CoGAP) is a Statutory Code under section 97 of the Water Resources Act 1991. While a farm does not have to follow the advice given in Part 2, Natural Resources Wales may take into account if it has when deciding on enforcement action following any water pollution incident. While this does not apply to any advice given purely to minimise air pollution risks, much of the advice related to reducing water pollution is also beneficial in reducing ammonia emissions. In 2019, the Code of Good Agricultural Practice was supplemented by guidance on reducing ammonia losses from agriculture in Wales. The 2019 guidance reflects the UNECE Framework Code for Good Agricultural Practice for Reducing Ammonia Emissions.

National Air Pollution Control Programme

In February 2023, a revised UK National Air Pollution Control Programme (the NAPCP) was issued in accordance with the requirements of the National Emission Ceilings Regulations 2018. The NAPCP sets out measures and analysis for how emission reduction commitments established by the Regulations, including for ammonia, can be met across the UK.

The NAPCP details the policy options selected for further consideration to comply with the emission reduction commitments in Wales, in relation to agriculture:

- Low emission application of fertiliser/manure on cropland and grassland
- Improved livestock management and rearing installations

- Improved animal manure/waste management systems

The Welsh Government is actively considering whether additional measures are necessary to achieve further reductions in ammonia emissions, taking account of uptake of relevant Sustainable Farming Scheme measures and results of the Control of Agricultural Pollution Regulations.

Knowledge Transfer

In April 2021, an online tool was launched to help farmers cut ammonia emissions. The tool contains the guidance from the CoGAP on reducing ammonia emission to present practical advice on steps farmers can take to lower emissions.

Rural Schemes

The Welsh Government operates a range of rural schemes which enable farms to undertake activities which have the potential to reduce ammonia emissions, including grants for yard covering, the environment, woodland creation and agricultural diversification.

Sustainable Farming Scheme

The Welsh Government is currently developing future support for agriculture following withdrawal from the European Union, to replace the Common Agricultural Policy (CAP). The Sustainable Farming and our Land consultation and the Agriculture (Wales) White Paper set out how Sustainable Land Management (SLM) will be the overarching principle for future agricultural policy and support. The proposed Sustainable Farming Scheme (SFS) will replace the current Basic Payment Scheme.

The fundamental change will be that the level of payment will be linked to the actions which a farmer carries out to deliver the SLM outcomes, one of which is “clean air”.

The SFS will do this by:

- Giving farmers up-to-date advice on how to lower ammonia emissions through the Knowledge Exchange and Innovation Programme (Farming Connect).
- Rewarding farmers for farming practices which lower ammonia emissions.
- Supporting collaborative approaches for farmers to deliver actions to lower ammonia targeted to where they will have the most benefit to ecosystems.

The Welsh Government has set a target to plant 43,000 hectares of new woodland by 2030, and 180,000 hectares by 2050 to meet the ‘balanced pathway’ set out by the United Kingdom Climate Change Commission. Work has begun to develop a National Forest for Wales. The National Forest will create areas of new woodland and help to restore and maintain some of Wales’ irreplaceable ancient woodlands. In time, it will form a connected network running throughout Wales, which will bring social, economic and environmental benefits. Last year the Deputy Minister for Climate Change led a deep-dive exercise into how we can remove the barriers to planting trees in Wales. This identified a series of actions, including a new funding scheme for woodland creation and an industrial strategy to coordinate the timber supply chain and construction sectors.

Farmers will play a big role in helping to achieve the tree planting targets and doing so in a way which delivers against multiple SLM outcomes such as clean air and resilient ecosystems. Strategic tree planting next to sources of ammonia such as slurry lagoons and

livestock buildings or buffering sensitive sites such as ancient woodlands from ammonia sources have been shown to intercept or disrupt the deposition of ammonia. These options will be supported through the SFS. The Woodland Opportunity Map, a GIS tool which indicates where new woodland creation would maximise ecosystem benefits, has been updated and now includes a data layer showing areas where new woodland creation would intercept ammonia deposition which has been shown to have a detrimental effect on habitats. Woodland proposals in areas of higher ammonia emissions within the map receive a higher score, which contributes to their likelihood of being selected for planting grant.

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

Llywodraeth Cymru
Welsh Government

Business Committee Members

13 July 2023

The Environment (Air Quality and Soundscapes) (Wales) Bill

Dear Colleague,

Due to an administrative oversight, the General Principles debate on the Environment (Air Quality and Soundscapes) (Wales) Bill was not added to the Business Statement for debate on 12 September 2023.

The Business Committee have agreed Stage 2 proceedings should be completed by the Climate Change, Environment and Infrastructure Committee before 20 October 2023, subject to the General Principles of the Bill being agreed by the Senedd, and the Committee have provisionally scheduled Stage 2 proceedings accordingly. A delay to the debate would have a significant impact on the Committee's forward workplan and the Government will, therefore, table a motion to suspend Standing Orders to enable the debate to take place as planned and I am asking Business Managers to support the proposal.

The debate on the financial resolution motion will take place on 19 September. Although no proceedings may be taken on the Bill after Stage 1 unless the Senedd has agreed a financial resolution, if the Senedd agrees the General Principles of the Bill, the window for tabling Stage 2 amendments will open, allowing the Bill to follow the current timetable.

I hope by bringing this to your attention now it will allow sufficient time to discuss with colleagues before we next meet and I apologise for the administrative oversight.

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

Kind Regards,

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith
—
Climate Change, Environment, and Infrastructure Committee

Senedd Cymru
Bae Caerdydd, Caerdydd, CF99 1SN
SeneddHinsawdd@senedd.cymru
senedd.cymru/SeneddHinsawdd
0300 200 6565
—
Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN
SeneddClimate@senedd.wales
senedd.wales/SeneddClimate
0300 200 6565

Peter Perry,
Chief Executive Officer, Dŵr Cymru

25 July 2023

Downgrade of Dŵr Cymru

I note with concern recent reports that Natural Resources Wales (NRW) has downgraded Dŵr Cymru to a two-star rating, indicating that it requires improvement. This downgrade has followed a decline in environmental performance, as NRW's annual review outlined. The report reveals that pollution incidents rose by 7% in 2022, with incidents having a high or significant impact increasing from three to five.

The previous year, Dŵr Cymru was downgraded from a four-star rating to a three-star rating following NRW's environmental performance report for 2021. This was after Dŵr Cymru was found to have caused 83 sewage-related pollution incidents, compared to 77 the previous year.

- What specific actions is Dŵr Cymru taking to address the issues that led to its downgrade for the second consecutive year?
- Can you explain why there was a rise in incidents classed as "having a high or significant impact" from three to five in 2022? How does Dŵr Cymru plan to reduce the number of sewage pollution incidents, particularly those with a high or significant impact?
- What lessons has the company learned from its performance in 2021, and how are these being applied to improve its performance?

Environmental Impact

Dŵr Cymru released sewage into rivers, lakes, and the sea around Wales for nearly 600,000 hours last year, more than 25% of all the hours of discharges into waterways across Wales and England. This has understandably led to significant public concern.

- How is Dŵr Cymru addressing the significant environmental concerns raised by its operations, particularly the release of sewage into rivers, lakes, and the sea?

- What measures are being put in place to reduce the number of hours that sewage is released into rivers, lakes, and the sea?

Self-Reporting of Incidents

Water companies are expected to self-report incidents to NRW before others do, as a rapid response can mitigate the impact of pollution. Dŵr Cymru also failed to improve the number of incidents self-reported to NRW, with the rate falling to 65%, a decrease of 7% from 2021.

- How does Dwr Cymru plan to improve its self-reporting of incidents to Natural Resources Wales, which fell to 65% in 2022?
- How does Dŵr Cymru compare its performance and pollution management strategies with other water companies, such as Hafren Dyfrdwy, which had zero serious pollution incidents in 2022?
- What lessons can Dŵr Cymru learn from the performance of other water companies, particularly in terms of self-reporting incidents?

Increase in Prices and Future Plans

In April, Dŵr Cymru increased its prices to an average bill of £499 a year, the second highest in Wales and England. Dŵr Cymru has stated it is working to deliver the improvements required in challenging circumstances, especially as it experiences more severe weather events and extreme variations in the climate. I understand that Dŵr Cymru plans to invest an extra £100m to improve river quality by 2025 as part of an £840m improvement plan.

- Can you provide more information about the £100m investment plan to improve river quality by 2025? How will this specifically address the pollution issues?
- How does Dwr Cymru's investment in infrastructure and environmental protection compare to that of privately-owned water companies in the UK?
- Privately-owned water companies in the UK have reportedly paid shareholders significant dividends over many years. As a not-for-profit company, how does Dwr Cymru's financial management and reinvestment into the company and its services compare?

