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Llywodraeth Cymru
Welsh Government

Welsh Government

Consultation Document

Changes to the consenting of infrastructure:

Towards establishing a bespoke infrastructure
consenting process in Wales.

Date of issue: 30 April 2018
Responses by: 23 July 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

The Wales Act 2017 devolves competence for the consenting of electricity generating stations up to 350MW both on and offshore, as well as associated overhead electric lines up to and including 132KV to the Welsh Ministers. It also devolves competence for harbour revision and empowerment orders and marine licences, and marine nature conservation functions in the offshore area.

In receiving these new powers, there is an opportunity to make significant improvements to the current processes for consenting infrastructure in Wales to stimulate the delivery of sustainable infrastructure and green growth, while ensuring our aspirations relating to community involvement, energy diversity, carbon emissions and security of supply are met.

This consultation aims to involve stakeholders in establishing a bespoke infrastructure consenting process which is responsive to business and community needs, to support sustainable economic growth, and to decarbonise our energy supply. As these powers to consent larger infrastructure schemes will be devolved on 1 April 2019, this consultation also seeks views on interim arrangements until a bespoke infrastructure consenting process is in place.

How to respond

The closing date for responses is 23 July 2018 and you can respond in any of the following ways:

Email: Please complete the consultation response form and send it to:

planconsultations-g@gov.wales

Please include 'Changes to the consenting of infrastructure – WG34221' in the subject line.

Post: Please complete the consultation response form and send it to:

Changes to the consenting of infrastructure consultation
Planning Directorate
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Prosperity for All: The national strategy

<http://gov.wales/docs/strategies/170919-prosperity-for-all-en.pdf>

Prosperity for All: Economic Action Plan

<http://gov.wales/docs/det/publications/171213-economic-action-plan-en.pdf>

Wales Act 2017:

<http://www.legislation.gov.uk/ukpga/2017/4/contents/enacted/data.htm>

Contact details

For further information:

Email: planconsultations-g@gov.wales

Tel: Lewis Thomas on 0300 025 3201

Data protection

How the views and information you give us will be used

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing. Names or addresses we redact might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold

information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information. Your data will be kept for no more than three years Under the data protection legislation, you have the right:

- to access the personal data the Welsh Government holds on you;
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Telephone: 01625 545 745 or 0303 123 1113

Website: www.ico.gov.uk

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:

Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

Email Address: Data.ProtectionOfficer@gov.wales

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Foreword from the Cabinet Secretary for Energy, Planning and Rural Affairs

The planning process must help us to build the infrastructure necessary to support sustainable communities and improve our quality of life by supporting Prosperity for All. Changes are vital to achieve our goals in relation to energy diversity, carbon emissions, security of supply, delivering sustainable infrastructure and green growth.

There are clear challenges on the horizon. In the advent of Brexit, Wales must remain competitive and an attractive place to invest. In the past, I have recognised the need to improve the environment and natural resources in Wales to make it a better place to live for all. There is also the need to improve our infrastructure and keep our communities connected.

The Wales Act 2017, which received Royal Assent last year, is a step forward in handing further control over the consenting of energy projects as well as ports and harbours, marine licences and other important regulatory frameworks to Wales. While it does not provide the lasting devolution settlement we desire, it gives us an opportunity to set out our aspirations to take on further devolved responsibility in relation to energy and other infrastructure.

In this consultation, I propose a number of reforms which will continue the work undertaken by the Welsh Government to simplify and unify consent regimes, which is an objective set out in Prosperity for All and the Economic Action Plan. My proposals will build on the planning process for Developments of National Significance which was successfully introduced in 2016.

My proposal to introduce a specific Welsh Infrastructure Consent which extends both on and offshore will contain the principles of:

- Providing a transparent, consistent and simple, yet rigorous process which strengthens the role of local communities
- Being fit for purpose for Wales and able to meet future challenges
- Streamlining and unifying decision making processes
- Improving the current standards of service
- Providing certainty in decision making

These reforms will make the step to a holistic process which can consider whether a proposed development is acceptable. My proposals will ensure the best outcome for communities, businesses, the environment and for Wales as a whole, while ensuring investment is directed to those areas which benefit most.



Lesley Griffiths
Cabinet Secretary for Energy, Planning and Rural Affairs

Glossary of Terms

2008 Act	The Planning Act 2008
CPO	Compulsory Purchase Order
DCO	Development Consent Order
DNS	Developments of National Significance
Electricity Act	The Electricity Act 1989
KV	Kilovolt
LIR	Local Impact Report
LPA	Local Planning Authority
NDF	National Development Framework
NSIP	Nationally Significant Infrastructure Project
MW	Megawatt
Offshore	The Welsh Inshore Region and Welsh Offshore Region as defined by S.322 of the Marine and Coastal Access Act 2009, insofar as within the legislative competence of the Welsh Ministers
PINS	The Planning Inspectorate
SofS	The Secretary of State
TCPA	The Town and Country Planning Act 1990
WIC	Welsh Infrastructure Consent; A new consent type which may be in the form of a standardised consent or statutory instrument which will be the outcome of a unified and bespoke consenting process.
WIP	Welsh Infrastructure Project; The types of project which are of importance to Wales and the development for which is consented as a Welsh Infrastructure Consent.
WNMP	The Welsh National Marine Plan

1. Background

Overview and challenges

- 1.1 The planning system in Wales plays an important role in helping support economic prosperity, promoting sustainable development and addressing the challenges posed by climate change, whilst safeguarding our access to a quality environment. At this time, the Welsh Government is facing a number of challenges which the planning system is helping to overcome.
- 1.2 The economic, legislative and political arrangements of the United Kingdom are set to change in the advent of its exit from the European Union. Economically, Wales could be at a disadvantage against the rest of the United Kingdom were there to be inferior arrangements for the consenting of infrastructure. To remain competitive and to encourage continued investment in Wales, the right environment should be in place which offers certainty in terms of decisions and timescales.
- 1.3 The Welsh Government's Natural Resources Policy¹ recognises the need to reduce pollution levels, ensure the sustainable extraction of minerals and to improve the uptake of renewable energy to help adapt and mitigate the impacts of climate change. Considering environmental issues separately from economic objectives is unacceptable and there is a need to ensure those issues and objectives are considered together. The Environment (Wales) Act 2016 provides for the better planning and enhancement of Wales' natural resources at a national and local level as well as our intentions to decarbonise the Welsh economy with a target of generating 70% of its electricity from renewable sources by 2030.
- 1.4 There is a Government commitment to set up a National Infrastructure Commission for Wales. The Commission is expected to set out strategic infrastructure needs and priorities. Our national strategy² already cites the need to ensure security of energy supply, tackling regional inequality, delivering quality services as ways to improve the well-being of the people of Wales. For any infrastructure which keeps Wales moving, an appropriate consenting vehicle must be in place to ensure its effective delivery.

New legislation

- 1.5 Recent modifications to the law have sought to reinforce the objectives of the planning system and has made significant changes to the backdrop in which infrastructure is dealt with in Wales.
- 1.6 Below, we set out those relevant changes:

¹ [Welsh Government – Natural Resources Policy, 2017](#)

² [Welsh Government - Prosperity For All: The National Strategy, 2017](#)

The Planning (Wales) Act 2015

- 1.7 The role of the planning system was established by the first Planning (Wales) Act, which sets out a statutory purpose³ for the planning system in ensuring the development and use of land contributes towards sustainable development by improving the economic, social, environmental and cultural well-being of Wales, in accordance with the Well-being of Future Generations (Wales) Act 2015.
- 1.8 In supporting decision-making through this purpose, the Planning (Wales) Act 2015 sets out a specific process for the delivery of strategic infrastructure in Wales named Developments of National Significance (“DNS”). The process for DNS projects is a special type of planning application made to and with permission issued by the Welsh Ministers. Its purpose is to ensure decisions on those projects which are of importance to Wales are made as quickly and as transparently as possible. This is to ensure greater certainty for communities and developers. The process, amongst other things, captures onshore energy generating projects from 10MW upwards for wind generating stations and from 10MW up to the devolved limit of 50MW for all other types of generating station. A full list of projects contained within the DNS regime is prescribed in Regulations⁴.

The Wales Act 2017

- 1.9 The Wales Act 2017 (“the Wales Act”) received Royal Assent in January 2017. This prospectively devolves further responsibility for the consenting of energy generating projects up to and including 350MW both onshore and in Welsh waters⁵, as well as other consequential provisions in Welsh waters. This does not alter the Welsh Ministers’ functions in relation to onshore wind generating stations. The legal effect of provisions in the Wales Act is to place onshore consenting by default into the Town and Country Planning Act 1990 (“TCPA”) and offshore consenting within the process set out in s.36 of the Electricity Act 1989 (“the Electricity Act”).
- 1.10 The Act also prospectively devolves responsibility for the consenting of overhead electric lines of 132KV⁶ or less where they are associated with a devolved Welsh generating station. These consenting powers are also placed by default into the planning application process under the TCPA.
- 1.11 The powers in the Wales Act relating to executive competence for on and off shore generating stations and overhead electric lines have not yet been commenced, however, a commencement date of 1 April 2019 has been set by the UK Government.
- 1.12 Concerning other infrastructure, as of 1 April 2018, the Welsh Ministers will receive devolved competence for the consenting of Harbour Revision and

³ S.2 of the Planning (Wales) Act 2015.

⁴ The Developments of National Significance (Specified Criteria and Secondary Consents) Regulations 2016.

⁵ S.39-42 of the Wales Act 2017.

⁶ S.42 of the Wales Act 2017.

Empowerment Orders, (with the exception of reserved trust ports)⁷. These, at present, will continue to be consented under the Harbours Act 1964.

Reason and scope of consultation

- 1.13 The Wales Act provides legislative and executive competence to the Assembly and Welsh Ministers respectively for the consenting of generating stations between 50MW and 350MW (with the exception of consenting for onshore wind generating stations, for which the Welsh Ministers already have executive competence) and associated overhead electric lines up to and including 132KV.
- 1.14 For many of the other functions which are to be devolved to the Welsh Ministers under the Act, powers under existing Acts and their processes are to be transferred directly to the Welsh Ministers. This provides an appropriate transition for those who use those processes. The provisions relating to energy consenting are different to other parts of the Wales Act⁸ in expressly removing Welsh generating stations from the existing Development Consent Order (“DCO”) process under the 2008 Act⁹. The DCO regime is an established ‘one stop shop’ consenting arrangement appropriate for determining this scale of energy project. One key aspect of the process is the ability to compulsorily acquire land alongside consent for development.
- 1.15 The Wales Act, instead of transferring DCO functions to the Welsh Ministers, places the consenting of devolved energy generating stations and overhead electric lines into the Electricity Act for those in Welsh waters and the TCPA for those which are onshore.
- 1.16 The TCPA is unproven in determining projects of this type and scale, and may be seen as unsuitable for consenting large scale energy infrastructure, particularly linear projects.
- 1.17 The energy consenting powers in the Wales Act are to be commenced by the UK Government on 1 April 2019. Additional changes are required to secondary legislation to allow Wales to exercise those new consenting powers effectively. This is a very short timescale within which the Welsh Government must provide adequate consenting arrangements.
- 1.18 Accordingly, this consultation sets out how the new powers contained in the Wales Act will be implemented.

Part 1: The short-term

- 1.19 In Part 1 of this consultation, we set out a transitional solution which will be in place from 1 April 2019, upon receipt of the new powers. This will require changes to existing consenting processes. While we see these changes as providing an adequate consenting process, it does not provide an appropriate arrangement in the long-term.

⁷ S.34 of the Wales Act 2017

⁸ S.39-S.42 of the Wales Act 2017

⁹ Schedule 1 of the Wales Act 2017 – Reservation M3 - 184

- 1.20 There are also emerging issues in the fields of energy consenting and compulsory purchase which must be addressed in the short term. This paper proposes to make beneficial changes to the current process in gaining planning permission for DNS, to safeguard Wales' position at the forefront of low carbon development.

Part 2: The long-term

- 1.21 This consultation also sets out a long-term solution in Part 2, which will eventually replace the transitional arrangements. As significant changes to legislation are required, it cannot be in place prior to the proposed commencement date.
- 1.22 In Part 2, we outline our measures establishes a truly bespoke and flexible consenting process for the consenting of infrastructure projects in Wales. This includes the development of legislative proposals and the introduction of new policy. In developing these proposals, we have collaborated with a number of stakeholders, and we are now seeking wider views and comments on our proposals. To summarise our proposals:

A new consent type

- 1.23 We propose to establish a new form of consent administered by the Welsh Ministers called a Welsh Infrastructure Consent ("WIC"), which extends on and off shore, and captures major infrastructure projects in Wales. This will replace the existing consenting route for planning permission for DNS under the TCPA, as well as other statutory regimes.

A one stop shop

- 1.24 The WIC would comprise of a 'one stop shop' for those infrastructure projects which are captured by it. This will enable other authorisations or licences necessary for the development to take place and be considered 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.

Clear and consistent policy

- 1.25 The consenting process would be accompanied by clear thresholds and policy against which individual projects can be assessed. In providing a definitive route for applications and establishing the principle of a particular development in policy, this will provide greater certainty in terms of outcomes and timescales and would encourage investment in Wales.

A flexible process

- 1.26 The process will be designed with flexibility in mind. As the WIC regime could capture a number of project types of varying sizes, a proportionate approach can enable certain types of decision to be examined and made quickly, where

the social, economic and environmental impacts are limited. Equally, where individual proposals are complex, further scrutiny can be given, while remaining within a set timetable. This will ensure more resources are available to focus on the schemes and issues where scrutiny and public testing are vital.

Strengthened community role

- 1.27 In providing a one-stop shop, the ability of the public and communities to participate effectively in the WIC process would be simplified and provide a more accessible route for them to have their say. We intend to require prospective applicants to engage with local communities in advance of submission of their application to ensure the scheme can be shaped by the comments of host communities. Local Planning Authorities (“LPAs”) will have specific involvement in documenting the impact on their local area. Full open-floor discussions will be introduced to the examination process to allow fair and inclusive participation.

Part 3: Reforms to the compulsory purchase regime in Wales

- 1.28 In Part 3, we set out a series of technical reforms to the compulsory purchase process including criteria for the delegation of decisions by Inspectors on CPOs submitted by acquiring authorities for confirmation by the Welsh Ministers. Also, we propose to broaden the power to award costs in Wales in relation to inquiries into CPOs which are made to facilitate land use and development.

Government objectives

- 1.29 The proposals in this paper fit with the Programme for Government¹⁰ in seeking to project a Wales which is prosperous and secure, united and Connected in being able to deliver more effectively any recommendations made by a National Infrastructure Commission for Wales. This consultation also acknowledges planning decisions affect every area of a person’s life and the right planning system is critical to delivering the Welsh Government’s objectives. There is a specific commitment in the national strategy¹¹ to establish a bespoke and unified infrastructure consenting process which is responsive to business and community needs, to support sustainable economic growth and to decarbonise the energy supply. This is also supported by the Welsh Government’s economic action plan¹².

Next steps

- 1.30 A series of consultation questions are set out in the body of this document. For ease of reference, a separate response form is provided alongside this paper at *Annex B*. The consultation closes on 23 July 2018.

¹⁰ [Welsh Government – Taking Wales Forward 2016-2021, 2016](#)

¹¹ [Welsh Government – Prosperity for All: The National Strategy, 2017](#)

¹² [Welsh Government – Prosperity for All: Economic action plan, 2017](#)

1.31 Following this consultation, we intend to bring forward our proposals in Part 1 to come into force on 1 April 2019. Our proposals in Parts 2 and 3 will require an Assembly Bill to be introduced in due course.

PART 1 – INTERIM ARRANGEMENTS

2. Changes to existing regimes

Altered DNS Thresholds

- 2.1 The Secretary of State for Wales made the decision for new powers relating to energy consenting contained in the Wales Act to be commenced on 1 April 2019.
- 2.2 Major changes are required to the legislative framework to enable a truly appropriate and bespoke arrangement for the consenting of such projects. It is not possible to do so in advance of 1 April 2019. The Wales Act places the consenting of generating stations into the planning system as a default position for onshore generating stations, offshore generating stations below 350 MW requiring a section 36 consent under the Electricity Act from the Welsh Ministers and a marine licence. However, this creates a number of anomalies which require correction. In this Part we propose interim arrangements for those proposed devolved energy generating projects. These interim arrangements are to provide a workable consenting process and will correct these anomalies. These interim arrangements will cover the period between 1 April 2019 and the coming into force of a bespoke consenting process (See Part 2).
- 2.3 While these arrangements may not provide the full range of powers the developer requires from the Welsh Ministers, such as powers to authorise compulsory acquisition, they provide a logical consenting process for both generating stations between 50MW and 350MW and for overhead electric lines up to and including 132KV.

