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

Llywodraeth Cymru
Welsh Government

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

15 December 2023

Dear Huw

Thank you for the Legislation, Justice and Constitution Committee Report in relation to the Infrastructure (Wales) Bill, published on 22 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 Finance Committee for information.

Yours sincerely

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

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Annex 1

Infrastructure (Wales) Bill

Responses to Legislation, Justice and Constitution Committee recommendations

Recommendation 1. The Minister should respond to the conclusions and recommendations we make in this report at least two working days before the Stage 1 general principles debate takes place.

Ministers endeavour to respond to the Committees as soon as reasonably possible but it is not always practical for Welsh Ministers to do this prior to the Stage 1 debate.

Recommendation 2. The Minister should update the Senedd on the Welsh Government's discussions with the UK Government regarding the outstanding Minister of the Crown consents and the transfer of legislative competence for the consenting of energy generating stations offshore between the edge of the territorial sea and the edge of the Welsh zone.

I accept this recommendation.

The transfer of legislative competence
Lord Callanan, Parliamentary Under Secretary of State for Energy Efficiency and Green Finance, wrote to me on 16 November confirming the UK Government position. Their view is that maintaining the current approach provides clarity for developers and investors by maintaining consistency between the consenting system in England and Wales and it is not evident that the current approach is creating significant difficulties for developers. The letter does offer the opportunity to provide further evidence on this matter. I disagree with this view and have instructed my officials to provide the necessary evidence.

Minister of the Crown consents
Engagement with the UK Government over the Minister of the Crown consents is still ongoing. The UK Government is aware of our timetable for tabling amendments.

Recommendation 3. The Minister should review the Bill and put on its face information already known about, for example, the requirements on or the functions of people, and who those people are, so that there is a better balance between what the Senedd is being asked to approve, and consequently what detail will be found in the Act, and what will be left to subordinate legislation.

I accept this recommendation.

I will bring forward amendments to provide more detail on the face of the Bill, where I consider it appropriate.

Recommendation 4. The Minister should provide to the Senedd a clear, full and detailed list of each and all delegated powers in the Bill, by reference to specific location, type and scrutiny procedure.

I accept this recommendation.

Details will be included in the revised explanatory memorandum.

Recommendation 5. The Minister should clarify why the Bill does not include overview sections, particularly for Parts 1 to 7, to describe what each part is seeking to achieve and how they relate to each other.

I accept the recommendation.

The purpose of an overview provision is to help the reader navigate an Act. Overviews are often included in Senedd Acts, but not always. The Welsh Government's policy on overviews (as set out in 'Writing Laws for Wales') is that drafters should consider whether they will be helpful to readers. There is no need for an overview if a clear picture is already given by the table of contents or by the long title. The drafters of this Bill felt that the part titles and crossheadings gave a clear idea of what the Bill does and that an overview would not add further value. In the light of the Committee's comments, I will give further consideration to whether an overview could be constructed that does add value without becoming too unwieldy.

Recommendation 6. The Minister should:
▪ provide clarity and detailed justification for the inclusion of flood prevention and minerals (in section 17(4)(b) and (c) respectively) as types of projects which may be added to the scope of the Bill (if and when enacted) via subordinate legislation;
▪ explain why criteria for the type of development that would fall under the fields of flood prevention and minerals were not included on the face of the Bill on introduction.

I accept this recommendation.

Flood defence projects, such as barriers and systems, as well as operations involving the winning of mineral resources can create large scale environmental change, affect multiple communities, require multiple consents across different regimes and form part of the national infrastructure in Wales. Therefore, I consider they should be included within the new consenting process.

However, while it is clear that projects relating to flood prevention and minerals have the potential to reach a scale and complexity to be of national importance, I have not received evidence to indicate a suitable threshold for these projects. This means I

have not identified a specific project threshold where an application would be considered under the new regime.

As further evidence becomes available, my officials will engage with all stakeholders before bringing forward any proposals for inclusion of such projects.

Recommendation 7. As suggested by stakeholders, to enable public consultation the Minister should consider the use of a super-affirmative procedure in respect of the making of regulations under section 17(1) which make provision for projects relating to the fields of flood prevention and minerals.

I reject this recommendation.

