Llywodraeth Cymru
Welsh Government

INFRASTRUCTURE (WALES) BILL

Explanatory Memorandum

incorporating the
Regulatory Impact Assessment and
Explanatory Notes

March 2024

Infrastructure (Wales) Bill

Explanatory Memorandum to the Infrastructure (Wales) Bill

This Explanatory Memorandum has been prepared by the Planning Directorate of the Welsh Government and is laid before Senedd Cymru.

It was originally prepared and laid in accordance with Standing Order 26.6 in June 2023, and a revised Memorandum is now laid in accordance with Standing Order 26.28.

Member's Declaration

In my view, the provisions of the Infrastructure (Wales) Bill introduced by me on the 12 June 2023, would be within the legislative competence of Senedd Cymru.

Julie James MS
Minister for Climate Change
Member of the Senedd in charge of the Bill

12 March 2024

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List of Abbreviations

DNS – Development(s) of National Significance

EIA – Environmental Impact Assessment

IC – Infrastructure Consent

KV – Kilovolt

LIR – Local Impact Report

LPAs – Local Planning Authorities

MIR – Marine Impact Report

MW – Megawatt

NDPB – Non-Departmental Public Body

NRW – Natural Resources Wales

PEDW – Planning and Environment Decisions Wales

SIP – Significant Infrastructure Project

TCPA 1990 – Town and Country Planning Act 1990

The Bill – The Infrastructure (Wales) Bill (as introduced)

TWA – Transport and Works Act 1992

PART 1 – EXPLANATORY MEMORANDUM

Chapter 1 – Description

1.1 The Infrastructure (Wales) Bill establishes a unified consenting process for the development of infrastructure in Wales and in Welsh waters, replacing several statutory regimes. The new form of consent will be known as an ‘Infrastructure Consent’ (“IC”) and will be issued in relation to projects which are prescribed as a ‘Significant Infrastructure Project’ (“SIP”). Categories of infrastructure ascribed SIP status include energy, transport, waste and water, among other infrastructure types. Developers must obtain an IC for a SIP, and the IC is intended to contain the full range of authorisations required to enable development to be implemented.

Chapter 2 – Legislative Competence

2.1 Senedd Cymru (“the Senedd”) has the legislative competence to make the provisions in the Bill pursuant to Part 4 of the Government of Wales Act 2006 (“GoWA 2006”) as amended by the Wales Act 2017.

Chapter 3 – Purpose and intended effect of the legislation

Overall objectives in implementing this policy through legislation

3.1 The timely and effective delivery of major infrastructure and low carbon development in the right locations requires simplified and efficient consenting arrangements.

3.2 The Bill proposes major changes to the legislative framework for the consenting of infrastructure in Wales and in the territorial sea adjacent to Wales to provide proportionate and bespoke arrangements. The aim of the proposed legislation is to create a unified consenting process for infrastructure projects in Wales, detaching consenting from current, largely outdated and inadequate arrangements to a new form of consent, which contains the full range of authorisations required to enable development.

3.3 The provisions contained in the Bill seek to amend existing primary legislation, principally the Town and Country Planning Act 1990 ("TCPA 1990"); Electricity Act 1989; Harbours Act 1964; the Highways Act 1980 and the Transport and Works Act ("TWA") 1992. The new arrangements will replace, either wholly or partly, current consenting arrangements.

3.4 In order to undertake development or works with the objective of constructing and/or changing use to create a SIP, it will be a requirement to obtain an IC.

3.5 The overall objective and purpose of the Bill will be to unify existing consenting regimes on the following basis:

- *Consistency* – To enable the public and developers to engage with a single process across all infrastructure types, providing administrative efficiency for decision-makers and familiarity with those who engage with it, which will reduce delays.
- *Certainty* – To provide certainty in terms of timescales for all involved, so that the public are clear on when decisions are made, and proceedings are not unnecessarily prolonged, and to enable developers to plan projects with more accuracy.
- *Chances of success* – To provide a clear strategic and policy framework on which decisions are made, to enable a developer to know their prospects of success in advance of an application for consent being made.
- *Quality of applications* – To provide minimum bars in terms of pre-application consultation and submission requirements to enable decision-

makers to better ascertain the impacts of development from the outset, while providing more informed information to the public.

- *Confusion* – To provide a more consistent and inclusive process, which enables those who are not familiar with engaging with the planning process to engage more effectively.
- *Complexity* – To enable a developer to obtain all the authorisations and consents it needs to implement a project, removing the need for the public to engage with multiple consenting processes, and lowering overall costs for all.

Issues/anomalies with current primary legislation

3.6 The Wales Act 2017 devolved the consenting of generating stations between 50 Megawatt ("MW") and 350MW, as well as associated overhead electric lines up to and including 132 Kilovolt ("KV"), to the Welsh Ministers. It did so by removing the consenting for devolved energy infrastructure under the Development Consent Order process from the Planning Act 2008, and into pre-existing regimes.

3.7 The consenting of onshore generating stations between 50MW and 350MW (with the exception of all onshore wind generating stations, which are already devolved) as well as associated overhead electric lines is given under the TCPA 1990. The Wales Act 2017 also returned the consenting of offshore generating stations between 1MW and 350MW to the Electricity Act 1989 and the consenting of all devolved ports and harbours[1] to the Harbours Act 1964. This supplements a number of existing regimes to consent already devolved infrastructure including dams and reservoirs and transport infrastructure such as roads, airports and railways.

3.8 Applications under these regimes are made to the Welsh Ministers directly. In some cases, development is also promoted by the Welsh Ministers. Procedures vary according to the regime. For particularly large projects there are a number of stages to a decision, and often development will require several consents, and these are then progressed together.

3.9 For some development, there may be requirements for statutory pre-application consultation. Following this, an application is made to the Welsh Ministers under the statutory powers. Generally, this is followed by examination from an independent Planning Inspector, which could include public inquiry. The Inspector will produce a report making recommendations to the Welsh Ministers, who will make the final decision. While this is the general approach

[1] S.29 and s.32 of the Wales Act 2017 excludes 'reserved trust ports' from those which are devolved. One such port qualifies in Wales, namely the port of Milford Haven.

for consents on infrastructure development, the differences between regimes have perpetuated and further widened with the devolution of energy infrastructure under the Wales Act 2017. This has resulted in numerous inconsistencies between consenting regimes for development which has similar impacts and requires similar authorisations.

The problem being addressed

3.10 Current consenting process can often be onerous and take a significant and unpredictable amount of time to be determined, given there are no statutory timeframes for current processes. This can generate uncertainty for all parties, imposing significant costs as well as potential planning blight. Furthermore, the delay in the delivery of key infrastructure can have harmful impacts on communities, businesses, the economy and the environment, and in some cases, deter future development. This may threaten Wales's ability to deliver the required infrastructure to continue to develop and attract further investment.

3.11 Due to the unpredictable length of time and expense of an examination it can be difficult for participants, such as Local Planning Authorities ("LPAs"), consultees and the community to participate effectively. Furthermore, the existence of different processes for different types of infrastructure can be confusing. This often means those with the most resources and knowledge engage in the consenting process, and this could be seen to be unfair.

Consistency

3.12 Current regimes have differing levels of consistency and can be confusing, due to the amount of related legislation that has been significantly modified. Certain consenting regimes were established as early as 1964 and are no longer appropriate for the consenting of large-scale infrastructure. Increased consistency will result in more competent decision-making and remove delay in the process.

Certainty

3.13 Many existing consenting regimes do not have definitive determination timescales and can be criticised for being inefficient. This can cause issues to be rehearsed, developed and mitigated at examination, which is a time-consuming process and does not encourage effective pre-application consultation. Where development requires multiple consents, it will only progress and be implemented as quickly as the slowest consent to be determined.

Chances of success

3.14 For many regimes, there is no clear policy to underpin the decision-making process. This may cause different weight or interpretation of policy or it being apportioned inconsistently on a case by case basis, and could provide uncertainty to potential applicants on the policy basis for development. The absence of a clear policy framework may discourage investment. This can also cause significant delay at examination.

Quality of applications

3.15 Although there are exceptions, there are no checks and balances on all occasions to ensure applications are prepared to a sufficient standard to allow thorough examination. Furthermore, pre-application consultation with both statutory consultees and local communities is not widely undertaken. This can result in members of the public sometimes feeling they have been unable to engage on the development of a project. Examinations can then be challenging in that unknown issues can arise during an inquiry. Mitigating for those issues can be costly to the applicant.

Confusion

3.16 Existing consenting regimes are often centred on whether objections trigger the need for a public inquiry. Such processes can be legalistic and adversarial, which may be intimidating for those engaging with the process. More inclusive processes are therefore required to allow valuable viewpoints to be offered and considered.

Complexity

3.17 Development consent does not necessarily mean construction can begin immediately. For large infrastructure further consents, licences or authorisations are often required. This lack of unified consenting can cause duplication of work. This can significantly increase the costs of applications and acts as a barrier to development, and cause frustration and confusion to those participating in the process.

Improvements to the current situation and enabling sectors to operate more efficiently

3.18 To improve the current situation, simplification is required as to how consents are gained by creating a one stop shop, where applications for a range of authorisations or approvals can be included as one application along with the main development consent. A bespoke process will aid the Welsh Ministers in

making decisions on Wales's infrastructure needs for the present and the future. It will also establish aspirations of the Welsh Government to take on further devolved powers in relation to energy and other infrastructure.

3.19 A unified consenting process will rectify some of the issues with fragmented consenting regimes (for example, development that straddles both onshore and offshore areas, such as tidal lagoons and alterations to harbours, and has separate jurisdictions and therefore multiple consents), and will ensure a more user-friendly approach for developers and communities. Having a unified process would enable the Welsh Ministers to include other consents and authorisations required in a 'one stop shop' approach which is vital for the delivery of infrastructure in Wales.

3.20 Consideration has been given to using current regimes, albeit with amendments, against the potential to introduce new arrangements. A comparison of the advantages of both is set out below:

Advantages of using existing consenting regimes.	**Advantages of introducing bespoke consenting arrangements.**
Developers are likely to be familiar with some of the existing consenting regimes, including Development(s) of National Significance ("DNS"), Harbour Revision Orders, Highways Act Orders and consents under the Electricity Act.	Wales could gain an advantage in having a modern and speedier consenting regime, which increases certainty, produces timely decisions and encourages appropriate energy and infrastructure development. This removes the unpredictability of current arrangements.
Current regimes can accommodate some change to enable streamlining, thus saving time and expense for all parties.	Greater consistency could be achieved across energy consenting and other types of major infrastructure in Wales, which leaves developers with little doubt as to the correct process and provides administrative efficiency. Opting for such a process would send the message Wales is open for business.
There are only a small number of projects currently seeking consent at present. This approach would ensure significantly less disruption in the short term.	Retaining existing regimes, which are multi-tiered and under separate Acts, can be confusing for stakeholders. A new, unified consenting regime could allow associated or ancillary consents to be included into a single consent. The 'one stop shop' approach is tried, tested and supported by the development industry in England. Establishing a similar process would require little adjustment from developers.

	A more flexible consenting process can be produced which can better respond to future changes, challenges and costs.
	Lessons have been learnt from having a fragmented consenting regime in Wales. A fragmented and non-unified consenting regime may lead to other authorisations and licences holding up the implementation of development.
	There is potential to introduce a statutory timeframe for the determination of infrastructure projects across the board, which will provide more certainty for the development industry.
	There is the potential to introduce a compatible statutory policy which provides certainty in terms of decision-making.

Who or what is affected by the legislation. Whether the legislation will improve access or outcomes for disadvantaged or excluded sections of society

3.21 The categories of infrastructure which a new and unified process is mainly expected to capture are energy, transport, waste and water, with minimum thresholds requiring only the most significant infrastructure to be included.

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

3.23 The Bill is intended to provide more consistency and transparency of outcomes in decisions being based on clear policy which has already been subject to public consultation. The intention is that the process will largely be electronic, enabling those with difficulty accessing physical information to engage with the process, while providing the relevant safeguards for those who only access information in its physical form.

3.24 Furthermore, the Bill is intended to consolidate a number of different consent types into a single process, providing familiarity for stakeholders.

The risks if this legislation is not made

3.25 Existing consenting regimes have their own disadvantages. For example, the DNS process is limited in scope, there is limited flexibility for changes and only a small range of secondary consents can be applied for concurrently and do not form part of the main decision. Furthermore, the DNS process has no compulsory acquisition powers. Other authorisations for infrastructure such as harbours, highways and railways are often granted as a statutory instrument which can add additional time and cost to these consent types and are technical processes which can take considerable time.

3.26 Making use of existing processes cannot provide the 'one stop shop' approach which the development industry supports, and which is in force for non-devolved projects as well as projects in England. Natural comparisons would be drawn with the equivalent situation across the border, and England would be at a significant competitive advantage where it concerns the ease of use of major infrastructure consenting processes. The use of existing arrangements would prolong the current issues with consenting processes and may lead to development in Wales being delayed or aborted.

3.27 Ultimately, failure to provide a truly unified consenting process would make Wales a less attractive place to invest in large-scale infrastructure projects.

Chapter 4 – Consultation

4.1 The “Changes to the consenting of infrastructure: Towards establishing a bespoke infrastructure consenting process in Wales” consultation ran from 30 April 2018 until 23 July 2018.

4.2 The consultation involved stakeholders in establishing a bespoke infrastructure consenting process and sought views on interim arrangements until a bespoke infrastructure consenting process is in place.

4.3 A total of 22 specific questions were set out in the consultation document, with a standard form provided for ease of response. Comments were also made outside of the standard questions.

4.4 On 30 April 2018 over 300 stakeholders, including individuals and organisations were notified by email of the publication of the consultation. These were drawn from the core consultation list held by the Planning Directorate of the Welsh Government, as well as other bodies who expressed an interest. This included all LPAs in Wales, public bodies, special interest groups and other groups. The consultation was made available on the Welsh Government’s consultation website.

4.5 The consultation generated 46 responses. Respondents were asked to assign themselves to one of six broad respondent categories. Table 1 below shows the breakdown of respondents.

Table 1 – Breakdown of Respondents

Category	Number	% of total
Businesses / Planning Consultants	10	22%
Local Authorities (including National Park Authorities)	10	22%
Government Agency/Other Public Sector	12	26%
Professional Bodies/Interest Groups	9	20%
Voluntary Sector	2	4%
Others (other groups not listed)	3	6%

4.6 There was general agreement with the principles of a unified consenting regime. However, respondents suggested that greater detail was required on how policy and legislation would influence the consenting process. Several queries and issues were raised in relation to specific principles.

4.7 A significant majority agreed and supported the proposal to replace the DNS process set out under the TCPA 1990 with an entirely new consenting regime. Although in agreement, respondents commented greater detail on how a unified consenting regime would operate in practice was required. Respondents stated that any changes must ensure flexibility, a strengthened role for communities and must not be overly complex or costly for applicants.

4.8 Generally, respondents were of the view that the introduction of 'optional' thresholds would help promote and achieve flexibility in the consenting process. Respondents also concluded that further detail and guidance relating to optional thresholds would be beneficial to the development industry. LPAs were particularly positive regarding the principle of optional thresholds for SIPs, commenting it was reassuring there is a recognition LPA determination periods for certain types of development can be quicker than the DNS process.

4.9 The majority of respondents agreed and supported the proposal for the Welsh Ministers to ultimately decide on a case-by-case basis whether an optional SIP qualifies as such. There was uncertainty around who made the final decision on whether a proposed development qualifies as a SIP via the 'optional' threshold route.

4.10 A significant majority agreed and supported the proposal for development, designated as of national significance to be determined at the national level. Several respondents sought further clarification on how the NDF and SIP process would interact with one another.

4.11 There was overall support for the proposed compulsory and optional thresholds, though some respondents suggested amendments.

4.12 There was overall support to remove Electricity Act 1989 consent for all development in the Welsh offshore area, where possible, and placing this consent in the unified IC process. LPAs commented the proposed consenting system was an adequate replacement for the Electricity Act 1989.

4.13 There was overall support for ICs to be conventional consents and as statutory instruments when required, suggesting it adds certainty, proportionality and flexibility whilst recognising the differing complexities and consenting requirements of development. There was a general view that further clarification was required on the form and content of both conventional consents and statutory instruments.

4.14 There was overall support for the fast-track of certain classes or types of SIP, to ensure a more proportionate decision-making process. As well as a general view that the concept of fast-tracking needs further consideration.

4.15 Generally, respondents agreed with the option for applicants to rationalise the different secondary consents required. However, there was consensus that the topic should be open for further consultation and development.

4.16 There was overall support for the NDF, Welsh National Marine Plan and topic-based policy statements providing the policy basis for determining infrastructure development. Respondents suggested that more consideration should be given to the role of local development plans.

4.17 There was overall support for the pre-application consultation proposals. Respondents suggested more information is required on specific aspects, including fees and cross-border issues and that any requirements must be meaningful.

4.18 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.

4.19 There was overall support for the ability to vary development during the determination process and post-consent. It was generally suggested that more detail and consideration is required regarding 'minor' variations and fast-tracking non-contentious variations.

4.20 There was overall support for designating the LPA as the main onshore enforcement authority, with the Welsh Ministers as the relevant authority offshore. Respondents stated that more information was required in relation to enforcement and onshore and offshore jurisdictions.

4.21 A summary of the consultation responses is available at: https://www.gov.wales/sites/default/files/consultations/2018-11/infrastructure-consultation-summary-of-responses.pdf

4.22 The provisions included in the Bill align to the principles set out in the consultation paper published in April 2018, for which there was overall support from respondents. Following the consultation, other Government priorities, such as making arrangements for the UK's exit from the EU and the response to the Covid pandemic caused a reprioritisation of all resources and legislative programme. However, the aim and objectives of the bespoke consenting regime have not changed which has been confirmed through ongoing engagement with stakeholders.

4.23 The specific proposals in the Bill have subsequently been further refined and expanded, such as, the processes and procedures for how applications for IC are submitted, publicised, examined and determined. However, much of the detailed procedural elements will be reserved for subordinate legislation, which will be subject to further consultation.

4.24 Due to length and technical nature of the Bill, it was considered more appropriate and efficient to undertake more focused and ongoing engagement and discussion with key stakeholders on specific elements of the Bill to inform

its development, rather than publish a draft Bill as part of a full consultation. This has included, but is not limited to:

- discussions with Natural Resources Wales in relation to elements of offshore consenting, such as the requirement for marine impact reports;
- meetings with the Planning and Environment Decisions Wales department to discuss the proposed application procedure, in particular, how applications are to be examined and determined; and
- meetings with representatives from National Grid and Scottish Power to discuss current issues with the consenting of overhead electric lines.

Chapter 5 – Power to make subordinate legislation

5.1 The Bill contains provisions to make subordinate legislation and issue determinations. Table 5.1 (subordinate legislation) and Table 5.2 (directions, published criteria) set out in relation to these:

(i). the person upon whom, or the body upon which, the power is conferred;

(ii). the form in which the power is to be exercised;

(iii). the appropriateness of the delegated power;

(iv). the applied procedure; that is, whether it is “affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.

5.2 The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when proposals are formalised.

Table 5.1: Summary of powers to make subordinate legislation in the provisions of the Infrastructure (Wales) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
PART 1 – SIGNIFICANT INFRASTRUCTURE PROJECTS					
Section 17(1)(a)	Welsh Ministers	Regulations	This is considered appropriate to future proof the Bill and to respond efficiently to changes to UK legislation and technological advancements in the industry. This is considered appropriate to benefit the consenting process as the list of qualifying projects may need adjusting more often than it would be sensible for the Senedd to legislate. The regulations are limited in terms of territorial competency and the type of project or variation of project that can be inserted.	Affirmative	This power is to amend, vary or remove an existing provision of an Act of the Senedd and Acts of Parliament, therefore it will require an additional degree of scrutiny.
Section 17(1)(b)	Welsh Ministers	Regulations	This is considered appropriate to future proof the Bill and to respond efficiently to changes to UK legislation and technological advancements in the industry.	Affirmative	This power is to amend, vary or remove an existing provision of an Act of the Senedd and Acts of Parliament,

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			This is considered appropriate to benefit the consenting process as the list of qualifying projects may need adjusting more often than it would be sensible for the Senedd to legislate. The regulations are limited in terms of territorial competency and the type of project or variation of project that can be inserted.		therefore it will require an additional degree of scrutiny.
PART 2 – REQUIREMENT FOR INFRASTRUCTURE CONSENT					
Section 21(1)(a)	Welsh Ministers	Regulations	This is considered appropriate to future proof the Bill and to respond efficiently to changes in UK legislation. Evidence may also emerge from industry demands and future policies and government objectives, that further types of consent should be included in this consenting process or to vary the cases in relation to which a type of consent is within this process.	Affirmative	This power is to amend, vary or remove an existing provision of an Act of the Senedd and Acts of Parliament, therefore it will require an additional degree of scrutiny.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			Responses to emerging evidence may need adjusting more often than it would be sensible for the Senedd to legislate.		
Section 21(1)(b)	Welsh Ministers	Regulations	This is considered appropriate to future proof the Bill and to respond efficiently to changes in UK legislation. Evidence may also emerge from industry demands and future policies and government objectives, that further types of consent should be included in this consenting process or to vary the 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 sensible for the Senedd to legislate.	Affirmative	This power is to amend, vary or remove an existing provision of an Act of the Senedd and Acts of Parliament, therefore it will require an additional degree of scrutiny.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 22(2)(c)	Welsh Ministers	Regulations	This is considered suitable for regulations because it will contain details of the limits to this power of direction. It is considered that regulations will provide the type of flexibility required which will benefit the consenting process.	Affirmative	This power relates to specifying development as a significant infrastructure project via direction. Therefore it will require an additional degree of scrutiny.
Section 26	Welsh Ministers	Regulations	This is considered suitable for regulations as they will accommodate details of procedural matters in connection with direction making powers under sections 22, 23 and 24. Flexibility is also required to respond to any procedural changes if considered necessary or appropriate to benefit the consenting process.	Negative	This is a minor technical detail and procedural matter which will set out details of direction making powers. These could be subject to change in the future depending on what procedural requirements are relevant or appropriate at the time and therefore flexibility is required to legislate swiftly if needed.
PART 3 – APPLYING FOR INFRASTRUCTURE CONSENT					

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 27(1)	Welsh Ministers	Regulations	This is considered suitable for regulations as they will accommodate significant detail relating to pre-application services. Flexibility is also required to respond to any procedural changes, or changes to what information is required to be submitted, if considered necessary or appropriate to benefit the consenting process.	Negative	This is a minor technical detail and procedural matter which will set out when and how pre-application services must be provided, what information must be included in a pre-application service response and how such services are publicised to the wider public. These could be subject to change in the future depending on what information / procedural requirements are relevant or appropriate at the time and therefore flexibility is required to legislate swiftly if needed.
Section 28(5)	Welsh Ministers	Regulations	This is considered suitable for regulations as the requirements for obtaining information about	Negative	This is a minor technical detail and procedural matter which will set out

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			interests in land by the serving of a notice will accommodate matters of detail. For example, on the content of a notice and timescales for responding.		requirements for applicants to serve notice on land interests that would be affected by a proposed IC. The proposed details which are to be prescribed may be subject to change in the future; for instance if changes are made to the overarching consenting process or if it is considered certain details should be added or amended to what is included in a notice. Therefore, it is important we retain the necessary flexibility to legislate swiftly, should the need arise to alter procedural matters or specified information.
Section 29(1)(h)	Welsh Ministers	Regulations	This is considered suitable for regulations as the list of those persons who must be notified of	Negative	The list of other persons who must be notified of a proposed application

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			a proposed application may need amending in the future to accommodate new or different persons.		is a minor technical and procedural matter and flexibility is required to legislate swiftly, should the need arise to amend the list of those persons.
Section 29(2) and (3)	Welsh Ministers	Regulations	This is considered suitable for regulations as the details specifying what information must be included in a pre-application notification form need to be flexible to respond to any future changes.	Negative	This is a relatively minor detail which sets out what details and information applicants must include as part of their pre-application notification form, including how and when a notification is to be given. We may be required to update this list at short notice and need the appropriate flexibility to do so, if it is considered necessary for prospective applicants to submit additional information in the future.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 29(5)	Welsh Ministers	Regulations	This is considered suitable for regulations as the information included in a notice, in addition to the period in which it must be given, may be subject to change in the future to benefit the consenting process and flexibility is required to respond to these potential changes swiftly.	Negative	This is a minor technical and procedural matter in the overall legislative scheme relating to the form and content of a notice from the Welsh Ministers to prospective applicants, where their pre-application notification has been accepted, including how such notice is to be given and the period within which it must be given.
Section 30(2) and (3)	Welsh Ministers	Regulations	This is considered suitable for regulations as the requirements relating to pre-application consultation will accommodate a significant level of detail which would encumber the reading of the Bill. This includes; who must be consulted, how consultation is carried out, timetables for	Negative	The requirement to undertake pre-application consultation is a minor procedural matter in the wider legislative scheme. The proposed details which are to be prescribed may be subject to change in the

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			consultation and to respond to consultations.		future if it is considered there are certain details which may not hold as much value in the consultation process as initially thought, or if certain details should be added. Therefore, it is important we retain the necessary flexibility to legislate swiftly, should the need arise to alter procedural matters or specified information.
Section 31(4)	Welsh Ministers	Regulations	This is considered suitable for regulations as the application process will accommodate a significant level of detail, including the form and content of an application and what information and documents must accompany it, how applications are made, the validation process, the procedure for varying or withdrawing an application and the period within	Negative	The process for submitting and validating applications for IC is considered a minor procedural matter, which also captures various technical matters. The proposed procedure and information required may be subject to change in the future, if it

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			which applications must be submitted.		is considered certain requirements should be added or removed from the list of information to be submitted, or any procedural matters, depending on how much value they hold. Therefore, it is important we retain the necessary flexibility to legislate swiftly, should the need arise to alter procedural matters or specified information.
Section 31(5)	Welsh Ministers	Regulations	This is considered suitable for regulations as the list of potential functions which may be conferred, along with the list of persons on whom such functions may be conferred, will present a significant level of detail which would encumber the reading of the Bill.	Negative	The list of potential functions which may be conferred, along with the list of persons on whom such functions may be conferred is a minor technical matter and flexibility is required to legislate swiftly, should the need arise to amend the list of functions and /

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					or those persons on whom they may be conferred.
Section 33(2)(c)	Welsh Ministers	Regulations	This is considered suitable for regulations as the list of those persons who must be notified of a proposed application may need amending in the future to accommodate new or different persons.	Negative	The list of other persons who must be notified of a proposed application is a minor technical and procedural matter and flexibility is required to legislate swiftly, should the need arise to amend the list of those persons.
Section 33(3)	Welsh Ministers	Regulations	This is considered suitable for regulations as there are a number of publicity and notification requirements relating to applications, which also vary depending on whether a proposed development is onshore or offshore. This will present a significant amount of detail.	Negative	Publicity and notification requirements of an application are considered a minor procedural matter in the wider legislative scheme. Furthermore, it may be necessary to amend how applications are notified and publicised in future to maximise exposure to a wider audience.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					Therefore, the ability to legislate swiftly is required.
Section 33(5)	Welsh Ministers	Regulations	This is considered suitable for regulations as the date by which representations relating to an application are to be received is a minor technical matter which may need amending in the future to accommodate a different time period.	Negative	The deadline for when representations must be received in relation to an application is a minor technical detail which may need amending in future to ensure the efficiency of the consenting process. It is therefore important we retain the ability to legislate swiftly when required.
Section 34	Welsh Ministers	Regulations	This is considered suitable for regulations as the requirements reserved for regulations will present a significant level of detail and will also need to be flexible to respond to any future changes in procedure.	Negative	Matters relating to how representations relating to an application may be made and the requirement for specified persons to respond is a minor procedural and technical

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					matter in the wider legislative scheme.
Section 35(4)(b)	Welsh Ministers	Regulations	This is considered suitable for regulations as the requirements for what must be included in a local impact report need to be flexible to respond to future changes in such requirements.	Negative	Requirements specifying the form and content of a local impact report is a minor technical and procedural matter which may need amending in future to reflect changing requirements. Therefore, flexibility is needed to legislate swiftly if required.
Section 36(4)(b)	Welsh Ministers	Regulations	This is considered suitable for regulations as the requirements for what must be included in a marine impact report need to be flexible to respond to future changes in such requirements.	Negative	Requirements specifying the form and content of a marine impact report are a minor technical and procedural matter which may need amending in future to reflect changing requirements. Therefore, flexibility is

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					needed to legislate swiftly if required.
Section 37(2) and (3)	Welsh Ministers	Regulations	This is considered suitable for regulations as the requirements for giving notice to the Welsh Ministers about persons with an interest in land for which compulsory acquisition would apply as part of an IC will accommodate matters of detail. For example, the information to be provided on those individuals with an interest.	Negative	This is a minor technical detail and procedural matter which will set out requirements for applicants to give notice to the Welsh Ministers about land interests. The proposed details which are to be prescribed may be subject to change in the future; for instance if changes are made to the overarching consenting process or if it is considered certain details should be added or amended to what information is provided. Therefore, it is important we retain the necessary flexibility to legislate swiftly, should the need arise to alter procedural

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					matters or specified information.
Section 38	Welsh Ministers	Regulations	This is considered suitable for regulations as the requirements for consultation on an application for IC relating to compulsory acquisition after the submission stage will accommodate matters of detail. For example, on the documentation that is required to be provided as part of a consultation or on its timetable.	Negative	The requirement to undertake consultation on an application for IC relating to compulsory acquisition after the submission stage is a minor technical detail and procedural matter in the wider legislative scheme. The proposed details which are to be prescribed may be subject to change in the future if it is considered there are certain details which may not hold as much value in the consultation process as initially thought, or if certain details should be added. Therefore, it is important we retain the necessary flexibility to

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					legislate swiftly, should the need arise to alter procedural matters or specified information.
PART 4 – EXAMINING APPLICATIONS					
Section 39(5) and (6)	Welsh Ministers	Regulations	This is considered suitable for regulations as arrangements need to be flexible to respond to any future changes in procedure which may be required to undertake examinations of applications effectively.	Negative	Matters relating to the appointment of an examining authority are considered technical and procedural.
Section 41(4)	Welsh Ministers	Regulations	This is considered suitable for regulations as the date by which a determination of examination procedure must be made is a minor technical matter which may need amending in the future to accommodate a different time period.	Negative	The deadline for a determination of examination procedure is a minor technical detail which may need amending in future to ensure the efficiency of the consenting process. It is therefore important we retain the ability to legislate swiftly when required.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 41(6)	Welsh Ministers	Regulations	This is considered suitable for regulations as the list of prescribed parties subject to notification of an examination procedure may require amending in future to accommodate additional parties in the list.	Negative	Notifying prescribed parties of an examination procedure is a minor procedural matter in the wider legislative scheme. Flexibility is also required to legislate swiftly, should the list of prescribed parties need amending in future.
Section 42	Welsh Ministers	Regulations	This is considered suitable for regulations as details relating to the procedure of examinations will accommodate significant detail which would encumber the reading of the Bill.	Negative	Details regarding examination procedure are minor technical and procedural matters which may require amendments in future to respond to changes in professional practice. It is therefore important we retain the flexibility to legislate swiftly.
Section 46(6)	Welsh Ministers	Regulations	This is considered suitable for regulations as arrangements	Negative	This is a minor procedural matter in the

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			need to be flexible to respond to future changes in procedure.		wider legislative scheme and flexibility is required to legislate swiftly, should the need arise for procedures to change.
PART 5 – DECIDING APPLICATIONS FOR INFRASTRUCTURE CONSENT					
Section 53(1)	Welsh Ministers	Regulations	This is considered suitable for regulations as arrangements need to be flexible to respond to future changes in working practice.	Affirmative	Powers given by regulations to the examining authority for certain types of applications for infrastructure consent would change the procedure for their determination under a new consenting process. Any changes in procedure for certain application types are considered to warrant additional scrutiny.
Section 55(d)	Welsh Ministers	Regulations	This is considered suitable for regulations as the further	Negative	This is a minor technical detail which may need

