Llywodraeth Cymru
Welsh Government

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Welsh Government

# Consultation Document

Infrastructure (Wales) Act 2024

# Implementing the Infrastructure (Wales) Act 2024

Date of issue: 19 September 2024

Action required: Responses by 13 December 2024

Mae'r ddogfen hon ar gael yn Gymraeg hefyd / This document is also available in Welsh
Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg / We welcome correspondence and telephone calls in Welsh

## Overview

The Infrastructure (Wales) Act 2024 provides for a new consenting process that will enable the Welsh Ministers to determine applications for significant infrastructure projects. The Act contains the framework for the overall process, with the finer details to be prescribed in Regulations.

The consultation paper describes the finer details by setting out the whole consenting process, from the identification of projects subject to the new regime, through to amendments to consents and revocation. Feedback to these proposals will enable the finalisation of the Regulations.

## How to respond

The closing date for responses is 13 December 2024 and you can respond in any of the following ways:

**Email:** Please complete the consultation response form and send it to: **infrastructureconsenting@gov.wales** (please include 'Implementing the Infrastructure (Wales) Act 2024') in the subject line.

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

Implementing the Infrastructure (Wales) Act 2024
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.

## Contact details

For further information:

Email: infrastructureconsenting@gov.wales

Tel: Owen Struthers on 0300 025 6430

This document is also available in Welsh: hyperlink

## UK General Data Protection Regulation (UK GDPR)

The Welsh Government will be data controller for Welsh Government consultations and 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. The lawful basis for processing information in this data collection exercise is our public task; that is, exercising our official authority to undertake the core role and functions of the Welsh Government. (Art 6(1)(e))

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 the case of joint consultations this may also include other public authorities. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

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.

You should also be aware of our responsibilities under Freedom of Information legislation and that the Welsh Government may be under a legal obligation to disclose some information.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

## Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- 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 (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

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

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ
e-mail: dataprotectionofficer@gov.wales

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

Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Tel: 0303 123 1113
Website: https://ico.org.uk/

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**List of Abbreviations**

The follow are common terms that are abbreviated in this paper.

DNS – Developments of National Significance

EIA – Environmental Impact Assessment

IC – Infrastructure Consent

KV – Kilovolt

LIR – Local Impact Report

LPAs – Local Planning Authorities

MIR – Marine Impact Report

MW – Megawatt

NDPB – Non-Departmental Public Body

NRW – Natural Resources Wales

PEDW – Planning and Environment Decisions Wales

SIP – Significant Infrastructure Project

TCPA 1990 – Town and Country Planning Act 1990

The Act – The Infrastructure (Wales) Act

TWA – Transport and Works Act 1990

# Consultation paper

## Chapter 1: Introduction

### Preface

1.1 The infrastructure consenting system in Wales plays an important role in helping to deliver sustainable infrastructure and ‘green’ growth, as well as making sure our commitments are met in terms of community involvement, carbon emissions and environmental protection. These objectives are reinforced by the Infrastructure (Wales) Act 2024.

1.2 Under the current multiple consenting processes it can be difficult for participants, such as LPAs, consultees and the community to participate effectively. Furthermore, the existence of different processes for different types of infrastructure can be confusing. This often means those with the most resources and knowledge are more likely to engage in the consenting process, and this could be seen to be unfair. The Act is designed to address these issues.

### The Infrastructure (Wales) Act 2024

1.3 The Act enables the Welsh Ministers to determine applications for developments that are of significance to Wales under a new process that is appropriate for the handling of such applications.

1.4 The purpose of the Act is to provide more certainty in the decision-making process. The Act contains the framework for the process, however the finer detail is to be prescribed in regulations which support the Act.

### Purpose of consultation

1.5 Comments received in response to the consultation paper ‘changes to the approval of infrastructure development’ established overall consensus on the establishment of a new consenting process for nationally significant development.

1.6 These principles were also approved by the Senedd as a result of the passing of the Act. This new process will ensure that developments are dealt with in an appropriate way given their likely impacts.

<u>Consultations to date</u>

1.7 The Welsh Government consulted on the pre-application consultation process and fees associated with the new consenting process between 13 May and 22 July. These consultations were based on very broad principles, intended to gather evidence to help refine the policy.

1.8 This consultation paper sets out detailed proposals for a system to administer and determine this category of development and builds on those proposals set out in the Act. As many elements of the process are considered straightforward this

consultation contains the detail that we intend to prescribe in a series of regulations. The proposals for pre-application consultation and fees are based on the evidence we received from the previous consultations.

1.9 This consultation paper is split into 15 chapters.

Transitional arrangements

1.10 The Act will replace, either fully or partially, a number of existing statutory regimes for the consenting of infrastructure projects. It is the intention of the transitional provisions to ensure a smooth passage from one regime to another, to minimise disruption as much as possible to matters already in train. Your views are sought on these arrangements.

Developments that fall within the consenting process

1.11 The Act ensures certain infrastructure in Wales in the future will be consented to my Welsh Ministers under a new single process. The Act defines these projects by type of work and threshold, and all projects on the face of the Act will require an IC. Where a project falls below the compulsory thresholds set out in Part 1 of the Act but is considered to be of national significance, for example by generating significant effects, or includes new technology or novel circumstances, the Act provides the Welsh Ministers with a power to direct such a project is a SIP for determination under the new consenting process. Your views are now sought on a set of thresholds and criteria for where a project may be directed.

Cross Boundary applications

1.12 The Act recognises that development may cross the border and therefore the development would not be consented through a single regime, meaning the efficiencies of the new process are not realised. Our process for these developments is set out here.

Extinguished and deemed consents

1.13 The Act provides that an IC may include provision that removes the requirement for a consent specified in regulations to be granted, or deems a consent specified in regulations to have been granted. These consents are separated into those the Welsh Minister may grant unilaterally, or those where the consent of the authorising body is required. Your views are now sought on a detailed list of those consents, and for the handling of them.

Pre-application advice and information

1.14 The Act makes provision to enable prospective applicants to design and develop their proposals. These require Welsh Ministers, LPA and NRW to provide pre-application services, where requested by prospective applicants. Arrangements are also available for applicants to obtain information on land ownership and access land.

Pre-application notification and consultation

1.15 The Act contains provisions requiring developers to provide a notification of the intention to submit an application for a SIP, and undertake pre-application consultation with the local community and statutory consultees.

1.16 We have developed these proposals based on the feedback received to the first consultation. Your views are sought on the procedural requirements of the pre-application process, and the level of consultation which must be undertaken by the developer prior to the submission of an application.

Applications for Infrastructure Consent

1.17 PEDW will undertake all functions relating to the processing of an application as the examining authority, for SIP, with the final determination being reserved for the Welsh Ministers. In this section, we will prescribe the process and requirements for making an application for SIP. Your views are sought on the details of this process.

Statutory consultees

1.18 The consenting of SIPs is undertaken by the Welsh Ministers, but LPAs, NRW and other statutory consultees will have a vital role to play in the examination of applications and their subsequent delivery. This will include the provision of a substantive response or a Local or Marine Impact Report. Your views are sought on their roles and responsibilities in relation to such applications.

Fees

1.19 Application fees for SIPs are to be set out in new fees regulations. This is the second consultation on this topic, and the information set out in this section reflects feedback received from the first consultation. Your views are sought on the proposed model for the charging of fees.

Examination

1.20 The consenting system will adopt a proportionate and timely method of examination while ensuring quality of reporting to support robust decision-making. Proposals are set out on appointing an examining authority, the examination procedure and open floor hearings.

Deciding applications and making orders

1.21 Following the examination, the examining authority will draft a report, which forms the basis of the next part of the process, the decision itself and the making of an order.

1.22 This part sets out who decides an application for IC, what the decision maker has to take into account when deciding an application, about the timetable for making the decision, and about making the decision and its publicity.

Environmental Impact Assessment

1.23 This chapter also contains information on the EIA that will apply to the consenting process.

Post decision

1.24 The IC process does not usually end once a decision is made by the Welsh Ministers to grant consent. There may be a requirement to correct an Order and as with any permission there will be responsibilities to discharge requirements and the potential for amendments to the consented project.

Compulsory acquisition

1.25 An IC can require the compulsory acquisition of land to ensure a scheme can take place. This chapter details where we are seeking your views on the implementation of a new process for the compulsory acquisition of land as part of the infrastructure consenting process.

Registers of pre-application services and applications for Infrastructure Consent

1.26 To ensure local communities and other stakeholders are aware of proposed developments which are likely to affect them, requirements are placed on the Welsh Ministers, LPAs and NRW to establish and maintain registers containing information relating to pre-application services and applications for infrastructure consent.

## Chapter 2: Transitional Provisions

2.1 The Act will replace, either fully or partially, a number of existing statutory regimes for the consenting of infrastructure projects. It is the intention of transitional provisions is to ensure a smooth passage from one regime to the other.

2.2 It is intended that disruption will be minimised as much as possible to matters already in train. This means projects that are being considered or progressed through existing consenting processes can continue to do so until a decision has been made. It is also important that the transition is workable in practice, and so your views and suggestions are sought on the proposed arrangements.

2.3 The proposed transitional provisions also seek to minimise the duplication of work where a project is in development before the new regime is in force but will be consented under the Act. Furthermore, for existing consents, decisions will continue to be made in relation to post-consent amendments, such as material changes or revisions to an existing consent, under existing regimes.

2.4 The Act will require appropriate transitional provisions in relation to:

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

<u>Powers</u>

2.5 The relevant sections of the Act are:

- *Section 144 Power to make consequential and transitional provision etc; and*
- *Section 146 Transitional and saving provision.*

2.6 Section 146 of the Act sets out detail on transitional provisions. It sets out that if certain conditions apply, an application for proposed development can continue under the relevant existing regime.

2.7 Section 146(2)(b) sets out the specific transition point for applications under the DNS regime. This will be a notification under section 62E(1) of the TCPA 1990. The transition period is 24 months from the day the relevant sections of the Act come into force. The Welsh Ministers also have the power to direct that a different transition period applies.

2.8 The Section also sets out that subordinate legislation will make provision about when an application or notification has been treated as made, and what under consideration means. The subordinate legislation will therefore set out the transition points in existing regimes.

2.9 If a project has reached these transition points at the date the Act comes into force, it will be for the applicant to decide whether to continue an application under the existing regimes or make a new application as a SIP.

Transition points for existing regimes

2.10 It is our intention to set out transition points in subordinate legislation for clarity. We propose the following points:

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

- an application which has been published in the relevant newspapers in accordance with Regulation 7 of the Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019. The relevant date is the first day of publication.

*Orders under s.14 of the Harbours Act 1964 (Harbour Revision Orders)*

- the relevant date will be the day on which the Welsh Ministers receive an application which meets the requirements set out in Paragraph 7 of Schedule 3 of the Harbours Act 1964.

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

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

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

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

*Highways Orders under the Highways Act 1980*

- the relevant date will be the day on which the Welsh Ministers publish a notice in compliance with Paragraph 1 Schedule 1 of the Highways Act 1980.

Existing work considered applicable to the SIP regime

2.11 To minimise the duplication of work during the transition period, it will be beneficial to be able to transfer pre-application work where a project is developed before the new regime is in force but will be consented under the new provisions.

2.12 It is recognised that the application process for some existing consenting regimes, such as Transport and Works Act 1992 and Electricity Act 1989 are outdated. It is hoped that by providing clarity, potential applicants will be able to ensure that work undertaken will be compatible with the new infrastructure regime and therefore be

able to be carried over. For example, this could mean potential applicants undertaking additional pre-application consultation in order to comply with the SIP application process.

2.13 The form, content and specific details of what will be required to make a valid SIP application is also subject to this consultation and will be considered separately to transitional provisions. We welcome your views and suggestions on the type of work that may be able to be carried over.

Pre-Application Consultation Work

2.14 Further information on the details of pre-application consultation can be found at Chapter 8 of this consultation paper.

2.15 Applicants may plan for and carry out pre-application consultation in line with the proposals, in anticipation of a transition to the new SIP regime. However, the acceptance and validity of pre-application consultation reports as part of a SIP application will be at the discretion of the Welsh Ministers.

Environmental and other surveys

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

2.17 It is anticipated that provided proposed developments are substantially the same, surveys should be able to be transferred to the SIP regime provided they are up to date and can reasonably be relied upon in this regard. As with any other major infrastructure application, should the project design or other element change, a supplementary survey or report may be necessary. However, this will be at the discretion of the Welsh Ministers.

2.18 As with environmental surveys, the production of an Environmental Statement (ES) for the purposes of EIA often requires a significant amount of time to produce. Whilst this will be subject to change in the coming years, it is anticipated that provided the project is substantially the same, EIA work should be able to be carried over. However, as with other pre-application work, this will be at the discretion of the Welsh Ministers.

2.19 Where the Welsh Ministers have issued an EIA screening or scoping opinion or direction, it is likely that this will be able to be transferred over to the SIP regime. However, the Welsh Ministers will still have the discretion to issue a new opinion or direction or require further information on EIA.

Discretionary Advice from Consultees

2.20 Where a body or organisation has provided pre-application advice on a proposed development, it will be for that body to decide whether that advice can carry over to a SIP application. It is anticipated that this would be a simple process for a body

to confirm the advice is still relevant, with the ability to add to advice if there are any changes.

Coming into force of new requirements

2.21 The new consenting system will be contained in regulations, and it is expected these will contain express provision bringing them into force at a later date. It is considered that the time between legislation being made and coming into force needs to be sufficient for all stakeholders to understand the requirements.

Questions

- Do you agree with the proposed transition points in existing consenting regimes? If not, why not?

- What time period is considered appropriate between regulations being laid to the infrastructure consenting process coming into force?

- What time between the legislation being made and coming into force is sufficient for all stakeholders to understand the requirements?

- What other provisions should be introduced to enable projects to move to the new system?

## Chapter 3: Developments that fall within the consenting process by Direction

3.1 The development that is subject to this new consenting procedure in the Act is identified in one of 3 ways:

- The Act defines these projects by type of work and threshold, and all projects falling within the definitions will require an IC.

- Development that is identified in a Direction issued by Welsh Ministers, either following an application from the developer or issued by Welsh Ministers on their own volition.

- Development is to be that designated as a SIP in the National Development Framework produced under section 60(3) of the Planning and Compulsory Purchase Act 2004.

3.2 This section is concerned with development that is identified in a Direction.

3.3 It covers situations where a project falls below the compulsory thresholds set out in Part 1 of the Act but is considered to be of national significance. This may be for example by generating significant effects, having a complex consenting routes, or includes new technology or novel circumstances. The Act provides the Welsh Ministers with a power to direct such a project is a SIP. This means the project will be determined under the new consenting process.

3.4 The Act sets limitations to this direction making power by requiring subordinate legislation to describe a type of development that may be directed to be considered a SIP. These regulations may include thresholds, but they do not have to.

3.5 Minor procedural matters concerning how a request for direction should be submitted to the Welsh Ministers and the time scale for the Ministers to decide whether a project or an application is a SIP will also be set in regulations.

3.6 This section covers:

- The procedural matters to be specified in regulations; and
- The projects which may be subject to a direction.

<u>Powers</u>

3.7 The relevant sections of the Act are:

- *Section 22 – Directions specifying development as a significant infrastructure project;*
- *Section 23 – Directions for applications to be treated as applications for IC;*
- *Section 25 – Directions under section 22 to 24: general provision; and*
- *Section 26 – Directions under section 22: regulations about procedure.*

**Procedural matters: Request for Direction**

Who can make a direction request

3.8 Under the Act only developers will be able to apply for a Direction. Other third parties are not able to apply for a project to be considered as a SIP. It is possible for a third party to ask the Welsh Ministers to use their powers to make a direction of their own volition, however there is no duty for the Welsh Ministers to respond to such a request.

3.9 Direction requests may be made where a developer wants certainty over the consenting route for a project. They may also want the project to be subject to the new regime, as the new regime provides benefits over the planning system, for example, compulsory purchase.

The form of requests

3.10 Requests from a developer must be made in writing to the Welsh Government and will be via an email to a specific mailbox. Where requests are made to other mailboxes the request will be forwarded, although will not be considered received until the correct mailbox receives it.

Information to be provided in connection with requests for directions

3.11 The ability of the Welsh Ministers to deliver timely and high-quality decisions on requests for Directions relies on all parties following good practice and behaving reasonably. Therefore, Welsh Ministers will need the following information to determine if a project is of national significance:

- a location plan;
- a description of the proposed development;
- whether a concurrent or previous application has been submitted in connection with the proposed development;
- reasons why the developer believes the project is a SIP, giving consideration to the thresholds set in the Act and elsewhere;
- the list of other consents required for the project to proceed, reasons why they would benefit from inclusion in the infrastructure consenting regime; and
- any other relevant information on the proposed development.

3.12 Developers are expected to provide sufficient information to enable a Direction to be made.

The persons to be notified in connection with requests for directions

3.13 Where a qualifying request from a developer has been made, we expect the applicant to notify PEDW and the authority to which the application would be or was made in relation to an application for a consent that falls under section 20 of the Act should the direction not be granted.

Time limits

3.14 The direction shall be made within 28 days of a qualifying request being received.

3.15 Where additional information is required from the developer, or information is requested from an authority within subsection 22(5) the direction shall be made within 28 days of the information being received.

Challenge

3.16 The High Court is the only authority that can formally identify a legal error in a decision and require that decision to be re-determined. Applications to challenge decisions on a Direction and related costs decisions must be received by the Administrative Court within 42 days (6 weeks) from the date of the decision.

**Development types: Request for Direction**

3.17 Section 22 provides that the Welsh Ministers may give a Direction specifying that a specific development is a SIP. Amongst other matters specified on the face of the Act, the development must be one which is of a description specified in regulations.

Development types included

3.18 The Act sets out the criteria and thresholds of SIPs which are captured by the new consenting regime. For certain types of projects (largely those with a medium energy output), or a project including new technology or novel circumstances, a simple compulsory quantitative threshold may not be sufficient to determine whether a project is of such significance and complexity that it merits consenting through a unified consenting process. Therefore, where a development is of national significance to Wales the Welsh Ministers may give a Direction to specify that a proposed development is a SIP. We have identified two examples where this is relevant.

3.19 Example 1 – when the project falls under compulsory criteria. Where a project falls just under the compulsory criteria of the Act but it is likely to raise significant concerns due to its location or complexity, the Welsh Ministers can direct that the project is to be classed as a SIP and thus require an IC. For example, a proposed solar farm with a generating capacity of 45MW but located in the proximity of an ecological sensitive receptor, and requiring multiple consents, may be directed by the Welsh Ministers to be classed as a SIP due to its potential significant impacts.

3.20 Example 2 – when the project contains new technology or novel circumstances. In addition to the power to direct when a project is below the compulsory thresholds, the Act provides the Welsh Ministers with a degree of flexibility in considering whether new technology or novel circumstances should fall under the consenting regime. For example, development relating to hydrogen production is not currently included in the Act because it is relatively novel technology and the cases that have come forward so far have a small capacity and are not complex. However, should a new project come forward which involves a higher complexity and

potential significant impacts, these projects may benefit from inclusion in the new unified consenting regime, due to their novel circumstances.

3.21 Based on this it is considered two categories of projects are appropriate to list in subordinate legislation as a project that may be directed as a SIP:

- Developments that do not meet the thresholds listed in part 1 of the Act; and
- New or novel technologies not currently listed in the Act.

3.22 It is considered the legislation should list the project categories, and not the thresholds. The legislation will be accompanied by guidance, and this guidance can give an indicative threshold of whether projects are likely to be considered significant.

3.23 The table below provides the proposed development types and associate thresholds to be set out in guidance.

| **Development set out in the Act** | |
|---|---|
| **Type of development - set in subordinate legislation.** | **Threshold of development - set in guidance** |
| **1A. Onshore generating stations (with the exception of those which generate from onshore wind specified in 1C and energy storage classes as specified in 1D); and** | **Construction:**<br>The construction of a generating station, where the generating station is expected to have an installed capacity of between 10MW and 50MW.<br><br>**Alteration or extension:**<br>The alteration or extension of a generating station, where its effect is to increase the installed generating capacity by at least 10MW, however, the effect of the extension must not increase the overall generating capacity beyond 350MW. |
| **1B. Offshore generating stations up to the seaward limits of the territorial sea, and with the exception of those energy storage classes as specified in 1D)** | **Construction:**<br>The construction of a generating station, where the generating station is expected to have an installed capacity of between 1MW and 50MW.<br><br>**Alteration or extension:**<br>The alteration or extension of a generating station, where its effect is to increase the installed generating capacity by at least 1MW, however, the effect of the extension must not increase the overall generating capacity beyond 350MW. |
| **1C. Onshore wind generating stations** | **Construction:**<br>The construction of a generating station, where the generating station is expected to have an installed capacity of between 10MW and 50MW.<br><br>**Alteration or extension:**<br>The alteration or extension of a generating station, where its effect is to increase the installed generating capacity by at least 10MW. |

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| | |
| **1D. Energy Storage - A station in which the conversion of electrical energy into a form of energy which can be stored, the storing of that energy, and the subsequent reconversion of that energy back into electrical energy occurs. This does not comprise of a hydroelectric system in which electricity is generated by the use of water which has been pumped into a reservoir at a higher altitude** | **Construction:**<br>The construction of a storage facility, where it is expected to have a storage capacity of above 10MW.<br><br>**Alteration or extension:**<br>The alteration or extension of a storage facility, where its effect is to increase the storage capacity by at least 10MW. |
| **1E. Overhead electric lines associated with a generating station of a description set out in 1A-1D.** | **Installation:**<br>The overhead electric line is expected to have a nominal voltage of less than 132KV; or<br><br>The overhead electric line is expected to have a nominal voltage of 132KV and a length of less than 2KM.<br><br>**Alteration or upgrading:**<br>Any alteration or extension of an overhead electric line up to and including 132KV. |
| **2A. Liquefied Natural gas facilities** | **Construction:**<br>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<br>**Alteration:**<br>The existing storage capacity is expected to increase by at least 10 million standard cubic metres or by a maximum flow rate of at least 10 million standard cubic metres more per day. |

| | |
|---|---|
| **2B. Gas reception facilities** | **Construction:**<br>The maximum flow rate of the facility is expected to exceed 1 million standard cubic metres per day; or<br><br>**Alteration:**<br>The maximum flow rate of the existing facility is expected to exceed 1 million standard cubic metres per day. |
| **3A. Highways** | **Construction:**<br><br>Where the Welsh Ministers or any company wholly owned by them is the Highways Authority; and the construction will include a stretch of road which is of a continuous length of up to 1KM. |
| **3B. Railways which start, end and remain in Wales, and which are not specified as Permitted Development within the Town and Country Planning (General Permitted Development) Order 1995.** | **Construction:**<br>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.<br><br>**Alteration:**<br>The alteration is to be undertaken by an approved operator and includes a stretch of track which has a continuous length of up to 2KM. |
| **3C. Rail freight interchanges** | **Construction:**<br>When constructed, the rail fright interchange is expected to be capable of handling up to four goods trains per day.<br><br>**Alteration:**<br>An alteration which is expected to increase the amount of goods trains handled per day. |
| **3D. Ports and Harbours** | **Works:**<br>The harbour facilities, when constructed or amended, are expected to conduce the efficient functioning of the harbour, and the facilities are expected to have a significant impact on the environment (i.e. it requires an EIA). |
| **3E. Airports** | **Construction:**<br>The airport, when constructed, or amended and are expected to have a significant impact on the environment (i.e. it requires an EIA). |
| **4A. Dams and reservoirs** | **Construction:**<br>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.<br><br>**Alteration:**<br>The additional volume of water to be held back by the dam or stored in the reservoir as a result of the alteration is expected to exceed 1 million cubic metres. |

| | |
|---|---|
| **4B. Transfer of water resources** | No optional thresholds are proposed. |
| **4C. Waste water treatment plants** | No optional thresholds are proposed. |
| **5A. Hazardous waste facilities** | No optional thresholds are proposed. |
| **5B. Geological disposal for the final disposal of radioactive waste** | No optional thresholds are proposed. |
| **Projects not specified in the act** | |
| **Hydrogen production** | The facility is capable of generating 15 tonnes of H2 per day |
| **Non gas transport pipelines** | Pipelines constructed by non-gas transporters with a length between 1 and 16km |
| Pipelines by Gas transporters. | The pipeline<br>- is being constructed by a gas-transporter<br>- is wholly or partly in Wales (or the Welsh zone)<br>- the pipeline must be more than 800 Millimetres in diameter and more than 40 km in length.<br>- The pipeline must have a design operating pressure of more than 7 bar gage.<br><br>Gas transporter is to have the same meaning as in par 1 of the Gas Act 1986 c.44. |

## Questions

- Do you agree with the projects that may be directed, and their corresponding thresholds?

