

Consultation reference: WG34221

Annex B - Consultation Response Form

Changes to the consenting of infrastructure

We are seeking your views on our proposed interim arrangements (Part 1), our proposals to establish a bespoke infrastructure consenting process (Part 2) as well as miscellaneous compulsory purchase reforms (Part 3).

Please submit your comments by 23 July 2018.

If you have any queries on this consultation, please email: planconsultations-g@wales.gsi.gov.uk or telephone Lewis Thomas on 0300 025 3201.

Data Protection

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

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

Names or addresses we redact might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Your data will be kept for no more than three years

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

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

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Telephone: 01625 545 745 or 0303 123 1113

Website: www.ico.gov.uk

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

Data Protection Officer:

Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

Email Address: Data.ProtectionOfficer@gov.wales

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Changes to the consenting of infrastructure in Wales		
Date of consultation period: 30 April 2018 to 23 July 2018		
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Type <i>(please select one from the following)</i>	Businesses/ Consultants	
	Local Planning Authority	
	Government Agency/Other Public Sector	✓
	Professional Bodies/Interest Groups	
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	
	Other (other groups not listed above) or individual	

Consultation Questions

Q1	Do you agree with our interim arrangements for onshore electricity generating stations? If not, why not?	Yes	Yes (subject to comment)	No
Comments: We agree with your interim arrangements for onshore electricity generating stations on the basis that the determination of a project should be addressed at the appropriate decision-making level, with effective improvements in performance. The interim arrangements should provide certainty by providing a suitable framework for decision-making, including clear timescales for decisions and consultation; and appropriate assessment of environmental impacts. The interim arrangements and changes in thresholds would appear to assist in the longer term and help the transition to a Wales Infrastructure Consenting (WIC) process.				

Q2	Do you agree with our short-term proposals regarding the storage of electricity? If not, why not?	Yes	Yes (subject to comment)	No
Comments: We support provisions to remove storage projects from the current DNS process, for decision at a local level, excluding pumped hydroelectric storage. We agree with the Welsh Government (WG) that storage technology has enormous potential.				

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Storage does not generate electricity, for example, a battery and if included as generation this product can distort markets by creating a less competitive environment. While we disagree with storage being defined as generation, we understand the need for storage to be defined as generation in the short term because the technology has only recently entered the market and defining regulatory frameworks can take time. However, there are clear benefits in identifying storage as a distinct activity and developing a clear regulatory definition of storage in the long term, which could be applied across all policies and industry codes. The distinction between storage and generation should therefore be clarified.

We agree that projects should be removed from Developments of National Significance (DNS) process for decision at local level if this would result in faster, cost-effective and equally transparent decision-making. We are confident that the potential environmental effects from these schemes can be adequately assessed and considered by local planning authorities (LPAs), in consultation with relevant bodies. However, it may also be useful to review the WG's [Practice guidance: Planning Implications of Renewable and Low Carbon Energy Development](#) so that it reflects potential matters relating to storage, including the potential for cumulative effects. We would also encourage developers to contact us at an early stage, as part of our [Discretionary Pre-Application service](#).

Additionally, we would recommend exploring ways of working with the UK Government about revisions to the Electricity Act 1989 and associated grid codes to define new activities such as storage activities. In 2012, Ofgem launched the Electricity Balancing Significant Code Review (EBSCR), which has helped in modifying some of the industry codes, however, the regulatory framework would also need to evolve to reflect new technologies and ways of working. We encourage the development of a Strategy to explain how Wales can integrate storage technologies within the Welsh energy system.

Q3	Do you agree with our interim arrangements for overhead electric lines? If not, why not?	Yes	Yes (subject to comment)	No

Comments:

We support the interim arrangements, which transfer consenting authority responsibilities to the Welsh Ministers (WMs) and adopt a unified approach in determining OEL proposals, which can potentially extend spatially across more than one local authority area. As can be found in our answer to question 1, the interim arrangements should provide certainty by providing a suitable framework for decision-making including clear timescales for decisions and consultation; and appropriate assessment of environmental impacts. The interim arrangements and changes in thresholds would appear to assist in the longer term and transition to a WIC process.

Q4	Do you agree with interim arrangements for offshore electricity generating stations? If not, why not?	Yes	Yes (subject to comment)	No

Comments:

We support the proposed interim arrangements for offshore generating stations. We would encourage a decision to be made and announced as soon as possible to provide certainty to both regulators and applicants on the consenting regimes post April 2019.

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We note that in paragraphs 2.26 and 2.28, it is stated that the Secretary of State will determine permissions under the Electricity Act for offshore generating stations between 1-100MW and that all permissions above 1MW have moved to the Development Consent Order (DCO) process. The Marine Management Organisation (MMO) currently determine permissions on behalf of the Secretary of State under the Electricity Act for applications from 1-100MW. For applications above 100MW these have moved to the DCO process under the Planning Act 2008 and are determined by the Secretary of State and include a deemed marine licence.

For projects located within England between 1-100MW the MMO determine the Marine Licence in conjunction with the Energy Act permissions. We understand from the MMO that the determination of the Electricity Act permission is made in close conjunction with the Marine Licence application minimising burden on the developer.