It is my opinion that the affirmative procedure, coupled with the Welsh Government's commitment to consult on regulations, provides sufficient opportunity for the Senedd and stakeholders to scrutinise any regulations made under section 17.

The super affirmative procedure is only used in rare instances where the content of a Bill is fundamentally changed. This is not the case in section 17, where the scope of the section is only to amend or add the type of projects which are considered Significant Infrastructure Projects (SIPs), but does not change the principles of the Bill itself.

Recommendation 8. The Minister should provide additional detail and reasoning as to why the regulation-making power in section 22 is needed in addition to the power in section 17.

I accept the recommendation.

The two sections serve a different purpose. The scope of section 17 is to be able to amend the Bill in future should evidence emerge that the categories and criteria defining a project as a SIP are no longer fit for purpose, due to technological advance or legislative changes, for example. An amendment made through section 17 amends the face of the Bill.

The scope of section 22 is different. It is recognised that, where there are novel or specific circumstances, an individual project may be of national significance even if it does not fall into the categories in Part 1. Section 22 enables an individual project to be designated a SIP due to specific circumstances, without listing that type of project on the face of the bill. This is because in other circumstances the type of project is not of national significance.

The regulation making power included in section 22(2)(c) is there to limit the power to direct that a project is a SIP to those specified in regulations.

Recommendation 9. In conjunction with recommendation 8, the Minister should explain the consequences if section 22 were removed from the Bill, and what would the Minister be prevented from doing that could not be achieved with section 17.

I accept this recommendation.

As set out in response to recommendation 8, the sections serve different purposes. Should section 22 be removed from the Bill the only projects that would be captured by the new regime would be those projects that are on the face of the Bill.

Therefore, any projects below those thresholds would not be captured by the new regime. For example, a solar farm located in a very sensitive location generating 40MW would not be captured by the new consenting regime. However, given the nature of the project, it might be considered more appropriate for it to be determined under the new regime. Section 22 enables individual projects to be directed as a SIP (provided the project is listed in regulations under 22(2)(c)).

The ability to have projects such as the solar farm example mentioned above considered by the new regime could not be achieved by section 17 alone for the following reasons:

Firstly, section 22 applies to individual projects, whereas section 17 applies to all projects above a threshold. A direction under section 22 therefore takes into account site specific circumstances.

Secondly, using the solar farm example, the intention is not to capture all projects above 40MW, only this individual project due to its specific circumstances.

Thirdly, using section 17 to achieve the same results of section 22 would mean frequent amendments to Part 1 of the Bill.

Fourthly, the intention of section 22 is to apply the new regime to an individual project. Changing Part 1 of the Bill using section 17 would not respond to an individual project which has come to light, unless the amendment was applied retrospectively.

Fifthly, developers have stated their preference for certain projects below the threshold to be considered under the new regime. Section 25 identifies what a qualifying request from a developer for a Direction is, and that the Welsh Ministers must provide a response.

Section 17 and 22 are fundamentally different in purpose, and I consider the removal of section 22 would be to the detriment of the principles of the Bill.

Recommendation 10. Section 24 should be amended to include details of what a direction made under subsection (1) may include. The Bill may also be

amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject the recommendation.

Section 24 provides that the Welsh Ministers may give a direction specifying that a proposed development that would otherwise be considered a SIP should not be classed as one for the purpose of this Bill. A direction made under section 24 may only be given if the proposed development is partly in Wales or the Welsh marine area.

The power is therefore naturally limited in its current drafting. Projects classified as a SIP are listed in sections 2 to 16, and directions under section 24 may only apply to these projects. SIP. A direction may only be made where the development is partly in Wales or the Welsh marine area. This means it is only projects that cross the boundary of these areas that may be subject to a direction under this section.

Recommendation 11. Section 24 should be amended to require that a direction made under subsection (1) must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd.

I accept this recommendation in part.

I accept that informing the Members of the Senedd would be beneficial, and it is my intention to table an amendment to the Bill to require the Welsh Ministers to publish the direction and issue an accompanying statement in the Senedd.