- What other new or novel technologies not currently listed in the Act should be listed, and what is the corresponding threshold?

## Chapter 4: Cross boundary developments

4.1 The Act ensures certain infrastructure on land within Wales, or within the sea up to 12 nautical miles will be consented by Welsh Ministers under a new single process. The Act recognises that development may cross the border and therefore the development would not be consented through a single regime, meaning the efficiencies of the new process are not realised.

4.2 Projects that straddle the land boundary with England would also need to be consented in England under the relevant legislation, for example the Planning Act 2008, or the Town and Country Planning Act 1990. Beyond 12 nautical miles the project would also be subject to other legislation for that part of the development, for example a Marine License by NRW or consent by the Welsh Ministers under the Electricity Act 1989.

4.3 Where a project crosses the border the amount of development that falls for determination under the Act will vary on a case-by-case basis. Where this represents a small part of the development, the new process may be disproportionate. The Act therefore enables the Welsh Ministers to direct a specific project is not a SIP. In such circumstances the project would fall back into the current consenting regime for that project (unless it was DNS where it will revert back to planning permission under the TCPA 1990).

Powers

4.4 The Act contains a number of provisions in relation to a request to direct a project is not a SIP. Some of these powers also cover the making of a Direction to specify development as a SIP. The relevant sections of the Act are:

- *Section 24 - Directions specifying that development is not a significant infrastructure project;*
- *Section 25 - Directions under section 22 to 24: general provision; and*
- *Section 26 - Directions under section 22: regulations about procedure.*

### Procedural matters

Procedures

4.5 The majority of procedures set out above for a request to direct a project is a SIP, including who can make a request and the time periods, would apply to requests for a direction that a project is not a SIP. The only differences relate to the type of projects that the request may apply to, and the information to support a request.

Projects

4.6 A direction request may only be given if the development will (when completed) be partly in Wales or the Welsh marine area. No other development can be considered.

Information to be provided in connection with requests for a direction

4.7 The request for a direction will need to contain similar information to set out in paragraph 3.11. The main difference will be to justify why the project should be excluded. It is expected that as a minimum a request for a direction should be accompanied by:

- a location plan;
- a description of the proposed development;
- whether a concurrent or previous application has been submitted in connection with the proposed development;
- reasons why the developer believes the project should be excluded from the requirement for infrastructure consent; and
- any other relevant information on the proposed development.

4.8 Developers are required to provide sufficient information to enable a Direction to be made.

## Chapter 5: Extinguished and Deemed consents

5.1 The Act puts in place a single consent regime for significant infrastructure to replace the current system which often requires numerous, and sometimes overlapping, consents to be obtained for an individual piece of infrastructure.

5.2 The intent is a one-stop shop. Therefore, as well as the consents listed in section 20 of the Act, it may be of benefit to promoters and the relevant consenting body for an IC to include provisions related to a particular aspect of the use or operation of infrastructure which is normally covered by a specific consent requirement.

Purpose and summary

5.3 The IC issued by the Welsh Ministers may therefore also have the effect of giving permission, authorising, approving, consenting, licensing or granting ancillary matters. This approach will enable developers to apply for the various other consents required to implement a scheme, should they wish.

Powers

5.4 The relevant section of the Act is:

- *Section 84 – Removing consent requirements and deeming consents.*

Distinguishing between deemed and extinguished consents

5.5 Deemed consents are those which are to be issued as part of an IC without the need for a separate consent, authorisation or licence. Extinguished consents are those which are being disapplied and are no longer required if an IC is granted.

5.6 The crucial difference between deemed and extinguished consents is that deemed consents can be enforced under the relevant Act if their terms are breached. An extinguished consent does not form part of the IC and therefore cannot be enforced under the relevant Act. However, conditions could be applied as part of the IC which cover the same subject matters as the consent which has been extinguished, and the conditions would be enforceable as part of the IC.

Who establishes the relevant consents

5.7 Where a consent is either deemed or extinguished, in practice it will be for the developer to specify whether they would like to seek the deeming or extinguishment of the consent (i.e. that the consent is not required any longer). However, ultimately, the power will lie with the Welsh Ministers to deem or extinguish the consent.

Consent to deem or extinguished a consent

5.8 The Act adopts a qualified approach, which deems that a relevant consenting authority has given authorisation for the use of its consent/licence/authorisation within the IC. However, the relevant consenting authority will be given the opportunity to decline for that ancillary consent/licence/authorisation to be

included within the IC. This is specified on the face of the Act at sections 84(2) and (3).

Deemed or extinguished a consent where consent is not required

5.9 The Act allows at sections 84(3) the Welsh Ministers to specify in subordinate legislation exceptions to sections 84(2) and (3), effectively allowing the Welsh Ministers to remove the requirement for or deem specified consents without the consent (explicit or silent) of the relevant authority.

5.10 These are consent types (such as planning permission for associated development, wayleaves or changes to the rights of navigation) which clearly should form part of the IC, or which are consented by the Welsh Ministers in the first instance. Such consents should not require the permission of the Welsh Ministers or the LPA in the first instance to be included within the IC. For a list of prescribed consents, it is proposed to enable the Welsh Ministers to include the these within the IC in all circumstances. The decision maker will be able to impose conditions on these consents.

What should be deemed or extinguished?

5.11 We do not believe that regulations should capture every consent or authorisation which could possibly be required in relation to a project – this would require a long and unwieldy list of limited relevance.

5.12 Instead, we want to specify those consents which the Welsh Ministers could reasonably be requested to, or might reasonably wish to include in an IC. We have sought to ensure that the list is as comprehensive as possible as regards consents which might reasonably be included in an IC.

**Matters which may be deemed or extinguished with agreement of the consenting body or can be included without agreement**

5.13 Annex A contains a list of those consents that may be deemed or extinguished with agreement of the consenting body or, alternatively, where the consent of an authorising body is not required before a consent is deemed or extinguished. Annex B provides a list of all consents that could be added to the final list, and is provided for information purposes.

Questions

- Do you agree with the Consents that may be extinguished/deemed? If not, what consents should be removed or listed?

- Which consents should be extinguished/deemed only with the consent of the relevant body?

## Chapter 6: Pre-application – advice and information

6.1 The pre-application stage of infrastructure projects is critical to ensure the whole process runs smoothly. The process leads to applications which are better designed and the process starts in the early stages through procedures to support the design of development and engagement.

6.2 The Act sets out these requirements:

- Pre-application services;
- Obtaining information about interest in land;
- Powers of entry to survey land.

### Pre-application services

6.3 The Welsh Ministers are committed to the use of pre-application services as a means of ensuring that any infrastructure consenting process operates efficiently. The provision of pre-application services improves the quality of submissions and facilitates quicker decisions.

6.4 Current practice indicates most developers seek pre-application advice and they benefit greatly from this as they can discuss their development proposal in detail, obtain information regarding the site and the locality, have the relevant policy framework set out and receive initial feedback on their development proposal.

6.5 This can assist in developing a proposal which includes all necessary information to allow local communities and other stakeholders to participate fully as part of the pre-application consultation process, as well as helping to ensure a smoother passage of the application through examination.

<u>Powers</u>

6.6 The relevant section of the Act is:

- *Section 27 – Provision of pre-application services.*

<u>Pre-application service request</u>

6.7 Where prospective applicants require pre-application services from the relevant LPA, NRW and / or the Welsh Ministers, a formal request will be required to be made. We are intending subordinate legislation to specify the following requirements:

- Any request for pre-application services must be made in writing on a form published by the Welsh Ministers;
- Prospective applicants will need to include the particulars specified or referred to in the form (see paragraph 6.8 for further information); and
- Must be accompanied by a site location plan and any other plans or drawings considered appropriate by the applicant.

6.8 Pre-application service request forms must include the following details:

- The name and address of the prospective applicant;
- The location of the proposed development by reference to a site address or co-ordinates;
- A non-technical description of the proposed development; and
- Whether an EIA screening or scoping direction is required from the Welsh Ministers.

6.9 Prospective applicants may include additional information or details in their pre-application service request form if they consider it would be beneficial to the body providing the pre-application services, although this would not be a mandatory requirement.

6.10 Prospective applicants will also be required to submit any fee payable for pre-application services. Further information regarding fees is set out in chapter 10.

Validation of pre-application service requests

6.11 A request for pre-application services will need to be validated by the body who prospective applicants request it from (the Welsh Ministers, LPA and / or NRW). This helps ensure those who are providing pre-application services have all the necessary information before them.

6.12 We are proposing that in order for a pre-application service request to be considered valid, all the information and requirements set out in paragraphs 6.7 – 6.8above must be met.

6.13 Where a request for pre-application services is submitted, but all requirements have not been met, for example, if information is missing or an incorrect fee submitted, the body to whom the request was made will be required to write to the applicant as soon as practicable, setting out what needs to be submitted in order for the request to be considered valid.

6.14 Similarly, where a request is made which meets all the requirements, the body to whom the request was made must write to the applicant as soon as practicable stating their request for pre-application services has been accepted and specify the date by which pre-application services must be provided.

6.15 We are proposing this to be 28 days from the date written notice of a valid request for pre-application services is made to the applicant, unless (in the case of pre-application services provided by LPAs and NRW) and an extension of time is agreed in writing with the applicant, or, (in the case of the Welsh Ministers) the Welsh Ministers direct further time is required.

Requirement to provide pre-application services

6.16 Upon receipt of a valid request for pre-application services, the Welsh Ministers, LPAs and NRW will be required to provide pre-application services and applicants will have the ability to seek these services from one, two or all of these bodies.

6.17 To ensure prospective applicants receive adequate pre-application services which provide them with the means to develop their proposal to the benefit of both the local and wider community, the Welsh Ministers, LPAs and NRW will be required to provide a certain level of information in their written pre-application service response to prospective applicants.

6.18 The information provided will differ, given the differing knowledge and expertise of those who can provide pre-application services and our intention is specify the minimum level of information which must be provided.

6.19 For the Welsh Ministers, we are proposing that as a minimum, the following information must be provided:

- Advice on the form and content of an application (including technical reports);
- Advice on any relevant policy; and
- Advice on the consenting process, including deemed or extinguished consents.

6.20 For LPAs, we are proposing that as a minimum, the following information must be provided:

- The relevant planning history of a proposed development site;
- Details of any potential statements of common ground;
- An indication of local issues relating to a proposed development site, including potential mitigation;
- The local policy framework, so far as material to an application; and
- Advice on pre-application consultation and how stakeholders and local communities (including individuals, groups or societies) potentially affected by a development proposal can be provided with as much information as possible.

6.21 For NRW, we are proposing that as a minimum, the following information must be provided:

- An indicative view on which environmental considerations need to be taken into account as part of a proposed development;
- An outline of the assessments which may be required to support an application for IC;
- Discussions regarding any potential statements of common ground;
- Provide initial advice on permits or licences that may be required for the project; and
- In the event that the proposer seeks to deem or extinguish a consent, initial advice in relation to that request.

6.22 Each of these bodies may also provide additional pre-application services which go beyond the proposed statutory minimum requirements set out above, if requested by a prospective applicant. However, there would be no mandatory

requirement to do so and any additional pre-application services would also be subject to any further fee set by the body.

Pre-application service meetings

6.23 Prospective applicants may find meetings useful when discussing their proposed development, particularly where it concerns clarifying the consenting process or elaborating on written pre-application advice received. Therefore, we are proposing to enable applicants to request a meeting with the Welsh Ministers, LPA and / or NRW as part of the pre-application services available to them. Such requests must be made in writing.

6.24 Where a pre-application service meeting is accepted, a fee will be payable by the prospective applicant to the body (or bodies) who have accepted the request for a meeting.

6.25 However, the Welsh Ministers, LPA or NRW may, without prejudice and where they consider a meeting unnecessary, decline to meet a prospective applicant.

Maintaining a register of pre-application services

6.26 To facilitate a consistent pre-application service, the Welsh Ministers, LPA and NRW must maintain a register of all requests for pre-application services they receive.

6.27 Further details relating to registers can be found in chapter 16 to this consultation.

Statement of services

6.28 To provide prospective applicants with as much information as possible and in the interests of clarity, we consider it appropriate for the Welsh Ministers, LPA and NRW to set out what pre-application services they provide and how prospective applicants can interact with the service. We consider providing this information on a website owned or maintained by these bodies to be the most appropriate approach.

6.29 As part of these proposals, we are proposing for subordinate legislation to require the Welsh Ministers, LPA and NRW to publish a statement on their respective websites which gives particulars of the pre-application services provided by them, as well as publish details of the fees payable in respect of requests for pre-application services.

**Obtaining information about interests in land**

6.30 The Act makes provisions under section 28 (provisions about obtaining information about interests in land) to ensure that those whose land interests[1] are affected by a development are part of the consenting process. While it is expected

[1] Land interests are defined under Section 28 of the Act and include owners or occupiers of the land, any person with an interest in the land and any person with the power to sell, convey or release the land.

that developers will be able to make these connections though positive engagement with the local community, the Act recognises this may not always be possible.

6.31 The Act sets requirements for certain people to be notified where applications are proposed or made. These include section 29 (provisions about notice of proposed application), 30 (provisions about pre-application consultation and publicity), and sections 61 to 69 (provisions in orders authorising compulsory acquisition of land).

6.32 The purpose of section 28 is to enable the applicant to comply with these provisions. The section enables the Welsh Ministers to authorise the applicant to serve a notice requiring the recipient to give to the applicant the name and address of any person the recipient believes has an interest in land to which a proposed application for IC relates; and is entitled to make a claim for compensation if the application were to be approved and development were to take place.

6.33 Prior to use of this power applicants are expected to act reasonably, first seeking to obtain relevant information on land interests directly before seeking consent from the Welsh Ministers. They should do this by undertaking 'diligent inquiry', i.e. by exhausting all reasonable means of obtaining information.

Powers

6.34 The relevant section of the Act is:

- *Section 28 - Obtaining information about interests in land.*

**Making a request**

6.35 The Act does not prescribe a form or process to follow when seeking authorisation from the Welsh Ministers to obtain information on land interests under section 28. The following is the process we intend to follow at this stage.

Information to be provided with the request to serve notice on land interests

6.36 Where the applicant has not been able to confirm they have obtained all information on land interests relating to the application for IC voluntarily, requests to be able to serve notice to obtain those details should be made in writing to the Welsh Ministers. To support the request, the following information should be provided by the applicant:

- Contact details for the applicant;
- Description of the project requiring consent;
- Explanation of why authorisation is needed;
- The proposed recipient(s);
- Plans identifying the land for which information about interests is sought;
- Information to demonstrate that the Applicant has acted reasonably and they have exhausted all reasonable means of obtaining information and / or have been unreasonably refused the information sought;

- Evidence of notifying the proposed recipient(s) that a request for authorisation has been made to the Welsh Ministers; and
- Duration for which section 28 authorisation is sought, which in most cases should be for maximum of a 12 month period.

What land may be covered in a request

6.37 A section 28 authorisation request should cover all land parcels where the applicant has been unable to obtain the relevant land interests information.

Fees for request

6.38 It is proposed a fee is payable for a section 28 request. It is proposed the fee payable will be dependent on the number of land parcels for which the request is made. The proposed fee is set out in chapter 10.

**The process**

Comments on the request

6.39 Where an applicant makes an authorisation request, the Welsh Ministers expect the applicant to send a notification letter to each proposed recipient (and, if applicable, copied to agents acting on their behalf) enclosing an exact copy of the authorisation request.

6.40 The notification letter should advise the proposed recipient(s) that they must respond to the authorisation request(s) within 14 days, starting the day after the expected date of receipt of the notification by the proposed recipient(s). The Welsh Ministers will also write to the recipients upon receipt of the application.

Further information

6.41 Following the opportunity for the proposed recipient(s) to comment on the authorisation request(s), and if the Welsh Ministers considers it appropriate, they may request further comments or information from the applicant and/or the proposed recipient(s).

Consideration

6.42 The Welsh Ministers will consider the request and any information submitted.

Time period of authorisation

6.43 It is anticipated that authorisation, if granted, would in most cases be expressed to expire either 12 months after the date of the authorisation, or, if made during the pre-application stage, the date of the submission of a SIP application for the proposed development (where the submission of the application is earlier than the expiry of that 12-month period).

**Time period for determination**

6.44 There is no prescribed statutory timeframe within which a request for authorisation must be determined. However, it is considered this may take at least 3 months to determine.

**The notice**

6.45 The procedure for the giving of a notice by the applicant where information on land interests is not forthcoming will be set out in regulations. Section 28 of the Act confirms that the Welsh Ministers may make provision about a notice under subsection (2) or (3), including provision about the form and content of a notice; how a notice is to be given; and the timescale for responding to a notice.

Form and content of the notice

6.46 It is envisaged regulations will provide the following requirements on how the notice is to be made and its content:

- The notice must be made in writing and state the information required to be provided by the recipient in response;
- State that the Welsh Ministers have authorised the applicant to serve the notice;
- Specify or describe the land to which the application, or proposed application, relates;
- Specify the deadline by which the recipient must give the required information to the applicant; and
- Draw attention to the provisions in subsections 28(6) to (8) of the Act which confirm that the person would be committing an offence and liable to a fine if they fail to comply with the notice.

Timescale for responding

6.47 The proposed timescale for responding to the notice is 21 days.

**Absent or untraced landowners when obtaining information about interests in land**

6.48 It is recognised that where the applicant is looking to identify relevant land interests that would be affected by a compulsory acquisition request, in some circumstances it may not be practical to find details for the persons on whom a notice is to be served.

6.49 Where, having exhausted all reasonable means of serving notice (by undertaking diligent inquiry and the steps outlined above), an applicant is satisfied it is not practicable to ascertain names and addresses of all land interests, and a relevant document on the compulsory acquisition is to be served (including publishing of a site notice), we propose that subordinate legislation will set out requirements for the document to be served by:

- Addressing it to them by stating that it is for the “owner” or “occupier” of the land; and
- Either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

**Powers of entry to survey land**

6.50 Applicants considering applying for an SIP may need to enter land for surveying and valuation purposes. For example, they may need to find out if there are any contaminated land which might hamper a proposed scheme or finalise project specifications.

6.51 While it is expected that developers will be able to gain consent for these works though positive engagement with the local landowners and the community, the Act recognises this may not always be possible. Section 125 and 126 provide powers of entry to survey land.

Purpose and summary

6.52 Under section 125 the Welsh Ministers can authorise a person(s) to enter land owned by third parties, in order to carry out surveys and take levels and/ or in order to facilitate compliance with statutory provisions. The power of entry may include the power to search and bore to ascertain the nature of the subsoil or the presence of minerals or other matter in it and/ or to take and process samples.

6.53 Prior to use of this power applicants are expected to act reasonably, first seeking to obtain access directly before seeking consent. Further, before granting authorisation, the Welsh Ministers must be satisfied that the proposed applicant is considering a distinct project of real substance genuinely requiring entry onto the land.

Powers

6.54 The relevant section of the Act is:

- *Section 125 - Powers of entry to survey land.*

**Making a request**

6.55 The Act does not prescribe a form or process to follow when seeking authorisation under section 125. The following is the process we intend to follow at this stage.

Information to be provided with the request

6.56 Requests should be made in writing to the Welsh Ministers, and contain the following information listed below to support the request:

- Contact details;
- Description of the project requiring or granted consent;

- Explanation of why authorisation is needed, having regard to the criteria for a section 125 authorisation (i.e. the applicant is considering a project of real substance genuinely requiring entry onto the land);
- Details of the proposed surveys and works;
- Identifying persons with an interest;
- Plans identifying the land for which authorisation to enter is sought;
- Information to demonstrate that the applicant has acted reasonably and has been unreasonably refused access to the land;
- Evidence of notifying the persons with interest that a request for authorisation has been made;
- Duration for which section 125 authorisation is sought;
- Any conditions subject to which the applicant thinks any authorisation should be granted.

6.57 Where the request relates to Crown land, a section 126 authorisation may grant rights of entry onto Crown land. However, a person cannot exercise that right unless they have the permission of the appropriate Crown authority or the authority of a person who appears to that person to be entitled to give that permission. Where required this should be provided with the application.

What land may be covered in a request

6.58 A section 125 authorisation request should cover all land parcels where the applicant requires to undertake relevant survey work.

Fees for request

6.59 It is proposed a fee is payable for a section 125 request. This is set out in chapter 10.

**The process**

Comments on the request

6.60 Where an applicant makes an authorisation request, the Welsh Ministers expect the applicant to send a notification letter to each proposed recipient (and, if applicable, copied to agents acting on their behalf) enclosing an exact copy of the authorisation request.

6.61 The notification letter should advise the proposed recipient(s) that they may provide comments on the authorisation request(s) within 14 days starting the day after the expected date of receipt of the notification by the proposed recipient(s). Welsh Ministers will also write to each proposed recipient to ensure that all recipients are notified.

Further information

6.62 Following the opportunity for the proposed recipient(s) to comment on the authorisation request(s), and if the Welsh Ministers consider it appropriate, they

may request further comments or information from the applicant and/or the proposed recipient(s).

Time period for determination

6.63 There is no prescribed statutory timeframe within which a request for authorisation must be determined. However, it is considered this may take at least 3 months to determine.

**The determination**

6.64 Following receipt of sufficient information, the examining authority will take into consideration any information provided by the applicant and the persons with interest and determine the authorisation request.

6.65 Following determination of the request, the Welsh Ministers will send a copy of the determination to the applicant either authorising entry onto the land including any conditions, or refusing the request(s). Reasons will be provided to support the determination. The Welsh Ministers will forward these to persons with interest.

Questions

- Do you agree with the general approach proposed for pre-application services? If not, why not?

- Do you agree with the proposed minimum requirements specified for the Welsh Ministers, LPAs and NRW in providing pre-application services? If not, should any requirements be added / removed?

- Do you have any comments on the process for obtaining information about interests in land?

- Do you have any comments on the process for powers of entry to survey land

## Chapter 7: pre-application notification and consultation

7.1 The ability for local communities and other stakeholders to influence proposed developments at the earliest possible opportunity helps ensure applications can be determined in a timely manner.