Within Wales, we currently work with the MMO to undertake joint consultation whenever possible, with the MMO utilising deferral mechanisms to the Welsh Natural Resources Wales (NRW) Marine Licence when legislatively possible to do so. We would seek to maintain this approach within the interim regime and would welcome further discussion and an agreed way of working. This may help to reduce the burden and potential cost to applicants in dealing with multiple regulators, noting that the proposed fees outlined under figure 2.2 are significantly higher than the current fee regime in England. We would welcome further discussion on this matter.

Q5	Do you agree with our proposals to seek the transfer of power of necessary wayleaves and compulsory acquisition connected to a generating station?	Yes	Yes (subject to comment)	No
Comments: We agree with proposals set out in the consultation document.				

Q6	Do you agree with the principles (set out in Paragraphs 3.26 to 3.43) which will underpin a unified consenting process? If not, why not?	Yes	Yes (subject to comment)	No
Comments: While we agree that the principles should underpin a simplified and unified consenting process, we would expect other key aspects to be included and this is explained below. It would be helpful to provide explanation about how the principles are also underpinned by; <ul style="list-style-type: none"> a) The Welsh Government Natural Resources Policy b) The Well Being of Future Generations (Wales) Act 2015, and c) The Environment (Wales) Act 2016 The compatibility between the principles should also be considered with appropriate linkages being made to ensure the document is read in its entirety and to enable integrated decision-making. A Transparent, consistent and simple yet rigorous process which strengthens the role of communities While this principle seeks to strengthen the role of communities, there should also be an emphasis in achieving effective engagement with specialist consultees				

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We note that the submission of high quality applications is sought under the unified regime by setting minimum requirements for pre-application, core minimum and additional requirements for the submission of an application, making use of best practice standards and only accepting limited changes to an application. While reference is made to two main requirements, we would welcome further details about specific validation requirements that an application would need to meet at the statutory pre-application and application submission stage (paragraph 3.30).

Underpinning this principle is a statutory framework and comments are made in paragraph 5.42, which recognise the requirement for consultees to provide a substantive response and this will be translated into a new infrastructure consenting process. As part of a rigorous process, any new consenting regime should provide for, and define, an adequate consultation period that reflects the complexity and scale of schemes, which will be determined. In ensuring a simple and clear process, any new consenting regime should define a 'substantive response' to be submitted by a specialist consultee. We seek clarity on the type of response to be provided, both for a statutory instrument and non-statutory instrument (paragraphs 5.9 and 5.51).

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

Reference is made in paragraph 3.33 of the consultation document about the ability to react and adjust to changing circumstances, that is, to satisfy the ways of working set out in the Well Being of Future Generations (Wales) Act 2015.

Reference to the Environment (Wales) Act 2016 and its implications should be made clearer under this principle. As explained in paragraph 1.3, this Act provides for the better planning and enhancement of Wales' natural resources at a national and local level, as well as our intentions to decarbonise the Welsh economy with a target of generating 70% of its electricity from renewable sources by 2030. In establishing a framework for decision-making this principle should be revised to capture the sustainable management of natural resources and associated benefits.

This principle should align with aspirations for place-making as set out in WG's draft Planning Policy Wales (ref. WG33228, Edition 10) (PPW) with far greater emphasis on what this means for the new consenting regime for infrastructure, for example, Welsh Infrastructure Projects (WIP) will need to achieve National Sustainable Place-Making Outcomes and create sustainable places, as set out in future changes to PPW. Our responses to the Welsh Government (WG) consultations on the Preferred Option for the National Development Framework (NDF), and Edition 10 of PPW sets out how the sustainable management of natural resources approach should be embodied within the planning system to help ensure the right development is directed to the right places.

Streamline and unify the decision-making process

Whilst, we support and encourage parallel tracking of permit and licence applications, we have significant concerns over the proposal to introduce a "one stop shop" to include various other consents that are required to implement the scheme. This requires careful consideration to avoid unintended consequences. We are not able to provide detailed comments on the acceptability of the approach without further details on how the proposed regime would function and have significant concerns over the outline proposals outlined in the consultation documents. This would need to include the provision of a compelling and evidenced case in support of the regime, which we do not consider having been established in the consultation. Please refer to our response to question 15 for further details.

Improve the current standards of service

This principle appears to focus on improving the standards of service for issuing a decision.

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We believe that in improving the current service focus should also be given to ensuring effective front-loading to avoid costly delays in decision making, and adequate information to support statutory consultation with consultees and to support the application to the determining authority. We would also seek the promotion of early engagement with consultees that is not limited to statutory pre-application consultation. We also refer you to our comments in response to the first principle, questions 15 and 17.

Provide certainty in decision-making

This principle should also focus on evidence-based decision-making, which would help to provide certainty and resilience. The Environment (Wales) Act 2016 requires the WG to prepare, publish and implement a statutory Natural Resources Policy setting out its priorities in relation to the sustainable management of natural resources, while NRW is required to produce a ‘State of Natural Resources Report’ and prepare ‘Area Statements’ to inform place-based action. The Natural Resources Policy and Area Statements are key pieces of evidence, which would explicitly set out the strategic context for the new unified system and illustrate its importance as a delivery system for economic, social, environmental and cultural well-being.

Our response to the WG consultation on Edition 10 of PPW highlights the need for early clarity to all parties in the planning system on how Area Statements and SoNNaR should be used to support the preparation and determination of planning applications to avoid potential conflicting views during the planning application process leading to costly delays in decision-making.