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			matters of which the Welsh Ministers must have regard in deciding an application will present a significant level of detail and will also need to be flexible to respond to any future changes in procedure.		amending in future to ensure the efficiency of the consenting process. It is therefore important we retain the ability to legislate swiftly when required.
Section 56(3)	Welsh Ministers	Regulations	This is considered suitable for regulations as further matters which the Welsh Ministers or examining authority consider that they may in future disregard in deciding an application will present a significant level of detail and will also need to be flexible to respond to any future changes in procedure.	Affirmative	Regulations that would change, remove or update matters specified on the face of the Bill that the Welsh Ministers or examining authority may disregard in deciding an application for infrastructure consent. Any such regulations are considered to be something that warrant an additional degree of scrutiny.
Section 57(4)(a)	Welsh Ministers	Regulations	This is considered suitable for regulations as arrangements	Negative	This is a minor technical detail which may need amending in future to

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			need to be flexible to respond to future changes in procedure.		ensure the efficiency of the consenting process. It is therefore important we retain the ability to legislate swiftly when required.
Section 57(6)	Welsh Ministers	Regulations	This is considered suitable for regulations as arrangements need to be flexible to respond to future changes in procedure.	Affirmative	Amending the prescribed timeframe for determining an application for infrastructure consent should only be done in exceptional circumstances and therefore it is considered to be something that would warrant additional scrutiny.
Section 58(2)(d)	Welsh Ministers	Regulations	This is considered suitable for regulations as the list of additional parties subject to notification of a decision by the Welsh Ministers may require amending in future to accommodate additional parties in the list.	Negative	Notifying prescribed parties of a decision is a minor procedural matter in the wider legislative scheme. Flexibility is also required to legislate swiftly, should the list of

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					prescribed parties need amending in future.
Section 58(4)(d)	Welsh Ministers	Regulations	This is considered suitable for regulations as the list of additional parties subject to notification of a decision by the examining authority may require amending in future to accommodate additional parties in the list.	Negative	Notifying prescribed parties of a decision is a minor procedural matter in the wider legislative scheme. Flexibility is also required to legislate swiftly, should the list of prescribed parties need amending in future.
Section 58(6)	Welsh Ministers	Regulations	This is considered suitable for regulations as arrangements need to be flexible to respond to future changes in procedure.	Negative	This is a minor procedural matter in the wider legislative scheme and flexibility is required to legislate swiftly should procedural changes be required to reflect working practices.
Section 60(3)(d)	Welsh Ministers	Regulations	This is considered suitable for regulations as the list of those persons who must be provided with a copy of a statement of	Negative	The list of other persons who must be provided with a copy of a statement of reasons is

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			reasons may need amending in the future to accommodate new or different persons.		a minor technical and procedural matter and flexibility is required to legislate swiftly, should the need arise to amend the list of those persons.
PART 6 – INFRASTRUCTURE CONSENT ORDERS					
Section 61(5)	Welsh Ministers	Regulations	This is considered appropriate to allow a degree of flexibility to respond efficiently to changes to UK legislation or matters emerging from the implementation of the Bill. This may need adjusting more often than it would be sensible for the Senedd to legislate. The regulations are limited in terms of territorial competency and the type of project or variation of project that can be inserted.	Affirmative	This power is to amend, vary or remove an existing provision of an Act of the Senedd, therefore it will require an additional degree of scrutiny.
Section 63(4)	Welsh Ministers	Regulations	This is considered suitable for regulations as they will	Negative	This is a minor technical detail and procedural

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			accommodate details of procedural matters to follow for authorising the compulsory acquisition of land as part of a proposed IC. Flexibility is also required to respond to any procedural changes if considered necessary or appropriate to benefit the consenting process.		matter which will set out details for authorising the compulsory acquisition of land as part of a proposed IC. These details could be subject to change in the future depending on what procedural requirements are relevant or appropriate at the time and therefore, flexibility is required to legislate swiftly if needed.
Section 70(1) and (2)	Welsh Ministers	Regulations	This is considered suitable for regulations as the requirements for notifying about a compulsory acquisition forming part of an IC will accommodate matters of detail. For example, on the content of a notice.	Negative	This is a minor technical detail and procedural matter which will set out requirements for notifying about a compulsory acquisition forming part of an IC. The proposed details which are to be prescribed may be

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					subject to change in the future; for instance if it is considered certain details should be added or amended to what is included in a notice. Therefore, it is important we retain the necessary flexibility to legislate swiftly, should the need arise to alter procedural matters or specified information.
Section 82(1)	Welsh Ministers	Regulations	This is considered suitable for regulations as they will accommodate details of procedural matters in connection with subsections (2) and (3). Flexibility is also required to respond to any procedural changes if considered necessary or appropriate to benefit the consenting process.	Negative	This is a minor technical detail and procedural matter which will set out details of direction making powers. These could be subject to change in the future depending on what procedural requirements are relevant or appropriate at the time and therefore flexibility

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					is required to legislate swiftly if needed.
Section 82(2)(3) and (4)	Welsh Ministers	Regulations	This is considered suitable for regulations as they will accommodate details of procedural matters in connection with subsections (2) and (3). Flexibility is also required to respond to any procedural changes if considered necessary or appropriate to benefit the consenting process.	Negative	This is a minor technical detail and procedural matter which will set out details of direction making powers. These could be subject to change in the future depending on what procedural requirements are relevant or appropriate at the time and therefore flexibility is required to legislate swiftly if needed.
Section 83(4)	Welsh Ministers	Subject to specific procedure set out in subsection (4)	This matter relates to the presentation of an IC order in the form of a statutory instrument to the Senedd. It will follow Senedd procedures and the specifications included in subsection (4).	Subject to specific procedure set out in subsection (4).	The process to present an IC order in the form of a new statutory instrument to the Senedd is subject to the specific procedures set at subsection (4).

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 86	Welsh Ministers	Regulations	This is considered suitable for regulations as arrangements need to be flexible to respond to future changes in procedure.	Negative	Details regarding the procedure for correcting an error in a decision document are minor technical and procedural matters which may require amendments in future to respond to changes in professional practice. It is therefore important we retain the flexibility to legislate swiftly.
Section 89(1), (3), (5) and (6)(c)	Welsh Ministers	Regulations	This is considered suitable for regulations as details relating to the procedure of changing and revoking IC orders will accommodate significant detail which would encumber the reading of the Bill.	Negative	Details regarding the procedure for changing and revoking IC orders are minor technical and procedural matters which may require amendments in future to respond to changes in professional practice. It is therefore important we retain the flexibility to legislate swiftly.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 92(1)(a)	Welsh Ministers	Regulations	This is considered suitable for regulations as it is a minor technical matter and arrangements need to be flexible to respond to future changes.	Negative	This is a minor technical detail which may need amending in future to ensure the efficiency of the consenting process.
Section 92(3)	Welsh Ministers	Regulations	This is considered suitable for regulations as it is a minor technical matter and arrangements need to be flexible to respond to future changes.	Negative	This is a minor technical detail which may need amending in future to ensure the efficiency of the consenting process. It is therefore important we retain the ability to legislate swiftly when required.
Section 93(2)	Welsh Ministers	Regulations	This is considered suitable for regulations as it is a minor technical matter and arrangements need to be flexible to respond to future changes.	Negative	This is a minor technical detail which may need amending in future to ensure the efficiency of the consenting process. It is therefore important we retain the ability to legislate swiftly when required.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 94(7)(b)	Welsh Ministers	Regulations	This is considered suitable for regulations as it is a minor technical matter and arrangements need to be flexible to respond to future changes.	Negative	This is a minor technical matter in the wider legislative scheme which may need amending in future. We therefore require the flexibility to legislate swiftly, should the need arise.
PART 7 – ENFORCEMENT					
Section 111(8)	Welsh Ministers	Regulations	This is considered suitable for regulations as arrangements need to be flexible to accommodate any future changes in practice relating to notices of unauthorised development.	Negative	This is a minor technical matter in the wider legislative scheme and flexibility is required to legislate swiftly should the matters to be specified in a notice of unauthorised development need to be amended in future.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 116(1)	Welsh Ministers	Regulations	This is considered suitable for regulations as arrangements need to be flexible to accommodate any future changes in practice relating to restrictions on issuing temporary stop notices.	Negative	Restrictions on when a temporary stop notice may be served is a minor technical matter in the wider legislative scheme. Furthermore, flexibility is required to legislate swiftly, should those restrictions require amending in future.
PART 8 – SUPPLEMENTARY FUNCTIONS					
Section 122(1) and (4)	Welsh Ministers	Regulations	This is considered appropriate as it involves powers to impose or increase fees or other financial burdens on the public.	Affirmative	Any future amendments to the regulations would involve an increase in fees which is likely to impact applicants and the wider public.
Section 126(6), (7) and (8)	Welsh Ministers	Regulations	This is considered suitable for regulations as it is a minor technical matter and arrangements need to be flexible to respond to future changes.	Negative	This is a minor technical detail which may need amending in future to ensure the efficiency of the consenting process. It is therefore important

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					we retain the ability to legislate swiftly when required.
Section 127(1), (3) and (4)	Welsh Ministers	Regulations	This is considered suitable for regulations as consultations with a wide pool of public bodies of which the Welsh Ministers must have regard in deciding an application will present a significant level of detail and will also need to be flexible to respond to any future changes in procedure.	Negative	This is a minor technical detail which may need amending in future to ensure the efficiency of the consenting process. It is therefore important we retain the ability to legislate swiftly when required.
Section 128(2)(c)	Welsh Ministers	Regulations	This is considered suitable for regulations as it is a minor technical matter and arrangements need to be flexible to respond to future changes.	Affirmative	This power allows the Welsh Ministers to direct a devolved Welsh authority specified in regulations to do things in relation to an application for infrastructure consent. Therefore it will require an additional degree of scrutiny.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 128(4)	Welsh Ministers	Regulations	This is considered suitable for regulations as it is a minor technical matter and arrangements need to be flexible to respond to future changes.	Affirmative	This power relates to the recovery of costs by public authorities under this section. Therefore it will require an additional degree of scrutiny.
Section 129	Welsh Ministers	Regulations	This is considered suitable for regulations as the power to disapply requirements will present a significant level of detail and will also need to be flexible to respond to any future changes in procedure.	Affirmative	This power is to disapply requirements imposed by, under or by virtue of the Bill. Subordinate legislation will limit this power but it will require an additional degree of scrutiny.
Section 130(2)	Welsh Ministers	Regulations	This is considered suitable for regulations as it relates to a procedural matter with a significant level of detail and will also need to be flexible to respond to any future changes in procedure.	Affirmative	This power relates to applications by the Crown and therefore it will require an additional degree of scrutiny.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
PART 9 – GENERAL PROVISIONS					
Section 134(2)(e)	Welsh Ministers	Regulations	This is considered suitable for regulations as arrangements for giving notices, directions and other documents need to be flexible to respond to future changes in procedure.	Negative	This is a procedural and technical matter which may need amending in future to ensure the efficiency of the consenting process. It is therefore important we retain the ability to legislate swiftly when required.
Section 142	Welsh Ministers	Regulations	This is considered suitable for regulations as the matters in question may need adjusting more often than it would be sensible for the Senedd to legislate for by primary legislation.	Affirmative	This section confers upon the Welsh Ministers a regulation making power which may be used to make supplementary, incidental, and consequential provision and transitional or saving provision. These could be subject to change in the future depending on what procedural requirements are relevant or

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					appropriate at the time and therefore, flexibility is required to legislate swiftly if needed.
Section 145	Welsh Ministers	Order	The use of delegated powers for commencement has a strong precedent and is uncontroversial.	No procedure	This section makes provision about when the provisions of the Bill come into force.
Paragraph 1(3) of Schedule 2	Welsh Ministers	Regulations	This is considered suitable for regulations as it is a minor technical matter and arrangements need to be flexible to respond to future changes.	Negative	This is a procedural and technical matter which may need amending in future to ensure the efficiency of the consenting process.
Paragraph 2(1) of Schedule 2	Welsh Ministers	Regulations	This is considered suitable for regulations as it is a minor technical matter and arrangements need to be flexible to respond to future changes.	Affirmative	This power relates to the compensation. Therefore it will require an additional degree of scrutiny.

Table 5.2: Summary of powers to make directions and set published criteria in the provisions of the Infrastructure (Wales) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
PART 2 – REQUIREMENT FOR INFRASTRUCTURE CONSENT					
Section 22(1)	Welsh Ministers	Direction	To direct on a case-by-case basis whether a project which does not qualify as a SIP under Part 1, is indeed treated as an IC for the purposes of the Bill.	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope and as such, to apply a Senedd procedure is not considered appropriate.
Section 23(1)	Welsh Ministers	Direction	To direct on a case-by-case basis an application is to be treated as an application for IC, following a direction given under section 22.	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope and as such, to apply a Senedd procedure is not considered appropriate.
Section 24(1)	Welsh Ministers	Direction	To direct on a case-by-case basis whether a project which is partly in Wales or the Welsh Marine area, which as a whole would normally qualify as a SIP under Part 1, is not a SIP for the purposes of the Bill.	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope and as such, to apply a Senedd procedure is not considered appropriate.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
PART 3 – APPLYING FOR INFRASTRUCTURE CONSENT					
Section 33(9)	Welsh Ministers	Direction	To direct the applicant to notify a person of an IC application and publicise that application in the way specified in the direction.	No Senedd procedure	Directions will be technical in nature and largely deal with process and as such, to apply a Senedd procedure is not considered appropriate.
Section 36(2)	Welsh Ministers	Direction	To direct the Natural Resources Body for Wales to submit a marine impact report within a specified timeframe.	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope and as such, to apply a Senedd procedure is not considered appropriate.
PART 4 – EXAMINING APPLICATIONS					
Section 39(3)	Welsh Ministers	Published criteria	The Welsh Ministers must publish a document that sets out the criteria for appointing a person or panel of persons, to examine an application to change or revoke an IC.	No Senedd procedure	Published criteria will be technical in nature and largely deal with process and as such, to apply a Senedd procedure is not considered appropriate.
Section 41(7)	Welsh Ministers	Published criteria	The Welsh Ministers must publish criteria to be applied	No Senedd procedure	Published criteria will be technical in nature and largely

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			by the examining authority when deciding on the procedure for each application it examines.		deal with process and as such, to apply a Senedd procedure is not considered appropriate.
Section 42(3)	Welsh Ministers	Direction	To direct that any matter or proceedings are to be decided by the Welsh Ministers instead of the examining authority, or vice versa. The power to direct in this case may be provided by regulations.	No Senedd procedure	Directions will be technical in nature and largely deal with process and as such, to apply a Senedd procedure is not considered appropriate.
Section 46(2)	Ministerial Authority (Welsh Ministers)	Direction	To direct the examining authority conducting an inquiry that specific evidence is to be heard or open to inspection, by persons specified in the direction.	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope and as such, to apply a Senedd procedure is not considered appropriate.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 47(2)	Ministerial Authority (Welsh Ministers)	Direction	To direct “the responsible person” to pay the fees and expenses of an appointed representative, for the purposes of a local inquiry.	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope and as such, to apply a Senedd procedure is not considered appropriate.
Section 51(1)	Welsh Ministers	Direction	To direct the examining authority to re-open examination, following receipt of a report under section 49 of the Bill.	No Senedd procedure	Directions will be technical in nature and largely deal with process and as such, to apply a Senedd procedure is not considered appropriate.
PART 5 – DECIDING APPLICATIONS FOR INFRASTRUCTURE CONSENT					
Section 53(4)	Welsh Ministers	Direction	To direct that an examining authority has the function to determine an application for IC instead of the Welsh Ministers, and that the Welsh Ministers have the function to determine an application for IC instead of an examining authority.	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope and as such, to apply a Senedd procedure is not considered appropriate.
Section 57(2)	Welsh Ministers	Direction	To direct a time extension on the determination period for an IC, either by the	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			examining authority or Welsh Ministers.		in scope and as such, to apply a Senedd procedure is not considered appropriate.
PART 6 – INFRASTRUCTURE CONSENT ORDERS					
Section 71(5)	Welsh Ministers	Direction	The power to direct that the right of way revives if the right is extinguished before the acquisition of the land is completed but the proposal to acquire the land is abandoned.	No Senedd procedure	The substance of the power to issue a direction is set out on the face of the Bill and is limited in scope and as such, to apply a Senedd procedure is not considered appropriate.
PART 8 – SUPPLEMENTARY FUNCTIONS					
Section 128(1)	Welsh Ministers	Direction	To direct public authorities to undertake any relevant matters in relation to an IC application.	No Senedd procedure	Directions will be technical in nature and largely deal with process and as such, to apply a Senedd procedure is not considered appropriate.
Section 129(1)	Welsh Ministers	Direction	To direct that requirements in the Bill do not apply to ICs subject to that direction.	No Senedd procedure	Directions will be technical in nature and largely deal with process and as such, to apply a Senedd procedure is not considered appropriate.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			The power to direct in this case may be provided by regulations.		
SCHEDULE 2 – COMPENSATION FOR CHANGING OR REVOKING INFRASTRUCTURE CONSENT ORDERS					
Paragraph (7)(1)(c)	Welsh Ministers	Direction	To direct the amounts payable to the Welsh Ministers and when in relation to the amount recoverable by the Welsh Ministers in respect of compensation.	No Senedd procedure	Directions will be technical in nature and largely deal with process and as such, to apply a Senedd procedure is not considered appropriate.

PART 2 – REGULATORY IMPACT ASSESSMENT

Chapter 6 – Regulatory Impact Assessment (RIA) summary

6.1 A Regulatory Impact Assessment has been completed for the Bill and it follows below.

6.2 There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

6.3 The following table presents a summary of the costs and benefits for the Bill as a whole. The table has been designed to present the information required under Standing Order 26.6 (viii) and (ix). All costs below have been provided to the nearest £100.

Infrastructure Bill		
Preferred option: Introduce legislation to – Establish a new form of 'Welsh Infrastructure Consent' for development or works with the objective of constructing and/or changing use to create a 'Welsh Infrastructure Project' (see Chapters 7 and 8 for options appraisal and further details on each option considered).		
Stage: Introduction	**Appraisal period:** 2024/25 - 2028/29	**Price base year:** 2022/23
Total Cost **Total: £-2,222,500** **Present value: £-1,938,800**	**Total Benefits** **Total: £-** **Present value: £-**	**Net Present Value (NPV): £1,938,800**

Administrative cost

Costs: There will be an initial implementation cost to the Welsh Government of £385,300 for the setting up of a new infrastructure consenting regime prescribed by the Bill, incorporating new case management and IT systems, guidance and training.			
Transitional: £385,300	**Recurrent: £0**	**Total: £385,300**	**PV: £372,300**

Cost-savings: The cost to the Welsh Government for determining infrastructure applications under the new consenting regime is estimated to be £567,700 per year. However, these determination costs will be fully recoverable through application fees and this generates a cost-saving to the Welsh Government of £65,400 per year between 2025-26 and 2028-29 when compared to the baseline (where costs are not fully recoverable) and a total cost-saving of (£65,400 x 4) £261,600. In addition to determination costs being fully recoverable, there will be general efficiency savings to the Welsh Government in determining individual infrastructure projects under one consenting regime, compared to the several that currently exist. In 2024-25, applications will be determined under current regimes and there is therefore no difference in costs compared to the baseline in that year.

Transitional: £0	**Recurrent: £261,600**	**Total: £261,600**	**PV: £232,100**
Net administrative cost: £123,700			

Compliance costs

The cost to developers for submitting their applications as part of a new consenting regime is estimated to be £4,208,400 per year. This represents a cost-saving of approximately £580,500 per year when compared to current regimes (the baseline). This saving will be realised between 2025-26 and 2028-29, giving a total saving during the appraisal period of £2,322,000. In 2024-25, applications will be determined under current regimes and so costs are expected to be the same as in the baseline. There will be a transition cost to developers of £3,000 for training on the new regime.

The cost to LPAs for participating in applications is estimated to be £21,200 per year, this represents a cost-saving of approximately £4,800 per year compared to the baseline scenario. Again this cost-saving will be realised between 2025-26 and 2028-29, with costs for participating in the determination process the same as the baseline in 2024-25. Total savings to LPAs over the appraisal period are therefore estimated to be £19,200. In addition, there will be a transition cost of £30,300 for training on the new regime.

The cost to statutory consultees for commenting on applications under the new regime is estimated to be £35,100 per year, this represents a cost-saving of approximately £9,500 per year when compared to the baseline. This saving is expected to be realised between 2025-26 and 2028-29, with costs in 2024-25 expected to be the same as in the baseline. The total cost-saving to statutory consultees is therefore estimated to £38,000.

Costs to communities are unknown.

Transitional: £33,300	**Recurrent: £-2,379,500**	**Total: £-2,346,200**	**PV: £-2,079,000**

Other costs

N/A			
Transitional: £-	**Recurrent: £-**	**Total: £-**	**PV: £-**

Unquantified costs and disbenefits

Costs to communities for participating in a new consenting regime are variable depending on their background and the nature of their responses to particular projects and are therefore not quantifiable.

Given the nature of the Bill which deals with procedural matters, there are no environmental disbenefits arising from it. Relevant environmental legislation will continue to apply in the determination of infrastructure projects under a new consenting regime.

Benefits

In addition to the identified cost-savings, the Bill will provide significant benefits by providing a more streamlined and unified consenting process for the determination of SIPs. A single cohesive system will remove complexity and provide a more flexible process that is better able to respond to future changes and challenges, contributing to Ministerial aims and objectives. It will provide a regime that is simpler to navigate for developers, therefore being better able to contribute towards economic growth and the development of a low-carbon economy. The amalgamation of disparate consenting regimes into a single process will lead to resource savings for community, statutory consultee and LPA involvement, by reducing duplication. Further justification for the inclusion of these benefits in the RIA, where it is not possible to quantify them financially, is provided under the section on Option 2 Benefits.

Total: £-	**PV: £-**

Key evidence, assumptions and uncertainties

Estimates of number of applications and subsequent costs that will apply as part of a new consenting regime prescribed by the Bill are based on the following evidence base:

- An assessment of infrastructure applications over the period 2013-2019 provided in a report prepared by Arup Consultants dated 2019 ("the Arup Report")[2];
- A further assessment of infrastructure applications submitted to the Welsh Ministers up to 1 April 2022;
- Welsh Government and LPA involvement in current infrastructure consenting processes, including DNS (2022/2023 desktop research); and
- Further routine statistical and service data.

It is noted specific costs evidenced for the Bill are based on current and historic data and therefore some detailed costs for its implementation may alter in future. However, it must be recognised that the evidence base for the RIA has been collated over a broad time period, with a number of set costs included such as application fees. It is therefore considered to provide the best available evidence to inform an accurate representation of costs that will apply for the Bill over the appraisal period and a suitable comparison of costs between the various options outlined in the RIA.

[2] Research into the Cost of Infrastructure development in Wales: Study Report. Arup 2019

Chapter 7 – Options

7.1 The full options appraisal has been set out in Chapter 8. The costs and benefits associated with each option are presented, using the best available information. This information has been prepared through discussion with key stakeholders and evidence-based research.

7.2 The assessment of costs and benefits is based on the five year period 2024-25 to 2028-29. If passed, the Bill is expected to receive Royal Assent in Mid-2024 and consequently it will be 2024-25 that initial costs will be incurred. The IC regime is expected to be fully operational by Mid-2025. This 'appraisal period' has been chosen as the costs of a new regime to different stakeholders are expected to be relatively consistent in a short time, with benefits being realised in the short to medium term.

7.3 The findings for each option detailed in Chapter 8 are largely derived from the report published by Arup in March 2019 titled: 'Research into the Cost of Infrastructure development in Wales' ("the Arup Report")[3]. The Arup report gathered information on infrastructure development submitted between April 2013 and February 2019. Further information was gathered from Planning and Environment Decisions Wales ("PEDW") on infrastructure development applications submitted beyond the Arup Report date of February 2019 up to 1 April 2022 to ensure an up-to-date and robust evidence base for the purposes of this assessment. 'Infrastructure developments' for the purpose of the Arup Report and PEDW applications included: planning permission under s.57(1) of the TCPA 1990; DNS under s.62D of the TCPA 1990; and other infrastructure development types including relevant consent relating to highways, railways, electricity and harbours.

7.4 Historic data on applications submitted to various consenting authorities is considered the most appropriate evidence base to establish potential application numbers for infrastructure development likely to come forward per year. As such, applications included in the Arup Report and PEDW applications have been used to determine the costs and benefits to stakeholders for future applications under the assessment of the alternative options presented in Chapter 8. The timeframe of the Arup Report, i.e. the period April 2013 to February 2019, in addition to applications submitted to PEDW from February 2019 up to 1 April 2022, is termed the 'assessed period' for the purpose of this RIA.

7.5 It must be noted that this RIA does not use speculative data. Historic data has indicated there has been an average of six applications per year for significant

[3] Research into the Cost of Infrastructure development in Wales: Study Report. Arup 2019

infrastructure in Wales in recent years. However, we note that a significant number of DNS proposals have been notified to the Welsh Ministers, and at the time of writing, 8 DNS planning applications and 1 Electricity Act 1989 consent were determined in the 2022/23 financial year. Furthermore, there is a pipeline of approximately 8 DNS applications per year for the next two financial years based on the number of notifications of intent to apply for planning permission for DNS, which have been issued by developers. While such application numbers appear to be increasing, we note the unreliability of speculative data, which do not set out the long-term forecast. By way of assumption, it can be noted that if application numbers are higher or lower in future under the preferred option than the historic data has indicated, this would affect annual costs to developers and other stakeholders. For example, if application numbers are higher, this would result in increased costs to the development industry for the submission of additional applications. However, the benefits would be implementation of a likely increased number of infrastructure schemes and therefore improved infrastructure. Costs to the Welsh Government under the preferred option would not be affected by changes to application numbers from the historic trends as they would be fully recoverable through fees. As such assumptions are speculative, whilst they are noted, they cannot be used to evidence costs for the purpose of this assessment.

7.6 Some key assumptions have been made for the assessment of costs and benefits under the alternative options presented in Chapter 8. The final costings have been rounded to the nearest £100, some totals may not sum due to this rounding. In line with HM Treasury Green Book guidance, all costs in the RIA are presented in constant prices. Historic costs have been uprated to 2022-23 prices using the GDP deflator series. In calculating costs under each alternative option, where applications per year are recorded at a decimal point, these totals have not been rounded to ensure accuracy. Costs which are reimbursed (for example through payment of fees) are marked in red under each table and have been counted separately from net costs to stakeholders. Net costs are marked in black and represent a more realistic assessment of actual costs to stakeholders, as they are not recoverable.

7.7 The supporting document ‘Regulatory Impact Assessment Methodology Paper’ sets out the detail and workings behind the figures in Chapters 7 and 8.

7.8 The following four options for determining infrastructure development are outlined in Chapter 8, and the advantages and disadvantages of each are presented.

1. **Option 1 – Do nothing. Applications for proposed infrastructure developments are to be determined according to the current legislative arrangements.**
2. **Option 2 – Establish a new form of 'Welsh Infrastructure Consent' for development or works with the objective of constructing and/or changing use to create a 'Welsh Infrastructure Project'. This is the preferred option.**
3. **Option 3 – Establish an independent consenting body to determine 'Welsh Infrastructure Consents'.**
4. **Option 4 – Establish a streamlined regime to be determined by a consenting unit within Welsh Government.**

7.9 A summary appraisal of the set-up costs (where applicable) and application costs to stakeholders for each option are outlined below, with detailed costs and benefits elaborated upon in Chapter 8.

Option costs

Table A – Transitional costs for each of the various options (where applicable)				
Stakeholder	Option 1	Option 2	Option 3	Option 4
Welsh Gov	N/A	£385,300	£1,054,100	£4,200
LPAs	N/A	£30,300	£30,300	£0
Developers	N/A	£3,000	£3,000	£0
Communities	N/A	£0	£0	£0
Statutory Consultees	N/A	£0	£0	£0

Table B – Net recurrent costs per annum[1] ***(further additional costs shown in red are provided for information purposes as these costs are expected to be reimbursed, for example through payment of fees)***				
Stakeholder	Option 1	Option 2	Option 3[2]	Option 4
Welsh Gov	£65,400 (£652,700 reimbursed)	£0 (£567,700 reimbursed)	£0 (£2,480,500 reimbursed). For this option, these costs would apply to the independent body as ongoing costs, rather than to the Welsh Government.	£0 (£718,100 reimbursed). The same costs as Option 1, but with all costs fully recoverable.
LPAs	£26,100 (£31,000 reimbursed)	£21,200 (£38,900 reimbursed)	£21,200 (£38,900 reimbursed)	£26,100 (£31,000 reimbursed). The same costs as Option 1.
Developers	£4,788,900	£4,208,400	£5,390,300	£4,757,900
Communities	Unknown	Unknown	Unknown	Unknown
Statutory Consultees	£44,600	£35,100	£35,100	£44,600. The same costs as Option 1.

1. In all options, applications during 2024-25 will be determined under current regimes and, as such, costs in that financial year will be the same as in the baseline (Option 1).

2. A longer transition period in Option 3 means applications received during 2025-26 will be determined under current regimes and, as such, costs in that financial year will also be the same as in the baseline.

Chapter 8 – Costs and benefits

Option 1 – Do nothing. Applications for proposed infrastructure developments are to be determined according to the current legislative arrangements.

Option 1 Description

8.1 Under this option there would be no changes to existing consenting regimes. There are no additional costs or benefits associated with this option. Existing costs have been summarised for the purpose of comparing the baseline option with the alternative options. This option would retain a fragmented consenting regime which does not provide the one-stop shop the development industry seeks.

Option 1 Costs

Table C – Set-up net costs for Option 1	
Stakeholder	Costs
Welsh Gov	Not applicable to this option as there would be no changes to existing consenting regimes.
LPAs	
Developers	
Communities	
Statutory Consultees	

Table D – Summary of net Option 1 costs per annum to the identified stakeholders *(further additional costs shown in red are provided for information purposes as these costs are expected to be reimbursed, for example through payment of fees)*						
Stakeholder	DNS	Generating stations under Electricity Act	Harbours Act Order	Highways Act Order	TWA Order	Total costs per annum
Welsh Gov	£0 (£348,400 reimbursed)	£0 (£46,300 reimbursed)	£42,300	£0 (£258,000 reimbursed)	£23,100	£65,400 (£652,700 reimbursed)
LPAs	£17,400 (£31,000 reimbursed)	£1,000	£2,400	£4,800	£500	£26,100 (£31,000 reimbursed)
Developers	£3,588,900	£352,600	£238,700	£258,000	£350,800	£4,788,900
Communities	Unknown					
Statutory Consultees	£26,300	£200	£11,600	£1,600	£300	(£40,000 + additional cost of

						£4,600 to Natural Resources Wales (“NRW”) for determining marine licences) £44,600.

(a) Welsh Government

8.2 Welsh Ministers are responsible for determining applications under the following legislative regimes:

- planning permission under section 57 of the TCPA 1990 (via ‘call-in’ or appeal);
- planning permission for DNS under section 62D of the TCPA 1990;
- marine licensing under section 65 of the Marine and Coastal Access Act 2009, delegated to NRW;
- consent to construct and operate generating stations under section 36 of the Electricity Act 1989;
- Harbour Revision and Empowerment Orders under the Harbours Act 1964;
- Orders under the TWA; and
- Orders under the Highways Act 1980.

8.3 By retrospectively applying the current legislative thresholds to the 54 applications over the assessed period, we have assumed an average of 6 applications per year. We anticipate that of these applications, 19 would be high complexity (2.1 per year); 26 medium complexity (2.9 per year); and 9 low complexity (1 per year).