Onshore electricity generating stations

- 2.4 Currently, all generating stations with an installed generating capacity of 10MW and upwards to the current devolved upper limit are DNS projects consented under the TCPA. The devolved upper limit is:
- 50MW for all types of onshore generating station which are not onshore wind; and
 - Unlimited for onshore wind generating stations.
- 2.5 The Wales Act raises the devolved upper limit to 350MW for onshore generating stations which are not onshore wind. Without amendment, the consenting for all non-wind onshore generating stations between 50MW and 350MW into the planning process to be determined by LPAs. We see this as a perverse situation. The evidence which underlies the current energy thresholds for DNS indicates the performance of LPAs in achieving timely decisions on large scale energy projects is not satisfactory. It would be illogical for smaller projects to be dealt with at the national level, with larger generating projects consented at the local level.

- 2.6 In our response¹³ to the consultation on DNS in 2015, we stated the medium term objective would be to capture any newly devolved projects above the 50MW upper limit as DNS. We have not changed this view for onshore generating stations in the interim period, and propose to extend the current DNS threshold to 350MW onshore.

Storage and generation

- 2.7 We acknowledge there are emerging technologies which will increase clean generation and energy efficiency in Wales and help the transition to a low carbon economy. The pace at which storage technologies are developing is rapid. The cost, efficiency and advancement of storage is leading it to becoming a common and viable part of our energy networks. We support the removal of barriers to such technology.
- 2.8 We have agreed to view storage technologies as energy generation¹⁴ for the purposes of consenting. While this is the case, there is evidence to suggest such projects require different treatment to conventional generation projects. At present, small storage projects (between 10MW and 50MW) must seek planning consent under the DNS process. No storage project has yet been consented through this process as the cost and time taken for decisions is seen as prohibitive to storage operators. Prior to the coming into force of the DNS process in 2016, the performance in consenting such projects appeared to be reasonable at the local level and the impacts of such projects are often minimal¹⁵.
- 2.9 To remove consenting barriers and to reflect the physical scale and impacts of storage technologies being developed, we propose to remove storage projects from the current DNS process, for decision at a local level. We see this as a more proportionate way to determine such projects. This proposal will not include pumped hydroelectric storage schemes, which on the basis of prior projects, continue to have significant environmental effects. This proposal will not affect those storage projects which have a capacity beyond the current devolved upper limit of 350MW.
- 2.10 The UK Government is currently considering¹⁶ ways of streamlining and simplifying the planning process for energy storage projects and is considering whether storage should continue to be treated in the same way as conventional generation. Our proposals will take into account any legislative changes made or proposed by the UK Government.

¹³ Welsh Government, Developments of National Significance – Summary of responses and Government response, November 2015

¹⁴ [Department for Business, Energy and Industrial Strategy – A Smart, Flexible Energy System: A call for evidence, 2016](#)

¹⁵ [Welsh Government – Research into the Thresholds and Criteria for Development of National Significance in Wales \(Prescribed under s.62D of the Town and Country Planning Act 1990\), 2017](#)

¹⁶ [Department for Business, Energy and Industrial Strategy – Upgrading our energy system – Smart systems and flexibility plan – Call for evidence question summaries and response from the Government and Ofgem, July 2017](#)

Devolved overhead electric lines

- 2.11 Consents for overhead electric lines are currently issued under the Electricity Act (up to 132KV) or the 2008 Act (132KV and above). These are both consents issued by the Secretary of State. On 1 April 2019, the Wales Act places consenting for these electric lines into the TCPA for such projects to be determined by LPAs, where they are associated with a generating station which has an installed generating capacity up to and including 350MW or an onshore wind generating station of any installed generating capacity.
- 2.12 Being placed in the planning regime brings particular concerns. Certain infrastructure corridors in Wales pass through a number of LPA areas, for example the heads of the valleys area. The requirement to gain separate consents from a number of LPAs may delay the development of such infrastructure in Wales. Furthermore, the development industry sees the current process under the Electricity Act as proportionate and our evidence suggests timely decisions are issued routinely under this arrangement. As a consequence of the Wales Act, devolved overhead electric lines will no longer be consented under this regime.
- 2.13 Our evidence suggests this distribution infrastructure can give rise to visual impact issues, depending on the engineering solution of the electric line. LPAs rarely object to such applications. Should an objection be made, a public inquiry would be automatically triggered. We believe this statutory requirement to trigger and participate in an inquiry may cause LPAs to avoid giving their reasoned opinion on such schemes, due to the financial implications involved.
- 2.14 Ultimately, overhead electric lines are necessary for the operational effectiveness and resilience of the electricity transmission and distribution network. Each link of the network, no matter what the scale, is critical to the network as a whole, ensuring power can be distributed sustainably and economically to customers. In the drive towards renewable energy, the planning process must take into account the full implications of generation. Thus, national consenting has a role in the timely delivery of electric lines.
- 2.15 We propose for all devolved overhead lines to be placed in the current DNS process¹⁷ for an interim period. Given the longer statutory timeframes, this may lead to the consenting of such lines taking longer than they do at present.
- 2.16 Our evidence suggests following acceptance of an application to construct an overhead electric line, the UK Government currently averages 4-6 weeks to make a decision on whether to consent the line. The DNS process has a maximum timeframe of 36 weeks, which is a significantly longer period. Although a recent decision was made well within this statutory timeframe, this still does not provide the same level of service as developers currently receive.
- 2.17 At present, all DNS projects are determined by the Welsh Ministers, rather than by an Inspector appointed by the Welsh Ministers. Determination by the

¹⁷ S.62D of the Town and Country Planning Act 1990

Welsh Ministers following examination of the application by an inspector, can take up 12 weeks of the 36 week determination period for a DNS project. We propose to remove this requirement for overhead electric lines to produce timelier decisions. In doing so, the Welsh Ministers will retain the power to recover jurisdiction over the DNS application should they consider it appropriate. We see this change as striking the right balance between rigour and timeliness of decisions.

- 2.18 In transferring powers for the consenting of devolved electricity lines to the Welsh Ministers, there is the need to carry over exemptions which preclude the need for consent under the Electricity Act¹⁸. These exemptions provide the ability for licence holders to undertake minor works including temporary installations and lines which are attached to existing buildings and apparatus, expeditiously. In the interests of continuity for developers and to preclude relatively minor works from requiring a DNS application, we intend to carry forward those exemptions as permitted development in the town and country planning process.

Figure 2.1: Altered energy thresholds for DNS

Type of development	Proposed compulsory threshold
Electricity infrastructure	
A. Onshore generating stations (with the exception of those which generate from onshore wind specified in B and energy storage classes as specified in C); and	<p>Construction:</p> <p>The construction of a generating station, where it is expected to have an installed generating capacity of between 10MW and 350MW</p> <p>Alteration or extension:</p> <p>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.</p>
B. Onshore wind generating stations	<p>Construction:</p> <p>The construction of the generating station, where it is expected to have an installed generating capacity of over 10MW.</p> <p>Alteration or extension:</p> <p>The alteration or extension of a generating station, where its effect is to increase the installed generating capacity by at least 10MW.</p>

¹⁸ S.16(3)(b) of the Planning Act 2008, S.37(2)(a)-(b) of the Electricity Act 1989 and Overhead Lines (Exemption) (England and Wales) Regulations 2009

C. Energy storage, which excludes pumped hydroelectric storage.	DNS will not capture this class of development.
D. Overhead electric lines associated with a generating station of a description set out in A-C.	Installation: All overhead electric lines where the nominal voltage is expected to be up to and including 132KV

Other requirements to initiate newly devolved projects (onshore)

- 2.19 To initiate a large scale energy project or to build an overhead electric line which passes land in multiple ownerships, it is essential there are powers for operators to gain rights over the land to build the necessary infrastructure and for the installation and operation of lines to be undertaken safely. These powers for operators are set out in the Electricity Act¹⁹.
- 2.20 Electricity operators must hold a licence for the transmission and distribution of electricity. Typically, licence holders need permission to install their electric lines and associated equipment on, over or under private land and to have access to that land for the purposes of inspecting, maintaining, repairing, adjusting, altering, replacing or removing the line or equipment. Commonly, this is undertaken through negotiation of a contractual arrangement with the landowner and/or the occupier of the land; this is called a voluntary wayleave. There are also powers enabling the provision of necessary wayleaves for electric lines²⁰. Where a mutual arrangement cannot be made between parties, the licence holder may apply to the Secretary of State for a necessary wayleave. These powers are important for the operational effectiveness of overhead lines.
- 2.21 Equally, where an electricity licence holder is unable to acquire land either voluntarily or by way of a wayleave there are powers for electricity licence holders to acquire land compulsorily which is required for any purpose connected with the carrying on of the activities to which the licence holder is authorised²¹. This may include the operation of a generating station, any sub stations or electric lines.
- 2.22 At present a necessary wayleave or an order for the compulsory acquisition of land by an electricity licence holder may only be granted or authorised by the Secretary of State. In the interests of providing some continuity for applicants, it is our intention to seek the transfer these powers to the Welsh Ministers to accompany our interim consenting processes.
- 2.23 In addition to land rights, electricity licence holders require the ability to safely install and operate electric lines. As most distribution lines are sited rurally, they are likely to be in close proximity to trees or shrubs. The Electricity Act provides powers for vegetation to be pruned or cut back to maintain safety standards and clearances to the line where the licence holder gives the

¹⁹ Schedules 3 and 4 of the Electricity Act 1989

²⁰ Paragraphs 6 and 8 to Schedule 4 of the Electricity Act 1989

²¹ Schedule 3 of the Electricity Act 1989

occupier of the land notice allowing them to do so and rectify the obstruction. However, occupiers of land may disagree with the vegetation clearance. In such instances the Secretary of State may decide to grant a tree felling and lopping of trees order²². It is also our intention to seek to transfer these powers to the Welsh Ministers, where they concern devolved overhead electric lines.

- 2.24 While transferring these powers will not provide a true unified consenting process in the short term, it will provide some opportunity to assimilate the necessary wayleave or compulsory purchase processes with the main consent, which can provide time-saving benefits for applicants.

Offshore generating stations

Interim consenting arrangements

- 2.25 As the TCPA may only extend to the low water mark, consents for offshore generating stations must be treated differently to onshore generating stations in the interim period. The default position set out by the Wales Act is consenting for offshore projects between 1MW and 350MW are to be undertaken through section 36 of the Electricity Act, with decisions being made by the Welsh Ministers. Projects up to 1MW will continue to require a marine licence alone. We see no reason to make alterations to this position in the short-term. The Welsh Ministers will also receive devolved powers to include declarations extinguishing public rights of navigation²³ as part of the consent and to declare safety zones for offshore renewable energy installation.
- 2.26 Consents under the Electricity Act are currently required in Wales for offshore generating stations between 1MW and 100MW. Decisions are made by the Secretary of State at present. While some amendments to the Electricity Act process have occurred in Scotland, powers under that Act are used to consent the majority of large offshore generating stations in their waters.
- 2.27 We see using the Electricity Act process with little amendment as an adequate solution in the short-term. However, we are mindful the Electricity Act process does not provide the certainty developers need in terms of decision outcomes and timeframes, and does not provide the one-stop shop the development industry requires. While this issue remains, we intend to pursue our proposals set out in Part 2 of this paper as the long-term solution.

Fees

- 2.28 In receiving devolved powers for the consenting of offshore generating stations up to 350MW, the Welsh Ministers will inherit the associated procedures under the Electricity Act. Since the coming into force of the 2008 Act, and the moving of all offshore consenting above 1MW from the Electricity Act to the Development Consent Order process, the procedures for consenting

²² Paragraph 9 to Schedule 4 of the Electricity Act 1989

²³ S.36A of the Electricity Act 1989

generating stations up to 1MW has scarcely changed, including the relevant fees level.

- 2.29 The Electricity Act, as amended, still remains the main consenting vehicle for on and off shore generating stations in Scotland. The Scottish Government has made major changes to fees for such consents to ensure full cost recovery in line with public finance principles. We have examined the evidence which underlies the fee increases in Scotland²⁴ and see no reason why increases in fees should not occur in Wales. While in some cases this may cause a significant increase in fee levels we see these increases as necessary to ensure an efficient and self-funding process is in place.
- 2.30 Our proposed fee structure is different from the current method of calculating fees for s.36 consents under the Electricity Act and will apply to all application types: the construction, extension, operation, alteration or a single application which combines any of these. While this method may appear more complex to the applicant, we see this as a fairer method which better achieves full cost recovery and reflects the complexity and impacts of a proposal, rather than its output. The fees set out in Figure 2.2 are based on the evidence which underlies the DNS process, which reflects the typical cost for the Welsh Ministers to administer applications, examine and determine applications for consent to develop.

Figure 2.2: Proposed fees for offshore energy consenting under the Electricity Act

	Fee level
Initial fees	
Fee for submission of application	£15,350
Examination fees	
(a) Daily rate for the Welsh Ministers examining an application on the basis of written representations	£870 per day
(b) Daily rate for the Welsh Ministers examining the application by way of hearing or inquiry	£920 per day
Determination fee	
Fixed fee for the Welsh Ministers determining an application.	£14,700

²⁴ [Scottish Government – Fees Charged for Applications under the Electricity Act 1989 \(February 2018\)](#)

Consultation questions

- 1. Do you agree with our interim arrangements for onshore electricity generating stations? If not, why not?**
- 2. Do you agree with our short-term proposals regarding the storage of electricity? If not, why not?**
- 3. Do you agree with our interim arrangements for overhead electric lines? If not, why not?**
- 4. Do you agree with interim arrangements for offshore electricity generating stations? If not, why not?**
- 5. Do you agree with our proposals to seek the transfer of power of necessary wayleaves and compulsory acquisition connected to a generating station?**

PART 2 – A NEW CONSENTING PROCESS FOR INFRASTRUCTURE

3. Principles

Implementing the Wales Act 2017

- 3.1 When fully in force, the Wales Act will make a number of changes to the consenting processes for infrastructure. The Act effectively removes newly devolved functions (*Paragraphs 1.9 and 1.10*) from the Development Consent Order (“DCO”) process set out in the 2008 Act. Instead, Wales will be placed into other pre-existing regimes.
- 3.2 As a default position, the Wales Act places 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 into the TCPA. The Wales Act also returns the consenting of offshore generating stations between 1MW and 350MW into the Electricity Act and the consenting of all devolved ports and harbours²⁵ into the Harbours Act 1964. These proposed changes are set out in *Figures 3.1 and 3.2*.

Figure 3.1: Current consenting processes

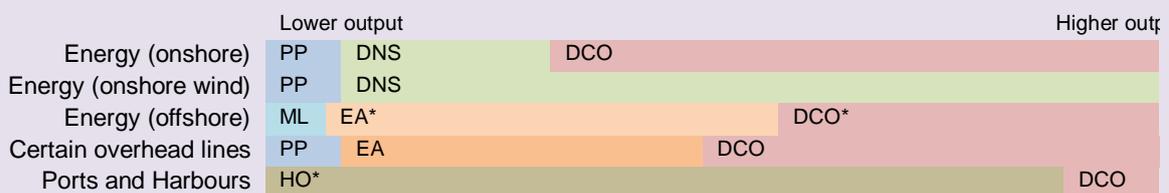
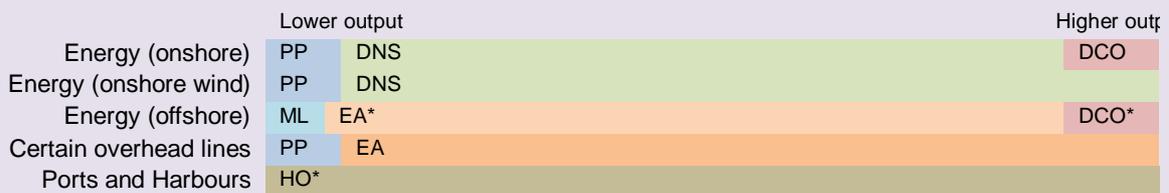


Figure 3.2: Changes to consenting processes arising from Wales Act 2017 (including interim arrangements set out in Part 1 of this consultation)



PP	s.57 Town and Country Planning Act 1990 (Planning Permission)
DNS	s.62D Town and Country Planning Act 1990 (Developments of National Significance)
DCO	s.31 Planning Act 2008 (Development Consent Order)
ML	s.65 Marine and Coastal Access Act 2009 (Marine Licence)
EA	s.36 Electricity Act 1989 (Consent to construct and operate)
EA	s.37 Electricity Act 1989 (Consent to construct and operate)
HO	s.14/s.16 Harbours Act 1964 (Harbours Orders)

*A separate Marine Licence under the Marine and Coastal Access Act 2009 will be required for all offshore generating stations and most works in waters at ports and harbours.