Q7	Do you agree with our proposals to remove the consenting of infrastructure from the Developments of National Significance set out under the Town and Country Planning Act 1990 process to an entirely new consenting regime?	Yes	Yes (subject to comment)	No

Comments:
 Generally, we support proposals to remove the consenting of infrastructure from DNS to a WIC process, which enables decisions to be made by WMs as the consenting authority, adopts a proportionate and simplified process.

Q8	Do you agree with the principle of optional thresholds for Welsh Infrastructure Projects?	Yes	Yes (subject to comment)	No

Comments:
 The devolution of additional energy consenting powers provides an opportunity to review the thresholds, which include the appropriateness of the previously established thresholds and takes account of the whole range of powers that are now devolved to WMs (1-350MW).

 The principle of optional thresholds can cause confusion, as to the appropriate consenting regime for certain projects, including the framework and timetable to be followed. This is a specific concern where there is associated disapplied or deemed permissions. If the proposal to disapply or deem consents is taken forward it is essential that the determination of projects proceeding under the WIC process do so at an early stage to provide greater certainty about legislative requirements.

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In addition, utilising the current threshold system already in place for energy consenting in the marine environment with a Marine Licence plus an Energy Act permission from the MMO for 1-100MW projects or a DCO process for over 100MW projects is already considered confusing. An additional optional threshold within this could also add to this confusion.

We believe that further clarity is required on how a decision on the procedure for optional projects is made by an applicant and how this affects the determining body. Clarity is also required on the powers given to WMs to decide if an optional WIP is of such complexity or the impacts are so significant to warrant call-in or refer the application to WMs for their decision and not the Local Planning Authority (LPA).

Given the different processes that can be followed under the second qualification criteria, we seek confirmation of statutory frameworks and time periods to be applied to statutory consultees, and other bodies, such as those acting as the relevant regulator. We would welcome further discussion on this.

Q9	Do you agree it is for the Welsh Ministers to ultimately decide on a case-by-case basis whether an optional Welsh Infrastructure Project qualifies as such? If not, why not?	Yes	Yes (subject to comment)	No
<p>Comments:</p> <p>While we agree, in principle, that the WMs should be given powers to decide if a development qualifies as an optional WIP, the process and timing for doing so would need to be clear to avoid ambiguity in the pre-application phases of the project. This is particularly important if permits, licences and authorisations are to be included within the WIC. Our experience is that at the early stages of a project, developers can be, reasonably, quite vague about the project proposals until their project ideas develop, therefore, we would recommend that there are clear and transparent processes that provide for a change of determination on the qualification of a WIC at the pre-application phases should the project alter.</p> <p>In paragraph 4.23 of the consultation, in setting out thresholds and criteria, we note that there are no changes to current permitted development rights held by statutory undertakers and other persons. Should there be any future changes to existing arrangements then we would welcome further discussion.</p>				

Q10	Do you agree designation in the National Development Framework for Wales should be a criterion as to whether a development qualifies as a Welsh Infrastructure Project? If not, why not?	Yes	Yes (subject to comment)	No
<p>Comments:</p> <p>The identification of projects in a national planning framework, accompanied by an appropriate rationale, is important evidence for the assessment of the public interest in a project, which is a critical element of some legally required assessment processes. However, in the offshore area the NDF may not be entirely suitable as a mechanism for determination of qualification as a WIC. For projects that are offshore, the Welsh National Marine Plan (WNMP) is likely to be more appropriate</p> <p>Currently it is unclear how the NDF and WNMP will be considered in parallel in the relevant decision-making regimes, including the WIC process. It will be critical that there is a clear, consistent policy to support the WIC, potentially including national policy statements for Wales</p>				

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in addition to the NDF and the draft WNMP. However, the current draft of the WNMP does not identify individual projects that specifically qualify as of national importance and therefore would automatically qualify as a WIC. We recommend that this could be further considered in the development of both the NDF and WNMP.

Q11	Do you agree with the proposed compulsory and optional thresholds for Welsh Infrastructure Projects? If not, why not?	Yes	Yes (subject to comment)	No

Comments:

Offshore Generating Stations

The further devolution of powers provides the opportunity to streamline the offshore energy consenting regime, in the context of the full range of energy consenting powers.

We recommend aligning the optional threshold to those for onshore generating stations (amending from 1-50MW to 10-50 MW) because this would help achieve the ambition to harmonisation where technologies straddle both the on and offshore (as stated in paragraph 4.32).

We note the statement within paragraph 4.32 that the creation of the WIC process will lead to a speedier consent process for technologies where the impacts are less certain. Whilst evidence is limited, due to the limited number of determined applications received to date, there are cases in which NRW has determined a novel marine energy scheme in less than one year.

The creation of a WIC process will not resolve the evidential uncertainties and policy framework that can cause the described delays and may divert the time spent on these application to the pre-application or post permission phases. We have suggested other additional mechanisms that could be utilised to further encourage the development of offshore renewables in our response to questions 16 and 22.

Ports and Harbours:

The optional criteria as drafted have much scope for interpretation and could therefore be confusing and potentially open to challenge, particularly if significant environmental effects come to light during the application phases of the project. We would recommend that other quantifiable means are used to determine the optional thresholds.