7.2 Our intention is for any significant issues to be raised, discussed and considered between prospective applicants and stakeholders before the submission of a formal application. Stakeholders may bring to the attention of applicants vital information and considerations which were previously unknown to prospective applicants, while local communities will be empowered to help shape a potential scheme. Undertaking effective pre-application consultation will benefit all parties involved in the development process. This process is covered by the notice of proposed applications and pre-application consultation and publicity.

### Notice of proposed applications

7.3 Prior to undertaking their pre-application consultation duties, the Act requires prospective applicants to notify the Welsh Ministers and other specified persons of their intention to submit an application for IC.

7.4 Requiring prospective applicants to provide prior notification will help contribute to a 'frontloading' culture, by informing all relevant parties of a proposed development and that they will likely submit a formal application in the future.

Powers

7.5 The relevant section of the Act is:

- *Section 29 – Notice of proposed application.*

Notification form and supporting information

7.6 To ensure a consistent approach, we are proposing subordinate legislation to specify the minimum requirements for what must be submitted as part of a prospective applicant's pre-application notification. Prospective applicants will be expected to submit:

- A pre-application notification form published by the Welsh Ministers (or a form substantially to the like effect), including the particulars specified or referred to in the form (see paragraph 7.7 for further information);
- A plan drawn to an identified scale which identifies the location / boundary to which a proposed development relates;
- Either a statement confirming an environmental statement will be provided, or a screening direction confirming it is not required;
- Details of other persons the pre-application form and other supporting information was sent to; and
- Any fee required to be paid in relation to giving pre-application notification.

7.7 Pre-application notification forms must include the following details:

- The name and address of the applicant;
- The name and address of the agent (if applicable);
- The location of the proposed development by reference to a site address or co-ordinates; and
- A non-technical description of the proposed development.

Acceptance of a pre-application notification form

7.8 Following the submission of a pre-application notification form, the Welsh Ministers will be required to give written notice confirming the receipt and acceptance of the notification to the person who submitted the notification and to those parties on whom the prospective applicant sent their pre-application notification form to (see paragraph 7.6.

7.9 Such notice will be required to be given in writing within 10 working days, beginning with the day on which the Welsh Ministers received notification from a prospective applicant, unless the Welsh Ministers direct further time is required.

7.10 However, a pre-application notification form will only be accepted by the Welsh Ministers where all the information required in the notification form and other supporting materials detailed in paragraphs 7.6 – 7.7 has been included and the correct fee paid.

7.11 If the Welsh Ministers consider a pre-application notification has been submitted which does not meet the requirements, they will be required to send written notification to the prospective applicant and all those parties who were sent a copy of the pre-application notification, informing them the notification has not been accepted and what information or details are missing or incomplete.

7.12 Such notice will be required to be given in writing within 10 working days, beginning with the day on which the Welsh Ministers received notification from a prospective applicant, unless the Welsh Ministers direct further time is required.

Time limits for beginning pre-application consultation

7.13 Following written notification of the acceptance of a pre-application notification form, prospective applicants will be able to begin their formal pre-application consultation with local communities and other stakeholders, in accordance with section 30 of the Act and other requirements set out in paragraphs 7.15 – 7.59 of this consultation paper.

7.14 To ensure that pre-application consultation activities are focused and remain relevant, we are proposing that prospective applicants will have a period of 12 months to undertake their pre-application consultation activities and submit a formal application for IC to the Welsh Ministers. The 12-month period would begin from the day on which the Welsh Ministers confirm acceptance of a pre-application notification.

**Pre-application consultation**

7.15 Undertaking a period of pre-application consultation is essential to ensure local communities and relevant stakeholders are made aware of proposed developments which are likely to affect them at the earliest opportunity.

7.16 It also provides for more effective involvement and engagement to help local communities and stakeholder to help influence schemes before a formal application for IC is submitted to the Welsh Ministers.

7.17 To ensure pre-application consultation is undertaken in a meaningful and inclusive manner, it is important a 'minimum bar' is established for all proposed IC applications. This will help provide a level of consistency in the process, although we will encourage prospective applicants to go beyond any statutory minimum requirements which will be set out in guidance where appropriate.

Powers

7.18 The relevant section of the Act is:

- *Section 30 – Pre-application consultation and publicity*

Previous consultation

7.19 On 13 May 2024, a consultation paper entitled 'Infrastructure (Wales) Bill – Requirements for pre-application consultation and methods of engaging stakeholders and local communities' was issued.

7.20 The consultation sought views, ideas and suggestions for how pre-application consultation requirements may be specified in subordinate legislation.

7.21 A copy of the 'summary of responses' document which has analysed responses received to the consultation can be found here:

**Infrastructure (Wales) Bill: requirements for pre-application consultation | GOV.WALES**

Pre-application consultation requirements

7.22 Following the close of the previous consultation and representations made, together with evidence from existing consenting processes, we are proposing the following statutory minimum requirements for pre-application consultation:

*Opening and maintaining a website*

7.23 As part of the pre-application consultation process, we are proposing prospective applicants be required to open and maintain a website dedicated to their proposed development, which would be accessible to any person who wishes to view it.

7.24 Providing a dedicated website for a proposed development will help ensure an open and transparent process by creating an accessible space where full details regarding a development proposal can be published.

7.25 It will also ensure local communities and other stakeholders are continually updated on the progress of a proposed development and are aware of any events or other consultation activities.

7.26 As part of these proposals, we would require prospective applicants to open and maintain a specific website dedicated to their proposed development within 3 months of the date in which they receive notification from the Welsh Ministers that their pre-application notification has been accepted as valid. The website would then need to be maintained from the when pre-application consultation commences, up until the point a full application for IC is submitted to the Welsh Ministers (as a minimum).

7.27 If a prospective applicant fails to open a website within the 3-month period, it will result in their pre-application notification being deemed as withdrawn.

*Minimum requirements for a website*

7.28 Although opening and maintaining a website dedicated to a proposed development will help enhance transparency and accessibility in providing relevant details and information, it is important such websites keep local communities and other stakeholders up to date on the development and how they can make representations.

7.29 To ensure this occurs, we are proposing to introduce minimum requirements for what a website must contain. This will include:

- A non-technical description of the proposed development;
- A plan identifying the land or area to which the proposed development relates;
- Any other drawings and documentation considered appropriate by a prospective applicant;
- Non-technical descriptions of any documents, plans and information relating to a proposed development;
- Details of any consultation being undertaken or proposed to be undertaken, such as events;
- A copy of the pre-application notification form;
- Any updates, timescales and changes made to a proposed development; and
- Contact details (telephone number and email address) for the developer to provide the wider public and those with an interest in a proposed development to seek clarification on aspects of the development and ask questions.

<u>Publicity and notification requirements</u>

7.30 In addition to a website dedicated to a proposed development, it is also essential local communities and other stakeholders are made aware of proposed developments which affect them at the earliest opportunity. This provides for more effective involvement and engagement to help influence schemes.

7.31 It is our intention to provide a statutory requirement for prospective applicants to publicise their proposed development and any information relating to their pre-application consultation engagement exercises to local communities and relevant stakeholders before any consultation is commenced.

7.32 Publicity and notification requirements will vary depending on whether a proposed development is on land or in the Welsh marine area.

*Development on land:*

- Notify in writing owner and / or occupiers of adjacent land to which a proposed development relates, statutory consultees, community councils, relevant Members of the Senedd and the House of Commons and any other persons considered appropriate of a proposed development, including individuals, groups or societies identified during any pre-application service discussions *(see below for further details regarding information contained in a notice)*;

- Notify in writing all persons who own, occupy or have another interest in the land to which a proposed development relates, or could be affected in such a way that they may be able to make a claim for compensation;

- Display a minimum of one site notice on or near the site to which a proposed development relates for a minimum of 42 days. However, where a site notice is removed, obscured or defaced within the minimum period of 42 days, we intend for prospective applicants to be treated as having complied with the requirements if reasonable steps are taken to protect the notice and where required, replace it *(see below for further details regarding site notices)*; and

- Publish notice of a proposed development, any planned pre-application consultation activities and a link to the website relating to a proposed development, in a minimum of one newspaper circulating in the locality to which a proposed development relates, for a minimum period of 1 week.

*Development in the Welsh marine area:*

- Notify in writing statutory consultees, community councils and any other persons considered appropriate, including individuals, groups or societies identified during any pre-application service discussions, informing them of any pre-application consultation activities and providing details of where the website relating to a proposed development can be accessed; and

- Publish notice of a proposed development in a minimum of one newspaper and which is likely to come to the attention of those likely to be affected by the proposed development, in Lloyds List and a minimum of one fishing journal (if one is in circulation)

*Further information relating to notices*

7.33 Where notice is given of a proposed development, either in writing or displayed on or near a site (where applicable), we believe it is necessary for such notices to contain a minimum level of information and detail in order for local communities and other stakeholder to fully engage in the process.

7.34 Therefore, we are proposing that any written notification as part of the pre-application consultation process and any site notice must contain, as a minimum:

- The name and address of the applicant;
- An email address and contact telephone number of the applicant;
- The location of the proposed development;
- A summary of the main proposals, including whether the proposed development includes a request to authorise the compulsory acquisition of land;
- Details of any pre-application consultation activities to be held;
- Details of how a prospective applicant's website relating to a proposed development can be accessed; and
- The date by which any representations are to be received and to whom they should be addressed.

7.35 For site notices, we acknowledge that certain developments captured by the Act may be for linear schemes (such as overhead electric lines) which extend for a significant length and would therefore require specific requirements.

7.36 We are proposing that where a proposed development is a linear scheme exceeding 5km in length, a site notice must be displayed at intervals of no more than 5km from the start to the end of the proposed route, except where it is impracticable to do so, such as if part of the land is covered in water. If the length does not exceed 5km, site notices must be displayed at each end of the proposed development.

Public events

7.37 Evidence from the DNS process has shown that although not a statutory requirement, a significant number of developers hold at least one public event, either in person or virtually. This offers a public-facing opportunity for stakeholders and local communities to gain further details and information on proposed developments which are likely to affect them.

7.38 We are proposing to formalise this as part of the infrastructure consenting process. However, we are not intending on being too prescriptive on matters such as how events should be organised or what should be included as part of an event as we consider this will differ on a case-by-case basis. It would be more appropriate for guidance to specify details relating to best practice.

7.39 For proposed developments in the Welsh marine area, we acknowledge it would not be possible to hold a public event in the vicinity of the development and therefore, would permit these events to be held by virtual means only.

Where additional parties with an interest in land are identified

7.40 It is recognised additional land interests may come to light during the pre-application stages of an IC application and beyond. For example, this could be where new land interests are made following the transfer of a title as a result of a land sale. It is considered these additional land interests must be made fully aware of the proposed IC. They must also be fully included in future material to support the application, including in pre-application consultation and submission documentation with this being dependent on when in the application process these additional land interests are identified.

7.41 In order to ensure any additional land interests are appropriately consulted on the application, we propose subordinate legislation will set out requirements for undertaking a period of additional statutory consultation (a 'final land interest consultation') with those interests where any prescribed statutory pre-application period has commenced and / or closed. It is further proposed that such a consultation must take place within a time period of not less than 28 days following the date when the last confirmed identified additional party with an interest in land is notified of the consultation.

7.42 A final land interest consultation must be accompanied by the original statutory pre-application consultation documentation and updated scheme information. It may be staggered with the purpose of allowing a process of confirming identified parties.

Consulting statutory consultees and other persons

7.43 During the pre-application consultation process, there are certain stakeholders who we will require prospective applicants to consult. These stakeholders may have a level of expertise in a particular field or be statutory consultees. We propose these are any town or community council (if one is established), any statutory consultee and any other relevant persons considered appropriate by a prospective applicant.

7.44 Statutory consultees are those who are experts or have technical knowledge of a specific topic area and are in a position to provide expert advice. Other relevant persons are defined only for the purposes of where deemed or extinguished consents are required with an IC and refer to those people who would have made the decision whether to grant a deemed or extinguished consent or not, were they not included in the IC.

7.45 However, we are aware there are UK or England-only bodies who are not covered by the Act but may have specialist knowledge useful for the decision-making process. Therefore, we are proposing to hold discussions with those bodies who cannot be designated as statutory consultees for the purposes of the

Infrastructure Consenting process, to agree an approach going forward regarding their involvement in the process.

7.46 To ensure a meaningful response is provided, we are proposing that when consulted, statutory consultees will be required to provide a substantive response within a period of 42 days.

7.47 We are proposing that a substantive response will either:

- State the statutory consultee has no comment to make;
- State the statutory consultee has no objections;
- State the statutory consultee has concerns regarding the proposed development and how they can be addressed; or
- State the statutory consultee has concerns regarding the proposed development and would be minded to object if an application like that being consulted on is submitted.

Where the application proposes deemed/extinguished consents the statutory consultee is expected to address these within the response above.

7.48 We are not proposing there will be a requirement for community consultees and any other persons to provide a substantive response, however, should they wish to respond to a pre-application notification, they will be required to respond within a period of 42 days. Failure to respond will indicate the consultee has no comment to make and has no objections.

7.49 Where a statutory consultee fails to respond with a substantive response within the specified timeframe, we are not seeking to introduce any form of enforcement (for example a refund) at this time, however, we will require all statutory consultees to provide the Welsh Ministers with an annual report relating to performance.

7.50 As a minimum, a report submitted to the Welsh Ministers will be in a form published by the Welsh Ministers and must state:

- The number of occasions the statutory consultee was consulted during the year;
- The number of occasions a substantive response was submitted; and
- The number of occasions a response (either substantive or not) was provided outside the specified period for response, including reasons why the specified period was not adhered to.

<u>Additional time limits for pre-application consultation</u>

7.51 Although we are proposing prospective applicants will have a 12-month period in which to undertake their pre-application consultation and submit their application for infrastructure consent to the Welsh Ministers, there are certain circumstances in which an extension to this time limit would result in high quality submissions and help expediate the examination process.

7.52 Firstly, we are considering the introduction of a ‘pre-application validation check’. Whereas the validation of an application will assess whether all the necessary plans, documents and information have been submitted with an application, this additional step would assess their detail and quality in order to minimise the requirement for additional information to be submitted during the examination stage.

7.53 Secondly, we are considering a two-step approach to pre-application consultation. Discussions with existing statutory consultees have raised concerns that where they raise comments or issues on a proposed application at the pre-application stage of existing consenting regimes, they have no opportunity to see whether these have been acknowledged or addressed until a formal application is submitted.

7.54 To help mitigate this, we believe applicants should have the opportunity to address any concerns or issues raised by statutory consultees during the pre-application stage, without affecting the overall timescale for submitting their formal application. This would also offer an opportunity to statutory consultees to continue their dialogue with applicants prior to the submission of an application.

7.55 However, both these proposals would not be mandatory requirements and would be at the discretion of applicants.

Pre-application consultation reports

7.56 In order to document all pre-application consultation activities, we are proposing a requirement be placed on prospective applicants to include a pre-application consultation report to the Welsh Ministers when a formal application for IC is submitted.

7.57 These reports will not only demonstrate how prospective applicants have complied with pre-application consultation requirements for SIPs, but they will also document how any representations received during the pre-application consultation process have been taken into account in finalising a development proposal.

7.58 Pre-application consultation reports will also need to demonstrate where representations have been addressed and where they have not, allowing prospective applicants an opportunity to provide justification for why they were not taken forward.

7.59 As a minimum, we are proposing a pre-application consultation report must include:

- Details of how the prospective applicant has complied with the statutory pre-application consultation requirements, including any publicity and notification requirements;
- Copies of each representation made at the pre-application consultation stage;
- Details of how those representations have been taken into account;

- A copy of the site notice and a declaration it was displayed on or near the site to which a proposed development relates for a minimum period of 42 days; and
- A list of those persons who were given written notice of a proposed development and copy of the written notice given to those persons.

Questions

- Do you agree the proposed minimum requirements are proportionate given the different types of application that may be submitted? If not, why not?

- Do you agree with the proposed content of a substantive response? If not, why not?

- Do you agree with the introduction of a ‘pre-application validation’ process and a two-step pre-application consultation process? If not, why not?

## Chapter 8: Applications for Infrastructure Consent

8.1 This chapter focuses on the requirements for submitting an application for IC, how applications are to be accepted as valid and what publicity and notification requirements are necessary to ensure local communities, stakeholders and any other interested parties have the opportunity to view and make representations on a final development proposal.

### Applying for Infrastructure Consent and deciding on the validity of an application

8.2 Following pre-application consultation which has met all mandatory requirements, a formal application for IC may be submitted to the Welsh Ministers.

8.3 All applications will be subject to a validation process before they can be accepted for examination. Any application which is accepted as valid will be subject to publicity and notification requirements, ensuring local communities and other stakeholders have an additional opportunity to assess a proposed development and make representations.

8.4 It is essential for the Infrastructure Consenting process, which is intended to provide certainty in terms of timescales and outcomes, to set out a minimum bar before an application can proceed. This will ensure all necessary information relating to the application is before the Welsh Ministers. Local communities and other participants in the process will also have some certainty as to what is being considered. This approach should also reduce instances of delay in asking for further information.

8.5 Accordingly, all applications submitted to the Welsh Ministers will be subject to a validation process before they can be accepted for examination.

Powers

8.6 The relevant sections of the Act are:

- *Section 32 – Applying for infrastructure consent; and*
- *Section 33 – Deciding on the validity of an application and notifying the applicant.*

Submission of an application

8.7 All applications for IC will be required to be submitted electronically on an application form published by the Welsh Ministers. Applications will be required to be submitted to the Welsh Ministers before the expiry of a 12-month period, beginning on the day on which a pre-application notification is accepted by the Welsh Ministers.

8.8 We envisage an application form to contain information such as (but not limited to):

- The name, address and contact details of applicant;
- The name, address and contact details of an agent (if one is appointed);
- Whether any deemed or extinguished consents are required and if so, which ones;
- Names of the LPA(s) or nearest coastal LPA(s) affected by the proposed development;
- A non-technical description of the proposed development;
- A description and co-ordinates (Easting and Northing) of the site or route of the proposed development;
- Information relating to site visits;
- A description and reference of any additional plans, drawings and / or documents submitted with an application;
- Whether discussions have been held with the relevant LPA(s) regarding planning obligations and the outcome of these discussions;
- Whether any pre-application discussions have been held with the Welsh Ministers and / or relevant LPA(s) and the outcome of these discussions;
- Confirmation a relevant fee has been paid;
- Site ownership details;
- Agricultural holdings details;
- A checklist; and
- Declarations.

8.9 Section 32(3) of the Act already specifies that an application for IC must specify the development to which it relates and must include a draft IC and a pre-application consultation report.

8.10 We are proposing subordinate legislation to also specify the following information, documentation and plans which must accompany an application:

- A plan identifying the land to which an application relates, drawn to a scale identified by the applicant and showing the direction of North;
- Any other plans, drawings and information necessary to describe the proposed development;
- A copy of the notice confirming acceptance of a pre-application notification which has not lapsed;
- A report which documents progress made in relation to discussions with the LPA(s) in which the proposed development is located (or the nearest LPA(s) and NRW in relation to proposals in the Welsh marine area) and any other relevant consultees in relation to developer contributions and draft conditions attached to an IC;
- An environmental statement (where applicable);
- The relevant fee (see chapter 10);
- An outline of the consenting pathway proposed by the developer;
- Where a deemed/extinguished consent is proposed as part of the IC, information that would normally accompany the relevant application;

- A statement whether the proposal engages one or more of the matters set out in section 79(1) (statutory nuisances and inspections therefor) of the Environmental Protection Act 1990, and if so how the applicant proposes to mitigate or limit them;
- Any report identifying any European site to which regulation 63 of the Conservation Habitats and Species Regulations 2017 applies, or any Ramsar site, which may be affected by the proposed development, together with sufficient information that will enable the Welsh Ministers to make an appropriate assessment of the implications for the site if required;
- A works plan showing, in relation to existing features—
    - the proposed location or (for a linear scheme) the proposed route and alignment of the development and works; and
    - the limits within which the development and works may be carried out and any limits of deviation provided for in the draft order;
- Where applicable, a plan identifying any new or altered means of access, stopping up of streets or roads or any diversions, extinguishments or creation of rights of way or public rights of navigation;
- Where applicable, a plan with accompanying information identifying—
    - any statutory or non-statutory sites or features of nature conservation such as sites of geological or landscape importance;
    - habitats of protected species, important habitats or other diversity features;
    - water bodies in a river basin management plan;
    - together with an assessment of any effects on such sites, features, habitats or bodies likely to be caused by the proposed development;
- Where applicable, a plan with accompanying information identifying any statutory or non statutory sites or features of the historic environment, including scheduled monuments, World Heritage sites, listed buildings and other historic structures, archaeological sites and registered battlefields, together with an assessment of any effects on such sites, features or structures likely to be caused by the proposed development;
- Where applicable, a plan with any accompanying information identifying any Crown land; and
- Any other plans, drawings and sections necessary to describe the proposals for which consent is sought, showing details of design, external appearance, and the preferred layout of buildings or structures, drainage, surface water management, means of vehicular and pedestrian access, any car parking to be provided, and means of landscaping.

8.11 Specific applications will also need to be accompanied by certain information. If an application is for the construction or extension of a generating station the application must be accompanied by—

- where the application is for a generating station, that is not an offshore generating station—
    - a statement of who will be responsible for designing and building the connection to the electricity grid; and
    - if a gas fuelled generating station, a statement of who will be responsible for designing and building the gas pipeline connection to the generating station; and

- where the application is for an offshore generating station—
    - details of the proposed route and method of installation for any cable; and
    - a statement as to whether applications will be made for safety zones.

8.12 If the application is for highway related development or for the construction or alteration of a railway, it must be accompanied by –

- section drawings to suitable horizontal and vertical scales, which show, by reference to Ordnance Survey or Chart datum;
- the levels of the proposed works, including in particular and where relevant—
    - ground levels;
    - the height of every proposed bridge, viaduct, aqueduct, embankment and elevated guideway;
    - the depth of every proposed cutting and tunnel;
    - the levels of the bed of any tidal waters or inland waterway in which it is proposed that any works should be situated;
    - the height of every structure or device (including a cable, but not catenary and related equipment) intended to be erected above, on or below the surface of, or on or beneath the bed of tidal waters or an inland waterway; and
    - drainage outfall details for highways;
- a cross section of every intended tunnel and any altered gradient of a carriageway or a way forming part of a guided transport system on either side of every level crossing, bridge, tunnel or underpass which would carry the carriageway or way or through which it would pass;
- If the application is for the construction or alteration of harbour facilities, it must be accompanied by a statement setting out why the making of the order is desirable in the interests of—
    - securing the improvement, maintenance or management of the harbour in an efficient and economical manner; or
    - facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.

<u>Acknowledging receipt of an application</u>

8.13 Where an application has been submitted the Welsh Ministers will provide written notification to the following persons, confirming receipt of the application and stating it will proceed through the validation process:

- The applicant;
- The agent (if applicable);
- The LPA(s) in which a proposed development is located;
- If in the Welsh marine area only; NRW; and
- Any other persons the Welsh Ministers consider relevant.

8.14 This notification does not validate the application. The acknowledgment an application has been submitted provides clarity and certainty to the parties and will start the time period for validation process.

Validating an application for Infrastructure Consent

8.15 The validation process will help ensure all necessary information required by the Welsh Ministers is submitted by applicants to help make a reasoned determination in a timely manner.

8.16 Applications will only be accepted as valid if all the documentation, information, plans, relevant fee and any other details specified in paragraphs 8.10 – 8.12 above have been submitted in full.