Recommendation 12: Section 31 of the Bill should be amended so that details of the functions referred to in subsection (5) which may be included in regulations made under subsection (4) are listed on the face of the Bill. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

Section 31(4) sets out the scope of what may be included in regulations made under that provision, and they are limited to provision about applications for infrastructure consent. Subsection (5) clarifies that provision made under subsection (4) can confer a function on any person, including the exercise of a discretion. The provision made in subsection (5), and in similar provisions elsewhere in the Bill, are intended to enable sub-delegation. In this case, the discretionary functions will be related to the process set out in the regulations for making an application.

The Statements of Policy Intent accompanying the Bill provide information about what is intended to be included in those regulations, subject to consultation. To separate out the 'functions' from the process would pre-empt the consultation and would lead to a confusing split in an administrative process between provisions on the face of the Bill and in regulations.

Recommendation 13: Section 33(2)(a) of the Bill should be amended to state that Natural Resources Wales, and any other known body/person, must be given a notice of any application for infrastructure consent.

I reject this recommendation.
Natural Resources Wales ("NRW") may only have an interest in certain applications which fall within the scope of the Bill. There is certainty over the applications in the Welsh marine area and those which straddle the onshore / offshore area due to the role NRW have in the consenting of marine licenses.

I have ensured NRW will always be notified of an application for development in the Welsh marine area by placing them on the face of the Bill at section 33(2)(b)(i). Building on this position, I have sought to strengthen NRWs involvement in the consenting process by tabling an amendment which requires prospective applicants to notify NRW of a proposed application for development in the Wales marine area at the pre-application stage. This will enable them to make effective resource plans in relation to future consenting needs.

Furthermore, section 33(2)(c) of the Bill provides for regulations to specify any other persons or descriptions of persons to be notified of an application. This will enable NRW to identify which additional types of development or applications they may have an interest in and wish to be notified about.

Recommendation 14: Section 34 of the Bill should be amended to add details of the requirements which may be imposed and on whom by regulations under subsection (1)(b). The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

There is, in effect, only one function that can be conferred by virtue of section 34(1)(b), requiring a person to respond to a notice. The purpose of this power is to ensure that those stakeholders who have detailed knowledge and expertise in particular types of development captured by the Bill are under a duty to respond to a notification of an application, as they are best placed to provide part of the evidence required to examine an application effectively.

Due to the range of development types captured by the Bill, these stakeholders will vary on a case-by-case basis and to set out a complete list with each of the circumstances in which they are required to respond to a notice, would incumber the reading of the Bill. For example, the current list of statutory consultees for Developments of National Significance (DNS) applications is set out in Schedule 5 of the Developments of National Significance (Procedure) (Wales) Order 2016 (as amended), and demonstrates the complexity of who needs to be consulted and when. Furthermore, DNS applications only represent some of the projects captured

under the Bill. Iwill also need to consider additional consultees from other existing consenting regimes, adding a further layer of complexity.

I also consider it appropriate that the regulations contain administrative matters of this kind. The regulations should tell a coherent story in respect of the procedure to be followed.

Recommendation 15: Section 34 of the Bill should be amended so that details of the functions referred to in subsection (2) which may be conferred by regulations made under subsection (1) are listed on the face of the Bill. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

As covered in response to recommendation 12, this approach is to ensure discretionary functions can be included in any regulations. The scope of the regulations is clear from section 34(1), and I have set out my intentions on how this power will be used in the Statements of Policy Intent. It is appropriate that all matters falling within the scope of section 34(1) be included in regulations.

Recommendation 16: The Minister should clarify the change she will seek to make to section 38 of the Bill, in line with our comments that this section contains one regulation-making power in subsection (1). In particular, the Minister should clarify whether an amendment is proposed to change the reference in subsection (3) from a reference to subsection (2) to instead be a reference to subsection (1), or if a more substantial amendment will be required to make the necessary changes to section 38.

I accept this recommendation.

We will make the necessary changes to clarify that the section contains one regulation-making power. This will include removing subsection (2) and changing the reference in subsection (3) to refer to subsection (1).

Recommendation 17: The Minister should clarify, and provide the necessary detail of, the powers contained within section 42 of the Bill.

I accept this recommendation.

I note the Committee's comments regarding the need to provide more clarity and detail in relation to the powers contained in section 42 of the Bill. I have set out in detail what requirements would likely to be included in subordinate legislation made under this section in the Statements of Policy Intent which accompany the Bill.
I intend these statements as a starting point, which will be subject to wider public consultation as the subordinate legislation is developed and therefore, may be subject to change based on the representations received from stakeholders.