Q12	Do you agree with our proposals to remove the need for consent under the Electricity Act 1989 for all development in the Welsh inshore area? If not, why not?	Yes	Yes (subject to comment)	No

Comments:

We agree with the proposal to remove the need for a consent under the Electricity Act, where the project is consented by either a Marine Licence or WIC. We note that the approach specifies removing the need for Electricity Act consent for the "inshore area", however, are there additional proposals for projects with regards to the Welsh Offshore area (12 nautical miles out to the median line)?

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The removal of the need for Electricity Act permissions would require the careful consideration in the handling and establishing of navigation safety zones. We would encourage further consultation with the MMO on this proposal.

Q13	Do you agree with our proposals for a Welsh Infrastructure Consent to be either in the form of a standardised consent or a statutory instrument, dependent on the type of application made? If not, why not? proposals?	Yes	Yes (subject to comment)	No

Comments:
 In the context of standardised consents, these proposals may be incredibly complex to achieve for WIC's that have deemed licences and permits. Should the proposals include deemed permits, these would need to be similar to what will continue to be utilised for non-WIC projects to ensure that these can be efficiently understood by compliance and enforcement officers.

To provide further advice, we would need to have further clarity and details on what is being proposed in terms of the "standardised consent".

Q14	Do you agree with the notion of fast-tracking certain classes of development? If yes, please specify where this may be suitable?	Yes	Yes (subject to comment)	No

Comments:
 We agree, in principle, with the proposal for fast tracking provided that the technical assessment of impacts and application quality is not compromised; transparency and accountability is not impeded. Fast tracking should not be utilised to by-pass the necessary assessments and scrutiny of an application. The qualification for a fast track application would need to be clearly established to ensure that the WIC process can manage all types of development equitably. However, the statement "where applications are considered to be uncontroversial and do not give rise to objections, we will consider mechanisms that speed up the decision making process" may be considered to imply that the full process will only be utilised when there are controversies, there may be a need to utilise the full process for other grounds such as environmental complexities including technical assessment of information.

We would seek assurance that our ability to fulfil our role as consultee is not compromised, for example, to ensure that the ability to assess projects is not undermined and we have reasonable time-periods in which to respond. We would welcome the opportunity to explore such aspects further in future discussions with WG.

Q15	Do you agree with our proposals to disapply the need for certain authorisations attached to the main development? If yes, please specify which authorisations may be included in a Welsh Infrastructure Consent?	Yes	Yes (subject to comment)	No

Comments:
 We support and encourage parallel tracking of permit and licence applications, however, the potential to disapply or deem permissions requires careful consideration to avoid unintended

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consequences. We are not able to provide detailed comments on the acceptability of the approach without details on how the proposed regime would function. From the outline provided in the consultation document we have significant concerns over the proposals. The intended approach would need to include the provision of a compelling and evidenced case for change, and for this aspect of the proposed regime that we do not consider having been established in the consultation.

NRW is responsible for over forty different regulatory regimes across a wide range of activities, including those under the Environmental Permitting Regulations, such as major industry, waste industry, water quality discharges, flood risk activities, Marine Licences, tree felling, species licences, consents and assents in relation to designated sites including Sites of Special Scientific Interest. In the context of permits required for any development, permissions may be required at the early stages of development, for example, those relevant to land clearance, activities during construction, operation and de-commissioning. Operational development may refer to the project throughout its lifetime or the operation of development in an already built structure.

The planning and regulatory regimes are diverse and with each requiring different technical skills to determine an application under different legislation. Some of which, such as those under the Environmental Permitting Regulations already have statutory timeframes, including the provision of "stop" clauses for determination, whereas others have non-statutory Service Levels as found in the Marine Licensing regime.

We consider that the establishment of a new unified regime can be incredibly complex, and it would require significant analysis and associated resourcing. This would ensure any new regime created satisfies the ambition and objectives outlined in the consultation document, while ensuring the current level of protection to the environment, human health and other areas that the established regimes provide.

We would welcome further detailed discussion on the proposals for specific permits and licences. Whilst there is some overlap with certain permissions such as the marine licensing regime, it should be recognised that land use planning and pollution control permitting are not designed for the same purpose and have distinct features. There is little overlap in the technical skills that are required to assess an application for planning permission and environmental permit under the EPR regime, rather they are complementary regimes assessing different aspects of a development's impact.

For regimes that are ultimately not included within a WIC, the development of new or revised legislation and policy would provide an opportunity to potentially strengthen the requirements for parallel tracking between applications. While the timetable for determining consents can vary between different consenting regimes, in many cases it would be advantageous if the various applications are submitted along a similar timetable to enable issues to be considered in parallel. For example, a developer may decide to twin track an application for planning permission and an application under the Environmental Permitting Regulations or extend tracking in obtaining permissions required across the marine and terrestrial jurisdictions. This could be done by including inter-relationships between the various permissions within the legislation in terms of input, decision points and with the assessment of the permissions themselves remaining with the current Competent Authority. Further, this approach can help to facilitate early discussions between the developer, NRW and other bodies, which can help enable the provision of a common evidence base and issues to be considered concurrently. To facilitate the parallel tracking approach for Developments of National Significance (DNS), NRW has developed [guidance](#), which indicates the determination timetable for several consents being decided by us.