8.17 If any documentation, information, plans, relevant fee or any other details are missing or incomplete, an application will not be accepted by the Welsh Ministers.

Timescales for validation

8.18 To ensure an element of certainty for applicants and consistency across the consenting process, we are proposing to introduce timescales for validating applications in subordinate legislation which will be 42 days from the date an application is received, or within 28 days from the date an application is received in cases where it is not accompanied by an Environmental Statement, if one is not required.

8.19 However, we acknowledge there may be certain instances where the Welsh Ministers are unable to comply with these prescribed timeframes. Therefore, we are proposing the Welsh Ministers have the ability to extend these timeframes on a case-by-case basis.

8.20 Where this is required, the Welsh Ministers must provide written notice to:

- The applicant;
- The agent (if applicable);
- The LPA(s) in which a proposed development is located;
- If in the Welsh marine area only, NRW; and
- Any other persons the Welsh Ministers consider relevant.

Notification of a valid application

8.21 Where an application is accepted as valid, section 33(3) of the Act specifies the Welsh Minsters must give notice of this to the applicant.

8.22 Where notice of a valid application is given, the notice:

- Must be given in writing;
- Must confirm the application has been accepted; and
- May include any other information related to the application as the Welsh Ministers consider appropriate.

8.23 Notification of other parties of a valid application is detailed in the ‘publicity and notification’ chapter of the consultation paper.

8.24 Where an application cannot be accepted as valid, section 33(4) of the Act requires the Welsh Ministers to give notice of this to the applicant, which must:

- Be given in writing;
- Confirm the application has not been accepted; and
- Specify the reasons for the decision.

**Notice of accepted applications and publicity**

8.25 Following the formal acceptance of an application for IC, the Act requires the Welsh Ministers (or any other person the Welsh Ministers confer a function upon) to notify various parties of this, as well as publicise the application to the wider public.

8.26 Publicising an application once accepted as valid will offer local communities, stakeholders and any other interested parties a further opportunity to provide representations to the Welsh Ministers following the pre-application consultation stage. This will allow them to make representations as to whether they are generally supportive or not of a proposed development, and to provide evidence to the Welsh Ministers where necessary.

Powers

8.27 The relevant sections of the Act are:

- *Section 34 – Notice of accepted applications and publicity;*
- *Section 35 – Regulations about notices and publicity;*
- *Section 36 – Local impact reports; and*
- *Section 37 – Marine impact reports.*

Written notice of an application

8.28 Following the acceptance of a valid application, the Welsh Ministers are required to give written notice of this to the applicant and those parties specified in section 34(2)(a) and (b) of the Act.

8.29 However, there are likely to be other individuals who would benefit from receiving written notice of an application. We are proposing for subordinate legislation to specify the following persons who the Welsh Ministers must also give written notice of an application to:

- Any owner or occupier of the land, excluding the applicant, to which an application relates;
- Any other persons who own, occupy or have another interest in the land to which a proposed development relates, or could be affected in such a way that they may be able to make a claim for compensation;
- Any adjoining owner or occupier of the land to which an application relates;
- All statutory consultees relevant to a proposed development;

- Any person who has requested to be a notified of a particular proposed development; and
- Any other persons considered appropriate by the Welsh Ministers.

8.30 Such notices will be required to be issued as soon as practicable following the validation and acceptance of an application, on a form published by the Welsh Ministers.

8.31 We are proposing these notices must contain the following information as a minimum:

- The name and address of an applicant;
- A statement indicating that an application has been made to, and accepted by the Welsh Ministers;
- A reference number allocated to an application by the Welsh Ministers;
- A summary of the main proposals including whether the application includes a request to authorise the compulsory acquisition of land;
- A statement specifying whether the application is EIA development;
- Specify where a copy of the application and any accompanying documentation may be viewed;
- Details of a website which hosts information relating to a proposed development (see paragraphs 8.33 – 8.34); and
- Details of how representations can be made.

8.32 Section 34(4) of the Bill also requires such notices to specify the deadline by which the Welsh Ministers must receive representations on an application, which is to be specified in subordinate legislation. We are proposing the deadline for submitting representations must not be less than 42 days, starting on the day following the issuing of a written notice.

Requirement to publish applications on a website

8.33 To ensure as many people as possible have access to details relating to a proposed development by as many means necessary, we believe it would be beneficial for the Welsh Ministers to publish such details on a website.

8.34 We are therefore proposing that the following information must be published on a website owned and maintained by the Welsh Ministers:

- The address and location of a proposed development;
- A description of the proposed development;
- Where and when an application may be inspected;
- How representations may be made in relation to an application and the date such representations must be received; and
- In the case of an application being accompanied by an environmental statement:
    - The fact the development is subject to an EIA procedure;
    - How copies of the environmental statement may be obtained and any associated fee;

- The main reports and advice issued to the Welsh Ministers;
- Details of the arrangements for public participation in the decision-making procedure, including a description of the procedure for the publication of any additional information subsequently submitted by an applicant; and
- Any other information relevant to a decision which only becomes available after the time all other information is first published.

Additional publicity and notification requirements

8.35 In addition to serving written notice informing relevant stakeholders an application has been accepted by the Welsh Ministers, we are also proposing further publicity and notification requirements are undertaken which publicises an application to the wider community and also invites representations to be made on a development proposal. In the first instance, this will be undertaken by the Welsh Ministers, although they may direct the applicant, LPAs, NRW, or any other person considered appropriate to undertake these functions (either in their entirety or in part) instead.

8.36 These requirements will need to be tailored, depending on whether a proposed development is on land or in the Welsh marine area and will follow similar requirements as the pre-application stage.

8.37 Therefore, we are proposing to specify the following additional requirements for publicity and notification:

*Development on land*

- Publishing notice of an application in a minimum of one newspaper circulating in the locality to which a proposed development relates for a minimum period of 1 week; and
- Displaying a minimum of one site notice on or near the site to which a proposed development relates for a minimum of 42 days. However, where a site notice is removed, obscured or defaced within the minimum period of 42 days, we intend for prospective applicants to be treated as having complied with the requirements if reasonable steps are taken to protect the notice and where required, replace it.

For linear schemes exceeding 5km in length, a site notice must be displayed at intervals of no more than 5km from the start to the end of the proposed route, except where it is impracticable to do so, such as if part of the land is covered in water. If the length does not exceed 5km, site notices must be displayed at each end of the proposed development.

*Development in the Welsh marine area*

- Publishing notice of an application in a minimum of one newspaper which is likely to come to the attention of those likely to be affected by a proposed development;
- Publishing notice of an application in Lloyds list; and

- Publishing notice of an application in a minimum of one appropriate fishing journal, if one is in circulation.

Consulting statutory consultees and other persons

8.38 Although statutory consultees and other relevant persons will have had an opportunity to make representations on a proposed development during the pre-application consultation stage, the development may have undergone various changes and amendments prior to being formally submitted in response to those representations.

8.39 Because of the key role statutory consultees and other relevant persons will play in the infrastructure consenting process, we have specified above in paragraph 8.29 that all statutory consultees relevant to a proposed development will be given written notice of an application when it has been accepted as valid by the Welsh Ministers.

8.40 Similar to requirements during the pre-application stage, we are proposing that statutory consultees must provide a substantive response within a 42-day period when given written notice of an application. This is to help ensure a meaningful response is provided. Further details on the requirements for what a substantive response must include and statutory consultees are specified in the 'pre-application notification and consultation' and 'statutory consultees' chapters.

8.41 However, to help strengthen the pre-application process and encourage statutory consultees to raise any issues or concerns as early as possible, we are considering specifying in subordinate legislation that a substantive response submitted by statutory consultees at this stage of the consenting process may not raise any matter which could have been addressed during pre-application consultation.

8.42 We are not proposing there will be a requirement for community consultees to provide a substantive response, however, should they wish to respond to a pre-application notification, they will be required to respond within a period of 42 days. Failure to respond will indicate the consultee has no comment to make and has no objections.

Local impact reports and Marine impact reports

8.43 As part of the publicity and notification requirements specified by the Act, the Welsh Ministers are required to notify relevant LPAs, community councils and NRW, depending on whether a proposed development is on land or in the Welsh marine area.

8.44 In responding to such notification, we consider it necessary and appropriate to specify requirements on how these responses should occur, namely, in the form of local impact reports and marine impact reports.

8.45 The intention of these reports is to provide factual information to the Welsh Ministers and not to give opinions or views on a proposed development, or

provide a summary of representations received from the public. This information can then be used as evidence during the examination of an application and the Welsh Ministers must have regard to these reports in forming their decision on an application.

*Local impact reports*

8.46 Local impact reports will only be required for development on land and it will be a mandatory requirement for each LPA for an area in which a proposed development is located who is given notice of an accepted application to submit a local impact report to the Welsh Ministers.

8.47 Any other LPA or community council (if one is established) may also submit a local impact report, although there would not be a mandatory requirement to do so. For example, this could apply to a proposed development in the Welsh marine area, where there could be some impact on a neighbouring coastal LPA.

8.48 Where an LPA is required to submit a local impact report, we believe that in the interests of clarity and certainty, it would be appropriate to specify in subordinate legislation the minimum requirements for what must be included in these reports. This will be:

- The relevant planning history of the land to which an application relates;
- Any local designations relevant to the land to which the application relates;
- The likely impact of any application in relation to a deemed or extinguished consent;
- Any locally applicable planning policies, guidance and other documents relevant to an application;
- Draft conditions or obligations which LPAs considers an application should be subject to, if it were granted; and
- Confirmation the LPA has undertaken any publicity and notification requirements required by them, if applicable.

8.49 LPAs may wish to specify further information, if they feel it is appropriate.

8.50 However, where an LPA or community council wish to submit a local impact report voluntarily, we would not expect the same mandatory requirements to apply. Therefore, in these circumstances subordinate legislation will specify certain minimum requirements to include:

- The likely impact of any application in relation to a deemed or extinguished consent;
- Any locally applicable planning policies, guidance and other documents relevant to an application, such as those specified in the Local Development Plan or Strategic Development Plan; and
- Draft conditions or obligations which the LPA or community council considers an application should be subject to, if it were granted.

*Marine impact reports*

8.51 Although similar to local impact reports, marine impact reports will only be required for development in the Welsh marine area where an application for IC contains provision for a deemed marine licence.

8.52 In these circumstances, and where NRW have been notified of an accepted application, there will be a mandatory requirement for them to submit a marine impact report. However, the Welsh Ministers also have the power to direct NRW to submit a marine impact report in other circumstances if considered appropriate.

8.53 Where NRW is required, or directed to submit a marine impact report, we are proposing subordinate legislation to specify the minimum requirements for what information must be contained in a report. This will include:

- Comments on the environmental designations relevant to the area and on the likely impact of the proposed environment (based on the applicants submissions) to which an application relates;
- The relevant marine licence history of the area to which an application relates;
- Comments on any relevant policies and guidance and other documents relevant to an application, identified by the applicant as part of the application;
- Comments on any draft conditions or obligations included in the applicants draft deemed marine licence;
- Any additional conditions which NRW considers an application should be subject to if it were granted.

8.54 However, there would be nothing to prevent NRW from providing any other relevant information if they considered it appropriate on a case-by-case basis.

<u>Variation of applications</u>

8.55 Both the Development Consent Order and DNS processes have been successful in limiting amendments to proposed developments following acceptance of a valid application. This helps provide local communities and other stakeholders with a level of certainty and consistency as to how a proposed development will be assessed throughout the determination process.

8.56 While this is the case, we can foresee circumstances where an amendment to a proposed development is required following representations made by local communities, statutory consultees and other stakeholders. For example, a local community may state they would be more likely to support an application if a minor change to the development was made.

8.57 Therefore, we are proposing that following the publicity and notification period, applicants will be granted one opportunity to propose a variation to their application. However, to ensure a level of consistency and to limit the scope of amendments, they will be limited to those which are minor or non-material. Generally, amendments which make changes to an EIA, invoke the need for additional Habitats Regulations Assessment, or have greater impact on communities or businesses will not be accepted.

8.58 If an applicant wishes to propose a variation, they will be required to provide written notice of this to the Welsh Ministers within 10 working days of the expiry of the representation period.

8.59 The written notice will be required to be given on a form published by the Welsh Ministers, include a description of the proposed variation and be accompanied by any relevant fee.

8.60 It will be at the Welsh Ministers' discretion to decide whether or not to accept the proposed variation. Further information on what is considered to be minor and non-material will be addressed in guidance, given it can vary on a case-by-case basis.

8.61 To ensure any proposed variation is minor or non-material, where proposed variation is considered by the Welsh Ministers to be a substantial change, they will not be able to agree the variation.

8.62 In all cases, the Welsh Ministers must notify an applicant of their decision to either grant or refuse a proposed variation to an application within 5 working days of receipt of notification of the intention to vary the application. However, the Welsh Ministers' decision will be final and there will be no opportunity to appeal the decision.

8.63 Where a proposed variation is agreed, the Welsh Ministers may issue a timescale within which the variation may be submitted and may consult on the variation and give notice in any manner and with any person(s) they consider to be appropriate.

Questions

- Should any additional information, documentation or plans be submitted with an application for infrastructure consent?
- Do you agree with the general approach for submitting and validating applications for infrastructure consent? If not, why not?
- Do you agree with the proposed minimum requirements for publicity and notification of an application for infrastructure consent? If not, why not?
- Do you agree with the proposed content of local impact reports? If not, why not?
- Do you agree with the proposed content of marine impact reports? If not, why not?
- Do you agree statutory consultees should not be able to provide comments on any matters which could have been raised during the pre-application consultation period? If not, why not?

## Chapter 9: Statutory Consultees

9.1 The consenting of SIPs is undertaken by the Welsh Ministers. However statutory consultees have a vital role to play in the consenting process.

9.2 Alongside consultation and engagement with proposed applicants, this will also include the provision of a substantive response to consultation and in the case of applications within the Welsh marine area the production of a MIR by NRW. Your views and feedback are sought on their roles and responsibilities in relation to applications for infrastructure consent.

9.3 Consultation with statutory consultees on applications for infrastructure consent is a principle already in place in the DNS regime. Similar provisions have been included in the Act to ensure the effective engagement and involvement of specified public bodies.

Purpose and summary

9.4 Expert bodies will provide technical advice across the infrastructure consenting process. This will include advice and guidance on a wide range of matters such as enhancing the natural environment and protecting historic assets.

9.5 The new consenting process has been designed to be a 'front loaded' system. This requires applicants to undertake early and proactive pre-application engagement. Further information can be found in chapter 7 on pre-application consultation.

Powers

9.6 The Act provides various powers that govern the roles of statutory consultees. The relevant sections of the Act are:

- *Section 30 – Pre-application consultation and publicity;*
- *Section 34 – Notice of accepted applications and publicity;*
- *Section 39 – Consultation post-application in relation to compulsory acquisition;*
- *Section 44 – Examination procedure; and*
- *Section 129 – Power to consult and duty to respond to consultation.*

Proposed Statutory Consultees

9.7 An applicant or the Welsh Ministers will be required to consult specific bodies as part of the consenting process, depending on the nature of the proposed development. The bodies identified will have 'statutory consultee' status.

9.8 It is intended for regulations to specify the list statutory consultees in the SIP process, and so your views and suggestions are welcome on which bodies should be included in that list.

9.9 Due to the terms of the devolution settlement not all public bodies can have a duty placed upon them by the Welsh Ministers. The Health and Safety Executive, the Office of Nuclear Regulation, the Equality and Human Rights Commission and Police Commissioners cannot have a duty placed on them, and so cannot not be identified as statutory consultees.

9.10 This does not prevent them from responding to wider public consultations on their own volition. However, It is intended that, in practice, these bodies will be consulted where appropriate as we recognise that these bodies may have views that would feed into the decision-making process. Guidance will encourage developers to contact these bodies on a voluntary basis to ensure they are aware of public consultations.

9.11 The below table shows proposed statutory consultees and the circumstances in which they should be consulted:

| Possible Circumstances to consult | Specific Consultees |
|---|---|
| **Proposed development may result in a material change or increase of traffic** | • The Welsh Ministers<br>• Network Operators<br>• Local Highways Authority |
| **Proposed development may include or consist of railways or impact railway transportation** | • Network Rail |
| **Proposed development involves the stopping-up or diversion of a footpath, a bridleway, a byway or cycle track** | • The Auto-Cycle Union<br>• The British Horse Society<br>• The Byways and Bridleways Trust<br>• The Open Spaces Society<br>• The Ramblers Association<br>• The British Driving Society<br>• Cyclists UK<br>• The Welsh Trail Riders' Association |
| **Proposed development may be in an identified coal area** | • The Coal Authority |

| | |
|---|---|
| **Proposed development may have an impact on an historic asset** | • The Welsh Ministers (Cadw) |
| **Proposed development is on land where there is a theatre** | • The Theatres Trust |
| **Proposed development may have an impact on agricultural land** | • The Welsh Ministers |
| **Proposed development may result in the loss of sports fields** | • The Sports Council for Wales |
| **Proposed development involves an area under control of a harbour authority** | • Relevant Harbour Authority<br>• Relevant Navigation Authority (if different)<br>• Associated British Ports |
| **Proposed development is of a certain size or location** | • The relevant Fire and Rescue Authority |
| **Proposed development relates to airport or may impact on an airport or its operations** | • The Civil Aviation Authority |
| **Proposed development may impact or is located on Crown Land** | • The Crown Estate |
| **Proposed development may impact the marine environment** | • The Joint Nature Conservation Committee |
| **Proposed development may impact the maritime or coastal environment, or the shipping industry** | • The Maritime and Coastguard Agency |
| **Proposed development may impact the marine environment within English territorial waters** | • The Marine Management Organisation |
| **Proposed development may impact navigation in tidal waters** | • Trinity House |

| | |
|---|---|
| **Proposed development may impact the functions of statutory undertakers** | • Relevant statutory undertaker |
| **Proposed development that includes a deemed marine license** | • The Crown Estate<br>• The Joint Nature Conservation Committee<br>• Any other relevant statutory nature conservation body<br>• The Maritime and Coastguard Agency<br>• Trinity House<br>• Royal Yachting Association<br>• Relevant LPA<br>• Local harbour authority<br>• Local ports<br>• RSPB<br>• Welsh Ministers<br>• Relevant Welsh archaeological trust<br>• Royal Commission on Ancient and Historic Monuments<br>• Chamber of Shipping<br>• Swangrove Estate<br>• Welsh Fisherman Association<br>• National Federation of Fisherman's Organisation<br>• Inshore Fisheries and Conservation Authorities |
| **Proposed development may have cross-border impacts** | Relevant refers to body/organisation likely |

| | |
|---|---|
| | to be affected by application.<br><br>• Relevant LPA(s) in England<br>• Relevant Health Board in England<br>• Relevant NHS Trusts in England<br>• Relevant Fire and Rescue authority in England<br>• Secretary of State<br>• Natural England<br>• Environment Agency<br>• The Historic England Commission<br>• Relevant water supplier in England (where development impacts water supply) |

9.12 This list of specific statutory consultees is not exhaustive and will include robust criteria for when consultation with a specific body is required. Decisions on the details of the relevant criteria will be made in conjunction with the relevant body.

9.13 There are a number of bodies that will be consulted in all cases, it is intended that these will be:

- NRW;
- Dŵr Cymru/Welsh Water;
- Severn Trent Water;
- Ministry of Defence;
- Canal and River Trust;
- Public Health Wales;
- Transport for Wales; and
- National Air Traffic Services (NATS).

9.14 As the SIP consenting regime is separate to the TCPA 1990, there may be some differences in the statutory consultees consulted on all cases. On that basis, the bodies that have been added to this list (that are not on the TCPA 1990 list) have been engaged with and provisionally agreed to this inclusion.

Substantive response

9.15 Subordinate legislation will prescribe the criteria for the form, content and requirements of consultation responses. This will ensure that an appropriate input is provided during the examination process.

9.16 It will also help focus consultation responses to matters that statutory consultees are responsible for. This will apply to all types of consultation, whether this be at the pre-application stage or as part of the examination of applications.

9.17 The requirement for statutory consultees to provide a substantive response is covered by the Pre-Application consultation chapter at paragraph 7.47.

Deadlines

9.18 Subordinate legislation will also specify the timeframe a response must be received in. This will include a specified time period, as well as the option for an agreed time period made in writing between the statutory consultee and the Welsh Ministers.

9.19 We are proposing that the consultation time period to be 42 days.

Statutory Consultee Reporting

9.20 Based on the requirement to provide a substantive response, it is appropriate for subordinate legislation to introduce performance monitoring to ensure compliance with the consultation requirements. Subordinate legislation will require an authority consulted under this section of the Bill to provide a report to the Welsh Ministers about the authority's compliance with the consultation requirements.

9.21 Reports will relate to a 12 month period, and subordinate legislation will specify what information is required to be contained in these reports (as a minimum). We anticipate this to include:

- The number of occasions in which the statutory consultee was consulted during the year;
- The number of occasions a substantive response was submitted; and
- The number of occasions a response (either substantive or not) was provided outside the specified period for response, including reasons why the specified period was not adhered to; and
- Reports will need to be submitted in a form published by the Welsh Ministers.

9.22 We welcome suggestions on when this 12 month period will begin, as this could be linked to other reporting periods or the calendar or financial year.

Questions

- Do you agree with the proposed statutory consultees to be consulted in all cases? If not, why not?

- Do you agree with the proposed statutory consultees to be consulted in specific circumstances? If not, why not and have any been missed?

## Chapter 10: Fees

10.1 It is intended that the consenting process will operate on the basis of full cost recovery, and the Act provides the framework to achieve this. The idea of cost recovery is to allow those stakeholders who undertake a function in relation to the infrastructure consenting process, to recover their costs of doing so. This is on the basis that neither profit nor a loss is made on undertaking such functions.

10.2 The intention is that these costs will be factored into costs associated with the application, funded by the developer. The exact details of fees will be set out in subordinate legislation.

10.3 Most functions of the infrastructure consent application process will be carried out by PEDW and the fees charged will be related to their costs in carrying out this work.

10.4 It is also our intention for fees to be paid to statutory consultees and LPAs for services and functions carried out in relation to the application process. This includes fees for consultation responses, participation in examination and other costs incurred.

10.5 The Welsh Ministers will determine the application, and this element of the application process will also be included in the fee regime. We propose that fees will consist of staff costs and overheads and, when applicable, venue costs and legal costs.

Previous consultation

10.6 On 13 May 2024, a consultation paper entitled ‘Infrastructure (Wales) Bill – fees for performance of infrastructure consent functions and services’ was issued.

10.7 The consultation sought views, ideas and suggestions on fees for the performance of infrastructure consent functions and services.

10.8 A copy of the ‘summary of responses’ document which has analysed responses received to the consultation can be found here:

**Infrastructure (Wales) Bill: fees for functions and services | GOV.WALES**

General Principles

10.9 We propose the fees charged for infrastructure consent pre-application and application work is based on the model used for DNS. Fixed fees will be used where the work is of a standard nature and the effort required will be the same, on average, each time that piece of work is carried out. Where the work is not of a standard nature, we will apply an hourly or daily rate and invoice the applicant appropriately. It is intended that the applicant will be notified of any additional costs in advance.

10.10 We propose a fee structure based on the recovery of costs incurred when carrying out the work to which the fee applies. This enables the fee system to comply with HM Treasury rules, in particular that the cost of the work should be recovered through the fee charged.

10.11 It is also proposed that the detail of fees will be contained in a statement published on the Welsh Government website that can be updated from time to time. This allows a certain level of flexibility in fees to respond to external factors such as inflation.