Recommendation 18: Section 42 of the Bill should be amended to set out the details of the procedure for situations where the decision-making body is to be changed from the examining authority to the Welsh Ministers, and vice versa.

I reject this recommendation.

These are procedural matters that are better suited to subordinate legislation. For example, the Welsh Ministers will provide written notification to the examining authority of their intention to amend who the decision-making body is. There would also be a requirement to notify the applicant, relevant stakeholders and any other persons considered necessary of the change.

Recommendation 19: Section 43 of the Bill should be amended so that the principles relating to the power of entry, as well as any limitations or criteria that should apply to the making of the regulations, should be on the face of the Bill.

I accept this recommendation.

I will table an amendment to set out further detail on powers of entry on the face of the Bill.

Recommendation 20: The Bill should be amended so that the draft affirmative scrutiny procedure applies to the exercise of the regulation-making power in section 43.

I accept this recommendation.

Iwill table an amendment so that any regulation-making powers set out under section 43 are subject to the draft affirmative procedure. The need to prescribe regulation making powers under section 43 will be revisited in light of accepting Recommendation 19 to set out further detail on powers of entry on the face of the Bill.

Recommendation 21: Section 45 of the Bill should be amended so that details of the functions of an appointed representative referred to in subsection (6) which may be conferred in regulations are listed on the face of the Bill. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

Any functions specified on the face of the Bill relating to an appointed representative will be required to relate to other requirements set out in regulations. There should be one place to go to for all of those functions and having some on the face of the

Bill and others in regulations would make the process inaccessible. In addition, it would be very unlikely we could achieve this separation of functions effectively.

Recommendation 22: The Minister should provide further detail and clarity as to why the regulation-making power in section 52 is necessary.

I accept this recommendation.

The proposed regulation-making power under section 52 will set out those types of infrastructure applications that are to be determined by the examining authority instead of the Welsh Ministers. It is the intention to only require applications to be determined by the examining authority where they may be straightforward cases. Further, the intention is those applications to be specified in subordinate legislation that would be determined by the examining authority may change over time. For instance, as a result of technological advances, a certain type of infrastructure development may come forward in future where potential impacts are negligible and it is straightforward in terms of whether or not to consent.

In summary, I consider that those matters specifying what body would determine specific types of applications are very specific and procedural details in the consenting process. Therefore, I consider they should be specified in subordinate legislation rather than on the face of the Bill.

Recommendation 23: If section 52(1) is retained, the Bill should be amended to require regulations to be made under section 52 to be subject to the draft affirmative procedure.

I accept the recommendation.

I will table an amendment accordingly.

Recommendation 24: Section 55 of the Bill should be amended to include details about the matters that the examining authority or the Welsh Ministers may disregard in deciding an application for infrastructure consent. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I accept the recommendation.

I will table an amendment accordingly.

Recommendation 25: The Minister should clarify why section 56(1)(b) is required, and amend the Bill to provide more details about the limitation of this provision and how the period agreed will be made public.

I accept this recommendation in part.

This provision is necessary as there may be extenuating circumstances, not by fault of the Welsh Ministers, where a limited number of applications may not be able to be determined within the 52-week timeframe and the timeframe needs to be extended. For example, the examination process may require a suspension where essential parties fail to attend a hearing, or that the project of such a magnitude and complexity that a longer period is more appropriate to allow for additional hearing sessions. The provision in those circumstances will require the Welsh Ministers to come to an agreement with the applicant on a revised timeframe under section 56(1)(b).

Section 125 of the Bill requiring the Welsh Ministers to maintain a register of applications for infrastructure consent will provide the legislative tool by which information on an application will be made public, including timescales for the determination of individual applications.

I reject the part of the recommendation seeking to amend the Bill to provide more details about the limitations of this provision. The power would only be applied in extenuating circumstances that would only come to light during the determination of an application. Therefore, it is not possible to set out those limitations on the face of the Bill.

Recommendation 26: The Minister should clarify why the approach adopted in section 56(2) as regards the direction-making power is necessary.

I accept this recommendation.