I look forward to your response and a detailed explanation of how Dŵr Cymru plans to address these concerns and improve its performance. The Committee may wish to return to this and other related matters in the autumn term.

Yours sincerely,

Llyr Gruffydd MS,
Chair, Climate Change, Environment and Infrastructure Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Jane Dodds
Aelod o'r Senedd dros
Canolbarth a Gorllewin Cymru
—
Member of the Senedd for
Mid and West Wales

Senedd Cymru
Bae Caerdydd, Caerdydd, CF99 1SN
Jane.Dodds@senedd.cymru
—
Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN
Jane.Dodds@senedd.wales

0300 200 6565
@janedoddswld
@DoddsJane
/JaneDoddsWLD

Dyddiad | Date: 03.08.2023
Pwnc | Subject: Dŵr Cymru - inquiry

Annwyl Llŷr,

I know that you and the Climate Change, Infrastructure and Environment Committee will share my disappointment and frustration at the recent reports from Cyfoeth Naturiol Cymru to downgrade Dŵr Cymru yet again this year.

Following questions from myself to both the First Minister and the Minister for Climate Change, I am writing to ask if you would consider conducting a committee inquiry into Dŵr Cymru during the forthcoming term?

It is my view that it would be beneficial to consider the extent to which the regulatory and governance arrangements of Dŵr Cymru are delivering for citizens, in addition to considering the implications of the findings of Cyfoeth Naturiol Cymru and the progress made by Dŵr Cymru against those findings. That could include the number of serious polluting incidents, self-reporting of pollution incidents, breaches of waste permit conditions and the lack of significant improvement from 2021 in compliance with discharge permits.

I would also encourage you to consider what steps Dŵr Cymru are taking in phosphate pollution and water treatment works in the context of the delivery of new housing.

I would welcome any comments you and the committee would have on this suggestion.

Yn gywir,

Jane Dodds

Jane Dodds MS/AS
Member of the Senedd for Mid and West Wales
Aelod o'r Senedd dros Canolbarth a Gorllewin Cymru

Dŵr Cymru
Welsh Water

Linea
Fortran Road
St Mellons
Cardiff
CF3 0LT

Linea
Heol Fortran
Llaneirwg
Caerdydd
CF3 0LT

02920 740450
dwrcymru.com

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

4 August 2023

Dear Llyr,

Thank you for your letter of 25 July in respect of our environmental performance. I have responded to the specific points you have raised in turn below.

Downgrade in our Environmental Performance Assessment

Despite the disappointment of being downgraded to a 2* Environmental Performance Assessment (EPA) rating in 2022, I want to assure you that we will be doing all we can to recover this and I thought it would be helpful if I set out the recent trend against these key environmental metrics contributing to the EPA.

Year	WWTW (Waste water treatment works – 597 in total)	WWTW Discharge Permit Compliance	Serious pollutions	Total pollutions	Self-reporting of pollution	EPA Rating
2019	5	98.3%	2	95	73%	3*
2020	3	99.7%	3	77	80%	4*
2021	5	98.3%	3	83	76%	3*
2022	6	98.7%	5	89[1]	69%	2*

([1] 89 total incidents was the 2nd lowest number of incidents recorded by Water & Sewerage Companies in England and Wales in 2022).

In line with our commitment to the First Minister, our Board places the highest priority on achieving the best possible standards of environmental performance. We take great pride in Wales having a significantly better record of waterbodies' ecological performance than England, and in the number of blue flag bathing beaches in Wales. That pride is not just at Board level – it is shared by our people throughout the company, particularly on the wastewater side of our business, whose recent engagement survey results show that they are deeply committed to what they do for the environment and for Wales. That is why moving from 3* to 2* EPA as a consequence of the assessment placed on the 2 serious pollution incidents was of such significance to us.

Not as an excuse, but as an important factor in terms of our overall pollution performance, the drought and high temperatures experienced in 2022 should be taken into account when assessing our pollution

performance. During the drought we saw some of the lowest ever river levels in Wales whereby any blockage leading to a sewage spill had a higher impact. Similarly, the lower flows in sewers saw our blockage rate increase by 7% leading to an increased risk of pollution.

The primary reason for the dip to 2* EPA rating relates to a slight increase (2) in serious pollution incidents. The incidents were:

- **Crundale, Pembrokeshire** – a third party discharge from a local trader caused our pumping station to block and an emergency overflow activated. Regrettably, our remote telemetry alarm did not activate at the time. This has subsequently been rectified and similar installations inspected across Wales.

- **Cadoxton, Barry** – a connection was made by a developer to an abandoned sewer without our knowledge. We will continue close liaison with developers, but it is difficult to predict this type of incident.

- **Kilgetty sewage pumping station, Pembrokeshire** – there was a blockage on the final chamber before the pumps due to wet wipe detritus. We will therefore increase future inspections at the site.

- **Bridgend** – the incident was caused by a sewer blockage. We have increased inspection and monitoring to prevent recurrence.

- **Trebanos waste water treatment works, Swansea** – the discharge of storm water on this occasion was compliant with the treatment work's permit, but it was still designated as a pollution incident by Natural Resources Wales. We are investing over £20m to improve the the plant in our next regulatory period 2025 – 2030.

As a means of comparison with performance across the sector the table below shows that two companies had more than 10 serious pollutions incidents and only two reported zero such incidents.

Number of Serious Incidents 2022	0 incidents	1 incident	2 incidents	4 incidents	5 incidents	> 10 Incidents	> 15 incidents
Number of Water Companies	2	1	1	1	2	1	1*

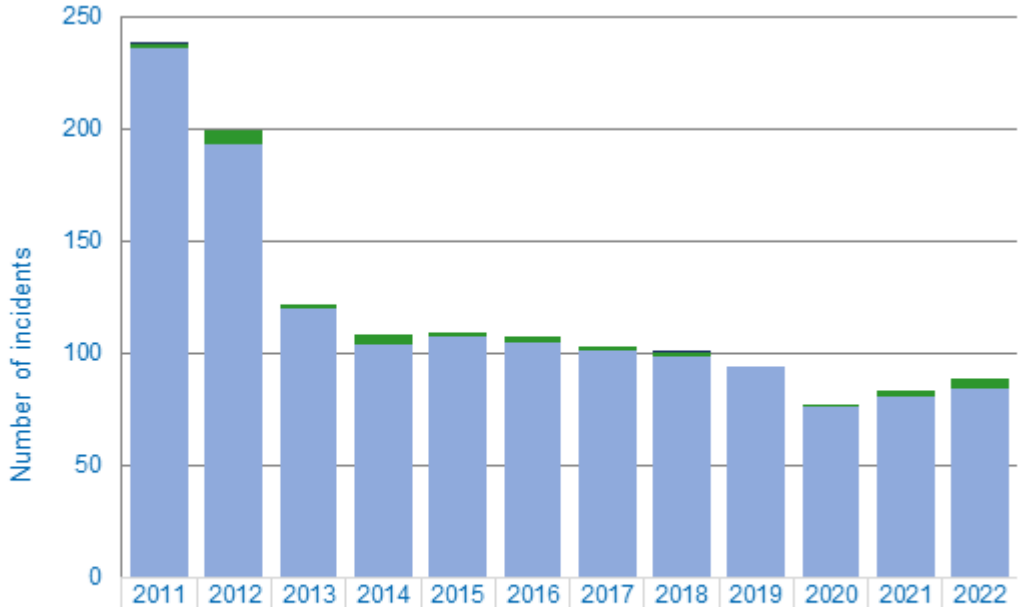
** 19 serious incidents were actually reported*

In terms of total non-serious pollution, the incidents occurred as follows;

Year	Foul Sewer	Combined Storm Overflow	Pumped Sewer	Pumping Station	Treatment Works
2021	37	15	12	12	8
2022	47*	9	4	18**	11***

** Increase due to low flows in sewers due to 2022 drought conditions*
*** Increase due to blockages and minor levels of equipment failure*
**** Increase linked to low river levels into which treated effluent discharged and due to drought conditions had more impact / was more visible*

The table below shows the total pollution incidents per year since 2011.



	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
High - major (Cat 1)	1	0	0	0	0	0	0	1	0	0	0	0
High - significant (Cat 2)	2	6	2	4	2	2	2	2	0	1	2	5
Low (Cat 3)	236	193	120	104	107	105	101	98	94	76	81	84

The above data and more historical information is used to develop and implement our evidence-led improvement plans.

We have a comprehensive pollution reduction strategy combining a range of specific improvement activities which I have summarised below:

- **AMP7 (2020 – 2025) Capital Investment** - £52m has been allocated to reduce pollution risk. In addition, planned maintenance of sewers, storm overflows, sewage pumping stations and wastewater treatment works covered in our overall £830m waste water investment programme in AMP7.