²⁵ 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.

- 3.3 Other regimes, such as those already consented under the TCPA, the Highways Act 1980 and the Transport and Works Act 1992 will remain unchanged as a result of the Wales Act.

Options for implementation

- 3.4 As a consequence of the Wales Act, it is a requirement to amend current legislation to ensure it operates in Wales in the light of newly devolved powers. However, the extent of legislation required will differ depending on how those new powers are implemented.
- 3.5 In implementing the Wales Act, there is flexibility to undertake two options:
- (a) *Use existing consenting regimes, with modifications*
- 3.6 This option would involve extending existing consenting arrangements under the TCPA for devolved energy generating stations and overhead electric lines onshore and offshore deploying existing powers under the Electricity Act, and the Harbours Act 1964 to consent offshore generating stations in Welsh waters and works to ports and harbours.
- (b) *Introduce unified and bespoke consenting arrangements both onshore and in Welsh waters*
- 3.7 This option would involve the establishment of a 'one stop shop' unified consenting regime for energy projects onshore and in Welsh waters as well as ports and harbours. Consenting arrangements would be accompanied by a clear policy against which individual projects can be assessed.
- 3.8 This option will require an entirely new form of consent which may enable the Welsh Ministers to issue consents for relevant energy projects and ports and harbours, as well as other authorisations or licences required to facilitate the development at the same time or as part of the same consent. This option also provides the opportunity to create a consistent process for other types of infrastructure, such as highways, airports and water schemes.
- 3.9 An assessment of the advantages and disadvantages of the options has been undertaken and is set out at *Figure 3.3*.

Existing consenting regimes

- 3.10 There are a number of regimes which enable the Welsh Ministers to consider whether or not to grant consent for the development of devolved generating stations, electricity lines, development straddling the low water mark such as ports or harbours, and already devolved infrastructure such as dams and reservoirs and transport infrastructure such as roads, airports and railways.
- 3.11 Applications under these regimes are notified to the Welsh Ministers directly, and in some cases the works are also promoted by the Welsh Ministers. The procedure varies according to the regime, however, for particularly large projects there are a number of stages which the project must go through.

- 3.12 There may be requirements for varying degrees of statutory pre-application consultation, including the identification of scheme options with a view of establishing a preferred scheme. Following this, an application is made to the Welsh Ministers under the statutory powers. Generally, this is followed by an examination held by an independent Planning Inspector, which may also include a public inquiry for detailed consideration of the proposal in the case of any objections. Following this, the Inspector will produce a report and recommendations to the Welsh Ministers to decide whether a project should be granted the necessary powers and consents to proceed.

The case for change

- 3.13 The above typical process can be onerous on the applicant and can take a significant and often unpredictable amount of time to deliver a decision, given there are no statutory timeframes for all of these processes. This can generate large amounts of uncertainty for all parties, which can impose significant costs on them as well as potential planning blight. 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 promoters from bringing forward new projects. This may threaten Wales' ability to deliver the required infrastructure and provide prosperity for all.
- 3.14 Due to the potential and unpredictable length of time and expense of taking in part in an examination, it can be difficult for participants and the community to take part and make their views heard. Furthermore, different processes being set out for different types of infrastructure can be confusing. This often means those with the most time, resources and best knowledge can have an advantage. This can be deemed to be unfair.
- 3.15 Our evidence suggests there is a case to unify the existing consenting regimes on the following basis:

Consistency

- 3.16 Current consenting regimes have differing levels of consistency and the processes are spread over a series of Acts which have been modified significantly, which can be confusing for the user. Regimes for 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

- 3.17 Some existing infrastructure consenting processes can be criticised for being slow and inefficient, without a definitive decision timescale. This can lead to issues to being rehearsed, developed and mitigated at examination, which is a time consuming process and does not encourage effective pre-application consultation by the applicant.

Chances of success

- 3.18 For many regimes, there is no clear policy to underpin the decision-making process. This leads to the prospects for a successful application being uncertain and may cause different interpretation of policy or weight to policy being apportioned inconsistently on a case by case basis. Where major infrastructure is concerned, it is important there is a clear strategic framework to enable initial investment. The absence of a clear policy framework may discourage promoters of works from bringing forward proposals. This can cause significant delay at the examination stage as a clear policy would negate the need to discuss at length the principle of the project.

Quality of applications

- 3.19 While there are exceptions, promoters of works do not appear to be preparing applications to a sufficient standard to endure thorough examination. Furthermore, promoters do not always engage at a sufficiently early stage with key parties such as statutory consultees and do not always consult widely enough with the local community. This can result in members of the public sometimes feeling they have been unable to influence the development of a project. This situation can also cause problems for the promoter, in that issues unknown to them prior to submission can arise during an inquiry. Mitigating for those issues can be costly to the scheme promoter.

Confusion

- 3.20 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 also be intimidating for those who wish to engage effectively in the process. More inclusive processes are required for valuable viewpoints to be offered and considered.

Complexity

- 3.21 A scheme receiving consent to develop does not necessarily mean it can be implemented immediately. For large infrastructure, further consents, licences or authorisations under different regimes to the development consent are often required to implement a scheme. This lack of one stop shop can cause the duplication of work and procedures. This can significantly increase the costs of applications and can act as a barrier to bringing forward proposals and cause frustration and confusion to those participating in the process.

Options and preferred option

- 3.22 In analysing the case for change and options available, there is a clear preference to establish unified and bespoke consenting arrangements for infrastructure both onshore and in Welsh waters. The creation of a unified consenting regime clearly demonstrates the aspirations and ability of the Welsh Government to take on further devolved responsibility in relation to energy and other infrastructure.

Figure 3.3: Advantages of Option (a) and (b)

Option (a): Use existing consenting regimes.	Option (b): Introduce unified and bespoke consenting arrangements.
Developers are likely to be familiar with some of the existing consenting regimes, including DNS, harbour revision and empowerment orders and consents under the Electricity Act.	Wales could gain an advantage in having a modern and speedier consenting regime, which increases certainty and produces quicker decisions, encouraging appropriate energy and infrastructure development. This removes the unpredictability of current arrangements.
Minimal change will be required to existing legislation, thus saving time and expense for all parties in the short term.	Greater consistency could be achieved across energy consenting and other types of major infrastructure in Wales, which provides clarity as to the correct process. 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 less disruption in the short term.	There is potential to streamline the process between onshore and offshore generation.
	A more flexible consenting process can be produced which can better respond to future changes, challenges and costs.
	A unified consenting regime could allow the developer to wrap up associated or ancillary consents into a single consent. The 'one stop shop' approach is tried, tested and supported by the development industry for NSIPs. Establishing a similar process would require little adjustment from developers.
	A fragmented and non-unified consenting regime may lead to other authorisations and licences holding up the implementation of a scheme.
	Retaining existing regimes, which are multi-tiered and under separate Acts, can be confusing for stakeholders.

- 3.23 Making use of existing processes, with modifications, may provide an adequate short-term solution. However, it cannot provide the 'one stop shop' approach which the development industry supports, and existing processes will remain relatively complex and inaccessible for communities and other users. A bespoke process will aid the Welsh Ministers in making decisions on Wales' infrastructure needs and can be adaptable for future needs.
- 3.24 A unified consenting process will rectify some of the issues of fragmented consenting regimes and can ensure a more user-friendly approach for developers and communities. There are certain development types which straddle both the onshore and offshore areas (such as tidal lagoons and alterations to harbours) and are subject to separate jurisdictions. Having a unified process would enable the Welsh Ministers to wrap up other consents and authorisations required to facilitate development in a 'one stop shop' approach which is vital for the delivery of infrastructure in Wales.
- 3.25 For those infrastructure projects which remain significant in their contribution to the economy of Wales, but are not as complex by way of their impacts or consents required (for example, energy storage and overhead electric lines), there remains the opportunity to revisit the range of currently devolved

consenting processes and provide a tiered and proportionate consenting regime within a single application process.

Principles

3.26 Resilient infrastructure to provide water, energy and transportation is a pre-requisite for prosperity for all. Without these things in place, issues such as increased pollution, energy shortages and congestion would occur. Infrastructure in Wales should support and demonstrate our ambition for prosperity for all. However, it is acknowledged the impacts of such infrastructure can fall disproportionately on communities living nearby.

3.27 Based on lessons learnt from current consenting arrangements, any future infrastructure consenting regime for Wales should have the following characteristics:

A transparent, consistent and simple, yet rigorous process which strengthens the role of local communities

3.28 A fundamental aspect of the consenting regime is the means by which communities have their say in proposals for infrastructure development which have the potential to impact on them. Our aim is to create effective community engagement. We propose to replace multiple consenting regimes with an entirely new unified process. This will enable the Welsh Ministers to take decisions on infrastructure in a timely, efficient, consistent and predictable way. In doing so, the ability of the public and communities to participate effectively in the consenting of infrastructure projects would be simplified and improved.

3.29 Decisions on infrastructure projects must ensure the interests of local communities are taken into account. While there are clear benefits supporting the provision of infrastructure to Wales as a whole, those who live closest to it may bear any negative consequences. The proposed consenting arrangements will ensure community interests are taken into account. LPAs will also have a strong representative role in helping to shape infrastructure in their respective areas.

3.30 To help achieve this objective, it is proposed to ensure a high quality of applications through the requirement for pre-application consultation which meets minimum requirements and which encourages best practice standards. Furthermore, we will impose limitations on the extent to which an application can be altered, once submitted, to ensure a degree of certainty to all parties as to what is under consideration.

3.31 The proposed consenting process will be undertaken within a statutory timeframe and include consistent steps to be taken by communities, LPAs and consultees in all cases. There will be a requirement for these parties to be involved prior to the submission of an application to ensure any scheme can be shaped with their comments in mind. There will be further opportunity to comment following the submission of an application. LPAs will also be

required to submit a Local Impact Report, which documents the impact on the locality and ensure their views can be taken into account.

- 3.32 During examination of a proposal, we intend to introduce the ability for members of the public to speak as part of an open-floor discussion, further increasing their participation in the process. This will ensure a fair opportunity for those with an interest in development proposals to be heard.

Be fit for purpose for Wales and able to meet future challenges

- 3.33 Infrastructure consenting by the UK Government is typically undertaken under the 2008 Act, though it is supplemented by other regimes. Whilst this consenting arrangement works well on an England and Wales basis, a more proportionate and flexible approach is required for the projects the Welsh Ministers consent in Wales. The ability to react and adjust in response to changing circumstances satisfies the ways of working set out in the Well-Being of Future Generations Act 2015.

- 3.34 Firstly, in terms of what the process captures, technology is developing at a rapid pace and Wales is aiming to maximise opportunities coming from green growth and the circular economy. Ensuring the right consenting process is in place for individual technologies is vital to ensure planning is not a barrier to economic development. Accordingly, we propose to introduce a reactive unified process for which the thresholds of entry can be altered in response to technological trends and other factors.

- 3.35 Secondly, flexibility is required in terms of the process itself. It is envisaged a unified consenting regime could capture a number of project types of varying sizes. Accordingly, we intend to introduce a flexible examination for schemes. This proportionate approach can enable certain types of decision to be examined and made quickly, where the social, economic and environmental impacts are limited. Equally, where individual proposals are complex, further scrutiny can be given, while remaining within a set and certain statutory timescale.

Streamline and unify the decision making process

- 3.36 Lessons have been learnt from having a fragmented consenting regime in Wales. For instance, major schemes which are important for the Welsh economy and our energy security have been subject to delay as other consents have been required following development consent. A fragmented and non-unified consenting regime may lead to other consents, authorisations and licences holding up the implementation of a scheme.
- 3.37 We propose to help developers improve the way applications are prepared by introducing a streamlined one-stop shop. We intend to make this one-stop shop far wider and more integrated than the current processes for determining planning permission for DNS. This approach will enable developers to apply for the various other consents required to implement a scheme, should they wish. This will have benefits for communities in allowing them to incorporate all comments they intend to make on a scheme as part of a unified application

process. The removal of overlapping regimes will result in the reduction of duplicated work by all parties as well as confusion and consultation fatigue on the part of communities.

- 3.38 While this approach may require longer examination the overall time and effort in attaining additional consents, licences and authorisations will be removed. This proposal will ensure more resources are available to focus on the schemes and issues where scrutiny and public testing is vital.

Improve the current standards of service

- 3.39 To demonstrate Wales is open for business and to stimulate economic development, it is important to offer a consenting regime which provides a high quality service. As a consequence of the Wales Act, consenting in Wales has been placed into existing regimes which do not offer the same certainty of timescales as the 2008 Act.

- 3.40 To remedy this, it is proposed to introduce a statutory timetable which attaches to any application under the unified regime. This proposal is aimed at reducing the time taken from application to decision to under a year in all cases, with shorter statutory targets for less complicated cases. This approach to consenting is designed to increase the economic competitiveness of Wales and support the transition to a low carbon economy.

Provide certainty in decision making

- 3.41 An efficient consenting process will only work effectively if it is underpinned by clear policy. This will provide greater certainty in terms of outcomes and timescales and would encourage further investment in Wales. All of those involved in the planning process have a right to understand the reasoning behind decisions and can expect accountability from policy makers and decision takers.
- 3.42 In establishing the principle of a particular development in policy, there will be no need to rehearse such arguments following the making of an application and examination can be used to discuss other matters of substance such as the specific impacts of the proposal and any land rights.
- 3.43 To realise this, we propose to use existing and emerging national policy frameworks such as the Wales National Marine Plan, the National Development Framework for Wales, Planning Policy Wales and other relevant topic-specific policy published by the Welsh Government to inform decision making. To make decisions, the Welsh Ministers will work within a clear legislative and policy framework which considers need at the national level. We consider this approach provides greater transparency and achieves a clear separation between setting policy and taking decisions.

Realising the principles

- 3.44 Changes have been made to the planning process through the introduction and implementation of the Planning (Wales) Act 2015, and the Positive Planning programme which has supported it.
- 3.45 The current process for determining applications for DNS was introduced in March 2016. This process alleviated a number of issues relating to the consenting performance of LPAs for renewable energy projects, placed a number of consents into one decision for qualifying projects and increased certainty through introducing a statutory time limit.
- 3.46 As the planning application process for DNS beds in, changes are required to reflect devolved powers. The DNS reforms will form the foundations of a coherent process and a stronger approach which will help deliver a wide range of benefits for individuals, communities, business, society and the environment.
- 3.47 While the current process for consenting DNS has partially unified a fragmented regime, it was designed for a specific purpose and range of projects and cannot provide a unified consenting process for all newly devolved projects of all types. This is in part due to its limited nature, largely being a planning permission under the TCPA. This limitation means:
- The current process for consenting DNS cannot capture off-shore projects, as the limit of the planning system ends at the low water mark;
 - The thresholds and criteria for DNS cannot capture certain infrastructure, such as major highways or harbours, as they are consented under different regimes;
 - Being a planning permission, there is limited scope to create a true 'one stop shop', and only a few of the other authorisations or approvals required to implement a project are sufficiently compatible to be sought at the same time and issued by the same authority;
 - There are no compatible powers over compulsory acquisition or necessary wayleaves and the TCPA does not offer sufficient scope to enable applicants to initiate such proceedings; and
 - The current process is not sufficiently flexible to produce different outputs, depending on the requirements of the developer.
- 3.48 It is our view changes are required to ensure the Welsh Ministers have a workable and consistent regime in place to receive those newly devolved responsibilities and to reflect Wales' aspirations for the devolution of further powers.
- 3.49 The DCO process under the 2008 Act has been successful in achieving certainty for communities and developers, providing a 'one stop shop' approach and a consistent framework within which decisions are made. To complement this, DNS in Wales has been successful in simplifying the planning process for those smaller projects and enabling greater community engagement. Both of these processes, as well as other existing processes such as Harbour Revision and Empowerment Orders and consents under the

Electricity Act, have characteristics which can be transferred into a new consenting arrangement which meets the needs of Wales.