10.12 This overall approach provides developers with a level of certainty regarding the cost of the application process, whilst retaining the flexibility to charge an appropriate fee that reflects the variable nature of the infrastructure application process.

10.13 Fees have been based on the cost of PEDW carrying out their functions in relation to the application process. Fees therefore have taken into account staff costs and overheads.

10.14 Fees incurred for other bodies and LPAs are discussed further on in this chapter.

10.15 It is proposed that fees will be as follows, to be updated from time to time:

**Infrastructure (Wales) Act 2024 - Fees**

| | |
|---|---|
| **Pre- Application Services** | PEDW – Hourly rate of £73 (plus VAT) |
| **Land information notices and other related costs** | £1,958 |
| **Access to land notice** | £1,958 |
| **Notification** | £773 |
| **Initial Fee (paid on submission)** | £20,445 |
| **Fee for LIR/MIR(s) (paid on submission)** | £10,322 |
| **Fees for Examining the Application** | Daily rate of £1,225 |
| **Determination fee** | £19,579 (paid directly to Welsh Government) |

10.16 We are open to feedback on the way in which fees are charged, our current proposal is based on charging fees at certain stages in the application process.

10.17 However, one initial fee could be charged at the start of the application process to cover all likely costs and a refund provided to applicants once the process is concluded, if a lower cost of processing the project has been incurred.

10.18 Respondents to the previous consultation on fees, undertaken earlier this year, disagreed with the charging of a separate determination fee. It is still under consideration whether this fee will be incorporated into an initial application fee.

Local and National Fees

10.19 The previous consultation on fees, carried out earlier this year, requested feedback on setting fees at a local or national level. Respondents supported the use of national fee system as this was considered to provide consistency and transparency for the fee levels. . However, limited evidence was provided to support the position or how a national fee system could be established.

10.20 When taking into account this, officials have considered the responses to other questions. All respondents considered the fee system should

- provide for cost recovery;
- take account of size, scale, location and complexity of a proposed development; and
- be transparent.

10.21 It is considered that in many circumstances a locally set fee provides this in the most effective way. Individual bodies can identify and account for their running costs, including factors such as complexity of an application. It is considered transparency can be provided through safeguards on a local fee system including the public accounting requirement of not to make a profit from this type of activity. We are therefore proposing to take forward a mix of fee systems.

Statutory Consultee Fees

10.22 It is envisaged that statutory consultees will have the ability to charge for fees for certain services in relation to infrastructure consent projects. These fees may take account of the cost of anything that is reasonable to the provision of relevant services.

10.23 As set out above, it is intended that statutory consultees will be able to set their own fees for the provision of services and functions, such as pre-application services, in relation to applications for infrastructure consent. A similar process has recently been introduced under the Planning Act 2008.

10.24 In order to charge an applicant for services in connection with an application, a statutory consultee must publish a statement that:

- Describes the relevant services for which fees will be charged;
- Set out the fees, or the method by which the fees are to be calculated.

10.25 The details of which bodies are considered statutory consultees are set out in chapter 9.

Pre-Application Functions and Services

10.26 As with the DNS regime, the Welsh Ministers will be required to provide pre-application advice in relation to infrastructure applications upon request, undertaken in practice by PEDW. There will be a charge to the applicant for the provision of this service.

10.27 Due to the function of the Welsh Ministers, there is limited information that can be provided at pre-application stage and is procedural in nature. Applicants will also have the ability to request a view from the Welsh Ministers as to whether a proposed development would be directed as a SIP.

10.28 It is envisaged that in most cases the pre-application services will be provided by PEDW. We propose that the fee for this work should be charged at an hourly rate. PEDW will invoice the developer once the advice has been provided. However, as this is intended to be an iterative process, invoices for work carried out may be issued at regular intervals as advice is requested. The hourly rate for this is set out in the table above.

10.29 LPAs and NRW will also be required to provide pre-application advice for infrastructure application upon request. They will provide detailed information on local policies and environmental information. There will be a charge to the applicant for the provision of this service, set locally by individual LPAs and NRW.

Notification of intention to submit an application

10.30 Applicants will be required to submit a notification of intent to make an application for infrastructure consent to the Welsh Ministers. Chapter 7 on making an application provides further details on this.

10.31 As this will be a standardised process, and for simplicity, we propose that developers pay a fixed fee for the submission of a notification. A notification will not be valid if the fee is not paid.

10.32 There may be instances where the notification is not accepted. This could be because the development does not meet the criteria for an infrastructure application, or the notification does not contain all the information and documents required. Where this happens, we propose that we will not refund the fee. This is because the work required to confirm that a notice of acceptance should not be issued is likely to be equivalent to the work which would lead to the notice being issued.

Application fees

10.33 An applicant submitting an application for infrastructure consent will be required to pay a fee and the payment of this fee will be a validation requirement. This portion of fee will be fixed as it is intended to cover standard sections of work within the application process that are the same for all applications submitted. The fixed fee will be derived from a standardised cost of carrying out the work.

10.34 The variable elements of the application process will be subject to a daily rate fee. This daily rate will be derived from the cost of time of the examining authority and other overheads. The daily rate will be charged in half and full day increments. These rates are set out in the table above.

10.35 The variable nature of an application stems from the different types of procedure used to consider the application. Further information on examination procedure can be found in chapter 11.

10.36 The written representations procedure requires the lowest staff resource while local inquiries require the highest. The examining authority will determine the application procedure in accordance with published criteria and the choice of procedure will be determined by what is the best course for examining the relevant issues. It will not be influenced by financial considerations.

10.37 At the point where the examining authority provides a report and recommendation to the Welsh Ministers, they will send an invoice to the applicant for payment of the remaining application fee for their portion of the process. It is possible that the examining authority may issue more frequent invoices during the course of the consideration of the application, especially for the longer hearing and local inquiry procedures, with a final invoice being issued when the report is sent to the Welsh Ministers.

10.38 It is proposed that statutory consultees and LPAs may set out additional fees during the examination of an application to recover their costs, such as attendance at a hearing or inquiry. This would be a local fee set by individual bodies.

Determination fees

10.39 The decision on infrastructure consent is to be made by the Welsh Ministers and will be based on the information gathered during the examination of the application, including the recommendation by the examining authority.

10.40 We propose that the Welsh Ministers' role in the application process should also be included in the fee paid by the applicant. As set out above, it is under consideration whether this determination fee will form part of the initial application fee or remain separate.

10.41 The Welsh Ministers may also incur additional costs which cannot be included in a fixed determination fee. These are most likely to be legal costs incurred during consideration of other associated consents.

Local Impact Reports (LIR)

10.42 The relevant LPA(s) for an application will be required to produce and submit a LIR. This will be a statutory duty and is intended to provide the decision-maker with relevant technical information on the impact of the proposed development. Further information is provided in the chapter 11 on Examination.

10.43 We propose that the LPA should receive payment for carrying out this statutory duty and other functions, such as updating the Planning Register and publicity. This payment is intended to provide the LPA with the resources to produce the report and to the expected quality, and to carry out the other functions expected of them. Without this payment the LPA would have to draw on existing resources, which may have an unintended and negative impact on other planning work carried out by them.

10.44 We propose that the LPA should receive the full payment if they meet the minimum requirements and timescale for submission. If they miss the timescale without good reason, they may only receive part of the fee or no fee at all.

10.45 We propose that the payment for the LIR should be part of the fixed fee which is paid by the applicant when they submit their application.

10.46 Welsh Ministers will pass on the relevant fee to the LPA as soon as the LIR has been provided in accordance with the requirements. Any part of the fee that is not paid to the LPA, due to late submission or not meeting the minimum prescribed requirements, will be refunded to the applicant.

10.47 This payment will only apply to LPAs who are under a duty to provide an LIR. Other parties wishing to submit a voluntary LIR, such as a neighbouring LPA or a Town or Community Council, will do so at their own cost.

10.48 The cost of providing an LIR will remain a separate fixed fee to other local fees an LPA may charge.

Marine Impact Reports (MIRs)

10.49 The same principles of LIR will apply to MIRs. NRW will be required to produce and submit a MIR for applications involving the marine area. This will be a statutory duty and is intended to provide the decision-maker with any relevant information held by NRW on the impact of the proposed development. Further information is provided in chapter 11 on Examination.

10.50 This payment is intended to provide NRW with the resources to produce the report to the expected quality, and to carry out the other functions expected of them. We propose that NRW should receive the full payment if they meet the minimum requirements and timescale for submission. If they miss the timescale without good reason, they may only receive part of the fee or no fee at all.

10.51 We propose that the payment for the MIR should be part of the fixed fee which is paid by the applicant when they submit their application. This fixed fee will be

based on the average cost of producing the MIR and carrying out their other functions.

10.52 The Welsh Ministers will pass on the relevant fee to the NRW as soon as the MIR has been provided in accordance with the requirements. Any part of the fee that is not paid to the NRW, due to late submission or not meeting the minimum prescribed requirements, will be refunded to the applicant.

10.53 This payment will only apply to NRW. Other parties wishing to submit a voluntary MIR, such as a Town or Community Council, will do so at their own cost.

10.54 The cost of producing an MIR will remain a separate fee to other local fees NRW may charge.

Other Costs

10.55 The examining authority may encounter additional costs during examination which could not appropriately be included in the fixed fee or daily rates. These additional costs could include venue costs for the hearing and local inquiry procedures; legal costs; and assessor costs. These costs are too case specific and variable to be included in the fees that are charged to all applicants.

10.56 We propose that these costs, when they are incurred, should be charged to the applicant and included in the final invoice issued when the examining authority provides the report to the Welsh Ministers. In this way the costs of the application are met but are only paid when they are incurred.

Refunds

10.57 The fees paid by the applicant, particularly the fixed fee that is required when the application is submitted, covers work which will be carried out by the Welsh Ministers after receipt of the application. There may be occasions where this work will not happen because the application is invalid, or the applicant withdraws the application.

10.58 Where an application is invalid, we do not consider it to be appropriate for the Welsh Ministers to retain the entire fee paid by the applicant. However, costs will have been incurred through processing the application documents and reaching the point where the application is confirmed to be invalid. These costs should be met by the applicant.

10.59 We propose that the applicant should receive a refund of a proportion of the fixed fee, paid when the application is submitted, if the application is found to be invalid and no further work will be dedicated to it. The exact percentage to be retained will be set out in subordinate legislation. The fee will reflect the amount of work carried out during the validation stage of the application process.

10.60 There may be other circumstances in which a recovery mechanism is appropriate, where a fee is paid and a service has not been provided. As this is a new system,

performance will be monitored and further consideration for refunds in other areas of the process may be appropriate in the future.

Non-payment of application fees

10.61 It is proposed that there are several points in the application process where the applicant is required to pay a fee. There is potential, therefore, for the fee not to be paid. If the applicant does not pay the fixed fee at the start of the process, then the application will be invalid, and no further work will be carried out on the application.

10.62 In situations where the Welsh Ministers issue an invoice based on the daily rate element of the fee, the applicant will be required to pay the fee within a specific time after the invoice is issued. Failure to pay the fee could lead to the Welsh Ministers taking debt recovery action through the Courts.

Award of costs

10.63 Where unreasonable behaviour has led to avoidable costs, the Welsh Minsters have the power to order costs in relation to the examination to be paid

10.64 It is proposed the parties will be able to make an application for their costs in these circumstances, but the Welsh Ministers will also be able to initiate awards of costs where they consider this to be appropriate. In this way, the behaviour of the parties during the examination process will be regulated, with unreasonable behaviour being subject to an award of costs to those affected.

Questions

- Do you agree that the relevant LPA should receive a fixed fee for producing a Local Impact Report? If not, why not?

- Do you agree that the LPA should receive a reduced payment, or no payment, if they do not submit the Local Impact Report within the timescale and minimum requirements? If not, why not?

- Do you agree that NRW should receive a fixed fee for producing a Marine Impact Report? If not, why not?

- Do you agree that NRW should receive a reduced payment, or no payment, if they do not submit the Marine Impact Report within the timescale and minimum requirements? If not, why not?

- Do you agree that the applicant should not receive a full refund if their application is invalid? If not, why not?

- Do you agree that fees should be paid in stages or one initial application fee paid and if the processing of an application is less, this will be refunded?

## Chapter 11: Examination

11.1 An efficient consenting process will make certain every application is examined in the most appropriate, proportionate and timely method while ensuring quality of reporting to provide robust decision-making.

11.2 Accordingly, we have adopted the principle of the appointed person being best placed to determine the most appropriate method for examination, and have control over its conduct. The proposals below also make provision in subordinate legislation to strengthen community involvement through an open floor hearing and allow access to hearings through online broadcasting.

11.3 The Act allows applications to be examined by one of, or any combination of, the following procedures in accordance with a timetable set by the appointed person:

- Written representations;
- Open floor hearing;
- Topic-specific hearing; and
- Topic-specific inquiry.

11.4 The Act also provides for the management of the examination process.

Powers

11.5 The relevant sections of the Act are:

- *Section 40 - Appointing an examining authority;*
- *Section 42 - Choice of inquiry, hearing or written procedure;*
- *Section 43 - Open-floor hearings;*
- *Section 44 - Examination procedure;*
- *Section 48 - Access to evidence at inquiry; and*
  *Section 49 - Payment of appointed representative where access to evidence restricted.*

### Appointing an examining authority

11.6 The examination and consideration of an application for an IC will either be by a single appointed person or a panel of persons as the ‘examining authority’.

11.7 Regulations will make further provision for or in connection with the appointment of an examining authority. We envisage this will include allocating functions to persons on a panel and how decision making is to be carried out by the panel; for instance in finalising the report for the Welsh Ministers which gives a recommendation to approve or refuse an application. Our intention is for the regulations to specify that the examining authority will have discretion over those matters, as the tasks to be undertaken in examining and considering an application will vary on a case by case basis depending on the issues to be determined.

Appointment of examining authority to examine an application to change or revoke an IC.

11.8 Section 40(3) of the Act requires the Welsh Ministers to publish the criteria to be applied when deciding whether an application to revoke or change an IC should be handled by a single appointed person or panel. In making this decision, the Welsh Ministers will apply the following criteria:

*The complexity of the case*

11.9 The complexity and the number of issues raised by individual applications will vary greatly depending, amongst other things, on the nature and location of the proposed infrastructure development, including whether the proposal:

- raises novel issues for development; and
- raises complex legal or technical considerations.

*The level of public interest in the outcome*

11.10 Each application for a significant infrastructure project is likely to be unique, and the level of public interest generated will vary greatly depending on the size, scale, location and nature of the proposed development. In particular, the Welsh Ministers will consider the likelihood of the need for examination requiring hearings so that evidence presented by interested parties can be tested in person by the examining authority.

Notification of appointment

11.11 The regulations will make provision about the person(s) appointed to assess an application and any subsequent changes to the person(s) appointed. It is considered certain parties should be informed of the appointed person(s) and any changes.

11.12 Therefore, we propose that regulations specify the Welsh Ministers must notify the name(s) of the appointed person(s) to the applicant and the LPA. Where the Welsh Ministers make a change to the appointed person(s), the name(s) of the newly appointed person(s) must be notified to the applicant and the LPA as soon as reasonably practical.

11.13 Where the Welsh Ministers appoint another person or a new panel, but it is not practicable to do so before any hearing or inquiry is held, the appointed person(s) holding the hearing or inquiry must, at its commencement, announce their name(s) and the fact of their appointment.

**Choice of inquiry, hearing or written procedure**

11.14 Section 42 of the Act requires the examining authority to determine how each application is to be examined before the end of a period specified in regulations. Examinations must be conducted either by hearing, inquiry, written representations or a combination of these procedures. This determination must

provide for examination of the application to include a hearing, unless the determination provides for a local inquiry to be conducted, or the examining authority considers that a hearing would not assist the examination. In making this decision they must consider the criteria to be applied in making determinations under this section.

11.15 To make this decision the examining authority is required to make an initial assessment of the principal issues arising from the application. This initial assessment will include preliminary analysis of application documents and may also take into account any of the relevant representations received from any consultation on the application.

11.16 By making an initial assessment, the appointed person or panel of persons will have a clearer understanding of the procedure(s) they consider most appropriate to examine an application.

Criteria

11.17 Determining which examination procedure to be used will be undertaken in accordance with published criteria. These will be published on the Welsh Government website (to enable them to be amended as necessary) and will provide transparency and examples of specific issues and the type of event most appropriate to examine them. The proposed criteria are provided below for information:

*Written representations*

11.18 Written representations would be appropriate if:

- the issues raised can be clearly understood from the documents and a site inspection; and
- the issues are not complex and the appointed person is unlikely to need to test the evidence by questioning the parties.

*Hearing*

11.19 A hearing would be appropriate if:

- the appointed person is likely to need to test the evidence by questioning or to clarify matters (for example where detailed evidence on landscape impact needs to be tested by questioning);
- there is no need for evidence to be tested through formal questioning by an advocate or given on oath; or
- it can reasonably be expected that all parties will be able to present their own cases (supported by professional witnesses if required) without the need for an advocate to represent them.

*Inquiry*

11.20 An inquiry would be appropriate if:

- there is a clearly explained need for the evidence to be tested through formal questioning by an advocate (this does not preclude an applicant representing themselves as an advocate);
- the issues are complex (for example where large amounts of highly technical data is likely to be provided in evidence); or
- the application has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing.

11.21 These criteria will apply to the individual impacts of development and not the application as a whole. This will mean different examination procedures may apply to different sections of an application.

Timetable

11.22 The development of a timetable will provide certainty and transparency to all parties involved in an examination. We propose the timetable must specify:

- the date within which any further representations must be received (if applicable) and the issue(s) they must address;
- state whether such further representations are to be given in writing or at a hearing or inquiry;
- the date by which any party who makes representations must notify the appointed person of their wish to be heard at a topic-specific hearing or inquiry;
- the date(s), place and time of any topic-specific hearing or inquiry (if applicable) or pre-examination meeting and the issues those hearings or inquiries will address; and
- such other deadlines as the appointed person considers necessary.

11.23 We expect this to enable conclusion of the examination within 6 months.

Timeframe

11.24 The examining authority will normally complete its initial assessment of the application and determine the most appropriate procedure within a period of 20 days. This begins the day after the deadline for receipt of relevant representations.

Notice of decision and timetable

11.25 After determining the examination procedure, regulations will provide that the examination authority must set out certain matters in the form of a notice. We propose the notice must:

- identify the matters, if any, to be determined at a hearing or inquiry; and

- where the Welsh Ministers have determined that a hearing or inquiry is to be held, identify those invited to take part; or
- contain a statement that the Welsh Ministers intend to determine the application on the basis of written representations.

11.26 We propose regulations will provide the timetable must be sent to:

- the applicant;
- the LPA(s) within which the development is located or the nearest onshore LPA if the application relates to an offshore proposal;
- statutory consultees;
- notification consultees;
- parties who submitted representations; and
- any other person(s) they consider appropriate.

Variation of timetable and procedure

11.27 The timetable and examination procedure set out within it may be varied at any time by the appointed person, provided all parties who were sent a copy are notified of its variation in writing. This includes the ability to close a public event and for an application to be examined by way of written representations instead.

**Pre-examination meetings**

11.28 While the examining authority may be able to determine the examination procedure and timeframe through the application and representations, we consider there may be cases where a preliminary meeting between parties, prior to the examination of an application, would be beneficial.

11.29 The main purpose of a pre-examination meeting would be for the appointed person or panel of persons to discuss any procedural matters with those invited to attend, and to hear any representations from them regarding how they consider an application should be examined. We anticipate the more complex applications would be subject to a pre-examination meeting; however, this would be at the discretion of the appointed person.

11.30 If it is decided a pre-examination meeting should be held, regulations will provide the appointed person or panel of persons will be required to invite the following parties to a meeting:

- the applicant;
- LPAs affected by a proposed development;
- statutory consultees;
- notification consultees; and
- any other person(s) they consider appropriate.

11.31 The examining authority will be required to give at least 14 days written notice of the date, time and place of the pre-examination meeting to all parties. The notice must also set out the matters to be discussed at the meeting.

11.32 Where one or more of the parties invited to the pre-examination meeting decline their invitation or fail to appear at the pre-determined place and time of a pre-examination meeting, the meeting may continue in their absence. If a party is unable to attend, they may be represented at the pre-examination meeting by another person.

11.33 Where it may not be convenient for parties to physically attend a pre-examination meeting, they may participate in, and be considered to have attended, a meeting via video or telephone conference, so long as the appointed person is satisfied such a form of meeting would not prejudice any of the parties.

11.34 No party shall be entitled to require that a pre-examination meeting be held. The decision to hold a pre-examination meeting will be solely at the discretion of the appointed person or panel of persons.

**Open-floor hearings**

11.35 An appointed person or panel of persons will take into account all representations submitted on an application. Written representations carry the same weight as oral submissions. However it is understood some parties would prefer to provide representation in person. Open-floor hearings are an opportunity for individuals and community groups to speak directly to the examining authority. To ensure a smooth and timely examination, regulations will provide further detail on these events.

<u>When is an open-floor hearing required</u>

11.36 Regulations will provide that the examining authority will hold at least one open-floor hearing if one is requested by ten or more interested parties within the deadline specified in the examination timetable; or where the number is below ten if they consider it necessary or useful to the examination. The interested parties must have a legitimate interest in the application and have made a duly-made representation.

11.37 Regulations will require any persons who make a request to set out the matters they wish to raise at the hearing. This will allow the examining authority to manage the process, providing for a more coherent examination process. If these matters fall within section 58 of the Act (provisions on matters that may be disregarded when making decisions on applications), the representation may be disregarded when considering the number of parties making a request for an open-floor hearing.

11.38 Regulations will provide that the examining authority will have the power to allocate interested persons to topic based hearings in order to avoid holding unnecessary open-floor hearings where this would lead to a duplication of topics.

11.39 The regulations will also enable the appointed person to deny a request for an open-floor hearing if any persons requesting it raise matters outside the remit of the examination; for example, if the person wishes to raise objections to national planning policy or legislation.

11.40 The decision about whether to hold an open-floor hearing will be at the discretion of the examining authority, with a presumption in favour of enabling proper engagement in the process.

Conduct of a hearing

11.41 Regulations will provide that where an open-floor hearing is held, the conduct of these hearings is the same as a topic based hearing, whereby the examining authority has the ability to prescribe the conduct of the hearing. The intention will be for the examining authority to ensure all parties have the opportunity to speak at the hearing and that it operates smoothly.

**Further representations**

11.42 There may be instances where the appointed person requires further representations from one or more parties to clarify certain matters, in order to assist them in making their conclusions and recommendations on an application. In these circumstances, regulations will allow the appointed person to request further representations.

11.43 By requesting more detailed representations on a particular matter, it may preclude the need to hold a specific event into these matters, or the scheme as a whole, thus leading to a speedier and more proportionate examination of an application.

Who may be requested to make further representations.

11.44 Where the appointed person is of the opinion further representations would be beneficial to clarify certain matters, regulations will provide that they may send a written notice requesting further responses on matters contained in their representations. The regulations will provide that persons they can send notice to are:

- the applicant;
- the LPA;
- statutory consultees; and
- any person who made representations in relation to the application.

How information must be submitted

11.45 Regulations will provide that any further representations must be submitted within such period as specified by the Welsh Ministers, must be in written form, and each representation on any particular matter must not exceed 3,000 words.

