

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



Llywodraeth Cymru  
Welsh Government

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

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

15 March 2024

Dear Llŷr

### **Infrastructure (Wales) Bill**

In my letter of 9 January I committed to publishing a revised Statement of Policy Intent in relation to the Infrastructure (Wales) Bill. I attach the revised Statement of Policy Intent on transitional provision as an annex to this letter.

My officials have undertaken focused engagement with stakeholders on these proposals. In accordance with the implementation plan I also provided to you we will conduct wider consultation on this, and all policy areas contained within the Bill, during the Summer/Autumn of 2024. The results of consultation will help inform the final form and content of the transitional provisions, as well as other areas in the Bill.

Yours sincerely

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

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Julie.James@llyw.cymru](mailto:Gohebiaeth.Julie.James@llyw.cymru)  
[Correspondence.Julie.James@gov.Wales](mailto:Correspondence.Julie.James@gov.Wales)

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

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

# **ADDENDUM TO STATEMENT OF POLICY INTENT – PART 9 GENERAL PROVISIONS**

## **Section 141 - Power to make consequential and transitional provision etc.**

### **Introduction**

This is a Statement of Policy Intent addendum and relates to section 142 and 144 of the Infrastructure (Wales) Bill (“the Bill”), at stage 2 of the Senedd scrutiny process. [Infrastructure Wales Bill.pdf \(senedd.wales\)](#)

This addendum provides draft proposals for transitional provisions. The Statement of Policy Intent sets out legislative intent of the subordinate legislation that will sit underneath the Bill and is not government policy or additional planning policy.

The Bill, at section 142, sets out a regulation making power which may be used by the Welsh Ministers to make supplementary, incidental, transitional or consequential provisions. These regulations may amend, modify, repeal or revoke any enactment (including an enactment contained in the Bill). Section 144 of the Bill sets out further detail on transitional provisions.

We want to enable stakeholders to have greater involvement in setting appropriate provisions. As part of the development of transitional provisions that are workable in practice, this draft proposal sets out current considerations.

The purpose of setting out these draft proposals is to provide further clarity to stakeholders in relation to existing projects or forthcoming applications. It will also be the starting point for the development of formal consultation proposals should the Bill receive Royal Assent.

### **Background**

The Bill will replace, either fully or partially, a number of existing statutory regimes for the consenting of infrastructure projects. Therefore, the bringing together of a number of existing regimes requires appropriate transitional provisions in relation to:

- Town and Country Planning Act 1990
- Electricity Act 1989;
- Harbours Act 1964
- Transport and Works Act 1992; and
- Highways Act 1980

The Bill sets out a list of infrastructure projects of national importance to be captured by the new consenting regime, removing the consenting of them from the above regimes.

### **Policy Intention**

It is the intention of transitional provisions to ensure a smooth passage from one regime to another, helping to minimise disruption as much as possible to matters already in train. This means projects that are being considered or progressed through existing consenting processes can continue to do so until a decision has been made.

It also seeks to minimise the duplication of work where a project is developed before the new regime is in force but will be consented under the new provisions. Furthermore, for existing consents, decisions can continue to be made in relation to post-consent amendments, such as material changes or revisions to an existing consent.

## **Draft Proposals**

The draft proposals for transitional provisions for the Bill consist of two elements, one relating to transition points and one relating to the transferring of pre-application work, such as environmental surveys, from an existing regime to the Significant Infrastructure Project (SIP) regime established by the Bill.

### **Transition points in existing regimes**

We consider where an application has been made under an existing regime it should continue to be consented under that regime. As the procedures and processes of existing consenting regimes differ, what constitutes an application being made varies. At this time, we consider transition points should be explicitly set out in subordinate legislation for clarity.

Section 144 of the Bill sets out that development will be considered under the current regimes where the application or notification has been made or the consent is still under consideration. If a project has reached these transition points at the date the Act comes into force it will be for the applicant to decide whether to continue an application or order under the existing regimes or make a new application as a SIP.

Section 144(6) enables regulations to make provision about when an application or notification is made, or when a development is considered under consideration. At this time, we expect these points to be:

### **DNS**

- Notification under section 62E(1) of the TCPA 1990 of a proposed application.

### **Applications under s.36 of the Electricity Act 1989**

- an application which has been published in the relevant newspapers in accordance with Regulation 7 of the Electricity (Offshore Generating Stations)

(Applications for Consent) (Wales) Regulations 2019<sup>1</sup>. The relevant date is the first day of publication.