- 3.50 Accordingly, it is proposed to create a single and unified consenting process in Wales which builds upon the principles of DNS, and which has a wider scope to capture other consent types. As the process will capture a wide range of infrastructure, the process must be flexible, and can vary its output and decision timetable to match the type and characteristics of the project.
- 3.51 The process will be a one-stop shop, where the developer asks for other authorisations or approvals to be included as part of the consent. It will incorporate those aspects of community consultation which have worked well in other regimes. The new arrangements will replace the current DNS process in its entirety and partially remove other regulatory processes. We see this as a necessary step to provide an efficient and lasting consenting process.
- 3.52 The remainder of this consultation paper will set out how such a process will work, its benefits and which specific projects it will capture.

Consultation questions

6. **Do you agree with the principles (set out in *Paragraphs 3.26 to 3.43*) which will underpin a unified consenting process? If not, why not?**
7. **Do you agree with our proposals to remove the consenting of infrastructure from the Developments of National Significance set out under the Town and Country Planning Act 1990 process to an entirely new consenting regime?**

4. Qualifying projects

Overview

- 4.1 In Chapter 3, we set out our thought process and principles for improving the way infrastructure projects are dealt with. Taking into account the needs of various infrastructure types, this chapter now sets out indicative thresholds and criteria for projects which will be most appropriate to capture within a new infrastructure consenting arrangement.
- 4.2 Chapter 5 of this consultation sets out the process for determining these projects, which will culminate in the issuance of a Welsh Infrastructure Consent (“WIC”). This chapter will set out the projects which the WIC process will capture. These projects will be called Welsh Infrastructure Projects (“WIP”). The WIC process will replace the current DNS process, as well as other statutory frameworks. The proposed change is illustrated in *Figures 4.1 and 4.2*.

Figure 4.1: Changes to consenting processes arising from Wales Act 2017 (including interim arrangements set out in Part 1 of this consultation paper)

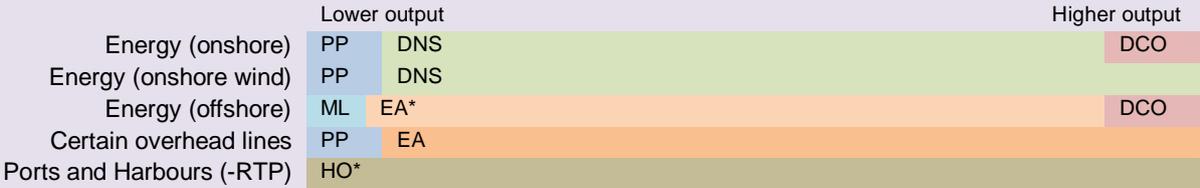
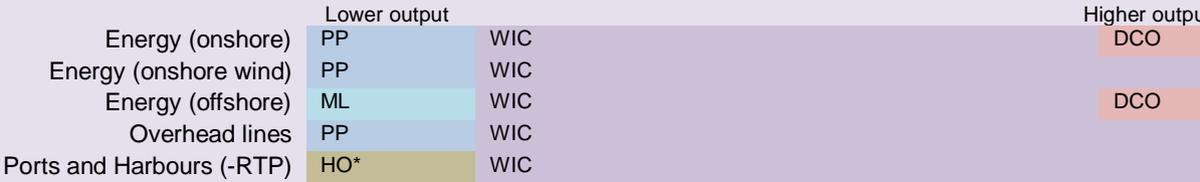


Figure 4.2: The new WIC process



- PP s.57 Town and Country Planning Act 1990 (Planning Permission)
- DNS s.62D Town and Country Planning Act 1990 (Developments of National Significance)
- DCO s.31 Planning Act 2008 (Development Consent Order)
- ML s.65 Marine and Coastal Access Act 2009 (Marine License)
- EA s.36 Electricity Act 1989 (Consent to construct and operate)
- EA s.37 Electricity Act 1989 (Consent to construct and operate)
- HRO s.14/s.16 Harbours Act 1964 (Harbours Orders)
- WIC New Welsh Infrastructure Consent

*A separate Marine Licence under the Marine and Coastal Access Act 2009 will be required for all offshore generating stations and most works in waters at ports and harbours.

- 4.3 Generally, the types of development defined as WIP and thus requiring a WIC will be those which are of greatest significance to Wales because of their potential benefits and impacts, although they are likely to be few in number. They may raise a number of technical issues and may require a series of other

consents to ensure their implementation. However, such projects would not be those which are of a small scale and which would have only local impacts and benefits.

Qualification criteria

- 4.4 In this chapter, we set out a three tier approach to the designation of WIP projects.

The first qualification criteria: Compulsory thresholds and criteria

- 4.5 Building on the current DNS process, we will continue to propose the Welsh Ministers deal with applications for nationally significant energy, water, waste and transportation projects in Wales. Such infrastructure is vital for prosperity for all.
- 4.6 We believe it is important to provide certainty to developers and communities as to which is the correct process for the determination of major infrastructure. For some categories of development, such as energy generation, railway lines and reservoirs, the current DNS process already sets out minimum thresholds²⁶ which trigger the need for an application directly to the Welsh Ministers.
- 4.7 The arguments for capturing onshore energy generation and other infrastructure were been rehearsed as part of the Positive Planning²⁷ and Developments of National Significance²⁸ consultation papers. Ultimately, these papers determined the majority of DNS cases would have fallen to be determined by the Welsh Ministers, either as a result of being called in or on appeal following refusal by the LPA, should they have progressed through the Town and Country Planning system. We see no reason for this logic not to continue to apply for WIPs, particularly where it concerns further devolved functions.
- 4.8 Experience of the current process for determining applications for DNS and discussions with the development industry have indicated current DNS thresholds should be reviewed and transferred into a new WIC process. Research²⁹, which further refines and analyses the performance of LPAs in determining DNS projects and builds on our previous evidence base, has been completed. We have also discussed with a number of stakeholders and prospective developers of emerging technologies to ascertain the impacts of these technologies, with a view of coming to a reasoned view as to whether they should indeed be captured as WIPs within an improved infrastructure consenting process.
- 4.9 For other regimes, which currently do not form part of the DNS process, such as the consenting of ports and harbours and highway projects, there are

²⁶ The Developments of national Significance (Prescribed Criteria and Secondary Consents) Regulations 2016

²⁷ [Welsh Government – Positive Planning, 2013](#)

²⁸ [Welsh Government – Developments of National Significance, 2015](#)

²⁹ [Welsh Government – Research into the Thresholds and Criteria for Development of National Significance in Wales \(Prescribed under s.62D of the Town and Country Planning Act 1990\), 2017](#)

currently thresholds set for the consenting of such projects in Wales, though procedures may be different dependent on who the applicant is. Our evidence suggests the current consenting processes work as a whole for these, and they deliver timely decisions. However, the timing and certainty of those regimes is unsatisfactory for larger scale projects, particularly where there are significant impacts on the environment.

4.10 It is proposed to set a series of thresholds and criteria by building on those which already exist and developing new and appropriate thresholds where they do not yet exist. New thresholds will avoid drawing in smaller projects whose benefits and impacts are of a local scale. Our proposed compulsory DNS thresholds take into account:

- Whether the development is of national significance by way of its complexity and impacts;
- Whether the project is infrastructure of a strategic nature;
- Whether the project typically requires other consents, in addition to the development consent, to implement; and
- The consenting performance of the current consenting authority relating to that project.

The second qualification criteria: Optional thresholds and criteria

4.11 Our experience and research³⁰ has suggested the output of a project does not necessarily dictate the scale of its impacts. For certain types of project, a simple quantitative threshold may not be sufficient to determine whether a project of such significance and complexity to merit consenting through a unified consenting process.

4.12 The current DNS process has a statutory timeframe of 36 weeks³¹ from acceptance to decision whereas LPAs have 8 weeks or 16 weeks³² to determine a planning application, depending on whether the development in question qualifies as Environmental Impact Assessment development. Much of the reasoning behind the DNS process was centred on concerns over the timing of decisions by LPAs on infrastructure projects³³.

4.13 Given the statutory time limits and based on the experience of the current process for determining DNS, we have been persuaded it is not necessarily a suitable or proportionate vehicle to consent some of those projects which are currently captured as part of the DNS thresholds over the local process administered by the LPA. Some applications may still be better placed to be decided at the local level.

4.14 For example, the current process for determining DNS can capture an onshore wind generating station of 20MW. Such a development will typically have significant economic and environmental impacts and evidence suggests the

³⁰ [Welsh Government – Research into the Thresholds and Criteria for Development of National Significance in Wales \(Prescribed under s.62D of the Town and Country Planning Act 1990\), 2017](#)

³¹ S.62L of the Town and Country Planning Act 1990

³² Article 22 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012

³³ [Welsh Government – Developments of National Significance, 2015](#)

consenting performance of LPAs for such developments has not been satisfactory. The current process also captures other low-carbon technology such as battery storage of the same output. However, battery technology typically has a minimal impact, footprint and environmental effects, yet they are captured as DNS. Furthermore, our evidence suggests the performance of LPAs in consenting battery schemes prior to 2016 has been good and has been undertaken within their shorter statutory timeframes.

- 4.15 This example illustrates a definitive compulsory threshold may not necessarily be appropriate in all cases and may not react well to changing technologies. For some developers, the DNS process has been prohibitive to such projects coming forward, as the cost and time is not compatible with the smaller margins associated with small scale development. This does not send the correct message of Wales being open to new and emerging low carbon technologies, and does not reflect the Government's objectives in terms of Green Growth.
- 4.16 While we must advocate certainty as to the correct process for all parties, there is a clear need for a degree of flexibility when setting out which projects qualify for a more rigorous unified consenting process.
- 4.17 We propose to introduce a tier of optional WIP thresholds and criteria, which remain within the same categories as, but sit below those compulsory thresholds and criteria for infrastructure projects. For these optional projects, we are of the view it is for the developer to determine which process will be more suited to their development type, and we still propose for communities to be aware of the process by which an application will proceed at an early stage. However, in the interests of fairness for communities, we propose to forbid any twin-tracking of an optional application with another application to the normal consenting authority.
- 4.18 We believe this approach to the thresholds and criteria will enable those more complex projects to proceed through a unified consenting process, whereas those less complex projects which do not require various other consents can continue to be determined in a timely manner by the LPA.

The third qualification criteria: The National Development Framework for Wales

- 4.19 The National Development Framework for Wales ("NDF") is the national land use plan for Wales. The plan will set out where nationally important growth and infrastructure is needed and how the planning system assists delivery of it.
- 4.20 There are existing statutory powers³⁴ enabling development designated within the NDF to be designated as nationally significant, and thus proceed under the consenting process for DNS. This ensures any nationally significant development which is set out in the NDF but is not captured by the thresholds and criteria for DNS will still proceed to be determined at the national level.

³⁴ S.62D of the Town and Country Planning Act 1990

4.21 We see no reason to alter this position and propose development which is designated as of national significance will remain to be determined at the national level, albeit through these new WIC arrangements. We also propose any designation in the NDF will override the ability to submit to the normal consenting authority under our proposals for optional infrastructure projects. All projects designated in the NDF as nationally significant will be required to go through the national infrastructure arrangements, regardless of whether it is a development type set out as ‘optional’ in legislation.

How projects will be set out

Compulsory and optional criteria

4.22 It is the intention to set out the specified criteria for WIP in legislation, with there being the option to alter the thresholds and criteria of the projects through a statutory instrument. This is intended to create certainty to users, while being able to respond quickly to changing circumstances, such as the introduction of new technologies or where further powers in relation to energy and other infrastructure projects may be devolved to Wales in the future.

4.23 In setting out thresholds and criteria, we will not affect any current permitted development rights held by statutory undertakers and other persons. The projects set out in the below list apply to both onshore and offshore development, and will be kept under constant review.

Figure 4.3: Proposed compulsory and optional WIP thresholds

Type of development	Proposed compulsory WIP threshold	Proposed optional WIP threshold
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	<p>Construction:</p> <p>The construction of a generating station, where it is expected to have an installed generating capacity of between 50MW and 350MW</p>	<p>Construction:</p> <p>The construction of a generating station, where the generating station is expected to have an installed capacity of between 10MW and 50MW.</p> <p>Alteration or extension:</p> <p>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.</p>

<p>1B. Offshore generating stations</p>	<p>Construction:</p> <p>The construction of a generating station, where it is expected to have an installed generating capacity of between 50MW and 350MW</p>	<p>Construction:</p> <p>The construction of a generating station, where the generating station is expected to have an installed capacity of between 1MW and 50MW.</p> <p>Alteration or extension:</p> <p>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.</p>
<p>1C. Onshore wind generating stations</p>	<p>Construction:</p> <p>The construction of the generating station, where it is expected to have an installed generating capacity of over 50MW.</p>	<p>Construction:</p> <p>The construction of a generating station, where the generating station is expected to have an installed capacity of between 10MW and 50MW.</p> <p>Alteration or extension:</p> <p>The alteration or extension of a generating station, where its effect is to increase the installed generating capacity by at least 10MW.</p>
<p>1D. Energy storage, which excludes pumped hydroelectric storage.</p>	<p>No compulsory threshold set.</p>	<p>Construction:</p> <p>The construction of a storage facility, where it is expected to have a storage capacity of between 10MW and 350MW.</p> <p>Alteration or extension:</p> <p>The alteration or extension of a storage facility, where its effect is to increase the storage capacity by at least 10MW, however, the effect of the extension must not increase the overall generating capacity beyond 350MW.</p>
<p>1E. Overhead electric lines associated with a generating station of a description set out in 1A-1D.</p>	<p>Installation:</p> <p>The overhead electric line is expected to have a nominal voltage of 132KV and a minimum length of 2KM</p>	<p>Installation:</p> <p>The overhead electric line is expected to have a nominal voltage of less than 132KV; or</p> <p>The overhead electric line is expected to have a nominal voltage of 132KV and a length of</p>

		less than 2KM. Alteration or upgrading: Any alteration or extension of an overhead electric line up to and including 132KV.
2. Oil, gas and minerals		
2A. Underground gas storage facilities	<p>Construction:</p> <p>The carrying out of operations for the purpose of creating underground gas storage facilities for the storage of gas underground in cavities or in natural porous strata;</p> <p>The development is starting to use underground gas storage facilities by a gas transporter, for the storage of gas underground other than in natural porous strata; or</p> <p>The development is starting to use underground gas storage facilities by a developer which is not a gas transporter for the storage of gas underground in natural porous strata or in cavities.</p> <p>Where:</p> <p>The facility has a working capacity of at least 43 million standard cubic metres or a maximum flow rate of at least 4.5 million standard cubic metres per day.</p> <p>Alteration:</p> <p>The effect of the alteration is expected to increase the working capacity by at least 43 million standard cubic metres or to increase the maximum flow rate by at least 4.5 million standard cubic metres per day.</p>	<p>Construction:</p> <p>The carrying out of operations for the purpose of creating underground gas storage facilities for the storage of gas underground in cavities or in natural porous strata;</p> <p>The development is starting to use underground gas storage facilities by a gas transporter, for the storage of gas underground other than in natural porous strata; or</p> <p>The development is starting to use underground gas storage facilities by a developer which is not a gas transporter for the storage of gas underground in natural porous strata or in cavities.</p> <p>Where:</p> <p>The facility has a working capacity of at least 10 million standard cubic metres or a maximum flow rate of at least 1 million standard cubic metres per day.</p> <p>Alteration:</p> <p>The effect of the alteration is expected to increase the working capacity by at least 10 million standard cubic metres or to increase the maximum flow rate by at least 1 million standard cubic metres per day.</p>
2B. Liquefied Natural gas facilities	<p>Construction:</p> <p>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</p>	<p>Construction:</p> <p>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</p>

	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.	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.
2C. 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.
2D. 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.
2E. 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 thresholds are proposed.
2F. 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 burrow on a new site.	No optional thresholds are proposed.
3. Transport		
3A. Highways	Construction or alteration: The highway will be constructed by or on behalf of the Welsh Ministers; and the area of development is greater than: a) In the case of a motorway, 15 hectares;	Alteration or improvement: Any alteration or improvement made by or on behalf of the Welsh Ministers, where the alteration or improvement will have a significant impact on the environment.