11.46 Further representations received after the specified timeframe, or which are considered vexatious or frivolous, or relate to material about compensation for the compulsory acquisition of land or matters outside the remit of the examination, may be disregarded. Similarly, further representations which exceed the 3,000 word limit may also be disregarded. However, the appointed person may return

the representations requesting they be resubmitted within the 3,000 word limit and within a timeframe specified by the Welsh Ministers. The timeframe for providing further representations will be decided by the appointed person on a case-by-case basis, depending on the extent of the information required. Alternatively, the appointed person may, at their discretion, increase the word limit beyond 3,000 words if they consider it necessary to do so.

11.47 Further representations may be requested by the appointed person at any time before the examination of an application is complete.

11.48 The Welsh Ministers may disregard any representation which is received out of time or in a manner other than that specified or exceeds 3,000 words.

Appointment of assessor, barrister, solicitor or advocate

11.49 When it seems likely that evidence to be given about an application will be of a specialist nature, or of a level of complexity outside the expertise of appointed persons, the examining authority can appoint one or more assessor to assist them.

11.50 It is envisaged that in most cases it will be the examining authority that will ask questions of persons making oral representations at hearings. However, the examining authority may sometimes need the support of a professional advocate to ensure that the evidence is tested in the most effective and revealing way. They therefore may appoint a barrister, solicitor or advocate to provide legal advice and assistance to the examining authority.

**How the examination process is to be conducted**

Date, place and time of an event

11.51 The proposed subordinate legislation will require the appointed person to give a minimum of 4 weeks written notice of the date, time and place of the hearing or inquiry to the applicant, relevant LPA(s), any interested parties and any other persons considered necessary. The regulations will provide that the date of a public event must be no later than 10 weeks following the end of the representation period. This time period shall not include additional representations requested by the appointed person.

Publicity of hearing or inquiry

11.52 Regulations will provide that the notice advertising a hearing or inquiry must include:

- the date, time and place of the public event(s);
- the matters to be discussed at the public event(s);
- a written description of the land sufficient to identify its location;
- a description of the proposals contained in the application form;
- a description of any deemed or extinguished consents being applied for; and

- details of where the application and accompanying documentation can be viewed.

Matters to be considered

11.53 It is intended that public events must be presided over by the appointed person or panel of persons. The appointed person will also be required to identify the matters to be considered at a public event and any matters on which they require further explanation.

Participation in public events

11.54 The leading of the hearing or inquiry is the responsibility of the appointed person. They will identify those invited to take part. Members of the public will be able to observe the event, and the appointed person will be able to manage the conduct of members of the public at topic-specific hearings or inquiries to ensure no disruption to the proceedings.

Calling of evidence at a hearing or inquiry

11.55 It is proposed that any party who is entitled to appear and take part in a hearing or inquiry shall be entitled to call another person to give evidence. It is also proposed that if the appointed person considers it appropriate or necessary they may also be able to permit any other person to call another person to give evidence.

Conduct of hearing

11.56 Regulations will provide that during a hearing, it will be the appointed person's responsibility to question the parties present. Any oral representations made during a hearing must be based on either the written representations made by the person by whom, or on whose behalf, the oral representations are made.

11.57 Where, in the appointed person's opinion, a person taking part in a hearing, or present at a hearing, is behaving in a disruptive manner, the appointed person has the power to eject individuals from the event. Those individuals may be refused permission to return, or allowed to return only on condition.

11.58 The appointed person will be provided with the power to adjourn a hearing at any stage and, if the date, place and time of the adjourned hearing are announced at a hearing that takes place before the adjournment, there will be no further written notice required.

11.59 The examining authority may proceed with a hearing in the absence of a person entitled to appear at it.

**Procedure for topic-based inquiries**

11.60 Regulations will provide that the procedure for inquiries will be largely similar to hearings, however the ability to cross-examine parties will be permitted, at the

discretion of the appointed person. It is not intended that such cross-examination would be carried out under oath.

11.61 The proposed subordinate legislation will include a provision which enables any person invited to take part in the inquiry to cross-examine other parties who give evidence, although the calling of evidence and cross-examination must be at the discretion of the appointed person.

11.62 The applicant, LPA(s) and any other person invited to take part in an inquiry may call another person to give evidence, although the appointed person shall also have the power to permit any other person to call another person to give evidence.

**Virtual and electronic hearings and inquiries**

11.63 The ability to examine applications orally through a hearing or inquiry is vital for the appointed person to expeditiously examine complex applications or those which require sworn evidence, such as the inclusion of compulsory purchase orders.

11.64 The subordinate legislation will allow for topic-based hearings and topic-based inquiries to be undertaken by electronic means, instead of, or in addition to, the traditional format of physical appearances at these events. PEDW's current practice is to apply a 'virtual first' approach to oral hearing because they have found them to be more inclusive and accessible to more stakeholders and provide efficiencies for all involved.

LPA facilitating access to online examinations

11.65 Regulations will provide that hearings and inquiries will be broadcast online, as this would increase public accessibility to the examination process. We also propose to facilitate access to those who may not have the ability to view the online event. The LPA shall make arrangements for the online broadcast to be publicly available, if requested.

Access to evidence at inquiry

11.66 Where a local inquiry is held, section 48 of the Act requires all oral evidence to be heard in public and that all documentary evidence is to be open to the public for inspection. The Welsh Ministers or the Secretary of State (a "ministerial authority") may direct that oral evidence is to be heard and documents inspected by specific persons only (and not the public). This would only occur if public disclosure of evidence is not appropriate due to national security issues or related to measures taken (or to be taken) to ensure the security of any land or property, and that public disclosure of such information would be against the national interest.

11.67 We propose for regulations to provide for the modification of the provisions set out above where such a direction is made to ensure national security is not impacted. For example, this would include closed hearings on certain evidence.

11.68 The Counsel General may also appoint a person ("an appointed representative") to represent the interests of persons prevented from hearing or inspecting evidence. This is intended to ensure that the withholding of information does not prevent appropriate consideration of the issues raised by third parties who cannot view the material.

Questions

- Is the examining authority best placed to determine the procedure for an examination?

- Is ten or more requests an appropriate amount to trigger a requirement to hold at least one open-floor hearing during examination? If not what number of requests is?

## Chapter 12: Deciding applications and making orders

12.1 Following the examination, the examining authority will draft a report. This report forms the basis of the next part of the process, governs the decision itself and the making of an order.

12.2 The Act makes provision about who decides an application for IC, about what the decision maker has to take into account when deciding an application, about the timetable for making the decision, and about making the decision and its publicity.

12.3 Where a decision is made to grant consent, this is brought into effect through an Order. The Act makes provision about the making of these orders, such as how they are published.

Powers

12.4 The relevant sections of the Act are:

- *Section 52 - Reports by examining authority;*
- *Section 55 - Function of deciding applications;*
- *Section 57 - Duty to have regard to specific matters when making decisions on applications;*
- *Section 58 - Matters that may be disregarded when making decisions on applications;*
- *Section 60 - Grant or refusal of an IC;*
- *Section 62 - Reasons for decision to grant or refuse an IC;*
- *Section 85 - Infrastructure consent orders: publication and procedure;*
- *Section 94 - Duration of infrastructure consent order; and*
- *Section 95 - When development begins.*

### Report

12.5 The examining authority will be required to make a report in writing to the Welsh Ministers, setting out their conclusions of the issues raised and their recommendation on whether consent should be granted or not. This will take place following the close of the examination and will provide part of the evidence base enabling the Welsh Ministers to make their decision.

12.6 Because the length of time required to produce a report will vary on a case-by-case basis depending on the scale and complexity of a proposed development, we are proposing that regulations will confirm the time limit for producing the report is set out in the examination timetable for each application.

### Function of deciding application

12.7 The Act enables an application to be determined by either the examining authority or the Welsh Ministers. To ensure consistency and clarity in the consenting process, subordinate legislation will specify those applications which are to be determined by the examining authority following the close of an examination. Any applications not included in subordinate legislation, by virtue of the type or

category of development specified in the subordinate legislation, will be decided by the Welsh Ministers.

12.8 We are not anticipating specifying any particular development types in subordinate legislation at this time. However, it is possible certain developments will be specified in the future, where evidence on the determination of certain types of applications submitted under the new consenting process confirms they are straightforward and do not warrant a decision by the Welsh Ministers.

**Duty to have regard to specific matters and matters that may be disregarded**

12.9 In deciding an application for IC, the Welsh Ministers must have regard to certain matters specified in the Act, such as any local or marine impact reports and other relevant considerations.

12.10 Due to the wide array of development types captured by the infrastructure consenting process, Section 57(d) of the Act enables subordinate legislation to specify any other matters which the determining authority must also have regard to when deciding an application, which will be specific to particular kinds of development. We have not identified any matters that will be specified at this time.

12.11 The Welsh Ministers may also disregard representations if they consider them to be vexatious or frivolous, relate to the merits of policy set out in an infrastructure policy statement, the National Development Framework for Wales or any marine plan, or relate to compensation for compulsory acquisition of land or of an interest in or right over land. Section 58(3) of the Act enables subordinate legislation to add matters to this list or to change or remove matters. We have not identified any matters that will be specified at this time.

**Notification of decision and reasons of decision**

12.12 When the Welsh Ministers have decided an application, they will notify certain parties of their decision, and provide reasons for this decision.

12.13 The notice of decision and accompanying reasons will be provided to the applicant, any planning authority or community council that has submitted a local impact report, NRW if it has submitted a marine impact report and any person or person of a description specified in regulations. We propose the regulations will identify any additional persons the Welsh Ministers consider it is appropriate to notify.

**Making an order**

12.14 An application for a proposed SIP must, amongst other documents, include a draft of the IC, together with an explanatory memorandum. The draft is a key application document, and the proposed order will, amongst other matters, be considered in deciding an application.

12.15 The Welsh Ministers may amend the draft order if consent is to be granted. The order made by the Welsh Ministers is the primary document which sets the

parameters for what is permitted in the event that consent is granted (and by implication what other aspects of a proposal are not permitted and may require further consent).

Duration of infrastructure consent order

12.16 The Act requires at section 94 that the development to which the IC is granted must begin before the end of a period prescribed in regulations. If the development is not begun before the end of the prescribed period, the IC ceases to have effect at the end of that period.

12.17 It is envisaged that a maximum period of five years for development to begin will be prescribed in regulations, in line with the DNS regime. In the interests of ensuring timely delivery of infrastructure, for development that is considered to be acceptable, the Welsh Ministers will hold discussions with the applicant to encourage development to be begun at the earliest opportunity. The Welsh Ministers will be able to set a shorter period for implementation in the order granting consent, should this be desirable and practical for the individual development.

12.18 There is no requirement for the period for development to begin to be stated in the order. Where the period is set out in the order and it differs from that set out in regulations, the period set out in the order shall apply.

When development begins

12.19 For the purposes of the five years, development is taken to begin on the earliest date on which any material operation comprised in, or carried out for the purposes of, the development begins to be carried out. Under section 95 of the Act, the Welsh Ministers can exclude certain operations from the definition of material operation. At this time we do not propose to specify any matters.

Making an order materially different

12.20 Where the Welsh Ministers propose to grant an application for IC, they must make an order. However, it is recognised there may be a need to make amendments to the order from that which was applied for. The Act provides the ability for the Welsh Ministers to make an infrastructure consent order on terms which are materially different from those proposed in the application. In such circumstances any necessary procedure will be set out in subordinate legislation.

12.21 We would expect the majority of modifications not to make any substantial change to proposals. Therefore, where in the opinion of the Welsh Ministers this is the case, we do not propose any formal procedure.

12.22 Where the Welsh Ministers propose a more substantial change they must consult the following persons:

- The applicant;
- Where the changes relate to a deemed or extinguished consent, the body responsible for the consent; and
- Any other person they consider appropriate.

12.23 The consultation must set out the proposed change and the reasons for the change. They must not make the order before a period of 21 days from the consultation having elapsed. This will enable the consultees to respond to the proposed amendments.

12.24 The Welsh Ministers cannot make an order which is more than minor materially different than what was originally applied for in an application for IC. Guidance will indicate this will include amendments which are likely to:

- alter land rights (i.e. compulsory acquisition of land);
- require changes to an EIA;
- invoke the need for an additional HRA; or
- require an additional licence for European Protected Species.

12.25 In such circumstances the application will need to be refused.

Publication

12.26 The Act, at section 85, sets the minimum publication requirements for an order contained in a statutory instrument. For other orders they must be published in such manner as the Welsh Ministers consider appropriate. We envisage they will be published in a combination of written notices, and publication on a website owned and maintained by the Welsh Ministers.

Questions

- In addition to those specified in Section 60(2) and 62(3) of the Act, who should the Welsh Ministers notify of a decision for infrastructure consent and the reasons for the decision?

## Chapter 13: Environmental Impact Assessment (EIA)

13.1 The EIA procedure is designed to provide environmental protection and transparency with regard to the decision-making process for projects. It ensures that environmental concerns are considered from the very beginning of new building or development projects, or their changes or extensions, as well as being an opportunity for public engagement.

13.2 The policy approach to the way in which environmental impacts are assessed will likely change in the next few years, to Environmental Outcomes Reports (EOR). However, current arrangements for EIA will remain in place for the time being.

13.3 The processes and need to undertake EIA remains the same. IC applications on land will be governed by the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017. IC applications in the Welsh marine area will be governed by the Marine Works (Environmental Impact Assessment) Regulations 2007.

13.4 As both EIA processes remain in place, this means that if a proposed development is located both on land and in the sea, the separate EIA regimes will apply. We anticipate this will only apply to a low number of applications.

13.5 As the EIA processes will not change for implementation of the Act, it is anticipated that applicants can continue to prepare EIA for proposed developments. Further information on the carrying over of work from one regime to another is set out in the transitional provisions chapter.

13.6 Further details on the processes for EIA, including screening and scoping, will be set out in guidance.

<u>Questions</u>

- Do you have any suggestions on how to align existing EIA processes with the Infrastructure Act?

## Chapter 14: Post decision

14.1 The IC process does not usually end once a decision is made by the Welsh Ministers to grant consent. As with any permission there will be responsibilities to discharge requirements and the potential for amendments to the consent project.

14.2 Once a decision on an application for IC has been issued, there may be instances where an error is found in the consent. These may be identified by the applicant upon review of their consent, by the Welsh Ministers, the appointed person, or by other parties with an interest in the decision. Such errors should be corrected for the purposes of clarity.

14.3 The use of conditions and enabling amendments to be made to consents is a means of ensuring that the infrastructure consenting process operates efficiently. The discharge of conditions can help speed up the consenting process, by removing minor matters from the principal discussion. Importantly, they ensure the consent is deliverable and consistent to ensure that the construction and operation of the development is sufficiently controlled and mitigated.

14.4 The Order process recognises that projects may change during the final design and construction phase. This can happen through agreed design parameters set out in the order. However, where a change is not captured by the Order, an application process to make a formal amendment to the Order either before construction of the project begins or during the construction process enables development to respond to other factors. As the order process is designed to capture multiple consents, this will include provision made in the Order under section 84 to remove or deem another consent.

Powers

14.5 The relevant sections of the Act are:

- *Section 87 – Power to correct errors in decision documents;*
- *Section 88 – Correcting errors: regulations;*
- *Section 63 - What may be included in an infrastructure consent order;*
- *Section 90 - Power to change or revoke infrastructure consent orders; and*
- *Schedule 1 (introduced by section 63) – Provision relating to, or to matters ancillary to, development.*

### Correction of errors

What are considered errors?

14.6 For the purposes of specifying what constitutes a correctable error and the procedure which follows, we are proposing that such errors or omissions are those which are limited to the part of the decision document which records the decision and is not part of the statement of reasons for a decision.

Correcting non-significant errors: unilaterally

14.7 Where the Welsh Ministers or the examining authority discover an error or omission in a decision document, the Welsh Ministers may correct it unilaterally.

14.8 If the error or omission is not considered significant, for example, an incorrect application reference, and the Welsh Minister intend on correcting it, regulations will provide that they will be required to issue written notice specifying the correction of the error or omission to:

- The applicant;
- Each relevant LPA;
- Each relevant community council (if one is established);
- NRW (if applicable); and
- Any other persons considered appropriate by the Welsh Ministers.

14.9 The written notice must be issued as soon as practicable after making the correction and also published on a website owned and maintained by the Welsh Ministers.

Correcting non-significant errors; notice from applicants or any other person

14.10 In addition to the ability of the Welsh Ministers to unilaterally correct an error or omission, we are also proposing to introduce the ability for applicants, or any other person who identifies an error or omission, to give written notice to the Welsh Ministers to correct it. The notice must contain the following information:

- The application reference;
- Details of what error or omission has been identified; and
- How the error or omission should be corrected.

14.11 Following receipt of written notice, the Welsh Ministers will follow the same procedure as identified above in paragraphs 14.7 – 14.9. However, in addition to those parties to whom notice of a correction must be given, specified in paragraph 14.8, written notice must also be given to the person who submitted the request for correcting an error or omission, if that person would not otherwise be notified through the specified list for a unilateral amendment.

14.12 Furthermore, the Welsh Ministers will not be obligated to correct the error or omission if, in their opinion there is no error or omission.

14.13 In such circumstances, the written notice in response to the request must give notice of the decision not to correct the error or omission, together with the reasons why and must also be published on a website owned and maintained by the Welsh Ministers.

Errors or omissions considered significant

14.14 Where an error or omission is identified by the Welsh Ministers or examining authority, or upon written notice from an applicant or any other person, and is

considered to be significant in the view of the Welsh Ministers, a more in-depth process is proposed.

14.15 In these circumstances, the Welsh Ministers will be required to write to:

- The applicant;
- The person who submitted a request to correct an error or omission (if applicable and if different to the applicant);
- Each relevant LPA;
- Each relevant community council (if one is established);
- NRW (if applicable); and
- Any other persons considered appropriate by the Welsh Ministers.

14.16 The purpose of this is for the Welsh Ministers to notify interested parties that there is an error or omission which they intend to correct, a list or schedule of the corrections proposed and the reason(s) for the correction.

14.17 Those persons who receive this notice will have a minimum of 14 days to respond to the proposed correction(s), although the Welsh Ministers may provide a longer representation period if they consider it necessary or appropriate to do so.

14.18 Following the close of the representation period, the Welsh Ministers will be required to make a decision on whether the error or omission should be corrected. Written notice of the decision must be given to those persons specified in paragraph 14.15 as soon as practicable.

14.19 The decision must also published on a website owned and maintained by the Welsh Ministers.

Effect of a correction

14.20 Where a correction is made by the Welsh Ministers, we are not proposing to replace and issue a corrected decision document (either an order or statutory instrument). It is our intention that corrections be specified in an order or statutory instrument, depending on how the original decision was issued, which amends the original decision and is read alongside it.

14.21 However, if the Welsh Ministers determine an error or omission should not be corrected, the original decision will continue to have full force and effect and that no steps undertaken pursuant to the proposed error or omission will affect the original decision.

When a correction takes effect

14.22 We are proposing that any correction made by the Welsh Ministers will take effect from the date a correction notice is issued, or, if the correction is required to be made by order contained in a statutory instrument, the date specified in the order.

### Discharging conditions

14.23 Conditions attached to the IC will be discharged by the relevant authority specified in the order. In most cases this will be the relevant authority who would normally be responsible for the consent no longer required as a result of section 20, or that was removed or deemed under section 84. However, where appropriate the IC may specify a different authority, for example where consenting matters overlap, or due to boundary issues.

14.24 Where a condition is to be discharged, we do not propose to require members of the public, householders, or community councils to be consulted, nor to publicise notices on the proposed application to discharge a condition. Although there is no obligation, the relevant authority may notify any person they consider relevant if they consider it beneficial to the consenting process.

14.25 We propose that regulations will provide that the IC should set out who the compulsory statutory consultees are for each requirement, such as the LPA or NRW. These bodies will be provided with 21 days to respond. If any other person, such as a community councils or members of the public, choose to provide comments, they are welcome to do so.

14.26 The discharging authority will have regard to any comments that are material to the proposal. It is not necessary for any public comments to be received for the body to discharge the requirement document that has been submitted to them. It is proposed the IC will also set a time period for a decision. It is expected this would be set based on the complexity of the condition, but set no longer than eight weeks. The IC can also set a “deeming clause” which states that if the Discharging Authority has not made a decision within the specified timeframe, the submitted document is automatically deemed as approved.

### Application to Change an IC

14.27 The nature of SIPs means that changes may be needed to the project either before construction of the project begins or during the construction process. Where such changes are not covered by parameters of the Consent Order that has been granted for the project, the Welsh Ministers may unilaterally make an amendment, or an application[2] will need to be made for a formal change to the Order.

*Welsh Ministers unilaterally making amendments to infrastructure consent orders*

14.28 Section 90 of the Act provides the Welsh Ministers the power to make an amendment to an infrastructure consent order unilaterally.

[2] Section 90(3) of the Act specifies who has the ability to make an application to make an amendment to an IC

14.29 Where the Welsh Ministers propose to use this power, we believe it is essential it is undertaken in a manner of openness and transparency. Therefore, the Welsh Ministers will be required to send written notice of their intention to amendment an IC to:

- The original applicant (or successor in title);
- Any person with an interest in the land to which an IC relates;
- Any person for whose benefit the IC has effect;
- The LPA(s) in which the development is located; and
- NRW (for ICs in the Welsh marine area).

14.30 Such notice will be required to contain the following information and be supplemented by:

- A copy of the proposed order;
- Any documents or plans considered necessary to support the order;
- A statement stating whether the proposed order involves EIA development;
- The reference number of the IC;
- A statement confirming where a copy of the proposed order and any documents or plans are available to be inspected (including an address / web address and the times);
- The latest date a proposed order and any documents or plans can be viewed, which must not be earlier than a period of 28 days starting on the date a person receives a notice;
- Details of how representations can be made; and
- The date in which representations must be received (no earlier than 28 days from the date a person receives a notice).

14.31 Similar to the procedure for Development Consent Orders in the Planning Act 2008, we are not intending to introduce any compulsory requirement for the formal examination for amending an IC following the expiry of the representation period. Instead, the Welsh Ministers may proceed straight to a decision and notify relevant persons of their decision.

*Applications to amend an infrastructure consent order*

14.32 Changes to an IC have different levels of impact, considered to fall as substantial, material or non-material changes. There is no definition of these and given the range of infrastructure projects that are consented through the Act, and the variety of changes that could possibly be proposed for a single project, it is not possible to prescribe whether any particular types of change would be substantial, material or non-material. Such decisions will inevitably depend on the circumstances of the specific case.

14.33 In general, amendments that do not require changes to environmental statement, Habitats Regulations Assessment or need for a new or additional licence in respect of European Protected Species are likely to be non-material. In addition, changes to authorise the compulsory acquisition of any land, or an interest in or

rights over land, that was not authorised through the existing consent are likely to be material.

14.34 A substantial change is more likely in cases where the proposed change would in itself constitute a SIP, or where the development as changed would constitute a different kind of infrastructure project from that which has already been given consent. The cumulative effect of previous changes made to the IC may also be relevant when considering whether a further application for change should be treated as a new project.

14.35 Because of the varying levels of impact and to ensure any procedure associated with amending an infrastructure consent order is proportionate, we are proposing separate procedures for amendments which are non-material and those which are more than non-material.

*Notification*

14.36 To assist the Welsh Ministers in anticipating any applications being submitted to them which propose an amendment(s) to an IC, applicants will be required to provide written notification to the Welsh Ministers of their intention to submit an application to amend an IC. The notification must include (as a minimum) the following information:

- The unique reference of a IC (allocated upon granting of consent);
- A brief description of the proposed change(s);
- A statement confirming whether the change is, in the view of the applicant, non-material or more than non-material;
- A statement confirming a formal application will be submitted within 6 months of the date on which notification is submitted; and
- Any other information the applicant considers appropriate.