- **Sewer Remote Monitoring** – early predictive warning alarms to enable earliest intervention, forming part of our wider 'Smart Network' programme. This combines real time data with a data science analytical approach to model our network and target preventative interventions. We have also increased the inspection frequency of sewer pumping mains, particularly those which are known serious incident risk assets. These monitors have helped us reduce sewer flooding (arguably the worst type of service failure for our customers) and where we have the best performance records in the industry despite the high rainfall in Wales.

- For above ground assets such as sewage pumping stations and treatment works we are installing new remote monitoring to confirm pumping capacity and flow measurement.

- **High Risk Asset Emergency Plans** – specific plans aimed at preventing potential high impact incidents. Including assessment and plans to deal with factors such as loss of mains power.

- **'Stop the Block' Campaign** – with over 90% of first time pollutions attributable to sewer blockages caused by plastic wet wipes, this is our effort to raise public awareness generally to prevent 'sewer abuse' but to target communities with emerging or known blockage history. This also includes

working with traders to reduce fat and oil disposal to sewers, with the power to prosecute persistent offenders.

- **Capability and engagement of our people** – we invest in providing our people with the latest maintenance equipment and the training to go with it. We have a sewer jetting simulation rig at our training centre in Abercynon. The awareness of preventing pollution and protecting the environment more generally is the subject of team meetings / briefings and is supported from the Executive team through communication such as my live call to all colleagues each month. We have also invested in River Quality Liaison Managers and more Pollution Prevention Technicians covering Wales, who interact daily with local communities and interest groups in river catchment areas. Our waste water teams are provided with performance target information and encouraged to contribute to our improvement plans.

Overarching our improvement plans deployment is regular oversight and constructive challenge from our Executive team and our Board. The Quality & Safety Committee of our Board (QSC), is unique in the sector, and is responsible for the detailed scrutiny of our performance which underlies it holding our management to account. It is also closely involved with the development of environmental improvement strategies. It includes an independent expert advisor (a former strategy Director of a leading water company and currently a respected environmental consultant) to aid scrutiny and to provide challenge in terms of our deployment of effective improvement plans and contemporary use of technology etc.

In terms of lessons learned from 2022 I would summarise as follows:

- We have an increasing level of remote monitoring technology equipment installed at our assets. Ensuring a consistent level of management oversight of the operation and maintenance of this technology is critically important. This is linked to the Crundale incident referenced above.

- Linked to the above, we will also continue to roll out remote monitoring equipment to confirm pump operation and equipment is online and performing to expected standard status.

- Ensuring that we are targeting future investment to mitigate potentially high risk assets – this includes £170m to replace strategic sewer pumping mains in north and south Wales. We will also increase levels of capital maintenance with a proposal to double sewer maintenance by £50m in AMP 8 (2025 – 2030).

- Continue to develop our Smart Network capability, with a sustained level of focus on potential new technology and ways of working to prevent pollution risk. (See *Comparing Performance with Other Companies* section below).

- Continue with public engagement to reduce the incidence of sewer blockages and continue to lobby for a plastic wet wipe ban in Wales.

- Our serious pollution risk assessment indicates that the greatest threat in terms of future incident lies with failure of a number of strategic sewage pumping mains. Such as the South East Wales Coastal Main, Kinmel Main in north Wales and the Bynea Main in south west Wales. We have included these in our AMP 8 investment plans. Clearly this will need regulatory approval to help mitigate these significant risks.

Environmental Impact

For the avoidance of doubt, we are always very sorry for any adverse environmental impact that we cause and are absolutely committed to doing better.

We fully accept that we have a high level of combined storm water overflow (CSO) discharges compared to other water companies and there are significant factors that should be considered in relation to this:

- **Combined Sewerage System** – we have one of the highest percentage (c65%) of combined sewer network in the UK. Whereby our sewers convey both sewage and surface water, this in part is due to age of the housing stock in Wales.

- **Rainfall** – being on the western side of the UK we see amongst the highest levels of rainfall and increasingly see the most periods of intense rainfall 'events' linked to climate change. It is rainfall that directly activates CSOs to prevent flooding. If we had the rainfall of East Anglia, our CSO would operate 60% less than they currently do.

- **Number of Combined Storm Overflows (CSOs)** – our number of waste water catchments (some of them very small), sparsity of population , geography and topography, mean that we have more sewerage infrastructure to serve our customers compared to other companies. This includes more CSOs at c2,300 compared to Thames or Southern Water who have c300 or so each.

In addition, many of our river catchments have steep hydraulic gradients and the rivers described as 'flashy' due to their rapid increase in flow linked to rainfall and subsequent decrease when rainfall subsides. Taking all these factors into account means that while we have a high level of CSO operation this does not necessarily link to high levels of pollution or environmental impact.

The main cause of river pollution in Wales is linked to nutrient (phosphorous) pollution. We fully support the Welsh Government policy of making phosphorous reduction the priority to improve river quality.

The First Minister through his programme of 'Phosphate Summits' has made it clear that this is his priority and we have aligned our pollution reduction strategy with this approach, as it will deliver more improvement than if we were to focus on reducing spills from CSOs.

We are - as directed by the strategy highlighted above - prioritising our phosphorous reduction investment on the six failing Special Area of Conservation (SAC) rivers in the current investment period and in AMP 8. This means that by 2030 we will have reduced our phosphorous load on these rivers by 90% and by 2033 by 100%. We have modelled total pollution loading on the SAC rivers and the average impact of CSOs is less than 5%, whereas our phosphorous loading is c23%. The remainder coming from other sectors – the modelling has been independently verified by NRW.

Whilst concentrating our pollution reduction investment on reducing phosphorous this does not mean that we are not also addressing CSOs. In the current period we are investing over £140m and in AMP8 we will invest a further £300m. In line with Welsh Government policy, we are targeting investment on those CSOs which cause the most significant environmental harm and are agreeing prioritisation of this investment with NRW, through the 'Storm Overflow Assessment Framework' (SOAF). The assessment also takes into account ecological or amenity impact and this also considered in the prioritisation process. This approach - concentrating on reducing environmental and amenity impact - will deliver better sustainable improvement than is achievable by solely focusing on CSO spill number reduction.

Underpinning the logic of the strategy is the condition of river and coastal water quality in Wales. In Wales 44% of rivers meet 'good' status under the EU Water Framework Directive, compared to 14% in England (and

8% in Germany and Holland). Also the main causes of pollution are also very different in terms of comparison with England. Here in Wales sewage pollution accounts for broadly 23% of total pollution whereas in England it is 44%. Our proposed AMP8 plan will improve over 750km of rivers in Wales.

Self-Reporting of Incidents

We were disappointed to see our self reporting dip to 65% in 2022, the primary reason for this, is that with the drought conditions and low river levels, more incidents were evident and were reported directly to NRW for example by the public.

However, in an attempt to increase our ability to self report we are;

- Continue to brief our colleagues on the importance of self reporting and sharing respective performance data with them regularly. Including our 24 hour control centre team to ensure out of hours remote alarms are escalated for quick response.
- Continuing to work with river user groups across Wales to build effective working relationships and to encourage them to report any issues with our assets.
- Continue deployment of remote alarm monitoring across our waste water infrastructure – particularly linked to our Smart Sewer Network programme.
- Deploy new technology such as CCTV at remote assets or on treatment works outfalls where standard telemetry equipment is unable to effectively be deployed.

Comparing Performance with Other Water Companies

As an Executive and through the Board Quality and Safety Committee, we expect each of the primary environmental improvement strategies that we review to demonstrate how we benchmark our performance and bring innovation into our improvement plans. To bring this to life our benchmarking and improvement plans are linked to;

- **Water UK National Pollution Group** – a monthly review of shared best practice, performance and innovation from all water and sewerage companies / authorities in the UK. (Hafren Dyfrdwy are also involved in this process. Self reporting is also reviewed here and our practices are totally aligned with sector good practice in this area).

- **International Benchmarking** - Close links with Hofor, the waste water service provider in Copenhagen. Annual benchmarking with Sydney Water in Australia.

- **Smart Water Networks International Association (SWAN**) – Founding and active member of this international forum for best practice in the development of the application of AI and predictive analytics.
- **UK Water Industry Research (UKWIR)** – Tony Harrington our Environment Director is an UKWIR Board Member and leads on a range of innovation and research programmes linked to waste water.

- **Ofwat Innovation Fund** – Again Tony Harrington is one of the founding Directors of SPRING the vehicle used to coordinate applications for the £200m AMP7 fund and we lead on a number of environmental projects linked to key elements of our future waste water improvement plans.