	<p>b) In the case of any other highway, where the average speed limit of the developed area is expected to be 50 miles per hour or greater, 12.5 hectares;</p> <p>c) In the case of any other highway, 7.5 hectares.</p>	
3B. Railways which start, end and remain in Wales	<p>Construction:</p> <p>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.</p> <p>Alteration:</p> <p>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.</p>	<p>Construction:</p> <p>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.</p> <p>Alteration:</p> <p>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.</p>
3C. Rail freight interchanges	<p>Construction:</p> <p>When constructed, the rail freight interchange is expected to be capable of handling at least four goods trains per day.</p>	<p>Construction:</p> <p>When constructed, the rail freight interchange is expected to be capable of handling up to four goods trains per day.</p> <p>Alteration:</p> <p>An alteration which is expected to increase the amount of goods trains handled per day.</p>
3D. Ports and Harbours	<p>The construction or alteration of harbour facilities which will result in an annual increase in the capability of handling:</p> <p>a) in the case of facilities for container ships, 50,000 Ten Foot Equivalent Units;</p> <p>b) in the case of facilities for roll-on roll-off ships, 25,000 units; or</p> <p>c) in the case of facilities for cargo ships of any other description, 500,000 tonnes.</p>	<p>Works:</p> <p>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.</p>
3E. Airports	<p>Construction:</p> <p>The airport, when constructed, is expected to be capable of providing:</p>	<p>Construction:</p> <p>The airport, when constructed, is expected to be capable of providing:</p>

	<p>Air passenger services for at least one million passengers per year, or</p> <p>Air cargo transport services for at least 5,000 air transport movements of cargo aircraft per year.</p> <p>Alterations and improvements:</p> <p>The airport, when altered or improved, is expected to increase the number of:</p> <p>Air passenger services by at least one million passengers per year, or</p> <p>Air cargo transport services by at least 5,000 air transport movements of cargo aircraft per year.</p>	<p>Air passenger services for up to one million passengers per year, or</p> <p>Air cargo transport services for up to 5,000 air transport movements of cargo aircraft per year.</p> <p>Alterations and improvements:</p> <p>The airport, when altered or improved, is expected to increase the number of:</p> <p>Air passenger services by up to one million passengers per year, or</p> <p>Air cargo transport services by up to 5,000 air transport movements of cargo aircraft per year.</p>
4. Water		
4A. Dams and reservoirs	<p>Construction:</p> <p>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.</p> <p>Alteration:</p> <p>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.</p>	<p>Construction:</p> <p>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.</p> <p>Alteration:</p> <p>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.</p>
4B. Transfer of water resources	<p>The volume of water to be transferred as a result of the development is expected to exceed 100 million cubic metres per year between:</p> <ul style="list-style-type: none"> • River basins in Wales; • Water undertakers' areas in Wales; or • A river basin in Wales and a water undertaker's area in Wales. <p>The development does not relate to the transfer of drinking water.</p>	<p>No optional thresholds are proposed.</p>

<p>4C. Waste water treatment plants</p>	<p>Construction of waste water treatment plants:</p> <p>The plant is expected to have a capacity exceeding a population equivalent of 500,000.</p> <p>The construction of infrastructure for the transfer or storage of waste water:</p> <p>The main purpose of the infrastructure will be either for:</p> <p>(i) the transfer of waste water for treatment, or</p> <p>(ii) the storage of waste water prior to treatment,</p> <p>or both, and</p> <p>the infrastructure is expected to have a capacity for the storage of waste water exceeding 350,000 cubic metres.</p> <p>The alteration of existing waste water treatment plants:</p> <p>The effect of the alteration is expected to increase the capacity of the plant by more than a population equivalent of 500,000.</p> <p>The alteration of infrastructure for the transfer or storage of waste water:</p> <p>The main purpose of the infrastructure will be either for:</p> <p>(i) the transfer of waste water for treatment, or</p> <p>(ii) the storage of waste water prior to treatment,</p> <p>or both, and</p> <p>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.</p>	<p>No optional thresholds are proposed.</p>
<p>5. Waste</p>		
<p>5A. Hazardous waste</p>	<p>Construction:</p>	<p>No optional thresholds are</p>

<p>facilities</p>	<p>Land fills 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.</p> <p>Alteration:</p> <p>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.</p>	<p>proposed.</p>
<p>5B. Geological disposal for the final disposal of radioactive waste</p>	<p>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.</p>	<p>No optional thresholds are proposed.</p>

Reasoning

Electricity Infrastructure

Onshore Generation and Storage

- 4.24 Currently, the DNS process sets the minimum electricity generation threshold as 10MW. For certain types of generating project, our research suggests this compulsory threshold is set too low. The UK Government has historically set a minimum threshold of 50MW above which development is deemed to be of national significance. Given the proposed change in consenting process from a planning-based system to a bespoke infrastructure consenting process with optional thresholds, we see strong reasoning to set the compulsory WIP threshold as 50MW. This figure, in our view, strikes the correct balance in terms of time taken to determine such development, the economic effects, environmental impacts and requirement to gain ancillary consents.
- 4.25 We, however, acknowledge there are emerging storage technologies which will increase the energy efficiency of Wales and help the transition to a low carbon economy. We would like to see storage becoming a common and

viable part of our energy networks and support the removal of barriers to such technology.

- 4.26 As set out in Part 1 of this consultation, for the purpose of consenting, storage technologies constitute energy generation³⁵, however, such projects require different treatment to conventional generation projects. This is due to the good consenting performance of such projects at the local level and the often minimal impacts of such projects. While we consider storage as a subset of energy generation, we propose not to capture storage compulsorily as a WIP. Overall, we believe this solution will provide the most timely and efficient consenting arrangement for developers and communities. Should there be more complex storage projects coming forward, the option will remain open for the developer to submit the scheme as a WIP through the WIC process.
- 4.27 In reaching this view, we have decided on one exception. Pumped hydro-electric storage will be captured as a WIP. Furthermore, works to facilitate such generating stations involve high potential environmental and social impacts which require scrutiny at a national level. Given the high average capacity and importance of pumped hydro-electric storage to the grid, we see such projects as nationally significant and intend to capture such projects within the threshold for conventional generation.
- 4.28 There may be instances where both storage and conventional generation come forward together as one project. Similar to Part 1 of this consultation paper, only the conventional generating station will be treated as a WIP for the purposes of WIC process. The applicant would be able to submit the storage element as a secondary consent associated with the project (See *Paragraph 5.4*).
- 4.29 Our research³⁶ continues to suggest the consenting performance of LPAs for energy generating projects between 10MW and 50MW can be poor, and the average time taken for certain technologies has consistently taken longer than the 8 and 16 week time periods set out in legislation³⁷. While this is the case, we are aware the time periods taken for certain technologies, such as solar and small scale turbines, are less than the statutory timescale for DNS of 36 weeks. Furthermore, the economic effects and environmental impacts of such schemes are largely local.
- 4.30 To provide choice for the developer, we propose development which includes a generating station with an output of between 10MW and 50MW may be considered as an optional WIP. This will ensure applications of a local nature may continue to be determined by LPAs, whereas development which has greater impacts and which may require a one-stop shop approach may proceed through the WIC process.

³⁵ [Department for Business, Energy and Industrial Strategy – A Smart, Flexible Energy System: A call for evidence, 2016](#)

³⁶ [Welsh Government – Research into the Thresholds and Criteria for Development of National Significance in Wales \(Prescribed under s.62D of the Town and Country Planning Act 1990\), 2017](#)

³⁷ Article 22 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012

Offshore generation

- 4.31 For offshore generation, the Wales Act places such development in a position which requires both consent for the construction of a generating station under the Electricity Act³⁸ and a Marine Licence³⁹, where its capacity is above 1MW. Our evidence suggests there can be delays concerning the issuance of both of these consenting aspects for generation of all scales, with most cases taking over a year. This issue is particularly prevalent for test technology under 5MW, where the impacts are less certain, largely due to the novel nature of the technology. We believe the development of offshore renewables and new technologies is a critical aspect in driving green growth and combatting climate change, and such technology should be encouraged.
- 4.32 To deliver our objectives, it is proposed to capture a wide range of optional consents offshore with a minimum threshold of 1MW, to provide a speedier consenting process. Applications below 1MW will continue to require a Marine Licence alone. It is also proposed to set a compulsory WIP threshold of 50MW, which is equivalent to the onshore arrangement, to ensure a degree of harmonisation where technologies straddle both the on and offshore areas. This is to prevent the fragmentation of consenting for such medium-scale generation projects which use both land and sea.
- 4.33 As a consequence of these changes, we are mindful of the potential for adding further layers to the offshore planning process. The above changes have not yet addressed the role of the Electricity Act which would still exist offshore for schemes above 1MW. In a novel approach and to provide a level of simplicity, it is proposed to remove the requirement for consent to construct a generating station under that Act, where we have legislative competence to do so. Thus, up to 50MW, we propose a Marine Licence is only required, except where the developer exercises the option to apply as a WIP under the WIC process. As the Marine Licence considers the impacts of the scheme on the marine environment as well as other technical issues, we do not see any reason why such a process should be duplicated under the Electricity Act, nor to add additional requirements to it.

Overhead electric lines

- 4.34 The Wales Act provides powers to consent overhead electric lines up to an including 132KV where they are associated with a Welsh devolved generating station and to determine how such consents are given. Consents for such lines are currently issued under the Electricity Act⁴⁰ (up to 132KV) or the 2008 Act (132KV and above). These are both consents given by the Secretary of State. By default, the Wales Act places consent for these electric lines into the Town and Country Planning system for such projects to be determined by LPAs. The Welsh Government does not have functions under the Electricity Act and 2008 Act regimes for devolved overhead electric lines.

³⁸ S.36 of the Electricity Act 1989

³⁹ S.62 of the Marine and Coastal Access Act 2009

⁴⁰ S.37 of the Electricity Act 1989

- 4.35 In Part 1 of this consultation paper, we have outlined the issues with the placement of overhead electric lines in the planning regime (*Paragraphs 2.11 to 2.18*), particularly the requirement to gain consents from a number of LPAs where there are lengthy lines and decided to place all consenting for overhead lines associated with a Welsh devolved generating station into the current DNS consenting process, in the short term.
- 4.36 We are mindful of the potential issues to compulsorily require all overhead electric lines which are associated with a devolved Welsh generating station to proceed through a national infrastructure consenting process. Hence, we propose a more flexible arrangement.
- 4.37 Electric lines of 132KV may span up to approximately 30 kilometres, which is the maximum length the frequency could allow. However, the output of an electric line does not necessarily dictate how it may look. Depending on a number of engineering factors, an overhead line of up to and including 132KV may be an innocuous line on a wooden structure, or be placed on a more visually recognisable lattice pylon. Given these circumstances, supplemented with the above evidence, we see no clear way to draw a line between national and local projects.
- 4.38 We propose to use existing precedents set out in the 2008 Act for setting a compulsory WIP threshold for overhead electric lines of 132KV. We see this as a proportionate approach which enables the Welsh Ministers to capture those more complex projects which may require other consents alongside it. Up to 132KV, we propose to give applicants the option of applying either locally or through the WIC process, as the length and engineering solution may dictate the most appropriate process.
- 4.39 Our new powers only extend to overhead electric lines where they are associated with a Welsh devolved generating station, the new powers are narrow and the number of applications handled each year is likely to be small. We do not see it as proportionate to add a new layer of consenting for such projects. However, we acknowledge incorporating devolved overhead electric lines into the WIC process may lead to a longer determination period for developers than they experience at present. To address this, we propose some adjustments to the WIC (*See Paragraph 5.10*) to ensure a speedier consenting process all round.

Figure 4.4: Illustration of the current electricity consenting arrangements, interim arrangements (Part 1 of this consultation) and long-term arrangements (Part 2)

		Now	1 April 2019	WIC implementation
Onshore generation	10MW-50MW	DNS		PP or WIC
	50MW-350MW (excl. wind)	DCO	DNS	WIC
	Onshore wind above 50MW	DNS		WIC
Offshore generation	Below 1MW	ML		
	1MW-50MW	EA*	EA*	ML or WIC
	50MW-100MW	EA*	EA*	WIC
	100MW-350MW	DCO*	EA*	WIC
Over-head lines	Under 132KV	EA	DNS	PP or WIC
	132KV	DCO	DNS	WIC

Consent type		Consenting authority
ML	s.65 Marine and Coastal Access Act 2009 (Marine License)	Welsh Ministers
PP	s.57 Town and Country Planning Act 1990 (Planning Permission)	Welsh Ministers
EA	s.36 Electricity Act 1989 (Consent to construct and operate)	Welsh Ministers
DNS	s.62D Town and Country Planning Act 1990 (Developments of National Significance)	Welsh Ministers
WIC	New Welsh Infrastructure Consent	Welsh Ministers
EA	s.36 Electricity Act 1989 (Consent to construct and operate)	Secretary of State
EA	s.37 Electricity Act 1989 (Consent to construct and operate)	Secretary of State
DCO	s.31 Planning Act 2008 (Development Consent Order)	Secretary of State

*A separate Marine Licence under the Marine and Coastal Access Act 2009 will be required for all offshore generating stations and most works in waters at ports and harbours.

Hatched area denotes the ability to optionally apply for either consent.

Oil, gas and minerals

- 4.40 Prior to 2016, gas supply infrastructure was covered by a number of consenting processes, which were split between the Welsh Ministers and LPAs. Changes were made to the planning process in 2016, which produced a unified point of contact for such consenting above a certain threshold through being prescribed DNS status.
- 4.41 Gas is an important contributor to the energy mix of Wales and being able to safely receive and store gas is important in securing energy supplies, given the increased dependence on the import of gas. This position has not altered since the DNS thresholds which were established in 2016. We do not propose to change those compulsory thresholds for the purpose of WIPs, where it concerns underground gas storage facilities, Liquefied Natural Gas facilities and gas reception facilities. Some nominal optional criteria have been established for those categories to reflect the importance of gas infrastructure of all sizes to the national need for secure energy supplies.

- 4.42 We consider applications for the exploration, appraisal or production of unconventional oil and gas as well as those for underground coal gasification should be regarded as a WIP for the purpose of national consenting. In addition, the current requirement to notify⁴¹ the Welsh Ministers of any applications for both types of extraction has the effect of further delaying the process. Categorising these as a WIP would provide greater certainty for communities and the development industry.
- 4.43 The production of coal has declined significantly over recent years as a consequence of decarbonising energy supply. Our research highlighted the average time taken for the determination of open cast mining applications during the last 10 years is 60 weeks, and the majority of decisions are either appealed against upon refusal or are called in by the Welsh Ministers. While the Welsh Government are not aware of future opencast sites coming forward, it would be prudent for any development which consists of the winning and working of coal from the earth by their removal from an open pit or burrow on a new site to be considered a WIP due to the impacts involved.

Transport

- 4.44 Operators of transport infrastructure benefit from wide-ranging permitted development rights⁴² which enable them to undertake works without the requirement for planning permission. However, certain works for new or extended railways, highways, airport facilities and port facilities will require development consent.
- 4.45 Consents for transportation infrastructure are spread across a number of regimes. Various orders under the Highways Act 1980 are required for new roads, depending on their type and scale, Harbour Revision or Empowerment orders under the Harbours Act 1964 or private Acts are required for certain works to ports and harbours, permission under the TCPA is required for new works to railways and airports, or an Order under the Transport and Works Act 1992 may be obtained which deems various consents for works to most transport modes.
- 4.46 As a result of this complex and inconsistent landscape for consenting transport infrastructure, there are limitations to making the efficiency improvements which a new process could deliver. The different procedures across a number of regimes could cause diverse projects to be treated differently. Where a major integrated infrastructure project, such as an airport with linked road and rail development require applications under a number of different regimes, there would be a risk of confusion for scheme promoters, communities and decision-makers alike. This may cause significant delay to the consenting process. A unified consenting process could ensure true integration of transport infrastructure.