Planning permission under section 57(1) of the TCPA 1990

8.4 Appeals against planning decisions are largely considered by PEDW on behalf of the Welsh Ministers, although a small number are recovered for direct decision by the Welsh Ministers. All called in planning applications are determined by the Welsh Ministers. PEDW is a part of the Welsh Government.

8.5 Over the assessed period, there were no applications that would be determined by the Welsh Government under section 57 of the TCPA 1990. Therefore costs to the Welsh Government for this type of consent are estimated to be zero.

Planning permission for DNS under s.62D of the TCPA 1990

8.6 PEDW process DNS applications on behalf of the Welsh Ministers, producing a recommendation report. In the majority of cases, the Welsh Ministers will make a decision on a DNS application, and any associated secondary consents, following consideration of the report.

8.7 A total of 36 DNS applications were examined over the assessed period, averaging 4 DNS applications per year, with all decisions being made by the Welsh Ministers.

8.8 The DNS regime is operated on a 'full cost recovery' basis, and various stages of the process attract a fee. The Developments of National Significance (Fees) (Wales) Regulations 2016[4] (as amended) sets out the full fee details. An initial fee covers the administrative costs to PEDW and a determination fee covers the costs to the Welsh Government. Actual costs associated with PEDW examination of an application are charged as a daily rate in addition to the set fees.

8.9 Depending on the nature of the proposed development, DNS applications are subject to examination via one, or a mixture, of the following methods:

- Written representations;
- hearing/s; and
- Inquiry.

8.10 Each DNS application is administered by PEDW and these fees are covered by the overall application fee. Other fees may be incurred by applicants relating to optional pre-application advice from PEDW, and pre-application notification. A determination fee is paid to the Welsh Government Planning Directorate. Full fees are set out in Table G.

8.11 Along with the standard and variable costs related to work undertaken by PEDW and the Planning Directorate of the Welsh Government, there may be actual (external) costs to PEDW. Actual costs could include advertising, venue hire, legal services, appointment of an assessor or commissioning of reports from external sources. Other than estimated costs for advertising, it is not possible to quantify actual costs for DNS applications due to their variable nature. Fees will be levied on applicants on the basis of full cost recovery to include these actual costs.

8.12 Any application for secondary consent submitted to the Welsh Ministers will be processed and determined alongside the DNS application, using the same

[4] https://www.legislation.gov.uk/wsi/2016/57/contents/made

procedure. Applying for secondary consents is optional. The inclusion of secondary consents may increase the variable costs associated with determining the application and would be absorbed into the daily cost of examination, though fixed costs will remain the same. As these costs are variable, they are therefore unknown.

8.13 PEDW and the Planning Directorate of the Welsh Government have provided a range of costs associated with three different levels of DNS complexity, based on staff time associated with determining such applications.

8.14 To provide an indicative range of costs, applications have been divided into three levels of complexity based on the nature of issues associated with each application. Low complexity cases are anticipated to be examined by written representations. Medium complexity cases are expected to be examined by topic-specific hearings. High complexity cases are expected to be examined by inquiry.

8.15 It is not possible to estimate the number or complexity of pre-application discussions or post-consent variations undertaken by applicants. Therefore, these costs are not included as part of this assessment and are unknown. Any Welsh Government costs for these activities would be subject to full cost recovery.

Table E – DNS costs to the Welsh Government			
Level of DNS complexity	Average cost to PEDW/Planning Directorate per application	Total costs based on number of cases over assessed period	Total costs to the Welsh Government (including PEDW) per year
Low	£32,200	£289,400	£32,200
Medium	£76,100	£1,597,800	£177,500
High	£208,100	£1,248,900	£138,800
Total		**£3,136,000**	**£348,400**

8.16 Based on assumed level of complexity and applied retrospectively, it is estimated that the 36 DNS applications over the assessed period would result in a future cost of approximately £348,400 per year to the Welsh Government (including PEDW).

8.17 All determination costs to the Welsh Government (including PEDW) are offset by the submission of relevant fees by applicants, resulting in a cost-neutral option to the Welsh Ministers.

Consent to construct and operate generating stations under section 36 of the Electricity Act 1989

8.18 Applications to construct, extend and operate offshore generating stations between 1MW and 350MW in Welsh waters require consent from the Welsh Ministers under section 36 of the Electricity Act 1989.

8.19 Over the assessed period, two applications for generating stations have been submitted. Based on their assumed level of complexity and applied retrospectively, it is estimated that these two applications would result in a future cost of approximately £46,300 per year to the Welsh Ministers. These costs are fully recovered by the Welsh Government from applicants.

Harbour Revision and Empowerment Orders under the Harbours Act 1964

8.20 Following the transfer of specific functions under the Harbours Act 1964 by virtue of the Wales Act 2017, the Welsh Ministers are responsible for making various types of harbour orders, including Section 14 Harbour Revision Orders and Section 16 Harbour Empowerment Orders.

8.21 Responsibility for the procedural elements of these Orders is shared between Welsh Government officials and, in certain cases, PEDW.

8.22 The procedure for orders which do not contain works related provisions (known as 'non-works orders') is administered by the Ports Policy team of the Welsh Government. PEDW is appointed by the Welsh Ministers to undertake the procedural elements for certain functions under the Harbours Act 1964, related to "works" harbour orders, under paragraphs 7, 7A, 7B, 9A and 17 within Schedule 2 of the Act.

8.23 There is no record of costs for the Welsh Government in determining applications for Harbour Orders as all applications during the assessed period were submitted prior to the Welsh Ministers receiving executive competence to deal with such applications. Fees are set out in guidance[5] and are generally considered too low to cover the Welsh Government costs of determining applications for Harbour Revision and Empowerment Orders.

8.24 Over the assessed period, five applications for Harbour Orders have been submitted. Based on their assumed level of complexity and applied retrospectively, it is estimated that these five applications would result in a future cost of approximately £42,300 per year to the Welsh Ministers. Given the low nature of fees, most of this cost is not anticipated to be recovered by the Welsh Government from applicants.

[5] Procedural harbour order guidance for Wales 2018 (gov.wales)

Orders under the TWA

8.25 Applications for orders under the TWA in Wales are determined by Welsh Ministers and administered by PEDW, and such an Order may be obtained by an applicant instead of the DNS process or the Electricity Act 1989 where it meets certain criteria.

8.26 Fees for the submission of TWA Orders are set out under Schedule 4 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. These fees are not applied for offshore development. PEDW may recover its examination costs in the case of an inquiry.

8.27 Over the assessed period, one application for a TWO Order has been submitted, for offshore development. Based on its assumed level of complexity and applied retrospectively, it is estimated the costs for determining TWO Orders would be approximately £23,100 per year to the Welsh Ministers. Under the current fee arrangements for TWA Orders, this cost is not recoverable from applicants.

Orders under the Highways Act 1980

8.28 The cost of determining an application under the Highways Act 1980 to the Welsh Ministers is estimated to be approximately £232,200 on average. Over the assessed period, there have been 10 applications for orders submitted to Welsh Ministers under section 10, section 14, section 16 or section 28 of the Highways Act 1980. These would also be determined under the current legislative regime, producing an annual estimated cost to the Welsh Government (including PEDW) of £258,000. This cost is recovered from applicants.

(b) LPAs

8.29 LPA costs under the various infrastructure consenting regimes for this option are provided below.

Table F – Total LPA costs under Option 1

Legislative regime	Cost per application	Total cost per annum
DNS	£12,094 (£7750 reimbursed)	£48,400 (£31,000 reimbursed)
Electricity	£4,344	£1,000
Harbour	£4,344	£2,400
TWA	£4,344	£500

Planning permission under section 57(1) of the TCPA 1990

8.30 Planning Permission under section 57 of the TCPA 1990 is required for certain infrastructure developments. Such submissions are determined by the LPA, unless called in or determined via appeal by the Welsh Ministers.

8.31 Over the assessed period, there were no applications which would currently be determined under section 57 of the TCPA 1990, and therefore costs to LPAs for this type of consent are estimated to be zero.

Planning permission for DNS under s.62D of the TCPA 1990

8.32 PEDW processes DNS applications on behalf of the Welsh Ministers, producing a recommendation report. LPAs are responsible for the following activities associated with DNS applications:

- consultation with the applicant[6];
- consultation with PEDW on Environmental Impact Assessment ("EIA") screening and scoping directions;
- erection of site notices (copies to be supplied by PEDW);
- placing a copy of the application on the local planning register;
- requesting information from relevant Community Councils;
- preparing a Local Impact Report ("LIR");
- making representations to PEDW during examination; and
- monitoring the implementation of the permission and ensuring that it is in accordance with the plans and any conditions.

8.33 The production of a LIR is estimated to cost £7,750 per relevant LPA[7] for each DNS application. Applicants are required to pay a fee to cover the cost for producing the LIR.

8.34 Excluding LIRs, it is estimated to cost an LPA £4,300 to engage with a DNS application. This figure represents an average cost, based on information provided by LPAs during 2022. This cost is not recovered.

8.35 Based on applications over the assessed period, it is assumed 4 DNS applications per year require input from LPAs. The total cost to LPAs is therefore estimated to be £48,400 per year, of which £17,400 is not recovered by way of the LIR fee.

[6] If the Inspectorate receives notification from an applicant that they intend to provide an Environmental Statement (ES), or if the Inspectorate has issued a positive screening direction, the LPA will be notified of their duty to enter into consultation with the person who intends to submit the ES and provide relevant environmental information (PEDW 2019).
[7] https://gov.wales/sites/default/files/publications/2019-11/developments-of-national-significance-dns-procedural-guidance.pdf

Consent to construct and operate generating stations under section 36 of the Electricity Act 1989

8.36 For applications to construct and operate generating stations under section 36 of the Electricity Act 1989, the relevant planning authorities receive the application and supporting Environmental Statement. They are required to make their views known by way of formal response to both the applicant and the Welsh Ministers. The relevant planning authority must serve notice of any objection to a generating station application within four months, unless a longer period is agreed in writing with the applicant and Welsh Ministers.

8.37 It is assumed consultation on such applications will be at a cost of £1,000 per year to LPAs. These costs are not reimbursed by the applicant or the Welsh Government.

Harbour Revision and Empowerment Orders under s.14 of the Harbours Act 1964

8.38 When an application for a Harbour Revision and Empowerment Order is made, Welsh Ministers consult with a range of organisations on the potential impacts and any proposed mitigation measures or conditions within the order. Consultees vary depending on the type of application and include LPAs.

8.39 It is assumed consultation on such applications will be at a cost of £2,400 per year to LPAs. These costs are not reimbursed by the applicant or the Welsh Government.

Orders under the TWA

8.40 When an application is made under the TWA, Welsh Ministers may consult with LPAs. Costs to LPAs for TWA Orders can vary, depending on the complexity of the application.

8.41 It is assumed consultation on such applications will be at a cost of £500 per year to LPAs. These costs are not reimbursed by the applicant or the Welsh Government.

Orders under the Highways Act 1980

8.42 When an application under the Highways Act is made, the Welsh Ministers may consult with LPAs.

8.43 It is assumed consultation on such applications will be at a cost of £4,800 per year to LPAs. These costs are not reimbursed by the applicant or the Welsh Government.

(c) Development Industry

8.44 Developers[8] bear the cost of preparing their proposed scheme and obtaining development consent, including the payment of a fee (or fees) to the relevant consenting authority.

Table G – Developer costs under Option 1			
Legislative regime	Preparation costs to developers per application*	Submission and determination costs to developers per application*	Total cost per annum
DNS	£670,000	£227,200	£3,588,900
Electricity	£1,373,900	£212,600	£352,600
Harbour	£176,300	£253,400	£238,700
TWA	£2,110,000	£1,046,900	£350,800

** Average preparation, submission and determination costs to developers for certain types of infrastructure schemes provided by the 2019 Arup Report (rounded to the nearest 100).*

Planning permission under section 57(1) of the Town and Country Planning Act (TCPA) 1990

8.45 Over the assessed period, there were no applications which would currently be determined under section 57 of the TCPA 1990, and therefore costs to the development industry for this type of consent are estimated to be zero.

DNS permission under s.62D of the TCPA 1990

8.46 Applicants seeking permission for DNS development submit an application to the Welsh Ministers. The DNS regime is operated on a 'full cost recovery' basis, and so various stages of the process are associated with the payment of fees. The Developments of National Significance (Fees) (Wales) Regulations 2016 (as amended) set out the full details.

[8] "Developer" is taken to mean a person or organisation wishing to apply for development.

8.47 Table H below outlines the standardised baseline costs and fee details associated with a DNS application. Additional costs can be accrued throughout examination to cover the costs of determination.

Table H – Baseline costs and fee details associated with DNS applications (provided in their pure form and therefore not rounded)	
Discretionary Costs	
Pre-Application Services – LPA	£1,500
Pre-Application Services – PEDW	Hourly rate of £55 (plus VAT)
Essential Costs	
Notification Fee	£580
Initial Fee (paid on submission)	£15,350
Fee for LIR (paid on submission)	£7,750 (per relevant LPA)
Written Representation Hearing or Inquiry	Daily rate of £870 Daily rate of £920
Determination fee (applicable to all DNS projects, except applications for overhead electric lines)	£14,700 (paid directly to the Welsh Government)

8.48 Total costs vary according to the nature of development. It is estimated average costs to developers for DNS applications will be £3,588,900 per year under this option.

Consent to construct and operate generating stations under section 36 of the Electricity Act 1989

8.49 Section 36 applications in Wales are consented by the Welsh Ministers. The average cost to the developer of submitting an application for a generating station under s.36 of the Electricity Act 1980 was estimated in the Arup Report as £1,586,500.

8.50 Based on costs per application taken from the Arup Report and their estimated numbers, it is estimated the costs to developers for applications for generating stations would be £352,600 per year.

Harbour Revision and Empowerment Orders under s.14 of the Harbours Act 1964

8.51 Based on costs per application taken from the Arup Report and their estimated numbers, it is estimated the costs to developers for Harbour Revision and Empowerment Orders would be £238,700 per year.

Orders under the TWA

8.52 Applications for orders under the TWA in Wales are determined by Welsh Ministers.

8.53 Based on costs per application taken from the Arup Report and their estimated numbers, it is estimated the costs to developers for TWA Orders would be £350,800 per year.

Orders under the Highways Act 1980

8.54 Applications for orders under the Highways Act 1980 in Wales are determined by Welsh Ministers.

8.55 Based on costs per application for the Welsh Government determining highways orders and their estimated numbers, it is estimated the costs to developers for Highways Orders would be £258,000 per year[9].

(d) The Community

8.56 Communities and interested parties can review and comment on proposed development to make their views known. In this manner, they are able to participate in the planning process and influence consideration of the proposed development. There is also a similar opportunity if an appeal is submitted.

8.57 Members of the public can submit representations on any planning application. There is no statutory requirement for the community to provide responses to consultation associated with applications for infrastructure development.

8.58 There is a time cost to interested parties and the public in participating in the planning process. However, this cost is variable, depending on the background of the respondent and the nature of their response. Therefore, it is not possible to provide a sum based on the time spent commenting on proposed schemes. This cost is therefore unknown. Under this option, it is considered there could be duplication of community involvement where communities would have to

[9] Costs to developers for highways schemes are based on an approach to apply their determination costs only for all options in this RIA. Full explanation and justification of the approach taken for highways schemes is provided in the Methodology Paper.

comment on number of regimes for a single infrastructure scheme. This could result in additional costs compared to other options.

(e) Statutory Consultees

8.59 The Arup Report estimated a range of costs for consultees based on the following tasks:

1. Estimated costs of providing a substantive response to applicants for pre-application consultation;
2. Estimated costs of providing services to applicants outside of any statutory requirements prior to an application being submitted and how much of that cost was recouped through a fee;
3. Estimated costs of providing a response to an application following submission; and
4. Estimated costs of participating in an examination of an application (excluding any written response to a consultation period).

Table I – Costs per statutory consultee for participating in the consenting processes (Arup 2019[10]) (figures rounded to the nearest 100)	
Legislative regime	Consultee costs (£)[11]
s.57 TCPA 1990	1,200 – 3,100
s.62D TCPA 1990	2,100 – 6,100
TWA	400 – 3,300
Highways Act 1980	900
Planning Act 2008	2,600 – 62,600
s.36 Electricity Act 1989	300 – 700
Harbours Act 1964	700 – 25,400

Table J – Total statutory Consultee costs under Option 1		
Legislative regime	Cost per application	Total cost per annum
DNS	£6,580	£26,320
Electricity	£798	£177
Harbour	£20,910	£11,617
TWA	£2,956	£328

[10] Arup 2019 ‘Research into the Cost of Infrastructure development in Wales’
[11] Statutory consultee costs are based on per applications costs as identified in the Arup 2019 report for the assessed period.

Planning permission under section 57(1) of the TCPA 1990

8.60 Over the assessed period, there were no applications found that would currently be determined under section 57 of the TCPA 1990 and therefore costs to statutory consultees for this type of consent are estimated to be zero.

DNS permission under s.62D of the TCPA 1990

8.61 There are statutory requirements relating to pre-application consultation and consultation when determining a DNS application, and these requirements apply to specified bodies.

8.62 In addition to statutory requirements, Welsh Ministers are able to consult any other consultees as they deem appropriate. As such, consultations are discretionary and variable.

8.63 Based on figures from the Arup Report on costs for responding to DNS applications and their estimated numbers, it is estimated total annual costs to statutory consultees for responding to DNS applications would be £26,300[12]. However, it should be recognised costs can vary widely depending on the context of each proposed development. For instance, a development potentially impacting upon a designated heritage asset would likely require significantly more engagement with Cadw than one which did not have any potential significant heritage impacts.

Consent to construct and operate generating stations under section 36 of the Electricity Act 1989

8.64 The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 define the consultation bodies for applications for consent under section 36 of the Electricity Act 1989 that are subject to EIA.

8.65 Based on figures from the Arup Report on costs for responding to generating station applications and their estimated numbers, it is estimated total annual costs for all statutory consultees for responding to generating station applications would be £200.

Harbour Revision and Empowerment Orders under s.14 of the Harbours Act 1964

8.66 Applications for Harbour Revision and Empowerment Orders in Wales are consented by Welsh Ministers, and the Welsh Ministers may consult a number of specified bodies[13].

12 Costs per annum for all statutory consultees.
13 As defined in Annex A of 'Procedural harbour order guidance for Wales 2018 (gov.wales)'.

8.67 Based on figures from the Arup Report on costs for responding to Harbour Order applications and their estimated numbers, it is estimated total annual costs to statutory consultees for responding to Harbour Order applications would be £11,600.

Orders under the TWA

8.68 There are statutory consultation requirements following the submission for an application of a TWA Order. Based on figures from the Arup Report on costs for responding to TWA Order applications and their estimated numbers, it is estimated total annual costs to statutory consultees for responding to TWA Order applications would be £300.

Orders under the Highways Act 1980

8.69 There are statutory requirements to consult in relation to EIA where an application is made for a Highways order. Based on figures from the Arup Report on costs for responding to Highways Order applications and their estimated numbers, it is estimated total annual costs to statutory consultees for responding to Highways Order applications would be £1,600.

Marine licensing under the Marine and Coastal Access Act 2009

8.70 Many activities which take place in and around the sea require a Marine Licence under the Marine and Coastal Access Act 2009. The function of determining marine licences is currently delegated to NRW, and this will continue under this option.

8.71 Based on costs for a cross-section of cases provided by NRW and their estimated numbers as part of existing infrastructure consenting regimes, it is estimated total annual costs to NRW for determining marine licences would be £4,600.

Option 1 Benefits

General

8.72 As a result of the current complex and fragmented legislative arrangements for infrastructure consenting, there are limitations to making the efficiency improvements a new process could deliver. Where a major infrastructure development requires consent under a number of different regimes, there is the risk of confusion and inefficiency for applicants, communities and decision makers alike. This may cause significant delay to the consenting process and lack of integration in the delivery of infrastructure.

Welsh Government

8.73 Currently, decisions are made at the appropriate level and involve relevant communities and stakeholders. However, there is currently a lack of continuity and administrative efficiency as the Welsh Government must use different processes and procedures to deal with applications which largely seek the same rights and have similar themes of impact, as well as inconsistent consultation requirements.

8.74 Some consenting processes are unsatisfactory in terms of their timescales and requirements[14]; whereas with most of the listed consenting regimes, there are varying abilities for the Welsh Government to provide all the rights required to a developer to implement a consent. The lack of a single cohesive regime reduces clarity in what is being determined, and undermines the objective of the Welsh Government to build a stronger, greener economy in Wales.

8.75 Planning fees for current regimes may not reflect true determination costs. Fees may increase under Option 2 to reflect the true costs to the Welsh Government for determining applications.

8.76 Under this option, no change will be required to existing legislation, thus saving time and resource for the Welsh Government, in terms of drafting the new legislation, producing guidance and responding to queries.

LPAs

8.77 The current legislative arrangements safeguard and codify the role of LPAs in the planning system and guarantee a means of representation. However, the absence of a 'one-stop shop' approach means that LPA involvement may be duplicated across numerous different consents, thereby increasing workload. Furthermore, the relative infrequency of applications determined under more obscure legislation, such as the Harbours Act 1964 and the TWA, can lead to LPAs struggling to retain the necessary knowledge to engage with the consenting of such development.

8.78 There is currently a standardised fee for LPAs to produce LIRs under the DNS process. However, such a fee is not received under other legislative processes, meaning LPAs contribute at their own cost.

[14] Stakeholders from the development industry have confirmed this to be the case in responding to the 2018 consultation: "Changes to the consenting of infrastructure: Towards establishing a bespoke infrastructure consenting process in Wales".

Development Industry

8.79 Developers are likely to be familiar with existing consenting regimes and can factor in the necessary cost during their assessment of project viability. However, the infrequency of certain application regimes, and differences between legislative requirements, means that developers are unlikely to develop efficient streamlined approaches to the various regimes.

8.80 The absence of a 'one-stop shop' approach means that developers may require multiple consents, across different legislation, to achieve the same means, thereby, adding increased costs and risks. A fragmented and non-unified consenting regime may require numerous consents, delaying the implementation of development.

8.81 There are currently lower or less requirements for applicants under certain legislative regimes, for example, there is no requirement for pre-application consultation for Harbour Revision Orders.

8.82 Some regimes currently do not have clear policy frameworks, leading to greater risk for developers compared to a more certain policy underpinning the DNS process. Similarly, some legislative regimes do not have a statutory timescale for decisions which leads to a lack of certainty for applicants, who benefit from clear timescales to provide accurate cost forecasts, and assurance for their Governance arrangements.

The Community and Statutory Consultees

8.83 Due to the complexity, unpredictability and expense of the existing consenting processes, it can be difficult for the community to participate and make their views heard. This often means those with the most time, resources and best knowledge of the process can have an advantage.

8.84 There is currently a lack of defined consultees for certain legislative regimes, meaning that third-party stakeholders are not guaranteed participation in consultation and may miss opportunities for engagement.

8.85 The requirement for a number of consents under different regimes can be difficult for communities to understand, particularly given the small number of applications per year under certain regimes. Given the protracted periods and complexity of proceedings, communities have found it difficult to engage with the determination of some infrastructure projects.

Option 2 – Establish a new form of 'Welsh Infrastructure Consent' for development or works with the objective of constructing and/or changing use to create a 'Welsh Infrastructure Project'.

Option 2 Description

8.86 This option introduces a new consenting process for infrastructure development in Wales. It would provide for a consistent, transparent and certain process which strengthens the role of local communities and streamlines decision making to improve the current standards of service.

8.87 A development will require an IC if it falls within thresholds to be set out in secondary legislation, or is designated as nationally significant within the national land use plan for Wales, 'Future Wales'. For purposes of clarity, developments which fall within the indicative thresholds identified in the consultation are used in assessing the impact of this proposal.

8.88 Under this option, IC applications would be determined by the Welsh Ministers following recommendation by an appointed PEDW Inspector. PEDW would undertake administrative duties associated with an application. PEDW currently operate as a Ministerial division of the Welsh Government and this institutional arrangement would remain under Option 2.

8.89 It is proposed a tier of optional SIP thresholds and criteria would sit below compulsory thresholds and criteria. For these optional projects, the applicant would decide whether the IC process or existing legislative regime would be more suited to their development type. However, the Welsh Ministers would ultimately decide whether the development constitutes a SIP, requiring an IC.

8.90 The proposed consenting process will be undertaken within a statutory timeframe and include consistent steps to be taken by stakeholders. There will be a requirement for key stakeholders to engage prior to submission of an application, to ensure development can be shaped with their comments in mind. LPAs will also be required to submit an LIR, which assesses the impact of the proposed development on the locality, ensuring LPA views are taken into account.

8.91 The IC would comprise of a 'one stop shop' for infrastructure projects captured by the relevant thresholds, thereby enabling other authorisations or licences necessary to be obtained at the same time and form part of the same consent. This will provide a consistent and administratively efficient process for determining major energy, waste, water and transportation infrastructure in Wales.

8.92 Under this option, the proposed consenting process would be fully implemented by Mid-2025, at which point all related legislative provisions would be in force. This position is dependent upon legislation for a new consenting process being given Royal Assent in Mid-2024, allowing for a one year implementation period. Costs to the various stakeholders are outlined below. It is expected costs would start to apply at the time the legislative provisions are commenced.

Option 2 Costs

Table K – Transition costs for Option 2	
Stakeholder	Costs
Welsh Gov	£385,300 *(comprising of £330,000 cost for new case management and IT systems, £43,000 for training and dissemination and £12,300 for one-off guidance on the new consenting procedure).*
LPAs	£30,300
Developers	£3,000
Communities	£0
Statutory Consultees	£0

Table L – Summary of net Option 2 costs per annum to the identified stakeholders (2025-26 to 2028-29)[1] ***(further additional costs shown in red are provided for information purposes as these costs are expected to be reimbursed, for example through payment of fees)***	
Stakeholder	IC Application
Welsh Gov	£0 (£567,700 reimbursed)
LPAs	£21,200 (£38,900 reimbursed)
Developers	£4,208,400
Communities	Unknown
Statutory Consultees	£35,100

1. In 2024-25, costs would be the same as in the baseline (Option 1).

(a) Welsh Government

8.93 IC applications will be made to Welsh Ministers for determination. PEDW will process applications and an appointed Inspector will present a report to the Welsh Ministers. The Welsh Ministers will determine the application following consideration of the report.

8.94 For the purposes of this assessment, the cost of processing and providing a report to the Welsh Ministers is based on an estimate of the time and staff costs currently required for determining DNS applications. This approach has been taken as the tasks involved are considered to be broadly comparable with the proposed determination of an IC.

8.95 This assessment of future IC applications under Option 2 is based on the same number of projects as Option 1. However, there would be less applications in total due to the removal of the requirement to obtain more than one consent for the same development. For projects identified over the assessed period, an explanation of where there would be fewer applications under Option 2 compared to Option 1 is provided in the Infrastructure (Wales) Bill Regulatory Impact Assessment Methodology Paper, Welsh Government, June 2023.

8.96 Whilst it is considered a new streamlined IC regime could result in additional development in Wales, the industry would need time to adapt to the process. Therefore, it is not possible to quantify numbers of additional projects that may be submitted under a new streamlined process as covered by this option, and it would equally be difficult to predict the potential dip in applications to adjust to a newly established process.

8.97 IC applications may be categorised as optional (at the discretion of the Welsh Ministers) or compulsory ICs. For the purposes of this assessment, it has been assumed that applicants may choose to pursue the IC determination process for certain categories of developments categorised as optional ICs (such as solar farms of wind turbines), however, will choose to apply to the normal consenting authority for other, more minor scheme types (such as short-term operating reserves).

8.98 This is because the output of a project does not necessarily dictate the scale of its impacts. For example, the current process for determining DNS can capture an onshore wind generating stations as well as short-term operating reserves which are powered by gas turbines. While the wind generating station may have significant economic and environmental impacts the latter typically have minimal impact, footprint and environmental effects. The proposed IC process will give developers the option (at the discretion of the Welsh Ministers) of

which consenting process to pursue and for those projects with minimal impacts, the IC process may not be the most appropriate route.

Table M – Costs to the Welsh Government for IC process under Option 2			
Level of DNS complexity	Average cost to PEDW/Planning Directorate per application	Total costs based on number of cases over assessed period	Average annual costs (based on 4.9 ICs per year)
Low	£32,200	£160,800	£17,900
Medium	£76,100	£1,826,000	£202,900
High	£208,100	£3,122,200	£346,900
Total		**£5,109,000**	**£567,700**

8.99 Over the assessed period it was determined there would be 44 applications that would be expected to go through the IC process under this option. Based on their assumed level of complexity and applied retrospectively, it is estimated this would result in a future cost of approximately £567,700 per year to the Welsh Government (including PEDW). These annual costs are expected to start in 2025-26. It is anticipated the Welsh Government's cost to determine each application will be fully recovered through applicant fees. The net ongoing cost to the Welsh Government under this option is therefore £0. This represents an annual cost-saving to the Welsh Government (relative to the baseline) of approximately £65,400.

8.100 Set-up costs would be required, based on the need for new case management and IT systems, the training of PEDW staff, dissemination events for LPAs and the development industry, as well as the provision of guidance on the new process. It is estimated these costs would be £385,300 (set up on the new case management and IT systems - £330,000, training and dissemination £43,000, and guidance £12,300). With regards to implementation, it is expected these set up costs would be incurred after legislation is given Royal Assent in Mid-2024 and during the implementation period which would follow in 2024-25.

8.101 There would be no transitionary costs to stakeholders in respect of applications being determined under current regimes. Any infrastructure applications submitted before the IC process comes into effect, but which are still under consideration, would be determined under the arrangements in place at the time of submission. As such, the cost of determining applications during 2024-25 is assumed to be the same as in the baseline scenario (Option 1). Since determination costs in 2024-25 are the same across all options and consequently have no impact on the Value for Money assessment, those costs have been excluded from the analysis.

8.102 To ensure any costs incurred as part of the application process for an IC (including the pre-application stage) can be recovered, it is our intention to provide a mechanism for fees to be charged at the various stages of this process. It is also our intention to extend the requirement for fees to the post-decision stage. Applications may be submitted to amend an IC, or revoke an IC, both of which will have cost implications to the Welsh Ministers and other statutory parties. Similar to DNS, we are proposing that fees recover the full operating cost, in line with public finance principles.

8.103 It is not possible to quantify the amount of pre-application discussions or post-consent variations that could be required or the amount of resource required to determine such amendments. This cost is therefore unknown. However, any such activity undertaken by the Welsh Government would be subject to the principle of full cost recovery from applicants.

(b) LPAs

8.104 The process of applying for an IC will require significant input from LPAs, starting at pre-application through to examination. Participation will also be required post-determination if, for example, variations to an IC are proposed. A fee structure will enable LPAs to recover costs (including overheads) for providing services in connection with an IC.

8.105 Where pre-application services are requested by the applicant, all LPAs will be required to provide a minimum set of specified information, which is likely to be:

- The relevant planning history of the proposed site;
- Advice on the requirement and scope for section 106 or Community Infrastructure Levy contributions;
- Discussions regarding any potential Statements of Common Ground;
- An indication of local issues relating to the proposed site, including potential mitigation;
- The local policy framework; and
- Guidance on individuals, groups or societies to be consulted.

8.106 These services will be compensated by applicants via a set fee, which is intended to recover the full cost.

8.107 Under the current DNS process, there is a requirement for the relevant LPAs in which the development is located to submit a LIR, which provides factual information regarding the potential impact of development. This requirement will be maintained for the IC consenting process. This will be a fixed fee. Any

other LPA which submits an LIR on a voluntary basis will not be eligible for a fee.