Within the existing DCO process, a developer can parallel track several applications if they choose to do so. If a developer chooses not to parallel track applications and engages in

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separate consultation processes there appears to be less opportunity for NRW and other partners to provide co-ordinated advice and to resolve concerns at an early stage. In the development of policy or legislation, the risks of a developer not undertaking parallel tracking should be identified, for example, the risk of identifying concerns at a later stage in the process, which can delay the application process and timetable for the commencement of development.

We also note the comments that the DCO process under the 2008 Act has been successful in achieving certainty for communities and developers, providing a ‘one stop shop’ approach and a consistent framework within which decisions are made (paragraph 3.49). However, this is not the case for all permits, for example, only a limited number of permits listed in “Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010” can be disapplied in the DCO regime. In addition, this is on the qualification that the relevant consenting body has also consented to their inclusion. We understand that for certain permits these provisions are rarely utilised within the final DCO application either from the request not being made or the consent withheld by the relevant authority. Other permissions, such as the Marine Licence within England are not disapplied within the DCO regime, they are deemed.

We would welcome the opportunity to provide further detailed advice, once more details are known regarding the regime, to help establish a regime that is fit for purpose for Wales. Based on proposals set out in the consultation document we consider there are several key points that would need to be considered to determine whether the approach is suitable, for which permits it may be suitable for disapplication or deeming within a WIC and how the regime is established.

a) Technical knowledge and skills.

As described previously NRW, regulates many differing regimes. Every regime has its own specific set of technical skill that Officers utilise, to inform or make decisions about applications. Whilst we acknowledge there are some overlaps with some permits and the planning process, such as the Marine Licence, the considerations relevant to other permit decisions can differ significantly. It would be essential that relevant considerations are also assessed as part of the WIC process, with the associated expertise within the examining and determining authority, to ensure that development is sustainable and resilient, the protection currently afforded to the environment is retained, human health and other key considerations are not diluted or lost.

Under the WIC process there is the potential for the relevant regulator to provide advice to the new determining authority, for example, advice on whether the scheme meets the regulatory requirements or recommendations for conditions. This would appear to significantly alter the role of the Regulator from decision maker to consultee.

b) Cost recovery as Regulatory and Costs as a Statutory Consultee

A large proportion of NRW’s regulatory regimes operate on a full cost recovery basis, often by a combination of application and subsistence fees. The fees can differ depending on the regime and the type of application. Should applications no longer be made then there would no longer be an associated fee. The costs to provide technical advice upon permits and licences (as in point a) above) would therefore need to be funded by other means. This would also need to include provisions for pre-application advice (including any statutory advice under the new regime), post permission compliance and enforcement activities.

Where consents are unified both the determining authority and relevant statutory consultee will need to be adequately resourced to provide the relevant expertise to assess potential effects, their significance, their acceptability and the effectiveness of proposed avoidance, mitigation and compensatory measures. We would expect any resource implications on us as a statutory consultee, and as a regulator to be considered fully and appraised as part

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Regulatory Impact Assessment (RIA), usually prepared in support of any new or changes in legislation.

c) Application quality and complexity

Efficient and timely determinations are dependent on a well-evidenced and a robust application being made. Whilst we note that the consultation emphasises the need for pre-application advice, to which we have provided additional comments in response to question 17, the inclusion of additional permit and licence applications could increase the complexity of WIC applications to be made, and associated advice to be given about the development. It would therefore be essential that the level of detail required to determine the WIC, associated relevant planning permission and the necessary permits would need to be provided at the application stage.

d) Clarity over enforcement (please also refer to our response to Q20)

In the instance of deemed permissions it is essential that the role of the enforcement authority is understood. We note the proposal for LPAs to be the terrestrial enforcement authority and the WG proposed as the enforcement authority in the marine. Whilst these would be the appropriate enforcement authorities for the planning permission and Marine Licensing respectively, should additional environmental permits be deemed within the WIC, we would anticipate the relevant enforcement authority to be NRW.

The practical aspects of one authority determining the permission and another authority enforcing the permission should be fully considered, utilising any lessons learned from the DNS and DCO processes.

e) Clarity over pre-application and post permission stages including variations

In the context of the deeming or disapplication of permits and licences the intention regarding the role of the current regulator in both the pre-application and post permission phases is unclear. At the pre-application phase it is essential that an applicant understands where advice should be sought to ensure their application is robust. At the post permission phase, in the case of a deemed permission the requirements for discharge of any conditions, the submission of monitoring and compliance reports should be clear.

In the case of variations, we note that there is an intention for the WMs to deal with variations to conditions and changes to a project, for example, scheme design. There is the potential for a significant number of variations associated with novel schemes, which need to be clearly considered. For example, those schemes within the marine environment or changes to the best available technology for permissions associated with the operational lifetime. There may be additional work involved in the transfer of permits or licences between operators and licence holders or in the surrender of permits. It may be more appropriate, in certain cases to allow the ongoing regulator to determine variations when they are associated with a deemed permission. If compared with current processes, the WIC process could therefore become more complicated and drawn out over a longer time-period if the relevant regulator does not have access to all the initial assessments and documents underpinning the original WIC decision.

