

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-JJ-3057-23

Peredur Owen Griffiths MS
Chair
Finance Committee
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

1 December 2023

Dear Peredur,

Thank you for the Finance Committee Report in relation to the Infrastructure (Wales) Bill, published on 24 November 2023.

Please see my responses to the set of recommendations within the report in Annex 1. I am copying this letter to the Chair of the Climate Change, Environment, and Infrastructure Committee and the Chair of the Legislation, Justice and Constitution Committee for information.

Yours sincerely,

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

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

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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

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

Annex 1

Infrastructure (Wales) Bill Responses to Finance Committee Recommendations

Recommendation 1. The Committee believes that the methodology paper provided in relation to this Bill serves as a good practice model for future legislation. Therefore, we recommend that the Welsh Government considers including such details, which are used to inform the cost estimates arising from each Bill, within Regulatory Impact Assessments, rather than as separate documents, as a matter of principle.

I accept the principle of this recommendation. I thank the committee for their consideration of the Regulatory Impact Assessment (RIA) and the accompany methodology paper and their conclusion that the content represents good practice. The recommendation has been shared with officials in Welsh Treasury who have oversight of the RIA process.

The Methodology Paper supplements the RIA by providing the detailed workings behind the costs and savings for the four options outlined. We believe, for this Bill, due to the extent of detailed workings and calculations informing the RIA costs and savings, it was best to locate this in a separate Methodology Paper. This decision was taken to reduce the length and complexity of the RIA and to enable it to focus on key figures and justifications for them.

In terms of future Bills, consideration will be given to the most appropriate and transparent presentation of costs and benefits on a case-by-case basis. Depending on the nature of the Bill and the complexity of the RIA, it may be possible for all information to be included in the main assessment. However it is not the intention to commit to this for every future Bill. In some cases, where it is considered it will improve the accessibility of the RIA to the general reader, we may still opt to remove some of the detailed assumptions and calculations from the main assessment and include that information in an annex to the EM/RIA.

Recommendation 2. The Committee recommends that the Minister undertakes the following and that the information is included in a revised Regulatory Impact Assessment, after Stage 2:

- **undertakes further modelling work to identify the costs and benefits for communities and/or interested parties arising from the Bill. This information should include an analysis to show the potential range of costs and benefits that might be incurred; and**
- **provides examples or further information on community involvement, how that currently works, who is involved and how it might change as a result of the Bill.**

I accept this recommendation in part.

I reject the first part of this recommendation that further modelling work should be undertaken to identify costs and benefits for communities and other parties arising

from the Bill. The costs to communities will vary greatly depending on each type of development scheme and therefore it is impossible to quantify with any accuracy. The cost will be dependent on the nature, size and location of each future scheme, as well as the extent of the interest of individuals in those schemes, the extent they wish to make their views known, and the cost incurred to make these views known. Given the uncertainties involved, we do not believe it would be possible to model these future costs in a robust and meaningful way.

However, I do accept we can provide further information on how communities can currently engage on infrastructure applications and what the Bill will mean for communities engaging in infrastructure applications under a new consenting process. We will update the RIA by providing more information on the benefits to communities arising from the new consenting regime compared to current processes. Therefore, I accept the second part of this recommendation.

Recommendation 3. The Committee recommends that the Minister undertakes further work in regard of the financial benefits arising from a streamlined consenting process. This information should be included in a revised Regulatory Impact Assessment, after Stage 2.

I do not accept this recommendation. The RIA contains costs for every element of the consenting process where we are able to do so. Many of those costs show clear financial benefits arising to stakeholders from a new consenting regime. For example, where we have costed the savings to statutory consultees in the RIA compared to current processes, this is obviously a clear cost benefit. The approach we have taken to other benefits in the RIA is to list those that are qualitative and descriptive in nature, it is not possible to attribute a cost to them and they have been listed for completeness.

I have elaborated on a number of examples taken from the RIA of where we have not provided a financial figure to the benefits described.

Complexity

We have stated in the RIA that a benefit of a new consenting regime would be to reduce complexity. This will result in stakeholders only having to engage with the one rather than numerous consenting regimes for infrastructure projects. This will make it easier and less onerous for developers to submit their applications and others to subsequently comment on a single scheme. That is a clear benefit, but not one that is readily quantifiable. However, what we have done in the RIA is to provide costs on complexity where we are able. This includes the costs to developers for submitting applications through the current numerous consenting systems, compared to the costs for submissions under the new single regime. Wider matters on complexity which can be viewed as a benefit of a new consenting process are not quantifiable.

Flexible process

Another example where we have stated in the RIA that a new consenting regime would provide a benefit is by providing a more flexible process than exists currently. This would be in terms of ensuring developments that may be smaller in scale or impacts are consented through a more proportionate system. It also allows us to direct individual novel schemes be considered under this process, but also where

there may be a need to identify a new type of infrastructure scheme under this process in the future due to emerging technologies.

These are benefits that will future proof the consideration of infrastructure schemes by the Welsh Ministers. They are not matters we can elaborate on in terms of a specific cost benefit as they have many variables. For example, to what extent future technologies may result in certain types of projects falling under the new regime in future.