8.108 The relevant fee will be calculated by multiplying the average hourly salary of an LPA planning officer by the average time taken to produce an LIR. The production of an LIR is currently estimated to cost £7,750 per LPA[15] for each DNS application. Assuming a similar figure for IC applications, this leads to a total of £37,900 per year of costs to LPAs (reimbursed by applicants), based on an estimate of 4.9 IC applications per year.

8.109 In addition to the LIR contribution, LPAs will have costs associated with general participation in IC examination, such as providing evidence at hearings. It is estimated that these costs will be broadly aligned to the cost of participating in DNS applications. It currently costs an LPA £4,300 to participate in a DNS application. Therefore, it is estimated that it will cost LPAs £21,200 per year to engage with the IC process outside of the LIR process, which will not be reimbursed.

8.110 The enforcement system will remain unchanged from the current model under Option 1, in which LPAs are responsible for monitoring and enforcement action, and so no additional costs are estimated in this assessment.

8.111 Based on an assumption of 4.9 IC applications per year, it is estimated that total costs of engagement with the process to LPAs (LIR report and examination participation) will be approximately £59,100 per year.

8.112 In addition to LPA engagement via the IC process, it is also envisaged 4 applications which qualify to be an optional IC would be submitted as planning applications under s.57 of the TCPA 1990, due to their type and likelihood of being made to the LPA. Therefore, it is estimated approximately 0.44 infrastructure applications per year would be determined by LPAs, at a cost of £2,300 per application. This would result in an additional cost to LPAs of £1,000 per annum, which would be reimbursed by fees.

8.113 Due to the small number of such applications being determined by LPAs per annum, it is assumed any appeal costs to the Welsh Government would be negligible for the purposes of this assessment.

8.114 Based on the above, total costs to LPAs for a new infrastructure consenting process under this option would be £60,100 per year. £21,200 of this amount would not be reimbursed. When compared to the baseline, this means there is a net cost-saving to LPAs of approximately £4,800 each year. This cost-

[15] https://gov.wales/sites/default/files/publications/2019-11/developments-of-national-significance-dns-procedural-guidance.pdf

saving is expected to start in 2025-26. In 2024-25, the costs incurred by LPAs as a result of the determination process are expected to be the same as in the baseline option.

Table N – Costs to the LPAs for IC process under Option 2		
Task	Cost per application	Total cost per annum
Preparation of Local Impact Report (LIR)	£7,750	£37,900 (all reimbursed)
General participation	£4,300	£21,200
Determination of applications not falling under IC regime	£2,300	£1,000 (all reimbursed based on 0.44 applications)
Total (per annum)		**£60,100 (£38,900 reimbursed)**

8.115 In terms of transitional costs, there would be a one-off cost to LPAs for attendance at training delivered by the Welsh Government, in order to familiarise themselves with the new process. These costs are estimated to be £30,300 and would incur during implementation of the new regime in 2024-25.

(c) Developers

8.116 The costs associated with preparing an application vary, depending on the nature of the scheme.

8.117 For the purposes of this assessment, it is assumed that developer costs for IC applications will align with those for DNS applications. The 2019 Arup report estimates £897,200 total average developer costs per DNS application. This figure is applied to all IC applications, excluding highways schemes, at an estimated annual cost to developers of approximately £3,788,300. For the 6 ICs anticipated to come forward as highways projects, determination costs are applied only[16], resulting in an estimated annual cost to developers of £177,100 for those schemes.

[16] Costs to developers for highways schemes are based on an approach to apply their determination costs only for all options in this RIA. Full explanation and justification of the approach taken for highways schemes is provided in the Methodology Paper.

Table O – Developer costs from the Arup 2019 report (rounded to the nearest 100)	
Developer Task	Cost
Estimated costs of application preparation	£670,000
Estimated costs of undertaking any statutory pre-application consultation	£23,300
Estimated costs of undertaking any non-statutory pre-application consultation (i.e. holding events, publicising events etc. outside of statutory requirements)	£22,500
Estimated costs of participating in an examination	£116,700
Estimated costs of making a material amendment to a project during the examination of an application, where one has been made.	£29,700
Estimated costs of making a non-material or minor amendment to a project during the examination of an application, where one has been made	£6,300
Estimated costs of creating and maintaining a website which displays an entire application, for a period of 6 months	£17,500
Estimated costs of publishing a notice in a local newspaper or relevant journal advertising a prospective application for development, for a period of 1 week	£11,300
Total cost	**£897,200**

8.118 Existing legislation does not allow a choice of how a DNS application should be determined i.e. either by LPAs or the Welsh Ministers. Under this option, it has been noted applicants would have a choice to apply for an IC or to apply for planning permission to the LPA in certain circumstances. It is estimated the latter would be the case in four applications during the assessed period (0.44 per year).

8.119 The £670,000 figure on preparation costs for a DNS application taken from the Arup Report includes planning application fees[17]. When excluding all application fees payable to the Welsh Ministers from the Arup Report figure,

[17] As confirmed at Page 21 of the Arup Report: Research into the Cost of Infrastructure development in Wales: Study Report. Arup 2019

this results in total developer costs for preparation of an infrastructure application to a LPA of £544,500. There would be a separate fee payable to LPAs for determination at £2,300 per application.

8.120 Therefore, total costs to developers for preparation and submission of an infrastructure application not captured under a new IC process is estimated to be £546,800. Based on an estimated 0.44 such applications per year, this would result in additional costs to the development industry of £243,000 for the submission of such applications to LPAs in future.

8.121 Based on the above, total costs to developers under this option would be £4,208,400 per annum. This represents a cost-saving (relative to the baseline) of approximately £580,500 each year. This cost-saving is expected to start in 2025-26. In 2024-25, the costs incurred by developers as a result of the determination process are expected to be the same as in the baseline option.

8.122 In terms of transitional costs, there would be a one-off cost to the development industry for attendance at training delivered by the Welsh Government, in order to familiarise themselves with the new process. These costs are estimated to be £3,000 and would incur during implementation of the new regime in 2024-25.

8.123 The consolidation of separate consenting regimes into a single streamlined process clearly represents a significant cost-saving to developers when compared to the current system under Option 1.

(d) The Community

8.124 The role of the public and interested parties in the new consenting system will remain unaltered from the current system, as described in Option 1. Therefore, there will be no new costs to interested parties and the general public. The amalgamation of the current disparate consenting regimes into a single IC process would lead to cost-savings, by reducing duplication of community involvement.

8.125 It is not considered possible to financially quantify the advantages arising to communities as a result of Option 2. These cost-savings are therefore unknown.

(e) Statutory consultees

8.126 During the process of an IC, from inception through to examination and determination, there will be several instances whereby the applicant or the Welsh Government will be required to notify and / or consult with prescribed consultees.

8.127 Statutory consultee engagement with the planning process will not change under the proposed IC regime.

8.128 The cost of participation for statutory consultees in the IC process is expected to broadly align with that of the current DNS process. Based on costs identified in the Arup Report and the anticipated number of applications per year, the total annual cost to statutory consultees is expected to be £32,200.

8.129 In addition, the costs to statutory consultees for applications determined by LPAs would be £2,900 per annum.

8.130 Under this option requirements for NRW to determine marine licences would be subsumed into the IC process. While there would no longer be the requirement for NRW to determine a marine licence, there would remain a cost to NRW for interacting with the consenting process offshore. This cost is considered to be the same across all options.

8.131 Similar to an LIR for LPAs, under this option it is proposed to introduce the requirement for NRW to submit a Marine Impact Report ("MIR"), which documents the impact on the marine environment where an applicant seeks to deem a marine licence alongside its consent.

8.132 The cost of the MIR to NRW is likely to be similar to that in engaging in the process under Option 1. The Welsh Government will set a fee for the MIR with the intention of recovering the cost for activities which are not subject to grant in aid. Further consultation would be required to establish an appropriate amount, thus the fee element cannot be costed for the purpose of the RIA.

8.133 Based on the above, the total cost to statutory consultees under this option would be £35,100 per annum compared to an estimated cost of £44,600 per annum under Option 1. This represents a cost-saving of approximately £9,500 per annum. The cost-saving is expected to be incurred from 2025-26 (in 2024-25 costs will be the same as in Option 1). This anticipated saving under Option 2 is a result of an amalgamation of consenting regimes under the IC process. Thus, statutory consultees would engage on fewer applications for one development compared with Option 1.

Option 2 Benefits

Welsh Government

8.134 In addition to efficiency savings to the Welsh Government arising from a more streamlined regime, a unified consenting process has the potential to give Wales a competitive advantage over neighbouring administrations by ensuring a more efficient and consistent regime, increasing certainty and producing timely decisions. A single cohesive system removes the unpredictability and complexity of using various differing consenting arrangements, and provides a more flexible process which can better respond to future changes, challenges and costs.

8.135 Providing a new consenting route for proposed infrastructure development contributes to Ministerial aims and objectives. IC applications would be more cost effective to developers, thereby encouraging economic growth and the development of a low-carbon economy, whilst ensuring a robust and democratic scrutiny process for all stakeholders.

8.136 Parts of the current consenting arrangements are well-established. The new legislation may take some time to bed in, thereby leading to a temporary loss of efficiency. However, the long-term benefits are estimated to greatly outweigh temporary disruption and the production of guidance should help to minimise any confusion.

LPAs

8.137 Within the IC regime, LPAs' views on the merits of an application will be taken into account by the decision-maker. A reduction in the number of separate applications will reduce the duplication of LPA contributions, thereby saving resource.

8.138 The IC regime represents an opportunity for LPA contributions to be partially reimbursed for regimes previously participated with at their own cost, such as orders under the Harbours Act 1964. The standardised approach to reimbursement strengthens LPAs ability to contribute specialist knowledge to the consenting process. This will enable LPAs to allocate appropriate resources to the IC process. It also remains open for the LPA to be funded for additional work via a Planning Performance Agreement.

Developers

8.139 Developers will benefit from a simplified and accessible regime, which enables efficient examination within a specified timeframe. Greater consistency will be achieved across major infrastructure development in

Wales, which leaves developers with little doubt as to the correct process and provides administrative efficiency. Opting for such a process would send the message that Wales is open for business.

8.140 A more unified consenting process would alleviate any timing and complexity issues associated with applying for consent under the current fragmented legislative frameworks. A 'one stop shop' approach is beneficial to developers as the current requirement to obtain other authorisations alongside the main consent results in additional cost and time.

8.141 Retaining existing regimes, which are multi-tiered and under separate Acts, can be confusing for developers. A new, unified consenting regime will allow the developer the ability to wrap up associated or ancillary consents into a single consent. The ‘one stop shop’ approach is tried, tested and recognised by the development industry in England[18]. Establishing a similar process would therefore require little adjustment from developers.

8.142 Certainty regarding decisions is required to keep our infrastructure sector competitive and able to react to changes to circumstances. Consenting in Wales is currently placed in existing regimes which do not offer certainty of timescales, as the 2008 Planning Act does in England. Under the IC regime, a fixed statutory timeframe for the determination of infrastructure projects will provide more certainty for the development industry.

8.143 Including the ability to apply for powers to compulsory acquire land or rights in land in the IC regime will be essential for developers, where it is impracticable to acquire all of the land or rights needed for development by agreement, or where statutory undertakers' interests would be affected.

8.144 Optional ICs allows greater flexibility for developers to choose the most appropriate consenting route for smaller scale infrastructure development.

The Community

8.145 The role of the community and interested parties in the new consenting regime will remain unaltered from their role in the current system in Option 1. Within the IC application process, members of the public and other interested parties will continue to have the opportunity to engage with an application and have their views considered by the decision-maker.

[18] The National Infrastructure Planning Association (NIPA) is a body of individuals and organisations, including public and private sectors representatives, who engage in the regime for the determination of nationally significant infrastructure projects in England under the Planning Act 2008 (NIPA | NIPA (nipa-uk.org))

8.146 In providing a ‘one-stop shop’ approach, where all the consents required to implement a project are contained in a single application, public participation would be simplified and provide a more accessible route than present to engage. We intend to require engagement with local communities in advance of application submission in all cases to ensure development can be shaped by the comments of local communities, and to provide consistency for communities between all infrastructure and major development.

8.147 For this option, the arrangements for pre-application consultation with communities would be improved and made consistent for infrastructure schemes by being formalised across the full range of consents required for a project to go ahead. For example, in respect of a proposed infrastructure project which would require consent under the DNS process for the planning elements, under the Electricity Act 1989 for an offshore generating station and under the Harbours Act 1964 for the port elements. Under the current consenting arrangements, pre-application consultation would not be required for the generating station or port elements of the proposal. Pre-application consultation would be mandatory for the full range of consents required for the scheme under the proposed consenting process. This will ensure communities are fully engaged on all aspects of infrastructure schemes at the earliest possible stage, rather than only certain elements as occurs currently.

8.148 For this option, there would be a requirement for developers to prepare a pre-application consultation report. This report must be submitted with the application and must evidence how they have taken all comments and representations received on the scheme from stakeholders into account, including local communities. This requirement would apply to the entire infrastructure project before it is able to go ahead. Therefore, it will ensure meaningful consultation with applicants takes place for the entire project, whereas this is not assessed or scrutinised fully under current regimes.

8.149 By rationalising the numerous consents required for an infrastructure scheme into the one consent, this would save communities time and resources in engaging. For example, currently in respect of a Tidal Lagoon application it may require the consent for the main operational elements as a Development Consent Order, one or more Harbour Revision Orders in respect of the port elements, a marine licence for offshore elements as well as other secondary consents (for example licences in respect of species). In this example, it would require communities to engage with the project for at least 4 different consultations, which are likely to be over different time periods. This would necessitate a considerable time input from individuals and this is likely to result in consultation fatigue, having to engage multiple times for different elements of the one proposal. Due to the number of consultations, this could lead to a lack of transparency and there is great potential for individuals to

miss at least one consultation and inadvertently not comment on an important element of the scheme. Consultation under a single consenting process would simplify community engagement by enable communities to review a cohesive and comprehensive proposal, greatly increasing transparency and their ability to input into all aspects. It would further prevent unnecessary duplication where they are likely to provide similar comments on numerous occasions under current regimes for the same project, making more efficient use of their time and resource.

8.150 Detailed provisions for community consultation and engagement on infrastructure projects to be determined under a new consenting regime would be set out in subordinate legislation. This will allow for consultation and engagement methods in infrastructure projects to be prescriptive and importantly to be kept up-to-date and relevant. For example, new technologies may enable swifter and more thorough engagement with communities and this may need to be reflected in the legislation in future. Therefore this option would futureproof appropriate and thorough engagement with communities on all aspects of an infrastructure project, unlike under the current disparate consenting processes.

8.151 To provide a level of familiarity and accessibility to the public, ICs may be in the form of a more conventional consent in many instances where they are currently a Statutory Instrument.

Statutory Consultees

8.152 Within the IC application process, statutory consultees will continue to have the opportunity to respond to applications, which will be considered by the decision-maker.

8.153 To ensure all necessary bodies and organisations are included as part of the process each statutory consultee and the circumstances under which they must be consulted will be included in secondary legislation. This approach offers greater certainty to statutory consultees, compared to some existing regimes in which their role may not be formally codified in law.

8.154 The IC process is expected be more administratively efficient to engage with, due to the rationalisation of consents required, and the consistent form in which consultation would be undertaken. This unified approach should also reduce duplication of responses for the same developments.

Further clarification and justification of the benefits outlined under this option

8.155 The benefits listed for this option in the RIA include the **removing of complexity, reducing duplication and providing a more efficient process**.

We have costed this benefit in terms of the submission and determination of applications through one single regime, compared to the current numerous consenting regimes. These cost-savings are provided elsewhere in the RIA; for example in terms of cost-savings to developers in submitting their applications through a single process.

8.156 There are wider benefits in terms of removing complexity, reducing duplication and providing a more efficient process which are not quantifiable. For example, time benefits where interested parties currently engage in multiple applications for a single project, where they would only have to engage in the one application under a streamlined consenting process. This would greatly vary on a scheme by scheme basis depending on the nature of the scheme, including its type, location and impacts, influencing the numbers of stakeholders who are interested and the extent to which people are able to engage (depending on their personal circumstances).

8.157 In terms of resource benefits, for developers it is expected they would incur in preparing and submitting information under a single process, such as the time and effort saved in submitting plans and evidence to support applications. However, again, this would greatly vary on a scheme by scheme basis depending on the nature of the scheme and location, and also the individual resource a developer may be willing to put into each submission. This would also apply to statutory consultees in respect of the information they submit, but again it would greatly vary on a scheme by scheme basis and the nature of the statutory consultee response.

8.158 There would be resource benefits to the Welsh Government in terms of time and officer resource needed to be spent on a scheme having to deal with fewer applications for the one project. This could also apply to local planning authorities in respect of having to make fewer contributions or representations on a scheme. Aside from the cost savings to the Welsh Government and local planning authorities evidenced elsewhere, savings such as time are not readily quantifiable as they would vary on a scheme by scheme basis.

8.159 With a new consenting process including the ability for powers to compulsorily acquire land or rights in land as part of the infrastructure application, this would lead to another time and cost benefit for developers in being able to obtain all the necessary land consents as part of a single application. This benefit is one that is not possible to cost in the RIA as to what extent compulsory acquisitions will be included in consents in future will vary greatly on a scheme by scheme basis with each application having its own specific requirements in respect of the extent of land required to facilitate development. There is no clear historic data on land acquisitions and therefore we cannot accurately include a figure on this benefit in the RIA. The

RIA does provide details elsewhere on cost-savings to developers resulting from streamlined processes in their submissions, but the issue of enabling the compulsory acquisition of land as part of the one consent can be viewed as a wider benefit which may result in further cost-savings.

8.160 The RIA lists the benefit of this option providing a **more flexible consenting process**. We have costed for a more flexible consenting process in the RIA in terms of cost-savings to developers and the Welsh Government by assessing how historic applications would likely to be determined under a new process, depending on their scale and complexity. For example, we have costed for highways orders being determined as high complexity DNS applications under a new process, where the procedure would likely be inquiry due to the need for additional scrutiny on such complex applications. Therefore, by assessing historic applications and their likely procedure under a new process, we have costed for a more flexible process in terms of a proportionate approach where different procedure would apply to different scales and complexity of infrastructure application. However, we cannot cost how this flexibility may provide future benefits in terms of actual applications that do come forward under a new process.

8.161 There are wider flexibility benefits to a new consenting regime provided under this option, such as it being able to appropriately respond where a new infrastructure technology comes forward. For instance, a new regime provides the flexibility for it to be updated speedily in terms of the types of applications that fall under its determination. This could lead to benefits for developers in terms of being able to submit their applications under an efficient and streamlined process, unlike currently where there isn't such flexibility in updating application procedures. However, these benefits are based on changing future circumstances. In the case of future technologies, benefits would be impacted by the extent they result in certain types of projects being determined under a new regime in future. This is an unknown. Therefore, such benefits are not readily quantifiable.

8.162 In terms of a new process being **simpler to navigate**, this is a benefit in terms of the system being more transparent and easier to understand for developers and other stakeholders such as communities and statutory consultees who wish to participate in it. There is not a direct cost element for characteristics such as awareness and understanding of processes that can be costed for in the RIA.

8.163 In terms of a new process **contributing to Ministerial aims and objectives, such as a low-carbon economy**. As evidenced elsewhere in the RIA, we have costed the benefits of a single consenting process in terms of cost-savings to various stakeholders. However, there are further benefits which a

consenting process will bring. For example, a system that is less costly, more efficient and more certain in terms of timescales for the determination of infrastructure applications is likely to encourage investment in Wales. This should enable the types of development that can contribute to the Welsh Government's objectives for a low-carbon and thriving economy. There can be no direct cost attributed to these benefits as they are indirect and will in effect be secondary benefits result from a new consenting process. They are not benefits that result in clear and direct cost-savings for submitting and determining applications under a new process.

8.164 In terms of a new process **contributing to LPA reimbursement of fees.** Calculations for LPAs being partially reimbursed under a new consenting process, where they wouldn't be under existing regimes, have been incorporated under the cost-savings to LPAs evidenced for Option 2. It is the intention for the Welsh Government to undertake engagement with LPAs during implementation of a new consenting process, with a view to working towards a model where they would be able to regain all of their fees for participating in the determination of significant infrastructure projects. We cannot evidence a full cost-recovery approach to LPAs under the existing cost-savings in the RIA as it will be subject to further work during implementation of a new consenting process.

Option 3 – Establish an independent consenting body to undertake planning scrutiny of 'Welsh Infrastructure Consents' on behalf of Welsh Ministers.

Option 3 Description

8.165 Option 3 is a variation of Option 2, in adopting a streamlined and unified consenting process, such as the IC, however with decisions being made by a new Non-Departmental Public Body ("NDPB")[19] dedicated to providing a scrutiny role on IC applications on behalf of the Welsh Ministers. This approach is in line with the proposals set out in the report entitled 'Evaluation of Consenting Performance of Renewable Energy Schemes in Wales', Hyder Consulting (UK) Limited, (January 2013) which recommended that applications for renewable energy schemes should be determined by an independent body.

8.166 The proposed new body would be in addition to other consenting authorities; being LPAs and the Welsh Ministers (via PEDW and the Welsh Government), and would be responsible for ensuring IC applications are determined within

[19] The Cabinet Office Public Bodies Handbook defines an Executive Agency as a public body which acts as an arm of its home Department. It is envisaged that the new organisation would function as an Executive Agency in the same way as the previous PINS Wales arrangement.

acceptable timescales by appropriately experienced decision makers. As a consequence of this option, the function of examining (via PEDW) and determining SIPs would not be undertaken by the Welsh Ministers. However, the Welsh Ministers would retain all other current functions, such as the examination of development plans, determination of other casework which includes appeals and called in applications.

8.167 In practice, it is envisaged some PEDW staff would be transferred to the new NDPB to retain an element of expertise and continuity, supplemented by the additional recruitment required to sustain the NDPB.

8.168 The new service would have the power to determine IC applications independently of the Welsh Ministers. However, the new NDPB as a whole would ultimately be accountable to the Welsh Ministers, rather than the Welsh Ministers being accountable for individual decisions. Aggrieved parties can make a claim through the Courts if they consider a decision to be unlawful.

8.169 As an NDPB, the organisation would be a separate body, and its staff public servants rather than civil servants. It would operate at arm's length from the Welsh Ministers and would not be within a Government Department[20]. As a separate legal entity, legislation would be required to create and vest powers in it. The organisation would have some operational control over its own internal policies and would have the ability to levy fees, however, decisions on ICs made by it would be subject to Welsh Government policy. Individual decisions on ICs would be made by technically competent individuals in an organisation set out in statute.

8.170 Similar to Option 2 and subject to Royal Assent being given (Mid 2024), the proposed NDPB would be fully operational by Mid-2026, at which point all related legislative provisions would be in force. It is expected the costs to the various stakeholders outlined below would begin to apply during this implementation period and as the legislative provisions are commenced.

[20] Cabinet Office guidance on public bodies can be found here: Public Bodies Handbook – Part 1. Classification Of Public Bodies: Guidance for Departments (publishing.service.gov.uk)

Option 3 Costs

Table P – Transition costs for Option 3	
Stakeholder	Costs
Welsh Gov	*£1,054,100 (comprising of costs for the setting up of an independent organisation and one-off training, dissemination and guidance on the new consenting procedure).*
LPAs	£30,300
Developers	£3,000
Communities	£0
Statutory Consultees	£0

Table Q – Summary of net Option 3 costs per annum to the identified stakeholders (2026-27 to 2028-29)[1] ***(further additional costs shown in red are provided for information purposes as these costs are expected to be reimbursed, for example through payment of fees)***	
Stakeholder	IC Application
Independent Body for ongoing costs	£0 (£2,480,500 reimbursed)
LPAs	£21,200 (£38,900 reimbursed)
Developers	£5,390,300
Communities	Unknown
Statutory Consultees	£35,100

1. In 2024-25 and 2025-26 costs are expected to be the same as in the baseline.

(a) Welsh Government

8.171 The Welsh Government will not have any new decision-making in relation to ICs, and as expected with Option 2, there are unlikely to be appeals relating to any 'optional' applications which are determined by LPAs. As a consequence, there will be no ongoing cost to the Welsh Ministers.

8.172 The independent body will be a Welsh Government Sponsored Body, established by the Welsh Government. However, it is intended for the organisation to cover all its own costs via applicant fees, and therefore no Welsh Government expenditure should be required to cover ongoing costs. There will, however, be an initial set-up cost of £1,054,100, which will be borne by the Welsh Ministers.

(b) The NDPB

8.173 The NDPB will be responsible for the processing and determination of IC applications. This will create new costs for the ongoing operation of the new organisation. The NDPB will be able to set its own budget based on forecasts of prospective applications, and would establish its own governance and staffing arrangements.

8.174 The total running costs of the IC Independent Body are estimated to be £2,480,500[21] on average per year, which are detailed below. The set-up costs for the new organisation are estimated at £1,054,100. In this option, transition costs would be incurred in 2024-26, with ongoing annual costs expected to be incurred from 2026-27. In this option, applications received during 2024-25 and 2025-26 will be determined under current regimes and the associated costs in those years would be the same as in the baseline option.

Staff costs

8.175 The NDPB will require new staff to deliver the functions of the organisation. This option estimates a total of 33 members of staff, which is anticipated to include some staff currently employed in PEDW[22]. There is anticipated to be 23 full-time staff, including Chair of the Governance Board, and 10 board members (expected to meet four times per year[23]).

8.176 The new organisation will be free to establish its own composition and terms and conditions. However, in the interests of expediency, and to reflect the expectation that some staff from PEDW will transfer to the new organisation, costs have been calculated using existing structures. I.e. based on Welsh Government staff costs on a per-grade basis.

8.177 The NDPB would be required to establish governance frameworks and controls to ensure impartiality from the Welsh Government. This would include the appointment of a Chair and the creation of a Governance Board. The Board would be responsible for all matters pertaining to the governance of the organisation, including finance, staff, human resources policies, risk management and challenge.

[21] See Table S.

[22] The workload of PEDW administrative staff is mixed between DNS applications and other sources of work, such as appeals, it is difficult to apply a direct transfer of staff based on current work. Some may join the new organisation or some may be recruited externally.

[23] An independent organisation that provides advice in respect of the planning system in Wales, Planning Aid Wales, is governed by a Management Board made up of fifteen trustee Directors which meets formally four times each year.

8.178 The structure of the Governance Board has been assumed to comprise a Chair, remunerated at £42,100 per annum, with the remaining 10 members being remunerated at £9,000 per annum.

8.179 The number of staff required has been based on the assumption of approximately 4.9 IC applications per year.

8.180 New staff responsibilities will be introduced due to the autonomous nature of a new agency. For instance, there will be a requirement for staff involved with the delivery of corporate functions, such as communications and human resources.

8.181 Total salary costs of the anticipated staffing structure (day-to-day staff costs plus Governance Board costs) are estimated at approximately £1,524,000[24] per year. In addition, there are anticipated contingency costs of £152,400[25] per year.

8.182 In addition to salary costs, there are anticipated to be one-off set-up costs relating to the recruitment, relocation and training of staff, including on new systems, which are estimated to be £137,900[26].

8.183 It is assumed that the organisation would require a budget for legal and other professional services, including translation. This is anticipated to be £368,100[27] in ongoing annual costs.

8.184 The Welsh Government would be responsible for the overarching policy implementation for the new regime. There would be a cost for Welsh Government led training and dissemination events on the new regime, including to train members of the NDPB on the specifics of the new regime. It is expected this would be at a one-off cost of £26,000.

8.185 There would also be a one-off cost to provide guidance on the new requirements and notifying stakeholders, including LPAs, of the changes. The Welsh Government would be responsible for preparing the guidance, rather than the NDPB. It is estimated there would be 15 guidance documents in total, with a total cost to the Welsh Government for their preparation and dissemination of £12,300.

[24] See paragraphs 3.63 to 3.65 of the Infrastructure (Wales) Bill Regulatory Impact Assessment Methodology Paper, Welsh government, June 2023 for a detailed breakdown of this cost.
[25] 10% Contingency costs include travel and subsistence, auditing, etc.
[26] See paragraph 3.66 of the Infrastructure (Wales) Bill Regulatory Impact Assessment Methodology Paper, Welsh Government, June 2023 for a detailed breakdown of this cost.
[26] See paragraph 3.68 of the Infrastructure (Wales) Bill Regulatory Impact Assessment Methodology Paper, Welsh government, June 2023 for a detailed breakdown of this cost.

Organisational infrastructure

8.186 The NDPB would require the establishment of all infrastructure required for its operation, including ICT, equipment/furniture and rent.

Table R – Costs for NDPB organisational infrastructure		
Infrastructure	Set-up cost	Ongoing cost (per annum)
ICT (including internal software and hardware and public facing ICT system)	£684,700	£312,800
Rent		£42,500
Fixtures and fittings	£193,100	
Facilities		£39,000

8.187 This option introduces the need to procure new bespoke ICT infrastructure, including a database, records management, and internal communications, alongside a public facing website and ICT service.

8.188 The design and delivery of bespoke ICT infrastructure for a new organisation would require considerable financial investment, estimated at £684,700, with ongoing costs estimated at £312,800 per annum. Costs are based on delivery of service, including a web-based interface enabling the submission of IC applications electronically.

8.189 It is estimated that organisational or legal independence from the Welsh Ministers would necessitate physical separation from the Welsh Government estate. It is anticipated that the new organisation would require separate property in or near Cardiff, with the aim of encouraging existing PEDW staff to transfer into the new organisation. The rental of equivalent office premises within Cardiff City Centre, accommodating up to 16 members of staff at any one time in accordance with flexible working arrangements, would cost approximately £42,500 per annum.

8.190 Further accommodation costs would apply for initial furnishing of the accommodation (‘fixtures and fittings’) and ongoing costs for facilities, including utilities and rates. It is estimated that initial costs for fixtures and fittings would be £193,100, with further annual costs of £39,000 for facilities. No additional depreciation costs would apply over the five-year period for the purposes of this assessment (excluding ICT for which ongoing maintenance costs are already estimated).

Insurance

8.191 Insurance costs for all members of staff, including board members, are estimated to be £41,600 per annum.

Funding

8.192 The IC NDPB will receive fee income from application and determination (and post-determination) costs for IC applications, charged to the applicant. As set out in Option 2, fees would be charged at the various stages of this process, with the view to attain full cost recovery. The fees will be defined, following consultation, in secondary legislation in the future. The organisation would be enabled to establish its own schedule of fees to cover its expenditure under the principle of full cost recovery.

8.193 It may also be possible for the independent body to generate additional income by offering other services, however, this cost cannot be estimated for the purposes of this assessment.

Total costs

Table S – Total costs NDPB		
Source of cost	Set-up cost	Ongoing cost (per annum)
Training and dissemination for a new IC regime	£26,000	
Initial guidance	£12,300	-
Staff costs	£137,900	£1,524,000
Professional services	-	£368,100
Contingency costs	-	£152,400
Insurance	-	£41,600
ICT (including internal equipment and public facing ICT system)	£684,700	£312,800
Fixtures and fittings	£193,100	-
Rent	-	£42,500
Facilities[28]	-	£39,000
Total	**£1,054,100**	**£2,480,500**

(c) LPAs

[28] Utilities, rates, repairs and maintenance.

8.194 LPA engagement with the IC planning regime would be the same as for Option 2. It is estimated that it will cost LPAs £60,100 (£21,200 of which would not be reimbursed) per year to engage with the IC process (based on the 44 applications over the assessed period that would be determined as ICs, and 4 applications that would be subject to their own determination, averaging 4.9 and 0.44 applications per annum respectively). As with Option 2, this represents a cost-saving relative to the baseline. There would also be a one-off cost to LPAs for attendance at training / familiarisation events of £30,300 that would be incurred during implementation of the new regime between 2024-26.