The practical aspects of one authority consenting the environmental permit while another carries out the compliance and enforcement work relating to that permit needs to be evaluated. As raised in point d) above, it is important that the practical aspects of one authority determining the permission and another working upon the post permission phase are fully considered. This also includes consideration of future variations to the consent if the developer needs to alter or broaden the purpose of the scheme.

f) Consideration of the end-end process

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We understand that the timelines for obtaining consent is crucial to developers. The establishment of any new process should also consider the potential time implications associated with the pre-application and post permission phases of a development to ensure that the setting of a strict determination timelines does not simply add time to the pre-application or post permission phases of the development. For those regimes that have a statutory determination timeline the WIC process may not offer any additional benefits with regards to reduced timescales in achieving consent.

g) Potential for confusion over multiple thresholds from regulators, developers and applicants.
 Given the potential for optional thresholds there could be some confusion between applicants and regulators as to what permissions are required. Any established regime would need to provide sufficient clarity to ensure that all parties are aware of the requirements at the early pre-application phase of a project.

h) Appeal mechanism
 Any associated appeal mechanism would need to ensure that there are appropriate levels of separation between the officers determining the application for a WIC and any subsequent appeal.

We reiterate that we are not able to provide detailed comments on the acceptability of the approach without further details on how the proposed regime would function and have significant concerns over the outline proposals outlined in the consultation documents.

Q16	Do you agree the National Development Framework, Welsh National Marine Plan and topic-based policy statements should for the policy basis for determining whether Developments of National significance should proceed or not? If not, why not?	Yes	Yes (subject to comment)	No
	<p>Comments:</p> <p>A clear policy framework for taking decisions is critical to good decision-making. The consultation document only briefly reflects upon the need for policy to support decision-making, which seems to rely on the NDF and WNMP, plus any other topic specific policy that WMs may develop.</p> <p>The policies in the current draft WNMP (and any final version) are unlikely to be sufficiently prescriptive enough to be a good predictor of application success. This is in part due to the current draft WNMP being the first of its kind and we anticipate it will take several plan-making cycles to develop and increase the level of prescription. Furthermore, because of the inherent uncertainties associated with assessing the effects of complex projects in the marine environment, for example, lack of data, greater connectivity between sources of effect and sensitive receptors, it is unlikely that a marine plan can be as prescriptive as terrestrial equivalents.</p> <p>It will be important to promote alignment between planning policies, for example, between WNMP, NDF and any relevant National Policy Statement. Clear guidance would be needed, for example, if any national policy developed conflicts with existing policy, including any policies affecting the draft WNMP Strategic Resource Areas.</p> <p>We would seek clarity as to whether the devolution of energy consents up to 350MW means that UK National Policy Statements will apply to, for both the interim and long-term proposals.</p>			

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Currently there is no directly applicable National Policy Statement for some infrastructure types that are prominent in Wales (Wave and Tidal developments). It will be important to consider any gaps in policy that will need to be filled and the information needed to support decision-making. This will need to be explored for each individual infrastructure type and prioritised, and we would welcome the opportunity to discuss this further with you.

For instance, WMs are looking to encourage growth of wave and tidal developments. There may therefore be an opportunity to explore policy development that supports streamlined and more timely decision-making for these types of development. Amongst other things, these policies might consider the public interest, alternatives, suitability of locations, principles of good design, key impacts, mitigation, decommissioning and so on.

It would be helpful to understand the application and requirements of strategic assessments, for example, SA, SEA and HRA, on any emerging policy, the timings for consultation and implications for WIPs.

For certain permitting regimes, such as EPR, the existing policy framework on decision making is very clear and this would need to be reviewed and incorporated into the proposed regime if considered appropriate to deem such permissions. For novel technologies or processes new policy positions would need to be developed to support the new regime.

Q17	Do you agree with our proposals for pre-application consultation to form the basis of the Welsh Infrastructure Consent process? If not, why not?	Yes	Yes (subject to comment)	No

Comments:

The success of the proposed approach will be highly dependent on good scoping, pre-application and assessment. Despite the more structured determination and pre-application approach undertaken for the DCO process, it remains the case that some applications and, critically, their accompanying assessments are inadequate at the point of application and this can lead to overly complex and resource intensive discussion at Examination, with additional time taken to determine the associated permits and licence, which increases the consenting risk for developers.

As a statutory consultee in the development management procedure, NRW can receive a consultation for major development at the statutory pre-application stage and while we provide suitable advice to resolve concerns this advice is not always taken proper account of or addressed satisfactorily by an applicant. This can result in duplication of effort by NRW at the planning application (post submission) stage.

The risk is further increased due to the restricted ability in the existing DCO and DNS regimes for scrutiny of the quality of applications before acceptance by determining authority. Pre-application, is only beneficial at de-risking projects if it is utilised effectively. It will be critical that the criteria for accepting applications provides a rigorous approach in scrutinising applications and the adequacy of accompanying assessments (paragraph 5.39). The disapplication or deeming of additional permissions may increase this risk if the process is not robust.

In the consultation document there is provision for developers to submit a report showing how comments from consultees have been taken account of and this is an important way of ensuring that the pre-application phase has been effective. It is important that such a report does not simply reflect the view of a developer, rather it identifies which matters are agreed

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and those that are not agreed. It is important that the report identifies how an application (post-submission) and a project has changed because of earlier comments. Statutory consultees should have the discretion to refer to the consultation report when providing a substantive response to the determining authority.