#### Orders under s.14 of the Harbours Act 1964<sup>2</sup> (Harbour Revision Orders)

- the relevant date will be day on which the Welsh Ministers receive an application which meets the requirements set out in Paragraph 7 of Schedule 3 to that Act.

#### Orders under s.1 and s.3 of the Transport and Works Act 1992

- the relevant date will be the day on which the Welsh Ministers receive a pre-application draft order and explanatory memorandum in accordance with rule 5(1) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006<sup>3</sup>.

#### Planning applications under s.57(1) of the Town and Country Planning Act 1990

- the relevant date will be the day on which the LPA receives an application which meets the requirements of Article 5 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012<sup>4</sup>.

#### Highways Orders under the Highways Act 1980<sup>5</sup>

- the relevant date will be the day on which the Welsh Ministers publish a notice in compliance with paragraphs 1 Schedule 1 to that Act.

We welcome alternative suggestions to these points.

### **Existing work considered applicable to the SIP regime**

We consider it is beneficial to minimise the duplication of work through the transferring of pre-application work where a project is developed before the new regime is in force but will be consented under the new provisions.

It is recognised that the application process for some of the existing consenting regimes, such as Transport and Works Act 1992 and Electricity Act 1989 are outdated, however applicants often go above and beyond the statutory minimum by undertaking work that would likely be consistent with the new SIP regime. It is hoped that by providing clarity at this stage in the development of the SIP regime, potential applicants

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<sup>1</sup> SI. 2019/295

<sup>2</sup> Harbours Act 1964 c. 40.

<sup>3</sup> SI. 2006/1466

<sup>4</sup> SI. 2012/801

<sup>5</sup> c.66

will be able to ensure that work undertaken will be compatible with the SIP regime and therefore be able to be carried over. For example, this could mean potential applicants undertaking additional pre-application consultation in order to comply with the SIP application process.

The form, content and specific details of what will be required to make a valid SIP application will be set out in subordinate legislation.

### Pre-Application Consultation

If a prospective applicant wishes to carry over other aspects of work, such as environmental surveys, the statutory pre-application consultation would need to be satisfied for SIP, regardless of the type of infrastructure being applied for.

It is anticipated that the pre-application consultation required for a SIP will be similar to the DNS regime, and best practice in other modern major infrastructure consenting regimes which many stakeholders will be familiar with. This may mean applicants plan for and carry out pre-application consultation that may not be necessary under current consenting regimes.

It is intended the pre-application process will be set in subordinate legislation. Detail on our proposals will be issued for consultation in the summer.

The acceptance and validity of pre-application consultation reports as part of a SIP application will be at the discretion of the Welsh Ministers.

### Environmental and other surveys

It is acknowledged that many environmental surveys require a significant amount of time to be conducted, and stakeholders may need to plan ahead to ensure surveys conducted in the near future can be carried over to a SIP application in the future.

It is anticipated that provided proposed developments are substantially the same, surveys should be able to be transferred to the SIP regime. As with any other major infrastructure application, should the project design or other element change, a supplementary survey or report may be necessary.

As with environmental surveys, the production of an Environmental Statement (ES) for the purposes of Environmental Impact Assessment often requires a significant amount of time to produce. Whilst this will be the subject of separate subordinate legislation and may be subject to change in the coming years, it is anticipated that provided the project is substantially the same, ES should be able to be carried over.

In this regard a screening or scoping opinion or directions will be able to be transferred over to the SIP regime, subject to the project remaining substantially the same. However, the Welsh Ministers have the discretion to issue a new opinion or direction or require further information on EIA.

## Discretionary Advice from Consultees

Where a body or organisation has provided pre-application advice on a proposed development, it will be for that body to decide whether that advice can carry over to a SIP application. However, where a project remains substantially the same, it is considered a developer should be able to rely upon the information given and it would be a straightforward process for a body to confirm the advice is still relevant, and simply add an addendum if there are any changes.

### **Status of this addendum and next steps**

Subordinate legislation, including specific details on transitional arrangements, will be formally consulted on when the Bill receives Royal Assent. It is our intention that the subordinate legislation will make clear the transitional arrangements. A timetable for implementation has been provided to the Senedd, and it is anticipated that formal consultation will be undertaken in summer 2024.

Whilst there are powers in the Bill to enable discretion in certain parts of the process, which could apply on a case-by-case basis to transitional provisions, this does not provide the necessary clarity for stakeholders. Feedback is therefore welcomed on the draft proposal on transitional provisions, to help inform their development and the formal consultation following Royal Assent. Feedback on the potential transitional arrangements for offshore development is particularly welcomed.