(d) Developers

8.195 The estimated annual cost to developers for engaging with the IC regime under this option is approximately £2,666,800, excluding application fees. For this option, the NDPB would be free to set its own schedule of fees to fully recover its costs. Whilst the tasks associated with determining applications will remain the same, there are likely to be higher overheads than Option 2, to cover the increased IT, human resources and governance costs associated with organisational independence from the Welsh Government. Therefore, the organisational overheads will increase significantly. To cover these costs, fees will cover the entire annual cost of the NDPB. Based on there being 4.9 applications per year, this fee is estimated to be £507,400 on a case-by-case basis, with £2,480,500 of income being paid annually by developers. As applied under Option 2, there would be further additional annual costs to the development industry of £243,000 for the preparation and submission of infrastructure applications not captured under a new IC process and to be determined by LPAs.

8.196 The estimated total annual cost to developers would be £5,390,300. This cost will be incurred from 2026-27. This represents an additional cost to developers of approximately £601,400 per annum when compared to the baseline. In 2024-25 and 2025-26 (the implementation period in this option), applications would be determined under current regimes and the annual costs would be the same as in the baseline scenario.

8.197 A one-off cost to the development industry for attendance at training / familiarisation events would be the same as Option 2 at £3,000 and would incur during implementation of the new regime in 2024-26.

8.198 The amalgamation of the consenting regimes into the unified IC process would lead to cost-savings by reducing duplication of developer expenditure on numerous applications associated with the same development.

(e) The Community

8.199 The role of the public and interested parties in the new consenting regime will remain unaltered from their role in the current system, as described in Options 1 and 2. Therefore, there will be no new costs for interested parties and the general public.

8.200 The amalgamation of the consenting regimes into a single regime could lead to cost-savings by reducing duplication of community involvement.

(f) Statutory Consultees

8.201 The cost of participation for statutory consultees is expected to broadly align with that of the current DNS process, and replicate an IC under Option 2 at £35,100 per year.

8.202 The amalgamation of the consenting regimes into a single regime could lead to cost-savings by reducing duplication of consultee engagement.

Option 3 Benefits

Welsh Government

8.203 The general benefits of the proposed IC process are outlined under Option 2, subject to the following additions.

8.204 An NDPB responsible for all aspects of the consenting process would eliminate the need for Welsh Government oversight of Inspector decisions, thereby speeding up the process and increasing efficiency.

8.205 Income generation from independent business activity may enable the organisation to contribute towards reducing the burden on the public purse in the longer term.

8.206 The independence of the organisation would mean that it is visibly impartial and able to demonstrate distance from the Welsh Ministers in reaching decisions. The new organisation will be self-contained and self-sufficient, which is a benefit to the Welsh Government who will no longer be responsible for decision making.

8.207 The lack of Welsh Government and Ministerial oversight of the decision-making process for significant infrastructure could lead to a perception of democratic deficit. There may also be public hostility to the idea of added bureaucracy through the creation of a new public sector organisation.

8.208 A serious risk for any new organisation is concerns that the required level of expert resource will be maintained to ensure the effective running of the business. Recruiting in the planning profession is already challenging. Physical relocation and actions resulting in either increased competition for, or limited opportunities for staff progression will introduce risk of losing experienced staff. This could lead to deficiencies of service across the profession.

8.209 The creation of an NDPB will necessitate the establishment of new ICT infrastructure to support this business need. Developing a bespoke replacement to meet current service standards introduces significant risk to continuity of business. Procurement and development of such infrastructure would take an estimated 24-36 months, which may lead to delivery risks and potential 'teething issues' at the outset.

8.210 The additional overheads for an organisation operating independently do not benefit from economies of scale available to the Welsh Government. Furthermore, the organisation would not be able to rely on in-house corporate services available within Welsh Government. Therefore, the organisation would likely have to pass on these higher running costs to applicants.

8.211 Given the very small size of the organisation, and the relatively few members of staff operating within it, additional costs of establishing and maintaining an NDPB is seen as disproportionate and not value for money.

LPAs

8.212 The general benefits of the IC regime to LPAs are outlined under Option 2.

8.213 The establishment of a new organisation similar to an existing model would enable stakeholders to adapt easily. However, it may take time for the new organisation to be fully functional leading to a temporary service level which is not as integrated, or as accessible, as stakeholders have become used to.

Developers

8.214 The general benefits of the IC regime to developers are outlined under Option 2, and there would be similar (dis)benefits to developers in terms of adaptation to that of LPAs.

8.215 The establishment of a new organisation similar to an existing model would enable stakeholders to adapt easily. However, it may take time for the new organisation to be fully functional leading to a temporary service level which is not as integrated, or as accessible, as stakeholders have become used to.

8.216 The establishment of a new independent organisation has the potential to lead to more timely decisions for applicants, arising from efficiency savings and new ways of working. However, there will be significantly increased fees under this option, covering the higher running costs associated with independence from the Welsh Government. Increased fees could lead to developers choosing not to invest in Welsh infrastructure development in favour of less costly regimes, in England for instance.

The Community

8.217 The general benefits of the IC regime to community stakeholders are outlined under Option 2, and there would be similar (dis)benefits to the community in terms of adaptation to that of LPAs.

8.218 The political impartiality of the new service may lead to a perceived lack of democratic accountability arising from an organisation fully independent of the Welsh Ministers.

Statutory Consultees

8.219 The general benefits of the IC regime to statutory consultees are outlined under Option 2, and there would be similar (dis)benefits to statutory consultees in terms of adaptation to that of LPAs.

Option 4 – Establish a major infrastructure planning unit within the Welsh Government and amend legislation relating to existing regimes to provide a fast-track and consistent infrastructure regime.

Option 4 Description

8.220 This option will not require an intervention by way of primary legislation, and is similar to Option 1. However, under this option, the various Regulations, Rules and Orders under Acts which govern the current and various processes for consenting infrastructure are proposed to be amended to assimilate procedures where possible. This would include changing secondary

legislation to amend consultation timescales, examination requirements, and fees to provide for similar application processes across different consenting regimes. The intention would be to simplify the application process for all stakeholders whilst maintaining the distinct primary legislation governing the different regimes.

8.221 PEDW would continue to examine and make recommendations on proposed development, and decisions would be processed by Planning Directorate within the Welsh Government, on behalf of the Welsh Ministers. A specific unit will be established within Planning Directorate, based on its current Planning Casework Branch, to provide a coordinated and focused team to streamline the delivery of infrastructure.

Option 4 Costs

Table T – Transition costs for Option 4	
Stakeholder	Costs
Welsh Gov	£4,200 *(for one-off guidance on the new consenting procedure).*
LPAs	£0
Developers	£0
Communities	£0
Statutory Consultees	£0

Table U – Summary of net Option 4 costs per annum to the identified stakeholders (2025-26 to 2028-29)[1] ***(further additional costs shown in red are provided for information purposes as these costs are expected to be reimbursed, for example through payment of fees)***	
Stakeholder	Streamlined regime of existing consents
Welsh Gov	£0 (£718,100 reimbursed). The same costs as Option 1, but with all costs fully recoverable.
LPAs	£26,100 (£31,000 reimbursed). The same costs as Option 1.
Developers	£4,757,900 A cost-saving of £31,000 per annum when compared to Option 1.
Communities	The same costs as Option 1, which are unknown.
Statutory Consultees	£44,600. The same costs as Option 1.

1. In 2024-25, applications will be determined under current regimes and costs would be the same as in the baseline option.

(a) Welsh Government

8.222 The proposed unit would be located within existing Welsh Government offices using existing staff. PEDW staff would continue in their current role in supporting appointed Inspectors to make recommendations to the Welsh Ministers on casework. As such, it not considered necessary to assess costs associated with accommodation, staff or corporate functions as these would remain unchanged from Option 1. However, in this option all costs would be fully reimbursed.

8.223 There would be one-off costs to the Welsh Government associated with the amending of subordinate legislation. Such costs would be absorbed within the corporate work of Welsh Government, and it is not considered necessary to cost them as part of this assessment.

8.224 There would also be a one-off cost to the Welsh Government of providing standalone guidance on the new requirements and notifying stakeholders, including LPAs, of the changes. For simplified application procedures, it is estimated 5 guidance documents would be required (to update or replace existing guidance on regimes that is taken into account by stakeholders as part of individual applications) at a total cost to the Welsh Government of £4,200. Due to existing regimes being maintained under this option, albeit with modifications, there would not be costs for training or familiarisation to stakeholders. Transition costs for preparing the new guidance would be incurred in 2024-25, with ongoing annual costs expected to be incurred from 2025-26 (in 2024-25, applications will be determined under current regimes and costs will be the same as in the baseline scenario).

8.225 The financial benefits arising from efficiency savings, resulting from a streamlined consenting regime, are not possible to quantify exactly. However, the Welsh Government intends to operate on the basis of full cost recovery.

(b) LPAs

8.226 LPA engagement with the planning regimes would remain unchanged from their current role under Option 1. It is estimated that it will cost LPAs £57,100 per year to engage with the process (based on the 54 applications for infrastructure development over the assessed period). Of this total, £26,100 would be non-reimbursed.

8.227 In the interests of ensuring consistency across different legislative regimes, there may be a new requirement introduced for LIRs in cases where they are not currently needed, which could lead to increased costs to LPAs in terms of their participation. However, such costs should be reimbursed by the developer via an amended fee regime.

(c) Developers

8.228 Cost-savings to developers are possible via a concurrent package of consents which has the potential to reduce duplication, simplify the process, and ensure greater certainty of outcomes.

8.229 In the interests of consistency, some regimes may see application fees increased and determination timescales extended, which could lead to higher costs for developers. However, it is anticipated that the overall impact will be beneficial for the reasons outlined in the above paragraph.

8.230 Costs to developers are estimated to be the similar to Option 1. As this option would result in other consenting regimes being amended through legislation to achieve greater alignment with the requirements of the DNS consenting process, many of the costs are based on the DNS regime. In achieving greater alignment with the DNS process to achieve greater consistency and efficiencies between the various regimes, as well as applying its fee model that is based on full cost recovery, it is estimated that it will cost developers £4,757,900 per year to submit applications under this option. This represents a cost-saving to developers of £31,000 per annum when compared to the baseline.

(d) The Community

8.231 The costs to communities and other stakeholders in the new regime will remain unaltered from the current system in Option 1.

(e) Statutory Consultees

8.232 The costs to statutory consultees in the new regime will remain unaltered from their role in the current system in Option 1. In terms of marine licensing, under this option, there are no plans to absorb the functions of another body into the Welsh Ministers. The function of determining marine licences will continue to be delegated to NRW, similar to Option 1.

Option 4 Benefits

Welsh Government

8.233 Establishing a new unit to determine all infrastructure casework would lead to reduced costs, compared with those associated with the establishment of an independent external body as outlined under Option 3. Further, it would reduce the risk of business disruption to service users and lead to significant cost-savings.

8.234 Streamlining the consenting of infrastructure, in terms of determination procedures and staff focus, could lead to increased efficiency within Welsh Government and PEDW. For instance, there is potential for a single Inspector to oversee a package of different legislative consents for the same development. The creation of a specialised unit could also foster greater administrative efficiency by allowing staff to focus solely on casework which is of national significance.

8.235 By not creating more simplified processes, a number of benefits relating to greater accessibility and efficiency would be lost due to the continued fragmentation of consenting regimes.

LPAs

8.236 Greater consistency across subordinate legislation should simplify the process of LPA engagement with major infrastructure consenting. The possibility of increased requirement for LIRs, for developments which previously would not have required them, could increase the ability of LPAs to provide detailed information on local impacts into the decision-making process.

Developers

8.237 The ability to approve different elements of a development in a concurrent package of consents has the potential to reduce duplication, simplify the process and ensure greater certainty of outcomes. A single unit dedicated to infrastructure consenting may also improve the efficiency of outcomes and improve developer engagement with the Welsh Government. However, there will remain issues in terms of accessibility of law.

The Community

8.238 The greater consistency across subordinate legislation could help improve the accessibility of the process for the general public, by simplifying and streamlining the system. However, there will remain issues in terms of accessibility of law.

Statutory Consultees

8.239 The greater consistency across subordinate legislation could help improve the efficiency of consultee engagement by simplifying and streamlining the system. A system which enables the concurrent examination of numerous applications under different regimes has the potential to assist statutory consultees in understanding the wider context associated with developments. However, there will remain issues in terms of accessibility of law.

Summary and Preferred Option

8.240 Option 2 is the preferred option as it offers a number of quantifiable benefits. Firstly, it delivers a unified and streamlined approach to the consenting of major infrastructure in Wales, and provides for enhanced community engagement with consistent decision-making mechanisms under a consistent policy framework. The benefits of Option 2 are supported by the overall lowest anticipated annual costs to all major stakeholders of each of the four options considered. It is recognised there are some initial set-up costs for Option 2 in comparison to other options, but it is considered these initial costs would be offset by the long-term savings that would be provided by a streamlined consenting regime.

Table V – Set-up net costs for each of the various options (where applicable)				
Stakeholder	Option 1	Option 2	Option 3	Option 4
Welsh Gov	N/A	£385,300	£1,054,100	£4,200
LPAs	N/A	£30,300	£30,300	£0
Developers	N/A	£3,000	£3,000	£0
Communities	N/A	£0	£0	£0
Statutory Consultees	N/A	£0	£0	£0

Table W – Net costs per annum ***(red figures indicate reimbursed costs)***				
Stakeholder	Option 1	Option 2	Option 3	Option 4
Welsh Gov	£65,400 (£652,700 reimbursed)	£0 (£567,700 reimbursed)	£0 (£2,480,500 reimbursed). For this option, these costs would apply to the independent body, rather than to the Welsh Government, as ongoing costs.	£0 (£718,100 reimbursed). The same costs as Option 1, but with all costs fully recoverable.

LPAs	£26,100 (£31,000 reimbursed)	£21,200 (£38,900 reimbursed)	£21,200 (£38,900 reimbursed)	£26,100 (£31,000 reimbursed). The same costs as Option 1.
Developers	£4,788,900	£4,208,400	£5,390,300	£4,757,900
Communities	Unknown	Unknown	Unknown	Unknown
Statutory Consultees	£44,600	£35,100	£35,100	£44,600. The same costs as Option 1.

Table X – Total net costs per annum for each of the various options, applied over the appraisal period 2024-25 to 2028-29				
Year	Option 1	Option 2	Option 3	Option 4
2024-25	-	£418,600 (set-up)	£1,087,300 (set-up costs over a two-year period). £4,925,000 for continuation of current regime under Option 1 for 2025-26.	£4,200 (set-up)
2025-26	£4,925,000	£4,264,700 (ongoing once implemented)		£4,828,500 (ongoing once implemented)
2026-27	£4,925,000	£4,264,700	£5,446,600 (ongoing once implemented)	£4,828,500
2027-28	£4,925,000	£4,264,700	£5,446,600	£4,828,500
2028-29	£4,925,000	£4,264,700	£5,446,600	£4,828,500
Total costs applying over appraisal period 2024-25 to 2028-29	**£19,700,000**	**£17,477,500**	**£22,352,300**	**£19,318,300**
Cost compared to Option 1 (baseline)	**-**	**£-2,222,500**	**£2,652,300**	**£-381,700**

8.241 Total net costs over the appraisal period 2024-25 to 2028-29 outlined above have been applied on the basis of ongoing costs being applied from year 2 (2025-26) onwards across all options. This accounts for set-up / implementation costs applying to some options for years 1 and 2, with

ongoing costs for improved and new regimes to start in year 2, thus ensuring consistency in how costs across the options are compared.

8.242 The establishment of an IC regime alone will provide a system with a streamlined decision making process to meaningfully improve the current standards of service, and provide greater certainty in decision making. All stakeholders are anticipated to benefit from a simplified and more accessible regime, which enables efficient examination and decision within a specified timeframe.

Chapter 9 – Impact Assessments

9.1 Specific impact assessments have been undertaken, which cover the whole of the Bill. A summary of the impacts is included below. Specific impact assessments will be published, as appropriate.

Children's Rights

9.2 The proposal would have no adverse effect on the rights of children or young people. The net effect of the Bill is to unify and streamline processes and create greater opportunities for communities to participate in decisions which affect them.

9.3 In some cases, these rights already exist, for example in the planning system, albeit there is very limited engagement from children and young people in planning decisions. Whilst there is an improvement in children's rights by virtue of the opportunity to contribute views on decisions where this might previously have not been possible, this is seen as very marginal. The introduction of the Bill provides no specific opportunity to promote knowledge or understanding of the United Nations Convention of the Rights of the Child (UNCRC).

Equality

9.4 The proposal is likely to have an overall neutral impact in terms of equality. Beyond the need to consult and undertake pre-application engagement on some development types where there are currently no requirements to do so, there will be no material change to the duties placed on, or rights of, individuals.

Rural Proofing

9.5 Individual applications for IC under the Bill regime may present a more direct impact on the lives of rural people, businesses and communities than their urban counterparts. It is considered that the mechanisms contained within the Bill, the requirement of pre-application consultation, to consult on the application and meaningfully examine the application and the representations received as a consequence, will mitigate any potential negative impacts. The impact of any future infrastructure development on the rural population will be considered as part of the overall decision on individual applications.

Data

9.6 The Bill will unify existing legislation and processes that already require applicants to submit information to either the Welsh Ministers or LPAs. The existing regimes are already GDPR complaint. The Bill will therefore not

introduce any new information requirements, only combine existing processes into one. A full Data Protection Impact Assessment is not required.

Welsh Language

9.7 The Bill proposes a replacement for application processes which are already fully bilingual (including the ability for the public to make representations at hearings or inquiries via the medium of Welsh). There is no intention to alter how an individual may state their preference in language when interacting with the Welsh Government through this process. There are no positive or negative impacts.

Biodiversity

9.8 The Bill will unify consenting processes for applications where biodiversity issues might previously have been considered separately, and at a separate time, from other aspects of the decision on these proposals. Consequently, the Bill intends to ensure biodiversity issues are considered as part of a wider decision on all major infrastructure projects, which is a requirement of national policy, and other legislation requirements such as the duty under s6 of the Environment (Wales) Act. The Bill will have no direct impact on biodiversity.

Socio-Economic Duty

9.9 Having had regard to the Socio-economic Duty, the Bill itself serves to have no socio-economic impact. The subsequent decisions arising from the Bill may in due course lead to the creation of employment opportunities, which may serve to create an opportunity to reduce inequality of outcome, although those decisions are already being made under the existing separate individual consenting regimes. Consideration of this duty will form part of the decision-making process prescribed under the Bill.

Justice

9.10 A Justice Impact Assessment has been undertaken for the Bill which has identified low potential impact on the justice system. The Ministry of Justice has also determined that there is a nil/minimal impact to the Justice System.

9.11 This is because, although the Bill introduces new offences and civil proceedings, it brings together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime.

9.12 The number of enforcement cases is anticipated to be minimal, for the estimated five IC applications a year. This is based on the current understanding that there have been no equivalent prosecutions or enforcement in relation to DNS and Development Consent Orders which are the regimes upon which the proposed powers are based.

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

Competition Assessment

9.14 A competition filter test has been completed for the legislation, this is presented below:

The competition filter test	
Question	**Answer yes or no**
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

9.15 A detailed consideration of the limited impact of the provision of the Bill on competition has been considered. There are unlikely to be any detrimental effects on competition.

Chapter 10 – Post implementation review

10.1 Statutory timeframes for the determination of IC applications are set out in the Bill at section 56. That provision also requires the Welsh Ministers to lay before the Senedd annual reports on their compliance with the statutory timeframe and the use of any direction to extend that statutory timeframe on a case by case basis. Formal monitoring of the IC process will be undertaken as part of that report.

10.2 An overall evaluation project is proposed within 5 years of implementation to measure the outcome of the process, and to identify any future improvements which may be required.

Annex 1 – Explanatory Notes

INFRASTRUCTURE (WALES) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Infrastructure (Wales) Bill ("the Bill") which was introduced into Senedd Cymru on 12 June 2023. They have been prepared by the Climate Change and Rural Affairs Group of the Welsh Government in order to assist the reader of the Bill. The Explanatory Notes should be read in conjunction with the Bill but are not part of it.

SUMMARY AND BACKGROUND

2. The Bill will reform how infrastructure is consented in Wales. It will establish a unified infrastructure consenting process called an Infrastructure Consent ("IC") for specified types of major infrastructure both onshore and offshore, called Significant Infrastructure Projects ("SIPs"). These will, in the main, comprise of energy, transport, waste, water and gas projects. The IC will replace, either fully or partially, a number of existing statutory regimes for the consenting of SIPs and will rationalise the number of authorisations required to construct and operate a SIP into a single consent.

3. A consultation paper, *Changes to the consenting of infrastructure: Towards establishing a bespoke infrastructure consenting process in Wales*, was published on 30 April 2018 and sets out the main principles of the Bill. The consultation closed on 23 July 2018 and the Government's response to the consultation issued in November 2018[29]. The responses to the consultation were used to inform development of the Bill's proposals.

4. The Bill contains 146 sections arranged in 9 Parts, and 3 Schedules.

COMMENTARY ON SECTIONS

Part 1 – Significant infrastructure project

5. Part 1 of the Bill defines the meaning of Significant Infrastructure Projects and the qualifying projects which will be subject to this consenting process.

Key term

Section 1 – Meaning of "significant infrastructure projects"

6. Section 1 provides that development is a "Significant Infrastructure Project" ("SIP") if it falls within one of three categories. In order to be a SIP, projects may:
    - fall under one of the definitions specified in Part 1 of the Bill,

[29] Changes to the approval of infrastructure development | GOV.WALES.

- be specified in a direction made by the Welsh Ministers under section 22, or
- be specified as a SIP in the National Development Framework for Wales that the Welsh Ministers are required to make under section 60(3) of the Planning and Compulsory Purchase Act 2004 (the "2004 Act").

7. The current framework under the 2004 Act is titled "Future Wales: the National Plan 2040"[30]. The current framework does not specify projects as being significant infrastructure projects for the purposes of the Bill, but replacement frameworks may do so.

8. There are three defined terms in the Bill that are particularly important for the purposes of the descriptions of SIPs in Part 1. These terms are "development" (see section 131), "Wales" and "Welsh marine area" (see section 141).

Energy

Section 2 – Electricity infrastructure

9. Section 2 states the circumstances in which electricity infrastructure will be a SIP. These are:
   - the construction of a generating station (other than an onshore wind generating station), where it is expected to have an installed generating capacity of between 50MW (inclusive) and 350MW;
   - the alteration or extension of a generating station (other than an onshore wind generating station), where its effect is to increase the installed generating capacity by at least 50MW, however, the effect of the extension must not increase the overall generating capacity beyond 350MW;
   - the construction of an onshore wind generating station, where it is expected to have an installed generating capacity of at least 50MW;
   - the alteration or extension of an onshore wind generating station, where its effect is to increase the installed generating capacity by at least 50MW;
   - the installation of above ground electric lines associated with the construction, extension or alteration of a generating station which is a SIP which are expected to have a nominal voltage of 132KV and a minimum length of 2km (to the extent they are in Wales).

Section 3 – Liquified natural gas facilities

10. Section 3 states the circumstances in which development related to liquified natural gas facilities will be a SIP. These are:
    - for the construction of a facility, the storage capacity is expected to be at least 43 million standard cubic metres or have a maximum flow rate of at least 4.5 million standard cubic metres per day;
    - for the alteration of a facility, the existing storage capacity is expected to increase by at least 43 million standard cubic metres or by a maximum flow rate of at least 4.5 million standard cubic metres more per day.

[30] Update to Future Wales - The National Plan 2040 (gov.wales).

Section 4 – Gas reception facilities

11. Section 4 states the circumstances in which development related to gas reception facilities will be a SIP. These are:
    - the construction of a gas reception facility where the maximum flow rate of the facility is expected to exceed 4.5 million standard cubic metres per day;
    - the alteration of a gas reception facility where the maximum flow rate of the existing facility is expected to increase by at least 4.5 million standard cubic metres per day.

12. Subsection (3) specifies that to qualify as a SIP a facility must not handle gas that originates in Wales, England, or Scotland, the territorial sea adjacent to those territories or the Renewable Energy Zone. The "Renewable Energy Zone" is the area of the sea outside the territorial sea of the United Kingdom where the UK has exploitation rights for energy production under the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941). Neither must the gas have arrived at the facility from England or Scotland, or have already been handled at another facility after its arrival in Wales.

Section 5 – Hydraulic fracturing for oil and gas and coal gasification

13. Section 5 states the circumstances in which hydraulic fracturing for oil and gas and coal gasification will be a SIP. These are:
    - development involving the onshore exploration, appraisal or production of coal bed methane or shale oil or gas using unconventional extraction techniques, including hydraulic fracturing except for exploratory boreholes which do not involve the carrying out of hydraulic fracturing, and
    - development connected to the gasification of coal in the strata, with the exclusion of the drilling of boreholes solely for the purpose of core sampling.

Section 6 – Open cast coal mining

14. Section 6 states that the creation of open cast coal mine or the winning and working of coal from an open cast coal mine in Wales is a SIP.

Transport

Section 7 – Highways

15. Section 7 states that the construction and alteration or improvement of a highway is a SIP when:
    - the highway will (when constructed) be in Wales;
    - the Welsh Ministers will be the highway authority for the highway;
    - the highway (when constructed) will be a continuous length of more than 1 kilometre.

16. For an alteration or improvement to be a SIP it must also be likely that it will have a significant effect on the environment.

17. Subsections (4) to (6) specify exceptions.

Section 8 – Railways

18. Section 8 states that the construction of a railway is a SIP when:
    - the railway will (when constructed) start, end and remain in Wales,
    - the railway will (when constructed or altered) be part of a network operated by an approved operator, and
    - the railway will (when constructed) include a stretch of track that is a continuous length of more than 2 kilometres.

19. This section also states that the alteration of a railway is a SIP when:
    - the part of the railway to be altered is part of a railway that starts, ends and remains in Wales,
    - the railway is part of a network operated by an approved operator, and
    - the alteration of the railway will include laying a stretch of track that is a continuous length of more than 2 kilometres.

20. This section specifies that it does not apply to the construction or alteration of a railway to the extent that the railway forms part (or will when constructed form part) of a rail freight interchange.

21. Construction of a railway is not a SIP if it is permitted development. Permitted development is development in relation to which planning permission is granted by article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (as it has effect from time to time).

Section 9 – Rail freight interchanges

22. Section 9 specifies the circumstances when the construction of a rail freight interchange is a SIP. These are:
    - the land on which the rail freight interchange is situated must:
        - be in Wales, and
        - be at least 60 hectares in area (when constructed),
    - the rail freight interchange must be capable of handling:
        - consignments of goods from more than one consignor and to more than one consignee, and
        - at least four goods trains per day,
    - the rail freight interchange must be part of the railway network in Wales,
    - the rail freight interchange must include warehouses to which goods can be delivered from the railway network in Wales either directly or by means of another form of transport, and
    - the rail freight interchange must not be part of a military establishment.

23. This section also specifies the circumstances when the alteration of a rail freight interchange is a SIP. These are:
    - the land on which the rail freight interchange is situated must be in Wales;

- the rail freight interchange must be capable of handling:
  - consignments of goods from more than one consignor and to more than one consignee, and
  - at least four goods trains per day;
- the rail freight interchange must be part of the railway network in Wales;
- the rail freight interchange must include warehouses to which goods can be delivered from the railway network in Wales either directly or by means of another form of transport;
- the rail freight interchange must not be part of a military establishment;
- the alteration must increase by at least 60 hectares the area of the land on which the rail freight interchange is situated.

Section 10 – Harbour facilities

24. Section 10 specifies the circumstances when the construction of a harbour facility is a SIP. These are:
    - the project will be wholly in Wales, the Welsh marine area or both,
    - the project will not be, or will not form part of, a reserved trust port, and
    - the project can handle the embarkation or disembarkation of at least the relevant quantity of material per year.

25. Alterations to a harbour facility will be a SIP when the effect of the alteration is expected to be to increase by at least the relevant quantity of material per year the quantity of material handled by the harbour.

26. This section specifies the relevant quantities.

Section 11 – Airports

27. Section 11 specifies the circumstances when the construction of an airport in Wales or the Welsh marine area is a SIP. These are:
    - the airport (when constructed) can provide air passenger transport services for at least 1 million passengers per year, or
    - the airport (when constructed) can provide air cargo transport services for at least 5,000 air transport movements of cargo aircraft per year.

28. The section also specifies the circumstances when the alteration of an airport is a SIP. These are:
    - the alteration increases by at least 1 million per year the number of passengers for whom the airport can provide air passenger transport services, or
    - the alteration increases by at least 5,000 per year the number of air transport movements of cargo aircraft for which the airport can provide air cargo transport services.

Water

Section 12 – Dams and reservoirs

29. Section 12 specifies the circumstances when development relating to dams and reservoirs will be a SIP. These are:

- the construction of a dam or reservoir in Wales if the volume of water to be held back by the dam or stored in the reservoir is expected to exceed 10 million cubic metres;
- the alteration of a dam or reservoir in Wales if the additional volume of water to be held back by the dam or stored in the reservoir as a result of the alteration is expected to exceed 10 million cubic metres.

Section 13 – Transfer of water resources

30. Section 13 specifies that the transfer of water resources is a SIP when:
    - the development is carried out by one or more water undertakers,
    - the development takes place in Wales,
    - the volume of water to be transferred as a result of the development is expected to exceed 100 million cubic metres per year, and
    - the development enables the transfer of water resources, subject to limitations.

Waste water

Section 14 – Waste water treatment plants

31. Section 14 specifies that the construction or alteration of a waste water treatment plant is a SIP when:
    - the treatment plant is in Wales or the Welsh marine area,
    - the treatment plant (when constructed) is expected to have a capacity exceeding a population equivalent of 500,000, and
    - in the case of an alteration, the effect of the alteration is expected to be to increase by more than a population equivalent of 500,000 the capacity of the plant.

32. The construction or alteration of infrastructure for the transfer or storage of waste water is a SIP when:
    - the infrastructure is in Wales or the Welsh marine area,
    - the main purpose of the infrastructure is:
        - the transfer of waste water for treatment, or
        - the storage of waste water prior to treatment, or both,
    - the infrastructure is expected (when constructed) to have a capacity for the storage of waste water exceeding 350,000 cubic metres, and
    - in the case of an alteration, the effect of the alteration is expected to be to increase the capacity of the infrastructure for the storage of waste water by more than 350,000 cubic metres.

Waste

Section 15 – Hazardous waste facilities

33. Section 15 specifies that the construction of a hazardous waste facility is a SIP if:
    - the facility is in Wales or the Welsh marine area,
    - the main purpose of the facility is the final disposal or recovery of hazardous waste, and
    - the facility (when constructed) is expected to have the capacity specified in subsection (2).

34. The section also specifies that the alteration of a hazardous waste facility is a SIP if:
    - the facility is in Wales or the Welsh marine area,
    - the main purpose of the facility is the final disposal or recovery of hazardous waste, and
    - the alteration is expected to increase the capacity of the facility as specified in subsection (3)(c).

Section 16 – Radioactive waste geological disposal facilities

35. Section 16 specifies that development relating to a radioactive waste geological disposal facility is a SIP where it is:
    - the construction of one or more of boreholes in Wales or the Welsh marine area to a depth of at least 200 metres beneath the surface of the ground or seabed, and their main purpose is to obtain data to determine the suitability of the site for a radioactive waste geological disposal facility, and
    - the construction of a radioactive waste geological disposal facility in Wales or the Welsh marine area.

Power to amend

Section 17 – Power to add, vary or remove projects

36. Section 17 allows the Welsh Minister to amend Part 1 by regulations in order to add a new type of project to the definition of significant infrastructure project or to vary or remove the existing significant infrastructure projects defined in the Bill. Projects may only be added or varied if the new project, or any variation to an existing project, is for the carrying out of works in the fields of energy, flood prevention, minerals, transport, water, waste water and waste and the works are to be carried out in Wales or the Welsh marine area.