Reliance on a robust pre-application phase and post permission phase can place financial burden upon statutory consultees. For applicants to make the most of the advice we provide, as part of any statutory pre-application consultation, we would encourage an applicant to submit proposals that are advanced in detail and of good quality. We do not have the capacity to provide multiple free statutory advice on a scheme and we recommend that any changes in future regulations restrict statutory pre-application to a single consultation per WIP. NRW has established a Discretionary Advice Service to ensure the continued support to the provision of pre-application advice. This Service does not prohibit developers from consultation with NRW during the statutory pre-application stage on discretionary basis. Where an applicant requires further advice, we will encourage applicants to take up our Service where advice can be sought as part of a charged service and therefore can be provided in addition to any statutory pre-application and application submission (post-submission). Any established regime should provide clarity regarding the statutory requirements for consultees. Should additional statutory advice be required then this would need to be appropriately funded. This is particularly the case for the disapplication or deeming of permissions within a WIC, for regimes that are currently operating on a cost recovery basis.

In paragraph 5.26 we note the requirement on an applicant to notify the WMs and a LPA on the intention to submit a WIC. We also recommend that statutory regulators with deemed or potentially disappplied permissions are notified at this stage and it would be beneficial for statutory consultees to also be notified.

In addition, for areas within the offshore environment it may be more appropriate to notify NRW because of our jurisdiction within the marine environment. There is also a need to clarify which LPAs would be closest to the offshore project, for example, out at sea the closest LPA may be based in England, Northern Ireland, the Isle of Man or the Republic of Ireland.

Our experience is that the length of an effective pre-application phase can vary considerably, depending on the novel nature of the project, or how advanced the project is in development when the notification is given. It is also dependent on other non-consenting factors, that is financial decisions for instance. We would recommend flexibility in the deadlines associated with the pre-application phases, particularly for those developments located within the marine environment.

As part of consultation requirements, the applicant must open and maintain a specific website until the point of submission of an application (paragraph 5.31). We recommend that the period to maintain a website is extended up until the point of a formal decision because this would enable statutory consultees to have appropriate access and the ability to refer to previous versions of documents if needed and track changes as a WIP progresses.

Q18	Do you agree with our proposals to remove inquiries from the process for determining Developments of National Significance and for hearings only to be held in place? If not, why not?	Yes	Yes (subject to comment)	No

Comments:

We recognise that inquiries can be resource-intensive and limiting DNS determination to hearings only appears to be a sensible approach, whilst ensuring that all issues are considered appropriately at examination.

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Q19	Do you agree with our proposals regarding variations during the determination process and post-consent variations? If not, why not? If you agree, please suggest ways of fast-tracking those variations.	Yes	Yes (subject to comment)	No
<p>Comments: For the marine environment and associated marine licences there is a reliance upon the ability to vary consents, particularly for novel technologies. With ongoing regulation and compliance of permits frequent variations are needed, it may not be efficient WMs to continue this role should a deemed licence be included within the WIC.</p> <p>In paragraph 5.54, it notes that the relevant enforcing authority would be WMs for the offshore, however, NRW currently undertake the post licence work associated with discharge of conditions, review of monitoring reports and variations. Consideration therefore, needs to be given on the appropriate authority for post-consent work in the marine environment with care given to those developments in the intertidal zone to avoid the situation in which two authorities are required to discharge the same requirement.</p> <p>The same considerations should be given to any other permission that is deemed within a WIC.</p>				

Q20	Do you agree the Local Planning Authority is the relevant onshore enforcement authority and the Welsh Ministers is the relevant offshore enforcement authority? If not, why not?	Yes	Yes (subject to comment)	No
<p>Comments: As outlined in our response to question 19 it is important to differentiate between compliance, post permission work, such as discharge of conditions and enforcement functions. In terms of enforcement, except for certain permits, as described in question 13, we agree that WMs would be the appropriate enforcement authority of the marine area and with the LPAs for onshore projects. However, there is a need to ensure there is a clear legislative outline of each authority's jurisdiction, considering the location of the impact, the cause of the impact and those considered to be intertidal projects. For example, under the current marine licensing regime the jurisdiction extends from Mean High Water Springs to the median line, whereas the Local Authority jurisdiction overlaps, extending down to Mean Low Water. For any deemed permissions there would also need to be clarity over the appropriate enforcement authority.</p> <p>We have also made comments with regards to relevant authorities for discharge of requirements and conditions in our response to question 15 point(e).</p> <p>As part of the examination process we may be asked to provide a response on those controls to be imposed should the application be granted, that is, conditions and legal agreements. However, we are concerned that this can put NRW in a difficult position if we are asked to suggest or to agree measures, which we understand to be ineffective and not deliverable. This may also have implications where it is not possible to undertake enforcement action, for example, if a condition is held ultra vires, invalid and beyond the powers of the consent and the control of the applicant.</p>				

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Q21	Do you agree with our proposals regarding the compulsory acquisition of land? If not, why not?	Yes	Yes (subject to comment)	No

Comments:
 Most of the Welsh sea bed is owned by the Crown Estate. We strongly recommend consultation with the Crown Estate regarding any proposals for compulsory acquisition in the Welsh marine area.

Q22	Do you have any other comments to make on both Parts 1 and 2 of this consultation?	Yes	No

Comments:
 The objective of the proposal requires careful consideration and it may take time to establish a robust process that achieves multiple aims and outcomes. As the system is established thought should be given to the transitional arrangements for those applicants already utilising the current process. Given the length of time often associated with the pre-application phase of infrastructure projects this can be a significant time-period. The existence of other comparative regimes also provides a useful opportunity to explore their strengths and weaknesses and this should not be missed.