We also have our own extensive inhouse innovation programme, where our water and waste water innovation teams are working with 79 leading organisations and universities (including most of the Universities in Wales) on innovation and R&D projects. These are linked, in the case of waste water, directly to our short term improvement plan and longer term risks / ambitions. In AMP7 we estimate that we will leverage £80m innovation value through this process. It was also recently independently reported that along with United Utilities (a company three times our size), are the two companies who have applied for and secure

the most projects from the Ofwat £200m AMP 7 Innovation Fund – for us this has meant 54 applications with 27 projects secured.

Comparative Performance: Dwr Cymru and Hafren Dyfrdwy

Thank you for reference to Hafren Dyfrdwy and their record of no serious pollution incidents in 2022. We have a positive working relationship with them and collaborate through the respective industry forums as touched on above and bi-laterally as neighbouring companies in Wales. We will ensure that we continue to share best practice and learn from others at every opportunity.

Company	Serious Pollution Incidents	Pollution per 10k km sewer	Treatment Works Compliance %	Internal Sewer Flooding per 10k connections	Sewer Collapse per 1k km sewer
Hafren Dyfrdwy	0	39.84	97.87%	2.34	22.36
Dwr Cymru	5	22.90	98.32%	1.36	6.71

Increase in Prices and Future Plans

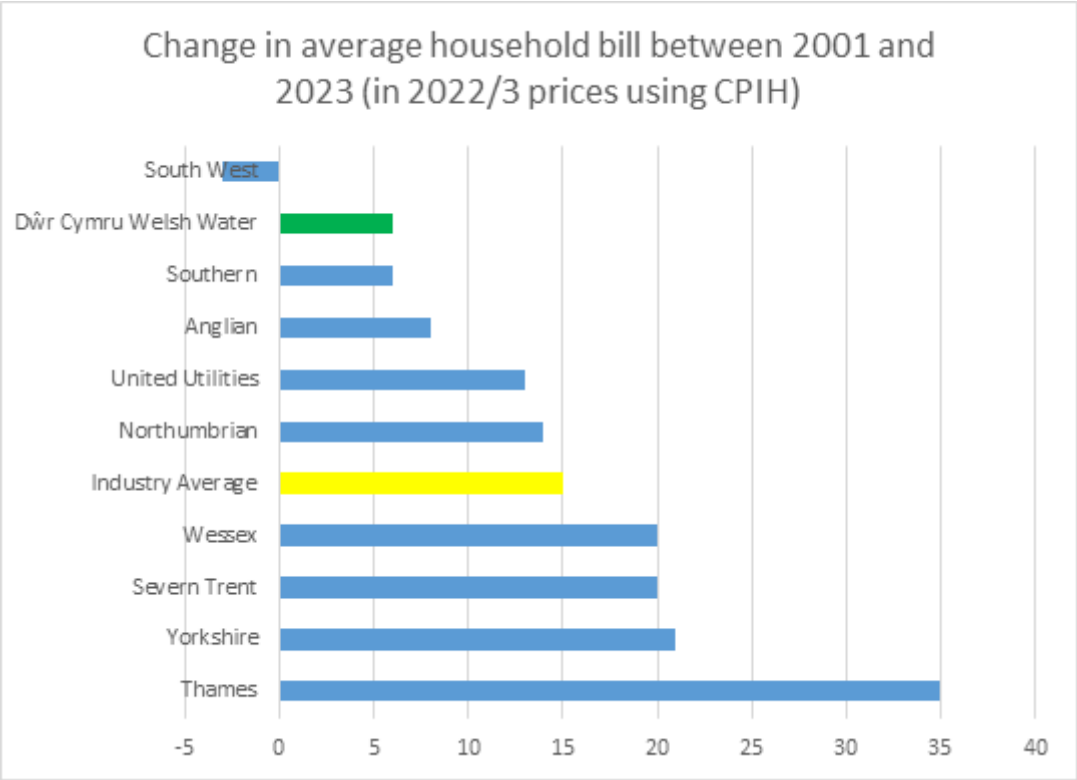
First of all, can I respond to your comment about us having the second highest charges in Wales and England? If you separate our bill into water and sewerage charges. We actually have the third lowest bill for water services at £193 (Average £213) of the companies in England and Wales. Our waste water bill is the second highest at £306 (Average £241) and this is linked to the fact that companies with the longest coastlines (ie , South West Water and Dwr Cymru) had to provide first time sewage treatment to its coastal communities after privatisation. In the case of Wales up until the late 1990's nearly 50% of the sewage in the country was discharged with minimal if any treatment into coastal waters. Our waste water bill since privatisation has had to fund building this waste water infrastructure. For us this was to provide full treatment on all communities above 15k population around the coast of Wales, including the coastal towns and cities of south Wales between Chepstow and Carmarthen. Other 'inland' companies such as Severn Trent with no coastline didn't have to fund this type of expenditure as their infrastructure was passed to them at privatisation.

The tables below show the comparative level of the total bill as well as broken down to cover the water and waste elements separately.

	Total		Water		Waste
South West*	526	Wessex	261	South West	310
Wessex	504	Thames	258	DCWW	306
DCWW	499	Anglian	222	Anglian	270
Anglian	492	South West	216	Southern	253
Thames	456	Severn Trent	213	Yorkshire	248
Yorkshire	446	United Utilities	210	Wessex	243
United Utilities	443	Yorkshire	198	United Utilities	233
Southern	439	Hafren Dyfrdwy	195	Severn Trent	206
Severn Trent	419	DCWW	193	Northumbrian	203
Northumbrian	391	Northumbrian	188	Thames	198
Hafren Dyfrdwy	372	Southern	186	Hafren Dyfrdwy	177
Average	453		213		241

** adding back the £50 rebate from the UK Government*

The chart below, shows the change in average household bill since 2001 (when Dwr Cymru became a not for profit company).



The extra £100m investment that we announced earlier this year to improve river quality by 2025 is funded from our financial surplus from our not for shareholder structure. This will be used to invest a further £40m to improve CSO and £60m being used to reduce phosphorous on various schemes across the failing SAC rivers touched on above. This is effectively accelerating future investment requirements to deliver the improvements more quickly.

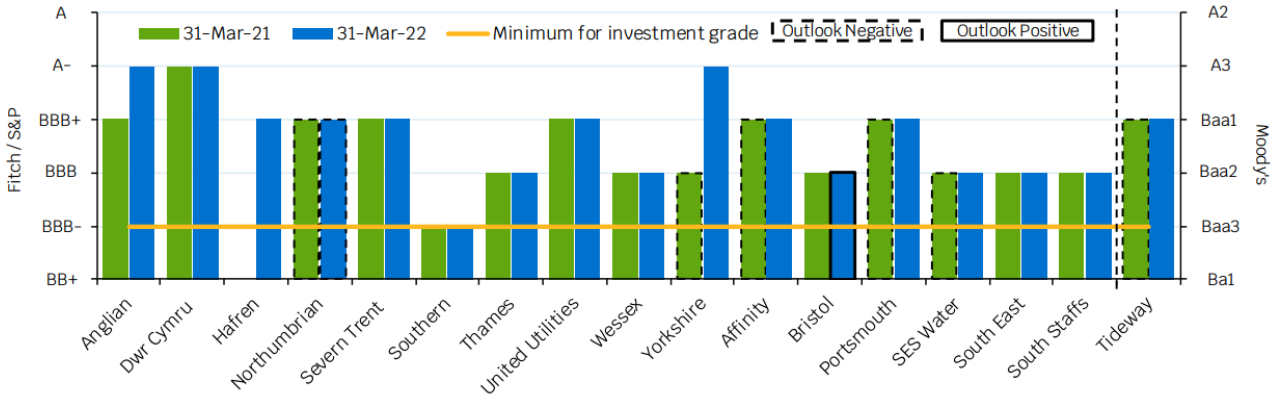
Further information can be found in our River Water Manifesto which we published in March 2023 and is available on our website.

Dwr Cymru's investment in infrastructure compared to privately owned water companies in England

It is difficult to make a straightforward comparison as each company will have its investment agreed individually with regulators and based on their specific company requirements. Since Glas Cymru established the current not for profit model in 2001, we have always delivered our agreed regulatory capital programmes in full. In fact, we have during the latter AMP cycles used our 'profit' to undertake more capital investment in addition to our regulatory programmes.

Since 2001 all financial surplus has been used for the benefit of customers, in total this amounts to £3.5 billion. Some £2.9 billion has been retained to make the business more financially resilient - in 2001 our level of gearing was at 93%. Over the past 22 years we have brought this down to 58% well inside the guideline level proposed by Ofwat. The recent publicity about Thames Water has highlighted they have 83% gearing. Our low level of gearing and prudent financial approach has given us stable financial position. Together with our not-for-shareholder model, this has given us sector-leading credit ratings that allow us to borrow money at lower cost, which is better value for our customers.