Interpretation

Section 18 – Cross-border projects

37. Section 18 clarifies that references in Part 1 to development being "in Wales" or "in the Welsh marine area" include development partly in those areas. It also clarifies that where infrastructure consent is required for development that is partly in Wales or the Welsh zone, infrastructure consent is required only to the extent the development is in Wales or the Welsh zone.

Part 2 – Requirement for infrastructure consent

38. Part 2 of the Bill imposes a requirement for infrastructure consent for development which is or forms part of a significant infrastructure project, and the effect on other statutory regimes.

The requirement

Section 19 – Requirement for infrastructure consent

39. Section 19 imposes a requirement to obtain the consent of the Welsh Ministers for development which is, or forms part of, a significant infrastructure project

(as defined in section 1). The required consent is referred to in the Bill as "infrastructure consent".

Section 20 – Effect of requirement for infrastructure consent

40. Section 20(1) and (2) lists the consents which cannot be obtained or given in relation to development, to the extent that infrastructure consent is required for the development.

41. Subsection (3) lists orders or authorisations which cannot be made or confirmed in relation to a highway or in connection with the construction, improvement or alteration of a highway, to the extent that infrastructure consent is required.

42. Subsection (4) specifies that if infrastructure consent is required for the construction or alteration of a highway, section 110 of the Highways Act 1980 does not apply.

Powers to change the requirement or its effect

Section 21 – Power to add or remove types of consent

43. Section 21 allows the Welsh Ministers to amend section 20(1) and (2) to add or remove a type of consent or to vary the cases under which a type of consent falls within section 20. Section 21 also allows the Welsh Ministers to make further provision about the types of consent and the cases in relation to which a type of consent is or is not within section 20(1) and (2).

44. Subsection (2) allows the Welsh Ministers to amend, modify, repeal or revoke an enactment by regulations. Subsection (3) clarifies the meaning of consent within the section.

Section 22 – Directions specifying development as a significant infrastructure project

45. Section 22 provides that the Welsh Ministers may give a direction specifying that a specific development is a significant infrastructure project, if the development, when completed, is wholly or partly in Wales or the Welsh marine area and the development is or forms part of a project that the Welsh Ministers consider to be of national significance, and is of a description specified in regulations.

46. Subsection (3) clarifies that the power of direction under subsection (1) applies to a development only to the extent that the development is in Wales or in the Welsh marine area.

47. Subsection (4) provides that the Welsh Ministers may require an authority to which an application for consent or authorisation has been made to provide any information required by the Welsh Ministers to enable them to make a direction under subsection (1) and under which terms.

Section 23 – Directions for applications to be treated as applications for infrastructure consent

48. Section 23 provides that if the Welsh Ministers give a direction under section 22, the Welsh Ministers have the power to direct an application mentioned in section 20(1) or (2) to be treated as an application for infrastructure consent or to direct a person proposing an application to treat it as an application for infrastructure consent.

49. Directions made under this section may provide for specified provisions of any enactment (including enactments in the Bill) to have effect in relation to the application or proposed application or to be treated as having been complied with in relation to the application or proposed application.

50. If the Welsh Ministers give a direction under this section, the relevant authority must refer the application to the Welsh Ministers. The Welsh Ministers may also direct the relevant authority to take no further action until further notice.

51. Subsection (5) specifies the meaning of relevant authority in this section.

Section 24 – Directions specifying that development is not a significant infrastructure project

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

53. The Welsh Ministers must publish the direction and report to the Senedd that a direction has been given.

Section 25 – Directions under section 22 to 24: general provision

54. Section 25 states that any direction made under sections 22 to 24 may be given subject to conditions and may specify the period of time for which it has effect.

55. A direction made by the Welsh Ministers under these sections can be given at the request of a developer or unilaterally. The Welsh Ministers are not required to consider a request for a direction unless it is a qualifying request from a developer. After making a decision on a qualifying request, the Welsh Ministers must give reasons for their decision to the person who made the request.

Section 26 – Directions under section 22: regulations about procedure

56. Section 26 gives the Welsh Ministers power to make regulations about procedural matters in connection with directions under sections 22 to 24 of this Bill.

Part 3 – Applying for infrastructure consent

57. Part 3 of the Bill sets out the pre-application procedure, how an application for infrastructure consent is to be made to the Welsh Ministers and the requirements for publicity and notification. It also sets out some procedures that relate to the compulsory acquisition of land as part of an infrastructure consent.

Assistance for applicants

Section 27 – Provision of pre-application services

58. Section 27 provides the Welsh Ministers with a power to make regulations regarding the provision of pre-application services by the Welsh Ministers, local planning authorities in Wales or Natural Resources Wales. Pre-application services are intended to assist prospective applicants prior to the submission of an application for infrastructure consent.

59. The power to make regulations includes the power to make provision regarding:
    - the circumstances in which pre-application services must be provided,
    - the form and content of a request for pre-application services, including the information required to be submitted together with a request,
    - what services must be provided by the Welsh Ministers, local planning authorities and Natural Resources Wales, including when and how they are provided,
    - requirements for the Welsh Ministers, local planning authorities and Natural Resources Wales to publish the range of pre-application services they provide, and
    - other steps required to be taken by any person in relation to the provision of pre-application services.

Section 28 – Obtaining information about interests in land

60. Section 28 enables the Welsh Ministers to authorise an applicant for infrastructure consent to serve notice on the persons specified in subsection (4).

61. The recipient of a notice is required to give to the applicant in writing the name and address of any person the recipient believes is an owner or occupier of the land or has some interest in or power over the land.

62. The purpose of this is to enable the applicant to comply with provisions of, or made under, section 29 (provisions about notice of proposed application), 30 (provisions about pre-application consultation and publicity), and sections 61 to 69 (provisions in orders authorising compulsory purchase).

63. The section also enables the Welsh Ministers to authorise the applicant to serve a notice requiring the recipient of a notice to give to the applicant in writing the name and address of any person the recipient believes is entitled to make a claim for compensation if the application for infrastructure consent were to be approved and development were to take place.

64. The words "person interested in the land" and "a person having power to sell and convey the land or to release the land" have the same meaning as in section 5(1) of the Compulsory Purchase Act 1965.

65. The section enables the Welsh Ministers to make regulations about a notice given under this section, notifying persons listed under subsection (4), where there is

a proposed application or application for infrastructure consent that includes a compulsory acquisition request.

66. This section makes it an offence where a person has failed without reasonable excuse to comply with a notice given under the section, in the case where they have provided false information. The offence is a summary offence and is punishable following conviction by a fine.

67. Where the offence is committed by a corporate body, officers of that body can be held liable for the offence also, see section 133.

Pre-application procedure

Section 29 – Notification of proposed application

68. Section 29 requires any person who proposes to make an application for an infrastructure consent to first notify:
    - the Welsh Ministers;
    - each local planning authority and community council for the area in which the proposed development is located (where a proposed development is in Wales);
    - Natural Resources Wales and each local planning authority and community council the person considers appropriate (where a proposed development is in the Welsh marine area);
    - constituency and regional Members of the Senedd for each area where a proposed development is located;
    - Members of Parliament who represent constituencies in Wales for each area where a proposed development is located; and
    - any other persons, or person of a description prescribed in regulations of the application.

69. A notification under this section must comply with any requirements specified in regulations, which may include:
    - the form and content of a notification,
    - what information, documents or other materials must accompany a notification, and
    - how and when a notification is to be given.

70. Upon receiving a notification which complies with all requirements under this section, the Welsh Ministers will be required to send written notice to the person who originally submitted a notification form, confirming it has been accepted and the prospective applicant may proceed to pre-application consultation.

71. This section also enables the Welsh Ministers to make regulations regarding (among other things):
    - the form and content of the notice;
    - how a notice is to be given, and
    - the period within which such notices are to be given.

72. The requirement to notify the Welsh Ministers under this section does not apply if a proposed application is being made following a direction specifying development as a significant infrastructure project, and a qualifying request was made under section 22.

Section 30 – Pre-application consultation and publicity

73. Section 30 requires a person who proposes to submit an application for infrastructure consent to carry out consultation on a proposed application prior to its submission. Any consultation or publicity undertaken prior to a prospective application receiving notice from the Welsh Ministers under section 29 shall not be treated as consultation or publicity under this section.

74. This section also provides the Welsh Ministers with a power to make regulations for, or in connection with, consultations and includes (among other things):
- who must be consulted,
- how consultations must be carried out,
- responding to consultations, including responding by preparing and publishing a report,
- timetables in connection with consultations, and
- how consultations must be publicised.

Application procedure

Section 31 - Applying for infrastructure consent

75. Section 31 requires an application for infrastructure consent to be made to the Welsh Ministers and provides that infrastructure consent may only be given if an application is made for it.

76. There is also a requirement for an application for infrastructure consent to specify the development to which it relates and that it must include a pre-application consultation report and a draft infrastructure order.

77. This section also enables the Welsh Ministers to make regulations about (among other things):
- the form and content of an application,
- how an application is made,
- what information, documents or other materials must be included in an application,
- how an application is processed,
- how an application may be varied or withdrawn,
- notices relating to an application, and
- the period within which an application must be made (including any extensions of time).

78. Regulations may also confer a function on any person.

Section 32 – Deciding on the validity of an application and notifying the applicant

79. Section 32 requires the Welsh Ministers, on receiving an application for infrastructure consent, to decide whether or not to accept an application as valid.

80. An application must be considered valid if it is received within the period specified in regulations and complies with the requirements imposed by or under section 31. The Welsh Ministers must give notice to the applicant of a decision to accept the application as a valid application.

81. Where an application does not comply with the requirements in this section or section 31 and cannot be accepted by the Welsh Ministers, they must notify the applicant of this decision, including the reasons why it cannot be accepted as valid.

Section 33 – Notice of accepted applications and publicity

82. Section 33 requires the Welsh Ministers to notify certain parties where they have accepted an application as valid.

83. Notice must be given to each local planning authority and community council in which the proposed development is located. Where development is in the Welsh marine area, notice must be given to any local planning authority or community council the Welsh Ministers consider appropriate and must be given to the Natural Resources Body for Wales. There is also a requirement for the Welsh Ministers to notify any other persons specified in regulations.

84. Notice must also be given to constituency and regional Members of the Senedd, in addition to Members of Parliament who represent constituencies in Wales for each area where a proposed development is located.

85. This section also requires the Welsh Ministers to publicise an application in the way specified in regulations and must also include the date by which any representations must be received, which will not expire before the end of a minimum representation period specified in regulations.

86. However, the Welsh Ministers have ability to extend the deadline by which representations must be received and may also extend the deadline more than once. Where this power is used, the Welsh Ministers are required to undertake publicity and notification again, specifying the new date by which representations must be received.

87. This section also allows for the Welsh Ministers to direct the applicant to notify persons of an application and publicise an application in the way specified in the direction.

Section 34 – Regulations about notices and publicity

88. Section 34 provides the Welsh Ministers power to make regulations:

- on the form and content of notices of accepted applications (section 32 and notices of publicity (section 33), how they are given, and the timescales for giving them,

- on how representations are to be given in response to notification or publicity under section 33, the form and content of such representations and timescales for submission,
- imposing a requirement on specified persons to respond to a notice given under section 32(2)(c), and
- on how persons may respond to publicity under section 33 and how representations are to be publicised.

89. Regulations may also confer a function, including a function involving the exercise of a discretion, on any person to ensure publicity and notification requirements are undertaken by the most appropriate party on a case-by-case basis.

Section 35 – Local impact reports

90. Section 35 makes provision about local planning authorities and community councils responding to notification or publicity about proposed development by a local impact report which gives details of the likely impact of a proposed development within the area of a local authority and community council.

91. Where a proposed development is in the area of a local planning authority and the authority receives notification of an accepted application under section 33(2)(a)(i) the authority must submit a local impact report to the Welsh Ministers before the deadline specified in the notice.

92. A community council which is notified of a proposed development under section 33(2)(a)(ii) may also, but is not required to, submit a local impact report to the Welsh Ministers before the deadline specified in the notice.

93. Where a proposed development is in the Welsh marine area, any local planning authority or community council which is given notice of the proposed development under section 33(2)(b)(ii) may submit a local impact report to the Welsh Ministers before the deadline specified in the notice.

94. Where a planning authority or community council submits a local impact report otherwise than in response to a notice under section 33(2), they must submit the local impact report to the Welsh Ministers before the deadline specified in the publicity undertaken under section 33(3).

95. This section also provides the Welsh Ministers with a regulation-making power to prescribe the form and content of a local impact report and any report submitted to the Welsh Ministers must comply with the requirements specified in the regulations.

Section 36 – Marine impact reports

96. Section 36 requires the Natural Resources Body for Wales to submit to the Welsh Ministers a marine impact report where it is notified of an application for proposed development in the Welsh marine area, if the draft order submitted in

an application for infrastructure consent contains provision for a deemed marine licence.

97. Subsection (2) provides that the Welsh Ministers may also direct the Natural Resources Body for Wales to submit a marine impact report in respect of an application for infrastructure consent.

98. Subsection (3) provides that the Natural Resources Body for Wales may submit a marine impact report in respect of an application for infrastructure consent otherwise than in response to a notice given under section 33(2)(b)(i) or a direction given under section 36(2).

99. A marine impact report must give details of the likely impact of a proposed development on the marine environment.

100. A report submitted in response to subsection (1) must be submitted to the Welsh Ministers before the deadline specified in the notice. A report submitted in response to a direction under subsection (2) must be submitted to the Welsh Ministers before the deadline specified in the direction. A marine impact report submitted voluntarily, otherwise than in response to a notice or a direction must be submitted within the deadline provided for responding to publicity under section 33(3).

101. This section also provides the Welsh Ministers with a regulation-making power to prescribe the form and content of a marine impact report and any report submitted to the Welsh Ministers must comply with such requirements as are prescribed in regulations.

Section 37 – Notice of persons interested in land to which compulsory acquisition request relates

102. This section provides that where the Welsh Ministers have accepted an application for infrastructure consent that includes a request for authorisation of the compulsory acquisition of land or an interest in or right over land, the applicant must give the Welsh Ministers names and other prescribed information in relation to persons with an interest in the land. The applicant is required to make diligent inquiry to ascertain the names of affected persons.

Section 38 – Consultation post-application in relation to compulsory acquisition

103. Section 38 provides the Welsh Ministers with a regulation making power to make provision for and in connection with consultation by an applicant for infrastructure consent where it includes a request for the compulsory acquisition of land. The regulations may make detailed provision about the consultation required including information that is to be provided during the consultation and its timetable.

Part 4 – Examining applications

104. Part 4 of the Bill sets out the processes and procedures for examining applications for infrastructure consent.

Appointing an examining authority

Section 39 – Appointing an examining authority

105. Section 39(1) requires the Welsh Ministers to appoint a person or a panel of persons to examine each valid application for infrastructure consent.

106. Subsection (2) provides that the Welsh Ministers may (but are not required to) appoint a person or a panel of persons to examine an application to revoke or change an infrastructure consent order. In deciding whether to appoint a person or a panel of persons to examine such an application, the Welsh Ministers must apply any criteria set out in a document published under subsection (3).

107. The Welsh Ministers may make or revoke an appointment of a person or person on a panel at any time.

108. This section also provides the Welsh Ministers with a power to make regulations making further provision for, or in connection with, the appointment of a person or a panel under this section.

109. A person or panel of persons appointed under this section is referred to in the Bill as an "examining authority".

Examining applications

Section 40 – Examining authority to examine applications

110. Section 40 provides that an examining authority has the function of examining an application in respect of which it has been appointed.

Section 41 – Choice of inquiry, hearing or written procedure

111. Section 41 requires the examining authority to determine how each application it examines is to be examined before the end of a period specified in regulations.

112. The examining authority must determine whether the application is to be examined on the basis of the application or on written representations (if any) about the application, at a hearing, at a local inquiry, or by any combination of these procedures. In the determination of those procedures, the examining authority must provide for examination of the application to include a hearing, unless the determination provides for a local inquiry or the examining authority considers a hearing would not assist the examination.

113. The examining authority may vary its determination as to how an application is to be examined at any time before the application being examined is decided.

114. The examining authority is required to notify any person or person of a description specified in regulations of its determination under subsection (1). The examining authority must also notify persons specified in regulations if it varies a determination made under subsection (1).

115. This section also requires the Welsh Ministers to publish a document setting out the criteria to be applied by an examining authority in determining how an application is to be examined.

Section 42 – Examination procedure

116. Section 42 provides the Welsh Ministers with a power to make regulations about the procedure to be followed in connection with the examination of an application under Part 4. The regulations may make provision about the procedure to be followed in connection with making a determination under section 41, about how an application is to be examined, about matters preparatory and subsequent to an examination and about the conduct of an examination.

Section 43 – Power to enter land in connection with examination

117. Section 43 provides a person authorised in writing by the Welsh Ministers may at a reasonable time enter land to carry out site inspection in connection with the examination of an application.

118. Subsection (2) provides conditions for the person entering the land, including they must provide evidence of their authority and state their purpose of entry before doing so, if required, and they must leave the land as secured against trespassers as how they found it. Subsection (2)(e) allows the Welsh Ministers to set other conditions for the entering of land in the giving of their authorisation.

119. A person commits an offence if they intentionally obstruct a person acting in the carrying out of the function to enter land and is liable on summary conviction to a fine.

Section 44 – Power to enter Crown land in connection with examination

120. Section 44 provides that a person must not enter Crown land in connection with examination of an application, unless they have the permission of a person appearing to be entitled to give it or of the appropriately Crown authority.

121. This section also provides that specified subsections of section 43 do not apply in relation to Crown land.

Section 45 – Power of examining authority to hold local inquiry

122. Section 45 allows an examining authority to hold a local inquiry for the purposes of examining an application.

123. The examining authority may, by summons, require any person to attend an inquiry in accordance with the requirements specified in the summons and to give evidence, and require any person to produce any documents which relate to any matter in question at the inquiry.

124. The summons must specify the time and place at which the person is required to attend. However, the person is not required to attend unless their expenses for attending are paid or offered to them.

125. Where a person refuses or deliberately fails to comply with a requirement of a summons or deliberately alters, suppresses, conceals or destroys a document they are required to produce, they will have committed an offence and can be tried in the Magistrates Court or in the Crown Court. If found guilty, they will be liable to an unlimited fine.

126. The examining authority holding the inquiry may also administer oaths and take evidence on oath.

Section 46 – Access to evidence at inquiry

127. Where a local inquiry is held, section 46 requires that all oral evidence is to be heard in public and that all documentary evidence is to be open to the public for inspection.

128. But the Welsh Ministers or the Secretary of State (a "ministerial authority") may direct that oral evidence is to be heard and documents are to be inspected by specific persons only (and not the public) if they are satisfied that public disclosure of evidence would likely 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 and that the public disclosure of information would be against the national interest.

129. If such a direction is being considered, the Counsel General may appoint a person ("an appointed representative") to represent the interests of persons prevented from hearing or inspecting evidence.

130. This section also provides the Welsh Ministers with a power to make regulations about the procedure to be followed by a ministerial authority before a direction is given where there is an appointed representative and about the functions of an appointed representative.

Section 47 – Payment of appointed representative where access to evidence restricted

131. Section 47 makes provision about paying the appointed representative whether or not an inquiry takes place.

Section 48 – Assessors

132. Section 48 allows the examining authority or the Welsh Ministers to appoint an assessor to assist in the examination of an application on a particular specialist matter or specific topic. A person may only be appointed as an assessor if the examining authority or the Welsh Ministers consider the person has suitable expertise to assist the examining authority.

Section 49 – Legal assistance

133. Section 49 allows the examining authority or the Welsh Ministers to appoint a barrister or solicitor to provide legal advice and assistance to the examining authority in connection with the examination under Part 4 of the Bill.

134. Where a barrister or solicitor is appointed, they may, for example assist the examining authority by carrying out oral questioning of a person making representations at a hearing or inquiry on behalf of the examining authority.

Section 50 – Reports by examining authority

135. Where the Welsh Ministers have the function of deciding an application following the examination of the application by the examining authority, this section requires the examining authority to make a report to the Welsh Ministers. The report must set out the examining authority's findings and conclusions in respect of the application and its recommendations as to the decision to be made on the application.

Section 51 – Power to direct further examination

136. Section 51 allows the Welsh Ministers to direct the examining authority to re-open its examination of an application following receipt of a report by the examining authority.

137. Where an examination is re-opened, it must be undertaken in accordance with any requirements specified in the direction given under subsection (1).

138. The examining authority will be required to make a report to the Welsh Ministers setting out its findings and conclusions in respect of the application and its recommendations as to the decision to be made on the application on the conclusion of an examination re-opened under this section.

Section 52 – Orders relating to costs of parties on examination proceedings

139. Section 52 allows the Welsh Ministers to make orders about the costs of the applicant, a planning authority, themselves or any other party to examination proceedings (which may include costs in respect of a hearing or inquiry that does not take place) and about the person(s) who must pay these costs.

140. Subsection (4) sets out how costs payable by virtue of such an order are recoverable.

Part 5 – Deciding applications for infrastructure consent

141. Part 5 of the Bill contains provisions about deciding applications for infrastructure consent.

142. This Part makes provision about who decides an application for infrastructure consent made under section 31 (an "application"), about what the decision-maker has to take into account when deciding an application, about the timetable for making the decision, and about making the decision.

Decision maker

Section 53 – Functions of deciding applications

143. Section 53 states that the examining authority has the function of deciding applications for infrastructure consent of a description specified in regulations and that the Welsh Ministers have the function of deciding any other application for infrastructure consent.

144. But the Welsh Ministers may direct that an examining authority has the function of deciding the application instead of the Welsh Ministers, or that the Welsh Ministers have the function of deciding an application instead of an examining authority.

Statutory policies and other relevant matters

Section 54 – Deciding applications: general considerations

145. Section 54 provides that applications for infrastructure consent must be decided by having regard to any infrastructure policy statement that has effect in relation to development of the description to which an application relates ("relevant policy statement"), the National Development Framework for Wales (first published in 2019 with the title *Future Wales: the National Plan 2040*), so far as relevant to development of the description to which an application relates and a marine plan prepared and adopted by the Welsh Ministers (first published in 2019 with the title *Welsh National Marine Plan*). It further provides that any decision on an application for infrastructure consent must be made in accordance with the statutory policies listed above, unless relevant considerations indicate otherwise. Subsection (2) confirms that if a statutory policy document as listed identifies a location as suitable, or potentially suitable, for a particular development, this does not prevent a different decision on an application being made if other relevant considerations indicate this should be the case.

Section 55 – Duty to have regard to specific matters when making decisions on application

146. Section 55 places a duty on the examining authority or the Welsh Ministers (as the case may be) to have regard to the following when deciding an application for infrastructure consent:

- any local impact report or marine impact report submitted before the deadline, specified either in a notice or publicity under section 33,
- any examination carried out under Part 4,
- any matters specified in regulations in relation to development of the description to which the application relates,
- the desirability of mitigating, and adapting to, climate change; and
- any other relevant consideration.

Section 56 – Matters that may be disregarded when making decisions on applications

147. Section 56 provides the Welsh Ministers or the examining authority may disregard representations (including evidence) in deciding an application for infrastructure consent, if they consider the representations to be:
    - vexatious or frivolous,
    - relate to the merits of policy set out in an infrastructure policy statement, the National Development Framework or any marine plan; or
    - relate to compensation for compulsory acquisition of land or of an interest in or right over land.

148. Regulations may amend the matters that may be disregarded in order to specify further matters or to change or remove matters already specified in section 55.

Timetable

Section 57 – Timetable for deciding application for infrastructure consent

149. Section 57 makes provision about the timetable for deciding applications for infrastructure consent. Subsection (1) states that the examining authority or the Welsh Ministers must decide an application before the end of the period of 52 weeks beginning with the day on which the application is accepted as valid under section 32 or any other period agreed between the applicant and the Welsh Ministers.

150. Section 57(2) gives the Welsh Ministers the power to extend, by direction, the periods for deciding an application mentioned in subsection (1). Under subsection (3), the Welsh Ministers may give more than one direction in relation to an application (allowing them to extend the decision period multiple times) and may give a direction after the end of the periods mentioned in subsection (1).

151. Subsection (4) requires the Welsh Ministers to notify the applicant and other persons specified in regulations of the direction, to publish the direction and to lay a statement about the direction before Senedd Cymru explaining its effect and why it was given.

152. Subsection (5) requires the Welsh Ministers to provide the Senedd with annual reports on the compliance with the duty imposed by subsection (1) and the exercise of the functions conferred by subsection (2).

153. Subsection (6) allows the period of 52 weeks mentioned in subsection (1)(a) to be amended by regulations. Any regulations made under this section are subject to the affirmative procedure.

The decision

Section 58 – Grant or refusal of infrastructure consent

154. When the Welsh Ministers have decided an application, section 58 requires the Welsh Ministers to either make an order granting infrastructure consent or refuse infrastructure consent.

155. When an examining authority has decided an application, this section requires it to either notify the Welsh Ministers of its decision that an order granting infrastructure consent is to be made or refuse infrastructure consent.

156. Where the Welsh Ministers receive a notification from the examining authority that an infrastructure consent order is to be made, the Welsh Ministers must make the order.

157. This section also specifies that where infrastructure consent is either granted or refused, applicants, relevant local planning authorities and community councils, Natural Resources Wales (only applicable where a marine impact report has been submitted) and any other person or persons of a description specified in regulations, must be notified of the decision.

158. Regulations under this section may make provision regulating the procedure to be followed if the Welsh Ministers propose to make an infrastructure consent order on terms which are materially different from those proposed in the application.

Section 59 – Development for which infrastructure consent may be granted

159. Section 59 specifies the development for which infrastructure consent may be granted.

160. Infrastructure consent may be granted for development for which an infrastructure consent is required (see section 19 for discussion about development that requires infrastructure consent), as well as "associated development".

161. "Associated development" is development that is associated with development that requires infrastructure consent (or any part of it) and is wholly within Wales, wholly within the Welsh marine area, or wholly within Wales and the Welsh Marine area.

162. The meaning of "Wales" and the "Welsh marine area" is explained at section 141 (general interpretation).

163. If infrastructure consent is granted for "associated development", none of the consents mentioned in section 20 (as that section may be amended by section 21) are required to be obtained for the "associated development".

Section 60 – Reasons for decision to grant or refuse infrastructure consent

164. Section 60 requires the Welsh Ministers to prepare a statement of their reasons to either make an order granting infrastructure consent or refuse infrastructure consent. A copy of the statement must be sent to the applicant, any planning authority or community council that has submitted a local impact report to the Welsh Ministers in respect of the application, Natural Resources Wales if it has submitted a marine impact report to the Welsh Ministers in respect of the

application and any person or person of a description specified in regulations. The statement must be published in such manner as they consider appropriate.

165. The section also requires the examining authority to prepare a statement of its reasons for deciding that an order granting infrastructure consent is to be made or refuse infrastructure consent. A copy of the statement must be sent to the applicant, any planning authority or community council that has submitted a local impact report to the Welsh Ministers in respect of the application, Natural Resources Wales if it has submitted a marine impact report to the Welsh Ministers in respect of the application and any person or person of a description specified in regulations. The statement must be published in such manner as the examining authority considers appropriate.

Part 6 – Infrastructure consent orders

166. Part 6 of the Bill contains provisions which relate to infrastructure consent orders. Section 61 specifies what may be included in an infrastructure consent order. Sections 62 to 70 make provisions about orders authorising compulsory acquisition. Sections 71 to 82 provide specific limitations on what can be included in an order, and also provide specific powers to include certain provisions in orders. Section 83 details the procedure for publication of infrastructure consent orders.

167. Sections 84 to 91 provide the Welsh Ministers with powers to change or revoke infrastructure consent orders. Sections 92 to 99 are about the effect of infrastructure consent orders and contain provisions about the duration of an infrastructure consent order, legal challenges, planning obligations and compensation in case where defence of statutory authority applies in civil or criminal proceedings for nuisance.

Provision in orders: general

Section 61 – What may be included in an infrastructure consent order

168. This section specifies what may be included in an infrastructure consent order.

169. Subsections (1) and (2) provide that an infrastructure consent order may impose requirements relating to the development for which infrastructure consent is granted. The types of requirements which may be imposed include those corresponding to conditions which could have been imposed on the grant of any permission, consent and authorisation, or the giving of any notice which would have been required for the development but for section 20(1) or any provision made under section 82. The requirements that may be imposed also include obligations to obtain the approval of the Welsh Ministers or any other person, so far as not within section 61(2)(a).

170. Subsection (3) provides that an infrastructure consent order may also make provision relating to, or to matters ancillary to, the development for which consent is granted.

171. Subsection (4) specifies that the provision that may be made under subsection (3) includes provision relating to any of the matters specified in Part 1 of Schedule 1.

172. Subsection (5) provides that regulations may add a matter to Part 1 of Schedule 1 or vary or remove any matter listed in Part 1 of Schedule 1.

173. Subsection (6) provides that an infrastructure consent order may apply, modify or exclude an enactment which relates to any matter for which provision may be made in the order. An infrastructure consent order may also amend, repeal or revoke enactments of local application as appear to the Welsh Ministers to be appropriate in consequence of a provision of the order or in connection with the order. An infrastructure consent order may also include such provisions that appear to the Welsh Ministers to be appropriate to give full effect to any other provisions in the order and may also include any incidental, consequential, supplementary, transitional or saving provisions.

174. Subsection (7) states that infrastructure consent orders may not create offences, confer power to create an offence or change an existing power to create offences unless the provision is made under subsection (3) and relates to any of the matters listed in paragraph 29(1) of Schedule 1 (creation of certain offences).

175. Subsection (8) states that, to the extent that provision for or relating to a matter may be included in an infrastructure consent order, no provision can be made of the kind of on order under section 14 or 16 of the Harbour Act 1964 or an order under section 1 or 3 of the Transport and Works Act 1992.

176. Schedule 1 lists the matters relating to, or ancillary to, the development for which consent is granted, as referenced at section 60(3). Paragraphs 28 and 29 of Schedule 1 includes matters which, if included in a consenting order, will require the order to be in the form of a statutory instrument, as specified at section 82(3)(a).

Provision in orders authorising compulsory acquisition

Section 62 – Purpose for which compulsory acquisition may be authorised

177. Section 62 provides that an infrastructure consent order may only include provision authorising the compulsory acquisition of land if the Welsh Ministers are satisfied that the land is:

- required for the development to which the infrastructure consent relates,
- required to facilitate that development or is incidental to that development, or
- replacement land given in exchange for the land authorised to be compulsorily acquired under section 68 (commons, open spaces etc.: compulsory acquisition of land) or section 69 (commons, open spaces etc.: compulsory acquisition of rights over land),

and that there is a compelling case in the public interest for the land to be acquired compulsorily.

Section 63 – Land to which authorisation of compulsory acquisition can relate

178. Section 63 provides that an infrastructure consent order may only include provision authorising the compulsory acquisition of land if the land is in Wales or the Welsh marine area and one of the following conditions is met:
    - the condition in subsection (2) is that the application for infrastructure consent included a request for compulsory acquisition of the land to be authorised;
    - the condition in subsection (3) is that all persons with an interest in the land consent to the inclusion of this provision;
    - the condition in subsection (4) is that the procedure specified in regulations has been followed in relation to that land.

179. Wales and Welsh marine area are defined in section 141.

Section 64 – Application of compulsory acquisition provisions

180. Section 64 provides that Part 1 of the Compulsory Purchase Act 1965 applies (with specified modifications) to any infrastructure consent order that contains provisions authorising the compulsory acquisition of land.

181. However, the order itself may make contrary provision.

182. The Compulsory Purchase Act 1965 sets out the procedure whereby ownership of the land is transferred to the acquiring authority.

183. The acquiring authority means the public authority or other person authorised by the infrastructure consent order to acquire the land.