The direction making power at section 56(2) is necessary as it must be recognised there may be extenuating circumstances, not by fault of the Welsh Ministers, where a limited number of applications may not be able to be determined within the 52-week timeframe. For example, the examination process may require a suspension where essential parties fail to attend a hearing. The direction making power for extending the timetable to determine an infrastructure consent application would only be used in those extenuating circumstances.

Recommendation 27. Section 56 should be amended to include details of what a direction made under subsection (2) may include. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject the recommendation.

Section 56(2) provides that the Welsh Ministers may give a direction to extend the 52-week timeframe. That is the only matter which the direction will contain.
The power is therefore naturally limited in its current drafting and therefore it is unclear what details the Committee are seeking.

Recommendation 28. Section 56 should be amended to require that a direction made under subsection (2) must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd.

I accept this recommendation in part.

The Bill already provides a duty under section 56(4) to publish the direction and section 56(5) provides a duty for the Welsh Government to issue an annual report on the compliance with the timescales to the Senedd. These should ensure Members are aware of the use of this direction making power. However, I recognise that the Senedd have an interest in this matter and I will table an amendment to require the Senedd to be notified by means of a written statement.

Recommendation 29. The Minister should clarify why section 56(3)(b) is required and amend the Bill to provide more details about the limitations that apply to this provision, including in particular the restrictions that apply to the time-period during which a direction under section 56(3)(b) may be given.

I accept this recommendation in part.

Section 56(3) is required because multiple issues may emerge during an examination and may require multiple suspensions. 56(3)(b) is required to provide clarity that it is possible for the Welsh Ministers to extend time after the deadline. The power to extend time is already limited to only be used only where there are extenuating circumstances. This clarity will prevent unnecessary future litigation about the exercise of the power to extend time.
Therefore, I will not table an amendment.

Recommendation 30: The Bill should be amended to require regulations to be made under section 56(6) of the Bill to be subject to the draft affirmative procedure.

I accept this recommendation.

I will table an amendment accordingly.

Recommendation 31: Section 57(6) should be amended to constrain the power to what is necessary and in line with how the Minister has stated the power is intended to be used.

I reject this recommendation.

The power relates to the setting of a procedure to be followed and it will relate to other procedures in regulations. Therefore, it is appropriate to have the procedure in regulations so secondary legislation tells a coherent story.

Recommendation 32: Section 59 should be amended to make it a requirement for a statement prepared under subsections (1) or (2) to be provided to the applicant of an infrastructure consent order.

I accept this recommendation.

I will table an amendment accordingly.

Recommendation 33. The Minister should explain why, in respect of section 60(6)(a) and (b), it is appropriate that an infrastructure consent order may amend, modify or exclude enactments without any scrutiny or oversight by the Senedd.

I accept the recommendation.

The Infrastructure Consent Order (ICO) is the product of the application process granting consent for a particular project. As such it will be limited in scope. The power in section 60(6)(a) allows the ICO to apply, modify or exclude an enactment which relates to any matter for which provision may be made in the order. This is limited to the application of enactments to the circumstances covered by the ICO, it does not allow amendments to be made in the general application of those enactments. For example, orders dealing with railways may include provision incorporating the Railways Clauses Consolidation Act 1845, or in relation to harbours, modification of the application of the Harbours, Docks, and Piers Clauses Act 1847.

Section 60(6)(b) allows for amendments, repeals or revocations of enactments of local application. For example, these may include local acts such as amendment of the Ffestiniog Railway Act 1869.

The granting of an ICO is a matter for the Welsh Ministers following the extensive examination process set out in the Bill. It would be confusing the roles of the executive and the legislature to provide for a role for the Senedd in the granting of consent for these SIPs.

Recommendation 34. Section 60 should be amended to require that an order made in accordance with the section must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd.

I reject the recommendation.

The granting of an infrastructure consent order is a matter for the Welsh Ministers following the extensive examination process set out in the Bill. Section 82 of the Bill already provides that Infrastructure Consent Orders must be published and, where contained in a Statutory instrument, must be laid before the Senedd.

Recommendation 35. The Bill should be amended so that orders made under section 82 which create criminal offences must be subject to the draft affirmative scrutiny procedure.

I reject this recommendation.