However, in the context of applications of a smaller scale and impact that would be more appropriately determined at the local level we have assessed those on the basis of historic data. We have looked at historic applications and costed the process under which they would likely be determined. Those costs are incorporated under the various stakeholder costs listed in the RIA.

Therefore, in terms of flexibility this is more than a cost benefit and we have provided figures on costs savings to stakeholders in the RIA as far as we can.

Wider resource saving

We have further stated in the RIA that a new consenting regime would provide benefits in terms of resource savings to stakeholders and by reducing duplication. For example, one process rather than numerous processes will improve public awareness on how to participate in an infrastructure project, whereas currently members of the public may be unaware of how to engage in certain consenting processes where limited guidance may be available. For the reasons I have set out in response to recommendation two, this is not quantifiable.

However, in terms of the cost element for this matter, again we have done this where we know the costs to different stakeholders (such as statutory consultees) for participating in numerous current regimes and comparing those costs to what the likely costs would be for participating in a single process where involvement would not be duplicated.

I am happy to include further information in the benefits section of the RIA to ensure it provides clear justification for the approach that has been taken where no costs are provided.

Recommendation 4. The Committee recommends that the Minister provides further information on how fees will differ under the new regime, compared to the current regime, and the impact of this on relevant stakeholders.

I accept this recommendation. The current fees for infrastructure applications are based on what is prescribed in regulations and statutory guidance. Some operate on a full cost recovery basis whilst others do not. For example, fees for 'Developments of National Significance' operate on full cost recovery, whilst fees for Harbour Orders do not result in full cost recovery for their determination. Therefore, currently the full extent of costs for determining infrastructure applications is not recovered from applicants.

Section 121 provides for fees for performance of infrastructure consent functions and services. Under this power it is expected the new regime will allow for fixed rate and variable fees to allow for full cost recovery on all types of infrastructure applications. In terms of fixed fees, those will be for elements of the process that will always require the same level of input and resources. Setting standardised fees on those elements will therefore allow for consistency and certainty. The elements of the regime that will allow for variable fees will be for those elements of the process which will vary for each application, for example the examination procedure. It is anticipated we will introduce variable fees in the form of a daily rate, which will help keep costs down and ensure applicants are only being charged for the time spent examining and determining their application. The new fee arrangements will therefore result in a fairer system of fee charging where applicants will be charged the true extent of the costs for determining a significant infrastructure project.

In terms of impacts on relevant stakeholders, for developers or applicants, it could result in a change in the fees for specific applications to ensure the full extent of costs are covered.

In addition, the new regime will have wider changes to the fee system. Developers will now pay for the one set of fees, rather than numerous fees where a scheme would currently require numerous consents. These efficiency savings resulting from a streamlined process will result in a fee system which better reflects costs for determining projects in the round, rather than duplicating costs. Under the new system it is expected developers will be invoiced for charges on an incremental basis at different stages of the determination process. This will offer more certainty and clarity on services they are paying for, rather than paying the full fee amount in one go where they would be paying for services they are not currently receiving.

For statutory consultees, the current consenting regimes do not allow for the costs to be recovered for input into infrastructure applications. Section 121 enables consultees to be remunerated for the services they provide in the consenting process. This will enable their resources for input into infrastructure applications to be fully recovered through applicant fees.

For local authorities, again their input into infrastructure applications is not fully reimbursed through existing consenting systems. They currently only receive a fee for preparation of Local Impact Reports to inform the determination of 'Developments of National Significance' of around £8,000. Equally, Section 121 enables local authorities consultees to be remunerated for the services they provide in the consenting process.

Any specific changes to fee charges will be subject to further work and consultation, with the detail being set out in regulations.

Recommendation 5. The Committee recommends that the Minister provides further information on the process associated with the optional threshold, including whether this flexibility could lead to some variability in the efficiencies outlined in the RIA.

I accept this recommendation. For those applications falling under the thresholds for 'directed applications', the applicant can request for their application to be determined either by the Welsh Ministers under the new consenting process or by the local planning authority. Ultimately, it will be for the Welsh Ministers to make an informed decision based upon the nature of the application and the issues that it raises whether it is or is not a significant infrastructure project for the Welsh Ministers' determination.

The RIA has already estimated future costs arising from the inclusion of 'directed applications' in the modelling. This was undertaken through assessing historic applications that would fall under that process and whether they would be determined by the local planning authority or the Welsh Ministers on the basis of their scale and impacts.

Recommendation 6. The Committee recommends that any post-implementation review assesses the overall costs and benefits of the new consenting regime and whether this met the expectations set out in the Regulatory Impact Assessment.

I accept this recommendation. I can confirm the evaluation project will be undertaken within the first five years following implementation of the new regime through subordinate legislation. This work will evaluate the operation of the new consenting regime, including the costs and benefits to different stakeholders. The new regime will also be monitored on an annual basis, where the performance in meeting the statutory timeframes set out in the Bill for determining applications will be set out in an annual report laid before the Senedd.