⁴¹ The Town and Country Planning (Notification) (Unconventional Oil and Gas) (Wales) Direction 2015 and the Town and Country Planning (Notification) (Underground Coal Gasification) (Wales) Direction 2016

⁴² Parts 13, 17, 18 and 29 of the Town and Country Planning (General Permitted Development) Order 1995

4.47 The Wales Act devolves both legislative and executive powers over the regulation of most harbours in Wales⁴³ to the Welsh Ministers. This provides an opportunity to not only revisit whether such a process is appropriate for major works, but also to integrate other infrastructure for which Wales has devolved powers into a unified consenting process.

Highways

4.48 Most major infrastructure projects in Wales comprise highways, and the majority of which are consented by way of an order, or number of orders, under the Highways Act 1980. While there are over a hundred road improvement schemes each year in Wales, a small number involve capital works for new roads and projects which are of strategic importance.

4.49 Where capital works are proposed, a number of orders may be required. This includes at least one, or in some cases all of the following:

- Trunk Roads Orders⁴⁴;
- Supplementary Orders for Trunk Roads and Classified Roads;⁴⁵
- Authorisation of Special Roads Orders⁴⁶
- Supplementary Orders relating to Special Roads⁴⁷
- Orders for schemes providing for the construction or bridges over or tunnels under navigable waters⁴⁸;
- Orders authorising the diversion of navigable and non-navigable watercourses⁴⁹;
- Toll Orders⁵⁰;
- Compulsory Purchase Orders⁵¹;
- Variation Orders⁵².

4.50 The need for a number of Orders can be difficult for communities to understand and is inefficient for project promoters. The most recent capital project promoted by the Welsh Government involves the M4 corridor around Newport, which is yet to be determined. The project included 12 draft orders, which include amending orders published between September 2016 and March 2017. The public inquiry, which commenced on 28 February 2017 has surpassed the estimated 5 months examination time and a final decision on the scheme is still pending at the time of writing. Given the protracted period and complexity of these proceedings, communities have found it difficult to sustain their contribution.

4.51 Both the promoter and communities would benefit from a simplified and accessible regime, which enables efficient examination within a specified

⁴³ S.29-38 of the Wales Act 2017

⁴⁴ S.10 of the Highways Act 1980

⁴⁵ S.14 of the Highways Act 1980

⁴⁶ S.16 of the Highways Act 1980

⁴⁷ S.18 of the Highways Act 1980

⁴⁸ S.106 of the Highways Act 1980

⁴⁹ S.108 or S.100 of the Highways Act 1980

⁵⁰ S.6 of the New Roads and Street Works Act 1991

⁵¹ S.239, S.240, S.250, S.260 of the Highways Act and S.2 of the Acquisition of Land Act 1981.

⁵² S.16, S.17, S.19, S.106 of the Highways Act 1980

timeframe. We consider this is the case for future major work promoted by the Welsh Ministers. Furthermore, divorcing major schemes from the Highways Act 1980 would enable a better functional separation of duties between the scheme promoter and the decision-maker. Accordingly, we propose to include major highways improvements as a WIP.

- 4.52 The thresholds relating to highways are intended to capture those projects which are of significance to Wales and are based on the standard works area required to construct or alter a single junction on the various road categories within the Welsh road network.

Ports and Harbours

- 4.53 In receiving new devolved powers in relation to ports and harbours, we have considered such schemes for inclusion in the WIC process. Works to ports and harbours can be undertaken through a number of processes. Permitted development rights are exercised where available, planning permission can be obtained for certain works, whereas Marine Licences are obtained for certain marine works. A Harbour Revision or Empowerment Order may also be obtained for major improvement works as well as non-tangible changes to harbours. This creates a complex consenting landscape.
- 4.54 The majority of harbour developments require a marine licence, which could result in the duplication of information and activity required, particularly in cases where an Environmental Impact Assessment is needed. Harbours are also continuing to diversify, and often major improvements would require links to other modes of transport such as rail or may require an element of renewable energy which extends both on and offshore. Some of these improvements can be achieved through a Harbour Revision or Empowerment Order, however, they do not override the need for a consents under the Electricity Act or orders under the Highways Act. Furthermore, the order-making process under these provisions does not contain statutory or certain timeframes.
- 4.55 Certainty of when a decision is made is required to keep our ports and harbours competitive and able to react to changes to circumstances. Accordingly, we propose to capture works to harbours as a WIP. There is an associated difficulty in setting out a clear threshold where it concerns ports and harbours. The DCO process for ports and harbours in England uses multiple modes of measurement which involve the movement of ships or materials through the port or harbour. These movements can be subjective depending on the efficiency of the port.
- 4.56 In response to this issue, we propose to set thresholds which are closely related to the existing activities of devolved Welsh major ports. Those are Holyhead, Fishguard, Newport, Cardiff Swansea and Port Talbot. This approach recognises any developments to harbour facilities would effectively increase ports capacity by a level equivalent or greater to a Welsh major port and would have a significant impact on the Welsh economy and infrastructure. We also propose to introduce an optional regime for ports and harbours, which qualifies promoters to apply through the WIC process where their scheme

involves works the achievement of which will conduce the efficient functioning of the harbour and which is likely to have a significant environmental impact. In applying through the WIC process, the need to obtain other consents separately (*Set out in Paragraph 5.4*) will be disapplied.

Rail and Airports

- 4.57 Thresholds were set out as part of the process for consenting planning applications for DNS in 2016⁵³. We continue to see such projects as important contributors to the infrastructure of Wales and have not received evidence to suggest those thresholds should change for the purposes of WIPs.

Water

- 4.58 Thresholds have been set out in relation to dams and reservoirs, waste water treatment facilities and the transfer of water resources which reflect existing DNS thresholds. Ultimately, these thresholds were set as such development is likely to require a number of associated consents and are likely to be a challenge for LPAs. A more unified consenting process would alleviate any timing and complexity issues.
- 4.59 The UK Government recently published a consultation⁵⁴ which proposed changes to the thresholds for dams and reservoirs, transfers of water resources and introduced a new threshold for the desalination of water. The evidence which underlies these new thresholds largely relate to securing long-term water resilience in England. We have not received any evidence to date in Wales which requires the DNS thresholds to be reviewed for this reason.
- 4.60 While this is the case, we will monitor the UK Government's analysis and response to their consultation. We would welcome views and evidence on whether there is merit in setting out equivalent thresholds to the UK Government, particularly where projects cross borders.

Waste

Geological disposal

- 4.61 The Welsh Government policy is geological disposal for higher activity radioactive waste can only be delivered in Wales on the support of voluntary partnership with a willing host community or communities⁵⁵. While no specific sites have been identified to date, a location within Wales could be put forward and selected if a community is willing to host a geological disposal facility.
- 4.62 There would be extensive local impacts during the construction of a geological disposal facility together with ongoing operational impacts associated with the delivery and emplacement of waste, which are anticipated to last over 100 years. Any geological disposal facility identified would likely be the only site of

⁵³ The Developments of National Significance (Specified Criteria and Secondary Consents) Regulations 2016.

⁵⁴ [Developing a national policy statement for water resources and proposed amendments to the Planning Act 2008](#)

⁵⁵ [Welsh Government, Policy on the Management and Disposal of Higher Activity Radioactive Waste, 2015](#)

its type in the UK and would accommodate all higher activity waste Wales, England and Northern Ireland produces. Given the scale, longevity and national importance of any such facility, it would be appropriate for the consenting for such a site to be a WIP, covered by the WIC arrangements.

- 4.63 The investigation stage would be an integral part of the site selection and design process, and would be subject to staged authorisation towards the eventual geological disposal facility development. This may involve deep test holes over one or more LPA areas. In itself, such testing works are considered to be of national significance. Accordingly, criteria has been designed which captures all works relating to the site selection and development of a geological disposal facility.

Hazardous Waste

- 4.64 Further thresholds in relation to the disposal of hazardous waste have been set out, which reflect those used for the planning application process for DNS. We do not see any reason for those thresholds to be altered for the purposes of WIP.

Consultation questions

- 8. Do you agree with the principle of optional thresholds for Welsh Infrastructure Projects?**
- 9. Do you agree it is for the Welsh Ministers to ultimately decide on a case-by-case basis whether an optional Welsh Infrastructure Project qualifies as such? If not, why not?**
- 10. Do you agree designation in the National Development Framework for Wales should be a criteria as to whether a development qualifies as a Welsh Infrastructure Project? If not, why not?**
- 11. Do you agree with the proposed compulsory and optional thresholds for Welsh Infrastructure Projects? If not, why not?**
- 12. Do you agree with our proposals to remove the need for consent under the Electricity Act 1989 for all development in the Welsh inshore area? If not, why not?**

5. The unified consent process

Welsh Infrastructure Consents

Overview

5.1 We propose to establish a Welsh Infrastructure Consent (“WIC”), which realises our vision of a single, unified consenting process. The WIC is intended to be an agile and flexible consent in terms of process, which can deliver significant improvements in the speed, transparency and predictability of decisions over current processes.

5.2 The WIC will allow us to bring together the range of authorisations, licences and consents required to implement projects which are prescribed as WIPs, and will allow the Welsh Ministers to consider projects holistically. Where requested, the process can provide all the authorisations needed to proceed. This would simplify the process for developers, communities and consultees.

Scope

5.3 Where applied for, the proposed WIC will replace various consenting regimes in Wales and can give a scheme promoter the equivalent provision to:

- Planning permission⁵⁶;
- Orders relating to highways⁵⁷;
- Harbour revision or empowerment orders⁵⁸;
- Consents to construct generating stations and overhead electric lines;⁵⁹

5.4 In removing the ability to apply for those consents, there will be a harmonised procedure across infrastructure. Alongside this, it is also proposed to give the option to scheme promoters to rationalise the different secondary consents required to implement a scheme into one main consent. These other consents may include, but are not exclusive of:

- Compulsory purchase orders;
- Necessary wayleaves⁶⁰;
- Tree felling or lopping orders⁶¹;
- Marine licences;
- Planning permission for associated development;
- Listed building consent;
- Scheduled ancient monument consent;
- Consents for works to or deregistration and exchanges of common land;
- The stopping up or diversion of highways;
- Hazardous substances consent;

⁵⁶ S.57 of the Town and Country Planning Act 1990

⁵⁷ S.10, s.14, s.16, s.17, s.18, s.19, s.106, s.100, s.108, s.239, s.240, s.250, s.260 of the Highways Act 1980, s.6 of the New Roads and Street Works Act 1991 and s.2 of the Acquisition of Land Act 1981

⁵⁸ S.14 and s.16 of the Harbours Act 1964

⁵⁹ S.36 and s.37 of the Electricity Act 1989

⁶⁰ Paragraph 6 of Schedule 4 to the Electricity Act 1989

⁶¹ Paragraph 9 of Schedule 4 to the Electricity Act 1989

- Consent for works to protected trees;
- Environmental permits;
- Consents for impounding or abstracting water;
- New connections to public sewers; and
- Licences for certain activities relating to animals, plants and other wildlife.

5.5 When other consents are included in a WIC, the WIC may include conditions which the secondary consent may otherwise have included. It is not the intention to dilute the assessment standards and scrutiny of these consents where they are made alongside a WIC. We would welcome views on which specific consents should be included within or excluded from the process.

Form

5.6 One of the main criticisms of existing infrastructure consenting regimes is the complexity of the output and communities can sometimes struggle to understand what a consent means. Furthermore, there are other authorities which are not the consenting authority who may have responsibility for discharging conditions, and the time taken for them to understand complex and unfamiliar decision documents can cause inefficiencies.

5.7 To offer familiarity to communities and those authorities who must discharge conditions or monitor any consent, we propose the WIC be presumed to be in the form of a standardised consent with conditions. We consider there will be considerable advantages in this approach in terms of accessibility to decisions, the cost of drafting and timeliness in producing the decision.

5.8 While this is the case, we understand there are occasions where a statutory instrument is required. WIC process will be granted by way of a statutory instrument under specified circumstances. To ensure promoters are clear whether a standard consent or a statutory instrument is required we will set out clear criteria in legislation which requires a statutory instrument in defined circumstances. We anticipate they will be limited to circumstances where land rights will be affected by the proposed project, such as where the consent includes compulsory acquisition, and where amendments are required to existing legislation in some form.

5.9 Given the different levels of complexity associated with a statutory instrument and a standard consent, in the interests of flexibility we propose two separate statutory timeframes (*See paragraph 5.51*) within which decisions must be made.

Agility

5.10 To provide an agile regime, we are exploring ways to add fast-tracking elements for certain classes or types of WIP, to ensure a more proportionate decision-making process. Where applications are considered to be uncontroversial and do not give rise to objections, we will consider mechanisms which speed up the decision-making process. This includes delegating certain decision-making functions to the Inspector examining the

application and reduced consultation requirements in clearly defined circumstances.

Impartiality

- 5.11 Whilst ultimately applications would be submitted to and decisions made by the Welsh Ministers in name, we propose applications be examined and administered by an Inspector appointed by the Welsh Ministers, with the decision-making function being reserved for the Welsh Ministers. We also propose the ability to appoint multiple Inspectors with a lead Inspector reporting to the Welsh Ministers for more complex cases.

Certainty of decision-making

- 5.12 To provide a level of certainty to any developer who wishes to promote an infrastructure project in Wales and to make sure communities are aware of the basis of decisions, it is vital for an efficient consenting process to make decisions based on a publically accessible policy which has already undergone due scrutiny and which establishes a principle of development.
- 5.13 The Welsh Government is developing statutory plans. The National Development Framework (“NDF”) and the Wales National Marine Plan (“WNMP”). While both plans have not yet been adopted, they are being developed to complement each other in terms of objectives and policies. Both are intended to be adopted by the Welsh Government in advance of 2020, which is likely to be prior to the coming into force of the WIC process.
- 5.14 The NDF will set out a 20 year land use framework for Wales and will replace the current Wales Spatial Plan. It will sit alongside Planning Policy Wales and is intended to support national economic, transport, environmental, housing, energy and cultural strategies and ensure they can be delivered through the planning system. The NDF will support the determination of WIPs.
- 5.15 Alongside the NDF, the Welsh Government is also developing the first WNMP. The purpose of this plan is to manage marine activities in a sustainable way, taking into account; economic, social and environmental priorities. The plan will cover both the Wales inshore and offshore area. Where any decision or authorisation is made in the area affected by the WNMP, the decision-making authority must make a decision in accordance with it, unless relevant considerations indicate otherwise⁶².
- 5.16 Both plans are intended to set out where development in Wales and its waters will occur and will provide specific policies guiding development. We see the NDF and WNMP providing the main policy basis on which decisions for the WIC process will be made.
- 5.17 The use of a system of topic-based policy statements which supplements the NDF and WNMP has been considered, similar to National Policy Statements used by the UK Government in determining NSIPs. While we do not see such

⁶² S.58(1) of the Marine and Coastal Access Act 2009

statements as the primary policy basis on which decisions will be made, we acknowledge changing circumstances may dictate the need to develop further policy. Where necessary, additional topic-based policy statements will be developed and these statements will be the main consideration, particularly for areas which the NDF or WNMP do not cover.

- 5.18 In terms of scrutiny, the NDF is subject to a set process set out in primary legislation, requiring compulsory scrutiny by the National Assembly for Wales⁶³. It is also the intention for the WNMP to be subject to Assembly scrutiny.
- 5.19 While there will be other material considerations, in the spirit of ensuring decisions on nationally significant development are made in accordance with national policy, we propose the primacy of the NDF and WNMP in the decision-making process.