The chart below shows our credit ratings compared to the rest of the sector as reported in Ofwat's latest financial resilience report.



In addition, some £580m has been returned to customers since 2001 as a result of our "not for shareholder" model. This is the equivalent of an annual 2% dividend comparable with the other companies' financial performance. The majority of this funding has been used to:

- **Help those who Struggle to Pay** – in the current period £60m is being used to fund our social tariffs, where proportionally we have the biggest scheme of this type in the sector assisting over 130k people in vulnerable circumstances. We have also recently launched Cymuned the first scheme of its kind by any UK utility to help those not on state benefits but classed with negative budgets or the working poor.

- **Mitigate key business risks such as climate change impact on our infrastructure** – where by as examples, we have accelerated investment to improve reservoir Dam safety, reduce flood risk in Cardiff and Chester city centres, improve the resilience of the water supply in Herefordshire.

In summary, our aim is to recover our previous 4* EPA position and we are expending every effort to do this over the next couple of years. This ambition is supported by our plans to deliver our biggest ever capital investment programme in AMP8, of over £3.2bn with over half of this being on our waste water infrastructure. Regaining our 4* position may take a couple years, but we are committed to doing so and are confident in our ability to do so.

Please do not hesitate to contact me if you require any further information.

Yours sincerely

Peter Perry
Chief Executive

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/2328/23

Elin Jones MS
Llywydd

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

Llyr Gruffydd MS
Chair, Climate Change, Environment and Infrastructure Committee.

Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

1 September 2023

Dear Elin, Huw and Llyr,

I am writing in relation to the Energy Bill (the Bill) which was introduced to the UK Parliament, the House of Lords, on 6 July 2022. As you know I laid the Legislative Consent Memorandum on the Bill as introduced on 29 June 2023.

On 25 July I laid a supplementary Legislative Consent Memorandum (sLCM) on the Offshore Wind Environmental Improvement Package (OWEIP) clauses in the Bill. Those clauses were tabled as amendments to the Bill in the House of Lords on 9 January 2023, with further amendments tabled against the Bill by the UK Government on 7 June 2023.

Further supplementary legislative consent memoranda

I am now writing as I lay a second sLCM to cover the other amendments to the Bill since introduction and covers the Bill as it left the House of Commons Committee Stage as published on 11 July 2023. The amendments which relate to matters within the competence of Welsh Ministers and the Senedd relate to Parts 1, 2, and 11.

The Welsh Government welcomes a number of the amendments to the Bill as they provide useful clarifications and additional detail on how the measures first introduced in the Bill will operate. However, as with the Bill as introduced, in a number of areas, the amendments

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

made to the Bill do not sufficiently respect the competence of the Senedd. Specifically, the Welsh Government recommends the Senedd withhold consent on clauses 9, 73, 106-126, 127 and 259. Here we are seeking a requirement for the Secretary of State to seek the consent of Welsh Ministers before new regulations can come into effect rather than a process of consultation as is in the current draft of the Bill.

The Welsh Government remains in discussion with the UK Government on the Bill, but to date I have not had an acceptable offer of amendments to address the points raised in the LCM or sLCM laid to date. I maintain the Welsh Government's position that we are supportive of the policy intent set out in the Bill and I also agree with the need for many of the regulations proposed to operate effectively on a pan UK basis. I remain of the view that there is no reason why the UK Government cannot work with us to deliver cross-border regulation in a way that avoids regulatory divergence through a process that requires the consent of Welsh Ministers in areas of devolved competence.

As with the other LCMs I appreciate that we are outside the normal two-week Standing Order 29 deadline for the laying of this supplementary LCM. This has been in part due to handling of the Bill by the UK Government but also due to the complexity of the issues under consideration.

Legislative consent motion debate

Presently Commons Report Stage and Third Reading for the Bill is scheduled for 5 September. House of Lords consideration of amendments is expected to commence on 12 September.

I am incredibly concerned that the current scheduling of this Bill will leave insufficient time to resolve concerns at an intergovernmental level, and the Senedd with no meaningful opportunity to consider their position on consent. I have asked that UK Ministers take immediate steps to postpone the scheduling of final Commons' Stages to enable further time for discussions, and to enable the Senedd to consider this Bill at a meaningful stage.

Based on the current timetable I am left in the regrettable position of seeking the Senedd debates the Legislative Consent Motion for the Bill at its earliest opportunity, 12 September 2023. I appreciate that this will mean that relevant Senedd Committees would be afforded no scrutiny opportunity for the sLCMs laid during recess, and will likely not have reported on the LCM laid on 29 June 2023. However, holding the debate on this date will enable the Senedd's position to be made clear to UK Government and Parliament as soon as possible.

Of even greater concern is the possibility that this Bill will be pushed through Parliament regardless of the potential lack of Senedd consent. Constitutional convention is that Parliament will not normally legislate with regard to devolved matters without the consent of the Senedd. There is absolutely no reasonable rationale that can be presented that this legislation is 'not normal'. I have therefore sought unequivocal assurance that, should the Senedd not consent to this Bill, the UK Government will commit to their stated respect for the Sewel Convention, and not legislate in relation to Wales.

Standing Order 29 and reporting implications

I am aware that Business Committee has previously set a reporting deadline of 15 September for the original LCM. Should either the Legislation, Justice and Constitution Committee or the Climate Change, Environment and Infrastructure Committee be in a position to issue a report prior to the debate on 12 September, I will respond accordingly in the Senedd debate and in writing as required.

I recognise, however, the significant difficulty this is likely to cause and the reality that this may prove unworkable. I will therefore also take steps to table a motion to suspend Standing Order 29.8 to enable the debate to take place on 12 September, along with relevant suspensions for Standing Orders 11.16 and 12.20(i).

I greatly respect and appreciate the role of the Senedd's Committees within the legislative consent process, and deeply regret this situation. However, as previously stated, I believe the current trajectory of this Bill makes it essential that the Senedd's position can be articulated with urgency.

I am copying this letter to the Counsel General and Minister for the Constitution, Mick Antoniw MS and the Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths MS.

Yours sincerely,

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

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/294/2023

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

30 August 2023

Dear Llŷr,

Thank you for your letter of 18 July regarding the Legislative Consent Memorandum (LCM) for the UK Energy Bill where you ask for information on how the Bill's provisions in relation to Wales will impact on the Welsh Government's ability to develop future energy/climate change policy that meets Wales' needs.

As I set out in the LCM you will be aware the Bill is structured around three pillars: Leveraging investment in clean technologies; reforming the UK's energy system and protecting customers; and maintaining the safety, security and resilience of the energy system across the UK. The Bill as introduced has 13 parts and 19 schedules but has since been amended to include 15 Parts and 22 schedules. In this reply I will cover the Bill as introduced and the new part introduced covering the offshore wind provisions. This then covers the LCM laid on 29 June 2023 and the supplementary LCM laid on 25 July 2023.

The Welsh Government is supportive of the broad policy intent of the Energy Bill. The Bill provides the required regulatory basis for a number of key technologies that are important for our energy security and for achieving net zero. In the areas of the Bill dealing with devolved matters, the Bill is generally aligned with our strategic policy position. However, there are some key differences in approach between governments which could not be exercised if the Bill were to proceed as currently drafted.

Part 1 of the Bill establishes an economic regulation and licensing regime for CO_2 transport and storage with the Office of Gas and Electricity Markets (Ofgem) as the economic regulator. Part 2 enables the Government to implement and administer carbon capture business models. I am in agreement that Carbon Capture Usage and Storage (CCUS) is likely to play a significant part in decarbonising industry in particular. This is in line with the conclusions of international studies undertaken by organisations including the Climate

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Change Committee (CCC), Intergovernmental Panel on Climate Change (IPCC) and the International Energy Agency (IEA).

However, the Bill as drafted provides for broad regulation making powers to the Secretary of State with a requirement to only consult with Welsh Ministers if regulations contain provisions that would be within the legislative competence of the Senedd. As a matter of devolved competence, the requirement to consult should be amended to be a requirement to seek the consent of Welsh Ministers. While both governments are aligned on the need to have a regulatory basis for CCUS, it is the Welsh Government's view that emissions must first be reduced at source with CCUS being taken forward where alternatives to decarbonise are not possible. I am keen to ensure that the scale of CCUS in Wales is the minimum required and that CCUS is not in itself deemed as a new industrial opportunity that could risk locking the UK into continued and avoidable use of fossil fuels.

In addition, as the detailed regulations are developed, the approach to CCUS will need to manage the balance between protecting marine habitats and developing CCUS projects. The Bill as drafted does not provide the Welsh Ministers or the Senedd the ability to shape a policy, apply the checks and balances that we would wish to apply should UK Ministers not require our agreement.