ICOs relate to specific projects and will be limited in scope. Any criminal offences created in anICO will trigger the requirement in section 82(3) and will be contained in a statutory instrument. This statutory instrument must be laid before the Senedd as soon as practicable after it has been made, alongside the associated plan and the statement of reasons. As set out in response to recommendation 33, the granting of an ICO is a matter for the Welsh Ministers and it would be confusing the roles of the executive and legislature to provide for a role for the Senedd in the granting of consent for these SIPs.

Recommendation 36. Section 87 should be amended to require that an order made under subsection (1) must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd.

I reject this recommendation.

Where an existing statutory instrument is amended (by revocation or a change), the amendment must also be contained in a statutory instrument as set out in section 87(7) of the Bill. Section 89(3) states that a copy of the instrument must be laid before Senedd Cymru.

I am satisfied that the current drafting of the Bill results in an appropriate level of scrutiny when Welsh Ministers consider the revocation or changes to an ICO.

Recommendation 37. The provisions contained in sections 87 and 88 relating to the change or revocation of infrastructure consent orders should be amended to include details of the safeguards that will be in place in respect of the use of the power in section 87(1) so as to ensure there are no unintended consequences.

I reject this recommendation.

I understand the Committee's wishes to ensure there are no unintended consequences in this area, however, having considered this recommendation, I do not consider the ability to change or revoke the infrastructure consent order after it is made, requires amendment.

We are proposing a formal process for applicants to apply for a change to the ICO

The processes and procedures required for notifying the Welsh Ministers of a proposed amendment(s), the scope of the amendment(s) and the timescales within which they may be made and how they are to be dealt with by the Welsh Ministers or

the appointed person, will be prescribed in regulations (with detail set out in the Statement of Policy Intent), and in summary will prescribe:

- The form and content of an application;
- Timescales and procedure;
- Consultation requirements;
- The manner in which an application is dealt with.

Any amendments which, in the Welsh Ministers' opinion, are substantial amendments will require the submission of a new application for an ICO.

Having regard to this I am of the view that the current drafting of the Bill and the provision for the detailed and robust procedure to be set out in Regulations is such that no unintended consequences will arise.

Recommendation 38. Section 88 should be amended to make it a requirement for a notice issued under subsection (6) to be provided to the person who originally applied for the infrastructure consent order.

I accept this recommendation.

I propose to table an amendment.

Recommendation 39. Section 92 should be amended to include details of what may be considered as an operation that is not a "material operation". The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

I set out in the Statement of Policy Intent that 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. It is my view that these matters should be informed by stakeholders before being defined, as the definition will impact on potential enforcement action. Defining this now may lead to changes being made to the Bill before the system is operational, which I do not consider to be best practice.

Recommendation 40: The Minister should provide additional detail and clarity as to what activities will not be prohibited by a temporary stop notice under section 115(1).

I accept this recommendation.

It is difficult to anticipate every eventuality or activity which will not be prohibited by a temporary stop notice given the wide and varying nature of the types of projects captured by the Bill.

However, one example I can provide the Committee is where a development is granted infrastructure consent and works are being undertaken which give rise to urgent health and safety matters. As a result, it may be necessary to mitigate against these matters by carrying out works which may not be in strict accordance with the consent granted. In these circumstances it may be not appropriate to issue a temporary stop notice if doing so would result in significant health and safety concerns.

Furthermore, the committee will note that in my letter of 11 September 2023 in response to question 25, I noted the same power already exists for the wider planning system in the Town and Country Planning Act 1990 and that certain restrictions may be introduced in that process which also hold relevance to applications for infrastructure consent.

Again, although it is not possible to anticipate what these restrictions could be in the future, the flexibility this power offers is important.

Recommendation 41: Section 121 of the Bill should be amended so that details of the functions referred to in subsection (5) which may be contained in regulations made under subsection (1) are listed on the face of the Bill. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

I understand the Committee's wishes to ensure clarity on functions in relation to fees. In this case, the discretionary functions will be related to the process set out in the regulations for charging a fee in connection with an application. Such examples could include setting a fee level, or administrative matters, such as collecting a fee and refunding it if required.

I have committed to providing cost recovery, but to do so will require consultation with all stakeholders, where functions will form part of the discussion. To separate out the 'functions' would pre-empt the consultation and would lead to a confusing split in an administrative process between provisions on the face of the Bill and in regulations.