14.37 Following receipt of a notification, the Welsh Ministers will have a period of up to 10 working days to make a determination as to whether, in their view, the proposed amendment is non-material or material and provide written confirmation of this to the applicant.

14.38 This confirmation will remain valid for a 6-month period and any application received after this time will not be accepted by the Welsh Ministers.

*Pre-application consultation and publicity*

14.39 Following the submission of their notification to the Welsh Ministers, we are proposing applicants will be required to consult local communities and relevant stakeholders on their proposed amendment(s) to an IC who may have a certain level of expertise in a particular field. This will only apply to proposed amendments which the Welsh Ministers have determined are more than non-material. Any non-material amendments will not be subject to mandatory pre-application consultation and publicity requirements. Applicants will be required to consult (as a minimum):

- The LPA(s) in which the site is located;

- Community councils in which the site is located (if one exists);
- NRW, if the development is in the Welsh marine area;
- Statutory consultees; and
- Each Member of the Senedd and the House of Commons representing an area in which the proposed development is located.

14.40 Where applicants consider it unnecessary to consult any person(s) identified, they will have the ability to write to the Welsh Ministers or the examining authority requesting their permission to exclude these person(s) if they are of the opinion their proposed amendment(s) would not affect them and include reasons for doing so.

14.41 The Welsh Ministers must provide a written response to a request within 4 weeks starting from the date a request to exclude certain person(s) is received.

14.42 At this stage, we are also proposing applicants must undertake additional publicity and notification requirements to help publicise proposed amendments. We envisage these will follow the requirements specified during the application stage (see paragraphs 8.28 – 8.42 of this consultation)

14.43 Responses to the consultation must be submitted in writing to the applicant within the date specified on the site notice, in publications and any written notices. The date shall be no shorter than 4 weeks from the date of publication.

*Application*

14.44 Following the close of the consultation period (where an amendment is considered more than non-material), applicants will make a formal application to the Welsh Ministers. This must be submitted before the expiry of the 6-month period, or such other period agreed in writing, beginning on the date notification is submitted to the appointed person of a proposed amendment(s).

14.45 Applications must contain the following information (as a minimum):

- The name and address of the applicant;
- The name and address of the agent (if one is appointed);
- The reference of the original IC which was granted;
- EIA and HRA (where required); and
- A detailed description of the change being applied for.

14.46 Together with their application, applicants will be required to submit:

- All responses received during the consultation period;
- Any documents or plans considered necessary to support an application, drawing to an identified scale;
- Any relevant fee; and
- Confirm whether the application is, in the applicant's view, non-material or more than non-material.

*Validation*

14.47 Once an application, together with supporting documentation and fee, is submitted to the appointed person, they will be required to determine whether it is valid or not within 2 weeks of the submission of an application, or any longer period notified to the applicant by the Welsh Ministers or the appointed person. Where an application is considered valid, this does not constitute an assessment on the materiality of the amendment being requested.

14.48 However, where the Welsh Ministers consider an application to change an IC they may refuse to entertain the application if they consider that the development that would be authorised as a result of the change should properly be the subject of a new application for IC.

14.49 The Welsh Ministers will write to the applicant informing them of this decision.

*Publicity and notification requirements*

14.50 Where an application to amend and IC has been accepted by the Welsh Ministers following validation, there will be certain publicity and notification requirements. We envisage these will follow the requirements specified during the application stage (see paragraphs 8.28 – 8.42 of this consultation).

*Non-material amendment*

14.51 Where an amendment(s) is considered non-material, the Welsh Ministers will consider the information provided, together with any representations received and identify if additional information is required from the applicant or a consultee. Where additional information is needed the deadline to provide this will be 21 days.

14.52 To ensure a quicker, more streamlined process, we are not intending for proposed amendments which are considered non-material by the Welsh Ministers to be subject to an examination and therefore, may proceed straight to a decision on whether to grant the amendment or not.

*Material amendment*

14.53 Where the Welsh Ministers or the appointed person determine an application for a proposed amendment(s) is more than non-material and requires further scrutiny, the examining authority will hold an examination. This will either be by way of written representations or a hearing. Due to the expected nature of material amendments, we do not expect such applications to be contentious and anticipate the majority will proceed without the requirement for a hearing. An open floor hearing is not proposed for a change application.

14.54 Following the outcome of the examination, the application will be processed in a similar manner to an application for an IC, with a report prepared by the examining authority and a decision by the Welsh Ministers, which will be publicised and notified to specified parties.

14.55 Where an amendment to an IC involves the compulsory acquisition of land or an interest in or rights over land only, a separate, streamlined process is proposed. Details of this are set out in the compulsory acquisition chapter of this consultation paper.

*Determination*

14.56 We are proposing the determination of applications for both non-material and material amendments to an IC will be undertaken by the Welsh Ministers, or the examining authority, within statutory time periods. These will be 8 weeks for non-material amendments, beginning on the day an application was accepted as valid and 24 weeks for material amendments.

14.57 As with other notification requirements throughout the consenting process, it is important applicants and other interested parties are informed of a decision in a timely manner via written notice.

14.58 In an effort to promote transparency and reach as wider audience as possible, we also consider it appropriate for the Welsh Ministers or the appointed person to publish a decision, reasons for a decision and any relevant documentation on a website owned or maintained by them.

**Revoking an IC**

14.59 Where an IC has been granted but not implemented, over time there are circumstances which may warrant the revocation of the original consent, for example, if over time it may be found to be contrary to any new National Development Framework.

14.60 In such circumstances, the Act makes provision for the Welsh Ministers to revoke an IC, either unilaterally or upon application.

*Unilaterally revoking an IC*

14.61 Although the Welsh Ministers have the power to revoke an IC unilaterally, we believe that in the interests of openness and transparency, it is essential for all interested parties to be notified and have an opportunity to make representations on a proposed revocation.

14.62 Therefore, before an IC can be revoked unilaterally, we are proposing the Welsh Ministers will be required to provide written notice of their intention to do so to:

- The original applicant (or successor in title);
- Any person with an interest in the land to which an IC relates;
- Any person for whose benefit the IC has effect;
- The LPA(s) in which the development is located; and
- NRW (for ICs in the Welsh marine area).

14.63 Such notices will need to specify details relating to the revocation, in addition to information regarding how representations can be made. We are proposing written notices for revoking an IC must contain the following details:

- The name and address of the Welsh Ministers;
- A statement to the effect the Welsh Ministers are proposing to revoke an IC;
- The reference number of the IC;
- A statement confirming where a copy of the proposed revocation document and any documents or plans are available to be inspected (including an address / web address and the times);
- The latest date a proposed revocation document and any documents or plans can be viewed, which must not be earlier than a period of 28 days starting on the date a person receives a notice;
- Details of how representations can be made; and
- The date in which representations must be received (no earlier than 28 days from the date a person receives a notice).

14.64 In addition to providing written notice, we are also proposing the Welsh Ministers undertake certain publicity and notification requirements to ensure the wider public and other stakeholders have the opportunity to view a proposed revocation and submit representations, should they wish. These will mirror the publicity and notification requirements proposed during the application stage (see paragraphs 8.28 – 8.42 of this consultation).

14.65 Similar to the procedure for Development Consent Orders in the Planning Act 2008, we are not intending to introduce any compulsory requirement for the formal examination of the revocation of an IC following the expiry of the representation period. Instead, the Welsh Ministers may proceed straight to a decision.

14.66 However, there will be a requirement for the Welsh Ministers to provide written notice of their decision. Section 91(6) of the Act already requires the Welsh Ministers to provide notice to the original applicant or successor in title, along with any other person specified in subordinate legislation. We are proposing these persons to be:

- Any person with an interest in the land;
- Any person for whose benefit the IC has effect;
- The LPA(s) in which the development is located;
- NRW (for ICs in the Welsh marine area);
- Statutory consultees; and
- Any person who has made a relevant representation.

14.67 In the interests of transparency, we also consider it appropriate for subordinate legislation to specify that when written notice of a decision on a revocation , it must also be accompanied by a statement of reasons, with the revocation order or notice also specifying when the revocation has effect.

*Revoking an IC upon application*

14.68 In addition to the Welsh Ministers' ability to revoke an IC unilaterally, section 90 of the Act also makes provision for revocations to be requested via an application by:

- The applicant, or a successor in title of the applicant;
- A person with an interest in the land;
- Any other person for whose benefit an IC has effect; or
- An LPA.

14.69 Prior to the submission of a formal application to revoke an IC, the person(s) seeking a revocation will be required to send notification of this to the Welsh Ministers.

14.70 Following the Welsh Ministers' acceptance of a notification, we are proposing applicants undertake certain publicity and notification requirements to ensure the wider public and other stakeholders have the opportunity to view a proposed revocation and submit representations, should they wish. These will mirror the publicity and notification requirements proposed during the application stage (see paragraphs 8.28 – 8.42 of this consultation).

14.71 Once the publicity and notification stage has expired, a formal application to revoke an IC may then be submitted to the Welsh Ministers and once accepted as valid, we are proposing a further round of publicity and notification be undertaken to help ensure as many people as possible have the opportunity to submit representations before a decision is made on whether an IC will be revoked or not.

14.72 After the expiry of this period of publicity and notification, we are proposing the Welsh Ministers have the ability to examine an application, adopting the same examination procedure specified in paragraphs 11.1 – 11.68.

14.73 However, we acknowledge there may be certain circumstances in which an examination would be disproportionate, for example, where no representations are submitted or no objections received. In such circumstances, we are proposing the Welsh Ministers may proceed straight to a decision.

14.74 Regardless of whether a proposed revocation is subject to an examination or not, the Welsh Ministers will be required to give notice of their decision to those persons specified in paragraph 14.62 above, in addition to any person who submitted representations.

14.75 In the interests of transparency, we also consider it appropriate for subordinate legislation to specify that when written notice, it must also be accompanied by a statement of reasons.

Questions

- Do you agree with the approach set out for amending an infrastructure consent order? If not, why not?

- Do you agree with the approach set out for revoking an infrastructure consent order? If not, why not?

## Chapter 15: Compulsory Acquisition

15.1 An applicant seeking infrastructure consent may require the acquisition of land not in their control to ensure a scheme can take place. This chapter sets out how the applicant can propose to compulsorily acquire the land as part of their application.

15.2 When applying for an infrastructure consent which includes a request to authorise the compulsory acquisition of land (a "compulsory acquisition request"), applicants will need to justify their proposals. The Welsh Ministers will have to be satisfied the purposes for making a compulsory acquisition request are legitimate, in the public interest and sufficient to justify interfering with the human rights of those with an interest in the land affected. Applicants will be expected to justify such proposals throughout the examination of the application for an infrastructure consent.

Powers

15.3 The Act sets out requirements for the compulsory acquisition of land as part of an infrastructure consent, which predominantly fall under sections 64 to 72. In addition, there are linked provisions under other sections, including 'Obtaining information about interests in land' under section 28.

15.4 This chapter does not discuss those matters which are set out in the Act on compulsory acquisition for which no further detail is required. Where it overlaps with other sections it should be read in conjunction with those chapters.

### Investigations at the pre-application stage before submitting applications which include compulsory acquisition requests

15.5 Applicants for infrastructure consent who propose to acquire land as part of their proposal will have to obtain information on and consult with those individuals with interests in the land to enable it to be compulsorily acquired as part of any consent. This engagement will help applicants establish a relationship with landowners/interests in land and provide an overview of the scheme and planning process.

15.6 Applicants will also have to undertake any relevant survey and investigative works to the land at this stage. This would include establishing the red line boundary of the land to be compulsorily acquired in order for a compulsory acquisition request to be validated (see section below on validating applications which include compulsory acquisition requests).

15.7 Paragraphs 6.30 – 6.38 covers the requests for notices requiring information on land interests to be provided. All requests for information notices will follow that process.

**Pre-application consultation**

15.8 The requirements for pre-application consultation, including for those applications which include compulsory acquisition requests, can be found in the pre-application chapters of this consultation paper.

**Validation requirements for accepting applications which include compulsory acquisition requests**

Overarching requirements for validating applications which include compulsory acquisition requests

15.9 Standard requirements for documentation required and timescales for validating an application for infrastructure consent can be found in the 'Applications for Infrastructure Consent' chapter of this consultation paper. In addition to those requirements, for an application that includes a compulsory acquisition request, subordinate legislation will set out requirements for certain documents and information to be submitted with the application in order to support the submission. Regulations will provide that the following information must be submitted to support the compulsory acquisition request:

- a land plan drawn to an identified scale identifying—
  (i) the land required for, or affected by, the proposed development;
  (ii) where applicable, any land over which it is proposed to exercise powers of compulsory acquisition or any right to use land;
  (iii) any land in relation to which it is proposed to extinguish easements, servitudes and other private rights; and
  (iv) where the land includes special category land and replacement land, that special category and replacement land;

- A 'book of reference' (further information on the book of reference is provided in the sections that follow);

- A statement of reasons to justify the compulsory acquisition request. The statement of reasons must demonstrate why there is a compelling case in the public interest for inclusion of the compulsory acquisition of land (which must be for the development itself, to facilitate the development or replacement land) within the infrastructure consent;

- A statement of funding to explain how the infrastructure consent which includes a compulsory acquisition request would be funded along with associated compensation payments (further information on this Statement is provided in the sections that follow);

- A plan showing the land which would be acquired, including parts of the land which are to be protected from development for reasons including the need to retain existing rights or duties, any proposed rights to be extinguished and any proposed replacement land. This will enable landowners or those with interests in land to identify how they are likely to be affected;

- Details of persons who if the application was consented and implemented, would be entitled to make a relevant claim for compensation under the requirements of compensation provisions contained in the Compulsory Purchase Act 1965 and the Land Compensation Act 1973. There would also be a requirement for the applicant to keep this information up to date during the application process; and

- Cross-referencing evidence of representations received as part of the pre-application consultation against land interests identified by the book of reference. This is to ensure all interests in land, who could potentially be affected by compulsory acquisition, are accurately consulted and kept informed of progress on the underlying scheme. It is proposed this information will be required to be kept updated and submitted by the time of examination, otherwise it may result in a delay to the examination of an infrastructure application, but it would not affect its validation.

Submitting and maintaining a book of reference

15.10 The book of reference to accompany an application for infrastructure consent which includes a compulsory acquisition request must contain the names, addresses and contact details of relevant persons with interests in land, having been identified by the applicant (see pre-application chapters which cover obtaining information about land interests). Relevant persons in this context would be those with a direct interest in the land, such as owners or occupiers and those with rights over the land. It will also specify the land to which the compulsory acquisition request relates.

15.11 It is proposed a book of reference must be kept up to date. Any subsequent amendments which are made to a book of reference following its submission with an application for an infrastructure consent due to property changing hands, land sales, or identification of new interests etc. must be identified to the Welsh Ministers no later than the deadline for the setting out of the timetable for the examination of the accompanying application. This will ensure all land interests are appropriately notified and remove the need for separate notices on land interests once an application has been accepted for examination.

15.12 We therefore propose that subordinate legislation will provide a definition of a ‘book of reference’ and include requirements to keep it up to date, as outlined above.

Statement of funding including certainty of compensation

15.13 In determining whether or not to grant an infrastructure consent which includes a compulsory acquisition request, it is proposed the Welsh Ministers will make a judgment on whether adequate funding is available to meet compulsory acquisition compensation claims in the event of compulsory acquisition powers being granted.

15.14 Applicants will be required to demonstrate through their statement of funding that adequate funding is available to enable the compulsory acquisition of land

following an infrastructure consent being made. It must demonstrate all resource implications have been taken into account, including how the applicant intends to secure the payment of compensation.

15.15 A requirement is therefore proposed to be set out in subordinate legislation for applicants to include in an infrastructure consent application which includes compulsory acquisition of land, a guarantee of their ability to pay compensation in relation to the land or an alternative form of security for that purpose (that has been approved by the Welsh Ministers). Ensuring the owners of land are fully compensated for any land acquisition will ensure the rights of landowners are protected, meeting the requirements of Article 1[3] of Protocol 1 of the European Convention on Human Rights.

**Acknowledging receipt of an application which includes a compulsory acquisition request**

15.16 The consultation paper elsewhere provides information on relevant bodies such as local planning authorities being informed of the submission of an application for infrastructure consent. Land interests will not be notified about the submission of an application as they will not be required to provide input on the application until after the validation stage.

Notice of accepted application and publicity

15.17 Where an application is accepted that includes a compulsory acquisition request, the Welsh Ministers would be required to issues a notice to all the relevant land interests as identified in the book of reference. This requirement will ensure clarity and transparency to all relevant stakeholders on the compulsory acquisition element of the scheme and allow for representations to be made on it. The consultation paper elsewhere provides further information on the process for persons being provided with written notice of the acceptance of an application for infrastructure consent.

15.18 Applicants will be required to cross-reference any pre-application representations to the book of reference. This will allow the land interests' representations to be tracked through the examination of the application, improve the audit trail and reduce mistakes in ensuring the views of all affected landowners/occupiers have been considered. Any inaccuracies identified between the book of reference and cross-referencing evidence may result in a delay in the examination of an application for infrastructure consent. Requirements for the applicant to provide the cross-referencing exercise and keep it updated with information on land interests are proposed will be prescribed in subordinate legislation.

[3] "*Every natural and legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of public international law.*"

**Examining applications for infrastructure consent which include compulsory acquisition requests**

15.19 The Act sets out procedures for examining applications for infrastructure consent that will be set out in regulations. Further information on the examination process in general is set out elsewhere in this consultation paper. The compulsory acquisition of land may be subject to its own examination procedure. This will be decided on a case-by-case basis by the Welsh Ministers. The nature of the proposed acquisition will be taken into account by the Welsh Ministers in deciding the examination procedure.

**The compulsory acquisition of additional land**

15.20 In allowing for an acquisition of land to be determined as part of an application for infrastructure consent, it is recognised there could be a scenario where the applicant does not initially include a request for the acquisition of certain land in a submission which is validated by the Welsh Ministers. However, the applicant could thereafter decide this certain land is required to be included as part of the application to ensure the successful implementation of the proposal. For instance, it could be deemed that subsequent to ongoing discussions around implementation of the proposal, the additional land is required to replace an existing right of way.

15.21 The applicant would, after the point of the application being validated by the Welsh Ministers, propose the land is to be acquired as part of the consent (the land in that scenario would be known as 'additional land'). In that circumstance and where a person with the interest in the additional land does not consent to the inclusion of the request, the additional land will have to go follow a similar process of scrutiny as the land initially identified to enable its compulsory acquisition. It is therefore proposed subordinate legislation will set out the procedure for the compulsory acquisition of 'additional land'.

<u>Purpose and summary and powers</u>

15.22 The outline procedure will be:

- Proposed provision - applicant must send to the examining authority details of the proposed provision, including a book of reference on the additional land or a supplement to a book already submitted; a plan identifying the additional land; and a statement of reasons as to why the additional land is required and how the compulsory acquisition of the additional land is proposed to be funded;

- Acceptance of proposed provision - examining authority will decide whether to accept the proposed provision, including validation;

- Notice of proposed provision - following acceptance the applicant must give notice of the proposed provision to all those with an interest in the additional land or might be entitled to make a relevant claim;

- Consultation and publicity of proposed provision - following acceptance the applicant must consult and publicise the proposed provision in the same manner as the original application; and

- Examination - following closure of the consultation and notification period the examining authority will undertake an assessment and amend the examination timetable as needed.

**Notice of authorisation of compulsory acquisition**

15.23 Once an infrastructure consent order which includes a compulsory acquisition of land is approved, the Act sets out provisions for publicising the compulsory acquisition by requiring whoever is purchasing the land (this could include a right over it) as part of the approved development to issue notice on its acquisition.

Purpose and summary

15.24 Section 72 of the Act (provisions about notice of authorisation of compulsory acquisition) sets out requirements for subordinate legislation to make provisions for the purchaser of the land for the giving, publishing or displaying of a notice authorising its compulsorily acquisition and also to provide the public with access to a copy of that notice.

Powers

15.25 The relevant section of the Act is:

- *Section 72 – Notice of authorisation of compulsory acquisition.*

Specific information that will be required to be included in a notice of authorisation for the compulsory acquisition of land

15.26 To ensure the compulsory acquisition of land through an infrastructure consent order is adequately publicised, it is proposed subordinate legislation will set out requirements to publish the notice in a certain way and for it to contain certain information, summarised as follows:

- Who the notice is addressed to regarding interests in the land and a description of where it is to be affixed;

- The title of the relevant infrastructure consent and information on the granting of it;

- What the acquisition of the land means in terms of its purpose;

- How a person who disagrees with the infrastructure consent can challenge it through judicial review; and

- Information on how the land is to be acquired by the purchaser in terms of applying existing legislation on compulsory acquisition[4].

**Amending an infrastructure consent order in respect of the compulsory acquisition of new land or interests**

15.27 Where a significant infrastructure project is granted consent, there will be a formal process by which applicants can apply to make a change to the infrastructure consent order. Further information on this process is contained in the post decision chapter of this consultation paper.

Purpose and summary

15.28 Sections 90 and 91 of the Act (provisions about changing or revoking infrastructure consent orders) sets out that the Welsh Ministers may by order make a change to, or revoke, an infrastructure consent order and that subordinate legislation will set out the procedure for applicants applying to do so.

Procedure for amending an infrastructure consent order, solely in relation to the compulsory acquisition of new land or interests

15.29 As outlined in the chapter on post decision process that apply to an infrastructure consent order, we consider amendments which are material include those which alter land rights (i.e. compulsory acquisition of land or an interest in or rights over land). However, for such amendments we do not believe it is proportionate for them to be automatically considered via the same process as other material amendments or require the submission of a new application.

15.30 The streamlined process for handling changes involving solely the compulsory acquisition of land or an interest in or rights over land reflects our view such changes require different scrutiny to other changes which are material. For example, the need for an updated Environment Statement, Habitats Regulations Assessment or new or additional licence in respect of Protected Species.

15.31 We therefore propose to set in subordinate legislation a prescribed procedure for amending an infrastructure consent where it involves solely the compulsory acquisition of new land or an interest in or rights over land. We consider this procedure will be as follows:

- It will require a specific application, which must be in a form publicised by the Welsh Ministers and must include as a minimum details on the applicant, the reference for the originally granted infrastructure consent and a brief description of the change to the land being applied for.

- It will require certain information to be submitted to support the amendment to the compulsory acquisition of land. This will be similar to the information required to support the original compulsory acquisition request alongside the consented application, see paragraph 9 above. It would also require a

[4] This would include Parts 2 and 3 of the Compulsory Purchase (Vesting Declarations) Act 1981.

relevant fee to be paid to support the amended proposal for the land acquisition, in addition to a statement confirming whether the application is, in the applicant's view, material involving solely the compulsory acquisition of new land or an interest in or rights over land.

- The Welsh Ministers will have 2 weeks to decide whether or not to accept the application, this will be dependent on whether it includes the required information as specified above. They must then provide notice to the applicant if the application has been accepted or if it is not considered valid, giving reasons.

- In considering the validity of the application, the Welsh Ministers will be required to consider if the amendments are material involving solely the compulsory acquisition of new land or an interest in or rights over land. Alternatively, if they are more substantive, which may result in the Welsh Ministers instructing that the amendment application cannot proceed further and requiring the applicant to submit a new application for infrastructure consent.