I have similar concerns to the new provisions introduced covering offshore wind electricity generation. My overall position on those clauses is covered in the supplementary LCM laid on 25 July 2023. From a policy perspective I agree that we need to streamline and accelerate offshore wind consenting and I am also committed to working in partnership to ensure there is a level playing field across the UK. I also agree that the new powers enabling strategic compensation measures to be used are sensible. We support the push to enable more offshore wind development to respond to the need to transition to a net zero energy system and our work on renewable energy targets shows the role that offshore wind is expected to play in Wales.

However, we have set out our position that the Senedd has legislative competence to make a Senedd Bill for a fund for all infrastructure projects below 350MW in the Welsh inshore region. This will not be possible for offshore wind should the Energy Bill comes into force as currently drafted. In addition, while we will have the power to amend the environmental assessment regulations where we have legislative competence, the UK Government intend their regulations to extend across both the consenting (where Welsh Ministers are limited to decision making 350MW and below) as well as Marine Licensing (where Welsh Ministers are not limited to 350MW and below where developments are wholly in the inshore region) regimes. While we accept there is a policy rationale to support this so we do not create different assessment processes for the same development, this would introduce a 350MW threshold in making assessments for marine licences which wasn't there before. We have stated we want to align processes as far as possible, but also want to see the devolution settlement respected insofar as it is in our executive competence to ensure those assessments are aligned.

While I am supportive of the policy intent set out in the Energy Bill, each country in the UK has our own set of environmental policies and emissions reduction plans, delivering against the specific set of challenges and priorities faced. The ability of Welsh Ministers to use all the appropriate levers within our competence at the right time to forge a path to net zero is limited by the Bill as is currently drafted.

Finally, I wanted to update the Committee on the current status of the Energy Bill. It is my intent to lay a supplementary LCM as soon as possible to cover the changes made to the Bill since introduction up until the Bill left the House of Commons Committee Stage at the end of June 2023.

The Welsh Government continues to discuss required amendments to the Bill in line with the positions I have already set out in the LCMs laid in the Senedd. I have made it clear to the UK Government that there is no reason why we cannot work together to deliver cross-border regulation in a way that avoids regulatory divergence through a process that requires the consent of Welsh Ministers in areas of devolved competence.

I have also repeated my deep concern that this Bill will be pushed through Parliament regardless of the potential lack of Senedd consent. With report stage scheduled for 5th September 2023, I am incredibly concerned that the current scheduling of this Bill will leave insufficient time to resolve concerns at an intergovernmental level, and the Senedd with no meaningful opportunity to consider their position on consent. Constitutional convention is that Parliament will not normally legislate with regard to devolved matters without the consent of the Senedd. There is absolutely no reasonable rationale that can be presented that this legislation is 'not normal'. I have made the point that legislating without consent in such circumstances would be unconstitutional and would fuel the arguments of those who would seek to undermine our United Kingdom.

Yours sincerely,

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

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith
—
Climate Change, Environment, and Infrastructure Committee

Senedd Cymru
Bae Caerdydd, Caerdydd, CF99 1SN
SeneddHinsawdd@senedd.cymru
senedd.cymru/SeneddHinsawdd
0300 200 6565
—
Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN
SeneddClimate@senedd.wales
senedd.wales/SeneddClimate
0300 200 6565

Julie James MS
Minister for Climate Change

18 July 2023

Dear Julie,

Legislative Consent Memorandum for the Energy Bill

As you are aware, the Legislative Consent Memorandum for the Energy Bill ('the LCM') has been referred to the Climate Change, Environment and Infrastructure Committee ('the Committee') for consideration with a reporting deadline of 15 September 2023.

In your letter to the Llywydd, dated 29 June 2023, setting out the reasons for the delay in laying the LCM you state, "The length and complexity of the Bill has resulted in the need for lengthy and in-depth analysis of the policy and constitutional position". In order to assist the Committee in its consideration of the LCM, it would be helpful if you could share with us any analysis of whether and how the Bill's provisions in relation to Wales will impact on the Welsh Government's ability to develop future energy/climate change policy that meets Wales' needs.

I should be grateful if you could respond as soon as possible and by 30 August 2023 at the latest.

Yours sincerely,

Llyr Gruffydd MS,
Chair, Climate Change, Environment and Infrastructure Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg. / We welcome correspondence in Welsh or English.

Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Legislation, Justice and Constitution Committee

Senedd Cymru
Bae Caerdydd, Caerdydd, CF99 1SN
SeneddDCC@senedd.cymru
senedd.cymru/SeneddDCC
0300 200 6565

—

Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN
SeneddLJC@senedd.wales
senedd.wales/SeneddLJC
0300 200 6565

Andrew Bowie MP
Parliamentary Under-Secretary of State for Energy Security and Net Zero

12 July 2023

Dear Andrew

Energy Bill

You will be aware that the Welsh Government has now begun the legislative consent process in the Senedd in relation to relevant provisions in the Energy Bill (the Bill). On 29 June 2023, the Minister for Climate Change, Julie James MS, laid before the Senedd a Legislative Consent Memorandum (the Memorandum) on the Bill. You will likely be aware that the Welsh Government is currently recommending to the Senedd that it should withhold consent to the relevant provisions in the Bill at this time.

In the Memorandum laid before the Senedd, the Minister for Climate Change states that the Welsh Government was not involved in the development of the Bill before its introduction, and "the full legal text [of the Bill] was not available for review until hours before its introduction to the House of Lords". The Minister for Climate Change also states that the Welsh Ministers have written to the UK Government to raise concerns that the Bill as drafted does not respect the legislative competence of the Senedd nor the devolved responsibilities of the Welsh Ministers.

The Minister for Climate Change was invited to attend my Committee's meeting on 10 July, when we were able to discuss with her the Welsh Government's actions to date as regards the Bill. In particular, we discussed the circumstances which had contributed to the fact that the Memorandum has been laid before the Senedd almost one year after the Bill was introduced to the UK Parliament. We would normally expect a legislative consent memorandum to be laid before the Senedd within two weeks of a Bill with relevant provisions being introduced to the UK Parliament. Further to the statements made in the Memorandum, the Minister made it clear that the delay was partly due to the lack of dialogue and cooperation between both Governments. She told us:

- "We would have very much wanted for the Welsh Government to have been involved in the development of the Bill months before the Bill was published. We would have had detailed discussions with UK Government Ministers on matters within our competence and so on. Not a single scrap of that happened at all. Nothing, absolutely not." [Record of Proceedings, paragraph 6]

- "I'm quite annoyed by the situation the UK Government has put in where we're struggling to keep up with the changes in a Bill that are rapid and don't involve us at the right level at all." [RoP, paragraph 7]

- "...there's just nothing good to say about the way the UK Government has treated the devolution settlement. The Bill has been drafted without any nod to devolution whatsoever. (...) from a political point of view, I would say that it's news to the energy team [in the UK Government] that there is such a thing as a devolution settlement. It's been a hard-fought battle to get them to even understand what we're trying to say." [RoP, paragraph 14]

- "I have, a number of times, not just in this instance, been summoned to speak to a Minister of the UK Government at 17:30 with no idea of what they want to talk to me about, only to be told that tomorrow morning, they're going to publish X, so that they can say they've consulted us. Well, I'm sorry, I don't think that's sufficient consultation at all." [RoP, paragraph 19]

- "I've made a number of representations to the Secretary of State for BEIS, as it was then, and the Secretary of State and Ministers within the new Department for Energy Security and Net Zero. In March this year, following the UK Government amendments, with the offshore wind environment improvement package, I set out my concerns to the new Secretary of State on the clauses and on the initial considerations of the Bill. I've requested a meeting to discuss the concerns, but no offer to meet has been forthcoming. The first and only meeting on this Bill I have had with a UK Government Minister was with Minister Bowie in May 2023, and I have to say, in that meeting, Minister Bowie showed no appreciation that any kind of devolution settlement existed. There's no getting away from that. It was a very short meeting, and their view was that it just doesn't engage the devolution—. Well, they just didn't have any appreciation of it at all." [RoP, paragraph 29. See also paragraph 20]

- "We do normally have much better engagement. (...) but I think that what we're looking at here is somebody who just did not realise that there was any devolution issue in it until the last minute." [RoP, paragraph 21]

The statements and comments made by the Minister for Climate Change are concerning. We would welcome and value your response to what we have heard from the Minister for Climate Change, in particular details of the engagement – at Ministerial and official level – between your respective departments, and how you have sought to address the concerns of the Welsh Government.

I would welcome a response by 1 September 2023, so that my Committee can fully consider the evidence before reporting to the Senedd ahead of the debate which will take place on a consent motion for the Bill.