Section 65 – Compensation for compulsory acquisition

184. Section 65 restricts the provision that may be made about compensation for compulsory acquisition in an infrastructure consent order that authorises the compulsory acquisition of land. (In particular restrictions are to compensation provisions under existing acts, such as the Land Compensation Act 1961.)

Section 66 – Statutory undertakers' land

185. Section 66 applies to land ("statutory undertakers' land") that a statutory undertaker has acquired for the purpose of its undertaking, and as a result of a representation made about an application for infrastructure consent, the Welsh Ministers are satisfied that the land is used for the purposes of carrying on the statutory undertakers' undertaking or an interest in the land is held for those purposes.

186. For an infrastructure consent order to be made that includes provision authorising the compulsory acquisition of statutory undertakers' land, the Welsh Ministers must be satisfied that the nature and the situation of the land are such that:
    - the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or

- it can be purchased and replaced with other land without any such detriment.

187. Similarly, an infrastructure consent order can include a provision authorising the compulsory acquisition of a right over statutory undertakers' land only if the Welsh Ministers are satisfied that:
    - the right can be purchased without serious detriment to the carrying on of the undertaking, or
    - any detriment can be remedied by the statutory undertaker using other land.

Section 67 – National Trust land

188. Section 67 applies to land which belongs to the National Trust that is held inalienably by them. It provides that an infrastructure consent order which authorises the compulsory acquisition of such land will be subject to special Senedd procedure (further consideration by the Senedd) if the National Trust has made an objection in a representation about an application for infrastructure consent and this objection has not been withdrawn.

Section 68 – Commons, open spaces etc: compulsory acquisition of land

189. Section 68 applies to land forming part of a common, open space or fuel or field garden allotment. This section provides that an infrastructure consent order that authorises the compulsory acquisition of such land will be subject to special Senedd procedure unless the Welsh Ministers are satisfied that one of the following applies:
    - replacement land has been or will be given in exchange for the land authorised to be compulsorily acquired ("order land") and that the replacement land will be vested in the person in whom the order land is vested and subject to the same rights, trusts and incidents;
    - where the order land is or forms part of an open space only, there is no suitable land to be given in exchange or any suitable land is only available at a prohibitive cost, and it is in the public interest for development to be begun sooner than is likely to be possible if the order were subject to special Senedd procedure;
    - where the order land is or forms part of an open space only, it is being acquired for a temporary purpose;
    - the land being acquired does not exceed 200 square metres or is required for the widening or drainage of an existing highway (or partly for the widening and partly for the drainage of such a highway), and the giving of land in exchange for it is unnecessary.

190. Where the Welsh Ministers are satisfied that one of these exceptions applies, they must record that fact in the order or otherwise in the instrument or other document containing the order.

191. Any replacement land must be no less in area than the land being compulsorily acquired and must be no less advantageous.

Section 69 – Commons, open spaces etc: compulsory acquisition of rights over land

192. Section 69 applies to land forming part of a common, open space or fuel or field garden allotment. This section provides that an infrastructure consent order that authorises the compulsory acquisition of a new right over such land will be subject to special Senedd procedure unless the Welsh Ministers are satisfied that one of the following applies:

- the order land when burdened with the order right will be no less advantageous than it was before to the person in whom it is vested, any other persons (if any) entitled to rights of common or other rights, and the public;
- replacement land has been or will be given in exchange for the order right and that land has been or will be vested in the persons in which the order land is vested and that replacement land will be subject to the same rights, trusts and incidents as the order land;
- where the land is open space only, there is no suitable land to be given in exchange for the order right or any suitable land is only available at a prohibitive cost, and it is in the public interest for development to be begun sooner than is likely to be possible if the order were subject to special Senedd procedure;
- where the land is open space only, it is being acquired for a temporary purpose;
- the land over which the right is being acquired does not exceed 200 square metres, or the right is required in connection with the widening or drainage of an existing highway (or in connection partly with the widening and partly with the drainage of such a highway) and the giving of land in exchange for the order right is unnecessary in the interest of the person entitled to rights of common or other rights or in the interests of the public.

193. Where the Welsh Ministers are satisfied that one of these exceptions apply, they must record that fact in the order or otherwise in the instrument or other document containing the order.

194. In this section, "order right" means the right authorised to be compulsorily acquired, and "order land" means the land over which the order right is to be exercisable. "Replacement land" means land which will be adequate to compensate the persons mentioned in subsection (9) for disadvantages which would apply to them as a result of the compulsory acquisition of a new right over land.

Section 70 – Notice of authorisation of compulsory acquisition

195. Section 70 provides that regulations must be made by the Welsh Ministers that require a person who has been authorised by an infrastructure consent order to compulsorily acquire land or a person for whose benefit the order authorises the creation of a new right (the "prospective purchaser") to give, publish or display

a "compulsory acquisition notice". Such a notice must contain the information set out in subsection (2).

196. The notice must also be sent to the Chief Land Registrar and is to be a local land charge in respect of the land to which it relates.

Provision in orders: specific limitations and powers

Section 71 – Public rights of way

197. Section 71 specifies that an infrastructure consent order cannot extinguish a public right of way over land unless the Welsh Ministers are satisfied that an alternative right of way has been or will be provided, or that an alternative right of way is not required.

198. Where an infrastructure consent order authorises the acquisition of land and extinguishes a non-vehicular public right of way over the land, the order cannot provide for the right of way to be extinguished earlier than the date on which the order is published. And the Welsh Ministers must direct that the right of way revives if the right is extinguished before the acquisition of the land is completed but the proposal to acquire the land is abandoned.

Section 72 – Power to override easements and other rights

199. This section amends section 205 of the Housing and Planning Act 2016 so that the power to override easements and other rights for carrying out building or maintenance work in section 203 and the subsequent power to pay compensation in section 204 of that Act applies where infrastructure consent has been granted for the building or maintenance work.

Section 73 – Extinguishment of rights, and removal of apparatus, of statutory undertakers etc.

200. Section 73 applies where an infrastructure consent order authorises the acquisition of land and the land falls into one or more of the following categories:
    - land in respect of which a statutory undertaker or electronic communications code network operator has a right specified in subsection (2) ("relevant right");
    - a "relevant restrictive covenant" applies to the land (which is a restrictive covenant that benefits the statutory undertakers in carrying on their undertakings);
    - there is on, under or over the land electronic communications apparatus or apparatus vested in or belonging to statutory undertakers ("relevant apparatus").

201. Where this section applies, an infrastructure consent order may include a provision requiring the extinguishment of a relevant right or relevant restrictive covenant or the removal of relevant apparatus only if the Welsh Ministers are satisfied that doing so is necessary for carrying out the development to which the order relates.

Section 74 – Crown land

202. Section 74(1) provides that an infrastructure consent order can authorise the compulsory acquisition of an interest in Crown land ("Crown land" is defined in section 131(2)) only if the interest is for the time being held otherwise than by or on behalf of the Crown, and the appropriate Crown authority ("appropriate Crown authority" is defined in section 132(5)) consents to the acquisition.

203. Subsection (2) provides that an infrastructure consent order can include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents.

Section 75 – Operation of generating stations

204. This section provides that an infrastructure consent order that authorises the operation of a generating station can only be made if the development to which the order relates is or includes the construction or extension of the generating station.

Section 76 – Keeping electric lines installed above ground

205. This section provides that an infrastructure consent order may authorise electric lines to be kept installed above ground only if the development to which the order relates is or includes the installation of the line above ground.

Section 77 – Diversion of watercourses

206. This section provides that an infrastructure consent order that authorises the diversion of any part of a navigable watercourse can only be made if the proposed new length of watercourse is navigable in a reasonably convenient manner by vessels familiar with using the watercourse being diverted.

207. If an infrastructure consent order authorises the diversion of any part of a navigable watercourse, it is also taken to authorise the diversion of any adjacent tow path or other way adjacent to that part.

Section 78 – Highways

208. This section provides that an infrastructure consent order may authorise the charging of tolls relating to a highway only if such a request was included in the application for the order.

Section 79 – Harbours

209. This section sets out the circumstances under which an infrastructure consent order may provide for the creation of a harbour authority, provide for the modification of the powers or duties of a harbour authority, and authorise the transfer of property, rights or liabilities from one harbour authority to another.

Section 80 – Discharge of water

210. This section applies to an infrastructure consent order that authorises the discharge of water into inland waters or underground strata. The person to whom infrastructure consent is granted does not acquire a general power to take water or to require discharges to be made from the inland waters or other sources from which the discharge authorised by the order are intended to be made.

Section 81 – Deemed consent under a marine licence

211. This section provides that an infrastructure consent order may deem a marine licence to have been issued under Part 4 of the Marine and Coastal Access Act 2009 for any activity for which the Welsh Ministers are the appropriate licensing authority (as defined in section 113 of the Marine and Coastal Access Act 2009).

212. A person who fails to comply with any conditions attached to the deemed marine licence does not commit an offence under section 101 of this Bill, but instead commits an offence under the Marine and Coastal Access Act 2009.

213. This Bill does not prevent a deemed marine licence from being varied, suspended, revoked or transferred in accordance with the Marine and Coastal Access Act 2009.

Section 82 – Removing consent requirements and deeming consents

214. Section 82(1) provides that an infrastructure consent order may include provision that removes the requirement for a consent specified in regulations to be granted, or deems a consent specified in regulations to have been granted, if the authority who would usually grant the consent:

- has given its consent to the provision being included in the order before the end of the period specified in regulations (subsection (2)), or
- has not refused its consent for the inclusion of such a provision before the end of the period specified in regulation (subsection (3)).

215. Subsection (4) allows regulations to provide exceptions to the requirement to meet the conditions set out in in subsections (2) and (3).

Procedure for infrastructure consent orders

Section 83 – Infrastructure consent orders: publication and procedure

216. This section requires the Welsh Ministers to publish an infrastructure consent order in such manner as they consider appropriate.

217. But an order must be contained in a statutory instrument if the order contains provision made under section 61(3) relating to any of the matters listed in paragraphs 28 and 29 of Schedule 1 (creation of certain offences by an infrastructure consent order), or is made in exercise of the powers conferred by section 60(6)(a) or (b) (modification of enactments by infrastructure consent order).

218. Where an order is contained in a statutory instrument, subsection (4) requires the Welsh Ministers to lay before Senedd Cymru a copy of the instrument, the latest version of any plan supplied by the applicant in connection with the application and a statement of reasons prepared under section 60 as soon as practicable.

Changing and revoking infrastructure consent orders etc.

Section 84 – Meaning of "decision documents" and "error"

219. This section sets out definitions for the purposes of sections 85 and 86.

Section 85 – Power to correct errors in decision documents

220. This section gives the Welsh Ministers a power to correct errors in a decision document (a "decision document" is the infrastructure consent order or the notice notifying the applicant that their application for infrastructure consent has been refused).

221. The power to correct errors may be exercised by the Welsh Ministers on receiving a request in writing to correct an error from any person or without such a request being made.

222. Subsection (4) provides that if the decision document is an infrastructure consent order, the power to correct errors must be exercised by order, and if the order being corrected is contained in a statutory instrument, the correction must be made by order contained in a statutory instrument.

223. Subsection (5) provides that if the decision document is a notice of refusal, the Welsh Ministers must exercise their power to correct the document by giving the applicant a notice.

Section 86 – Correcting errors: regulations

224. This section provides the Welsh Ministers with a power to make regulations regarding the procedure for correcting an error in a decision document.

225. The regulations may include, for example, provision regarding:

- any consultation that must take place,
- the circumstances in which the Welsh Ministers must publish a statement explaining the reason for correcting the error,
- the effect of making a correction and not making a correction, and
- when a correction takes effect.

Making changes to, and revoking, infrastructure consent orders

Section 87 – Definitions

226. This section sets out definitions for the purposes of sections 88 and 89.

Section 88 – Power to change or revoke infrastructure consent orders

227. This section gives the Welsh Ministers a power to make a change to an infrastructure consent order and to revoke an infrastructure consent order.

228. The provision that may be made by a way of a change to an infrastructure consent order includes any provision that may be made under section 61 (what may be included in an infrastructure consent order), but this is subject to the rules in this section.

229. The power may be exercised on an application made by the applicant or a successor in title of the applicant, a person with an interest in the land or any other person for whose benefit the infrastructure consent order has effect, and in

the circumstances set out in subsection (4) an application can be made by a planning authority.

230. The Welsh Ministers may also change or revoke an infrastructure consent order without an application being made.

231. The Welsh Ministers may refuse to exercise the power if they consider the development, as a result of the change, should be the subject of an application for a new infrastructure consent order.

232. Subsection (7) gives examples of some of the things that the power under subsection (1) to change or revoke infrastructure consent orders can be used to do. It includes, for example, requiring the removal or alteration of buildings or existing requirements and requiring the discontinuance of a use of land.

233. Subsection (8) makes it clear that existing building or other operations which have already been carried out are not affected by the exercise of the power in subsection (1), unless the change or revocation requires the removal or alteration of building works.

Section 89 – Procedure: changing and revoking infrastructure consent orders

234. This section provides the Welsh Ministers with a power to make regulations about the procedure for changing and revoking infrastructure consent orders.

235. The regulations may, for example, make provision about how an application for changing or revoking an infrastructure consent must be made, the decision-making process for such an application and the effect of a decision to exercise the power to change or revoke an order.

236. This section provides that where a person has an interest in some, but not all, of the land to which an infrastructure consent order relates, the person may make an application to change or revoke only in respect of the land in which the person has an interest.

237. This section requires a change or revocation of an infrastructure consent order which is contained in a statutory instrument to also be contained in the form of a statutory instrument.

Section 90 – Changing and revoking infrastructure consent orders: formalities

238. This section requires the Welsh Ministers to publish an order made under section 85 or 88 or a notice given under section 85 in a manner that they think is appropriate, but if the order is required to be contained in a statutory instrument, the Welsh Ministers must lay a copy before Senedd Cymru.

Section 91 – Changing or revoking an infrastructure consent order: compensation

239. Provision about compensation for changing or revoking an infrastructure consent order is made in Schedule 2.

Effect of infrastructure consent orders

Section 92 – Duration of infrastructure consent order

240. This section provides that where consent for development is granted by an infrastructure consent order, that development must commence within a period specified in regulations, or the period that is specified in the order. Failure to commence development within the applicable period will result in the infrastructure consent order ceasing to have effect at the end of that period.

241. Where the infrastructure consent order authorises the compulsory acquisition of land, subsection (3) provides that any steps that may be set out in regulations must be taken before the end of a period specified in regulations or the period that is specified in the order. If these steps are not taken within the applicable period, the authority provided by the order to compulsorily acquire the land ceases to have effect.

Section 93 – When development begins

242. This section states that development is taken to begin on the earliest day that any material operation comprised in, or carried out for the purposes of, the development begins to be carried out.

243. "Material operation" means any operation, but there is a power in subsection (2) for the Welsh Ministers to set out in regulations kinds of operations that are not a "material operation".

Section 94 – Legal challenges

244. This section provides that:

- an infrastructure consent order,
- a refusal of infrastructure consent,
- a decision not to accept an application as valid,
- a decision relating to correcting errors in a decision document,
- a decision relating to changing or revoking an infrastructure consent order, or
- anything else done or omitted to be done by the Welsh Ministers or an examining authority in relation to an application for infrastructure consent, or an application to change or revoke an infrastructure consent order,

may only 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 periods within which the 6 weeks begin can be found in subsections (1)(b), (2)(b), (3)(b), (4)(b), (5)(b) and (6)(b).

245. This section does not apply in relation to a failure to decide an application for infrastructure consent, or an application to change or revoke an infrastructure consent order, or to anything which delays (or is likely to delay) a decision on such applications.

Section 95 – Benefit of infrastructure consent order

246. Section 95 provides that an infrastructure consent order will have effect for the benefit of the land in respect of which the order is made and all those for the time being interested in the land, unless the order makes provision to the contrary.

Section 96 – Planning obligations

247. Section 96 amends the Town and Country Planning Act 1990 ("the TCPA") so as to allow the applicant promoting a significant infrastructure project to enter into agreements with local authorities, in the same way as a developer seeking planning permission under the TCPA is able to. These agreements are called "infrastructure consent obligations".

248. Subsection (3) amends section 106A of the TCPA. The effect of the amendment is that an infrastructure consent obligation may be varied or discharged by agreement between the Welsh Ministers and the person against whom the infrastructure consent obligation is enforceable. The amendment also provides that the person against whom the infrastructure consent obligation is enforceable may apply to the Welsh Ministers for it to be discharged or varied (if the Welsh Ministers decided or will decide the application in connection with which the obligation was entered into).

249. It will be for the local planning authority to enforce the obligation.

250. Subsection (5) makes provision about legal challenges in connection with planning obligations.

Section 97 – Blighted land

251. An infrastructure policy statement identifying a location as a suitable (or potentially suitable) location for a significant infrastructure project may create blight at that location, reducing land values and making it hard to sell the land. Blight may also result from an application being made for an infrastructure consent order authorising the compulsory acquisition of land or from such authorisation being given.

252. Section 97 amends the Town and Country Planning Act 1990 ("the TCPA") so as to allow owner-occupiers adversely affected in this way to have the benefit of the existing provisions of the TCPA relating to blight by making these descriptions of land "blighted land" for the purpose of the TCPA.

253. The TCPA provides a procedure which enables persons with certain interests in the land that is blighted to serve a notice on an "appropriate authority" requiring the authority to purchase their interest. The effect of subsection (6) is that the "appropriate authority" in the case of blight caused by an infrastructure policy statement is the statutory undertaker named as an appropriate person to carry out the development specified in the infrastructure policy statement, or the Welsh Ministers where there is no such named undertaker. The Welsh Ministers are to determine any disputes as to who the appropriate authority is.

254. Subsection (4) prevents the appropriate authority from serving a counter-notice to a blight notice on grounds of having no intention of conducting the development.

Section 98 – Nuisance: statutory authority

255. Section 98 confers statutory authority for carrying out development for which consent is granted by an infrastructure consent order and for doing anything else authorised by the order. Subsection (2) provides that statutory authority is conferred for the purpose of providing a defence in civil and criminal proceedings for nuisance. Subsections (1) and (2) are subject to any contrary provision made by an infrastructure consent order.

Section 99 – Compensation in case where defence of statutory authority applies

256. Section 99 confers a right to compensation in cases where, by virtue of section 98 or the terms of an infrastructure consent order, there is a defence of statutory authority in civil or criminal proceedings for nuisance in respect of any authorised works.

257. Subsection (2) defines "authorised works" as development for which an infrastructure consent order is granted and anything else authorised by the order.

258. Subsection (3) imposes a duty on the person who carries out the authorised works or on whose behalf such works are carried out, to pay compensation to any person whose land is injuriously affected by the carrying out of the authorised works.

259. Disputes about compensation under subsection (3) are referred to the Upper Tribunal.

260. Subsection (5) provides that section 10(2) of the Compulsory Purchase Act 1965 (limitations on compensation) applies to section 99(3) as it applies to section 10(2) of the Compulsory Purchase Act 1965.

261. Any rule or principle applied to the construction of section 10 of the Compulsory Purchase Act 1965 must be applied to the construction of section 99(3) with any necessary modifications.

262. Subsection (7) provides that Part 1 of the Land Compensation Act 1973 (c. 26) (compensation for depreciation of land value by physical factors caused by use of public works) applies in relation to authorised works as if:

- references in that Part to any public works were to authorised works;
- references in that Part to the responsible authority were to the person for whose benefit the infrastructure order has effect for the time being;
- sections 1(6) and 17 were omitted.

263. An infrastructure consent order cannot include provision the effect of which is to remove or modify the application of section 99.

Interpretation

Section 100 – Meaning of "land"

264. Section 100 provides that, in Part 6, "land" includes any interest in or right over land.

Part 7 – Enforcement

265. Part 7 of the Bill contains provisions about offences relating to development without infrastructure consent and a breach of, or failure to comply with, the terms of an infrastructure consent order and the ability to serve notices of unauthorised development.

266. This Part makes provision about what enforcement tools are available to local authorities and the Welsh Ministers to aid in undertaking enforcement duties, in addition to the time limits within which any enforcement action may be taken.

Offences

Section 101 – Development without infrastructure consent

267. This section provides that an offence is committed where a person carries out, or causes to be carried out, development which requires infrastructure consent, but at the time, no such consent is in force in respect of the development.

268. A person may be tried in the magistrates' court or the Crown Court and where found guilty, will be liable to an unlimited fine.

Section 102 – Breach of terms of infrastructure consent order

269. This section provides that an offence is committed if, without a reasonable excuse, a person carries out, or causes to be carried out, development which is in breach of the terms of an infrastructure consent order or fails to comply with the terms of an infrastructure consent order.

270. It is a defence for a person charged with an offence under this section to prove the breach or failure to comply only occurred because of an error in the infrastructure consent order and that the error has been corrected under section 85.

271. A person may be tried in the magistrates' court or the Crown Court and, where found guilty, will be liable to an unlimited fine.

Section 103 – Time limits

272. This section sets out time limits for bringing charges in relation to the offences created by sections 101 and 102.

Section 104 – Powers to enter land for enforcement purposes

273. This section allows a person authorised by a relevant planning authority or the Welsh Ministers to enter land for the purposes of assessing whether an offence

under section 101 or section 102 is being or has been committed. This may be exercised at any reasonable time and only if there are reasonable grounds for entering the land for the purpose in question.

274. Where a person is authorised to enter land, they must produce evidence of their authorisation to do so and the purpose of entry, if requested and may take on to the land any other persons considered necessary. They must also leave the land effectively secured against trespassers if they leave when no owner or occupier is present.

275. This section also specifies a person authorised to enter land may not demand entry to a building which is used as a dwelling unless 24 hours' notice of the intended entry is given to every occupier of the building.

Section 105 – Warrant to enter land

276. This section provides that a justice of peace may issue a warrant conferring a power to enter land if the justice of the peace is satisfied that there are reasonable grounds for entering land to assess whether an offence under section 101 or 102 is being, or has been, committed on or in respect of the land and that admission to the land has been refused or is reasonably expected to be refused, or the case is one of urgency.

277. An admission to land is to be treated as a refusal if no reply is received to a request for admission within a reasonable period.

278. Where a warrant is issued under this section, it can only confer a power to enter land on one occasion and at a reasonable time, unless the case is one of urgency and will cease to have effect 1 month from the day it is issued.

279. Where a person is authorised to enter land, they must produce evidence of their authorisation to do so and the purpose of entry, if requested and may take on to the land any other persons considered necessary. They must also leave the land effectively secured against trespassers if they leave when no owner or occupier is present.

Section 106 – Rights of entry: supplementary provisions

280. This section creates an offence where a person intentionally obstructs a person exercising a power of entry under section 104 or 105. A person may be tried in the magistrates' court and, where found guilty, will be liable to an unlimited fine.

281. This section also provides that if damage is caused to land or other property in the exercise of the power to enter land, the person suffering the damage may recover compensation from the relevant planning authority who authorised entry, or the Welsh Ministers if they authorised entry.

282. A claim for compensation under this section must be made in writing within 12 months, beginning with the day the damage was cause, or the last day damage

was caused if it was over a period of more than 1 day, and any disputes arising must be referred to and determined by the Upper Tribunal in accordance with section 4 of the Land Compensation Act 1961.

Section 107 – Rights of entry: Crown land

283. This section provides that the power to enter land with or without a warrant under sections 104 and 105 does not apply to Crown land.

Section 108 – Marine enforcement powers

284. This section amends the Marine and Coastal Access Act 2009 ("the 2009 Act") by inserting new section 243A into that Act.

285. New section 243A provides the Welsh Ministers with a power to appoint persons for the purposes of enforcing the Infrastructure (Wales) Act 2024 in Wales and in the Welsh inshore region (and in relation to any vessel, aircraft or marine structure in this region, with the exception of any British warship).

286. The power gives the Welsh Ministers a wide discretion in who they appoint and gives a person appointed under this section the common enforcement powers set out in Chapter 2 of Part 8 of the 2009 Act (common enforcement powers). These include:

- powers of entry, search and seizure,
- powers to record evidence of offences and to require names and addresses,
- powers to require the production of licences,
- powers to require attendance of certain persons,
- powers to direct vessels or marine installations to port,
- powers relating to assisting enforcement officers,
- powers to use reasonable force, and
- powers to require information relating to certain substances and objects.

Information notices

Section 109 – Power to require information

287. This section allows the relevant planning authority or the Welsh Ministers to serve an information notice on any person who is the owner or occupier of land or has any other interest in it, or who is carrying out operations on the land or using it for any purpose, where they consider an offence under section 101 or section 102 may have been committed on or in respect of land.

288. The section also allows the Welsh Ministers to serve an information notice on a person carrying out operations in the Welsh marine area where they suspect an offence to have been committed in or in respect of the Welsh marine area.

289. This section also prescribes what an information notice must specify and what it may specify and requires the person on whom a notice is served to provide the information specified in the notice so far as they are able to do so. The notice must set out the likely consequences for failing to respond.

Section 110 – Offences of failing to comply with information notices

290. Section 110(1) provides that an offence is committed where a person on whom an information notice has been served does not comply with a requirement of the notice after a period of 21 days from the day on which the notice was served, but there is a defence if the person can prove a reasonable excuse for failing to comply. This is a summary offence punishable by a fine.

291. Subsection (5) provides that it is an offence to knowingly or recklessly provide information which is false or misleading. This is an either way offence punishable by a fine.

292. It is possible under this section for a person to be convicted of more than one offence in relation to the same information notice by reference to different periods.

Notices of unauthorised development

Section 111 – Notice of unauthorised development

293. This section provides the relevant planning authority or the Welsh Ministers with the power to issue a notice of unauthorised development when a person is found guilty of an offence under sections 101 and 102 in respect of land.

294. For offences under section 101, a notice may specify the steps to be taken to remove the development and restore the land to its condition before the development was carried out, which must be undertaken within a period specified in the notice.

295. For offences under section 102, a notice may require the person on whom a notice is served to remedy the breach of failure to comply within a period specified in the notice.

296. Where a notice of unauthorised development is served, this section specifies the notice may specify different periods for taking different steps.

297. This section also provides the Welsh Ministers power to make regulations which may prescribe additional matters which must be specified in a notice of unauthorised development.

Compliance with notices of unauthorised development

Section 112 – Order to permit steps required by notice of unauthorised development

298. This section allows the owner of land to apply for an order to a magistrates' court to require another person with an interest in the land to permit the owner to take such steps as required by a notice of unauthorised development.

299. Where the court is satisfied that a person with an interest in the land is preventing the owner from taking such steps, the court may make an order.

Section 113 – Power to enter land and take steps required by notice of unauthorised development

300. This section provides that where any steps required to be taken by a notice of unauthorised development have not been taken within the period specified in the notice, the planning authority who issued the notice of unauthorised development, or the Welsh Ministers if they issued the notice, may enter the land to which the notice relates at any reasonable time and take the step(s) themselves.

301. This section also provides that a person who intentionally obstructs a person exercising their power under this section commits an offence. A person may be tried in the magistrates' court and, where found guilty, will be liable to an unlimited fine.

Section 114 – Recovery of costs of compliance with notice of unauthorised development

302. This section provides that where a relevant planning authority or the Welsh Ministers exercise the power under section 113, they may recover their costs from a person who is then the owner of the land.

303. Any costs recoverable are, until recovered, to be a charge on the land to which the notice of unauthorised development relates and takes effect as a local land charge at the beginning of the day after the day the planning authority or the Welsh Ministers completes the step(s) specified in the notice of unauthorised development to which the costs relate.

304. This section also specifies materials may be removed from the land when taking steps required by a notice of unauthorised development and where the owner of the materials does not claim them and take them away within 3 days beginning the day after they are removed, the materials may be sold.

305. If materials are sold, the proceeds must be paid to the person who owned the materials, after deducting any recoverable costs.

306. Costs may not be recovered from the Crown.

Temporary stop notices

Section 115 – Power to issue temporary stop notice

307. This section provides the power for a relevant planning authority to issue a temporary stop notice in relation to land in their area where they consider an activity has been, or is being carried out, which constitutes an offence under section 100 or section 101 and the activity ought to be stopped immediately. The power to issue a temporary stop notice does not extend to the Welsh Ministers.

308. This section also prescribes what must be specified in a temporary stop notice, who a temporary stop notice may be given to and how such notices must be displayed.

Section 116 – Restrictions on power to issue temporary stop notice

309. This section provides that a temporary stop may not prohibit the use of a building as a dwelling and any activity or circumstances which may be specified in regulations.

310. Temporary stop notices may also not prohibit any activity which has been carried out, or is being carried out, for at least 4 years before the date on which a temporary stop notice is first displayed, with the exception of an activity consisting of, or incidental to, building, engineering, mining or other operations, or the deposit of waste.

Section 117 – Duration etc. of temporary stop notice

311. This section provides that a temporary stop notice takes effect when a copy of the notice is first displayed and ceases to have effect at the end of a period of 28 days, beginning on the date it is first displayed, unless a shorter period is specified in the notice or the court grants an injunction under section 120.

312. This section also specifies a temporary stop notice will cease to have effect if the relevant planning authority withdraws the notices before the end of the period for which it would otherwise have effect.

313. Where a temporary stop notice is issued, this section prevents the relevant planning authority from issuing a second or subsequent notice in respect of the same activity, unless the authority has issued a notice of unauthorised development or issued an injunction.

Section 118 – Offence of breaching temporary stop notice

314. This section provides that an offence is committed where a person carries out an activity prohibited by a temporary stop notice at any time when such a notice has effect.

315. However, it is a defence for a person to prove that a copy of the notice was not served on them and that they did not know, and could not reasonably have been expected to know, of the existence of the temporary stop notice.

316. A person may be tried in the magistrates' court or the Crown Court and where found guilty, will be liable to an unlimited fine. It is also possible under this section for a person to be convicted of more than one offence in relation to the same temporary stop notice by reference to different periods.

Section 119 – Compensation for loss due to notice

317. This section provides that where an activity specified in a temporary stop notice is authorised by an infrastructure consent order granted before the day the notice takes effect, or the relevant planning authority withdraws the notice, any person with an interest in land to which a temporary stop notice relates may make a claim for compensation to the relevant planning authority for any loss or damage suffered by the person that is directly attributable to the notice within 12 months.

318. This section does not apply to any activity specified in the notice which is authorised by an infrastructure consent order granted on or after the day a temporary stop notice takes effect, or if the relevant planning authority withdraws a notice after the grant of a consent and also specifies the circumstances in which compensation is not payable.

Section 120 – Injunction to restrain prohibited activity

319. This section provides that a relevant planning authority or the Welsh Ministers may apply to the High Court or county court for an injunction to restrain an actual or expected activity which constitutes an offence under either section 101 or section 102 in relation to land.

320. The court may grant an injunction on any terms it considers appropriate for the purpose of restraining such activity, although an injunction may not be issued under this section against the Crown.

General

Section 121 – Meaning of "relevant planning authority"

321. This section specifies who a relevant planning authority is for the purposes of Part 7 of the Bill.

Part 8 – Supplementary functions

322. Part 8 of the Bill provides a number of supplementary functions, mainly for the Welsh Ministers, to facilitate the operation of the system established by the Bill and to give the Welsh Ministers powers to adjust the system by disapplying its requirements or making special provision for applications by the Crown (which includes Crown offices and bodies).

Fees

Section 122 – Fees for performance of infrastructure consent functions and services

323. This section provides the Welsh Ministers power to make regulations in relation to the charging of fees by a specified public authority for performing an infrastructure consent function and for the provision of an infrastructure consent service. The regulations may confer a function on any person and may provide for the amounts of fees to be calculated by reference to costs incurred in the performance of any infrastructure consent function.

324. The regulations may make provisions 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.

Right of entry

Section 123 – Powers of entry to survey land

325. This section provides a power for a person with authorisation from Welsh Ministers to enter land for the purposes of surveying or taking levels of that land in connection with:
    - an application for infrastructure consent (or a proposed application);
    - an infrastructure consent order that authorised the compulsory acquisition of that land or an interest in it or a right over it.