- In validating the application, the Welsh Ministers will be required to serve written notice to specified bodies if they accept the application. This requirement will be similar to the serving of such notice undertaken by the Welsh Ministers when accepting the original application for infrastructure consent which contains a compulsory acquisition request.

- Publicity and notification requirements for the amended application will be similar to standard publicity and notification requirements as part of an application for infrastructure consent, as set out elsewhere in this consultation. For example, publishing notice of the application in a newspaper for a minimum period of a week. Any notice the Welsh Ministers will give on the application will be required to include a statement to the effect the Welsh Ministers or appointed body for determining the application consider it to be material involving solely the compulsory acquisition of new land or an interest in or rights over land and include details of the infrastructure consent to which the amendment application relates.

- There will be a 3-week period for representations to be submitted on the application, which will begin on the date notice of the application is published. The Welsh Ministers will only consider representations about the proposed compulsory acquisition of new land or an interest in or rights over land.

- We propose that examination procedures for both an amendment application and examining land not originally included in an application for infrastructure consent, the compulsory acquisition of 'additional land', would be similar and could comprise of one or a number of procedures under written representations, hearing or inquiry. This is due to both procedures solely being about considering amendments to land interests as part of the significant infrastructure project.

- The determination of an amendment application by the Welsh Ministers, or person appointed on their behalf, will be required to be undertaken within 12 weeks of the date the application was validated. Rather than creating a new consent, a determination will amend the existing consent. The Welsh Ministers or the appointed person must not make a determination on any proposed amendments which are considered non-material or are substantial.

- Notification requirements of a decision on an amendment application will be similar to requirements to notify on a decision for the original infrastructure consent which includes a compulsory acquisition request. If the amendment application is approved, provisions in respect of the compulsory acquisition of the land will again be similar to giving notice on the authorisation of the original compulsory acquisition request.

15.32 An amendment application should allow for more than one amendment to the compulsory acquisition of new land or an interest in or rights over land to be included within the single application. The Welsh Ministers, or person appointed on their behalf, would be able to partially approve an application for amendments to an existing infrastructure consent involving solely the compulsory acquisition of new land or an interest in or rights over land, where there are multiple amendments.

Questions

- Do you agree with the procedure specified for determining a compulsory acquisition request as part of an application for infrastructure consent or when amending an existing order. If not, how should the procedure be amended?

- Do you consider specific procedure should be set out in subordinate legislation regarding examining a compulsory acquisition request as part of an application for infrastructure consent? If yes, what procedure should be specified?

## Chapter 16 - Registers of pre-application services and applications for Infrastructure Consent

16.1 To ensure local communities and other stakeholders are aware of proposed developments which are likely to affect them, requirements are placed on the Welsh Ministers, LPAs and NRW to establish and maintain registers containing information relating to pre-application services and applications for infrastructure consent.

Purpose and summary

16.2 The requirement to establish and maintain registers will benefit both the public authority responsible for the registers, as well as the wider public and stakeholders.

16.3 A formal process for record management will ensure the Welsh Ministers, LPAs and NRW have access to historical records in the future, should they require them, and it will also benefit local communities and any other person with an interest in a particular application by affording them an opportunity to exercise their rights to information in a timely manner.

Powers

16.4 The relevant section of the Act is:

- *Section 128 – Register of applications and pre-application services.*

Registers: pre-application services

16.5 The Welsh Ministers, LPAs and NRW will all be required to establish and maintain a register of pre-application services they are engaged in as part of the infrastructure consenting process.

16.6 To help ensure consistency, we believe it is appropriate for such registers to contain the same information.

16.7 We are proposing that as a minimum, subordinate legislation will provide that the following information is contained in registers for pre-application services:

- A copy of a pre-application request form (including all plans, drawings and any other documentation submitted with a form);
- Details of what pre-application services were provided by the Welsh Ministers following a request; and
- A plan drawn to an identified scale, which identifies the location / boundary to which a proposed development relates.

16.8 However, additional information may also be included in the registers, if the public authority responsible for their register feels it is necessary or appropriate.

Registers: applications for Infrastructure Consent

16.9 In respect of applications for infrastructure consent, section 128 of the Act specifies that where the Welsh Ministers receive a valid application, they must record details of the application in the register. This will include the application form itself and any supporting plans, documents or other information submitted alongside the application form.

16.10 However, there may also be additional information which could be of interest which we are proposing should also be recorded. Therefore, for completeness, we are seeking to specify in subordinate legislation that a register relating to applications for infrastructure consent maintained by the Welsh Ministers will also contain a copy of:

- any notification made to the Welsh Ministers;
- any notification of receipt of an application to the Welsh Ministers;
- any notice of acceptance given by the Welsh Ministers in relation to the application, including in relation to withdrawal of the application;
- any notification the application has not been accepted;
- any written representations received by the Welsh Ministers in response to any invitation for representations set by the Welsh Ministers and within the timescale set by the Welsh Ministers;
- any written notice of decision relating to the application; and
- any revised notice of decision, such as an amendment or correction of error.

16.11 Although applications for infrastructure consent will be submitted to the Welsh Ministers, we acknowledge that local communities and other interested parties may, in the first instance, go to their local authority or NRW for information relating to an application for infrastructure consent.

16.12 Therefore, we are proposing that both LPAs and NRW are also required to set up and maintain a register specifically related to applications for infrastructure consent. Although the information contained in these registers will not be as extensive as the register maintained by the Welsh Ministers, we are proposing that registers by LPAs and NRW must include, as a minimum:

- a link to where details relating to an application for infrastructure consent can be found on a website owned and maintained by the Welsh Ministers;
- any notice of acceptance given by the Welsh Ministers in relation to the application;
- any written notice of decision relating to the application, including in relation to withdrawal; and
- any revised notice of decision, such as an amendment or correction of error.

Publication of registers

16.13 In the interests of transparency and to ensure local communities and other stakeholders are aware of proposed developments which are likely to affect them, we consider it necessary for all registers relating to pre-application services and

applications for infrastructure consent to be published on a website owned and maintained by each of the Welsh Ministers, LPAs and NRW.

16.14 This will help ensure all information relating to proposed developments is accessible and widely available to as many people as possible.

16.15 However, there are stages of the consenting process which occur in advance of a formal application being submitted, primarily requests for pre-application services, where a prospective applicant may feel uncomfortable in engaging in these important discussions if their proposed development is, for example, commercially sensitive and they would be reluctant to have such information published at this early stage for the wider public.

16.16 Therefore, to ensure we do not discourage pre-application discussions, we are proposing that prospective applicants will have the ability to make a written request to the Welsh Ministers, LPA or NRW (whoever pre-application service discussions were sought), for information relating to their request to be published on the register at a later date.

16.17 This date must not be later than the day the applicant formally notifies the Welsh Ministers of an application for infrastructure consent, or a maximum period of 3 years following on from pre-application service discussions (whichever is sooner).

16.18 However, if a pre-application notification is not submitted following pre-application service discussions, we are not proposing to withhold publication of these discussions in perpetuity, as this would not be in the spirit of openness and transparency. Consequently, we would require publication of these pre-application service discussions within a period of 2 years, if a pre-application notification is not submitted within this time.

16.19 Written requests submitted by applicants must contain reasons and justifications to publish the request on the register at a later date (i.e. if the information is commercially sensitive) and it shall be for the public authority to determine whether the reasons and justifications for non-disclosure outweigh the public interest. However, there must be a presumption in favour of disclosure.

16.20 Where the public authority does not consider the reasons and justifications for non-disclosure outweigh the public interest, the request must be published on the register as soon as practicable.

## Annex A – Proposed list of extinguished and deemed consents

**Matters which may be deemed or extinguished with agreement of the consenting body:**

- A licence under section 16 of the Wildlife and Countryside Act 1981;
- Requirements under the Water Resources Act 1991:
  - A licence under section 24 (restrictions on abstraction);
  - A licence under section 25 (restrictions on impounding);
  - A consent under section 32 (restrictions on abstraction);
  - A drought order under section 73 (drought orders);
  - A drought permit under section 79A (drought permits);
  - A consent under byelaws made under paragraphs 5, or 6 of Schedule 25 (byelaw-making powers of the appropriate agency);
  - A consent under section 164 (consents for certain discharges under section 163).
- A licence under section 10 of the Protection of Badgers Act 1992.
- An authorisation under regulation 8 of the Persistent Organic Pollutants Regulations 2007.
- A licence under regulation 55 (licences for certain activities relating to animals or plants) of the Conservation and Habitats and Species Regulations 2017.
- Requirements under the Environmental Permitting (England and Wales) Regulations 2016:
  - An environmental permit or an exemption from the requirement for such a permit;
  - A permit under regulation 13, where that function is exercisable by a local authority pursuant to regulations 32 or 33 (grant of an environmental permit).
- A permit under Chapter 1 of Part 2 of the Greenhouse Gas Emissions Trading Scheme Regulations 2012.
- A consent under section 16 (consent of coast protection authority required to carrying out of coast protection work) or a licence under section 18 (prohibition of excavation etc, of materials on or under the seashore) of the Coast Protection Act 1949.
- Authorisation under section 20 pursuant to byelaws (byelaws for protection of nature reserves) of the National Parks and Access to the Countryside Act 1949.
- A licence under section 10 of the Conservation of Seals Act 1970.
- A consent under section 28E (duties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981.
- A licence under section 8 (exceptions for licensed persons) of the Deer Act 1991.
- Requirements under the Countryside and Rights of Way Act 2000:
  - A consent or authorisation required under byelaws pursuant to section 17 (byelaws);
  - Directions under section 24, 25, or 26 (land management; Avoidance of risk of fire or of danger to the public; or Nature conservation and heritage preservation).

- A registration under regulation 9 (inventories of contaminated equipment) of the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000.
- A consent under parts 2 or 3 of the Water Abstraction and Impounding (Exemptions) Regulations 2017.
- A confirmation or variation of an order under section 26 (limitation of fishing licences) of the Salmon and Freshwater Fisheries Act 1975.
- A permit under part 3 of the Keeping and Introduction of Fish (Wales) Regulations 2014.
- A consent under section 166 (consents for certain discharges under section 165) of the Water Industry Act 1991.

**Matters which can be included without agreement:**

- A consent under section 23 of the Land Drainage Act 1991 (prohibitions of obstructions etc. in watercourses).
- A licence under section 18 (storage of carbon dioxide) of the Energy Act 2008.
- A licence under regulation 55 of the Conservation of Offshore Marine Habitats and Species Regulations 2017.
- An order under section 14 (direction by order that village greens, etc, shall not be fenced) of the Inclosure Act 1852.
- An order under section 5, 9 or 11 (exchanges etc, fencing etc) of the Inclosure Act 1854.
- An order under section 1(fences may be dispensed with) of the Inclosure Act 1857.
- Imposition of limitations and conditions under section 193 (rights of public over commons and waste lands) of the Law of Property Act 1925.
- A licence under section 3 of the Petroleum Act 1998 (to search and bore for and get petroleum).
- A consent or authorisation required under byelaws or regulations made pursuant to sections 1 and 10 (power for district council to make scheme for regulation of common; or provisions as to byelaws) of the Commons Act 1899.
- A consent under section 15 (power to place pipe-lines in streets) of the Pipe-lines Act 1962.
- A licence under section 1 (protection of sites of historic wrecks consent or licence) of the Protection of Wrecks Act 1973.
- A consent or Licence under section 6 or 10 of the Coity Wallia Commons Act 1976.
- A licence under section 8 (licences) of the Food and Environment Protection Act 1985.
- Consents under section 13 (application for hazardous substances consent without condition attached to previous consent), section 17 (revocation of hazardous substances consent on change of control of land) and section 18 (determination of applications for continuation of hazardous substances consent) of the Planning (Hazardous Substances) Act 1990.
- A consent under section 198 (power to make tree preservation orders) of the Town and Country Planning Act 1990.

- An order under section 247 (highways) of the Town and Country Planning Act 1990.
- An order under section 257 (footpaths, bridleways and restricted byways affected by development: orders by other authorities) of the Town and Country Planning Act 1990.
- An order under section 110A (new connections with public sewers) or a consent under section 118 (consent required for discharge of trade effluent into public sewer) of the Water Industry Act 1991.
- Requirements under the Clean Air Act 1993:
  - Approval under section 4 (requirement that new furnaces shall be so far as practicable smokeless);
  - Approval under section 6 (arrestment plant for new non-domestic furnaces);
  - An exemption from operation of section 6 under section 7 (exemptions from section 6);
  - Approval under section 8 (requirement to fit arrestment plant for burning solid fuel in other cases);
  - Exemption under section 14 (height of chimneys for furnaces);
  - Approval under section 15 (applications for approval of height of chimneys of furnaces);
  - Approval of plans under section 16(2) (height of other chimneys);
  - An exemption of fireplaces from the provisions of section 20 (prohibition on emission of smoke in smoke control area).
- A consent under regulation 5 (removal of hedgerows) of the Hedgerows Regulations 1997.
- An order under section 53 (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981.
- An order under section 1 (power to limit the import etc of fish and fish eggs) of the Import of Live Fish (England and Wales) Act 1980.
- An order for the regulation of traffic under section 1, 9, 14, 15 or 22BB (general provisions for traffic regulation: regulation in special cases) of the Road Traffic Regulation Act 1984.
- A consent or authorisation required under byelaws or regulations made pursuant to section 15 (owners may make byelaws) of the Commons Act 1876.

# Annex B – Potential list of extinguished and deemed consents

| Type of Consent | Legislation |
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| **PLANNING / GENERAL** | |
| Installation permit | Environmental Permitting (England and Wales) Regulations 2016, Schedule 1 activities |
| Right to connect to public sewers – notice | Water Industry Act 1991, section 106 |
| Mains Connection | Water Industry Act 1991, s110A |
| Discharge of trade effluent into public sewer | Water Industry Act 1991, s118 |
| Discharges under s165 | Water Industry Act 1991, s166 |
| Application for consent under tree preservation order. | Section 198 of the Town and Country Planning Act 1990 |
| Limestone Pavement Order | Section 34 of the Wildlife and Countryside Act 1981 |
| Environmental Permits, enforcement notices and suspension notices (if contravention of environmental permit) | Environmental Permitting (England and Wales) Regulations SI 2016/1154) – regulation 12, regulation 13, regulation 36 and regulation 37 |
| Consent for work on construction sites | Control of Pollution Act 1974, section 61 |
| Imposition of limitations and conditions under section 193 of the Law of Property Act 1925 (rights of public over commons and waste land) | Section 193 of the Law of Property Act 1925 |
| **CHEMICALS / PESTICIDES** | |
| Licence to search and bore for and get petroleum | Petroleum Act 1998, s3 |
| Derogation under regulation 8 of the Persistent organic Pollutants Regulations 2007 | Regulation 8 of the Persistent Organic Pollutants Regulations 2007 |

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| Hazardous Substances Consent | Planning (Hazardous Substances) Act 1990, sections 4, 13, 17 and 18 and regulation 5 of the Planning (Hazardous Substances) (Wales) Regulations 2015 |
| Registration under regulation 9 of the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000 | Regulation 9 of the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000 |
| **PIPELINES** | |
| Consent under section 15 of the Pipe-lines Act 1962 (power to place pipe-lines in streets) | Section 15 of the Pipe-lines Act 1962 |
| **AIR QUALITY** | |
| Approval | Section 4 of the Clean Air Act 1993 |
| Exemption from operations of section 6 under section 7 of the Clean Air Act 1993 | Section 7 of the Clean Air Act 1993 |
| Approval | Section 8 of the Clean Air Act 1993 |
| Approval | Section 15 of the Clean Air Act 1993 |
| Exemption | Section 14 of the Clean Air Act 1993 |
| Approval of plans | Section 16 of the Clean Air Act 1993 |
| Exemption of fireplaces | Section 16(2) of the Clean Air Act 1993 |
| **MINING** | |
| Compulsory Rights Orders | Opencast Coal Act 1958, section 4 |
| **WASTE** | |
| Waste permit | Environmental Permitting (England and Wales) Regulations 2016, Schedule 1 |

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| **ROADS / HIGHWAYS** | |
| Extinguishing rights of way over land held for planning purposes | Town and Country Planning Act 1990, section 251. |
| Highways affected by development: orders by the SoS - stopping up or diversion of a highway | Town and Country Planning Act 1990, section 247 |
| Highway crossing or entering route of proposed new highways | Town and Country Planning Act 1990, section 248 |
| Order extinguishing right to use vehicles on highway | Town and Country Planning Act 1990, section 249 |
| Extinguishment of public rights of way over land held for planning purposes | Town and Country Planning Act 1990, section 251. |
| Footpaths, bridleways and restricted byways affected by development: orders by other authorities - stopping up or diversion of a footpath, bridleway or restricted byway | Town and Country Planning Act 1990, section 257. |
| Order under sections 1, 9, 14, 15 or 22BB of the Road Traffic Regulations Act 1984 (general provisions for traffic regulation: regulation in special cases) | Sections 1, 9, 14, 15 or 22BB of the Road Traffic Regulation Act 1984. |
| Conversion of footpaths into cycle tracks. | Section 3(10) of the Cycle Tracks Act 1984 |
| Orders providing for constructions of bridges over or tunnels under Navigable waters | Section 106 Highways Act 1980 |
| Stopping up of footpaths bridleways and restricted byways | Section 118 Highways Act 1980 |
| Stopping up of footpaths bridgeways and restricted byways crossing rails | Section 118A Highways Act 1980 |
| Diversion of footpaths, bridleways and restricted byways crossing rails | Section 119 Highways Act 1980 |
| Public path extinguishment and diversion orders | Section 120 Highways Act 1980 |
| Control of scaffolding on highways | Section 169 Highways Act 1980 |
| Control of deposit of building materials and making of excavations in streets | Section 171 Highways Act 1980 |

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| Hoardings to be set up during building | Section 172 Highways Act 1980 |
| Restriction on construction of bridges over highways | Section 176 Highways Act 1980 |
| Restriction on construction of buildings over highways | Section 177 Highways Act 1980 |
| Restriction on placing rails, beams over highways | Section 178 Highways Act 1980 |
| Control of construction of cellars etc. under streets | Section 179 Highways Act 1980 |
| Control of opening into cellars etc. under streets, and pavement lights and ventilators | Section 180 Highways Act 1980 |
| **ENERGY** | |
| Safety zones around renewable energy installations | Section 95, Energy Act 2004 |
| Licence for the storage of carbon dioxide | Energy Act 2008 s18 |
| **ENVIRONMENT** | |
| Power for owners to make byelaws in relation to commons | Section 15 Commons Act 1876 |
| Power for Councils to make byelaws in relation to commons | Sections 1 and 10 Commons Act 1899 |
| Consents for works to or deregistration and exchanges of common land | Commons Act 2006 - Section 38 is works on common land; Sections 16 and 17 are exchange on common land |
| Consent under regulation 5 of the Hedgerows Regulations 1997 (removal of hedgerows) | Regulation 5 of the Hedgerows Regulations 1997 |
| Felling Licences | Forestry Act 1967, section 9 |
| Licence under section 10 of the Conservation of Seals Act 1970 (power to grant licence) | Section 10 of the Conservation of Seals Act 1970 |

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| Licences under section 8 of the Deer Act 1991 | Section 8 of the Deer Act 1991 |
| Licence under section 10 of the Protection of Badgers Act 1992 | Section 10 of the Protection of Badgers Act 1992 |
| Licence under section 16 of the Wildlife and Countryside Act 1981 | Section 16 of the Wildlife and Countryside Act 1981 |
| Direction for the avoidance of fire or of danger to the public/exclude or restrict access for the purposes of nature conservation and heritage conservation | Countryside and Rights of Way Act 2000 sections 25 and 26 |
| Direction, on an application exclude or restrict access to land. | Countryside and Rights of Way Act 2000 s24 |
| Consent or authorisation required under byelaws | Countryside and Rights of Way Act 2000, s17. |
| Byelaws for Protection of Nature Reserves | S20 National Parks and Access to the Countryside Act 1949 |
| A licence under regulation 55 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (power to grant licences) | Regulation 55 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 |
| A licence under regulation 55 of the Conservation of Habitats and Species Regulations 2017 (licences for certain activities relating to animals and plants) | Reg 55 of the Conservation of Habitats and Species Regulations 2017 |
| Direction by order that village greens, etc. shall not be fenced | Section 14 of the Inclosure Act 1852 |
| Order under sections 5, 9 and 11 of the Inclosure Act 1854 (exchanges etc, fencing etc) | Sections 5, 9 or 11 of the Inclosure Act 1854 |
| Order under section 1 of the Inclosure Act 1857 (fences may be dispensed with) | Section 1 of the Inclosure Act 1857 |
| SSSI consents, including S28H consents | Wildlife and Countryside Act 1981, sections 28E and 28H |
| Order under section 53 of the Wildlife and Countryside Act 1981 (duty to keep definitive map and statement under continuous review). | Wildlife and Countryside Act 1981, section 53 |
| **WATER** | |
| Authorisation of drainage works in connection with a ditch | Section 30 Land Drainage Act 1991 |

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| Powers of ministers to authorise landowners to carry out drainage works | Section 22 of the Land Drainage Act 1991 |
| Consent under section 23 of the Land Drainage Act 1991 (prohibitions of obstructions etc. in watercourses) | Section 23 of the Land Drainage Act 1991 |
| Consent under section 16 of the Coast Protection Act 1949 (consent of coast protection authority required to carrying out of coast protection works) | Section 16 of the Coast Protection Act 1949 |
| Prohibition of excavation, etc, of materials on or under the seashore | Section 18 of the Coast Protection Act 1949 |
| Power of Minister to facilitate coast protection work | Section 28 of the Coast Protection Act 1949 |
| Dee Protection Zone | Water Protection Zone (River Dee Catchment) (Procedural and other provisions) Regulations 1999, regulations 4 and 5 |
| Licence under section 1 of the Protection of Wrecks Act 1973 (protection of sites of historic wrecks consent or licence) | Section 1 of the Protection of Wrecks Act 1973. |
| Water quality permit | Environmental Permitting (England and Wales) Regulations 2016, Schedule 1 |
| Water Resource Abstraction, Impoundment, Hydroelectric power (HEP), transfer, temporary licence | Water Resources Act 1991 - sections 24, 24A, 25, 32, 73, 79A, 109, 163, 164 and para 5 and 6 of Sch 5. |
| Compulsory works orders | Section 167 Water Industry Act 1991 |
| Compulsory works orders | Section 168 Water Resources Act 1991 |
| Limitation of fishing licences | Salmon and Freshwater Fisheries Act, s26 |
| Power to limit the import etc of fish and fish eggs | Import of Live Fish (England and Wales) Act 1980 S1 |
| Keeping and introduction of fish into inland waters | Part 3 of the Keeping and Introduction of Fish (Wales) Regulations 2014 |
| Restriction on abstracting or impounding water | Parts 2 or 3 of the Water Abstraction and Impounding (Exemptions) Regulations 2017 |
| **OTHER CONSENTS** | |

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| Greenhouse Gas Emissions or installation Permit | Greenhouse Gas Emissions Trading Scheme Regulations 2012 Chapter 1 of Part 2) |
| Licences | Food and Environment Protection Act 1985, s8 |
| Consent or Licence under section 6 or 10 of the Coity Wallia Commons Act 1976 | Section 6 or 10 of the Coity Wallia Commons Act 1976 |
| Licence to allow sites to be used for moveable dwellings | Public Health Act, 1936 s269 |