I am copying this letter to the Rt Hon Grant Shapps MP, Secretary of State for Energy Security and Net Zero; the Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations; and the Rt Hon David TC Davies MP, Secretary of State for Wales.

I am also copying the letter to the Senedd's Climate Change, Environment, and Infrastructure Committee.

Yours sincerely,

Huw Irranca-Davies
Chair

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith
—
Climate Change, Environment, and Infrastructure Committee

Senedd Cymru
Bae Caerdydd, Caerdydd, CF99 1SN
SeneddHinsawdd@senedd.cymru
senedd.cymru/SeneddHinsawdd
0300 200 6565
—
Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN
SeneddClimate@senedd.wales
senedd.wales/SeneddClimate
0300 200 6565

Julie James MS
Minister for Climate Change

26 July 2023

Dear Julie,

Decarbonising the private housing sector – update on progress

In responding to the Committee's report, Decarbonising the private housing sector, you committed to providing us with six-monthly updates on progress towards taking forward several of our recommendations.

In anticipation of the first update, due on 27 August 2023, the Committee agreed I should write to request that you also address the specific questions set out in this letter.

A residential housing decarbonisation route map

Recommendations 3 and 4 in our report relate to the development of the 'residential housing decarbonisation route map for Wales'.

In responding to these Recommendations, you told the Committee:

> *"Welsh Government officials are working with the Decarbonisation Implementation Group in setting up and implementing a residential housing decarbonisation route map for Wales. The Decarbonisation Implementation Group are at the initial stage of identifying relevant themes and actions at a strategic level. Task and finish groups will then contribute to the development of a route map which will give direction and drive progress towards decarbonising Wales existing homes.*
>
> *The route map, will set the direction of travel required for residential decarbonisation in the short, medium and long-term."*

We understand the Decarbonisation Implementation Group ('the DIG') has been unable to progress work on the route map at the speed it would have liked. Furthermore, we understand the Welsh

Government, at the highest level, has failed to engage effectively with the DIG's work, for example, by not responding to correspondence. This is deeply concerning.

1. We would welcome an explanation of the above and seek assurance that you and senior officials within your Department will commit to improving engagement with the DIG to facilitate its work.

2. As previously agreed, please can you:

   - provide an update on progress towards the development of the route map; and

   - clarify the timescales you are working towards, including whether these have been agreed with the DIG?

We understand that, unlike other groups set up by the Welsh Government to take forward work on decarbonisation, for example, the Heat Strategy Group, the DIG is not funded.

3. Can you outline the rationale for the different approaches to funding such groups?

We seek assurance that sufficient funding will be made available to the DIG to ensure it can carry out its role efficiently and effectively.

New Warm Homes Programme

We are aware that, in June 2023, you issued a policy statement on the new Warm Homes Programme. According to the statement, the Welsh Government's intention is "to continue to take a fabric, worst and low carbon first approach, delivering measures to improve the energy efficiency of the least thermally efficient low-income households in Wales". The statement says this will be achieved in two parts:

Part 1 involves bringing forward the procurement of a replacement demand-led service.

Part 2 involves the development of an integrated approach across all tenures and income levels to drive decarbonisation.

4. You have said the replacement demand-led service will be in place for winter. Please could you provide more exact timings?

The statement explains that, for the replacement demand-led service, "eligibility for support with energy efficiency measures…will be based on a low income threshold, rather than means tested benefits".

5. When and how will you determine what the 'low income threshold' will be?

The original Programme comprised a demand-led scheme (Nest) and an area-based scheme (Arbed).

6. Can you clarify whether and how the new Programme will make provision for an area-based approach to improving home energy efficiency? If not, why not?

The statement focuses on Part 1 and the replacement demand-led service, providing limited information about Part 2.

7. When will you be in a position to provide a more detailed explanation of Part 2 of the Welsh Government's approach to improving home energy efficiency?

All-Wales building stock model

Recommendation 12 in our report relates to using UCL Energy Institute's all-Wales building stock model as a means of identifying households eligible for ECO funding and for any future grant funding to support energy efficiency retrofit.

In responding to this Recommendation, you told the Committee:

> *"Welsh Government are in discussion with TrustMark with regards to an All-Wales stock model that will allow identification of households that can utilise other funding channels such as ECO funding or future funding arrangements that target support towards energy efficiency retrofit."*

8. Please can you provide an update on your discussions with TrustMark, including any outcomes? Can you clarify when and how an All-Wales stock model will be utilised to identify households?

Housing Net Zero Carbon performance Hwb

Recommendation 24 relates to the Housing Net Zero Carbon performance Hwb ('the Hwb'), which has since been launched. You previously told the Committee, "after the first year, it is anticipated the services offered by the Hwb will be expanded to help private landlords and homeowners". However, in response to our Recommendation, you told us:

> *"The Net Zero Carbon Performance Hwb has an agreed budget allocation for the first three years and therefore any additional asks of the Hwb will require additional funds to meet those additional requirements. My officials will work the Net Zero Carbon Performance Hwb steering group and the delivery partner to ensure that the Hwb and its associated website is available and provides insight and advice to all tenures as soon as is practically possible."*

9. Please can you clarify when the services offered by the Hwb will be expanded to support private landlords and homeowners and the additional funding required to meet the cost of this?

Financial solutions for the 'able to pay'

Recommendation 28 relates to financial solutions for the 'able to pay', including Property Linked Finance and zero/low-interest loans.

10. Please can you provide an update on progress towards the development of financial solutions for the 'able to pay', including Property Linked Finance, since your response to our report in April 2023.

Heat Strategy for Wales

Finally, on a separate, but related matter, Net Zero Wales Carbon Budget 2 (2021-25) includes a commitment to "publish a heat strategy for Wales in 2023".

11. Please can you provide an update on progress made towards the development of a heat strategy? Can you confirm the Welsh Government will be publishing the strategy before the end of 2023?

I look forward to receiving a response from you as soon as possible and by 27 August at the latest.

Yours sincerely,

Llyr Gruffydd MS,
Chair, Climate Change, Environment and Infrastructure Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg. / We welcome correspondence in Welsh or English.

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/292/2023

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

31 August 2023

Dear Llŷr,

Thank you for your letter of 26 July requesting the first six-monthly update on progress towards taking forward several of the recommendations made in the Climate Change, Environment and Infrastructure Committee's report on Decarbonising the Private Housing Sector. My officials are making progress in taking forward several of the recommendations made in the report.

Please find attached a detailed update on the specific questions included in your letter.

Yours sincerely,

Julie James

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

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Annex 1

A residential housing decarbonisation route map

1. **We would welcome an explanation of the above and seek assurance that you and senior officials within your Department will commit to improving engagement with the DIG to facilitate its work.**

The Decarbonisation Implementation Group (DIG) is supported and facilitated by my officials and meets monthly to take forward a range of areas. Through these meetings the group have determined a list of priority areas of focus for the route map that they believe need to be more widely discussed and agreed with stakeholders.

I have received correspondence from the Chair of DIG outlining his concern over the pace of progress and am due to meet with him shortly to discuss this and future ways of working for the DIG.

Meetings have also been recently held (14 August) with the Chair of DIG and senior officials to discuss progress. We are committed to ensuring the work of DIG is progressed and supported. I am however aware that the remit of the DIG has not been formally revisited or refreshed since its inception following the publication of the “Better Homes” report in 2019.

At recent meetings of the DIG, members have actively considered the focus of the group’s remit and purpose and what changes may now be required to ensure the group can best deliver. I am looking forward to discussing this with the chair and hearing the group’s views before reflecting and refining the group’s remit.

2. **As previously agreed, please can you:**

- **provide an update on progress towards the development of the route map; and**
- **clarify the timescales you are working towards, including whether these have been agreed with the DIG?**

The DIG has considered the development of the route map and over the course of several monthly meetings since January 2023 they have determined the areas they believe need to be considered and developed with wider stakeholders. These include a focus on the following topics:

- Funding;
- Skills;
- Data;
- Pathways;
- Communications and User Experience.

They have also been working to identify the range of stakeholders that need to be assembled to discuss and develop these topics further.

Officials have highlighted to the DIG that the work of the residential decarbonisation route-map will need to be co-ordinated with other key strategic developments. Of particular importance is the publication and consultation on the Heat Strategy. A series of action plans will be developed as part of this work and the overlap between the action plan for the domestic element of the Heat Strategy and the work in compiling the route-map has been emphasised.

Due to this, and to provide further support to the work of DIG, officials have proposed aligning work on the domestic element's action plan and the route-map. This will ensure no duplication or lack of alignment between these workstreams, while also bringing support to the process from consultants already engaged to support the production of the action plan.