The time-period proposed to establish the legislation and guidance is restrictive and we would need to be appropriately resourced. We would expect resource implications on statutory consultees to be considered fully and included in the undertaking of a Regulatory Impact Assessment (RIA). The proposal will best achieve its ambition where time has been allowed to develop an appropriate framework, strategy, policies and guidance established to support it. We would also seek consistency in wording of any new or changes to legislation, policy and guidance, for example, either use statutory consultee or specialist consultee.

In adopting the preferred option, that is, the new unified regime, it should be recognised that a fixed determination timetable can risk applications being turned down if there is insufficient time to address significant impacts adequately or not being determined at all if the time-period has ended. One advantage of the existing regime is that it allows flexibility to address such issues or take account of new information. This can be of benefit for more complex schemes where there can be many uncertainties (as can be the case for many marine schemes). Decision makers need to be confident that they can refuse and seek to withdraw applications if they cannot make a clear decision at the end of the timescale.

There is no description in the consultation document about the implications for the legally required assessments and associated legislation changes. This needs to be carefully considered. For instance, to enable a unified regime, it may be necessary to amend or create legislation that requires an Environmental Impact Assessment (EIA) given those activities to be undertaken, or to ensure that the current exemptions continue to apply, for example, retain the exemption for a marine licence for the maintenance of Harbour Works.

The specific needs of the marine sectors should be carefully considered to ensure that the new regime is fit for purpose both on and offshore. The complexity of this should not be underestimated. Some of the major challenges of marine consenting is the lack of evidence base, novel and rapidly changing technologies. This has led to uncertainty about the effects of marine projects on the environment, applications can be a lengthy and subject to complex processes. This is especially the case when assessing the effects of novel developments, such as wave and tidal projects which, because of their innovative nature, are even less well

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understood. Some of the measures proposed in the new consenting approach should help with this. For example, aligning the different consents required for development and the creation of a more structured approach to the pre-application phase should assist developers to scope the project assessments more efficiently and effectively. Although, as highlighted elsewhere in our response these changes are also quite complex.

As the draft consultation recognises, the WNMP (as drafted) represents a policy framework to support better decision-making and assessment. However, it cannot currently address sector specific policy in greater detail and further policy development will be needed to consider a range of issues that help to speed up decision-making and assessments. These issues include:

- **Improvements to the evidence base**

The WNMP policies encourage support for sectors in strategic resource areas that represent important areas of opportunity. Plan-makers, decisions-makers and developers are encouraged to collaborate to improve the evidence base for taking informed decisions about individual developments. It will be important that WG ensure that this collaboration is supported effectively and that access to evidence is improved, for instance, through the Marine Planning Portal.

Furthermore, research will be needed to identify gaps in evidence that can hamper effective consenting. The creation of the Offshore Renewables Joint Industry Programme (ORJIP) for Ocean Energy has provided a focus for the identification of Research and Development needs, but it will be important that research is supported financially and directed towards these needs.

- **A risked-based and proportionate approach to consenting**

NRW's Permitting Service has already streamlined the Marine Licence consenting process by banding projects based on risk. Band 1 ('low risk') are subject to a much less stringent decision-making procedure than Band 2 and 3 projects. However, most wave and tidal stream development will fall into Band 3 ('high risk') category and further work is needed to better understand if projects in this higher risk category can be further subdivided on the basis of risk to the environment, so that the assessment and consenting process can be adapted and applied in a proportionate way, which matches the individual level of project risk.

Comments on Fees and Costs

We would agree with the principle of securing relevant resources through Planning Performance Agreements because this process will enable NRW to use its existing charging mechanisms, for example, the Discretionary Planning Service (paragraph 5.64).

Q23	Do you agree with our criteria for delegating non-Ministerial Compulsory Purchase Order cases for decision by an Inspector? If not, why not?	Yes	Yes (subject to comment)	No
<p>Comments: We agree with proposals set out in the consultation document.</p>				

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Q24	Do you agree with the intention to amend, via primary legislation, section 5(4) of the Acquisition of Land Act 1981 to broaden the power to award costs to parties in relation to compulsory purchase orders (CPOs) being made to facilitate development and other land uses, or for highway purposes?	Yes	Yes (subject to comment)	No
Comments: We agree with proposals set out in the consultation document.				

Evidence

A	Do you have any information on the costs and benefits of existing consenting regimes? Those include the DNS, Harbour Revision or Empowerment Orders, consents to build and operate generating stations and overhead electric lines, Transport and Works Orders and Highways Orders.	Yes	No
Comments: NRW holds data regarding the determination timescales, and in some cases, hours spent determining consents. We would welcome further discussion with the WG on which data, if any would be beneficial to analyse in establishing the proposed regime.			

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How to Respond

Please submit your comments in any of the following ways:

Email

Please complete the consultation form and send it to :

planconsultations-g@wales.gsi.gov.uk

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

Post

Please complete the consultation form and send it to:

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

Additional information

If you have any queries on this consultation, please:

email: planconsultations-g@wales.gsi.gov.uk ; or

telephone: Lewis Thomas on 03000 25 3201