Pre-application and submission

Overview

- 5.20 Developers will be required to prepare applications to a definite quality prior to the submission of an application. Frontloading the WIC process by offering pre-application services and requiring applicants to undertake pre-application consultation will help ensure applications for consent proceed smoothly and quickly once they have been formally submitted for determination as any significant issues can be raised and discussed before this point. Furthermore, it provides opportunities for early engagement between developers and local communities. Our proposals are outlined below:

Pre-application Services

- 5.21 The provision of pre-application services improves the quality of submissions and facilitates speedier decisions.
- 5.22 Prior to submitting an application most developers seek and benefit from a pre-application service where they can discuss their development proposal in detail, acquire information regarding the site and the locality, have the relevant policy framework set out and receive initial feedback on their development proposal. This information can assist in developing a proposal to ensure the full information is before the community and the determining authority and to ensure a smoother passage of the application through examination.
- 5.23 Similar to the current DNS process, we propose to make it a requirement for LPA(s) and the Welsh Ministers to provide pre-application services to prospective applicants within defined circumstances upon request. Both the Welsh Ministers and LPA(s) will be reimbursed appropriately in providing this advice. We propose any request for pre-application services may be made at any time preceding an application for an infrastructure project, including before any formal consultation or notification of proposed project. We also propose

⁶³ S.3 of the Planning (Wales) Act 2015

for the services from the Welsh Ministers to include advice on the merits of a proposed scheme.

- 5.24 In the interests of transparency and open governance, a public record will be maintained containing details of any pre-application services given.

Pre-application notification

- 5.25 The ability for local communities and relevant stakeholders to inform proposed developments at the earliest possible opportunity helps ensure the best schemes can be taken forward and applications can be determined in a timely manner.

- 5.26 Prior to undertaking any pre-application consultation, prospective applicants will be required to notify both the Welsh Ministers and the LPA(s) within which the development site is located, or nearest LPA(s) for offshore developments, of their intention to submit an application for a WIP. We intend to include a requirement for the applicant to set out details on how they intend to carry out pre-application consultation as well as an indicative timetable.

- 5.27 Notification for applying for planning permission for the current DNS process is time limited. However, a number of notices have lapsed and applicants have been required to re-notify the Welsh Ministers, which can cause confusion, additional cost and has proven to be unproductive. As we continue to value being informed at an early stage of a prospective project, we do not propose the notification to be subject to a time limit within which an application must be made. However, to strike the correct balance and offer certainty to communities on timescales, we anticipate placing some conditions on our pre-application consultation requirements.

Consultation requirements

- 5.28 Thorough pre-application consultation on the part of the developer is the basis for an efficient consenting regime.

- 5.29 Our evidence suggests a clear link between the standard of pre-application preparation and consultation and the length and complexity of the examination process for the developer. Good pre-application consultation can help communities and consultees better understand a proposal so they may contribute to the consenting process in an informed and productive way.

- 5.30 It is essential local communities and relevant stakeholders are made aware of proposed developments which affect them at the earliest opportunity. This provides for more effective involvement and engagement. As each scheme is different and will require a different level of engagement, we are not proposing to place prescriptive requirements on applicants for systematic and phased consultation. However, we intend for developers to undertake two main requirements:

- 5.31 Firstly, following the applicant notifying the Welsh Ministers, the applicant must open and maintain a specific website up until the point of submission of an

application which sets out the details of the potential infrastructure development. The objective of maintaining a website is to ensure the community and consultees are continually updated on the progress of a proposed project and are aware of any events or requirements for comments.

- 5.32 Secondly, to ensure a minimum bar for consultation, prior to the submission of an application, we will require applicants to publicise and consult on the draft application they intend to submit to the Welsh Ministers. This requirement is a bare minimum and satisfying the minimum requirements alone should not be seen as a guarantee of securing a smooth and successful examination of the application.
- 5.33 This statutory stage is to ensure there have been representations from local communities and relevant stakeholders and these representations have been considered. Following the undertaking of consultation on the full draft details, prospective applicants should be in a position to submit an application which best suits the local area.
- 5.34 It is the intention the applicant will have continually developed their scheme and consulted with communities and stakeholders at various points prior to this stage, in accordance with best practice and their set timetable. Failure to consult effectively and to resolve issues can impact on the application's chances of success at examination.
- 5.35 To ensure all consultation undertaken is documented, we require applicants to submit a consultation report which documents how any comments received have been taken into account upon full submission of the scheme to the Welsh Ministers. Such a report will demonstrate where comments received have been addressed and where they have not, allowing the prospective applicant an opportunity to provide justification for why they were not taken forward.

Submission of an application

- 5.36 To ensure certainty of timescales for the community, we propose an application for WIC must be submitted within a year of the start of the statutory pre-application consultation stage. This period is fixed to ensure the information consulted upon as part of a draft application remains relevant and up to date at the point of submission. Failure to do so will require the applicant to repeat the statutory consultation stage.
- 5.37 We propose to set core minimum validation requirements for each application, with additional requirements depending on the type of development and whether additional consents, authorisations or licences are required. For every application, we propose the applicant must submit a draft of their consent. In some cases (*Paragraph 5.9*), the consent may be a statutory instrument.

Assessment and examination

Overview

- 5.38 An efficient process will ensure every application for infrastructure in Wales is examined by the most appropriate, proportionate and timeliest method while ensuring quality of reporting to provide robust decision-making. Our proposals for examination build on previous planning reforms in adopting the principle of the Inspector being best placed to determine the most appropriate method for examination. To reach this stage, the Welsh Ministers may request representations from consultees, LPAs and communities on the development proposal to ensure the main impacts are understood and can be examined accordingly.

Initial procedure

- 5.39 As with the current process for determining DNS, we propose to set out an initial period for acceptance of a WIC application, to ensure the environmental information submitted with it is appropriate and the application is able to proceed to examination. Following acceptance, the statutory period for determining the application will be commenced.
- 5.40 To inform how the application will be examined and to identify the main issues, we propose an initial period of advertisement and notification inviting representations from communities and statutory consultees. The ability to make representations on a submitted application at this stage is the final opportunity to comment on the scheme as discussions and comments would have been exchanged at the pre-application stage.
- 5.41 The process will be operated on a digital basis. Where possible, we will ensure notification requirements relating to consultation and the display of documents can be undertaken online, while still retaining the facility for those to be notified or participate in more conventional ways where there is not the ability to do so.
- 5.42 The requirement for consultees to provide a substantive response to planning applications was introduced by the Planning (Wales) Act 2015⁶⁴. This has been successful in ensuring a continued quality of responses from statutory consultees. We see no reason for the requirement for statutory consultees to provide a substantive response not to be translated into a new infrastructure consenting process.
- 5.43 Under the current DNS process, there is a requirement for the LPA to submit a Local Impact Report (“LIR”) which documents factual information about the impact of the development during the initial procedure of the application. We intend to retain this requirement. However, we acknowledge the timeframes within which a LIR must be submitted may in some circumstances be short and give rise to political sensitivity. We would welcome comments on appropriate timescales within which such a report must be submitted.

⁶⁴ S.37 of the Planning (Wales) Act 2015

Examination

- 5.44 An efficient process will examine applications in the most appropriate, proportionate and timeliest method while ensuring quality of reporting to provide robust decision-making. Our proposals for examination will build on previous planning reforms in adopting the principle of the Inspector being best placed to determine the most appropriate method for examination.
- 5.45 As a variation from current processes, we propose the Welsh Ministers will make an initial assessment of the principal issues arising from an application with a view to setting out a timetable for examination. The timetable will specify dates by which further word-limited representations will be required and when hearings will be held and their scope. We propose applications be examined by one of, or any combination of, the following procedures in accordance with a timetable set by the appointed Inspector:
- Written representations;
 - Pre-examination hearing;
 - Open floor hearing; and
 - Topic-specific hearing.
- 5.46 To strengthen community involvement in the process, we intend to introduce the use of open floor hearings. It is intended to remove the formality normally associated with inquiries and for specific issues to be addressed by way of hearings alone. We see this as a way of increasing access to examination events. Inspectors will, however, reserve the ability to allow cross-examination at hearings where useful and necessary, such as in Compulsory Purchase proceedings.

Variation of applications

- 5.47 Both the existing processes for determining NSIP and DNS applications have been successful in limiting amendments to schemes following acceptance, providing communities and consultees with some certainty as to how the scheme will look throughout the determination process. While this is the case, we can foresee circumstances where an amendment to a scheme is required following comments made by communities, consultees and LPAs. Accordingly, it is proposed to allow a window for variations similar to the DNS process.
- 5.48 To ensure a level of certainty and to limit the scope of amendments, they will be limited to those which are minor or non-material. Generally, amendments which alter land rights, make changes to the Environmental Impact Assessment, invoke the need for additional Habitats Regulations Assessment, or have greater impact on communities or businesses will not be accepted. It will be to the Welsh Ministers' discretion to decide whether or not to accept the proposed variation.

Decisions

Considerations

- 5.49 Following the examination of an application, the Inspector will be required to set out their conclusions and recommendations for the Welsh Ministers to make a final decision whether to grant or refuse consent. This will operate in a similar way to DNS applications. Although, we may reserve the ability for certain classes of infrastructure consent to be determined by the Inspector as part of a 'fast track' (See *Paragraph 5.10*) process.
- 5.50 Decisions must be taken in accordance with the national plans, which are the NDF (onshore) and the WNMP (offshore) and any additional topic-based policy statement except where material considerations indicate otherwise. Those considerations may be:
- Planning Policy Wales or any topic-based policy statements published by the Welsh Government;
 - Any relevant written or oral representations received;
 - The Local Impact Report, which sets out relevant local or strategic policy;
 - Welsh language; or
 - Other material considerations as considered necessary.

Statutory timescales

- 5.51 As the process is built on the premise of certainty for developers and communities, we propose a statutory timeframe within which an application must be determined. We propose these to be:
- 52 weeks from acceptance for decisions where a statutory instrument is required;
 - 36 weeks from acceptance for decisions where a statutory instrument is not required.
- 5.52 Two separate timescales are proposed and a longer timescale predicated on the likely complexity of a project being consented through a statutory instrument. Such cases would normally involve interferences of statutory and land rights which may require more detailed consideration and examination. Two separate timeframes are proposed to reflect the breadth of projects which may be determined through the process.

Challenge to decisions

- 5.53 To give communities confidence applications for WICs are examined appropriately and decisions are taken in a way which is fair to all participants, there should be opportunity to challenge decisions. Legal challenge against decisions of the Welsh Ministers would be through the Judicial Review process. This opportunity to challenge would be open to the community or any other person or group affected by the decision on the grounds of procedural unfairness, unreasonableness or illegality. Any challenge must be brought within six weeks of a decision.

Post consent

Enforcement and Conditions

- 5.54 In the case of an approved application for a WIC, we propose the Welsh Ministers may specify any conditions, which may include mitigation measures, which the recipient of the consent must comply with. Any conditions would remain to be subject to the tests set out in the conditions Circular⁶⁵. In addition, the Welsh Ministers may attach conditions which would otherwise be normally attached to any secondary consent applied for as part of the WIC. Responsibility for discharge of conditions will largely remain with the relevant enforcing authority, which is the LPA onshore and the Welsh Ministers offshore, though functions may be delegated other bodies as specified in the consent.
- 5.55 In terms of enforcement of decisions, the LPA is the most appropriate authority to monitor approved land-based schemes due to their presence in the local community, the logistical advantage and the possession of the necessary skills and local knowledge to ascertain whether any breaches have occurred. The Welsh Ministers are the appropriate enforcement authority offshore, with expertise in the enforcement of marine licences.

Changes to consents, including conditions

- 5.56 We acknowledge circumstances can change following the issuance of a consent. While frontloading the process is intended to provide certainty as to what has been consented, we understand efficiencies in terms of design and improved mitigation of impacts can be achieved following the consenting of a scheme. Such instances can arise from developments in technology or where new impacts are discovered prior to construction.
- 5.57 Given the Welsh Ministers have dealt with the original consent we see it as logical for them to deal with any variations of condition or the scheme as a whole after the point of decision. The precise way in which any variation would be dealt with would depend on the potential impact. For instance, where a variation may give rise to increased environmental impacts or further affect land rights, we may require the same general approach as the initial consent. However, where the variation is relatively minor in nature, we will use expedited procedures which narrow the scope for consultation to the relevant parties and provide a quick decision on acceptance or refusal which ensures development may proceed with certainty.
- 5.58 We will continue to develop ways to provide a fast-tracked infrastructure consenting process and would welcome views on how a simple process for amendments can be provided.

⁶⁵ Welsh Government Circular 016/2014: The use of Planning Conditions for Development Management.

Fees and costs

Fees

- 5.59 The current process for deciding whether DNS projects require planning permission is operated on the basis of full cost recovery. In line with public finance principles⁶⁶ of setting charges for a service, and to provide arrangements which meet and balance the needs of key stakeholders, including the development industry and communities, we will continue to aim to achieve full cost recovery, including the standard cost of capital.
- 5.60 Given the varied nature of WIPs, we propose for any fees to be based on the type and length of examination of the application, and will be a mixture of fixed and variable fees. Fixed fees will be used where possible where there is a standardised element of the consenting process. However, as examination can vary from project to project, there will be a significant variable element based on a daily rate.
- 5.61 While our proposals for fees provide the best opportunity for full cost recovery we acknowledge this will not provide certainty of the likely level of fee for the developer. To provide some certainty to developers for budget management purposes, it is intended for the Welsh Ministers to provide an estimate of the fee amount following full timetabling and setting out of the method of examination.
- 5.62 Where there are optional WIPs which may either proceed through the WIC process or the normal consenting authority, we acknowledge there is a choice to be made by the developer as to the most suitable process to proceed under. While there will be a different way of calculating for fees for applications for WICs compared to planning applications, Harbour Revision or Empowerment Orders and Marine Licences, we aim to ensure the likely level of fees and costs is not a factor in making this decision as to which process to proceed through. We want to ensure the developer opts for the consenting method based on process alone.
- 5.63 Following acceptance of a WIC, a contribution will be required from any relevant LPA by way of a Local Impact Report (“LIR”). We acknowledge most applications for WIPs would normally be determined by the LPA were the WIC process not in place, and the production of an LIR will come at a cost. We intend to reimburse the LPA with a fixed fee for the production of the LIR. We will continue to work with LPAs to determine the true cost to them of producing an LIR.
- 5.64 Within the proposed WIC process, there will be routine work for statutory consultees and LPAs, such as responding to pre-application queries, responding to consultations on a statutory basis and, where necessary, participating in an examination. It will be open for these parties to make arrangements with the applicant by way of a Planning Performance Agreement, to secure the relevant resources, involvement and to aid the

⁶⁶ Welsh Government, Managing Welsh Public Money (Section 6), January 2016

applicant in providing a robust decision to them. We will introduce a formalised charging mechanism for pre-application services for the Welsh Ministers and LPAs.

- 5.65 Following the issuance of any WIC, the consent may have conditions attached to it which requires further information to be discharged by an authority, such as the Welsh Ministers, LPA or statutory consultee. We have received evidence which suggests there can be significant work involved in the discharge of conditions. To secure a good level of service to developers and to recover the cost of the work involved, we propose to introduce a charging mechanism for the discharge of any condition relating to a WIC.

Costs

- 5.66 Outside of the requirement for fees, there may be rare occasions when determining a WIC where unreasonable behaviour occurs, leading to parties incurring wasted and unnecessary costs. It is logical for the costs regime to apply to the WIC process. In this way, the behaviour of parties participating in the process will be regulated and the costs of those affected by unreasonable behaviour will be reclaimed. Recent changes to the costs regime enable the Welsh Ministers to initiate awards of costs and require any applications for costs to be made at the earliest possible stage. We propose these changes and the relevant guidance⁶⁷ will continue to apply for the purpose of the WIC process.

Compulsory acquisition

- 5.67 We see compulsory acquisition powers as an important tool to assemble the land required to deliver modern and connected infrastructure. These powers provide for the compulsory acquisition of land or rights in land, the extinguishment or interference with public rights and temporary possession of land. For major infrastructure projects, this range of powers are essential where it is impracticable to acquire all of the land or rights needed for a scheme by agreement, or where statutory undertakers' equipment would be affected.

Submission and pre-application

- 5.68 Where applicants seek this right, the draft WIC will be in the form of a statutory instrument (*See Paragraph 5.8*), and the application shall be subject to the 52 week statutory timeframe. As a requirement, the Welsh Ministers may only authorise the compulsory acquisition of land where they are satisfied there is a compelling case in the public interest, the relevant procedure in relation to compulsory acquisition has been followed and the land is:

- required for the development to which the WIC relates;
- required to facilitate or is incidental to the WIC development; or
- replacement land which is to be given in exchange for the order land, such as common land, open space or allotments.