Planning is being undertaken, ahead of an initial session with stakeholders (pencilled in for early October). Ahead of this further work is planned to get a common understanding of the areas of focus for the action plan, and the areas that need to be further developed as discreet elements within the route-map.

Regarding funding the DIG, this group was established following publication of the better homes report back in 2019. At the time it was established as a voluntary advisory group considering implementation of recommendations contained in that report. The remit is now developing and evolving and with the elapse of time and the emergence of new areas of work – such as the development of the route-map.

Whether a board or advisory group is funded or not is influenced by its remit purpose, composition, and basis. For instance, most boards where members are paid are recruited via a public appointment process.

Some of the examples that DIG looked at when comparing their work are not constituted as boards. The Heat Strategy, for example, was developed with input from a range of stakeholders who were not paid for their time. Officials undertook an open procurement exercise to commission consultants to produce packages of work, support our stakeholder involvement and draft the overall heat strategy for our review and approval. This approach where resource and expertise are procured to help develop strategies and policy approaches is relatively common but does not constitute a board.

In considering the development of the route-map I considered that DIG, as an established advisory group already channelled to supporting decarbonisation of housing, would be well placed to take forward this work.

3. **Can you outline the rationale for the different approaches to funding such groups? We seek assurance that sufficient funding will be made available to the DIG to ensure it can carry out its role efficiently and effectively.**

I have outlined above that there are different approaches to funding groups and a difference between using a group to support developing work, as opposed to commissioning an external organisation to provide support.

DIG will now be working with the organisation supporting the development of the Heat Strategy action plan. This resource will now be aligned to support an intrinsic element of the route-map work. Any further consideration of resources will be made as necessary moving forward.

New Warm Homes Programme

4. **You have said the replacement demand-led service will be in place for winter. Please could you provide more exact timings?**

The key milestones we are working to are:

- Invitation to Tender published — August;
- Selection of preferred bidder — Mid October;
- Assurance Gateway — w/c 23 October;
- Intention to Award letters (2 week standstill period) — Mid November;
- Contract Award — End November;
- Mobilisation starts — End November.

The complexity in the transition between the new and old contracts will, in large part, depend on whether there are new suppliers or not. My officials are in discussions with the current Nest suppliers to begin arrangements for demobilising Nest. The extension to the current Nest contract to the end of March 2024 will ensure there will be no gap in provision between the new and existing programmes.

5. When and how will you determine what the 'low income threshold' will be?

The low income threshold will be set in line with 60% of the Households Below Average Income, HBAI statistics. The threshold values, which will be equivalised across different household types, will be calculated annually and published on the scheme website.

6. Can you clarify whether and how the new Programme will make provision for an area-based approach to improving home energy efficiency? If not, why not?

We will be working with the successful bidders during the first year to further develop the scheme to accommodate communal and small-scale area-based schemes, such as the treatment of a terrace of houses or a block of flats where that is the most appropriate intervention.

7. When will you be in a position to provide a more detailed explanation of Part 2 of the Welsh Government's approach to improving home energy efficiency?

We have confirmed that with Part 2, we will develop an integrated approach across all tenures and income levels to drive decarbonisation. We have recently launched a consultation on a Heat Strategy for Wales which includes our assessment of many of the priority areas for action on the decarbonisation of homes and an indicative timeline for their implementation. A more detailed action plan will be developed later this year. The Decarbonisation Implementation Group and stakeholders on the Heat Strategy advisory panels will be contributing to its development.

<u>All-Wales building stock model</u>

8. Please can you provide an update on your discussions with TrustMark, including any outcomes? Can you clarify when and how an All-Wales stock model will be utilised to identify households?

We continue to discuss with TrustMark the best route forward in terms of securing an All Wales Stock Model. We have not yet concluded these discussions.

TrustMark work with us on a number of projects including as a trusted partners delivering data collection and management around the ORP and IHP programmes, and as the body responsible for PAS 2035.

The proposed stock model work involves gathering new data pertaining to real-world energy performance of Welsh homes in a systematic and scalable manner. The project would see the deployment of the Built Environment Scanning System (BESS). This real-world, as-built, condition data, will form a new data asset that is directly linked to ongoing policy implementation. The resulting insights can be used to make data-driven decisions regarding decarbonisation measures and policy developments.

Housing Net Zero Carbon performance Hwb

9. Please can you clarify when the services offered by the Hwb will be expanded to support private landlords and homeowners and the additional funding required to meet the cost of this?

The Hwb will have free to access areas that will help inform how private landlords and homeowners can decarbonise their homes using case studies and learning from the decarbonisation of social housing. This will be available at no extra cost and will develop alongside the areas developed for the social housing sector (which will be behind a membership access log-in). The expected timeline for the initial website will start to see content from January 2024, with the open access advice and guidance being available from July 2024. The Hwb will also link to and highlight other sources of information (such as the Climate Action Wales) and have links to other UK hubs.

Financial solutions for the ‘able to pay’

10. Please can you provide an update on progress towards the development of financial solutions for the ‘able to pay’, including Property Linked Finance, since your response to our report in April 2023.

We are currently working with the Development Bank Wales on a pilot project for the owner-occupied sector looking at loans for the ‘able to pay’. We are currently waiting on a funding decision regarding FTC monies to support the pilot. We are also in contact with the Green Finance Institute and discussing with stakeholders options in regard to financing decarbonisation.

Heat Strategy for Wales

11. Please can you provide an update on progress made towards the development of a heat strategy? Can you confirm the Welsh Government will be publishing the strategy before the end of 2023?

The Heat Strategy for Wales consultation was published on 16 August, alongside a review of the publicly available evidence. The consultation will close on 8 November and we aim to publish the response analysis early 2024. Its preparation involved a range of interested parties, including those representing consumers. The impartial literature confirms the electrification of heat is the most appropriate solution for most homes and can be implemented with moderate amounts of preparatory work.

This heat strategy supports our aspiration for a net zero public sector by 2030 and it supports the decarbonisation of our homes, our industry and our businesses in line with our statutory responsibilities by 2050. It is a strategy for the long term, reflecting the scale of the challenges and the range of interventions needed to drive change.

Our strategy will outline how we aim to break down barriers to low carbon heating in Wales, and the UK Government's role by, for example, releasing funds for insulation and rebalancing electricity costs.

As we reflect on the first phase of the Strategy development, the focus now shifts to the development of the Action Plan. To launch this phase, Action Planning workshops and thematic advisory sessions will be organised.

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref IM/JJ/ Heat Strategy

Llyr Gruffydd MS
Chair, Climate Change, Environment and Infrastructure Committee

16 August 2023

Dear Llyr

Net Zero Wales:Carbon Budget 2 contained a commitment to scope out the challenges and opportunities around low carbon heat and to publish a heat strategy for Wales in 2023. I confirm we published on 16 August 2023 our **Heat Strategy for Wales consultation** https://www.gov.wales/heat-strategy-wales

The climate emergency requires us to change our approach to energy – reducing our demand, increasing energy efficiency and using low carbon sources of energy. This is true of our space heating and cooling in our homes, businesses and public buildings, heat for cooking and industrial heat use. The strategy's purpose is to develop a decarbonised heat system that delivers on our net zero ambitions and help us to plan is for a better, fairer, and greener future for us all.

The consultation closes on 8 November 2023, and we aim to publish the response analysis early 2024. We shall keep you updated.

Yours sincerely

Julie James

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

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Lee Waters AS/MS
Y Dirprwy Weinidog Newid Hinsawdd
Deputy Minister for Climate Change

Llywodraeth Cymru
Welsh Government

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee

15 August 2023

Dear Llyr,

Thank you for your letter of 25 July regarding electrical vehicle (EV) charging infrastructure.

The Welsh Government's investment of £26 million assisted the delivery of a large number of publicly available charging devices in Wales. The funding did not fund the installation of all 1,639 chargepoints installed as at April 2023.

The Welsh Government has corrected its response to the Committee's report [a copy of the corrected response is attached]. The introduction now reads "Since the Welsh Government published our EV Charging Strategy in 2021, we have invested over £26 million in charging infrastructure across Wales, which contributed to increasing the number of public devices by 120%. There were a total of 1,465 charge points as at 1 January 2023".

The press release has been in the public domain for over a month. We will ensure that any future communications will describe more clearly the total number of chargepoints funded by Welsh Government.

The Welsh Government will provide a breakdown of all chargepoints funded by Welsh Government up to April 2023 as soon as this information is available. The breakdown will include the total number of charging points, their respective locations, the charging speeds they offer, and a breakdown by local authority.

Yours sincerely

Lee Waters AS/MS
Y Dirprwy Weinidog Newid Hinsawdd
Deputy Minister for Climate Change

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Lee.Waters@llyw.cymru
Correspondence.Lee.Waters@gov.wales

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Document is Restricted