Recommendation 42: Section 126 of the Bill should be amended to require Natural Resources Wales, and any other known body/person, to be consulted about a valid application for infrastructure consent.

I reject this recommendation.

NRW will only have an interest in certain applications which fall within the scope of the Bill, primarily, those in the Welsh marine area and those which straddle the onshore / offshore area. They may also have an interest as a consultee on

applications that may have a potential impact on protected sites or species, for example.

I have ensured NRW will always be notified of an application for development in the Welsh marine area by placing them on the face of the Bill at section 33(2)(b)(i).

Furthermore, section 33(2)(c) of the Bill provides for regulations to specify any other persons or descriptions of persons to be notified of an application, for which NRW could also be included, if there are any additional types of development or applications they may have an interest in.

In addition, I have sought to strengthen NRWs involvement in the consenting process by tabling an amendment which requires prospective applicants to notify NRW of a proposed application for development in the Wales marine area at the pre-application stage.

It is not necessary to place the requirement to consult NRW on the face of the Bill, as the requirement to notify NRW in certain circumstances is already in place. Furthermore, consulting in all cases places an unnecessary obligation on NRW to respond even in cases where this may not be required.

Recommendation 43: The Minister should clarify the details of the "things" a public authority may be required to do as directed by the Welsh Ministers using the power in section 127(1), and the Bill should be amended to set out this detail.

I accept this recommendation in part.

Although the Welsh Ministers have responsibility for undertaking functions relating to applications for infrastructure consent, there may circumstances where the Welsh Ministers want to, or it is more appropriate to, direct another body to undertake one or more of functions on their behalf.

These matters may include, but would not be limited to, displaying site notices for the purposes of publicising an application or publicising an application in a relevant fishing journal for those developments in the Welsh marine area.

I do not consider it appropriate to specify each potential activity on the face of the Bill as they are procedural in nature and may be subject to change. For example, should a new type of development be categorised as a SIP, it may be necessary to place new requirements on existing bodies, or place a function on a new body.

There may be some value in clarifying the broad scope of the activities that may be the subject of a direction and we will give further consideration to amending section 127 at Stage 2.

Recommendation 44: The Minister should provide further detail and clarity as to why the direction-making power in section 127(1) is necessary, and why the

statutory requirements to be placed on a public authority are not included on the face of the Bill.

I accept this recommendation.

Please see my response to recommendation 43. This power is necessary as it may not always be appropriate for the Welsh Ministers to undertake a particular function in relation to an application for infrastructure consent. This power enables the Welsh Ministers to direct another body undertake a function (or functions) on their behalf.

Recommendation 45: Section 127 should be amended to include the list of relevant devolved Welsh authorities to which the section will apply. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

An interpretation of devolved Welsh authorities is specified in section 157A of the Government of Wales Act 2006. At this point in time, I have not finalised the list of public bodies which will have a function placed upon them. It is my intention to engage with all stakeholders about the list of bodies and set them out in subordinate legislation. Providing them on the face of the Bill at this point would pre-empt that consultation.

Recommendation 46: The Bill should be amended so that the draft affirmative scrutiny procedure applies to the exercise of the regulation-making power in section 127(4).

I accept this recommendation.

I will seek to table an amendment to give affect to the recommendation.

Recommendation 47. The Minister should clarify why the approach adopted in section 128(1) as regards the direction-making power is necessary.

I accept this recommendation.

The power is needed in cases where the standard process would involve a disproportional burden on the parties involved. The Bill provides a transparent and fair examination process which is 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 there would be no detriment to procedural fairness.

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.

Recommendation 48. Section 128 should be amended to include details of what a direction made under subsection (1) may include. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

This power of direction is already limited by subordinate legislation subject to draft affirmative procedure. Further consultation will identify the limitations appropriate to place on this power and to place in legislation a potentially incomplete or erroneous list now would only result in immediate changes later on, which will be contrary to our aim of clarity.

Recommendation 49. Section 128 should be amended to require that a direction made under subsection (1) must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd.

I accept this recommendation.

An amendment will be tabled to require the direction to be published and a statement issued to all Members of the Senedd

Recommendation 50. The Bill should be amended to require that regulations made under section 129(2) of the Bill are subject to the draft affirmative procedure.

I accept this recommendation.

An amendment will be tabled.