⁶⁷ [Welsh Government, Development Management Manual, Section 12 Annex – Award of Costs](#)

- 5.69 To progress compulsory acquisition as part of a WIC application, the applicant must include supplemental information in their submission. This includes:
- **A statement of reasons** justifying the powers of compulsory acquisition sought and why there is a compelling case in the public interest;
 - **A funding statement** setting out how the compulsory acquisition should be funded, setting out liability guarantees and alternative forms of security;
 - **Detailed plans** setting out the land to be acquired;
 - **A book of reference** setting out, among other things, who shall be affected and shall be compiled; and
 - **Cross-referencing evidence** of pre-application consultation representations and relevant representations made on an accepted application for a WIC from those who shall be affected against their book of reference index.
- 5.70 To reach this stage of submission, the applicant is expected to have made reasonable, diligent inquiry at the pre-application stage as to who has interests in the relevant land and the nature of their interests. We intend to give powers to prospective applicants to obtain this information as well as rights of entry to survey or value land.
- 5.71 Prior to submission, the applicant will be required to undertake a statutory stage of pre-application consultation (*See Paragraph 5.28 to 5.35*) and will be required to submit a consultation report which documents this consultation. It will be a requirement for those with interests in relevant land who could potentially be affected by compulsory acquisition to be consulted as part of this pre-application consultation, and for their views on the development and any compulsory acquisition element to be contained within the consultation report and cross-referenced against the book of reference.
- 5.72 There may be occasions where additional parties with an interest in the relevant land are identified during the statutory pre-application consultation process. Those new persons shall be noted in the consultation report. It will be a requirement for consultation to be undertaken with any newly identified persons with an interest, so as not to prejudice or unfairly treat those persons. However, under certain circumstances where failure to consult was unavoidable or where there are genuine errors in the book of reference, the Welsh Ministers may waive the requirement to consult and allow for alternative consultation arrangements for those persons affected without prejudicing their interests.

Initial procedure and examination

- 5.73 For representations to be made on the final scheme, it will be a requirement for those interested persons who are set out in the book of reference to be offered the opportunity to comment, in the same way as statutory consultees and communities are consulted (*See Paragraphs 5.39 to 5.43*). As the application will involve the prospective alteration of land rights, those persons with an interest in the relevant land may ask for a hearing to be held on the compulsory acquisition matters.

5.74 Ultimately, the responsibility for setting the method of examination of a WIC application will lie with the Welsh Ministers (See Paragraph 5.45) and we do not see a compelling need to provide a right to appear before the Welsh Ministers. However, where a person affected by compulsory acquisition requests the right to appear, the Welsh Ministers are likely to accede to this request, unless it is clear the matters are sufficiently simple to be dealt with by way of written representations. Compulsory acquisition hearings will follow a similar process to topic-specific hearings.

Authorisation of compulsory acquisition

5.75 Where the Welsh Ministers decide to authorise compulsory acquisition as part of a WIC, with or without amendment, the applicant will be required to serve a compulsory acquisition notice on those persons affected. We intend to prescribe publicity requirements for this notice, including the obligation to display it on or near the site and within a local newspaper for inspection. To enact the compulsory acquisition notice and to transfer the ownership of the land to the applicant, a notice to treat⁶⁸ must be served within 5 years of the beginning on the date on which the WIC is given. This same period shall also apply to vesting declarations⁶⁹.

5.76 As the Welsh Ministers do not have devolved competence over the level of compensation for compulsory acquisition, a WIC may not include provision to the effect of modifying or excluding compensation.

Consultation questions

- 13. Do you agree with our proposals for a Welsh Infrastructure Consent to be either in the form of a standardised consent or a statutory instrument, dependent on the type of application made? If not, why not? proposals?**
- 14. Do you agree with the notion of fast-tracking certain classes of development? If yes, please specify where this may be suitable?**
- 15. Do you agree with our proposals to disapply the need for certain authorisations attached to the main development? If yes, please specify which authorisations may be included in a Welsh Infrastructure Consent?**
- 16. Do you agree the National Development Framework, Welsh National Marine Plan and topic-based policy statements should form the policy basis for determining whether Developments of National significance should proceed or not? If not, why not?**
- 17. Do you agree with our proposals for pre-application consultation to form the basis of the Welsh Infrastructure Consent process? If not, why not?**

⁶⁸ S.5 of the Compulsory Purchase Act 1965

⁶⁹ S.4 of the Compulsory Purchase (Vesting Declarations) Act 1981

- 18. Do you agree with our proposals to remove inquiries from the process for determining Developments of National Significance and for hearings only to be held in place? If not, why not?**
- 19. Do you agree with our proposals regarding variations during the determination process and post-consent variations? If not, why not? If you agree, please suggest ways of fast-tracking those variations.**
- 20. Do you agree the Local Planning Authority is the relevant onshore enforcement authority and the Welsh Ministers is the relevant offshore enforcement authority? If not, why not?**
- 21. Do you agree with our proposals regarding the compulsory acquisition of land? If not, why not?**
- 22. Do you have any other comments to make on both Parts 1 and 2 of this consultation?**

PART 3 – REFORMS TO THE COMPULSORY PURCHASE REGIME IN WALES

6. Delegation of Decisions and Awards of Costs

Delegation of decisions

- 6.1 Subject to some exceptions, most notably for these purposes under the Electricity Act 1989, most CPOs in Wales must be submitted by acquiring authorities to the Welsh Ministers for confirmation. In cases where there are no outstanding objections and certain other requirements are met, the Welsh Ministers have discretion to allow acquiring authorities to confirm their own orders.
- 6.2 Where a CPO submitted to the Welsh Ministers is contested, an Inspector is appointed to hold an inquiry or to consider the case through written representations. In cases which are straightforward and do not raise issues of more than local importance, the Ministerial decision letter is often unlikely to add anything substantive to the Inspector’s findings and conclusions. Yet in all cases, the Inspector must prepare a report with a recommendation for the Welsh Ministers who will make the final decision. This adds up to 12 weeks to the process.
- 6.3 The Housing and Planning Act 2016 prospectively amends the Acquisition of Land Act 1981 (“the 1981 Act”) to enable the Welsh Ministers to appoint, on their behalf, an Inspector to make the decision on whether or not a non-Ministerial CPO, i.e. where the acquiring authority is not one of the Welsh Ministers and section 13A of the 1981 Act applies, should be confirmed. The Welsh Ministers will be able to appoint an Inspector to act on their behalf in relation to:
- (a) an individual, specific non-Ministerial CPO; or
 - (b) a description of certain types of non-Ministerial CPOs⁷⁰.
- 6.4 The Welsh Ministers will also have the ability to cancel the appointment of an Inspector at any time.
- 6.5 We consider it appropriate to delegate decisions by an Inspector in certain, but not all, circumstances. The Welsh Ministers may decide against delegating certain decisions in relation to non-Ministerial CPOs which they have responsibility for confirming. In this consultation we are interested in views on the proposed criteria to be used for the consideration of the delegation of non-Ministerial CPOs for decision by Inspectors.
- 6.6 While the purpose of delegation is to streamline and speed-up the decision-making process, each CPO case will be considered on its individual merits. If at any time until a final decision is made the Welsh Ministers consider a CPO

⁷⁰ I.e. CPOs made under different enabling powers, i.e. section 226 of the Town and Country Planning Act 1990; section 47 of the Planning (Listed Building and Conservation Area) Act 1990; section 250 of the Highways Act 1980; section 17 of the Housing Act 1985; section 121 of the Local Government Act 1972 etc.

raises issues which should be considered by them, they may cancel the appointment of an Inspector and “recover” the case back for their own determination. This allows for consideration of exceptional cases where, for example, an important new or novel issue has emerged during the course of the confirmation process, which means the decision should be made directly by the Welsh Ministers. In these circumstances, the Inspector will submit a report and a recommendation to the Welsh Ministers who will make the decision on whether or not the CPO should be confirmed.

Criteria for delegating non-Ministerial CPO cases for decision by Inspectors

6.7 The proposed criteria for delegation is based on the frequency and complexity of the different types of non-Ministerial CPOs, made under different enabling powers, which the Welsh Ministers received for confirmation over the past 10 years and were subject to a public inquiry. It is also based on the criteria used by the Welsh Ministers in the consideration of call-in requests and the delegation of planning appeals to Inspectors⁷¹.

6.8 We propose the following criteria for delegation of a decision by an Inspector:

“The Welsh Ministers will consider the suitability of the following types of non-Ministerial compulsory purchase orders (CPOs), made under different enabling powers, to be delegated to an Inspector for a decision on the confirmation of:

- *CPOs made under the Highways Act 1980;*
- *CPOs made under the Housing Act 1985;*
- *CPOs made under the Planning (Listed Building and Conservation Area) Act 1990;*
- *CPOs made under the Town and Country Planning Act 1990.*

These powers are used selectively and each case is considered on an individual basis. Delegation to an Inspector will generally only be considered appropriate where a CPO does not raise issues of more than local importance. It could be considered appropriate to delegate a decision by an Inspector where, for example, the Welsh Ministers are of the opinion making the order appears unlikely to:

- *conflict with national policies;*
- *raise novel issues;*
- *give rise to substantial controversy beyond the immediate locality;*
- *have wide effects beyond the immediate locality; or*
- *raise significant legal difficulties.”*

6.9 It will be for the Welsh Ministers to consider, against the proposed criteria, whether or not to delegate a decision by an Inspector on a non-Ministerial CPO for which they are the confirming authority.

⁷¹ S.77 and S.78 of the Town and Country Planning Act 1990

Compulsory purchase order inquiries: An award of costs

6.10 For public inquiries into the compulsory purchase of land, the current position is that successful objectors to a CPO⁷² (or unsuccessful objectors where the acquiring authority has behaved unreasonably) must appear at inquiry to be awarded costs under section 5 of the Acquisition of Land Act 1981.

6.11 We propose to broaden, via primary legislation, the power to award costs in Wales under section 5 of the Acquisition of Land Act 1981 Act. This specifically relates to CPOs which are being made:

- i) to facilitate development and other planning purposes⁷³; or
- ii) for highway purposes⁷⁴

and where a CPO inquiry is cancelled or where a party does not appear at a CPO inquiry. These situations may occur where an acquiring authority no longer wishes to proceed with a CPO, or an objector has reached agreement with the acquiring authority to exclude their land from an order.

6.12 Currently, where an acquiring authority withdraws the threat of compulsory purchase before a scheduled CPO inquiry is to be held, and an agreement on costs cannot be reached, a landowner's only recourse is to insist a CPO inquiry is held. This can lead to parties incurring considerable additional expense and an Inspector being engaged for unnecessary time because of an inability to allow an award of costs without a CPO inquiry being held.

6.13 Under current legislation, where an acquiring authority has been found to have behaved unreasonably, for example withholding information, a landowner would have to attend a CPO inquiry and make representations to be eligible for an award of costs. In this instance, additional costs would be incurred by the landowner due to the need to make a case at and attend inquiry. It is not uncommon for an award of costs not to take into account this additional expense and 100% cost recovery is rare for landowners in this instance.

6.14 Broadening the power to award costs to parties in relation to CPOs which are being made:

- i) to facilitate development and other planning purposes⁷⁵; or
- ii) for highway purposes⁷⁶

and where a party does not appear at an inquiry or where a CPO inquiry is cancelled will ensure these important procedures are not misused for commercial purposes. This can cause unnecessary delay to proceedings and can undermine the legitimacy of proposals and of procedural fairness. It will also enable an award of costs to be made in a claimant's favour without a CPO inquiry being held.

⁷² Means a person who in defending their rights, or protecting their interests, had them successfully removed from a CPO.

⁷³ As defined in section 246(1) of the Town and Country Planning Act 1990

⁷⁴ The use of compulsory powers under the Highways Act 1980

⁷⁵ As defined in section 246(1) of the Town and Country Planning Act 1990

⁷⁶ The use of compulsory powers under the Highways Act 1980

Consultation questions

- 23. Do you agree with our criteria for delegating non-Ministerial compulsory purchase orders (CPOs) for decision by an Inspector? If not, why not?**
- 24. Do you agree with the intention to amend, via primary legislation, section 5(4) of the Acquisition of Land Act 1981 to broaden the power to award costs to parties in relation to compulsory purchase orders (CPOs) being made to facilitate development and other land uses, or for highway purposes?**

Annex A

Costs

- A1 While Part 2 of this consultation paper outlines significant benefits to communities and the development industry, we anticipate there will be some costs associated with our proposed reforms.

Welsh Government

- A2 The Welsh Government will be subject to new costs. In increasing the range and number of projects which it determines, as well as other consents and authorisations which are required alongside the main consent, there will be additional administrative cost. There will also be one-off set up costs to the Welsh Government in designing a process, through the production of legislation and guidance.
- A3 The majority of ongoing costs will be offset by the introduction of fees. These are intended to recover the entire ongoing administrative cost of providing a unified consenting process. Given a number of existing processes will be incorporated into a single consenting regime, there will be a lower cost as a result of efficiencies gained through the reduction in administrative burden.

Development Industry

- A4 Developers are likely to be subject to higher fees than those which are set for current processes⁷⁷, which do not reflect actual costs at present and are unlikely to achieve full cost recovery. While this is the case, a developer may obtain a number of authorisations at the same time as the main consent, as part of a one-stop shop regime. Accordingly, the developer will not be paying fees for those authorisations, nor will time be spent making different applications for them and participating in those consenting processes. Overall, there is the potential for time and costs to be saved.
- A5 The proposed WIC process is intended to be frontloaded, there will be considerable pre-application consultation in advance of a formal submission. Accordingly, costs of communications with communities and consultees are likely to be higher. There may also be transition costs in adjusting to a new process. In return, there is likely to be less delay in achieving a consent as statutory timescales are proposed. The cost of delay to the development industry and the economy will be reduced.

Normal consenting authorities

- A6 Cost will be generated through engaging in the WIC application process, such as responding to consultations, participating at the pre-application stage and participating in an examination. These costs will vary on a case by case basis and dependent on who the normal consenting authority is. LPAs will be

⁷⁷ Planning Permission under the Town and Country Planning Act 1990, Consents under the Electricity Act 1989, Harbour Revision and Empowerment Orders under the Harbours Act 1964, Orders under the Transport and Works Act 1992 and Orders under the Highways Act 1980.

subject to some statutory functions for which they will be reimbursed, such as the production of a Local Impact Report. These are functions which are currently undertaken through the processes for consenting DNS and NSIP projects. The normal consenting authority will lose fee revenue as a result of applications being made directly to the Welsh Ministers.

Communities

- A7 We do not anticipate new costs for communities as a result of the WIC process. As participation in the process is optional, the role of communities and interested parties will remain unchanged. However, their participation will occur at an earlier stage than at present to secure an early influence on a scheme. Furthermore, there will be no requirement to engage in authorisations associated with the main project, should these be required as part of the WIC.

Conclusions

- A8 While there are costs and cost-benefits to the above groups, these will be significantly outweighed by the provision of a one stop shop consenting arrangement which contribute to the Ministerial aims of encouraging economic growth and towards achieving a low carbon economy. We anticipate there will be a lower cost to the Welsh Ministers than using existing processes through the provision of proportionate application fees. Democratic accountability will also be retained in decisions being made by the Welsh Ministers.
- A9 The consenting of major infrastructure will be placed centrally. The normal consenting authority will be able to focus their resources on more frequent and regular casework. This will result in administrative efficiency for both the Welsh Ministers and the normal consenting authorities. Communities and developers will benefit financially and in terms of time spent in dealing with a single application, rather than a number of consents and authorisations. Ultimately, this will decrease the cost of delay to the economy.
- A10 To help us produce a full picture of how our proposals will impact on the above groups, we would welcome further information from respondents which sets out evidence-based costs in participating in the consenting of infrastructure.

Call for evidence

- A. Do you have any information on the costs and benefits of existing consenting regimes? Those include the DNS, Harbour Revision or Empowerment Orders, consents to build and operate generating stations and overhead electric lines, Transport and Works Orders and Highways Orders.**