326. This section requires an authorised person entering land to produce evidence of that authorisation, if requested, provide notice of intended entry if the land is occupied and comply with any conditions set out in the authorisation. An authorised person may also take any other persons that are necessary on to the land and must, if leaving the land when no owner or occupier is present, leave it as effectively secured against trespassers as they found it.

327. Authorisation to survey land also includes the right to search and bore to determine the nature of soil or presence of minerals if prior notice of this intention has been provided.

328. This section provides that an offence is committed if a person authorised to enter land is wilfully obstructed from doing so. Compensation for any damage caused to the land or property may be recovered from the person authorised to enter the land.

Section 124 – Powers of entry to survey land: Crown Land

329. This section provides that the powers set out in section 123 also apply to Crown land, subject to the person exercising the power gaining permission to enter the land from the person who appears to have the authority to give it or the appropriate Crown authority (which is defined in section 132).

330. This section also provides that specified subsections of section 123 do not apply in relation to Crown Land.

Infrastructure policy statements

Section 125 – Infrastructure policy statements

331. This section gives Welsh Minsters the power, by notice, to designate a document as an infrastructure policy statement, if it is a document issued by the Welsh Ministers and sets out a policy to guide decision making in relation to significant infrastructure projects. The Welsh Ministers may withdraw the designation of a document as an infrastructure policy statement by notice in writing. Subsection

(4) requires the Welsh Ministers to publish any notice designating a document, the infrastructure policy statement itself and any notice of withdrawal.

332. The significance of a document being designated under this section is that an examining authority or the Welsh Ministers (as the case may be) must decide an application for infrastructure consent by having regard to any relevant infrastructure policy statement (see section 54(1)).

Register of applications and pre-application services

Section 126 – Register of applications and pre-application services

333. Section 126 requires the Welsh Ministers to maintain a register of:
- applications for infrastructure consent;
- applications received by the Welsh Ministers for pre-application services;
- pre-application services provided by the Welsh Ministers.

334. The Welsh Ministers must include details in the register of valid applications, requests for pre-application services and pre-application services provided.

335. The register must be published (subsection (5)).

336. The Welsh Ministers may by regulations require a planning authority to maintain a register of the applications for infrastructure consent in its area, of applications for pre-application services to the planning authority and of any pre-application services provided by the authority (subsection (6)).

337. The Welsh Ministers may by regulations, also require Natural Resources Wales to maintain a register of applications they receive for pre-application services, as well as any pre-application services provided by them in respect of an application.

338. Subsection (7) enables the Welsh Ministers to make regulations in relation to the form, content of any register required by or under the section and may make other provision in respect of public access to documents relating to entries in the register or the timing of entries.

Statutory consultees

Section 127 – Power to consult and duty to respond to consultation

339. Section 127 gives a power to the Welsh Ministers or an examining authority to consult a public authority specified in regulations 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.

340. Regulations may specify the form and requirements of consultations. Regulations may also require an authority consulted under this section to give a report to the Welsh Ministers about the authority's compliance with the consultation requirements.

Welsh Ministers' directions

Section 128 – Directions to public authorities

341. Section 128 allows the Welsh Ministers to give a direction to a planning authority, the Natural Resources Body for Wales or a devolved Welsh authority specified in regulations, to do things in respect of an application.

342. Subsection (3) clarifies that directions may relate to specific applications or authorities or to applications or authorities generally.

343. Regulations may make provision for or in connection with the recovery of costs incurred by public authorities when carrying out a direction of the Welsh Ministers (subsection (4)).

Section 129 – Power to disapply requirements

344. Under section 129 the Welsh Ministers may make regulations which would give the Welsh Ministers power to direct that requirements imposed by this Bill may be disapplied in a case specified in the regulations. The regulations must specify the requirements that may be disapplied and impose a duty on the Welsh Ministers to publish any direction.

345. The Welsh Ministers must publish the direction and lay a statement about the direction before Senedd Cymru explaining its effect and why it was made.

Regulations about Crown applications

Section 130 – Applications by the Crown

346. Section 130 provides the Welsh Ministers with the power to make regulations which may modify or exclude any enactments relating to the procedure to be followed before a Crown application is made, the making of a Crown application and the decision-making process for such an application. The power applies to applications for infrastructure consent and applications for change or revocation of infrastructure consent orders.

Part 9 – General provisions

347. Part 9 of the Bill contains general provisions which relate to multiple parts or all of the Bill. Sections 134, 135, 136 and 137 make provisions about giving notices, directions and other documents and make provision about the duties that apply when publishing something under the Bill. Section 138 makes provisions about the restrictions that apply to any regulations made under the Bill or an infrastructure consent order made under the Bill and section 139 sets out the procedures for making regulations. (Section 83 sets out the procedure for infrastructure consent orders.) Sections 142 and 143 provide the Welsh Ministers with powers to make further incidental, consequential, transitional, transitory or saving provisions by regulations.

Development

Section 131 – Meaning of "development"

348. Section 131 sets out the meaning of "development" for the purposes of the Bill. Everything that is "development" for the purposes of the Town and Country

Planning Act 1990 ("the TCPA") is also development for the purposes of the Bill and the scope of "development" is extended beyond this in a few respects.

349. Section 55(1) of the TCPA defines "development" as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land", subject to further clarifications in that section.

350. Subsection (2) of section 131 provides that "material change in the use" (from the meaning of "development" in section 55(1) of the TCPA) includes:
- the conversion in fuel of a generating station to it being fuelled by crude liquid petroleum, a petroleum product of natural gas, and
- an increase in the permitted use of an airport (whether permitted by planning permission under the TCPA or an infrastructure consent order made under the Bill).

351. Subsection (3) provides that specific works are to be treated as development to the extent that they would not otherwise be development under the TCPA. These include:
- works for the demolition of a listed building or its alteration or extension in a manner which would affect its character as a building of special architectural or historic interest,
- demolition of a building in a conservation area,
- works resulting in the demolition or destruction of or any damage to a scheduled monument,
- works for the purpose of removing or repairing a scheduled monument or any part of it,
- works for the purpose of making any alterations or additions to a scheduled monument, and
- flooding or tipping operations on land in, on or under which there is a scheduled monument.

352. Development under the TCPA relates to development of land within the areas of planning authorities and not development in the sea outside the boundaries of their areas. Subsection (4) provides that development under the Bill includes operations and changes of use in the sea and other areas covered with waters. The extent to which development in the sea is covered in relation to a SIP depends on whether the definition of the SIP covers development in the "Welsh marine area". The "Welsh marine area" is defined in section 141.

Crown land

Section 132 – Crown land and "the appropriate Crown authority"

353. This section defines the expressions "Crown land", "Crown interest", "Duchy interest" and "the appropriate Crown authority" for the purposes of the Bill. This section also requires that any question about who the appropriate Crown authority in relation to any land is must be referred to the Treasury, whose decision is final.

Offences

Section 133 – Offences by bodies corporate

354. This section provides that where an offence is committed under section 28, 101, 102, 110 or 118 by a body corporate and it is proved to have been committed with the consent or connivance of a senior officer of the body or a person purporting to be senior officer of the body, or attributed to their neglect, that person will be guilty of an offence (as well as the body corporate) and is liable to be prosecuted. In this section "senior officer" means a director, manager, secretary or other similar officer of the body corporate.

Giving notices and other documents

Section 134 – Giving notices and other documents

355. This section contains provision about how notices, directions and other documents are to be served.

Section 135 – Giving notices etc. to persons occupying or with an interest in land

356. This section makes further provision about serving a notice or a document on a person interested in land or occupying land. Section 134 applies in addition to this section.

Section 136 – Giving documents on the Crown

357. This section specifies that any notice or document required by or under the Bill to be served on the Crown must be served on the appropriate Crown authority, and the rules about giving notices set out in sections 134 and 135 do not apply. For the purpose of this section, "the Crown" includes the Duchy of Lancaster and the Duchy of Cornwall.

General

Section 137 – Duties to publish

358. Where the Bill imposes a duty to publish something, it must be published electronically. Nothing in this section prevents the person subject to the duty from publishing in another way as well as publishing electronically.

Section 138 – Regulations and orders: restrictions

359. This section sets out that regulations under sections 30, 33, 34, 46(6), 61(5), 89(3) 122 and 127 of the Bill or an infrastructure consent order or an order under section 88 may include provision that would require the consent of the Secretary of State (i.e. "the appropriate Minister") under any of paragraphs 8(1)(a) or (c), 10 or 11 of Schedule 7B to the Government of Wales Act 2006 if the provision were included in an Act of Senedd Cymru.

360. This section also provides that regulations under sections 30, 33, 34, 46(6), 61(5), 89(3), 122 and 127 of the Bill or an infrastructure consent order or an order under section 88 may include provision that would require consultation of the appropriate Minister under paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006 if the provision were included in an Act of Senedd Cymru. See correspondence between the Secretary of State and the Welsh Ministers dated 08

January[31] confirming consent under Schedule 7B for the provisions, including a commitment to consult the UK Government prior to making regulations which affect reserved bodies.

361. Regulations and orders under any other section of this Act may not include provision that would require the consent of the appropriate Minister under paragraph 8, 10 or 11 of Schedule 7B to the Government of Wales Act 2006 if the provision were included in an Act of Senedd Cymru; and may not include provision that would require consultation of the appropriate Minister under paragraph 11(2) or (2A) of Schedule 7B to that Act if the provision were included in an Act of Senedd Cymru.

Section 139 – Regulations: procedure

362. This section provides that the power to make regulations is exercisable by statutory instrument.

363. Subsection (3) provides that a statutory instrument containing regulations made under the following sections of the Bill are to be made under the affirmative procedure (i.e. a draft of the instrument should been laid before, and approved by a resolution of, Senedd Cymru):

- section 17 - power to add, vary or remove projects;
- section 21 - power to add or remove types of consent;
- section 22(2)(c) - directions specifying development as a significant infrastructure project;
- section 53(1) - power for the examining authority to decide certain kinds of applications for infrastructure consent;
- section 56(3) - updating of matters that may be disregarded when making decisions on applications;
- section 57(6) - power to amend the timetable for deciding an application for infrastructure consent;
- section 61(5) - what may be included in an infrastructure consent order;
- section 122 - fees for performance of infrastructure consent functions and services;
- section 128 – directions to public authorities;
- section 129 - power to disapply requirements;
- section 130 – applications by the Crown;
- section 142 - power to make consequential and transitional provision etc., but only where the regulations amend, repeal or otherwise modify a provision of an Act of Parliament, a Measure of the National Assembly for Wales or an Act of Senedd Cymru;
- paragraph 2(1) of Schedule 2.

[31] https://business.senedd.wales/documents/s144189/LJC6-04-24%20-%20Paper%2016%20-%20Letter%20from%20the%20Minister%20for%20Climate%20Change%2022%20January%202024.pdf.

364. Instruments containing regulations made under any other power in the Bill are subject to the negative procedure (i.e. annulment in pursuance of a resolution of Senedd Cymru).

Section 140 – Directions: general

365. This section requires a direction given under or by virtue of this Bill to be in writing.

Section 141 – General interpretation

366. This section defines certain terms used in the Bill.

Section 142 – Power to make consequential and transitional provision etc.

367. This section confers upon the Welsh Ministers a regulation-making power which may be used to make supplementary, incidental, and consequential provision and transitional or saving provision. Regulations made may amend, modify, repeal or revoke any enactment (including an enactment contained in this Bill).

Section 143 – Consequential amendments and repeals

368. This section refers to Schedule 3 which makes provision in consequence of this Bill.

Section 144 – Transitional and saving provision

369. This section specifies all the relevant transitional and savings provisions.

Section 145 – Coming into force

370. This section makes provision about when the provisions of the Bill come into force. The provisions of the Bill in Part 1, the provisions of Parts 2 to 8 that confer powers to make regulations or make provision about what is or is not permitted to be done in the exercise of a power to make regulations and Part 9 (except section 143) will be brought into force on the day after the day on which this Bill receives Royal Assent. The other provisions of this Bill will come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.

Section 146 – Short title

371. The short title of this Bill is the Infrastructure (Wales) Act 2024.

Schedule 1 – Provision relating to, or matters ancillary to, development

372. Schedule 1 is introduced by section 61. An infrastructure consent order may make ancillary provision (see section 61(3)) and the ancillary provision that may be made includes (among other things) provision that relates to the list of matters in Schedule 1.

Schedule 2 – Compensation for changing or revoking infrastructure consent orders

373. Schedule 2 is introduced by section 91 and makes provision about compensation for changing or revoking an infrastructure consent order.

Paragraph 1 – Changing or revoking an infrastructure consent order: compensation

374. Where an infrastructure consent order is changed or revoked by the Welsh Ministers without an application being made, this paragraph gives a right to compensation for certain losses to persons with an interest in land to which the infrastructure consent order relates, persons with an interest in minerals on such land or persons for whose benefit the infrastructure consent order has effect.

375. On making a claim to the Welsh Ministers, those persons are entitled to be paid compensation by the Welsh Ministers for any expenditure that has been incurred in carrying out work (including certain preparatory work described in sub-paragraph (4)) which is rendered abortive by the change to, or the revocation of, the infrastructure consent order.

376. Those persons are also entitled, on making a claim, to be paid compensation by the Welsh Ministers for any other loss or damage which is directly attributable to the change or revocation.

377. Sub-paragraph (5) specifies that compensation is not payable in respect of certain works and losses.

378. The Welsh Ministers may make regulations about the timeframe and the process for making a claim for compensation under this paragraph.

Paragraph 2 – Compensation for depreciation: introduction and key terms

379. This paragraph provides that paragraphs 3 to 9 apply where compensation for depreciation of more than the minimum amount specified in regulations becomes payable.

380. "Compensation for depreciation" in this paragraph (and paragraphs 3 to 10) means compensation payable in respect of loss or damage consisting of depreciation of the value of an interest in land.

381. This paragraph also sets out other definitions for the purposes of paragraphs 2 to 10.

Paragraph 3 – Apportionment of compensation for depreciation and determination of disputes

382. This paragraph makes provision about apportionment of compensation for depreciation and disputes about such apportionment.

383. Sub-paragraph (1) requires the Welsh Ministers to apportion the compensation for depreciation between different parts of the land to which the claim for compensation relates if they consider it practicable to do so and also requires them to give details of any such apportionment to the claimant and any persons they consider to be substantially affected by the apportionment.

384. Sub-paragraph (2) details how, in carrying out the apportionment, the Welsh Ministers must divide the land into parts and distribute compensation for depreciation between those parts according to how the Welsh Ministers consider those parts are affected by the order that caused compensation to be payable.

385. Sub-paragraph (3) details the persons who may refer a dispute about apportionment of compensation to the Upper Tribunal and sub-paragraph (4) details the persons who are entitled to be heard by the Upper Tribunal.

386. Sub-paragraphs (5), (6) and (7) make rules that apply on a reference of a dispute on apportionment to the Upper Tribunal.

Paragraph 4 – Notice of compensation for depreciation

387. This paragraph details the process to be followed when compensation for depreciation becomes payable.

388. When compensation for depreciation becomes payable, the Welsh Ministers must serve a "compensation notice" on a council of the county or county borough for the area in which the land or any part of the land to which the notice relates is situated, and (if that council is not the planning authority for the area) on the planning authority for the area.

389. Paragraph (3) sets out what a compensation notice must include, and sub-paragraph (4) states that a compensation notice is a local land charge.

Paragraph 5 – Development not to be carried out until compensation paid or secured

390. This paragraph prohibits a person from carrying out certain development on land in respect of which a compensation notice has been registered until any amount that is recoverable in respect of the compensation specified in the notice has been paid or secured to the satisfaction of the Welsh Ministers.

391. Sub-paragraph (2) details the development to which the prohibition applies. And sub-paragraphs (3) and (4) set out the circumstances in which the prohibition does not apply.

Paragraph 6 – Amount recoverable by Welsh Ministers in respect of compensation

392. This paragraph sets out the rules that apply to determine the amount that is recoverable by Welsh Ministers in respect of compensation specified in a registered compensation notice.

Paragraph 7 – Payment etc. of amount recoverable

393. Sub-paragraph (1) provides that an amount recoverable is payable to the Welsh Ministers as a single capital payment, as a series of instalments of capital and interest combined or as a series of other annual or periodical payments as the Welsh Ministers may direct. Sub-paragraph (2) details the duties on the Welsh

Ministers to take representations into account before they exercise their direction-making power under sub-paragraph 1(c).

394. Sub-paragraph (3) provides that if the amount payable is not paid as a single capital payment, it must be secured in such way that the Welsh Ministers direct.

395. If a person begins development in breach of paragraph 5, under sub-paragraph (4), the Welsh Ministers have the power to serve a notice on the person specifying the amount they consider to be recoverable under paragraph 6 and requiring the person to pay that amount within a period specified in the notice.

396. Sub-paragraph (5) sets out when a person begins development for the purposes of sub-paragraph (4).

Paragraph 8 – Recovery of compensation from acquiring authority on compulsory acquisition or sale

397. Where an interest in land is compulsorily acquired or sold to an authority possessing compulsory purchase powers, and a compensation notice is registered in respect of the land, this paragraph makes provision about the circumstances in which the Welsh Ministers are entitled to recover compensation from the acquiring authority. This paragraph also makes provision about the amount that is recoverable.

Paragraph 9 – General provisions about compensation for depreciation

398. This paragraph makes general provision about compensation for depreciation and provides that the rules in section 5 of the Land Compensation Act 1961 (rules for assessing compensation) apply for the purpose of assessing compensation for depreciation that is payable under this Schedule. This paragraph also makes various specific provisions about compensation for depreciation where an interest in land is subject to a mortgage.

Paragraph 10 – Determination of claims for compensation

399. This paragraph requires any question of disputed compensation to be referred to and determined by the Upper Tribunal.

Schedule 3 – Consequential amendments and repeals

400. Schedule 3 is introduced by section 143 and sets out consequential amendments and repeals.

Annex 2 – Index of Standing Order Requirements

Index of Standing Order requirements

Standing Order		Section	Pages
26.6(i)	Statement the provisions of the Bill would be within the legislative competence of the Senedd.	Member's declaration	1
26.6(ii)	Set out the policy objectives of the Bill.	Chapter 3 – Purpose and intended effect of the legislation	6-12
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted.	Part 2 – Regulatory Impact Assessment	57-117
26.6(iv)	Set out the consultation, if any, which was undertaken on: (a) the policy objectives of the Bill and the ways of meeting them; (b) the detail of the Bill, and (c) a draft Bill, either in full or in part (and if in part, which parts).	Chapter 4 – Consultation	13-16
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended.	Chapter 4 – Consultation	13-16
26.6(vi)	If the Bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision.	Chapter 4 – Consultation	13-16
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill.	Annex 1 – Explanatory Notes	119-170

Standing Order		Section	Pages
26.6(viii)	Set out the best estimates of: (a)the gross administrative, compliance and other costs to which the provisions of the Bill would give rise; (b)the administrative savings arising from the Bill; (c) net administrative costs of the Bill's provisions; (d) the timescales over which such costs and savings would be expected to arise; and (e) on whom the costs would fall.	Part 2 – Regulatory Impact Assessment	57-117
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially.	Part 2 – Regulatory Impact Assessment	57-117
26.6(x)	Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision: (a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised; (b) why it is considered appropriate to delegate the power; and (c) the Senedd procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure).	Chapter 5 – Power to make subordinate legislation	17-56

Standing Order		Section	Pages
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate.	The requirement of Standing Order 26.6(xi) does not apply to this Bill.	N/A
26.6(xii)	Set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.	Part 2 – Regulatory Impact Assessment	116-117
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement in Standing Order 26.6B for a Table of Derivations is not applicable to this Bill as the Bill is a standalone piece of legislation and does not derive from existing primary legislation for the purposes of amendment or consolidation.	N/A
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	The requirement of Standing Order 26.6C does not apply to this Bill as the Bill does not propose to significantly amend existing primary legislation.	N/A

Annex 3 – List of projects to be prescribed as SIPs

Type of development	Column A – Compulsory SIP threshold for class A projects	Column B – Directed SIP threshold to be set in guidance for which developers may obtain a Direction under Class B to be set in secondary legislation.
1. Electricity infrastructure		
1A. Onshore generating stations (with the exception of those which generate from onshore wind specified in 1C and energy storage classes as specified in 1D); and	**Construction:** The construction of a generating station, where it is expected to have an installed generating capacity of between 50MW and 350MW **Alteration or extension:** The alteration or extension of a generating station, where its effect is to increase the installed generating capacity by at least 50MW, however, the effect of the extension must not increase the overall generating capacity beyond 350MW.	**Construction:** The construction of a generating station, where the generating station is expected to have an installed capacity of between 10MW and 50MW. **Alteration or extension:** The alteration or extension of a generating station, where its effect is to increase the installed generating capacity by at least 10MW, however, the effect of the extension must not increase the overall generating capacity beyond 350MW.

1B. Offshore generating stations up to the seaward limits of the territorial sea, and with the exception of those energy storage classes as specified in 1D)	**Construction:** The construction of a generating station, where it is expected to have an installed generating capacity of between 50MW and 350MW **Alteration or extension:** The alteration or extension of a generating station, where its effect is to increase the installed generating capacity by at least 50MW, however, the effect of the extension must not increase the overall generating capacity beyond 350MW.	**Construction:** The construction of a generating station, where the generating station is expected to have an installed capacity of between 1MW and 50MW. **Alteration or extension:** The alteration or extension of a generating station, where its effect is to increase the installed generating capacity by at least 1MW, however, the effect of the extension must not increase the overall generating capacity beyond 350MW.
1C. Onshore wind generating stations	**Construction:** The construction of the generating station, where it is expected to have an installed generating capacity of over 50MW. **Alteration or extension:** The alteration or extension of a generating station, where its effect is to increase the installed generating capacity by at least 50MW.	**Construction:** The construction of a generating station, where the generating station is expected to have an installed capacity of between 10MW and 50MW. **Alteration or extension:** The alteration or extension of a generating station, where its effect is to increase the installed generating capacity by at least 10MW.

1D. Energy Storage – A station in which the conversion of electrical energy into a form of energy which can be stored, the storing of that energy, and the subsequent reconversion of that energy back into electrical energy occurs. This does not comprise of a hydroelectric system in which electricity is generated by the use of water which has been pumped into a reservoir at a higher altitude	No compulsory threshold set.	**Construction:** The construction of a storage facility, where it is expected to have a storage capacity of above 10MW. **Alteration or extension:** The alteration or extension of a storage facility, where its effect is to increase the storage capacity by at least 10MW.
1E. Overhead electric lines associated with a generating station of a description set out in 1A-1D.	**Installation:** The overhead electric line is expected to have a nominal voltage of 132KV and a minimum length of 2KM	**Installation:** The overhead electric line is expected to have a nominal voltage of less than 132KV; or The overhead electric line is expected to have a nominal voltage of 132KV and a length of less than 2KM. **Alteration or upgrading:** Any alteration or extension of an overhead electric line up to and including 132KV.
2. Oil and minerals		

2A. Liquefied Natural gas facilities	**Construction:** The storage capacity is expected to be at least 43 million standard cubic metres or have a maximum flow rate of at least 4.5 million standard cubic metres per day; or **Alteration:** The existing storage capacity is expected to increase by at least 43 million standard cubic metres or by a maximum flow rate of at least 4.5 million standard cubic metres more per day.	**Construction:** The storage capacity is expected to be at least 10 million standard cubic metres or have a maximum flow rate of at least 1 million standard cubic metres per day; or **Alteration:** The existing storage capacity is expected to increase by at least 10 million standard cubic metres or by a maximum flow rate of at least 10 million standard cubic metres more per day.
2B. Gas reception facilities	**Construction:** The maximum flow rate of the facility is expected to exceed 4.5 million standard cubic metres per day; or **Alteration:** The maximum flow rate of the existing facility is expected to increase by at least 4.5 million standard cubic metres per day.	**Construction:** The maximum flow rate of the facility is expected to exceed 1 million standard cubic metres per day; or **Alteration:** The maximum flow rate of the existing facility is expected to exceed 1 million standard cubic metres per day.
2C. Unconventional oil or gas	Development involving the onshore exploration, appraisal or production of coal bed methane or shale oil or gas using unconventional extraction techniques, including hydraulic fracturing, but does not include the making of exploratory boreholes which do not involve the carrying out of such unconventional extraction techniques.	No optional threshold.

2D. Underground coal gasification	Development connected to the gasification of coal in the strata, with the exclusion of the drilling of boreholes solely for the purpose of core sampling.	No optional threshold.
2E. Open cast coal mining	Development which consists of the winning and working of coal from the earth by their removal from an open pit or borrow on a new site.	No optional threshold.
3. Transport		
3A. Highways	**Construction:** Where the Welsh Ministers or any company wholly owned by them is the Highways Authority; and the construction will include a stretch of road which is of a continuous length of more than 1KM. **Alterations and improvements:** Where the Welsh Ministers or any company wholly owned by them is the Highways Authority, and the improvement or alteration is likely to have a significant effect on the environment (i.e. it requires EIA).	**Construction:** Where the Welsh Ministers or any company wholly owned by them is the Highways Authority; and the construction will include a stretch of road which is of a continuous length of up to 1KM.
3B. Railways which start, end and remain in Wales, and which are not specified as Permitted Development within the Town and Country Planning (General	**Construction:** The construction is to be undertaken by an approved operator and includes a stretch of track which has a continuous length of more than 2KM. **Alteration:**	**Construction:** The construction is to be undertaken by an approved operator and includes a stretch of track which has a continuous length of up to 2KM. **Alteration:**

Permitted Development) Order 1995.	The alteration is to be undertaken by an approved operator and includes a stretch of track which has a continuous length of more than 2KM.	The alteration is to be undertaken by an approved operator and includes a stretch of track which has a continuous length of up to 2KM.
3C. Rail freight interchanges	**Construction:** When constructed, the rail fright interchange is expected to be capable of handling at least four goods trains per day. **Alteration:** An alteration which is expected to increase the amount of goods trains handled by at least four per day.	**Construction:** When constructed, the rail fright interchange is expected to be capable of handling up to four goods trains per day. **Alteration:** An alteration which is expected to increase the amount of goods trains handled per day.
3D. Ports and Harbours	The construction or alteration of harbour facilities which will result in an annual increase in the capability of handling: a) in the case of facilities for container ships, 50,000 Ten Foot Equivalent Units; b) in the case of facilities for roll-on roll-off ships, 25,000 units; or c) in the case of facilities for cargo ships of any other description, 500,000 tonnes.	**Works:** The harbour facilities, when constructed, are expected to conduce the efficient functioning of the harbour, and the facilities are expected to have a significant impact on the environment (i.e. it requires an EIA).
3E. Airports	**Construction:** The airport, when constructed, is expected to be capable of providing:	**Construction:** The airport, when constructed, is expected to be capable of providing:

	Air passenger services for at least one million passengers per year, or Air cargo transport services for at least 5,000 air transport movements of cargo aircraft per year. **Alterations and improvements:** The airport, when altered or improved, is expected to increase the number of: Air passenger services by at least one million passengers per year, or Air cargo transport services by at least 5,000 air transport movements of cargo aircraft per year.	Air passenger services for up to one million passengers per year, or Air cargo transport services for up to 5,000 air transport movements of cargo aircraft per year. **Alterations and improvements:** The airport, when altered or improved, is expected to increase the number of: Air passenger services by up to one million passengers per year, or Air cargo transport services by up to 5,000 air transport movements of cargo aircraft per year.
4. Water		
4A. Dams and reservoirs	**Construction:** The volume of water to be held back by the dam or stored in the reservoir is expected to exceed 10 million cubic metres of water. **Alteration:** The additional volume of water to be held back by the dam or stored in the reservoir as a result of the alteration is expected to exceed 10 million cubic metres.	**Construction:** The volume of water to be held back by the dam or stored in the reservoir is expected to exceed 1 million cubic metres of water. **Alteration:** The additional volume of water to be held back by the dam or stored in the reservoir as a result of the alteration is expected to exceed 1 million cubic metres.

4B. Transfer of water resources	The volume of water to be transferred as a result of the development is expected to exceed 100 million cubic metres per year between: • River basins in Wales; • Water undertakers' areas in Wales; or • A river basin in Wales and a water undertaker's area in Wales. The development does not relate to the transfer of drinking water.	No optional thresholds are proposed.
4C. Waste water treatment plants	**Construction of waste water treatment plants:** The plant is expected to have a capacity exceeding a population equivalent of 500,000. **The construction of infrastructure for the transfer or storage of waste water:** The main purpose of the infrastructure will be either for: (i) the transfer of waste water for treatment, or (ii) the storage of waste water prior to treatment, or both, and the infrastructure is expected to have a capacity for the storage of waste water exceeding 350,000 cubic metres. **The alteration of existing waste water treatment plants:**	No optional thresholds are proposed.

	The effect of the alteration is expected to increase the capacity of the plant by more than a population equivalent of 500,000. **The alteration of infrastructure for the transfer or storage of waste water:** The main purpose of the infrastructure will be either for: (i) the transfer of waste water for treatment, or (ii) the storage of waste water prior to treatment, or both, and the effect of the alteration is expected to be to increase the capacity of the infrastructure for the storage of waste water by more than 350,000 cubic metres.	
5. Waste		
5A. Hazardous waste facilities	**Construction:** Landfills or deep storage facilities which have a capacity of more than 100,000 tonnes of hazardous waste per annum. In any other case, facilities which have a capacity of more than 30,000 tonnes of hazardous waste per annum. **Alteration:**	No optional thresholds are proposed.

	The effect of the alteration to a land fill or deep storage facility is expected to increase the capacity by more than 100,000 tonnes of hazardous waste per annum. In any other case, the capacity of the facility is expected to increase by 30,000 tonnes of hazardous per annum.	
5B. Geological disposal for the final disposal of radioactive waste	Development which involves the construction of one or more boreholes, and the carrying out of any associated excavation, construction or building work, for the main purpose of obtaining information, data or samples to determine the suitability of a site for the construction of or use as a radioactive waste geological disposal facility with a depth in excess of 200 metres.	No optional thresholds are proposed.

Annex 4 – Developer Costs (Arup 2019)

COSTS (as taken in their pure form from the Arup Report and not rounded)	S.57 TCPA 1990 (£)	DNS (£)	TWA (£)	Highways Act 1980 (£)	Development Consent Order (£)	s.36 of the Electricity Act 1989 (£)	Harbours Act 1964 (£)
Estimated costs of application preparation	1,255,417	670,000	2,110,000	15,882,750	1,800,000	1,373,888.89	176,333
Estimated costs of undertaking any statutory pre-application consultation (where it is a requirement)	64,542	23,333			266,250		
Estimated costs of undertaking any non-statutory pre-application consultation (i.e. holding events, publicising events etc. outside of statutory requirements)	78,229	22,500	110,000	433,650	685,000	21222.22	150,000
Estimated costs of participating in an examination in an application	81,306	116,667	800,000	3,254,375	1154,167	148291.67	
Estimated costs of making a material amendment to a project during the examination of an application, where one has been made.	89,667	29,667	75,000	2,912,500	275,000	17,250	47,450
Estimated costs of making a non-material or minor amendment to a project during the examination of an application, where one has been made	5,750	6,250	40,000	770,000	70,000	11312.5	32,500
Estimated costs of creating and maintaining a website which displays an	5,583	17,500	20,000	17,500	9,500	10,000	17,500

entire application, for a period of 6 months							
Estimated costs of publishing a notice in a local newspaper or relevant journal advertising a prospective application for development, for a period of 1 week	5,992	11,313	1,913	11,313	9,756	4,538	5,906
Total	**1,586,486**	**897,230**	**3,156,913**	**23,282,088**	**4,269,673**	**1,586,503.28**	**429,689**